

CHAPTER TWO: ACCESS TO JUSTICE DISCOURSE FOR WOMEN AND GIRLS LIVING WITH DISABILITIES: A REVIEW

The access to justice discourse for women and girls living with disabilities continues to gain intellectual purchase the world over, but especially in Southern Africa. Being a woman, with a disability, renders them defenceless victims in the face of abuse. Chapter 1 provided a description of the background to the study, the research problem, purpose and objectives, approach and significance of the study. The current chapter takes a close peek at literature that underpins the study. To fully explore the issues at hand and enable better understanding, the chapter begins with a conceptual framework, takes deep and diverse look at literature as guided by research questions before concluding with the theoretical framework adopted for the study.

The concept of justice can be elusive. Justice can be viewed from various perspectives and what might be just for one person in one situation may not be just for another in a different situation (Parnami, 2019). In the case of sexual violence perpetration, the subject of this study, the abuser, abused and even their respective families would view justice differently, each likely to look at their own side of the argument. The author goes further to suggest why laws are then set, to regulate these diverse views and prevent society descending into chaos.

As argued by McGlynn and Westmorland (2018), the question of justice ordinarily starts off with a 'trigger'; an event or incident from which the search for justice begins. Often, what follows is a sequence of events in a criminal justice system. When this process is followed with a definite end, such as conviction is reached, justice is said to have been realised (Goodmark, 2015). In the case of the current study, an act of rape of a woman or girl with a disability could be the spark that triggers the search for justice. Until the perpetrator is brought to book, justice has not been served.

The foregoing perception of justice is criticised on the basis of its assumption that the events leading to justice are sequenced in linear fashion and that

justice is served through a formal system, yet it is well known that the road to justice can be complex. McGlynn and Westmorland, 2018: 180) present what they call the victim-survivor perspective which views:

Justice as a constantly shifting pattern, justice constantly refracted through new experiences or understandings; an ever-evolving, lived experience.

Several questions do arise: At what point is justice served? To what extent is access to that service called justice available? In the case of girls and women with disabilities, is such access available? Would it be different if the victim did not have a disability? While, this study may not provide all the answers, it seeks to draw attention to and alert situations that may call for interrogation of the very concept of the realisation of substantive justice to women and girls living with disabilities.

A fundamental principle that underpins justice, at both international and national levels, is equality before the law and the right to justice: Rawls (1999: 3-4) stresses that:

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore, in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.

Human Rights Law recognises equal rights for all and these rights are enshrined in conventions and stated in declarations, the latter being a legally binding documentation. These are rooted in the Universal Declaration of Human Rights (1948); Rights of Disabled persons (1975) and Rights of the Child (1989), respectively.

However, when all these international human rights instruments were put in place many African countries were not member states due to the fact that they were still under colonialism. Conventions on the other hand rose significantly after the gaining of independence of some African countries with

Ghana after attaining independence in 1957, being the first in 1964 to accede to the Convention on the Elimination of all Forms of Racial Discrimination (CEFRD) in (1966:1) that observes how:

Considering that, all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination.

This is of significant importance to this research in the sense that persons from marginalised groups have the right to be given equal recognition by the law. Many Conventions were ratified after 1966 that specifically focused on marginalised groups in the world such as the, Convention of the Rights of the Child (CRC) (1989) and Convention on the Elimination of Discrimination against Women (CEDAW) (1979). The latter seeks to give voices to the women who are constitutive of some of the most marginalised categories of persons. Although various marginalised groups ranging from racial minorities, to immigrant labourers and children had conventions covering them, it took 40 years to produce a convention with a focus on persons with disabilities as an entity on its own considering many problems that they face. It took even longer for some countries to ratify this convention, let alone domesticate it into their national laws. To date, there is a need to further investigate rights of persons living with disabilities and to create conventions specific to gender and age of the persons living with disabilities. It is important before discussing access to justice to take a closer look at girls and women living with disabilities. Ortoleva (2011:282) argues that:

Persons with disabilities have often been denied access to fair and equal treatment before courts, tribunals, law enforcement officials, prison systems, and other bodies that make up the justice system in their country, because they have faced barriers. Additionally, persons with disabilities are discriminated against in terms of attaining positions as lawyers, judges, and other officials in the justice system. Such barriers not only limit the ability of persons with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society and to the community as a whole.

It is in light of such findings from the foregoing scholar that this research lays its foundations. Ortoleva further conceptualises disability not as a medical ailment, but as a source of societal discrimination, a societal construction.

Zimbabwe boasts of a plural justice system. It consists of the formal system, modelled around those of former colonial powers, even though some have since been adapted into home grown systems and a traditional system that is largely informal and has its origins in the pre-colonial period. These are discussed in the following sections.

The traditional and customary laws in Zimbabwe run parallel to the laws of the state. These constitute largely the family court, community court and chiefs' courts. The traditional justice system dates back to pre-colonial Zimbabwe where in both Shona and Ndebele cultures chiefs held sovereign and absolute power. Saki and Chiware (2007) posit that this changed with the start of the colonial era in 1889 and the subsequent introduction of a constitution and new laws. Colonialism in Zimbabwe brought new judicial structures, formalised by the introduction of the court system including, magistrates, judges, evidentiary rules, legal fees (Legal Resources Foundation, 2020). These were alien to the African population and made worse by the exclusionary nature of colonialism. The end of colonialism left the newly independent Zimbabwe with a quasi-traditional system. The Constitution of Zimbabwe (2013) recognises African customary law as part of the law that can be administered. Saki and Chiware (2007) further argue how other pieces of legislature exist under customary law namely: Customary Marriages Act; Administration of Deceased Estates Act an assumption and Local Courts Act. In support of the foregoing, Matavire (2012) observe that:

Traditional jurisprudence seeks to bring justice to persons who are unjustly treated. Africans have all law described as corrective whereupon it is used in correcting civil cases such as theft, assault raft level. Cases like murder before they are reported further to formal courts. Traditional courts use compensatory justice since there are no custodial sentences (:218).

Traditional justice systems are limited to a large extent and tend to focus mainly on domestic issues. This type of court is usually used by women. Encourages inclusiveness and social justice and in some cases birth homes and is predominant in rural Shona settings. This system of justice bears significant gender stereotypes and discrimination. Matavire (2012:218) supports, the above and avers:

.... the Shona is a patrilineal society where major decisions are made by men. Women regarded as a weaker sex, inferior to men and boys such that they are supposed to be protected. They are given lighter sentences at traditional courts because their position is slightly higher than that of children.

Matavire (2012:222) further advances the fact that:

... traditional jurisprudence operates within parameters and guidelines of Unhu (person hood). Despite these guiding principles, there are several limitations and challenges to the traditional jurisprudence. Traditional court system excludes women in decision-making because they are regarded as minors who are represented by their husbands or fathers in matters affecting them. In most cases, their opinions are not represented well. During court proceedings, women are in a weaker position to challenge men because they always override women's decisions. The fact that there are no legal representation costs heavily on individuals who are not eloquent and those who cannot argue their cases out.

The UNDP cited in Human Rights and Traditional Justice systems in Africa (2016), states traditional and indigenous systems of justice refer to the types of justice systems that exist at the local or community level which have not been set up by the State. It can also be seen as a system of justice that usually follows customary law or an uncoded body of rules of behaviour, enforced by sanctions, varying over time. Linked with the foregoing, this study sought to investigate access to justice for girls and women as a largely 'voiceless' group to justice at both traditional and judicial levels. Women in this light were 'victims' of crimes levelled against them and research shows that they were not given positions to speak up in the largely patrilineal traditional justice systems that they existed in. Of importance were the Women and girls living with disabilities who were only alienated because they were female but also because they are disabled (Lodenius, 2020). The analysis of the traditional system is of significance to this study in terms of assessing the extent to which these are still in use and how they handle access to justice for women and girls with disabilities.

Zimbabwe's formal justice system is grounded in its Constitution, the supreme law of the land (Constitution of Zimbabwe, 2013). The Constitution (section 162) establishes that judicial authority originates from the Zimbabwean people and is exercised through a court system encompassing the Constitutional Court, the Supreme Court, the High Court, the Labour

Court, the Administrative Court, magistrates' courts, customary law courts, and any other courts created by or under an Act of Parliament.

Saki and Chiware (2007:24), in support, argue how, the justice system in Zimbabwe comprises the following elements: The Supreme Court, the High Court, the Administrative Court, Magistrates' Courts, the system for the administration of the courts, the office of the Attorney General and associated public prosecutors, and the legal profession.

The goal of the Justice System is to ensure the smooth flow of the rule of law in Zimbabwe. It is at the apex of ensuring that separation of powers is observed and practiced. The judiciary provides for checks and balances in the exercise of power by the other two arms of state namely, the executive and the Legislature.

Other aspects of the justice system emanate from legislature although it must get Presidential assent before it becomes effective. Madhuku (2010) observe that the law in Zimbabwe starts from Parliament but must get Presidential approval before it becomes operational. There is also an attorney general and four types of courts namely; high court, supreme, magistrate and specialised courts. The Constitution of Zimbabwe observes that, "The President is the head of state and government" (:16) and his ability to pass law is enshrined in the constitution. The Zimbabwean Republic Police are also an integral part of the justice system as enforcers of the law. The victim friendly component of the latter works particularly with victims of abuse.

In the context of the current study, any meaningful discussion on access to justice is inconceivable without unpacking the disability concept itself. This section explores the underlying disability issues; including the concept, the evolutionary aspects, the types and models and why these are important for girls and women with disability.

Due to its evolving and supple nature, there are no universally agreed definitions of the concept disability, yet its importance in enhancing research need not be over-emphasised (Ghoshal, 2018).

