

CHAPTER ONE: THE CONCEPT AND CONTEXT OF JUSTICE

Justice is of paramount importance to every human being. It is the route by which fairness and equality are fundamentally realised. The importance of justice cannot be over-emphasised. It is one of the most essential aspects of human existence as advanced by Rotkangmwa and Lalu (2016) who posit that it is one of the most essential social services that every human being in spite of their culture, race, region, sex, tribe, religion, disability should have access to. United Nations Convention on the Rights of Persons with Disabilities CRPD (2006) describes disability as the “social effects of the interaction between individual impairment and the social and material environment” (:4.). Studies tend to suggest that disability remains a pertinently ‘taboo’ issue particularly in Zimbabwe. Culture is noted as a significant driver in the marginalisation of persons with disabilities and this renders them ‘invisible’ and voiceless.

The interest in access to justice for women and girls, particularly those with disabilities, is a recent concern in Zimbabwe and many studies point out a plethora of issues that affect their access to justice. An earlier study by Lang and Charowa (2007) suggest that the plight of women and girls with disabilities in Zimbabwe is precarious because they are invariably subjected to victimisation, harassment and sexual exploitation. Nyakanyanga (2007) provides an example of a case of Tanya Munyoro, a young girl in Zimbabwe with speech and hearing impairment, who was raped and impregnated by a known perpetrator.

Despite the perpetrator being known, the justice system failed to assist her due to barriers such as lack of sign language expertise. In view of this, this study brought to the fore the fact that persons with disability feel left out and unrepresented in the justice system. The findings of the study by Nyakanyanga (2007) further suggest that it is fine for women with disabilities to be abused because they are regarded as of no use and amount to nothing. The study by Lodenius (2020) depicts that women and girls living with disabilities are still misconceived to be unimportant. It is therefore

necessary that the study sought to explore the nexus of the two; access to justice and disability in the context that encompasses girls and women. Girls and women living with disabilities suffer a triple blow, borne out of the fact that they are disabled, female and largely live-in poverty. As argued by Hayashi & Naomi (2004), women with disabilities all over the world experience multiple disadvantages due to gender and disability. Considering the aforementioned, documents like the UNCRPD and CEDAW amongst other international human rights instruments, were ratified.

This study focuses on the often-overlooked situation of women and girls with disabilities to access justice and how women and girls, more so with disabilities, and are considered the most vulnerable groups in society, are treated when it comes to access to justice. There are concerns such as those highlighted above that have piqued the interest of the researcher. It is from studies such as these that the researcher bears a keen interest on the phenomenon under study. Persons with disability as posited by the World Report on Disabilities in 2011, were placed within the category of the less privileged in society. This is a victim-oriented study which also sought to establish if there, are pockets of good practices and brings out new knowledge on access to justice in relation to women and girls living with disabilities in Zimbabwe. Zimbabwe still faces challenges in the provision of access to justice. In an effort to address challenges in access to justice, certain legal reforms were adopted such as provision of logistical support for witnesses to attend court. However, observations are made that there are loopholes within the Zimbabwean Justice System and this has, in the process, affected how women and girls living with disabilities' access to justice. Therefore, it is cogent to argue how this is an analysis of the justice system in Zimbabwe in response to victims and perpetrators who are women and girls living with disabilities. Though legislation and policies are put into place, concerns are raised that women and girls living with disabilities continue to encounter barriers in accessing justice. Moreover, though these policies are implemented, scholars in a recent report by the United Nations Women's Trust Fund titled "Final Evaluation: Access to Justice for Girls and Women with Disabilities in Zimbabwe" highlights the challenges faced by women and girls with disabilities in accessing justice in Zimbabwe. The report emphasizes the lack of monitoring and evaluation mechanisms for existing

policies and programs aimed at improving access to justice for this vulnerable group: highlighted lack of monitoring and evaluation of these. Hence there exists a gap in scholarship between what is stated in the policy and what is on the ground.

Many reports are made to date in Zimbabwe, concerning the plight of girls and women with disabilities. Choruma (2007) posits that persons with disabilities in Zimbabwe are a “forgotten tribe”, despite legislation and conventions ratified and put into place. She notes that out of the Millennium Development Goals only the right to education for persons with disabilities is highlighted and the other goals hardly pay any particular attention to persons with disabilities and their rights to access services such as justice systems. SDG 5 pinpoints key issues for women and girls with disabilities and advocates for the closure of data gaps on gender and disability. Browne (2017) elucidates in target 5.1 of SDG5 that women and girls with disabilities lack legal capacity and, in turn, have reduced power and status. Browne (2017) postulates that in target 5.2 “while affecting women generally, women and girls with disabilities are disproportionately at risk of violence due to factors relating to systematic discrimination and stigma” (:3). The author underpins the fact that the 2030 Agenda for Sustainable Development, needs to mainstream the rights of women and girls with disability into all efforts to promote gender and disability equality. Statistics show that there was a rise in the number of reports on the barriers that affect women and girls with disabilities to access the Justice System from 2015-2017. One particular report, a Sunday News report dated 17 December 2017, brought to light that there were 200 girls and women living with disabilities that are abused in Zimbabwe. Such reports show the lack of attention that victims with disabilities receive especially their failure to access justice. These reports influenced the researcher to conduct this victimology study to document the experiences of victims and use the data collected to influence policy attention to the sector.

