
**AN EXPLORATION INTO WOMEN'S AND GIRLS' ENJOYMENT OF THEIR
RIGHTS TO FREEDOM OF MOVEMENT AND ASSOCIATION IN EPWORTH,
HARARE, ZIMBABWE**

BY

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Abstract

This research sought to discover whether women and girls in today's Zimbabwe experience more or less public gender-based violence (GBV) or violations of their Constitutionally protected human rights to move and associate freely in public than their predecessors during the decade following the country's independence in 1980. Being the target of jeers, catcalls, insults, indecent assaults (including inappropriate touching) and even being stripped naked and, in extreme situations, murdered is the norm for girls and young women in shopping centres, at commuter omnibus (public taxi) ranks and bars not only in Harare but also other cities and towns throughout Zimbabwe and Africa. For the purpose of this study the researcher compared and contrasted the experiences of two groups of girls and women from the high density suburb of Epworth, Harare. The younger group was between 18 and 30 years old and live under the current dispensation of Zimbabwe's progressive 2013 Constitution which succeeded the country's more restrictive 1980 Constitution which governed the lives of the older group of women aged between 50 and 60. The writer employed several complementary theories and methodological approaches in the study including the grounded women's law approach which also embraced a strong human rights perspective. Her data collection methods included interviews and focus group discussions. Other data sources included local and foreign legislation and case law as well as international human rights instruments. Her major finding was that today's women's and girls' rights to freedom of movement and association are being violated more than they were in the past chiefly due to the influence of societal resistance and backlash directed at women who try to assert their Constitutional rights in public as well as harmful cultural and religious attitudes that give men a dangerous sense of entitlement over women. Based on her findings, the writer proposes several recommendations including (1) the adoption of an Equality Act together with an Equality Court and Council to handle specifically issues of discrimination especially those taking place in the public sphere; (2) the banning of media content that has the effect of spreading prejudice and discrimination against girls and women and their subsequent failure to exercise their rights to freely move and associate with whomever they choose in public spaces and (3) the roll out of nationwide legal literacy programmes conducted especially in low socio-economic areas and media campaigns at the expense of the state to socialise people so that they learn to respect the rights of others and change harmful attitudes about the stereotyped statuses, roles and responsibilities of men and women in the modern society of today's Zimbabwe.

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Declaration

I, Sakhile O.N. Ndingindwayo, do hereby declare that this dissertation is my original piece of work, it is an honest and true effort of my personal research. I certify that this has not been presented anywhere else before for the award of certificates or any other form of assessment.

SIGNED.....

DATE.....

This dissertation was submitted for examination with my approval as the university supervisor.

Signed.....

Professor Julie Stewart

Date.....

Dedication

To Professor Julie, for your enduring patience and kind guidance throughout my studies, you kept me grounded in never forgetting the importance of this research's area of influence, especially in the times when my faith in the research's impact wavered.

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List of abbreviations and acronyms

BDPA	Beijing Declaration and Platform for Action
CBD	Central Business District
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
Criminal Law Code	Criminal Law (Codification & Reform) Act [Chapter 9:23]
ECOWAS	Economic Community of West African States
GBV	Gender-based violence
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
NGO	Non-governmental organisation
SDG	Sustainable Development Goal
SEARCWL	Southern and Eastern Africa Regional Centre for Women's Law, University of Zimbabwe
UDHR	Universal Declaration of Human Rights
VAW	Violence against women

List of international human rights instruments

African Charter on Human and Peoples' Rights (1981)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (Maputo Protocol)

Beijing Declaration and Platform for Action (1995) (BDPA)

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)

CEDAW Committee General Recommendation No. 28 on Core Obligations of States Parties (2010)

CEDAW Committee General Recommendation No. 35 on GBV against women (2017)

CEDAW Concluding observations on the sixth periodic report of Zimbabwe (2020)

International Covenant on Civil and Political Rights (1966)

Sustainable Development Goals (2015) (SDGs)

Universal Declaration of Human Rights (1948) (UDHR)

List of legislation

Malawi

Malawi Penal Code [Chapter 7:01] (2014)

Zimbabwe

Constitution of Zimbabwe. Amendment No. 17

Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution)

Criminal Law (Codification & Reform) Act [Chapter 9:23] (Criminal Law Code)

Domestic Violence Act [Chapter 5:16] (2006)

List of cases

Nigeria

Chemanze and Others v. Federal Republic of Nigeria ECW/CCJ/JUD/08/17.

Zimbabwe

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Executive summary

This research sought to interrogate the experiences of Epworth women and girls in exercising their constitutional rights to freely move and associate in public spaces, more significantly to establish if the current generation of younger women (18- 30 years) is freely asserting and enjoying their rights more than when the current older generation (50 – 60 years) were younger women, that is in the 1980's.

I did this by comparing the post-2013 laws to the ones that governed the older generation in the 1980s in terms of which rights young women can exercise. I also looked at how and why the constrictions on female's behaviour and sexuality are maintained by discussing pertinent feminist theories and court cases of gender based violence against women from Zimbabwe and Nigeria. The current Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution), the Criminal Law (Codification & Reform) Act [Chapter 9:23] (Criminal Law Code) and the Domestic Violence Act [Chapter 5:16] amongst many other regional and international agreements by which Zimbabwe is bound provide and protect the rights to freely move, engage, participate and pursue a cultural life of one's choosing as long as it does not infringe on the rights of others in public spaces. Even so, young women and girls (18-30 years) continue to be the main targets of various forms of gender based violence (GBV) in the public sphere which include but are not limited to, insults, name calling, rape, indecent assault and murder.

I then tried to ascertain why it is that their rights are constantly infringed when there is a legal framework protecting them by embarking on an assessment of inter-generational shift in the enjoyment of these rights through incorporating the views of the 50-60 years female generation later in the data collection phase.

To collect the data I conducted one on one interviews as well as focus group discussions with women and girls only in their respective homes. I carried out my research process using a totally grounded process whereby my research assumptions were prone to modification depending on what I would have found in the field. This was the case when I decided to establish if there was any change in the enjoyment of the rights by incorporating the views of the 50-60 years generation which were not in the initial research design.

The human rights approach as part of my research methodology enabled me to situate these rights within the legal framework, to see whether the right to freely move and fully participate in public life can be claimed. In order to weigh the adequacy of this human rights framework in protecting the rights of women and girls, I engaged the women's law approach in analysing if we have substantive equality as a nation or if we were still at the formal equality stage, that is, if at all the legal framework spoke or was in synch with the lived experiences of women. Last, but not least, I utilised the Women, Law and Development (WLD) methodology in collecting and analysing the data as well as in giving recommendations. This approach guided me in establishing the major causes of the rights infringement and in coming up with possible courses of action.

The major findings of the inquiry are that women and girls' rights to freedom of movement and association are being infringed now more than they were in the 1980s. This is because of societal resistance and backlash directed at women who try to assert their constitutional rights in public as well harmful cultural and religious attitudes that give men a dangerous entitlement over women.

Another important finding is that the Domestic Violence Act is only limited to protecting women in specific relationships as outlined in its section 2 and women whose rights are violated in public are left without much protection. The reason is that the current Criminal Law Code not only lacks a gendered aspect in handling the cases of women whose rights to freely move in public are infringed by men, but some of its offences are too generalised.

Recommendations made for this study include but are not limited to the adoption of an Equality Act together with an Equality Court and Council to handle specifically issues of discrimination especially those taking place in the public sphere. I recommended that widespread legal literacy programmes be conducted especially in low socio-economic areas and that media campaigns at the expense of the state be carried out continually in order to socialise people so that they respect the rights of others and also to change harmful attitudes about the stereotyped statuses, roles and responsibilities of men and women in society. I also recommended the banning of media content that has the effect of spreading prejudice, discrimination of women and their subsequent failure to exercise their rights to freely move and associate with whomever they choose in public spaces.

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

Growing up and having to experience my young womanhood in Harare, the bustling capital of Zimbabwe, exposed me both to being a victim of and a witness to a number of rights' violations only young women encounter in public spaces. Being the target of jeers, catcalls, insults, indecent assaults (including inappropriate touching) and even being stripped naked and in extreme situations murdered is the norm for girls and young women in shopping centres, at commuter omnibus (public taxi) ranks and bars not only in Harare but also other cities and towns throughout Zimbabwe and Africa. Even though a part of the old me (before being trained at SEARCWL) knew there was something wrong with even some of these lesser evils, my opinion of them inclined toward those of my society, thinking that it was somehow 'normal' and 'justified' for females, including myself, to go through what was an awful ordeal.

During my studies at SEARCWL I thankfully learnt, however, that a woman or girl does indeed have the right to move about freely in Zimbabwe and participate in the cultural life of her choice without any form of harassment and if her rights to do so are infringed, she may seek remedies at law as these rights are protected by the Declaration of Rights found in Chapter Four of the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution); the Criminal Law (Codification & Reform) Act [Chapter 9:23] (Criminal Law Code) and the Domestic Violence Act [Chapter 5:16].

Since only a little has been written about women's rights to freely move about and associate in public spaces, I have sought through this piece of research to determine why women's rights are continually curtailed in spite of the fact that there are laws to protect them and I also wanted to investigate those factors which come into play in order to keep women's conduct and sexuality so-called 'in check.'

This research was conducted at a time when Zimbabwe was and still is being governed by its newest 2013 Constitution which is more liberal than its predecessor, its 1980 Constitution which made no reference to sex or gender as a basis for non-discrimination criteria to be

applied. Even when ‘sex’ was added (through Amendment No. 17), section 23(3) of the 1980 Constitution still retained a claw-back clause which made an exception to discrimination of any kind when it came to matters of personal law or African Customary Law, amongst other factors. This meant that laws that disadvantage and/or prejudice women could still be passed in the application of personal and African Customary Law.

Infringements of the right to freely move and associate in public spaces are largely perpetrated on women by men and this makes them forms of gender-based violence (GBV) which is any discriminatory act done on a particular sex and/or gender mainly because of social constructions and/or attitudes held by society about that person’s sex/gender. Since women’s choice of culture, behaviour and sexuality are regulated not only by society but by the victims themselves because of their fear of societal backlash, their freedom to exercise these rights in public is already curtailed way before they leave their zones of comfort and safety. Hence, this research aimed to find out if women and girls of this current generation are enjoying their rights to freedom of movement in public spaces compared to their older predecessors who experienced their young womanhood in the 1980s when national laws permitted discrimination along the lines of gender, customary laws and personal law.

1.2 Statement of the Problem

Zimbabwe is a signatory to several international and regional conventions that obliges the government and all its arms to ensure the protection of women’s rights to freely move and fully participate in public life. The government has even taken the further step of domesticating some of these provisions and incorporating them into its 2013 Constitution, Criminal Law Code and Domestic Violence Act. Even so, young women and girls are still not at full liberty to exercise their constitutionally guaranteed rights are afraid to freely move around and associate in places of their choice as well as pursue a culture of their own choosing.

It more than surprises me that after seven (7) whole years of life under their new Constitution which boasts a comprehensive Declaration of Rights which fully recognises every citizen’s right to personal liberty, inherent human dignity, freedom of movement, personal security, choice of culture, bodily and psychological integrity as well as the right to be free from all forms of violence from public and private sources, Zimbabwe’s women and girls still

participate in public life on an unequal footing with their male counterparts resulting in their continued exposure to violence at their hands.

This research was therefore specifically prompted by my need to know why young women's and girls' rights to freedom of movement and association in public spaces are constantly infringed when these rights in particular are not only fully protected at law but at the very highest level. If such illegal, wrongful, prejudicial and harmful behaviour is allowed to continue, the principles of equality and non-discrimination on which our society is founded will continue to be eroded and sacrificed and women and girls will continue to suffer. They will not only end up living in fear of fully participating in public life but there is the real risk of internalising, normalising and passing on to future generations the culture of males dominating females not only in the public sphere but in the world of work and home.