In its International Classification of impairments, disability and handicap of 1980, WHO (1980) provided an interesting conceptual framework in its effort to explain disability. They argue it has to do with three related issues that are interrelated and overlapping; impairment, disability and handicap;

Impairment, disability, and handicap are distinct but related concepts. Impairment describes a problem with a body part or its functioning, representing a deviation from a typical biological or psychological state. This could involve missing limbs, sensory deficits like blindness or deafness, or cognitive impairments like intellectual disability. It focuses on the anatomical or physiological abnormality. Disability, in contrast, describes the functional limitation or restriction in performing activities that arises from the impairment. For example, an individual with a leg amputation (impairment) may experience difficulty walking (disability). The focus shifts from the body part itself to the individual's ability to perform specific tasks. Finally, handicap describes the social disadvantage experienced by an individual as a result of the impairment and resulting disability. It represents the barriers encountered in society that limit participation in roles considered normal based on factors like age, sex, and cultural context. A person using a wheelchair (related to impairment and disability) might experience a handicap if buildings lack accessible ramps, limiting their access to employment or social events. Essentially, impairment is the problem within the body, disability is what the person can't do because of it, and handicap is the social disadvantage they face as a result.

In concurrence, Oliver (2017) stresses how the understandable medical inclination of the WHO definition, in light of their mandate. However, this view is criticised on the grounds that it is narrowly conceived since disability has a lot more to do with non-medical conditions. When the UNCRPD (2006:4) provided its own definition, it sought to broaden the disability perspective. It observes how:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

This is a much broad and more inclusive definition that allows for consideration of different dimensions of disability. It also shows the contested nature of the disability definition with meanings that are constantly evolving. In addition to highlighting physical and mental components, it goes further to embrace a social dimension ... 'hinder their full and effective participation in society on an equal basis with others'. This provides the foundations of the notion of two models of disability discussed in a later section of this report. This recognises that disability arises from the results of the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others (UNCRPD, 2006:1). These definitions are of special significance to the current study as they equally broaden and inform the scope of interventions in the search for access to justice when the core category is those who are not only women but also with disabilities.

As argued by Wasserman, Asch, Blustein, and Putnam (2016), the medical model of disability portrays the notion of a health condition that is best dealt with by medical professionals. In light of this definition, 'disability' is seen as a problem of the individual who is in need of being fixed or cured:

The medical model understands a disability as a physical or mental impairment of the individual and its personal and social consequences. It regards the limitations faced by people with disabilities as resulting primarily, or solely, from their impairments ... (para 12).

Kahane and Savulescu (2009:53), as argued by whom disability is:

... a stable physical or psychological property of subject S that tends to reduce S's level of well-being in circumstances C, when contrasted with a realistic alternative, excluding the effect that this condition has on well-being that is due to prejudice.

The social model of disability sees "disability" as a socially created problem and a matter of the full integration of individuals into society. Retief and Letsosa (2018:3) concur:

[D]isability is a situation, caused by social conditions that requires for its elimination, (a) that no one aspect such as incomes, mobility or institutions is treated in isolation, (b) that disabled people should, with advice and help of others, assume control over their own lives, and (c) that professionals, experts and others who seek to help must be committed to promoting such control by disabled people.

The social model is contrasted with the medical model by emphasising the relationship between individuals and their social environment. Someone may already have a physical and/or mental characteristic but it is their exclusion from major domains of social life that highlights the essence of the social model of disability (Wasserman *et al*, 2016).

The medical-social characterisation of disability is useful for this study on access to justice for women and girls with disabilities. The women and girls with disabilities have diverse disabilities that span across the two main models. Putting a ramp on a building will not necessarily address the needs of someone who does not require a wheel chair, neither will counselling be the only answer to someone who has a broken bone. A holistic response will therefore be needed and can only come after such a broad understanding of disability. Table 2.1 shows the key tenets of each model considered around certain issues and questions.

Table 2.1: Medical and Social Model of disability (Haegele and Hodge, 2016: 194)

Topic	Medical Model	Social Model
What is disability?	An individual or medical phenomena	A social construct that is imposed on top of impairments by society; a difference
Access to treatment and services	Referral by diagnosis	Self-referred, experience Driven
Targets of intervention	Fixing the disability to the greatest extent possible, 'normalizing'	Social or political change in an effort to remove environmental barriers and increased level of understanding.
Outcome of intervention	Normalized function: functioning member of existing society	Self-advocacy, changes in environment and understanding, social inclusion.
Agent of remedy	The Professional	Can be the individual, an advocate or anyone who positively affects the arrangements.
Effects on individuals who are typically functioning	Society remains the same	Society evolves to be more inclusive
Perceptions towards individuals with disability	The individual is faulty	The individual is unique
Cognitive Authority	Medical model, scientists and doctors	Academics and advocates with disabilities
Perceptions of disability	Being disabled is negative	Being disabled in itself is neither positive or negative.

The analysis shows how one can bring in issues such as the inquiry: who is responsible? What is their role? Neither model on its own will provide the perfect answer to issues encountered on the ground. A bit of both looks more appropriate, hence the suggestion in the next section.

Rohwerder (2015:5) posits that the human rights model of disability is, to a large extent, based on the social model and also seeks to transform unjust systems and practices. It takes the UNCRPD (2006) as its main reference point. It sees people with disabilities as the 'central actors in their own lives as decision-makers, citizens and rights holders' (Al Ju'beh, 2015).

As argued by Kett & Twigg (2007), most of today's disability policies and practices are based on the social and human rights models. Alienation of the models is not how to manage them but to 'help [them] to see that barriers are a more helpful and respectful lens with which to view disability' (Al Ju'beh, 2015:23). In explaining the Human Rights Model, WHO and World Bank, (2011:9) have this to observe how:

Disability is a human rights issue because: ■ People with disabilities experience inequalities – for example, when they are denied equal access to health care, employment, education, or political participation because of their disability. ■ People with disabilities are subject to violations of dignity – for example, when they are subjected to violence, abuse, prejudice, or disrespect because of their disability. ■ Some people with disability are denied autonomy – for example, when they are subjected to involuntary sterilisation, or when they are confined in institutions against their will, or when they are regarded as legally incompetent because of their disability.

In the communities of Mashonaland Central Province, the study encounters women and girls with physical disabilities, social disabilities, a combination of both physical and social and those whose rights are at stake. An analysis of these models helps to bring that awareness that the template of analysis needs to be broad based, to take into account issues from all models. Only then are we able to approximate more closely the solutions that we recommend.

Disability is also seen as a complex, dynamic, multidimensional and contested phenomenon that is evolving over several decades, taking into consideration

contributions of disabled people's movement, World Reports on Disability and researchers from the social and health sciences. Disability has effectively transformed from an individual, medical perspective to a structural, social perspective; describing the transformation as the shift from a "medical model" to a "social model" in which people are viewed as being disabled by society rather than by their bodies. The medical model and the social model are often presented as dichotomous, but disability should be viewed neither as purely medical nor as purely social: persons with disabilities can often experience problems arising from their health condition. A balanced approach is needed, giving appropriate weight to the different aspects of disability. Interaction models, which take a bit of both, recognise that disability should be seen as neither purely medical nor purely social, as people with disabilities can experience problems arising from the interaction of their health condition with the environment (WHO and World Bank, 2011). Proponents for a mixed view believe in the use of a combination of both the medical and social models of disability.

The medical versus social dimensions are the most paramount and attracting much of the debate, some researchers warn of the dangers of ignoring some underlying features. Goodley *et al.* (2019), for example, consider disability to be a scrutiny of inequality. The argument goes further to highlight powerful perceptions of disabled people's organisations that regard as a phenomenon associated with the discrimination of people with sensory, physical and cognitive impairments (Goodley *et al.*, 2019 and WHO & World Bank, 2011).

A study on association between disability and discrimination (Krnjacki, Priest, Aitken, Emerson, Llewellyn and Kavanagh, 2017), showed that nearly 14% of Australians with disability reported disability-based discrimination in the previous year. Further analysis showed disability-based discrimination was more common among people living in more disadvantaged circumstances and associated with higher levels of psychological distress.

A separate study, based in review of literature that sought to determine access to reproductive health services for women with disabilities in eleven low-and middle-income countries in Africa and Asia is reported by Casebolt (2020). It found that women with disabilities experience many barriers to reproductive

healthcare, including negative attitudes from family, the community, and providers. The review also found limitations in the areas of transportation, infrastructure, and communication; leading to the conclusion that indeed women with disabilities were discriminated against and prompting proposals to develop policies that mandate inclusion of people with disabilities and provision of accessible and disability-friendly facilities and transportation (Casebolt, 2020). Is discrimination an issue in the current study on access to justice for women and girls with disabilities? This is part of what this study is trying to answer towards appropriate recommendations for action.

Ableism is another important concept in the disability discourse. Fenny (2017) calls it ableism, describing it as nothing other than discrimination in favour of non-disabled people. Its opposite, dis-ableism, refers to discrimination against disabled people. Both terms describe disability discrimination, but the emphasis is different.

Fenny (2017) observes how ableism, meanwhile, provides a framework for considering why environments and activities are constructed in particular ways and which embodiments (and which abilities) are currently assumed and valued. Therefore, consideration of ableism, using Campbell's definition, can be complementary to a social-relational approach to disability.

Physical barriers: such as a lack of ramps, elevators, no sidewalks, no push-buttons for doors and so on.

Design barriers: such as poorly designed rooms that are difficult for people with mobility aids to navigate, furniture that is bolted down or too heavy to move, door knobs that are hard to open, doors that are too heavy to push open, elevators that are hidden and difficult to find etc.

Forced segregation of disabled people in society: disabled people historically, and currently, are segregated from abled people. Story lines often write disabled characters to be angry, difficult, as predator, as “super cripp” and, as someone who is disabled that is highly accomplished, or that they only want to be “cured”.

Invisibility of disability culture and community: disability rights history is not taught to many students, and there is little visibility of disability culture or disability pride movements.

There is an understanding that the ableism discourse is located in the field of disability and can be viewed as stereotyping, prejudice, discrimination; but also, as outright social oppression towards people with disabilities (Bogart & Dunn, 2019).

More specifically:

Ableism refers to a network of beliefs, processes and practices that produce a particular kind of self and body (the corporeal standard) that is projected as the perfect, species-typical and therefore essential and fully human. Disability then is cast as a diminished state of being human (Campbell, 2001:44).

