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Building a Victim Centred GBV Activist Movement across Namibia

By Kate Mukungu, University of Cumbria

This article contains some reflections after co-authoring a book chapter on criminal and traditional justice processes affecting victims of Gender Based Violence (GBV) in Namibia. The purpose of writing this piece specifically for Sister Namibia is to highlight points useful to GBV activists.

Readers will already be aware that support services for victims of GBV are overstretched and, in many remote areas, are inaccessible. Articles in previous editions have already made the convincing case to increase both the accountability and spending for GBV across all government ministries. However, it is not only in victim support where geographical variations exist. Victims of GBV may go through contrasting experiences for several reasons, such as: the distance from their homes to a police station / court; the way GBV is approached in their local community / culture and; whether they report the crime to the Criminal Justice System (CJS) or Traditional Justice System (TJS), if indeed they do report it.

The variation in outcomes that victims of gendered and sexual violence may experience due to the above reasons are complex and need to be understood. This requires engaging with actors in both justice systems throughout Namibia, not just the CJS. To demonstrate some of the cultural differences in realising victims' rights after GBV has been perpetrated, this article focuses on how rape is addressed in Traditional Courts. This selection does not suggest that there are no issues of inequality to address in the CJS. However, it does acknowledge that CJS issues, such as problems with implementing Protection Orders, are likely to be more widely known, because of the publicity this has received. The TJS has been prioritised here in recognition of the fact that it is the justice system of choice in many rural communities.

The Legal Assistance Centre (LAC) and other legal experts are clear that rape cases must be heard in the CJS. This based on Article 66 of the Constitution that states that the application of customary law may not conflict with statutory law. The Combatting of Rape Act 2000 sets a minimum sentence of 5 years imprisonment for rape a sentence which a Traditional Court could not implement. So, whilst a complainant is entitled to seek compensation in a Traditional Court, this should not replace state justice proceedings.

From 2010 - 2016, most Traditional Authorities had their customary laws ascertained, meaning they are now documented. This is very helpful as it enables GBV activists to examine customary law processes with GBV victims in mind. This is worth doing, as the ascertainment reports compiled by researchers from UNAM show a variety of Traditional Court response to rape.

Although many Traditional Courts defer to the police or Magistrates Courts, some have vague or no stated processes in place. Some others appear to vary procedures according to the status of the alleged victim. For example, one court automatically reports rape to the Magistrates Court when the alleged victim is a minor but does not state the procedure for a Magistrates Court referral for adult victims. In another authority the Traditional Court reports rape cases to the police, except when the alleged victim is the spouse of the accused. In such situations the alleged victim is provided with information on counselling and told to decide whether to make a report to the police.

As well as being a constitutional matter, different traditional justice practices and the effects they have on victims of rape are important to GBV activists. Strategic level activist groups may wish to campaign for agreed standards nationally, in order to ensure the provisions of the Combatting of Rape Act 2000 are upheld. Indeed, the input of GBV activists with specialist knowledge can be of great benefit to traditional leaders, and legal and political actors from the state responsible for ensuring this issue is addressed.

Even if national standards were to be agreed, it is also the case that meaningful change a traditional community level require local connections. That is why rural and regional GBV activism need to be supported by national activist stakeholders as a priority. The enormity of this goal is not to be underestimated. Developing GBV activism in the many communities that practice traditional justice is not just a difficult geographical undertaking but discussing the sensitive and gendered topic of rape poses interpersonal challenges too.

However, it is an endeavour that may result in significant reward. Trust and respect between people at community level are vital to achieve meaningful change in Traditional Courts. When leaders of Traditional Authorities are convinced about the reasons why Traditional Courts should relinquish their responsibility for sentencing the perpetrators of rape, necessary changes will be written into local customary law. This could lead to lasting change for GBV victims.

In her 2006 article 'New Things after Independence': Gender and Traditional Authorities in Postcolonial Namibia, Becker argues that there are examples of gender balanced Traditional Courts that are competent to hear rape case. Uukwambi Traditional Authority has been highlighted as an example of good gendered practice and the achieved by bottom up change. This is great news in relation to the compensation process that victims may choose to undertake at Traditional Court.

However, recent research by Peters and Ubink (2015) 'Restorative and flexible customary procedures and their gendered impact: a preliminary view on Namibia's formalization of Traditional Courts' highlights some sensitive issues in relation to rape and GBV generally. For example, while most Traditional Courts permit women to open a case in the same way as men, a small number require the approval of a male family member, usually the father or husband of the women complainant. These are the kinds of important topics that local activism could discuss with their Traditional Authorities for women to be able to access justice. These gendered practices in Traditional Court demonstrate the importance of supporting rural GVB activism.

This article does not seek to criticise the concept of culture or traditional justice. However, it does seek support for the principle that women victims of GBV are not disadvantaged when they turn to traditional justice after being violated. Sylvia Tamale, a respected human rights academic and activist from Uganda, argues that colonialism had a longstanding impact on most African cultures, because colonial authorities negotiated a series of community rules and conventions with patriarchal figures. These effects, which built up over a century, will take time to undo in the contemporary era.

Outreach work that has been undertaken over the years by the Women's Leadership Centre, Sister Namibia, LAC, Lifeline Childline, Women's Solidarity and others, has already helped build relationships with Traditional Authorities needed to promote gender justice within Namibian cultures and groups. Such work needs to be sustained and expanded. Where rural and regional GBV activism already exists, it should be supported and, where it is still in formation it needs to be nurtured. Men's activism, by groups such as Men Engage also have a valuable role to play in supporting these developments at traditional community level.

Research by Htun and Weldon in 2012, ("The civic origins of progressive policy change: Combating violence against women in global perspective") argues that having an autonomous, non-governmental feminist mobilisation is the single most important factor in ensuring effective policy and practice responses to GBV. They base this finding on data analysed from countries around the globe. NGO and volunteer GVB activists can therefore be confident that the work they do has value and impact, even when it does not feel that way.

In addition to raising awareness of gender rights, one of the most important contributions the feminist movement makes is holding responsible organisations to account. This is particularly the case when it comes to GBV and is one of the reasons that independent, feminist, GBV activism is so important. GBV activism in Namibia is no exception. Feminist organisations and activist groups, many of whom have united under the GBSV Coalition, have been pivotal in highlighting harmful cultural practices and victim blaming among other GBV injustices. They have often been the clearest advocates for the need for correct responses to victims and perpetrators as set out by law.

Even though highlighting the need for more rural engagement, this article pays tribute to Namibian feminist and GBV activist groups already progressing the national conversation about GBV. Namibia is in the middle of a very important moment as testimonies of survivors, under the banner of #MeToo Namibia, reach the hearts and homes of the nation. However, if victims in all corners of Namibia are to be encouraged to stand up and say "me too" and "no more" they need to know that their local community and justice systems will respond supportively and take their case seriously. So while government spending on GBV across all ministries is important, so too is financial and practical support for activist groups, so they can survive and extend to all Namibian communities.

This article has been informed by a book chapter Kate Mukungu co-authored with Dr Ndumba J Kamyawah, from UNAM, called "Gender-Based Violence: Victims, Activism and Namibia's Dual Justice Systems", for a forthcoming book, Victimology: Research, Policy and Activism.