Formal and informal justice systems in the context of SGBV, HP and SRHR in Zimbabwe

Building cooperation and complementarity
1.0 Introduction

This position paper targets policy makers within the various ministries and departments in the government of Zimbabwe, civil society organisations and international organisations that partner government in combating sexual and gender-based violence (SGBV). The purpose of the paper is to provide insights into how the formal and informal justice systems can be utilised in complementarity as a means to promote access to justice for survivors and victims of sexual and gender-based violence. The lessons provided in the paper are drawn from two research projects conducted under Spotlight Initiative focusing on the efficacy of the formal and informal justice systems. The research showed that the two justice systems were operating parallel and often in conflict with each other. It is also clear that the majority of survivors preferred and actually utilised the informal justice system which in many cases undermines access to justice. It is thus imperative to find a way to ensure that the two systems complement each other to increase access to social justice. Based on the findings from the two studies outlined above our position is that access to justice for survivors and victims of SGBV can only be enhanced if the formal and informal justice systems work in complementarity and not competition to each other.

The paper draws from fieldwork conducted in three districts across Zimbabwe (Mutasa, Karoi and Umzingwane) and desk research to argue how the formal justice systems are well served by cooperating, capacitating and promoting certain elements of the informal justice system. The research showed that the advent of COVID-19 initiated lockdowns provided important insights into the need to build a robust justice system that is responsive to survivors of SGBV in disaster situations. Restricted movement coupled with limited access to formal justice systems SGBV survivors were made more vulnerable. This position paper targets policy makers within the various ministries and departments in the government of Zimbabwe, civil society organisations and international organisations that partner government in combating sexual and gender-based violence (SGBV). The purpose of the paper is to provide insights into how the formal and informal justice systems can be utilised in complementarity as a means to promote access to justice for survivors and victims of sexual and gender-based violence. This policy paper argues for the need to build complementarity between the formal and informal justice systems in Zimbabwe as a way of enhancing access to justice especially in situations where the formal systems are unresponsive.

A lack of investment in improving the quality of informal justice systems poses challenges when this becomes the only source of services for survivors. This research Generally, informal justice systems such as customary courts are easily accessible to most rural women for resolution of disputes. Women have used these courts to get relief in cases of domestic violence, gender-based violence, harmful practices and maintenance. Women were unable to access the community courts due to transport and travel restrictions that were imposed by the COVID 19 Regulations.¹ The research in the conducted in Mutasa, Karoi and Umzingwane shows that informal mechanisms of justice are bedeviled by serious shortcomings such as bias against women and children, failure to follow legal and constitutional guidelines, inability to follow international and national human rights standards. The mechanisms however remain key in ensuring that justice is domestically rooted and owned by local communities for sustainability of peace and justice.

¹ Formal justice study cited experiences of multiple women and organisations working with women who experienced the challenges with travelling restrictions. There is however lack of evidence that outlines the exact number of women affected by this.
2.0 Role of Stakeholders in Building Complementarity between informal and formal justice systems

2.1 Government

2.1.1 Informal justice systems can be good partners with the formal justice system

Research in Mutasa, Hurungwe and Umzingwane showed that the formal justice system often operates under difficult financial constraints which affect availability of infrastructure and human resources. It is therefore imperative to use the localized resources of the informal justice systems where possible to complement the often-difficult work of conducted by state justice systems. The complementary role can be enhanced by also ensuring that cases that do not involve serious crimes can be handled in a cost-effective manner informal justice system. This can decongest the courts and ensure improvement in the time it takes to process serious SGBV cases. The government can do the following to ensure this complementarity:

- Building institutional capacity by improving the competencies and capacities of informal justice institutions or groups through trainings, material investment and a policy framework to guide partnership between formal and informal systems.
- Joint training workshops involving informal justice systems leaders and state court judges to improve collaboration and to encourage ongoing dialogue.
- Training of trainer programs to give informal justice systems leaders the capacity to impart their knowledge to others.
- Training targeted at developing women as informal justice systems leaders and participants in dispute resolution.
- Supporting the establishment of representative groupings or councils of informal justice systems leaders to foster collaboration, knowledge sharing, and greater consistency of practices across regions.

2.1.2 Reconciliation of practical conflicts between formal and informal laws and processes

- Legal harmonization legislation aimed at acknowledging, recognizing, or integrating customary practices and standards into statutory law administered by formal courts.
- Adoption of procedures to allow state courts to review and enforce decisions of informal justice systems.
- Non-legislative agreements or memoranda of understanding between the state and informal justice institutions to govern the harmonization of practices applied by state courts and informal justice systems, aimed at minimizing practical conflicts in SGBV cases.
- Establishment by legislation of non-state institutions that adopt informal justice systems dispute resolution processes or features and whose roles are distinguished from those of formal courts.
2.1.3 Integrate informal justice institutions as part of the referral pathway

Research in the three districts has shown that the informal justice institutions as the primary means of accessing justice by citizens. The government should thus invest in strengthening these institutions by firstly ensuring that they are part of the existing formal systems such as the referral pathways. This requires the government to do the following:

- Training of actors in the informal justice system of the referral pathways and legal pathways for SGBV and HP cases. This includes clear outline on the roles and procedures for informal actors in SGBV cases.
- There should be a clear role of informal systems in the referral pathway that leads victims and survivors to the appropriate service providers.
- Training to create linkages between informal institutions with primary formal institutions such as police and health centres.