As argued by Bogart & Dunn (2019), ableism can also be conceptualized by “othering” of disabled people: ableism is “ideas, practices, institutions and social relations that presume able-bodiedness, and by so doing, construct persons with disabilities as marginalised ... and largely invisible ‘others’”.

Considering all the foregoing perceptions about ableism, people with disabilities are left with disturbing experiences of ableism, some of them with more negative consequences than the other “isms” (racism, sexism, ageism); Of course, it must be said that while negative experiences of ableism appear to be commonest, it is not every disabled person who recognises them as unacceptable; ... with Dirth and Branscombe (2019) finding that people with disabilities were more likely to recognise ableism when they had a positive disability identity and endorsed the social model. However, in the majority of cases, this has resulted in significant health and well-being consequences (Branco, Ramos and Hewstone, 2019). Thus, an understanding of these concepts will not only assist in the analysis of issues and processes in the current study but also provide insights into response options peculiar to some behaviour patterns.

McBride (2009) observes that access to justice is interested in the means of securing individual rights, specifically through the use of courts and tribunals

a position supported by Beqiraj, McNamara and Wicks (2017) who show how access to justice is a fundamental right in itself. Nkhata (2020: 132), in further support, states, "...access to justice is a fundamental right in itself and also an essential prerequisite for the protection and promotion of other rights". LRF (2020) observes that access to justice is, "the system by which people may vindicate their rights and/or resolve their disputes under the auspicious of the state. This system must be equally accessible to all, and second it must lead to results that are individually and socially just" (:5). The Chief Justice of Canada on the occasion of the 7th Annual Pro Bono Conference Vancouver in British Columbia on the 8th of October as cited in LRF (2020:7) remarked:

Whenever I think about access to justice, a quote from Honoré de Balzac comes to mind. He said that, 'Laws are spider webs through which the big flies pass and the little ones get caught.' To me, that image perfectly captures not just the inequities in our legal system, but the tangible effects those inequities have on people. While the system is meant to treat everyone equally, some people get stuck, and expend a great deal of time and energy to break free. Others breeze through to resolution and move on with their lives. Giving people access to justice is like giving them the tools to free themselves from the spider's web.

While there appears to be agreement that access to justice has much to do with promotion and protection of rights, Shughuru (2013) bemoans lack of consensus regarding what he considers a proper definition of the concept. Two approaches have nevertheless been used to describe the concept; the narrower and the broader approach. Shughuru (2013) further elucidates that the narrow approach regards access to justice as being concerned with the means for securing vested rights, particularly through the use of courts and/or tribunals. On the other hand, the broader approach seeks a firm conjunction of procedural and substantive aspect of justice. Accordingly, access to justice requires a construction that best ensures just, equitable and inclusive legal and judicial outcomes. In further analysis of the concept of access to justice, Nkhata (2020:132) observes that:

The expression 'access to justice' marries two intellectually loaded concepts 'access' and 'justice'. Because of the 'marriage' that the expression creates, a full understanding requires equal focus on both 'access' and 'justice'.

Therefore, the enjoyment of one's human rights also impacts on one's ability to access justice. Francioni (2007) in Liefwaard (2019) opines that, at the same

time, it can be argued that access to justice is acknowledged by regional human rights courts and treaty bodies as a human right in the context of domestic law and under international human rights law. As argued by the United Nations High Commissioner, access to justice for children ‘applies to civil, administrative and criminal spheres of national jurisdictions, including customary and religious justice mechanisms, international jurisdictions, and alternative and restorative dispute resolutions’ (United Nations High Commissioner, 2013, para. 4). It covers ‘all relevant judicial proceedings, affecting children without limitation, including children alleged as, accused of, or recognised as having infringed the penal law, victims and witnesses [of crimes] or children into contact with the justice system for other reasons. UNICEF in Liefwaard (2019) observes that access to justice is the right to obtain a fair, timely and effective remedy for violations of rights, as argued by national and international norms and standards, through adapted processes that protect children’s dignity and promote their development.

Simply put, access to justice refers to access to the legal procedures undertaken at all levels of reporting a crime, from inception of the report till the completion of the sentencing of the perpetrators. Shughuru (2013), further observes that, from the key elements of the above definition, it is important to note that the cumulative effects of these elements would result in an inclusive, participatory and barrier-free criminal justice system. The UN High Commissioner for Human Rights (UN High Commissioner:2013) defined access to justice for children as ‘the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child (CRC).

The concept of access to justice was brought up in the 1960s as a means of suggesting that inadequate levels of access to justice result in deep rooted inequalities and has made great strides over the last 50 years. McNamara and Beqiraj (2015) posit that, access to justice for all is a key priority for development and one of the SDG goals. They go on to argue how, ensuring effective access to justice serves two complementary functions: a redress function when laws and rights are violated by public institutions and/or

private parties, and a preventive function against further violations, including through increased public trust in the justice system.

Accordingly, access to justice is both an essential precondition for the effective functioning of institutions governed by the rule of law, and an individual right that is constitutionally guaranteed and part of international customary law and human rights principles. Effective access to justice is at the same time essential for the realisation of a range of other civil, cultural, economic, political and social rights and is an invaluable tool for empowering the most vulnerable groups to escape the 'vicious circle of impunity, deprivation and exclusion' (UNHCR press release, 2012, para.1).

Begiraj and McNamara (2016) also posit that, access to justice is essential to the establishment and maintenance of the rule of law because it operates as an empowering instrument, enabling the most vulnerable groups to have their voices heard and to exercise their rights. It serves both a redress function when public institutions and private parties violate laws and rights, and a preventive function against repeated violation of human rights.

Flynn (2015) avers that, the concept of access to justice contributes to an array of legal and political human rights theories. Cappelletti and Garth (1978) in Maldonado (2020) argue that access to justice has had three stages: in the first, access to justice meant the right to have a day in court; in the second, access to justice also meant strategic litigation of structural social problems, and in the third, it meant alternative methods for attaining justice. As argued by Nyenti (2013) the concept of access to justice, has evolved over the years from a narrow definition (that refers to access to legal services and other state services) to a broader one (which includes social justice, economic justice and environmental justice), a reading of the right protected in section 34 of the Zimbabwean Constitution (the resolution of disputes in a fair public hearing by a court or another independent and impartial tribunal or forum) suggests access to justice in the sense of access to the courts or tribunals that adjudicate or mediate. The concept in relation to this research depicts access to the panoply of justice systems as the means to which justice is achieved for persons living with disabilities particularly girls and women. Maher et al. (2018) argue how, justice begins with the assertion that people

with disability are bearers of human rights. In this research both women and girls living with disability are considered as subjects of human rights law on an equal basis, with legal capacity that must be affirmed and supported. The concept of access to justice is therefore an evolving concept that changes with time and human rights approaches and relevant needs of the time. However, for the purposes of this research Maher (2018)'s assertion above aligned with the meaning of justice within the context of this research.

To many the right to access justice takes a backseat to other factors to access such as shelter, food and financial stability. The right to access justice is often deemed as unimportant. However, this aspect is cardinal and core to the accessing of other rights. There are many factors that limit access to justice for disabled persons. These include: physical, discriminatory, financial issues, and lack of knowledge and education (Chikate, 2020). Bornman *et al.*, 2020:1) opine that:

Persons with disabilities are generally at greater risk of experiencing violence than their peers without a disability. Within the sphere of disability, individuals with severe communication disabilities are particularly vulnerable and have an increased risk of being a victim of abuse or violence and typically turn to their country's criminal justice system to seek justice. Unfortunately, victims with disabilities are often denied fair and equal treatment before the court .

Andrae (2017), in support, observe that children with disabilities, especially girls, tend to experience multiple forms of violence by many perpetrators within their extended family and wider community, with extremely limited opportunities to get help:

The above barriers not only limit access to justice but to other essential services such as health. The goal of access to justice is to widen participation and to overcome geographical, social and economic barriers. Such limits deny persons living with disability their basic human rights. These are discussed in greater depth in the following sections.

Access to justice is not only a fundamental right for every human being, but also a core requisite for the preservation of all other human rights. Legal Resource Foundation (2020:2) in support opine that:

Article 2 of the International Covenant on Civil and Political Rights (ICCPR) refers to the right to an effective remedy for all the rights in the covenant. This implies access to justice because one needs to access justice delivery institutions to obtain an effective remedy.

As argued by the Disability Toolkit for Africa (2011), for persons with disabilities to fully access justice there is need for accommodation of the different and specific special needs to be met that are a requisite at different stages of the justice process. There is need for any existing barriers to be lifted to ensure accessibility.

Nkhata (2020: 137) observe that “Access to justice for persons with disabilities is both a means and an end”. It is a means in the form of a transport mechanism that provides PWDs with an “opportunity to realise their rights” (Nkhata, 2020: 136). Edwards *et al.* (2012) acknowledge that, the literature emanating from the study of victims of crime, or ‘victimology’, has yet to address people living with disabilities as a specific category of victim. Neither has there been much engagement within disability studies regarding people with disabilities as crime victims, or regarding their experiences with the criminal justice system. Edwards *et al.* (2020) argue how, many people living with disabilities would reject terms, such as ‘victim’ and ‘vulnerable’. Such language can feed into constructions of disability which emphasise individualised notions of personal tragedy.

Beqiraj *et al.* (2017) notion of access to justice as a fundamental right in itself and as a precondition of the enjoyment of all other rights is especially crucial for this category of vulnerable persons, and provides a unique tool to counter the discrimination (and often disrespect, lack of dignity or even violence) that they face. For example, persons with disabilities are frequently denied legal capacity and have difficulty accessing courts and quasi-judicial bodies. Paradoxically, however, those who need effective access to justice are the ones who frequently encounter barriers to it. Beqiraj *et al.* (2017) give a gloomy picture. They argue how persons with disabilities face disproportionate socio-economic marginalisation, resulting in poorer health and medical treatment, lower quality of education, limited employment prospects and generally broad-ranging restrictions on their community participation. These negative outcomes are exacerbated by barriers to access to justice specifically

experienced by persons with disabilities. This excludes the importance of access to justice for persons with disabilities above all other rights.