1.3 Significance of the study

Although a number of studies on the enjoyment of the rights to freedom of movement and association have been conducted in the light of civil and political rights, very few, if any, of the inquiries have delved into women's enjoyment of the right to move freely specifically in their own communities on a daily basis. This study seeks to contribute to the body of knowledge on this subject through examining factors that affect women's enjoyment of this fundamental right. The recommendations made by this study can be a guide to strategic interventions for both government and non-governmental bodies to help enhance women's right to live with dignity and peace of mind in their communities throughout Zimbabwe.

1.4 Objectives of the Research

- (1) To ascertain how the post-2013 laws regarding women's rights to freedom of movement and association are affecting women aged 18-30 years in terms of the rights they can exercise.
- (2) To find out if the fear of being verbally and physically assaulted by men in social spaces inhibits women and girls from fully exercising and enjoying their rights to freedom of movement and association.

- (3) To see if cultural attitudes incite men’s sense of entitlement over and interference with women’s and girls’ rights to freedom of movement and association.
- (4) To determine if religious attitudes normalise men’s control over women’s freedom of movement and association.
- (5) To establish if young women of this generation (18-30 years) fully enjoy and assert their rights to freedom of movement and association compared to their older generation counterparts (50-60s).

1.5 Research assumptions and questions

Table 1 contains the research assumptions and questions.

Table 1: Showing research assumptions and questions

RESEARCH ASSUMPTIONS	RESEARCH QUESTIONS
(1) The laws and policies governing this generation (18-30 years) in Zimbabwe provide for the enjoyment and protection of women’s and girls’ rights to freedom of movement and association unlike the laws that governed the older generation (50-60 years).	(1) Do the laws and policies governing this generation (18-30 years) in Zimbabwe provide for the enjoyment and protection of women’s and girls’ rights to freedom of movement and association unlike the laws that governed the older generation (50-60 years)?
(2) The fear of being verbally and physically assaulted by men in social spaces inhibits women and girls in Epworth from fully exercising and enjoying their rights to freedom of movement and association.	(2) Does the fear of being verbally and physically assaulted by men in social spaces inhibit women and girls in Epworth from fully exercising and enjoying their rights to freedom of movement and association?
(3) Cultural attitudes incite men’s sense of entitlement over and interference with women’s and girls’ rights to freedom of movement and association.	(3) Do cultural attitudes incite men’s sense of entitlement over and interference with women’s and girls’ rights to freedom of movement and association?
(4) Religious attitudes normalise men’s control over women’s freedom of movement and association.	(4) Do religious attitudes normalise men’s control over women’s freedom of movement and association?
(5) Young women of this generation (18-30 years) enjoy and assert their rights to freedom of movement and association unlike their older generation counterparts (50-60s).	(5) Do young women of this generation (18-30 years) enjoy and assert their rights to freedom of movement and association unlike their older generation counterparts (50-60s)?

1.6 Demarcation of the research

My aim was to assess the experiences of Epworth women in exercising their right to freely move and associate in public spaces. Figure 1 is a map of the location of Epworth in relation to Harare, the capital of Zimbabwe. The concept of the right to freedom of movement was not used in line with the notions of civil and political rights in international law but in the sense of movement within their local communities' public spaces. I interviewed women only and more of this is covered under the research design in Chapter 3.

Figure 1: Map showing the location of Epworth in relation to Harare



1.7 Conclusion

This chapter gave a brief overview of the scope of the research by outlining first the research problem which is what made me embark on this research journey. The chapter covered what I envisaged achieving through this inquiry as well as the assumptions and research questions which guided me in my endeavour to understand and help resolve the research problem.

CHAPTER TWO

2.0 WHAT ARE WE TALKING ABOUT?

2.1 Introduction

This chapter seeks to unpack and discuss the concept of freedom of movement with regard to female persons in their communities' public spaces. I will use human rights and legal frameworks that protect women's rights to freely move and participate fully in public life to articulate the concept. I will start by unpacking what it means to be able to freely move as a woman in Zimbabwe's public spaces and then delve into feminist theories and court cases that will help explain limitations imposed on women's behaviour and sexuality.

2.2 Unpacking freedom of movement in public spaces

Being able to freely move encompasses a number of issues related to total freedom from fear of participating fully in public life and having one's bodily and psychological integrity protected from all forms of violence that emanate from public spaces. Essentially, it means that as long as a person is not infringing on the rights of others they can fully pursue any culture of their choice without the slightest obstruction. Hence freedom of movement entails the absence of all forms of violence and/or infringement (either physical or emotional) that are found in public spaces including streets, bars, commuter (taxi) ranks and markets, etc. It is crucial to note that a woman's freedom of movement in public spaces is curtailed more than a man's and that within those spaces women are more likely to be victims of violence at the hands of men.

General Recommendation No. 35 of 2017 by the CEDAW Committee categorised any form of violence against women as discrimination based on one's sex. Such violence is not merely violence but is gender based or, in other words, gender motivated. This is the exact term that clearly describes the gendered aspects of violations or particular forms violence which are only inflicted against women, because they are women, in public spaces. Thus the curtailing of a female person's right to freely move and fully participate in public life is tantamount to gender based violence against a woman because it is deeply rooted in gendered notions. These notions include the belief of men's sense of entitlement over females, widespread social norms concerning masculinity and the desire to assert male power, to enforce gender roles or to stop, discourage and discipline what is perceived as unacceptable female

behaviour. These gendered aspects contribute to either the unequivocal or implicit normalisation of gender-based violence against women and to the widespread impunity given to the perpetrators of it. Infringing women's and girls' right to freely move and participate in public spaces is a socially constructed problem because women's subordinate positions in respect of men's and their stereotyped roles in the social, economic and political spheres are perpetuated and maintained by society. Recommendation No. 35 notes that GBV is a serious obstacle to achieving substantive equality and to women's enjoyment of their fundamental freedoms and human rights.

Paragraph 14 of the General Recommendation No. 35 also explains how gender-based violence manifests itself and affects women and girls throughout their life. It takes on multiple forms which include but are not limited to acts or omissions that may have the intention of or likelihood to cause or result in any of the following, "... death, physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty." The CEDAW Committee further notes that GBV against women is fuelled by numerous factors including cultural, ideological, religious and social norms which have been found relevant to this study. Women's and girls' right to a life free from GBV is inseparable from and inter-connected with the enjoyment of other human rights, such as the right to life, security of person, equality, freedom from torture, cruel, inhuman or degrading treatment, freedom of movement, participation and association. Obstructing a woman's or girl's freedom of movement in public spaces may amount to torture or cruel, inhuman or degrading treatment which can seriously impair and invade her right to dignity and privacy.

In its 2010 General Recommendation No. 28, the CEDAW Committee reinforces the core obligations of its Convention's article 2 which requires State parties to respect, protect and fulfil by all appropriate means without delay the rights of women to non-discrimination as well as their enjoyment of both formal (*de jure*) and substantive (*de facto*) equality.

Having demystified what women's and girls' right to freely moving in public spaces entails, it is clear that violations of such right constitute not only GBV but also violations of fundamental human rights and liberties which are clearly protected by key human rights instruments to which Zimbabwe is a party as well as its Constitution's Declaration of Rights, Criminal Law Code and Domestic Violence Act.

2.3 Human Rights Framework

2.3.1 Universal Declaration of Rights (UDHR) (1948)

Although the Universal Declaration of Rights (UDHR) is not legally binding, a number of other human rights instruments including domestic legal frameworks largely borrow from it. It is a roadmap to the recognition, realisation and protection of people's universal and fundamental rights. The UDHR declares that every person is entitled to freedom, equality and dignity inherent to them, security of their person and the right to a life free from torture and inhuman or degrading treatment in which one can move freely within the borders of every state.

2.3.2 Beijing Declaration and Platform for Action (BDPA) (1995)

The Beijing Declaration and Platform for Action (BDPA) does not bind states legally but constitutes ethical and political commitments made by Governments that can be harnessed to pursue regional and national efforts to advance the human rights of women. Zimbabwe participated in the drafting and signature of the BDPA and since then it has been a basis or reference point for the government and its agencies. Article 29, amongst many others, speaks to the need for all states to prevent and eradicate all forms of violence against women. All governments who participated at the Fourth World Conference on Women envisaged a world in which each woman and girl can exercise her freedoms and choices, realise all her rights and lead a life free from all forms of violence.

2.3.3 Sustainable Development Goals (SDGs) (2015)

The Government of Zimbabwe subscribes to the Sustainable Development Goals (SDGs) also known as Agenda 2030. It is a framework for achieving development that will benefit future generations, and it recognises gender equality as a fundamental human right. Amongst its 17 goals, Goal No. 5 with its targets and indicators guides all states to achieving a gender equal world. It challenges states, including Zimbabwe, to achieve gender equality and empower all girls and women. The targets relevant to women's and girls' freedom of movement in public spaces requires governments to implement all measures necessary to end all forms of discrimination against women and girls everywhere as well as eliminate all forms of violence against women and girls in public and private spheres. The indicators and targets do not, however, specifically speak to percentages of women and girls who report violations of their freedoms in public spaces as a measure of progress towards violence free communities.

2.3.4 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (2003)

Zimbabwe signed and ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) in 2003 and 2008, respectively. A sure stride towards gender equality on the government of Zimbabwe's side was to domesticate a good number of its provisions in its 2013 Constitution which is the supreme law of Zimbabwe.

The Maputo Protocol largely speaks to every female's right to freely move in public spaces by defining violence against women as, "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life..." Articles 2, 3 and 4 oblige government agencies to implement measures to eliminate all kinds of discrimination against women. They clearly state that every female has the right to life with dignity, integrity, respect and security of the person. Article 25 of the Protocol obliges the government to ensure that remedies including judicial ones are given to the woman whose rights and freedoms secured by the instrument are violated.

The Constitution of Zimbabwe largely speaks to the abovementioned fundamental freedoms for every citizen. It obliges the state to ensure the recognition of the inherent dignity of each human being and their equality as well as see to it that laws, policies and decisions of the state result in a just and free society in which all people enjoy happy and fulfilling lives (section 8, section 3(e), (f), and (g)). The Constitution also nullifies any custom, law or practice inconsistent with it as obligated by the Maputo Protocol, which means that all harmful cultural practices that give men social entitlement over women are null and void in terms of the law. Through sections 58, 63 and 66(2a) in its Declaration of Rights, the Constitution provides for the right to freely move within Zimbabwe, the right to choose to associate or disassociate with others as well as provide for the right to choose which culture one desires to follow as long as it does not infringe on the rights of others.

2.3.5 Criminal Law (Codification & Reform) Act [Chapter 9:23] (Criminal Law Code) (2004)

The Criminal Law (Codification & Reform) Act [Chapter 9:23] (Criminal Law Code) criminalises all actions that cause or could result in the harming of a person's bodily and psychological integrity. These actions include but are not limited to insults, indecent assault, assault, rape and disturbance of the public peace. These are clearly articulated under the following sections: Section 93(1)(a); (2)(a) and (b); (3)(a)(i) and (ii); section 90; section 45; section 36(1)(a) and (b); (2)(b), (c), (d) and (e); (3)(b); section 37(1)(a)(ii), (1)(b) and (c)(ii) and sections 65 and 77; section 66, section 67 and section 89 (1)(a) and (b); section 95 and section 96, amongst many others.

The Criminal Law Code, however, omits the crucial element that some of the offences committed against women are of a gendered nature and hence a gendered as opposed to a general approach should be adopted. In determining the appropriate sentence for some crimes, the Code does not list and/or prioritise the gender or sex of the victim and the perpetrator as a factor to be considered as in other crimes such as the crimes of public indecency and unlawful detention in sections 77(2) and 93(3) of the Code, respectively. Therefore, there is a high risk that a judicial officer without any gender training may fail to realise that by shouting or singing in obscene language at anyone, a perpetrator maybe motivated by misogyny in committing such a crime or, put simply, that the crime may be motivated by his or her prejudicial attitude towards the victim's sex and gender.

Hence there is a need for comprehensive law reform through prioritising gender so that gender based violence against women in public is curbed. The Criminal Law Code does not provide for the availability of victim friendly services and it does not address the crime of stalking in public as fully as does the nation's domestic violence legislation. I will explain these gaps in detail in the findings and recommendations chapter.