2.1.4 Strengthening access to justice for all and gender equality in all justice systems

The government must strengthen access to justice for all and gender equality in all justice systems. This includes enhancing public access to justice by facilitating greater equality and human rights through the improvement of individual capacities of informal justice systems dispute resolvers, disputants and other participants. Other steps include:

- Legal educational programs for citizens, particularly vulnerable or marginalized groups, such as women with disabilities
- Public awareness campaigns via electronic media broadcasts, community theatre, and print publications on legal rights especially for women and girls
- Training programs for justice providers, including lawyers and paralegals, on customary law and the application of state law principles in non-state dispute resolution.
- Legal aid services provided by lawyers and paralegals at community level
- Training aimed at developing community paralegals to serve communities that have no practical access to state courts or attorneys.
- Monitoring and evaluation of informal justice systems activity and effectiveness through civil society organisations.
- Training programs specifically for women who serve as informal justice systems decision makers or who otherwise assist in negotiating disputes affecting women.

2.2 Civil Society

2.2.1 Paralegal training for key actors in the informal justice system

It is important to develop and strengthen community paralegal models on legal aid services for remote and marginalised communities that may not have to access mobile phones, laptops and tablets which they could use to access legal aid materials. Paralegals are resident in the communities and in the context of COVID 19 they are not affected by lockdown travel restrictions beyond 5km radius. Civil society organisations can be critical in investing in paralegal training and capacity building. This can be done by promoting the following:

- Train and capacitate paralegals in communities as a means of ensuring access to justice as grassroots level.
• Provide paralegal training to the key actors in the informal justice system. Such training will ensure awareness raising of the legal and constitutional requirements for SGBV and HP related cases so that instances of cases being stifled or silenced are reduced.

• Develop the capacities of informal justice actors to provide information to members of their communities about legal rights and legal and other services that may be available to them. Informal justice actors are often the first point to whom citizens first report when they need assistance or have a grievance. They are therefore a potentially effective means of channeling information to the community.

2.2.2 Building communities’ capacity on law, women rights and human rights frameworks on SGBV, HP and SRHR

There is need for concerted effort to build the capacity of communities especially women and key actors in the informal justice system on the national and international legal requirements around women and human rights. The formal justice system will benefit from well informed communities that are able to understand what to do in case of SGBV cases. The raising of legal awareness and public information outreach efforts targeting the general population can usefully be developed in conjunction with the training of key actors and adjudicators within the informal system. Increasing legal awareness extends knowledge of rights, and thus promote community demands for the protection of those rights, and remedies where those rights have been violated. It is clear that the major weaknesses of the informal justice systems are experienced often disproportionately by the most disadvantaged groups in society, including women, the poor and geographically isolated communities yet they also largely lack of awareness and understanding of their rights. It is therefore imperative for civil society organisations to implement programmes at community level that focus on the following:

• Training community members on law, women and human rights frameworks as it relates to SGBV, HP and SRHR. Training in legal rights and obligations is thus necessary to empower an effective collaboration between formal and informal systems because disempowered groups within communities understand their rights and the steps, they can take to protect those rights.

• Provide advocacy material and information packs in local languages that ensure access to information at community levels. As cell phone penetration increases in rural areas there is need to explore how to utilise social media platforms as a means to ensure access to information.

2.2.3 Mainstreaming gender in the informal justice system

There is need for the mainstreaming of gender across the informal justice system. Gender mainstreaming is necessitated by the need to ensure that women also become important actors within the informal justice systems. There is need to ‘bring together the formal and informal systems to work on gender awareness and gender justice. In other words, we need to engage the customary leaders in examining ideas and perceptions of women and gender equality, bringing customary leaders into the discussion, making them part of the process, forging a consensus, and, if that doesn’t happen, create a system to check the congruence of formal and informal systems that ensures transparency and accountability.2

Civil society organisations can facilitate in this process by undertaking the following:

- Gender training for all actors that work within the informal justice system especially traditional leaders and communities
- Training on human rights for all actors that work within the informal justice system especially traditional leaders and communities.
- Supporting community based organisations to build capacity to monitor the informal justice systems in particular the handling of cases involving SGBV.

### 2.3 Law Schools and Universities

#### 2.3.1 Introduce law students to informal justice systems

There is value in ensuring that students being trained in the formal justice system get introduced to informal justice systems during their training. This can lead to growing an appreciation of the informal by future legal officers who will be able to understand the efficacy and limitations of these systems. A lack of understanding of the informal systems often lead to those in formal systems to shun and look down upon systems that can greatly enhance their work through collaboration. Universities with the support of government and other stakeholders should thus do the following:

- Offer advanced degree studies in customary law to foster the development of attorneys who are able to understand and support state and non-state dispute resolution.
- Mainstream customary law within the current law curriculum to ensure that actors in the formal justice systems are able to understand the processes and actions in the informal justice system.
The impact of COVID-19 on socio-economic rights in Zimbabwe