Wulandari (2018) posits that the relationship between access to justice and girls and women living with disabilities lies in the fact that, women have a higher chance to be victims; this problem is worsened by existence of patriarchy culture which is still very strong in a majority of communities. Women are considered vulnerable, moreover those who have disabilities. Thus, observations are made that women living with disability are less likely to be able to protect themselves from the violence. These problems are related to lack of access to justice for those women who are victims of violence. Maher *et al.* (2018) share that, there are three main stages or processes for victims in the criminal justice system, namely, reporting the crime; accessing justice through the courts; and experiences after the trial.

The extant literature at international level shows that people living with disabilities experience barriers in all of the aforementioned stages of the criminal justice system. They also experience barriers during other intermediary processes such as accessing healthcare in response to crime. The underlying nexus between access to justice and victimology, therefore lies within the notion that the women and girls living with disabilities as victims of crime may seek justice as recourse for crimes perpetrated against them. Access to justice is therefore, simply more than improving a person's access to court. Ndedi and Mua (2017) argue how, "access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards"(:6). It is therefore a foundation of the enjoyment of other rights.

LRF (2020) observe that, whilst there is no perfect judicial system in the world access to justice in Zimbabwe for all persons and in this particular case, women and girls with disabilities, is riddled by diverse factors including; gender, poor funding, illiteracy and economic factors. Edwards, Harold's and Kilcommmins (2012) argue how "a significant amount of international research has demonstrated that people with disabilities are more likely to be victims of crime than their able-bodied counterparts" (: 11) Maher *et al.* (2018) supports this assertion and goes on to argue how girls and women living with

disabilities may have the same offence committed against them but their disabilities place them in a unique situation. Lodenius (2020) goes on to argue how girls and women living with disability GWWD become victims of crime and most often marginalised from accessing justice and judicial services.

Fiduccia as cited in Wulandari (2018) observes how, disabled women and girls are of all ages, all racial, ethnic, religious, and socio-economic backgrounds and sexual orientations; they live in rural, urban and suburban communities. Disabled women and girls live at the corner of disability and womanhood-with two 'minority' identities, a double dose of discrimination and stereotyping and multiple barriers to achieving their life goals. While many women with disabilities derive enormous strength, resilience and creativity from their multiple identities, they also face the consequences of discrimination. Yet, the self-defined needs of women with disabilities remain on the margins of the social justice movements that should represent them, - the women's movement, the disability rights movement, and the civil rights movement-leaving disabled women and girls of all backgrounds essentially invisible. This places women and girls living with disabilities into unfair conditions.

Guided by the parameters of international law as provided for in the global conventions, each country has gone on to develop its national legislation. These are expected to reflect differences in the content of the legislation and the manner in which they see things at the practical level. This section takes a look at access to justice as seen through the lenses of different countries. There was no particular formula used to select the countries. They serve illustrative purposes, with the aim of drawing some comparisons and drawing lessons for the country study.

The broader global community refers to the countries outside Africa, usually referred as first world countries. In most cases, this category belongs to those that have participated in the development and early ratifications of most of the early global instruments that guide theory and practice of justice today. Much of the access to justice issues are carried in the Convention for the

Rights of Persons with Disabilities the CRPD in 2006. This section covers India, Australia and Canada.

The situation for women and girls with disabilities in India is not different from the situation worldwide. As argued by the Guidelines and Protocol for Medico-Legal Care for Victims/Survivors of Sexual Abuse (2014), girls and women with disabilities face particular barriers in reporting sexual and other forms of abuse. Medico-Legal Care for Victims/Survivors of Sexual Abuse (2014:15), observe that:

...because of the obvious barriers to communication and their dependency on caretakers who may also be abusers. When they do report, their complaints are not taken seriously and the challenges they face in expressing themselves in a system that does not create an enabling environment to allow for such expression.

Women with disabilities are not only treated as invisible in the communities they reside in but there are no records of attacks and abuses of girls and women with disabilities. In 2014 a report by Rashida Manjoo shows that there was a lack of data on cases involving violated women with disabilities and she stated that this renders the violence committed against women with disabilities “invisible”. It is therefore evident that despite the ratification of the CRPD and legislature such as the Criminal Law (Amendment) Act 2013 against sexual violence, such violence still persists, especially among the girls and women living with disabilities. The critical issue about the Indian scenario appears to be attitudinal. In spite of increasing violence perpetration, there is little care about this vulnerable group: to the extent of not bothering to collect data that would otherwise inform responses.

Barriers prevent effective access to justice. For instance, high levels of discrimination and stigmatisation are levelled against persons in charge that are supposed to enable access to justice for women and girls living with disabilities. An example given by the Human Rights Watch (2018) stated that after a victim had reported the case to the police, they had asked her how she had felt and if she had enjoyed it. They called her mentally unstable due to her psychosocial disability based on the preceding sentiments. The researcher is of the view that there is need for further research in this area to obtain hard data that can be used to sensitise lawmakers and the community at large to

better assist girls and women living with disabilities towards access to justice.

Larson (2016), posits that no nation has met the challenge of successfully ensuring access to justice for persons with disabilities. McCullock *et al.* (2020) explore the meaning of justice for girls and women with disabilities who have experienced various levels of crime and family violence. They paint a picture of women with disabilities as still being a largely marginalised group and her persistence (by 2020) of a perception previously purported by Chenoweth (1996:6) when she posits:

Women with disabilities typically occupy positions of extreme marginalisation and exclusion that make them more vulnerable to violence and abuse than other women. There is a profound silence around the lived experiences of many women with disabilities that has meant that the violence in their lives is largely invisible and unknown.

Ortoleva and Lewis (2017) also paint a grim picture of the fulfilment of access to justice for girls and women with disabilities in Australia. McCullock *et al.* (2020) go on to argue how 20 to 30 per cent of women who experience violence in Australia have disabilities. The researcher undertook the current study with a desire to answer some of these previously held views and practices. The take away from the Australian experience is one of extreme marginalisation, even though there is evidence of high levels of perpetrations among Australian women with disabilities.

McCullock *et al.* (2020) paint a rather disturbing picture of the Canadian Justice System in response to a crime committed against a mentally unstable woman who had been abused and the perpetrator was one of her guardians. The case offers a poignant of challenges that women and girls with disabilities face in law courts. In this case study the victim gave a videotaped description of what her step father had done to her, the perpetrator in turn challenged her level of competency to testify and due to the judge feeling she had unsatisfactorily answered questions the perpetrator was acquitted.

Such poignant disregard for the rights of girls and women living with disabilities was further challenged by the Canadian Supreme court and the

case was retried, after inclinations were made that the court should be more accommodating to the needs of girls and women living with disabilities. This has led to recent research by McCulloch *et al.* (2020), suggesting that the supreme court highlighted that "questions should be phrased patiently, in a clear and simple manner", to accommodate persons living with disabilities. In essence, this is viewed as a starting point accommodating women and girls with disabilities while testifying in Canadian justice system. This provides important lessons to learn for Zimbabwean justice system.

Disability has largely been a taboo in the African context. Persons with disabilities are voiceless and ostracised within African communities. Most African countries have not fully accepted and enforced the rights of persons living with disabilities in general and those of girls and women in particular. This section provides insight into African Union (AU) and Southern African Development Community (SADC) and cases of a few countries, selected on the basis of regional representation for illustrative purposes.

Africa appears to have progressed in terms of change of mentality about women and girls with disabilities. Whereas traditionally these vulnerable groups were shunned and even hidden away, it looks like the arrival of CRPD may have changed the dynamic with Article 7.1.3 of the protocol stating that:

State parties shall recognise that persons with disabilities are equal before and under the law and entitled without any discrimination to equal protection and equal benefit of the law

In keeping with the letter and spirit of that Convention that most heads of African states have ratified, Africa Union (AU) heads of states adopted the Protocol to the African Charter on Human and People Rights on the Rights of Persons with disabilities in Africa in 2018, with the last signatory signing it in 2020. Muridzo and Chikadzi (2020) argue how, the protocol covered issues affecting Persons with Disabilities (PWDs) The Disability Rights Protocol tries to accommodate the privileges of people with disabilities as argued by an African viewpoint, considering the lived real factors of people with disabilities on the continent. The study, in part assesses how these developments have influenced practices in the province of Mashonaland Central.

The SADC protocol on Gender and Development (2008) observe that member states should abolish the minority status of women and ensure equality of access, that is not compromised by any laws or policies. The Protocol seeks to ensure that all women in Southern Africa have access to justice. As argued by the SADC Gender and Development Monitor (2016:4;

the SADC Protocol on Gender and Development seeks to ensure that women have access to justice including equity in judicial, quasi-judicial and other proceedings including customary and traditional courts , affordable legal services and equitable representation in the criminal justice system

Article 7 of the Protocol on Gender and Development (2008) speaks to “equal legal status and capacity” for all women in SADC member states. While the protocol is clear on its intentions, it remains to be seen to what extent this has cascaded down to practice. Through its various tools and instruments, the study collects data that hopes to provide the answers.

The development of the Nigerian system is showing mixed attention to the issues of rights of persons with disabilities. For example, the 1993 Nigerian Disability Decree was already showing some awareness. The Nigerian Disability Decree (1993:2) provides that:

The purpose of this Decree is to provide a clear and comprehensive legal protection and security for Nigerians with disability and establish standard for enforcement of the rights and privileges guaranteed under this decree and other laws applicable to the disabled in the Federal Republic of Nigeria.