2.3.6 Domestic Violence Act [Chapter 5:16] (2006)

Apart from domestic acts of violence which are committed in private spaces, including the home, the Domestic Violence Act [Chapter 5:16] also covers and seeks to protect women's rights related to freedom of movement and free participation in the public sphere. There are some forms of gender based violence against women that constitute domestic violence even though they are perpetrated in the public sphere. The Act provides protection in the case of

the infringement of rights that take place in public as long as the complainant and the respondent have the kind of relationship specified by section 2(1) of the Act. Some of my respondents were victims of domestic violence whose spouses or in-laws stalked them in public or prevented them from going to certain public places, thus breaching their rights to freely move and associate in public spaces. Although adequate for specified relationships, the Domestic Violence Act does not afford a woman protection from gender based violence in public if the woman and the perpetrator is, to put it simply, strangers to each other. This, therefore leaves a good number of gender motivated violations against women to be prosecuted under the Criminal Law Code which has gaps in as far as its approach to gender is concerned.

2.3.7 Case law on gender based violence against women in public spaces

2.3.7.1 Zimbabwe: *State v. Jeri* HH 516-17 CRB 40/17

The summary of the State's case against Jeri as assessed and outlined by High Court Judge, Mrs. Justice Tsanga, who presided over the case clearly pointed out that the accused (Jeri) intentionally killed the deceased (Mushangi) by stabbing her in the stomach and caused wounds from which she eventually died. The stabbing occurred at a bottle store in Pingo, Kadoma after Mushangi turned down Jeri's romantic advances towards her. Witness' statements to the stabbing all corroborated the fact that Jeri had been restrained by other patrons but managed to escape their grip. The deceased had tried to hide behind some of the patrons but Jeri, relentless in his pursuit of her to punish her for ignoring his advances, managed to break free and attacked Mushangi slapping her with open hands, kicking and even head butting her. His knife attack on her was so vicious that it exposed her bowels.

The facts of the case laid out by the presiding Judge indicate that even though it was a criminal case of murder, the events culminating in the death of Mushangi were a pure exercise of the accused's power and control of a man over a woman, the accused being a male who severely punished and killed a woman because she had rejected his advances. The accused is said to have slapped Mushangi for ignoring him and this in itself was not only an assault but also an exercise of his power over her, which in the Judge's view, should be understood for what it was, "*an ultimate display of power over her rejection.*" The accused was clearly no longer at any risk of being harmed (as he had claimed in his defence) by Mushangi who had thrown a broken glass at him in order to escape from his grip. Instead, he persisted with and intensified his attacks against her just to prove to her who her master was.

The Judge referenced human rights frameworks saying that Jeri's conduct infringed the freedoms and liberties guaranteed by Zimbabwe's Constitution. She said part of Jeri's conduct constituted harassment which violated Mushangi's right to dignity and to freedom from all forms of violence from both public and private sources conferred by the Constitution. It is vital to note that Jeri's conduct undoubtedly was an affront to the deceased's rights. Tsanga J emphasised that the gendered aspect of violence is evident in the fact that it is women, as opposed to men, who are most likely to be victims of forms of violence in the public sphere at the hands of people they might or might not know.

Although women are human and have rights which should be publicly respected and protected, this is a very clear case of an incident of gender based violence which occurred in public, escalated and culminated in murder. Tsanga J very correctly pointed out:

“It would be truly amiss for this court to fail to make this connection to gender based violence from the onset because that is ultimately what the killing was about in this case.”

The facts of the case reveal how gender based violence is fuelled by perceptions that when a woman says 'no' she is actually saying 'yes' and even more dangerously that a woman has no right to make independent decisions about what or whom she likes or dislikes as well as with whom she decides to associate or with whom she decides not to associate. Tsanga J rightfully noted that:

“the accused perceived his manhood to have been challenged due to his own dangerous sense of entitlement in his dealings with and perceptions of women.”

This is usually the case in most incidents of gender based violence in public and therefore what sparks an attack should never be trivialised or dismissed by authorities or communities as insignificant. Such triggers need to be honestly confronted and the motives and roots of GBV investigated and addressed as serious criminal offences.

Another motive for gender based violence was revealed in the words of the defence. They clearly constructed the notion that a woman who enters a bar is a drunkard and selling sex and as such the accused had every right to order her around as well as punish her in any way he chose if she did not comply with his demands. Not only is it a motive for gender based

violence but they are patriarchal perceptions about women who are the opposite of society's dictates about who and what a moral woman should be. To my relief as both a feminist researcher and a woman, Tsanga J reinforced the human rights of women and the gendered violence aspect of cases saying that the judiciary should be awake to their Constitutional implications and be ready to make gender connections in all cases over which they preside. She reiterated that the motives for the assault were evidently gendered and failure to address this case's gender dimensions would be tantamount to legitimising gender based violence within the criminal justice system '*and in the society as a whole*' (my emphasis). If the criminal justice system fails to do its part in passing deterrent sentences against those who perpetrate gender based violence such failure may actually incite as oppose to combat the perpetration of such crimes.

2.3.7.2 Nigeria: *Chemanze and Others v. Federal Republic of Nigeria* ECW/CCJ/JUD/08/17

The facts of the Chemanze and Others against the Federal Republic of Nigeria case presided over by the Economic Community of West African States (ECOWAS) Court depicts how gender based violence against women is not only perpetrated by ordinary men but can also be committed and legitimised by States through their various agencies and policies. The State in this case was found guilty of violating women's rights to their personal security, dignity and freedom of movement in public spaces through its after dark round-up operations aimed at curbing prostitution. From the evidence set before the court, it is clear that the operation was targeted against women '*only*' even though the said crime of prostitution requires two or more people, the male gender most probably included to complete the sexual transaction.

This systematic rounding up directed against only women by the Nigerian Government law enforcement agency included insulting the women and committing the crimes of indecent assault and rape against some of them which at the very least is barefaced evidence of discrimination on the grounds of gender. The defence of the Nigerian government is in itself evidence of how society views women who walk at night wearing clothing that does not fit society's standards of decency and morality. Below is part of the defence's 'justification' for its criminality:

“The Plaintiffs dress naked or half naked by the road side soliciting for men both interested and uninterested members of the public including innocent infants...Only an insane or an idle person can be in the street at 12 mid-night.”

The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) obliges state parties to adopt laws, administrative and policy measures to prevent gender based discrimination. Nigeria being a party to the Convention was found to be in contravention of this and many other obligations of the international and regional human rights framework to which it is legally bound. The Nigerian government’s failure to protect and uphold the rights of the plaintiffs constitutes gender based discrimination and other violations of articles 1, 2, 3, 5 and 18(3) of the African Charter on Human and Peoples’ Rights, Articles 2, 3, 4(1) and (2), 5, 8 and 25 of the Maputo Protocol, Articles 2, 3, 5(a) and 15(1) of the CEDAW and Articles 2(1) and (3), 3, 7 and 26 of the International Covenant on Civil and Political Rights. The rights of the women protected in the above mentioned instruments include but are not limited to protection of their inherent dignity, security of person, equality as well as their fundamental freedoms and liberties in public spaces.

Principal to my inquiry is the ECOWAS Court’s observation ruling that women’s rights to freely move in public spaces were violated at every turn by the very institutions that are mandated to protect them! Failure of the State to fulfil its mandate would have the ordinary citizen who identifies with the male gender stop at nothing in also violating the same rights of the woman.

2.4 Understanding masculinity in the occurrence of GBV

In order to fully understand women’s position both at law and in society in the process of eventually achieving *de facto* equality, there is a need to explore in detail male paradigms and attitudes that shape society and gender relations. According to Nkiwane (2011: 263), societal relations between women and men are not simply different but rather are characterised by deeply rooted power inequalities which are chiefly caused by social constructions of what masculinity and femininity mean: men are socialised to have the upper hand over women and women are expected to submit to them. Masculinity is not homogeneous, however, since it manifests itself in diverse forms. There is therefore is no typical man to represent all males. Of chief importance to this study is hegemonic masculinity in which men are raised to dominate women in all aspects of life.

2.4.1 *What is hegemonic masculinity?*

According to Connell and Messerschmidt (2005: 5), hegemonic masculinity refers to the widely held belief that to be a man one needs to be dominant in society and this is done by subordinating women in order to maintain such power. Smith et al. (2015: 4-5) agree that while this form of masculinity works to position men strategically in spaces of power in society, not every male subscribes to and utilises it, there are individual variations in socialising male gender roles.

Hegemonic masculinity, also known as toxic masculinity is, however, the ideal masculine form males are socialised to achieve, and they demonstrate it by adhering to a strict set of prescribed masculine gender roles that work to promote male dominance. For example, men are expected to never display feminine traits through restricted emotionality, toughness and aggression. Levant et al. (2010) cited in Smith et al. (2015: 3) established the following seven norms of hegemonic masculinity (1) self-reliance through mechanical skills, (2) negativity toward sexual minorities, (3) restrictive emotionality, (4) avoidance of femininity, (5) importance of sex, (6) toughness, and (7) dominance.

Of key importance to this study are the importance of sex, negativity toward sexual minorities, toughness and dominance. This study emphasises that not only are sexual minorities victims of hegemonic masculine attitudes but so also are heterosexual women.

2.4.2 *Masculine gender role stress and Gender Based Violence against women*

Eisler et al. (1988) and Malamuth et al. (1996) cited in Smith et al. (2015:6) assert that men who strictly incline to hegemonic masculinity are most likely to be stressed in situations where their masculinity is threatened. The threat occurs when their response to a situation is questioned or evaluated. In their eyes, such questioning or evaluation is undesirable and stressful. It is called male masculine gender role stress. The gender-relevant situations that may cause masculine gender role stress are numerous. Some of them occur when one experiences physical inadequacy, intellectual inferiority or when they are outperformed or made to feel vulnerable by women.

Relevant to this study are situations in which women refuse to fit into the framework prescribed by society. This provokes stress and anxiety in men who may feel that they have failed to meet the ideals prescribed by hegemonic masculinity which are to control and

subordinate. Men who experience such stress from having their traditional male role norms challenged are likely to react in ways that reaffirm their masculinity. Their responses are most likely to be aggressive because aggression is often perceived as a manhood trait and it is usually accompanied by several negative consequences.

Research on masculine gender role stress has linked it to unhealthy social behaviours such as anger and anxiety which may culminate in men's perpetration of violence against women. Moore and Stuart (2004) cited in Smith et al. (2015: 4) found that men are most likely to have higher levels of anger, retributive tendencies and verbal aggression as responses to a female threatening their masculinity. This is because men experiencing such male gender role stress feel the need to re-assert their masculinity by behaviour, including violent behaviour, that subordinates others. The *State v. Jeri* case (above) is one example that reveals the applicability of this theory, in that Jeri, having perceived his masculinity as wounded by Mushangi's refusal of his advances, sought to reaffirm his manhood by subordinating her through violence.

In contrast, this theory also posits that men who do not experience masculine gender role stress will most likely not assert their dominance through violent means. These men do not subscribe to hegemonic or toxic masculinity but other forms of masculinity which make them feel comfortable in their gender and under no compulsion to assert their manhood through harmful means in order to fit into society's definition of what it is to be a man.

In my opinion, the more a man inclines and feels pressured to live up to notions of hegemonic or toxic masculinity, the weaker, more fragile is his ego and the poorer his self-image, as a result of which he is more likely to resort to GBV against women.

2.5 The nexus between women's socio-legal status and their mobility in public

The position and/or status of women in society and at law is best explained by Simone De Beauvoir's work (1953: xxii), "The second sex" and MacKinnon's dominance and difference theories. Even though both scholars spoke accurately of the realities of women in the 20th Century, there has not been much positive change in the situation of women half a century later. Women's lives are still viewed in relation to those of men. De Beauvoir correctly theorised that women are not independent of men since men are the 'self' and women the

‘other.’ This essentially means that women’s existence is determined and validated by men who are the standard through which the world is judged. Women’s mobility is inhibited mostly in a gendered power relations context which usually generates and upholds a dominant and/or hegemonic masculinity that leads to ideas and claims about what proper behaviour should be for women and men both in public and private spheres. Such gendered social hierarchy therefore gives men the right to become the arbiter of what appropriate behaviour is for all genders and this usually reinforces the stereotypes that identify women as victims.