This study investigates the barriers girls and women with disabilities face in accessing justice in Zimbabwe. It explores the factors influencing their access, how the Zimbabwean justice system responds to their needs as crime victims, and community perceptions of their ability to obtain justice. The

research aims to pinpoint these influencing factors, describe the justice system's role in supporting crime victims with disabilities, investigate the lived experiences of women and girls with disabilities navigating the justice system, and understand community attitudes towards their access to justice.

The following questions ground this study:

1. What are the factors that influence access to justice for girls and women living with disabilities?
2. What is the role of the Zimbabwean Justice System in dealing with people who are living with disabilities?
3. How do communities perceive access to justice for women and girls living with disabilities?

The research objectives informing this study were:

1. To identify factors that influence access to justice for girls and women with disabilities;
2. To describe the role of justice system in dealing with people who are victims of crimes living with disabilities;
3. To explore access to the justice system by women and girls living with disabilities in Zimbabwe.
4. To establish how the community reacts towards access to justice for women and girls with disabilities.

The purpose of this study is to critically analyse the access to a fair and equitable justice system that ensures an adequate protection of the human rights of girls and women living with disabilities, whether as accused persons, victims or witnesses of crime (see Box 1.1). It also aims at raising awareness of the different barriers to access to justice for girls and women living with disabilities in Zimbabwe.

In light of the limited research on this subject, this research sought to fill the information gap on the experiences of girls and women living with disabilities to access justice. The findings of this study are poised to benefit the formulation of laws and policies which may bear a positive impact on girls and women living with disabilities as either victims or witnesses of crime. Formulation of such policies and legislature burgeons on the availability of

relevant information. Therefore, policy makers and legislators might benefit from the findings of the study and be in a position to review the current of justice system in Zimbabwe so that it benefits everyone regardless of gender. The findings of this study might also be of significant importance to stakeholders such as NGOs in the implementation of access to justice programmes for persons living with disabilities particularly girls and women. The findings of this study might also influence the responses for women and girls with disabilities and result in their voices being heard.

Box 1.1: Definition of Key Terms

This box provides the definition of key terms as they are used in the study. These include; disability, victimology and justice:

Disability: Francis and Silvers (2016) argue how, the term “disability” means, with respect to an individual --(A)a physical or mental impairment that substantially limits one or more major life activities of such individual;(B) a record of such an impairment; or (C)being regarded as having such an impairment (:10). In the context of this study disability refers to physical and mental conditions that hinder one’s ability to participate in life events.

Victimology: is an academic scientific discipline which studies data that describes phenomena and causal relationships related to victimisations. This includes events leading to the victimisation, the victim’s experience, its aftermath and the actions taken by society in response to these victimisations. Therefore, victimology includes the study of the precursors, vulnerabilities, events, impacts, recoveries, and responses by people, organisations and cultures related to victimisations.” (Dussich, 2006:118). In the context of this study, the emphasis is placed on the victim who are GWWD, their experiences and actions taken after their victimisation.

Social Justice: Hulbert and Mulvale (2020) conceive of social justice as, ideas, practice and values that guarantee that all groups and individuals participate in decision-making, practice mutual respect and care for one another and exist in ways that protect and sustain. In the context of this study social justice is studied in the context of GWWD.

The monograph consists of six chapters namely:

Chapter One: The Concept and Context of Justice –The chapter presents the background to the study and the foundations of the research. It articulates the statement of the problem, the research questions and objectives.

Chapter Two: Access to Justice Discourse for Women and girls living with disabilities: A Review- the chapter lays the theoretical framework that

anchored the study and the literature review that created the basis on which the research questions were answered. It lays the foundation on which the debate was built.

Chapter Three: Study, Design and Methodology –This part of the monograph provides a description of the methodology that was adopted to analyse and investigate the research problem. This section also depicted and explored the various methods of data collection. It sought to answer two main questions, how the data was collected and generated and how it was analysed.

Chapter Four: Data and Evidence –data presentation and analysis as well the findings of the research are outlined in the chapter.

Chapter Five: Discussion –Which entails an analysis of what was found against existing theory and knowledge.

Chapter Six: Conclusion and the Future Direction–presents the conclusion of the findings and proffered recommendations in line with the emerging results of the study. It also illustrates any models that may be designed out of the findings of the research.

The overarching argument of the monograph is based on the accessibility of justice for female victims of crime in Mashonaland Central Province of Zimbabwe.

The chapter covered the introductory component of the study. It includes; background to the study, statement of the problem, research questions, research objectives, purpose of the study, significance of the study, definition of key terms and the envisaged structure of the monograph. The next chapter proffers the literature review in two parts; literature related to research questions and literature based on theoretical frameworks.