As argued by Rotkangmwa and Lalu (2016), subsequent policies and legislature appeared to have retrogressed. For example, the 1999 Nigerian Constitution provides no special mention to persons with disabilities or their rights. That constitution was largely blamed for its silence on issues on disability. However, subsequent versions of the constitution (in 2011 and 2017) made reference to disability issues, even though it is argued that implementation was given little attention. Ewanga (2019) observe that Nigeria confirmed the United Nations Convention on the Rights of People with Disabilities (CRPD) in 2007 and its Optional Protocol in 2010. From

that point forward, common society gatherings and individuals with disabilities have approached the public authority to incorporate it. In 2011 and 2015, the National Assembly passed the Discrimination Against Persons with Disabilities (Prohibition) Bill 2009., However, the then President declined to sign it into law. The bill for the new law was passed by the House of Representatives and the Senate joint board of trustees in November 2016, only to have it signed in 2018. Umogbolu (2021) cites, lack of commitment on the part of the government “to attempt and implement the needs of disabled persons which are hindrances to access to justice for the disabled persons in Nigeria” (:29). Lessons to take from here include lack of political will on the part of the Government and hiccups in terms of implementation, a situation that renders girls and women with disabilities largely voiceless and marginalised. Some of the impediments behind lack of progress include education, structural accessibility, cost of justice, communication, discrimination and non-enforcement of bills, laws and treaties.

In Uganda, Human Rights for disabled people are enshrined in the Ugandan Constitution under section XVI, it is stated that “Society and the State shall recognise the right of persons with disabilities to respect and human dignity” (:23). is to be applauded as the first country in the world to recognise use of Sign language as an official language in its constitution even though there is some negativity levelled against that country. Global Accessibility News (2013) highlighted the experience from National Union of Disabled Persons of Uganda (Nudipu), an umbrella organisation of persons with disabilities, showing that the term Justice was far-fetched as far as people with disabilities are concerned, and may not hold water by any standard.

South Africa acceded to many conventions at international and regional level and has one of the most watertight constitution Act 108 of 1996. However, the country is largely characterised by a significant number of discriminatory practices. These mostly affect the marginalised and poorer classes of the South African society. Discrimination against persons with disabilities in particular girls and women persists.

Holmes and Rule in ADRY 6 (2018) suggest that there are many constitutional protections against unfair discrimination. The promotion of substantive equality and access to justice means that persons with disabilities have the same rights as non-disabled persons. They have their disputes heard in procedurally and substantively fairways in all courts in South Africa, including traditional courts. In spite of this observation, critics such as Backup (2009), still see persons living with disabilities as having difficulties in exercising their fundamental social, political and economic rights.

Access to justice for disabled persons in Zimbabwe is a fairly recent phenomenon, borne out of the need to address Human Rights violations and disability rights. However, despite ratifying and being part of different Global protocols such as the Convention on the Rights of Persons with Disabilities (CRPD), access to justice of women and girls living with disability remains questionable. For instance, Zimbabwe is one of the countries largely criticised for flagrantly violating the same conditions that it agrees to uphold, that of promoting, protecting human rights for all, especially girls and women with disabilities (Chikate, 2020).

There are many conventions, laws and protocols which were ratified by the Zimbabwean government in good faith to increase access to all services and equality for persons with disability with those without and reduce the context of ableism. Earlier research by Choruma (2007) highlights how persons living with one form of disability or another in Zimbabwe are a largely 'forgotten tribe' and little is done to advocate for their rights apart from the signing of paperwork that speaks of their rights with little progress on enforcement. An example is the National Disability Act of 1992 which was passed and a disability board created to oversee it, but to date, little implementation progress has taken place.

The Government of Zimbabwe has since taken other policy and legislative steps that show commitment to promoting the rights of persons with disabilities. As argued by SIDA (2014), in terms of international instruments, the Zimbabwe government signed and ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in

September 2013 and sent its first report on the Human Rights of Persons with disabilities thereafter. The Protocol on Multi Sectoral Management of Sexual Abuse and Violence in Zimbabwe introduced in 2003 and revised in 2012, was put in place to strengthen and clarify the roles and responsibilities between service providers and agencies that have statutory and thus obligatory responsibilities in the delivery of age, disability and gender sensitive, survivor-centred services thereby enhancing their accountability and credibility. Enshrined in the protocol is the Victim Friendly System a multisectoral forum made up of social workers, medical doctors, nurses, the police force and role players within the justice system such as magistrates, prosecutors, counsellors, educationists and psychologists (Multi sectoral Protocol, 2012). These professionals offer distinctive but complementary interventions to child survivors of child sexual abuse the government also signed and ratified other relevant conventions such as the UNCRC.

Despite the aforementioned, Mandebvu (2015) underscores the loopholes in the Zimbabwean justice system especially when it comes to girls and women living with disabilities. She goes on to argue how, girls and women living with disability have an inter-sectional marginalisation born out of being women, vulnerable, economically poor and also disabled. Lodenius (2020) further cements that, “the 2013 constitutional reform, is heavily inspired by the CRPD and therefore embodies the ideology of inclusivity” (Lodenius,2020:19). However, on the ground there are no concrete implementation processes to ensure access for women with disabilities and access to justice is not an exception”. Beqiraj, McNamara and Wicks (2017:14) share that justice systems are both formal and informal and posits that:

.... It starts with the existence of rights enshrined in laws, and awareness and understanding of those rights. It embraces access to dispute resolution mechanisms as part of justice institutions that are both formal (i.e., institutions established by the state) and informal (e.g., traditional or religious authorities, mediation and arbitration). Effective access includes the availability of, and access to, counsel and representation.

To backtrack it is necessary to note important policies and legislation put into place for disabled persons within the Zimbabwe Justice System. Manatsa (2015) speaks to the issue of the Disabled Persons Act (DPA) [Chapter 17: 01],

the major law that sought to address disability in Zimbabwe. The DPA of 1992 of Zimbabwe covers two main areas prohibiting discrimination against PWDs namely; access to public premises, services and amenities and employment. The DPA also establishes the office of Director for Disabled Persons Affairs and constitutes the National Disability Board (NDB, hereinafter the Board). The Director formulates proposals and other measures that are submitted to the Board. The Board then develops measures and policies that concern PWDs in the country as provided for in terms of sections 5 (b) (i) to (xiii) of the DPA. The Board is also responsible for registration of PWDs and associations, institutions and organisations including state institutions dealing with the welfare of PWDs. The Board submits its reports to the appropriate Minister in terms of section 6 of the DPA as part of its modus operandi established under the DPA. In the years of its inception, the PWDs and disability organisations hailed the DPA as a great landmark in terms of furthering the rights of PWDs. However, due to lack of positive change, PWDs became disenchanted with the DPA. Manatsa (2015) notes that the DPA has morphed into a liability agency incapable of addressing the pressing needs of PWDs. Manatsa further suggests that DPA should be scrapped from the list of statutes because the use of “Disabled persons”, is pejorative and unpleasant . The following observation buttresses the foregoing:

Whereas scholars such as Mandipa advance that the use of such terminology “reflects a medical and diagnostic approach to disability which ignores the imperfections and deficiencies of the surrounding society”. In support of the foregoing, Nyirinkindi further opines that terms and labels become significant in colouring perspectives and determining what rights may be attached to PWDs. It is argued that the DPA is overtaken by events at the international level as its terminology is now at variance with that used in the CRPD which is “persons with disabilities.” (Manatsa, 2015:27).

Hence, it can be said that the DPA is not in conformity with the CRPD. Manatsa (2015:27) goes on to argue how the definition of a disabled person as proffered by the DPA leaves a lot to be desired. The DPA (2016:2) states, a disabled person is a person with:

...a physical, mental or sensory disability, including a visual, hearing or speech functional disability that give rise to physical, cultural or social barriers inhibiting

him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society

The DPA provides disability in the medical sense of the term but also makes reference to what scholars refer to as social disability. Manatsa (2015) suggests that though the DPA should be commended for establishing the National Disability Board, the definition that it uses is now archaic in that it fails to capture the fact that disability is not only limited to individual impairments but also to barriers caused by both attitudinal and environmental factors. Literature such as the above exposes the good and bad aspects of legislation and policies surrounding disability and disabled persons' rights issues. It also provides a glimpse into the placement of importance by the Zimbabwean Government on disability issues. Manatsa (2015:25) paints the image that:

Zimbabwe was once viewed as a model country for disability rights in Africa and the world over. It was one of the first countries to adopt disability related legislation through the promulgation of the Disabled Persons Act (DPA) of 1992 .

The Zimbabwean Justice System is multi sectoral in nature. Each arm of the system stands on its own but in total dependence on the next aspect for it to function. Also writing within the Zimbabwean context, Chikate (2020) observes that Zimbabwe is one of the first countries in the world to historically dignify the lives of disabled people with legislative and constitutional representation. In 1992, 14 years before the signing of the CRPD, Zimbabwe had already signed into law the Disabled Persons Act (DPA).

In conclusion, Zimbabwe has progressed in terms of ratifications and development of local instruments and programmes to take care of the needs of people with disabilities. However, implementation appears to be its largest undoing. The study in Mashonaland is not only seeking to confirm or otherwise these trends but also to seek out lessons that might be useful in response initiatives. Prior to the 2013 constitution, Zimbabwe's stance on rights of people living with disabilities was not only questionable but barely significant. The African Disability Rights yearbook (2013), depicts the 2005

constitution as having insignificant mention of persons with disabilities by only adding physical disabilities under the non-discrimination clause. Prior to the 2005 constitution there was no mention of persons with disabilities let alone girls and women living with disabilities.

Phiri (2019:6) observes that many acts and amendments are made as positive strides to accommodate women with disabilities in Zimbabwe. For instance: The Domestic Violence Act (2006) helps to protect women with disabilities from GBV in Zimbabwe. The definition of domestic violence extends protection to women and girls with physical, mental, sensory, visual, hearing and speech disability (Domestic Violence Act 2006, section 3(1)(n)).

The Sexual Offences Act (2003) also prohibits immoral or indecent acts with intellectually handicapped persons (Sexual Offences Act 2003, section 4(2)(b)). Punishment ranges from a fine to imprisonment of not more than ten years or to both (Section 4(2)(b)) and;

The Mental Health Act [Chapter 15:12], paints a picture of rights for persons with mental disabilities and governs treatment of the aforementioned persons.

Criminal Law and Codification Act [Chapter 9: 23] to advocate for justice for crimes against the person, particularly sexual crimes committed against young or mentally incompetent persons [Chapter 5.3].