Mackinnon (1989: 106) argues that the manner in which sexuality is moulded, directed and expressed organises society into two distinct sexes which are men and women. She claims sexuality influences gender relations and/or how society perceives and interprets relations between men and women. MacKinnon argues that inequality between men and women in society institutionalises the dominance of men by subordinating women through a rationalised arrangement. In simple terms, this means that a man is mostly likely to violate a woman’s rights and feel justified having done so, while the woman, as his victim, is unlikely to have realised that her rights have been violated. These justifications are done through socio-cultural and religious belief systems in which violations in the form of routine male dominance are perceived as natural and/or normal. Nussbaum (1999:29) agrees with Mackinnon and De Beauvoir and adds that sometimes oppressive traditions have become so deeply internalised within their victims that they seem to record what is right and natural and women themselves endorse their own second class status.

Mackinnon emphasises that women’s status as described by legal instruments and national policies (formal equality) does not translate into equality in their lived realities because of the unequal power differences between persons emanating from their history and social settings (Nussbaum 1991: 67). Hence it is these differences in social power between men and women that relegate women to a lower status in society, that of being ‘*not human enough*’ (my emphasis) to have her autonomy, right to personhood and privacy respected. These social power differences between men and women culminate in gendered violence where women are predominantly the victims of it since they have less social power.

It is fitting to mention at this point something I shall explain in greater detail later under emerging issues. Women are not a homogenous group. We lead different paths in life and we

are therefore affected by both societal and state rules differently. Some women are more educated than others and have more exposure to liberal environments and financial independence; other women are at the complete opposite end of the spectrum and the remainder fall somewhere in-between the two extremes. The women in the first group are more likely to be able to assert their rights to freely move and associate with whom they want in a crippling patriarchal society and by asserting these rights they may or may not accrue some social power for themselves. This, however, does not guarantee that men will respect their choices and they may still feel their need to reaffirm their masculinity through either violent or non-violent means. Such situations may cause some of these women to become complicit in the domination men exercise over them.

2.6 Conclusion

This chapter attempted to demystify the concept of the enjoyment of freedom of movement and full participation in public spaces by women through human rights and legal lenses. The right to freedom of movement is interconnected with other rights such as security of person, liberty, freedom from fear of violence, among many others. From there, I proceeded to deconstruct some of the factors that constrain women's behaviour and sexuality through delving into feminist theories and court cases on GBV against women.

CHAPTER THREE

3.0 METHODOLOGICAL APPROACHES & RESEARCH METHODS

3.1 Introduction

This chapter will cover the methods and the approaches that guided me in gathering data on young women's enjoyment of their rights to freely move and associate with others in public spaces, the factors that hinder the enjoyment and how these are maintained throughout a woman's life. Under research methods I will discuss the research design in detail and how it helped to extract as much credible and valid information as was possible.

3.2 My research journey: Empirically exploring the concept of freedom of movement (Methodology)

3.2.1 Grounded Approach

Being a women's law researcher, I needed to theorise and conceptualise the enjoyment of the right to freedom of movement by young women and girls in their local communities' public spaces. Since there is not much written about it on the scale I am interested in, I had to conduct empirical research in order to come up with appropriate theories and concepts (Bentzon et al., 1998:79).

I began my expedition going really grounded which is a very flexible approach in which assumptions are not cast in stone but can be attuned according to what emerges as the research proceeds ensuring that initial assumptions and empirical data were adjusted as needed. My initial plan was to interview respondents from the younger generation women (18-30 years) intending to find out if they enjoyed their rights of freely moving in public spaces since the 2013 Constitution and other legislation protect the right and all those that are connected to it. The responses signified that they were not fully and freely exercising their right to freedom of movement. It prompted me to question if ever there was a positive change in the enjoyment of these rights from the time when the current older generation (50-60s) were younger women, a time when socio-cultural attitudes, the Constitution and other legislation fuelled discrimination and inequalities along gender lines on matters relating to African Customary Law and personal law. Going really grounded assisted me in understanding that even though there is *de jure* equality and the law purporting to protect all rights relating to free movement, it did not automatically translate into their full enjoyment.

Being a flexible approach, the grounded process crucially allowed my initial assumptions to be in constant interaction with the empirical data I gathered, adjusting them accordingly as I conducted the study. I changed the trajectory of the research by incorporating the views of the older generation women in order to find out if there was positive change in the life experiences of women in as far as enjoyment of their freedom of movement and association in public spaces is concerned. Since the older generation's responses seemed to contradict my expectations, going grounded helped me to unlearn the presumptions I had about the older generation's experiences when they were younger and actually learn from them, reading between the lines and deducing what it was they were communicating to me.

3.2.2 Women's Law Approach

I was also guided by the women's law approach which is a bottom-up one in trying to assess the adequacy of the post-2013 laws in protecting women's and girl's rights. The main takeaways from the Women's law Theory, as argued by Dahl (1987), are that males and females lead different paths in life which result in their having different life experiences in which they are affected by laws differently. I began looking at women's lived experiences as the point of departure in analysing their position in both society and at law. In trying to find answers to whether or not laws and the human rights framework in Zimbabwe adequately protect women and girls from not only the fear of being verbally and physically assaulted by men in public spaces but also from imminent and actual gender based violence, I decided to treat each case on its own merits, instead of generalising about the impact of the laws. In other words, I treated each and every female's experience as the starting point in understanding the varying forms of impact the laws have on women.

The law may define the parameters of interactions between individuals and also between the state and individuals but, in itself, the law has limited power to actively on its own affect human lives (Stewart et al., 2018:54). Equal laws in themselves do not preclude discrimination. In my study, I approached it with the understanding that, YES, the law may provide for freedom of movement, choice and association for everyone, but women may not fully enjoy this provision as men. My question was, WHY? This bottom-up approach revealed a number of factors outside the general law that determine how a woman ought to lead her life. These include but are not limited to semi-autonomous social fields, the different socialisation of both men and women which result in unequal power dynamics, unwillingness to change, societal resistance, and media influence.

It is imperative to note that women's circumstances are not ever static (Stewart, 2011: 33), hence, the need for a grounded process in understanding the current lived experiences of women vis-à-vis what the law provides. Since the law has the potential to be used as a strategy for attaining social justice for women (Stewart 2011: 30), the approach enabled me to analyse current law, reality and morality from the women's perspective as asserted by Stang Dahl (1988) and cited in Stewart (2011: 31). It was therefore crucial to unpack and review the functioning of the law in the myriad manifestations and forms in which it occurs in cultural, religious and state law from a woman's perspective and then critique it in terms of areas of weak legal support, strong legal support and judicial voids and based on this exercise, make suggestions for law reform. I will explain in the later chapters how the women's law approach helped in analysing the formal laws and making recommendations for law reform.

3.2.3 Women, Law and Development Approach (WLD)

In the process of analysing the collected research data upon which I drafted the study's recommendations, I borrowed from the WLD approach propounded by Schuler (1986). She sets out the three (3) components that make up the legal system in its widest sense. They include the substantive (written) law, the structural law which are the structures that facilitate the application of the law and the cultural component of the law which is basically its social aspect being the public's attitudes as well as their acceptance of the law including semi-autonomous social fields. Based on this approach, I managed to identify which one of the three (3) components of the legal system that particularly and directly spoke to my inquiry. It helped me to zero in on the cultural component of my research which speaks more about the importance of public attitudes in achieving *de facto* equality. These public attitudes have the power to overturn and or neutralise any law reform meant to protect women and girls. This was the case with one of my assumptions on cultural attitudes where I had to find out if they encourage men's sense of entitlement over and interference with women's and girls' rights to freedom of movement and association. Employing the WLD approach, I learnt that public attitudes require comprehensive interventionist strategies so that social justice for women is achieved, for example, engaging the mass media in raising awareness of women's rights in the community.

3.2.4 *Human Rights Approach*

This approach departs from the understanding that human rights are common global minimum standards to be complied with universally (Stewart, 2011: 31). Although women's rights are human rights, human rights are assumed to be western oriented because they as well as their content are largely western inspired (Stewart 2011:30). Using international standards as the benchmark for assessing states' compliance with these common global minimum standards in their national and local contexts is beneficial in monitoring and stimulating development for women (Stewart 2011: 32).

Guided by this approach, I learnt what freedom of movement really entails in a comprehensive human rights framework. I had to unravel several perspectives as I tried to understand this right during the data collection and analysing process. I learnt that it is not only about unobstructed physical movement from point A to B; more importantly, it is also about feeling secure during this activity, not being afraid of imminent or actual violations and also being free from self-regulation in terms of what clothing to wear at certain places at certain times, as well as having my integrity and dignity intact the whole time. Viewing all these concepts from a human rights perspective enabled me to analyse the issues of moving freely in public spaces by recognising that each and every individual is human whether they are born female or male and that, above all, they are all rights holders. This approach then guided me in conducting desk research of the pertinent human rights and legal framework governing my area of interest (women's freedom of movement and association in public spaces).

3.3 The research design

3.3.1 *Brief overview of Epworth*

Epworth which is just outside Harare, Zimbabwe's capital (Figure 1 in chapter 1) was once a farm owned by the Methodist Church in the 1900s and due to the unprecedented growth in its population, the Church handed the farm over to the Epworth Local Board to be administered. Epworth consists of seven (7) Wards which comprise largely informal structures and housing which the Local Board is in the process of formalising.

Most people who are looking to try their luck in the city choose Epworth as their destination because rentals are relatively low compared to other parts of the city. The rent for one room

ranged from between Z\$50 and Z\$60 at the time of data collection (November-December 2019) which was equivalent to US\$3 and US\$4 whilst in other high density suburbs it would range from Z\$250 to Z\$300 or about US\$15-\$20. It should be noted, however, that Zimbabwe's economy is currently hyper-inflationary.

Epworth is a densely populated area with alarming levels of multidimensional poverty including poor sanitation, food insecurity and poor access to health and education. The high levels of poverty have resulted in Epworth experiencing moral decadence, murder and hooliganism, prostitution, drug abuse, rape, robbery and politically motivated violence.

Most residential areas in Wards 1 and 6 are not connected to the main electricity grid, although electricity is available to most Government schools, the main shopping areas and the residents of Ward 3. However, not every ward in Epworth is connected to the municipal sewer system or running tap water; instead they rely on boreholes and wells. Some people run businesses selling water to the local residents.

Most women in Epworth are engaged in informal trading such as running mini-market stalls, dress making and hair braiding. Very few females have pursued tertiary education, careers or work outside of Epworth. It is men mostly who commute daily from Epworth to work in Harare's CBD. Figures 2, 3 and 4 are photographs I took of the research site.

Figure 2: Photograph of typical housing structures in Wards 1 and 6 of Epworth



Figure 3: Photograph of typical housing structure in Ward 3 of Epworth



Figure 4: Photograph of a typical business area in Epworth



3.3.2 Sample Size

With all things being equal, human and financial resources as well as time permitting, I would have loved to incorporate the views of each and every female in Zimbabwe through a census. As a result of the limitations imposed by the research, however, I had to work with a cross-sectional female representation of Zimbabwe's population also known as a sample. The research was conducted in Epworth, a peri-urban residential area located approximately 15km south east of Harare's Central Business District (CBD) (Figure 1 in chapter 1).

The respondents were women and girls only from Wards 1, 3 and 6. Wards 1 and 6 are much poorer than Ward 3 residents. Twenty-eight (28) of the respondents were from the younger generation of women (those between 18-30 years) and the other group was made up of

thirteen (13) women from the older generation of women between 50-60 years of age. This therefore made a total of forty-one (41) respondents.