However, with the economic challenges the country is currently facing the implementation of these laws is poor. The CEDAW Committee in its concluding observations on Zimbabwe noted that the Anti-Domestic Violence Council which is responsible for the implementation of the Domestic Violence Act does not receive adequate monetary and human resources for it to effectively function (CEDAW 2012, paragraph 23). The following section will offer some of the best practices that are being employed to help curb the violence against women and girls living with disabilities.

Zimbabwe has a long way to go in terms of enforcing the rights of persons with disabilities (Chikate, 2020). However, in April 2013, the enforcement of the new constitution depicted the first step towards disability rights enforcement in Zimbabwe. It placed Zimbabwe on the constitutional reforms map depicting that equality is a guaranteed right for all persons with disabilities, including women and girls. Section 22 shows the Government's aim to remove all barriers to access for People with Disabilities (PWDs) by providing that all institutions and agencies of the government at every level must recognise the rights of persons with physical or mental disabilities, particularly their right to be treated with respect and dignity. Meanwhile, Section 83 of the Zimbabwean Constitution emphasises on implementation and further enshrines the enforcement of equal rights for persons with disabilities. Furthermore, Section 83 shows great strides in constitutional reforms, particularly in the acknowledgement of persons with disabilities as an arm of the community that requires necessary protections that are awarded to all members of the community. Thus, despite limited resources made available to ensure that persons with disabilities realise their full mental and physical potential, The Constitution of Zimbabwe (2013) strives for the following measures women with disabilities:

- a) To enable them to become self-reliant;
- b) To enable them to live with their families and participate in social, creative or recreational activities;
- c) To protect them from all forms of exploitation and abuse;
- d) To give them access to medical, psychological and functional treatment;
- e) To provide special facilities for their education; and
- f) To provide State-funded education and training where they need it.

The major loophole of the Constitution of Zimbabwe (2013) in reference to persons with disabilities is that it enshrines the rights of persons with disabilities in writing but does not emphasise adequately the role that government should play in enforcing these rights, in alignment with the CRPD. As such Figure 2.1 depicts some of the pertinent questions that continue to arise in line with the phenomena on under study.

Does the constitution explicitly guarantee equality or non-discrimination for persons with disabilities?

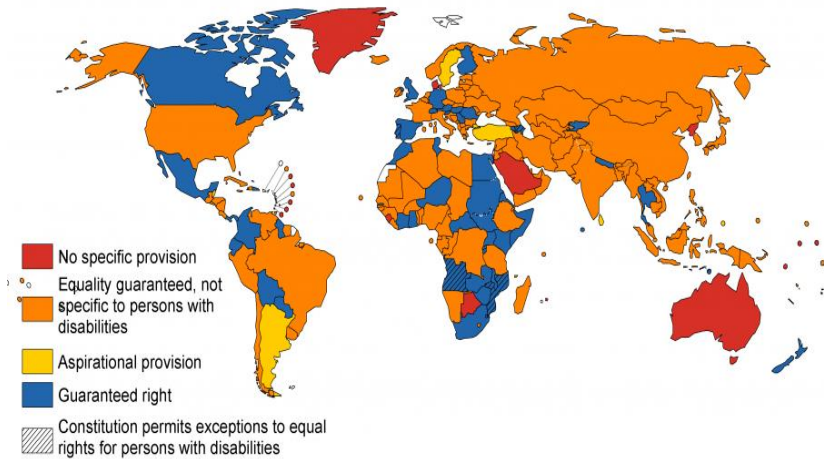


Figure 2.1: Does the Constitution explicitly guarantee equality or non-discrimination with disabilities? (Heymann, Sprague and Raub, 2020: 157)

Figure 2.1 above shows countries that have constitutions that are non-discriminatory to persons with disabilities, it also portrays the countries where equality is guaranteed and no specific provisions are made for persons with disabilities.

In terms of achieving substantive access to justice for women and children living with disabilities, Zimbabwe still faces a debilitating task. There is a large representation that shows that girls and women living with disabilities fall into the crevices of intersectional marginalisation simply because they are women, poor and disabled. This has led to scholars such as Dziva, Shoko and Zvobgo (2018) proposing that section 83 of the constitution should move from theory to practice since it directs the state to advance PWDs' issues by coming up with concrete measures that will ensure that women and girls living with disabilities are not marginalised. Thus, inclusion of PWDs' rights under the Bill of Rights in Zimbabwe's constitution is a positive step towards showing the importance accorded to PWDs in society.

The Zimbabwean Justice System largely dominated by the courts is bound by the constitution that pushes for a justice for all regardless of race, gender or creed. In many countries, Zimbabwe included the formal state administered justice systems coexist with informal systems of community conflict resolution and justice. The constitution as previously stated, in section 83 stands for the equal access to services and access to justice in this case for all persons with disabilities. The Zimbabwean justice system is also comprised of traditional systems of justice .

Lodenus (2020) observe that the traditional system led largely by a patriarchal setup in Zimbabwe is riddled with its own biases against women and the disabled. Coupled with traditional justice systems led by traditional leaders, the judicial system and traditional justice systems face a panoply of their existence and exclusion from society events due to complications brought about by their differing forms of disability.

The Zimbabwean Justice System has, however, taken strides towards accommodating persons with disabilities at the courthouses by modifying existing physical structures and creating what is described as disabled access friendly spaces. An example is the provision and construction of wheelchair ramps and in some cases provision of sign language interpreters stationed at court houses such as at the Bindura Magistrates Court.

It is imperative to note that the Zimbabwean Justice System falls under the Victim Friendly System. These systems comprise of but are not limited to the ZR: Ministry of Health and Child Care, Department of Child Welfare and National Prosecuting Authority and civil organisations. As argued by Muridzo and Chikadzi (2020:257):

...the Victim Friendly System is a confluence of multisectoral and multi stakeholder professionals from different governmental and nongovernmental organisations that offer integrated and coordinated services targeting primary, secondary and tertiary levels of child sexual abuse prevention and mitigation. The Victim Friendly System has made significant strides in providing better service delivery outcomes to direct and indirect victims of child sexual abuse .

The Victim Friendly System was formed to provide and deliver comprehensive and specialised case management services through offering mental health and psychosocial, medical, legal and referral services to survivors of sexual abuse and violence. (Chikadzi, 2020; Save the Children, 2015. :2)). It is from this initiative that Victim Friendly Police units were formed (VFU) that are manned by officers who have specific responsibilities to provide a space for child and adult survivors of sexual abuse and violence. The VFU Officers are trained to take all allegations of abuse and violence seriously and provide support for boys, girls, women and men who are survivors of violence to attend court. The Victim friendly system is a co-dependent system that provides referrals to each arm of the system from the VFU to health service providers to the courts and Department of Social Development in no particular order. For example, all survivors of abuse and violence can be referred to any of the victim friendly services at which time they can be supported to access any services within the system relevant to their protections, care and support.

Though the foregoing paints a picture of a solid VFU which caters for all towards access to justice, Chikate (2020:37) paints a totally different a picture and observes that there is still a long way to go in terms of legislative reforms when she quotes a disability N.G.O representative as having stated that:

Yes, we are signatories of these treaties, and our constitution argues that we are protected, but there is a lack of enforcement of the actual treaties. The people are given a document that observes how, 'you are protected' but when push comes to shove, we are nowhere near protected.

Chikate further observes that this quote elaborates the difficulty of legislative implementation despite having all the necessary paperwork in place.

Literature, such as Rotkangmwa and Lalu (2016) has on record examples of specific types of types of violence against women and girls with disabilities. In summary, these include psychological and emotional abuse, neglect, financial abuse or exploitation, and physical or sexual abuse. Some of these are linked not only to the type of disability of the victim but also their age. In

confirmation of this argument, Day (2021) observes that disabled children and adolescents were especially vulnerable to sexual abuse.

Sexual violence or abuse encompasses any uninvited or coerced sexual contact, such as rape and threats of violence or coercion in relation to sexual behaviour (Ozemela, 2019). Domestic violence is another common form of victimisation for girls and women with disabilities (Rugoho and Maphosa, 2015; Jones, 2007). Jones (2007:207) reports the results from a Canadian national assessment of women under domestic abuse treatment programme that showed that:

10% of ... had physical disabilities, 7% had mental retardation or developmental disabilities ('MR/DD'), 21% had mental illness, 2% had vision impairments, and 3% had hearing impairments (:207) ... since the data only includes women who have reported domestic violence, they may underestimate the true frequency of domestic violence against women with disabilities. Disabled children and adolescents are especially vulnerable to sexual abuse and re-victimisation.

There were also reports of other common crimes against women and girls with disabilities. In Canada, it was mainly intimate partner violence Savage (2021), while in Brazil, it was abuse of a physical or sexual form (Passos *et al.*, 2019). Passos *et al.* (2019) attribute these trends to the patriarchal nature of Brazilian society. So, it appears that certain trends can be discerned and these can go a long way to 'advise' on prevention and response initiatives.

When crime is perpetrated, it may not be enough just to deal with the perpetrator and leave it there. The question of who perpetrates can provide useful leads on future solutions in prevention and response efforts. Literature and studies have shown that perpetrator is rarely someone totally unknown to the victim. In their writings, Martin, Ray, Sotres-Alvarez, Kupper, Morocco, Dickens and Gizlice (2006) have found that physical and sexual assault are mostly perpetrated intimate partners or other persons known by the victim.

This position is supported by Human Rights Watch (2010) that argues that caregivers constitute a sizeable proportion of perpetrators, either at home or in institutional settings. There is also another angle where females with

disabilities are often trapped by violent partners or family members because they are financially and socially dependent on them for survival (Human Rights Watch, 2010). In situations of reliance on caregiver support with routine activities, victims may choose not to disclose authorities or anyone else out of fear that they will have no one to provide essential care for them.

In view of the foregoing, it appears the pattern of most crimes against girls and women with disabilities are linked to someone very close. Such information should help in prevention strategies such as not leaving a victim under the care of one individual alone.

Does the place where the crime takes place matter? Are there specific patterns of locations where such sexual violence acts do occur? This was an issue of interest to the study since patterns matter in occurrence of events. The case of abuse perpetrations taking place in the home or institution where the victim lives is mostly linked to the caregiver-turned perpetrator. This is a case where the dynamics of the routine activity theory could have set in (Drawve *et al.* 2014). In this case, the caregiver is made 'absent' by the sudden decision to transforms into the offender.

In a study of French Police database involving 1829 women, an analysis of pre-crime, crime, and post-crime patterns of abuse perpetrations against women challenged by either disability or old age, findings show the pre-crime phase being most significant and pointing to most occurrences taking place in the victim's residence (Chopin & Beauregard, 2019).

The legal and policy framework is the first step towards promotion of access to justice for women and girls with disabilities, together with enabling guidelines and supporting programmes. The framework sets out the parameters around which any practices can occur. Even though it bemoans the need for improvements in the areas of coordination, capacity building and continuous review of policies, Namibia has reportedly made good progress towards meeting the country's access to justice needs, especially provision of medical and social needs. (Shumba, 2018).

The CRPD states, in no uncertain terms, that there should be no barriers to access to justice for persons with disabilities. Article 13 of the CRPD, for example, observe that, states/government political parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations. This is meant to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceeding, including at investigative and other preliminary stages. The article (13 of the CRPD:11)further elucidates:

To help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Despite these declarations and despite article 6 of the CRPD being signed and ratified by 187 countries, international evidence, manifesting through literature, suggests that people with disabilities experience barriers in all the three stages of the justice system (Harold *et al.*, 2012). This has resulted in literature depicting a state of gaps, with many 'promises' still to be fulfilled and put into action. The CRPD has laid a foundation for, amongst these efforts, the removal of barriers that limit access to justice.

Liefwaard (2019), writing from the child angle, observes that children, in particular, face unique barriers when accessing justice; posing specific challenges. Such barriers relate to the complexity of justice systems that makes it difficult for children to get access and to participate effectively. Liefwaard (2019:203) further argued that:

Some of these barriers are general and affect children in the same way as they affect adults. Poverty and economic status, for example, can mean that an individual cannot afford a lawyer. Other general barriers include procedural costs, location of courts, physical access that for instance has relevance for individuals with disabilities, and legal barriers, such as statutory limitations and the denial of legal standing

Maher *et al.* (2018), observe that barriers in the justice system such as those in the Australian legal capacity framework further isolate persons with disabilities from accessing justice. It is therefore necessary to note that such

frameworks depart from the goal of the CRPD that seeks to ensure that all people have the right to equal recognition before the law in particular, in article 6 where it notes that:

...women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

Several key barriers hinder access to justice for women and girls with disabilities (GWWD) in Zimbabwe. These barriers, identified in various studies (Beqiraj et al., 2017; Kilcommins, 2012; Maher, 2018; Shughuru, 2013), can be broadly categorized as follows:

- **Normalisation of Violence**-A culture that tolerates violence within service systems and society at large creates a significant obstacle for GWWD seeking justice.
- **Structural Barriers**-These barriers exist at multiple levels, including traditional and socio-cultural systems. They encompass physical barriers in the built environment, as well as intellectual and cultural dimensions.
- **Procedural Barriers**-These relate to the processes and procedures within the justice system itself, which may be inaccessible or difficult for GWWD to navigate.
- **Attitudinal Barriers**-Negative attitudes and prejudices held by individuals within the justice system and the wider community can prevent GWWD from being taken seriously or receiving appropriate support.
- **Lack of Knowledge**-Both GWWD themselves and those working within the justice system may lack knowledge about disability rights, available support services, and appropriate procedures.

Specifically, structural barriers in Zimbabwe manifest in various ways. They include, but are not limited to, traditional and socio-cultural norms that may discriminate against GWWD. These barriers also encompass physical obstacles in the built environment, making it difficult for GWWD to access justice facilities. Furthermore, structural barriers include intellectual and cultural dimensions that can further marginalize GWWD within the justice

system. The Convention on the Rights of Persons with Disabilities (CRPD), particularly Article 5(3) regarding non-discrimination, mandates that States Parties take "all appropriate steps to ensure that reasonable accommodation is provided" (CRPD: 7). Article 2 of the CRPD defines reasonable accommodation as "necessary and appropriate modification and adjustments..." These provisions highlight the importance of addressing structural barriers to ensure equal access to justice for GWWD. Beqiraj *et al.* (2017) further acknowledge the need for modifications in the physical setups in courts for persons with physical disability and observe that, in the context of access to justice for persons with disabilities (both physical and intellectual), it may be that a 'reasonable adjustment' could require a change of venue for court hearings for a person with disability. Similarly, visual or hearing impairment may also impede physical access and related adjustments need to be introduced (Larson, 2014 & Holness and Rule, 2015).

Adjustments are crucial to guaranteeing access to justice in practice, but the scope of 'reasonable' adjustments based on disability grounds (for example, building a ramp for wheelchair users or changing a venue in specific cases) may vary considerably across jurisdictions (Ortoleva, 2011). The case of jurors with a visual or hearing impairment provides an interesting example. While the prohibition of disabled jurors participating in a criminal trial is increasingly being challenged, the main problem relates to the 'reasonable adjustments' during court proceedings, in particular around the acceptability or not of support during jury deliberations. Since the effective participation of sight or hearing-impaired jurors may require a third-party joining discussion in the jury room, there is debate (Byrne, Elder and Schwartz, 2021).

It has already been noted that structural barriers are not limited to the physical barriers but they extend to what Edwards *et al.* (2012:10) describe as, the criminal justice system can be understood as a structure comprising many interrelated institutions. Structural barriers can evolve where there is a lack of communication between institutions, or lack of clarity within an agency in terms of who takes responsibility for dealing with victims of crime who may have impairments.

Meanwhile, with regard to the traditional courts, Mandebvu (2015:54) observes that, disabled women are often denied the opportunity to access justice based on socio-cultural considerations. When they are sexually assaulted, the matter is taken to Village Heads or Chiefs who sometimes disregard the importance of reporting the case to the police but rather favour settling the matter at the Village Court level. In most situations, if the perpetrator is found guilty, he has to pay compensation in the form of money or livestock (Transitional Justice Policy Brief Series1, 2016). This does not solve the underlying problem. The victim neither benefits from the compensation nor will it reverse her drastic experience. If anything, perhaps the caregivers are manipulated by the compensation and thus disregard taking the matter to the police station. The victim deserves some form of justice. Justice can only prevail if the matter is handled in court. Therefore, cultural considerations such as settling the matter in the village only protects the perpetrator and does nothing to bring him to book. The least that the victim deserves is the access to justice. Lodenius (2020) highlights that some structural barriers that exist limit access to buildings. Choruma (2007) acknowledges this and indicates that most modern buildings have disability modifications but some are not up to standard and some do not have labels and directions to show the disabled persons where their modified points are.

Edwards *et al.* (2012) assert the following, structural barriers: the criminal justice system can be understood as a structure comprising many interrelated institutions. Structural barriers can evolve where there is a lack of communication between institutions, or lack of clarity within an agency in terms of who takes responsibility for dealing with victims of crime who may have impairments.

This aspect of the study is massively relevant to this study. In a system where the ramp may be the only known means to remove barriers, it is of interest to understand what is available, else could be introduced and what the overall implications for the system are.

Women and girls with disabilities (GWWD) face compounded marginalization. As highlighted by Disability Awareness in Action, women are already a marginalized group due to pervasive patriarchal societal

structures. GWWD, therefore, experience a "double blow" of stigma stemming from both their gender and their disability. Disability often restricts their social inclusion and participation, creating social barriers that increase their vulnerability to abuse and limit their access to support systems, including justice mechanisms. This situation is exacerbated in countries lacking adequate legislation or advocacy for disability rights. Indonesia, for example, ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2016, but has yet to make significant progress in promoting access to justice for people with disabilities, particularly GWWD.

Furthermore, a lack of accessibility within the justice system itself poses a major obstacle. This includes inaccessible police stations, a lack of information in accessible formats, and communication barriers. For instance, Deaf individuals may struggle to contact the police during emergencies due to the absence of sign language interpreters or other accessible communication methods.

Edwards *et al.* (2012:2) also outline the following procedural barriers as affecting women and girls living with disabilities. The Criminal Justice System comprises a complex number of procedures and processes. People with disabilities have often been shown to lack information about these procedures, from reporting a crime through to giving evidence and seeking compensation post-trial, where relevant. These procedures can appear intimidating and confusing to all crime victims. Lack of accommodation in terms of making these procedures accessible, including practical adjustments such as ensuring court premises are accessible, or that communication supports are provided, have acted as barriers to people with disabilities. It is also widely noted in literature that the common law justice system which characterises Ireland and countries such as the United Kingdom, United States of America, Australia and New Zealand is based on an adversarial process in which the principle of orality is key: in itself can disadvantage people with disabilities who are not able to communicate in a clear and persuasive manner. Until the system allows other means of providing evidence, access to justice may still remain a pipedream for many a victim with a disability.

People with disabilities face an onslaught of unfavourable attitudes and opinions concerning the nature and characteristics of their disability. Attitudinal barriers, as argued by Rohwerder (2015), are one of the most significant barriers to achieving equality of opportunity and social inclusion. These commonly appear as: non-disabled individuals' inability to look past the impairment by removing their ableist lenses; prejudice; fear; bullying; and low expectations of people with disabilities.

As argued by Edwards et al. (2012), there are attitudinal barriers because the criminal justice system includes several professional organisations and personnel, such as police or Garda, barristers, and judges. Attitudinal Barriers are negative attitudes and incorrect beliefs or assumptions on the part of key factors such as police, health workers, attorneys, and judges that may result in people with disabilities being considered and treated as less credible at all levels of the legal process, including when reporting a crime.