Table 2: Showing details of the respondents

RESPONDENTS' AGE GROUP	NUMBER INTERVIEWED	WARD/ AREA	METHOD OF DATA COLLECTION
18-30years	5	Ward 1-Jacha and Makomo Extension	One-on-one Interviews
18-30 years	5 participants	Ward 1-Jacha	1 Focus group discussion with 5 participants
18-30 years	10	Ward3 - Glenwood Park	One-on-one Interviews
18-30 years	8	Ward 6 - Overspill	One-on-one interviews
50-60 years	6	Ward1 - Muguta Extension	One-on-one interviews
50-60 years	7	Ward 6 - Overspill	One-on-one interviews
TOTAL	41 PARTICIPANTS		

3.3.3 One-on-one interviews

I utilised semi-structured interview guides that kept me grounded in the issues relevant to the research questions. I was not, however, restricted by them and when necessary I would follow up a respondent's answer with another question until there were no loose ends. Interviews are very in depth and provide rich opportunities for the women's law researcher to probe deep into research issues. These interviews were conducted in the respondents' homes, which are usually zones of comfort and ease. Such home interviews resulted in a plethora of data comprising attitudes, opinions and values of the respondent. Once the respondents welcomed me into their homes I was confident of obtaining all the information I required. In the interviews with women of the older generation who were a bit more difficult to find than the younger women, I would simply ask the respondent where to find another respondent in her age group.

One-on-one interviews helped me gather almost all the data I needed and they helped to establish rapport and trust coupled with the confidentiality I promised them before starting the interview. The respondents would open up and I was guaranteed honest, valid and credible information. Because Epworth's residential areas are overcrowded in which a single yard comprises 3 or 4 dwelling units in the form of chiefly informal structures, I managed to carry out one group discussion with women of varying backgrounds and experiences. This group discussion was not planned but it was very pertinent in yielding rich data and new insights.

3.3.4 Desk research / Secondary data

The assumption on the adequacy of the laws in protecting women's and girls' rights to freedom of movement partly drove me to analyse Zimbabwe's human rights and legal framework. Through my review of the various relevant legal instruments I came to understand what the right to move about freely involves, especially for a woman. I also consulted court cases involving gender based violence against women occurring in public spaces in Zimbabwe and Nigeria with the intention of analysing women's lived realities and how judicial officers unpack women's liberties and freedoms in public spaces. One of the cases is that of *State v Jeri* HH 516-17 CRB 40/17.

3.4 Conclusion

This chapter delved into the logistics I employed in conducting this inquiry on women's and girls' freedom of movement and association in public spaces. I was guided by the women's law approach, grounded theory, the human rights approach as well as the women, law and development approach. In gathering the knowledge, I utilised qualitative methods of data collection such as semi-structured interview guides and focus group discussions.

CHAPTER FOUR

4.0 FINDINGS AND DISCUSSIONS

4.1 Introduction

This chapter seeks to discuss not only the findings emanating from set research questions as but also other issues that were not anticipated at the outset of the research. These include information on the adequacy of post-2013 laws in protecting women's rights to freely move and associate in public, data on whether fear inhibits their freedom of mobility as well as findings on whether or not cultural and religious attitudes encourage men's sense of entitlement over women's freedom. I will start with the findings emanating from each research question and then move to the emerging issues.

4.2. Findings on each research question

4.2.1 Do the national laws in the post-2013 period provide for the full enjoyment of women's and girl's rights to freedom of movement and association vis-à-vis the laws that governed the older generation?

Data for this research question was gathered mainly through desk research by comparing the 1980 Constitution with the 2013 one. There has been a paradigm shift in the laws governing Zimbabwe since its independence in 1980. Of particular interest to this inquiry is section 23(3)(a) and (b) of the 1980 Constitution which gave an exception to discrimination when it came to matters of personal and African Customary Law amongst other factors vis-à-vis the more liberal sections of the current Constitution (2013) particularly section 2 which renders any law or custom inconsistent with it invalid to the extent of the inconsistency as well as section 56(3) which states that everyone has the right not be treated in an unfairly discriminatory manner on whichever grounds.

It is crucial to note that during the first decade of the 1980 Constitution, Zimbabwe had not yet ratified nor signed the Convention on Elimination of all forms of Discrimination against Women (CEDAW, 1979). This means that Zimbabwe had not taken any necessary measures through its legislation or any other means to ensure that no woman suffers discrimination on the basis of her sex or gender. Even when the 1980 Constitution was amended to include 'gender' as another basis prohibiting discrimination, section 23 still retained the claw-back clause that permitted discrimination against a person under personal and African Customary

Law both of whose precepts are known for notoriously disenfranchising women. The intention of the 2013 Constitution is similar to and embraces CEDAW's call on all state parties to:

“take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (CEDAW, Art 5a).

The 2013 Constitution treats all genders equally and incorporates some provisions of CEDAW and the Maputo Protocol. In particular, the Constitution's Declaration of Rights clearly spells out that everyone has the right not be subjected to any form of discrimination and that all laws, traditions, customs and cultural practices that infringe the rights of women conferred by it are void to the extent of the infringement (section 80(3)). Gender based violence (GBV) is a form of discrimination in that a person is subjected directly or indirectly to a restriction, condition and/or disability to which others (men in particular) are not subjected.

Section 66(2)(a) in the Declaration of Rights of the 2013 Constitution provides for the right to freely move in Zimbabwe. A similar section in the form of section 22 was its predecessor in the 1980 Constitution. Section 23 of that Constitution, however, undermined it by allowing differential treatment of people on several grounds. The 2013 Constitution obliges the government's institutions and agencies at every level to ensure that people lead prosperous, happy and fulfilling lives through enacted laws and policy decisions (section 8(2)).

The Criminal Law (Codification & Reform) Act [Chapter 9:23] (Criminal Law Code) enacted in 2005 codifies criminal law in Zimbabwe and regulates conduct between people in public and private (regardless of the nature of their relationship) by criminalising a number of infringements of people's rights. Of primary interest to this research are the infringements of a female person's right to bodily movement, personal security, bodily and psychological integrity. The Domestic Violence Act [Chapter 5:16] of 2006 treats men and women equally in the process of protecting the rights of women whose rights to freedom of movement and association are more often infringed than those of men. Women and girls are more than any other group by any gender based violence. The Act protects not only women from forms of

violence happening within the confines of a home setting but also stretches to the violence that may take place in the public sphere as long as it happens within the specified relationships defined in section 2 of the Act.

An outline of the 1980 Constitutional Amendments especially those related to sections 22 and 23, the enactment of the Criminal Law Code and Domestic Violence Act as well as the 2013 Constitution depict that the Zimbabwean Government was and is still making slow but sure progress towards recognising women's rights as human rights. Although the law and human rights framework determining the legal status of women does not fully guarantee women's freedoms and liberties in public spaces, it is in a better state than what was it was in the 1980s. More of this is discussed in relation to the last research question which sought to ascertain the actual enjoyment of these rights guaranteed by the legal and human rights framework in Zimbabwe.

4.2.2 Does the fear of being verbally and physically assaulted by men in social spaces inhibit women and girls in Epworth from fully exercising and enjoying their rights to freedom of movement and association?

All women and girls in Epworth stated that although they may exercise their right to freedom of movement, they are afraid of being indecently assaulted, raped, catcalled and insulted amongst other things by perpetrators who are mostly men in public spaces especially when they are on their own or at night. All women from both generations said that they felt safer in public spaces when they are in a group or during the day. All younger generation women indicated that they had to be conscious of what they wear in public spaces as some types of clothing exposed them to all kinds of violations by men.

4.2.2.1 Self-regulation and self-blame

Findings from the inquiry indicate that women regulate their own and other women's behaviour as well as choice of culture in the public sphere. Women blame themselves and others when they are violated in public spaces. One respondent said:

“...at times it is permissible that these women are reprimanded by being jeered at or assaulted because other types of dressing can strip a woman of her dignity...”

About half of the twenty-eight (28) young generation respondents expressed the same sentiments in different ways; others said they ‘had asked for it’ especially if they hung out in places which society labels as no place for a woman, bars or concerts or if they were alone at night. Against such societal perceptions, there is a strong possibility that women and girls may choose to take the back seat or never pursue life on an equal footing with their male counterparts because of the infringements to their right to move about freely in public spaces.

These findings are in agreement with those of Anwar et al. (2018:15) who assert that violence against women usually emanates from so called ‘natural’ claims to public spaces as there are popular perceptions about specific conditions in which men and women can access these. Such perceptions on gendered mobility in the surveyed Pakistani neighbourhoods generate fear of moving in public spaces as well violence which may result in women carefully managing their mobility. Anwar et al. (2018: 16) make a point similar to my findings that gender based violence is experienced often as a punishment for those who transgress gender norms, with women’s freedom of movement further restricted in masculinised spaces such as bars, concerts and bus terminuses where the threat of violence against women is imminent. This potential for violation may result in women regulating and restricting themselves in public spaces because of the fear of imminent violence.

4.2.2.2 Is male dominance the issue?

Oakley (1985: 9) poses a good question about the significance that differences in treatment and behaviour between men and women have. Pertinent to this paper is the understanding that women and men’s roles in life are prescribed and stereotyped by a myriad of assumptions that include but are not limited to those which are social, religious and legal (Stewart 2011: 36). This difference in the treatment of women and men in society widely normalises a male’s sense of entitlement and control over women. It becomes a widely accepted part of everyday life which particularly affects the livelihoods, mobility and the well-being of one of the most marginalised populations, women and girls.

Dominance theorists such as Mackinnon (1987) postulate that violence against women is a manifestation of historically unequal socially constructed power relations between men and women. The perpetrator of any form of violence against a woman will likely regard his behaviour as acceptable and the victim is unlikely to recognise his behaviour as unacceptable. Such mindsets normalise harassment or violence against women because of the perpetrator’s

pre-existing societal position of power. Women's inferior position in society is because of males' resolute effort to subordinate and control women through social, sexual and physical domination. Physically men and boys wield the threat of violence and socially men attempt to control women by objectifying or belittling them as well as forcing them to fit into a frame of what proper womanhood is.

The findings on this particular research suggest that it is this normalised domination of men over women that instils fear in females so much so that their freedom to fully participate in public life just as males do is inhibited. All the younger generation respondents said in various ways that men know that women have no power to stand for themselves, so they (the men) wield their physical power in any manner they consider appropriate. They said that boys / men are socialised to believe that they have the power to control anything and anyone. It is therefore for such reasons that women wind up (thinking like men about themselves and) blaming themselves and (behaving like men force them to behave by) regulating their own conduct before and when they enter into the public sphere.

4.2.3 Do cultural attitudes encourage men's sense of entitlement over and interference with women's and girls' rights to freedom of movement and association?

When asked what they thought caused the various forms of violence perpetrated by men against women in public spaces, both generations of women save for about four (4), that is about 90% of the respondents, indicated that men are raised to know that their word is the rule. Most ways of life accord social power to men which they wield at any time over women whom they view as inferior to them or simply not as human as they are. Other responses signified that men view women as being inferior to them knowing that they can neither retaliate nor stand up for themselves. Most ways of life (culture) in Zimbabwe put men on a pedestal, being the superior sex not only in their families but also in the public arena. As a result of this, men get away with a lot of violence against women they cause in the public sphere and this ranges from insults, obstruction of movement and all kinds of assault. Such violence is normalised and thus all the more reinforces men's sense of entitlement over women's and girls' rights to freedom of movement and association in public spaces.

Moore's (1978) theory as cited in Oppermann (2006: 65-67) on semi-autonomous social fields can be employed to understand what maintains male control over women's lives. The semi-autonomous social fields are informal bodies of rules and dictate whose contribution

maybe seen as more important than the formal laws of a country. While all people are today subjects of states, they also belong to social groups other than the state, and they generally view their membership in these groups as more important than broader state affiliations (Woodman, 1989: 1). Social groups have their own rules that order their members' relations and behaviour, which are generated within the group and or adopted from outside. In Africa, the non-state groups include but are not limited to the tribe and the adherents of a religion that order the activities of their members for the better parts of their lives.

The supremacy of law becomes muddled when different bodies of law simultaneously exist. As is quite correctly said, too many cooks spoil the broth! This is more serious in legally pluralistic nations in which socio-cultural law and national law co-exist. Such co-existence mostly results in conflict with seriously unfair implications for women's rights as in some communities with regard to cultural norms women are often subordinate to men. These cultural norms usually reflect male interests which permeate traditional law that in turn regulates family and community issues and this results in the social supremacy of male interests over female ones.

Thus when one has to decide where, when and how to move and whether or not to embark on a particular journey cultural norms that especially dictate the mobility of different genders. Tsanga (2003: 69) opines that culture is built on power and control. It is culture that ascribes gender roles and responsibilities, who is to be accorded much respect and who owns what, when, why and how. A critical view of culture interrogates its role in keeping women in a subordinate position even though we are in an era where women's rights are being recognised as human rights and concerns for equality are the talk of this generation. With this reality in mind, culture in Tsanga's (2003: 69) words is therefore an embattled territory in which "there is a struggle between men's dominant interests and women's concerns for equality."

Culture is said to be unchanging or difficult to erase because it protects the interests of dominant groups and individuals in society and in this study it is male interests. When the subordination and control of women is passed down from generation to generation those at the bitter end of the control may normalise it which helps to explain women's clear collusion in conserving cultural practices such as modest clothing for women amongst many others. I make this point in detail on women's internalisation of their own oppression under emerging issues of this study.

4.2.4 Do religious attitudes normalise men's control over women's freedom of movement and association?

4.2.4.1 The Bible's theory on family conduct and power dynamics

Seventy percent (70%) of the responses indicated that Christianity based on the Bible normalises men's control over women's freedom of movement, choice of culture and with whom they associate. No church was specifically mentioned and all the respondents made reference to what the Bible says. Even though scripture instructs family conduct by telling Christian women to submit to their husbands, men and society all together have adopted this teaching in life outside the family and domestic setting. Men are given the upper hand over women such that they can dictate what acceptable behaviour is and by so doing no one knows where to draw the line on the dictates and impositions over women's right to movement. According to the Christian Bible as cited in OpenBible.info to which the respondents made reference, wives are expected to be submissive in many ways. They are asked not only to be submissive to their husbands but to the church, their community and to God. Most feminists argue along similar lines to functionalists and Marxists saying that religion acts as a conservative force, maintaining the *status quo*. For feminists, that *status quo* is a patriarchal society.

Simone De Beauvoir (1953) as cited in Hall (n.d) took a very similar view to traditional Marxists, except that, instead of seeing religion as assisting in the subjugation of the workers, she saw it as exploiting and oppressing women. She argued that religious faiths encourage women to be meek, to put up with inequality, exploitation and suffering in order to accrue rewards in the afterlife. Religion can promote male control over women through religious teachings, ceremonies and practices as well as through the structure and power relations of religious organisations.

4.2.4.2 The Bible's theory of creation and power dynamics

One respondent said that men draw their social dominance from the belief that the first woman (Eve) in the Garden of Eden was created from a rib of the first man, Adam. She said that women, despite their relationship with men, ought to put themselves under men's instruction. The theory of creation has been referenced by many, including St. Thomas who, according to De Beauvoir (1953: xxii), pronounced woman as an 'imperfect man,' and an 'incidental being'. Had it not been for a man's loneliness or the need for a helping hand, the woman would have never existed. This finding is in agreement with De Beauvoir who argues

that the unplanned nature of a woman's existence is symbolised in the Bible book of Genesis in which Eve is depicted as made from a bone Adam did not really need. The essence of the theory is that being human is male, men therefore define the woman never in herself but in relation to him and the woman is not regarded as autonomous.

Benda's Rapport d'Uriel as cited in De Beauvoir's 'The second sex' supports the assertion by arguing that a woman is basically what man decrees. Hence she is called "the sex." For him, her existence is for nothing more than sex, meaning that to him she appears essentially a sexual being to the man. She is identified in reference to a man, she is nothing without the man who gives her significance but the man is everything and absolute in himself. She is therefore incidental, seen as the inessential compared to the essential; he is the 'absolute' and she the 'other'. This finding suggests that it is such belief systems that relegate women to a lower status in society and largely inform power dynamics in society.

4.2.4.3 Religious Fundamentalism

As postulated by Schuler (1986:18), fundamentalist movements in religion have the potential of reversing the gains that have been won for women in the previous years. Fundamentalism is principally about religious obligations and commitments. There are some religious practices that may actually maintain the subordinate status of women in society. When a woman is confronted with the decision to choose between her membership in any religious grouping and asserting her rights she may most likely choose her religion even though it subordinates her. This is also the same as when a woman has to choose between religious dictates that lower her social status and upholding her rights. Over 70% of the respondents strongly agreed to statements that suggested that they are beneath men not only in marriage but also in public life. Hence religious fundamentalism plays a big role in circumscribing the position of women.

4.2.5 Do young women (18-30 years) in this generation enjoy and assert their rights to freedom of movement and association compared to their older generation counterparts (50-60s)?

4.2.5.1 Legal Framework

This research makes a comparative analysis of how the 1980 legal provisions affected the personal liberties of females who experienced their young womanhood in the 1980s and are currently in the 50s and 60s age group vis-à-vis how the post-2013 legal provisions affect

women currently experiencing their young womanhood (18-30 years). This dichotomy will help in understanding why young women's rights to freedom of movement and association in this generation are more violated than those who experienced their young womanhood in the 1980s. Over 90% of the respondents from the older generation agreed that women's rights to freedom of movement and association have been violated more than in the 1980s when they were in their young womanhood, indicating that they enjoyed their rights to freedom of movement and association in public spaces. Questions then arose as to why young women in the post-2013 period are experiencing more violations of these rights when the laws are now more liberal, especially since the State's adoption of some of the provisions of CEDAW and the Maputo Protocol into the 2013 Constitution and other legislation such as the Criminal Law Code and Domestic Violence Act. Is it that women and girls do not know that their rights are protected by the Constitution and other legislation or it is that they know but do not exercise them or it is that they know and do exercise them?

4.2.5.2 Knowledge and action

All twenty – eight (28) of the young female respondents admitted in their own words that they know they have the right to move about freely in public and associate with people of their choice so long as they do not infringe the rights of others in the process. However, they all also confessed to not actually enjoying these rights because, they said, while they chose to move about freely and frequent places considered safe for women during the day, they did not move about as freely at night. In other words, although all the interviewed women know their rights, their enjoyment of them is limited by the dictates of men and society at large.

This finding agrees with Schuler's (1986: 17) theory on women, custom, ethnicity, religion and the law which she terms 'ethnic revivalism' which plays a major part in confining the status of women to certain standards. Ethnic revivalism comes into play when there is a conflict between her rights to the womanhood of her choice and the dictates of her ethnic group or local community. It explains why women who may very well know that they have a right to freely move and associate in public spaces and pursue a culture of their choosing yet still fail to exercise their rights. She would rather choose to conform to the oppressive dictates of her social grouping than assert her rights and thereby challenge and risk losing her identity as one of its members.

4.3 Emerging Issues

4.3.1 Other influencing variables - Level of education, income, exposure, occupation

There are other variables which may positively and negatively influence women's potential to exercise their right to freely move in public spaces. The research gathered that the socially constructed power differences between sexes, religious attitudes and semi-autonomous social fields either intersect with other variables (such as an individual's level of education attained, income, occupation and exposure) or work individually in infringing women's rights to freedom of movement and association in public spaces. Variables such as level of education attained, income, exposure and occupation have the potential to either hinder or positively influence progress towards respect for women's rights to freedom of movement, choice of culture and association.

In this study, female respondents who had higher levels of education, exposure to other environments outside Epworth and those with an income of their own did not agree with notions that justified the abuse of women on the grounds of their choice of clothing and meeting places, unlike their counterparts with lower exposure, income and education. In addition, 20% of all the respondents were more empowered with regard to finances, education and exposure to other environments outside of Epworth and they openly embraced notions of women's liberalism, freedom of choice of culture, movement and association' whilst those more economically challenged and with little or no exposure to other ways of life, information and education supported the circumscribing of women's liberties by socio-cultural and religious dictates.

This observation goes hand in glove with research on low socio-economic status communities which indicates that lower socio-economic status correlates with lower educational attainment, poverty, less or no exposure to other developed and progressive ways of life and that groups falling into this category tend to be more exposed to interpersonal violence, to be more likely to suffer from it and perpetuate it (American Psychological Association, n.d).

Another theory in congruence with this finding is the information paradox argued by scholars of transnational activism who assert that the occurrence of lower levels of abuse in countries and/or communities can be attributed to the production of more information about abuse within their borders and people's exposure to it (Ron et al., 2009: 350). This is linked to my

observation that individuals with higher levels of exposure, information and education are less likely to support the infringements of others' rights or make excuses for them and vice versa.

4.3.2 Backlash and societal resistance

All twenty-eight (28) of respondents from the younger generation (18-30 years) indicated that they knew what their rights to freedom of movement and association entail; they also indicated that they had either experienced the infringement of their rights or they had seen other women's rights to freely move and participate in the public sphere being violated by men and boys. Of the thirteen (13) respondents from the older generation, twelve (12) agreed that women in their generation were facing more harassment now than they did when they were young women in the 1980s.

As times and laws shift from being repressive to becoming more liberal, one would normally expect that societal attitudes and behaviour would conform to the change. Based on the above responses, however, the opposite has been the case. In Zimbabwe's socio-legal climate the rights of women's and girls' freedom of movement and association in public spaces are being violated now more than they were in the past when its laws were more repressive. What is the explanation for this?

There is a strong possibility that since laws are now more liberal, women in the post-2013 period are now actually trying to assert their rights to move and associate freely in public and the more they do so the more men and society at large resist the idea of change and this results in their response or rather push-back to it in the form of punishment for trying to challenge the system. This is also known as "backlash" which is more of a matter of retaliation rather than the denial of the change's existence. Backlash is best explained by Mansbridge and Shames (2008:625) whose theory is that a group disadvantaged by the status quo (e.g., the women's movement) works to change it and thereby directly challenges the entrenched power structure which is male dominance in the all society's socio-economic and political spheres. Backlash is the term used to express the resistance by those in power to such attempts to change the status quo.

Backlash to regain the lost or threatened power varies as capacity comes in several forms. This backlash can manifest in subtle forms of coercive power such as mockery,

condemnation, exclusion and censure or brazen forms such as femicide, rape, beatings, stripping of clothing or other forms of violence directed against those who dare to assert their rights. Whichever form it takes, backlash involves the use of forcible power to regain lost privileges and power, because backlash is a reaction to shifts in power reacting to changing conditions and relations; it can also be seen as a process of dynamic resistance.

A glaring and pertinent example of backlash in Zimbabwe was seen when the country was in the process of trying to curb domestic violence through the passing of the Domestic Violence Bill. A former Member of Parliament boldly stated during a Parliamentary session:

“I stand here representing God, the Almighty. Women are not equal to men...It is a dangerous Bill and let it be known in Zimbabwe that the rights, privilege and status of men are gone. I stand here alone and say this Bill should not be passed in this House. It is diabolic.”
(As quoted by Ray Matikinye in an article in *The Independent* of 20 October 2006 and cited by Mugomba (2017)).

The above was one of only many examples of the backlash to this Bill. The most appalling and distressing fact was that the resisters to this positive change to bring about equality between women and men were the country's own lawmakers who are the very members of our society who are primarily entrusted with the responsibility of bringing about its progress, not resisting it.

Another theory with similarities to the backlash theory that can be used to explain this scenario is that of male gender role stress (which I unpacked in the second chapter) which occurs when a man who strictly inclines to ideas of hegemonic and or toxic masculinity is most likely to be stressed and reacts in violent ways in situations where his masculinity is made vulnerable through being exposed and or challenged. The reaction of such a man is either to vindictively punish the woman responsible for (in his view) diminishing his masculinity or to reaffirm it through other violent ways.

An explanation for why the older generation women in Zimbabwe did not experience bare-faced forms of violence in the public sphere maybe due to the fact that the 1980s socio-legal climate was characterised by repressive formal and informal laws which reinforced African Customary Law, known for notoriously relegating women to a lower social status, and as a result women were far less likely to have attempted to go anywhere or wear clothing that

would provoke the gate-keepers of popular culture. Today, however, the younger generation complain about various violent forms of public backlash since they feel emboldened by a growing culture which is now encouraged to change as it is empowered to do so by the 2013 Constitution which explicitly nullifies any custom or practice that is inconsistent with it to the extent of its inconsistency. I probed further as to why they thought women's rights to freedom of movement were constantly under attack and they suggested a variety of reasons which include but not limited to widespread poverty, joblessness, economic challenges and deliberate lawlessness as well as the passing of the Legal Age of Majority Act in 1982 and the influence of the media.

Tsanga (2003: 52) asserts that reactions to law can be both negative and positive, and in the case of the former, the law will most likely not accord with the interests, needs, attitudes and convictions of society. Legislators, however, seem to be naïve about societal resistance to the law. According to Griffiths (1986) cited in Tsanga (2003), they simply believe in the law's instrumentalism as a result of which they see the law as a set of commands and or rules handed down by the legislator to the individual who must obey them. No attention is paid to the social structure in which the law travels. Therefore resistance to the law must rather be understood in terms of this social medium, for the law does not exist in a vacuum. This social structure propounded by Tsanga largely speaks to the theory of semi-autonomous social fields (explained above) which is the social space between the legislator and the people. This space is not empty but interposed are various social fields to which individuals' behaviour and conduct is forced to comply and conform to societal standards.

4.3.3 *The influence of the media*

The older generation respondents attributed the infringement of women's and girls' freedom of movement and association to the pervasive nature of the media. In one of the respondents' words:

“...the television and radio nowadays feature content with obscene language which influences young men of nowadays to misbehave by touching young women inappropriately or uttering insults.”

Another respondent mentioned a popular song by Enzo called “*Bhiza Rinoda Mutasvi*” which means ‘a horse needs a rider.’ It is meant to evoke the image of a horse being the woman being ridden by its rider, the male, implying that the man is the dominus and or

controller of the woman who is the controlled or dominated party. She continued that such songs influence males to be rowdy and even force themselves on women. The media involves all forms of communication and include but are not limited to content produced by radio and television stations, mobile phones, newspapers, advertisements, billboards, the internet and social media. These forms of media are inescapable, widespread and powerful agents of socialisation which can be utilised not only to change attitudes that are resistant to progress but also to inculcate destructive ones.

The sophistication and diversity of the technology of the twenty-first Century has resulted in the influence of the media being even more pervasive than it was in previous decades. Nowadays people come across various forms of media both involuntarily as well as by choice hence the chances of escaping these are slim unless one relocates to a desert island incapable of reaching a signal of any kind (Armstrong, 2013:18). One of the crucial functions of the media besides transmitting information is that of socialising or creating as well as representing what can be perceived as socially acceptable behaviours. These relate to 'being' and how to relate to others. Forms of media also influence how status, public acknowledgement and honour is allocated or more usually withheld from people (Carter & Steiner, 2004:1).

Gramsci's work on hegemony (1891-1937), as cited in Carter & Steiner (2004:2), is vital in comprehending how the media influences the relationship between the dominated and the groups it dominates. Gramsci argues that the media, among other socialisation agents, plays a critical role in winning over and creating the consent of the oppressed over an issue/s to which those who dominate subscribe. The oppressive groups utilise the media to normalise their dominance as opposed to maintaining it through coercion. They make their explanation or perspective of the particular issue/s sound like common sense, fixed and natural, implying that there are no other explanations possible. Thus the media not only mirrors what is taking place on the ground, it also generates hegemonic justifications for what the dominant group wants to be perceived as reality and natural. In other words, the media plays a crucial role in controlling minds and maintaining the *status quo* that is usually hegemonic.

4.3.4 Women have internalised their own oppression as its gate keepers

Responses from the study unearthed that women of both the older and younger generation have internalised their own oppression. Twenty (20) of the forty-one (41) respondents, that is

about 49% or nearly half of them, agreed that women's choice of clothing and culture should be regulated by men and the rest of society in any manner amicable or harshly. Their responses depicted that women have internalised the society's oppressive narratives that regulate how their bodies and lifestyles are and should be disciplined and they do this by participating as the gate keepers of male dominance over women. In other words, they help to normalise patriarchy. For example, many of their responses revolved around statements such as:

“...a woman's body should be covered in a dignified manner...”

and

“a woman should be reprimanded because some types of clothing may prompt men to rape her.”

The contribution of women is rarely acknowledged in endorsing male dominance. It is in the subtle or even more obvious statements, such as:

“...she was asking for it by wearing provocative clothing or by going to the bar or in public at night.”

In a situation in which a woman decides to assert her right to freely move and lead a culture of her own choosing, other females are most likely to be the first to disapprove of such behaviour; it is very rare for the latter to encourage the former to exercise her rights in any way she sees fit. Women have been traditionally wired to live up to a standard beyond their identity and the principles of equality and fairness are the price women pay for attempting to do so. It is other women who are in fact the tireless gatekeepers of a system that favours men over women in which women correct and teach other women to embody womanly mannerisms that are acceptable to men at large and not primarily themselves. Unless and until women stop betraying themselves, they will continue to breed a society in which male power thrives from exacting discipline over women, their bodies, culture and other rights linked to their liberties.

Responses from both generations also indicated that societal expectations differ for both women and men. Society views women as the quintessence of culture in that they are expected to embody a certain set of values that bring dignity and honour to their families and

society at large. Their failure to uphold this responsibility brings shame. Men in this honour-shame equation are placed as the controller of female behaviour, not only of their female family members but even of those outside of it. Women's sexuality is therefore controlled by these subtle societal expectations of women from men and the rest of society. Men are then justified by women and men alike when they reprimand or chastise a woman who deviates from such expectations.

4.4 Conclusion

This chapter discussed the issues which arose from the assumptions that guided this research. I also discussed some of the issues that emerged from the discussions I had with the respondents. Some of these issues included but were not limited to the media's influence, societal backlash and resistance to change and the women's internalisation of their own oppression.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

Any piece of research is of little or no use if it does not proffer a way forward and or possible solution/s to the problems it identifies and seeks to solve. The atmosphere breeding the perpetration of public GBV against women is rationalised and normalised to such an extent that interventions may appear a futile and unnecessary exercise. This may be worsened by complexities such as finding the perpetrator as he may possibly be someone not known by the victim. With such intricate and problematic situations in cases of public violence against women, solutions to ending it can be difficult to craft also. Be that as it may, I will conclude and offer interventionist strategies on each and every assumption as well as emerging issues.

In doing so, I will employ the women, law and development (WLD) strategy by Schuler (1986:30) as a backdrop to my discussion. The WLD approach proposes a three-pronged approach to liberating women. These are the substantive (written law), structural (application of the law) and the cultural (public attitudes) components. I will also add to the backdrop the Women's Law approach in assessing the law itself in terms of its areas of weak and strong legal support as well as judicial voids. Many of the recommendations from this inquiry are related to the substantive and cultural component as all research questions sought to understand the influence of these in oppressing and emancipating women.

5.2 Conclusions and recommendations on each assumption

5.2.1 *Adequacy of the post-2013 laws in as far as the rights which women and girls can exercise*

5.2.1.1 Areas of weak legal support

A general look at the law gives the impression that the post-2013 laws are adequate in protecting women's and girls' rights to freedom of movement and association. However, from a women's law researcher's perspective, there is a need to scrutinise the entire legal framework in order to assess its impact on women by analysing factors which cause the law to have varying meanings for particular groups of people.

The law, especially in the case of the Criminal Law Code, seems to be too generalised, its provisions missing the gendered aspects of violence that takes place in public spaces. This realisation is necessary in order to ensure that remedies for violations are specific to the victim's needs. Some of the areas of weak legal support in the Criminal Law Code are that the sex and gender of the perpetrator and victim are not listed and or prioritised as factors to be considered in determining the weight of a charge in some crimes. The risk in this is that some crimes can be handled in general without due assiduousness for the gender dimensions present in them and this in turn may be seen as condoning violence against women or their discrimination. GBV in the public sphere requires just the same attention as domestic violence by giving more attention and even stiffer penalties to those who perpetrate it in public so as to deter future and potential offenders. The case of the *State v Jeri* (above) is just one pertinent but sadly unfortunate of many horrendous gender motivated attacks. Many of the assaults on women that happen in public spaces are often trivialised and the blame is put on women.

To help remedy this, I suggest that the Criminal Law Code be amended so as to create a section that speaks to gender based violence and provide stiffer penalties for them. It is also difficult to point out where some forms of harassment can be exactly placed in the Criminal Law Code. For instance, currently the Code does not provide any protection from harassment in the form of stalking as is provided in the Domestic Violence Act. It is perfectly possible for a stranger to stalk one in public and pose as a threat to their personal security or cause fear that they may be harmed and therefore provision should be made for such a crime in the Criminal Law Code. Even though section 95(1)(b) of the Code criminalises any conduct that invades the privacy of a person, it does not adequately speak to circumstances where one is continually stalked or followed by someone they do not know in public and it is females who are most often the victims of this form of harassment. Using this perspective shows that it is necessary to wear feminist lenses in evaluating the effectiveness of the law in protecting women.

5.2.1.2 Law Reform

The Women's Law theory, according to Stang Dahl (1987), posits that after reviewing and critiquing the body of law there should be discussions on how it should be expanded, contracted or replaced. To address the gap identified above, I recommend that a separate piece of equality legislation be formulated to deal with cases of gender based violence in

public. It should define and prohibit all forms of discrimination and these should be matched with deterrent penalties. This stand-alone piece of legislation should criminalise all acts of discrimination including hate speech, direct or indirect harassment on the basis of sex, gender and other grounds to the effect that historically oppressed groups such as women and girls can participate fully and on an equal basis with men in all spheres of society. This equality Act should be far and wide reaching in its scope leaving no discrimination to chance; it should ban and criminalise any media content which has the effect of spreading prejudice or depicting one sex as superior to the other.

This equality legislation should give effect to most sections in the Declaration of Rights especially section 56. It should provide that victims of gender based violence in the public sphere have access to victim friendly unit services where there are specially trained personnel to effectively deal with such cases. An Equality Council should also be set up to give full effect to this legislation; its functions should not only oversee implementation of the Act but also promote research of the problem of discrimination of women especially in public spaces and disseminate information about gender equality and discrimination especially in rural and other low socio-economic areas. Alternatively, the Domestic Violence Act's Council's mandate and scope could be widened to incorporate the problem of gender based violence in public spaces. This would mean that the entire Domestic Violence Act would have to be amended to incorporate aspects of violence in public against women perpetrated by people who are not specified in section 2 of the Domestic Violence Act. Such amendments would also require an appropriate change to the name of the Act to, for example, the 'Public and Domestic Violence Act' or 'Anti-Violence Act'.

To prosecute all acts of discrimination in all spheres, I suggest that the proposed Equality Act mandates the setting up of a specialised court called the Equality Court to deal with discrimination cases. Its judicial officers should be vigorously and constantly trained to detect and manage discrimination, especially gender discrimination, cases which is the most common form of discrimination in Zimbabwe. In its concluding observations and recommendations (2020) on Zimbabwe's sixth periodic report, the CEDAW Committee emphasised the urgent need for Zimbabwe to adopt a gender equality law in order to fulfil its obligations under articles 1 and 2 of the Convention.

It is crucial that I point out that the law can only be effective in curbing gender based violence against women occurring in public spaces if corrective approaches are taken, for example, infrastructural improvements, considering that some forms of public violence against women such as verbal abuse and indecent assault make it difficult to detect and trace its perpetrators since there is a strong likelihood that they do not know each other. The effectiveness of the law in dealing with this challenge is contingent on functional infrastructure in public spaces such as high definition street cameras whose footage can be used to identify and trace perpetrators and even help with audio-visuals to ascertain the degree of harassment and the charge to level against perpetrators.

5.2.1.3 Cultural Component

Schuler (1986) opines that the cultural component is just as important as the substantive and the structural component. The cultural component is mainly centred on reforming public attitudes. The Ministry of Finance should avail and invest sufficient finance in agencies mandated to eradicate gender based violence, i.e., the Ministry of Women's Affairs, the Gender and Human Rights Commission so that they can embark on legal literacy as a tool for social change as well as publicising these laws. This is in line with Article 4(2)(i) of the Maputo Protocol which obligates States parties to provide adequate financial and other resources to ensure the implementation and monitoring of efforts aimed at preventing and eradicating violence against women; I strongly feel that relevant government agencies should desist from their current reactive approach and rather embark on a proactive one.

Legal literacy aimed at enlightening women about their fundamental freedoms and rights should be an ongoing process especially in rural areas and peri-urban as well as urban low socio-economic areas. Section 7 of the Constitution obligates the Government as well as non-governmental organisations and other individuals to take it upon themselves to disseminate all its contents.

The national treasury should allocate funds which will necessitate the implementation of adequate tools that will create an environment in which men especially purpose to respect the rights of women in public spaces and other people can actually intervene to stop the human rights abuses rather than remain onlookers. Public attitudes about the stereotyped roles and responsibilities of women and men in society can also be changed by these concerted efforts by government.

Efforts should not only be non-governmental organisation's work as is the situation in Zimbabwe. Actions by government should not only be seen during the commemoration of United Nations Days, for example the International Day of the Girl Child but action should be taken throughout the year.

I also recommend that the government through the Ministry of Justice and the rest of the parliamentarians should push for the government's ratification of CEDAW and Maputo Optional Protocol in order to allow citizens to seek legal remedies to the respective committees when all national avenues have failed, even as it stands.

5.2.2 Fear of being verbally and physically assaulted by men prevents women and girls from exercising and enjoying their rights to freedom of movement

Women and girls self-regulate their behaviour and conduct in public spaces. They purport to fit within a prescribed framework of what a moral woman is like. Self-regulation and discipline emanates from the fear of being ostracised and or punished by society for not conforming to societal dictates which are at large laced with suggestions of male dominance.

Fear of participating in public life and subsequent self-regulation has wider implications for equality both now and in the future. Forcing women to fit into society's perception, framework or straitjacket of the ideal woman causes women to fret about joining in public life, internalise and reinforce their already socially inferior position. The negative effects of all these influences combine to discourage women from ever asserting their rights to anything which therefore culminates in gender inequality.

Therefore, I recommend that the Government through the Ministry of Home Affairs invest in programmes and measures that enhance the security of public spaces especially at night, in secluded areas, bus/taxi terminuses and bars. The police should use public address systems in public spaces to raise awareness on the right to freedom of movement and association, to speak about the human rights of women and against male control of women especially at bars, bus/taxi terminuses or concerts. The City and Rural District Councils should also work towards enhancing safe cities and spaces for women by ensuring that street lights are functional, long grass is regularly cut and street cameras are installed. The Ministry of Women's Affairs together with the Ministry of Information, Media and Publicity should also embark on awareness campaigns about the human rights of women. Just as there are

programmes on farming and many other disciplines on national television, it is imperative that the government also prioritises issues of the security of the person as is required by the Maputo Protocol.

As the implementation of all Government programs is contingent on sufficient funds, I also suggest that the Ministry of Finance together with the Ministry of Women's Affairs prioritise gender equity and equality issues by allocating more funds towards programs that are aimed at improving the protection of the rights to security of the person and freedom from all forms of violence emanating from public and private sources.

5.2.3 Do cultural attitudes create and reinforce men's sense of entitlement over women?

My research has exposed that cultural attitudes do indeed frustrate the efficacy of the law. The simultaneous existence of both formal and informal laws has negative implications for women. Even though the Constitution confers upon everyone, including women, the right to participate in the cultural life of their choice, certain groups, such as women, do not get to make this vital choice because they are forced to conform to the dictates of semi-autonomous social fields which manifest themselves in the form of cultural attitudes. Harmful cultural attitudes impede progress towards substantive equality between women and men. Such harmful attitudes include but are not limited to infantilising women and girls based on men and society harbouring dangerous assumptions that women cannot make independent decisions or they, women, must not refuse to conform to oppression.

As suggested by the WLD approach by Schuler (1986:30), public attitudes are best changed through agents of socialisation, more significantly the media. I therefore recommend that the Ministry of Women's Affairs as well as the Gender Commission of Zimbabwe and the Human Rights Commission embark on nationwide campaigns through mass and social media in order to change negative societal attitudes towards girls and women. I recommend that the state sponsors an impactful long term mass and social media campaigns to change public attitudes about women's position in society.

The mass media of national radio and television should be widely utilised as powerful socialisation agents to inculcate fresh attitudes about the human rights of women and the need for them to be respected by all members of society. The media can be used to create an environment in which respect for women's rights is the normative order. For example the

state could produce an impactful advertisement on women's right to freedom of movement and freedom from violence and broadcast it every day during the main evening news hour on Zimbabwe Broadcasting Television. The same could be done on the national radio so that the message reaches far and wide.

The Ministry of Women's Affairs and relevant independent commissions should conform to the obligations of CEDAW and Maputo Protocol that oblige the Government to enforce positive culture. Positive culture resembles respect for the rights of others. As Schuler (1986:29) puts it, there is a need to raise the individual consciousness of citizens on a personal level. This means working towards raising personal awareness of what subordination of women looks like and combating it. This can be done through community meetings and workshops that are conducted on a regular basis so as to transform harmful and toxic masculinities that hide behind culture.

Another interventionist strategy would be for the Ministry of Justice and other relevant Government bodies to embark on legal advocacy training people on the rights conferred on them by the Declaration of Rights in the 2013 Constitution. Section 7 of the Constitution obliges the state to promote public awareness of the Constitution through disseminating knowledge of its content throughout society. All pertinent legislation should be translated into all Zimbabwean languages and this should be prioritised and sponsored by the relevant government agency.

5.2.4 Religious attitudes incite men's sense of entitlement over women

This research has showed that women's status in society is indeed at the mercy of ardent followers of religion whose so-called teachings subjugate women. Biblical citations have been referenced as the ones giving men a higher social status. Interventions in religious circles need careful strategy otherwise they can easily become a fight in a losing battle. Schuler (1986) suggests strategies from within the religion.

Lessons need to be learnt from a prior failed attempt by the Ministry of Home Affairs whose intervention aimed at an apostolic sect in Budiro, Harare went badly wrong in 2014. Apparently the police were sent to the sect's place of worship to investigate issues pertaining to child marriage and sexual abuse reported to them by the local community. The intervention proved fruitless as the police were assaulted upon arrival. The apostolic leaders resisted the

police's approach. This is a pertinent example of the religious sensitivity of groups in society, such as the male dominated apostolic sect, which therefore calls for deep circumspection and careful strategy if all its members are to be encouraged to improve their respect for women, their interests, rights and freedoms for the improvement of the groups in society to which they belong and ultimately its general welfare.

I therefore recommend the employment of the internal discourse strategy and cross-cultural dialogue proposed by An-Na'im as cited in Tsanga (2011, 206). These would be ideal given the constant tension between the dictates of religion and the law especially the primacy given to religious traditions the world over. The internal discourse strategy suggests that in order to influence change activists should draw on the internal experiences of the group in question and identify their tradition's achievements in as far as women's protection is concerned. Efforts for change should be drawn from the same source from which the original practice emanates.

In employing cross-cultural dialogue in order to influence change within conservative groups, activists should point out what other groups in similar situations have done in order to realise and respect the human rights of women and stay committed to them. The closer the other religious group's reality is to the one being persuaded the more effective the persuasive argument is likely to be.

These two processes can be conducted by both government and non-governmental organisations. It is a process of reasoning together and negotiating and importantly performed in the spirit of nego-feminism (Nnaemeka, 2004: 358) without blame shifting or the contesting of egos. In such a positive space, Feminists can aspire to reason with gate keepers of harmful religious attitudes and practices so that they see less of the dictates of a foreign law opposing their culture but rather its well-intended spirit of equality and mutuality which should encourage them to reach an amicable consensus.

5.2.5 Do young women (18-30 years) in this generation enjoy and assert their rights to freedom of movement and association compared to their older generation's counterparts (50-60's)?

The inquiry revealed that younger generation women do not enjoy fully their right to freedom of movement and association in public spaces as a result of societal and male resistance as

well the backlash or retaliation women experience when they do try to assert their rights. Social attitudes need to change so that all members of society accept the supremacy of the law over all harmful ideologies that give men the sense of entitlement to dominate women. Media influence has also been flagged as another factor causing women's subordination. All these are linked to societal attitudes needing to be changed because failure to do so would only help to undermine the promotion of substantive equality.

The government should through the Censorship Board, Broadcasting Authority of Zimbabwe and or the Ministry of Media embark on an exercise of banning all media content from advertisements to music which may possibly reinforce women's already low social status. Under the leadership of the then Minister of Media, Professor Moyo came up with the 75% local content policy in 2003 and 2011, respectively, in a bid to promote local talent (Maodza, 2013). This was a partially successful initiative in helping to create a thriving local arts industry.

Similarly an exercise can be carried out to ban the production of all content that directly or indirectly prejudices and discriminates against women. Fines and jail sentences can also be imposed against those who breach this ban which will all be contingent on the kind of amendments made to the legislation on gender equality.

By following the above proposals the Government of Zimbabwe will be fulfilling its obligation under articles 2(b) and 2(2) of CEDAW and the Maputo Protocol, respectively, which require the state's institutions to commit themselves to modifying all social and cultural patterns of men and women through legislative measures, sanctions where appropriate (e.g., communication and education) to prohibit discrimination against women as well as to eliminate prejudices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Zimbabwe could take steps similar to those of its neighbour to the north, Malawi, whose Lilongwe Magistrates Court arrested and later released on bail a young male hip hop artist who sang a song entitled 'Ndizakupanga rape' which means 'I will rape you.' The lyrics narrated the man's resolute intention to rape the girl who had been long refusing his sexual advances by getting her drunk, gagging her with tape or shoving a sock into her mouth. The

background of the song carries the helpless cries of a woman being sexually violated. The Malawi Censorship Board also banned the song and ordered all music sites to take it down, (“Mwiza Chavura granted bail”, 2018).

Although the artist was arrested on grounds of contravening section 179(1) of the Malawian Penal Code which criminalises the production of obscene language, the prosecution would have carried more weight and even warranted/attracted a more deterrent charge if the magistrate had also charged him for contravening section 137(3) of the same Penal Code which criminalises any act through words, sounds, gestures amongst other conduct done with the intention of insulting the modesty of any woman.

It is imperative that the Zimbabwe government becomes hands on in its interventions otherwise equality for women will simply remain an ideal on paper resulting in more suffering for women because of powerful semi-autonomous social fields that manifest in the form of cultural and religious attitudes. As a nation we need to shift from formal to substantive equality so that everyone, despite their sex and gender, fully realise and enjoy all their rights related to freedom of movement and association. In order to do so harmful ideas about the superiority of males and inferiority of women need to be resolutely dealt with first.

5.3 Concluding Remarks

The major point driven home by this research is that women’s rights to freedom of movement and association in public spaces are heavily inhibited by interlocking oppressions in addition to gender. These multiple oppressions come in the form of culture, class, multi-faceted poverty, patriarchy and or hegemonic masculinities normalised by socio-cultural and religious belief systems. It is impossible for women to exercise their right of freely moving and associating in public spaces without having their bodily movement, inherent dignity and integrity obstructed and without feeling intimidated or facing the threat of violence because these attitudes make claims about what the appropriate and ‘natural’ behaviours of all genders should be both in private and public spheres.

Cultural attitudes have deeply embedded imbalanced gender narratives such as those that normalise men’s abusive behaviour while they, at the same time, encourage women to cope with or navigate it by modifying their behaviour, changing their places and times of

associating, wearing looser and longer clothing or even avoiding travelling altogether (Anwar, 2018: 29). Cultural and religious attitudes are of even greater importance than that of formal laws and policies in determining the social status of all genders and how they ought to lead their lives. The simultaneous existence of these laws creates problems particularly for women which then frustrate efforts for substantive equality.

Hence, recommendations for these identified obstacles to achieving substantive equality are centred on transforming public attitudes which formal equality alone cannot. Gender equality, especially women's right to freedom of movement and association, cannot be achieved through seemingly equal laws and policies only. There is a need for a paradigm shift in socio-cultural and religious beliefs and attitudes that create and sustain inequality between men and women. Even though the law on its own cannot bring substantive equality, it performs a directive role upon whose dictates all interventions aimed at transforming public attitudes are hinged.

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