The CRPD (2016: para52) also observes how:

Women with disabilities face barriers to accessing justice, including with regard to exploitation, violence and abuse, owing to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations that can lead to their credibility being doubted and their accusations being dismissed. Negative attitudes in the implementation of procedures may intimidate victims or discourage them from pursuing justice. Complicated or degrading reporting procedures, the referral of victims to social services rather than the provision of legal remedies, dismissive attitudes by the police or other law enforcement agencies are examples of such attitudes. This could lead to impunity and to the invisibility of the issue that in turn could result in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned that they may lose the support required from caregivers

Women with disabilities face more abuse – Zimbabwe (2013),

The attitude of staff at institutions such as the police station and hospital, tends to be one of hostility towards people living with disabilities. In most cases a disabled rape victim is ridiculed and blamed. I personally know a situation where a police officer at a particular police station openly told a rape victim that she should thank the rapist because, if she was not raped, she was never going to enjoy the pleasure of sex in her life, (CRPD: para.7).

Human Rights Watch (2018:para.1) provides an example of how stakeholder attitudes can negatively impact women with disabilities who are victims of crime, recounting the experience of one such woman.

The police asked me very nasty things like how it felt for me. I told them I was totally unconscious, so how would I know? The police said things like, 'She's mental, why should I pay attention to her?'
—Susmita, 26, a woman with a psychosocial disability from Kolkata, West Bengal, whom four males neighbours sedated and gang-raped in February 2014

A "lack of proactive conduct in expressing ideas and exercising their rights," which leads to further marginalization (PPUA Penca, 2013:12, 14-15), can also be a consequence of systemic barriers and societal attitudes that discourage or prevent women and girls with disabilities from asserting themselves.

These groups' assumptions about the talents and capacities of persons with disabilities are demonstrated to be problematic, whether in terms of reporting a crime or seeing individuals with disabilities as competent and reliable witnesses in court. Difficulties in the built environment and information: Procedural barriers that individuals with disabilities face are frequently exacerbated by barriers in the built environment, such as inaccessible courthouses or Garda stations, or a failure to offer information in accessible formats.

Larson (2014:220) backs up this claim, stating that "people with disabilities are frequently stigmatised by society and our legal systems." As argued by Holness and Rule (2014), disabled people's invisibility as subjects of human rights and equality law is an unavoidable result of their separation from the mainstream: a separation induced by their inability to access mainstream facilities due to physical and social impediments.

Cotter (2018) notes that women with disabilities are subject to various, sometimes contradictory, social and legal myths and attitudes when it comes to their sexuality. These range from the perception that women with disabilities are hypersexual and sexually deviant, to a tendency to treat women with disabilities as children, or a view that women with disabilities are entirely non-sexual (Benedet & Grant, 2014). Edwards *et al.* (2012) posit

that such attitudes about girls and women with disabilities are even assumed by law enforcement agents making women with disability more prone to abuse but less likely to report due to such stigma and assumptions. Attitudes, such as these can both place women with disabilities at a higher risk of sexual assault, and also serve to minimise or ignore the consequences or impacts of victimisation for women with disabilities. For instance, UNFPA (2018) observe that, legal capacity refers to the capacity to be both a holder of rights and an actor under the law. Legal capacity to be a holder of rights entitles a person to full protection of his or her rights by the legal system. Legal capacity to act under the law recognises that person as an agent with the power to engage in transactions and create, modify, or end legal relationships. This implies that, supported decision-making mechanisms may be necessary to empower persons with disabilities to exercise their rights to legal capacity.

Cotter and Savage (2019) in the above extract paints a grim picture of the depiction of women with disabilities and highlights the unique ideas that whether imagined or not fuel the rate of abuse and subsequent depiction of women and girls as victims of crime. Literature also reveals a deplorable picture of the experiences of victims of crime who are disadvantaged in more ways than one; who are marginalised and discriminated against in the communities they live in, who are women and thought of as the inferior sex and in this case, who also are disabled and therefore discriminated against. As argued by Groce and McGeown (2013) a total of 90 % of women living with disabilities have at some point or the other in their lives been sexually abused, this is largely due to their unique conditions such as mental challenges where one cannot refute or defend themselves and physical impairments that may prohibit them from running away. This coupled with other factors resulted in a high HIV/AIDS prevalence rate and limited access to justice due to their disability limitations and the fact that disability is mostly associated with poverty and this creates a barrier to accessing justice (Chikate, 2020; Lodenius, 2020).

Edwards *et al.* (2012:10) also contend that, though police are meant to be the gatekeepers to the criminal justice system, their attitudes and towards crime victims with disabilities have a significant bearing on those victims' experiences of seeking legal redress. Wulandari's depiction is of a

cantankerous judicial system that bears no respect for girls and women living with disabilities as victims of crime. The African Disability Rights yearbook (2013:74), paints a dull picture and observe that:

Women and children with disabilities in Zimbabwe suffer more human rights violations as they have other vulnerabilities. Women with disabilities suffer double discrimination, firstly as women, and secondly as persons with disabilities. Cultural beliefs and practices weigh too heavily against the realisation of the rights of women with disabilities. Poverty, misery, illiteracy, joblessness and social exclusion are some of the common plights that women with disabilities face in Zimbabwe. Similarly, children with disabilities are normally not sent to school, compared to their non-disabled counterparts. Without the requisite knowledge and skill, it is very difficult for the children to secure any form of employment when they grow up

Harold *et al.* (2012) support the above and argue how victims of crime who are largely disabled have a lower number of cases that are taken to court and that are tried or even prosecuted. These scholars give a grim portrayal of women and girls with disabilities within the Irish context and show that there is still a lot of work to be done if they are to be deemed equal in the court of law and throughout the justice system. Larson (2014) supports this and observe that victims of crime with disabilities face more barriers in accessing justice due to the special nature of their disabilities.

Maher *et al.* (2018) bring to light the fact that, women and girls with disabilities face particular challenges and sets of risks to their safety daily. They have the same rights to access justice with everybody else. Maher *et al.* (2018), give examples of women with disabilities who are victims of violence and who are keen to have their stories believed, and their decisions and desires respected as part of legal processes.

Negative perceptions held by police personnel regarding people with disabilities, and particularly people with intellectual disabilities that can lead to reports of crimes not being taken seriously. Police tend to hold stereotypical views about people with disabilities as lacking capacity and competence as witnesses;

Lack of knowledge also constitutes the widening of the gap. Holness and Rule (2014) make an assertion of legal awareness as the foundation for fighting

injustice. That position is well supported by Nkhata (2020) whose argument is about the poor and other disadvantaged people being unable to seek remedies for injustice because they lack knowledge about their rights and entitlements are under the law. Information on remedies for injustice must be intelligible to the public and knowledge provided to them must serve their practical purposes. Edwards et al. (2012:5) also observe that the criminal justice system can be intimidating for people with disabilities. Individual support, whether from a key worker, family member, or advocate, was seen as vital to enable people with disabilities to report crimes and follow the case through. Participants stressed the importance of attitudes and knowledge of the Gardaí at the reporting stage. Concerns were raised about the consistency of knowledge across the Gardaí in terms of working with people with disabilities as victims of crime. Issues of capacity were seen as a key stumbling block for people with disabilities in the criminal justice system (both at first reporting, and in terms of their progression to prosecution).

In the court setting, victims' experiences are very much influenced by the attitude of judges and barristers, and the way in which accessibility is understood (not just in terms of physical access, but also explaining the 'jargon' of the courtroom) (Edwards *et al*, 2012). Edwards et al. (2012) further asserts that the barriers during the reporting phase of a crime are often different from the barriers at the court phase of a crime. Beqiraj (2014) observe that, there are barriers in rural and remote areas that limit the effectiveness of using the media to raise awareness about rights.

In India rural villages may be isolated, with limited exposure to the media or to the wider country or the world. Even television that has generally permeated through to the village level, does not necessarily have an impact on the lives of people in many rural areas when it comes to awareness of legal rights. In rural Tajikistan attempts to raise women's awareness about rights through television or radio are strongly limited by electricity shortages. Tajiks in those remote areas receive only one to two hours of electricity per day, so few women can watch television or listen to the radio during this time. Lack of disability awareness of police personnel that can lead to a failure to identify people with disabilities as vulnerable witnesses, or recognise where they may need further support;

It remains a fact that lack of knowledge stands out as a barrier to accessing justice and all efforts must go towards breaking those barriers to open the streams of access.

Social and customary norms play a role in discriminating against disadvantaged populations. While customary practices might safeguard vulnerable groups, they can also be a source of prejudice. One such example is the second-class position accorded to women in many civilisations' social and customary rules. Culture has an important role in the marginalisation of people with disabilities. Disability is related with witchcraft in many Zimbabwean societies; they consider it a curse and the birth of a crippled child to be a bad omen for the family. Persons with disabilities face low social acceptance and isolation as a result of this adversarial attitude of disability.

It is common practice to draw attention to the double discrimination against both gender and disability that women with disabilities face on the job. If women with disabilities are universally at a disadvantage as a result of these stereotypes, their lives are often severely hampered throughout most of the developing world, where poverty and traditionally negative attitudes toward women and disability are widespread, if not universal (Groce,1997). This study is not meant to chronicle every known variation in attitudes experienced by women with disabilities, but rather to present an overview of some of the most notable concerns confronting women with disabilities in the world today. Choruma (2007) observes that in Zimbabwe, many negative ideas about the origins of impairments continue, such as the association of disability with witchcraft or maternal promiscuity. In Zimbabwe, disability is still regarded as a curse. Camilleri (2018) in support states impairment at an individual level, can be further compounded as a result of the disabling barriers evident in social, cultural and institutional environments . Lodenius (2020:94) alludes to cultural stigma and observe that sometimes, women with disabilities are forced to not report a crime and instead bear the brunt and live with the consequences of the crime. Camilleri (2018) in support states impairment at an individual level, can be further compounded as a result of the disabling barriers evident in social, cultural and institutional environments .

Lodenius (2020:25) provides two examples of such barriers and implications on women with disabilities, one example is by a 57-year-old woman named Tatenda who has psychosocial problems explained how her mother knew her stepfather started to rape her and her sisters at age 11 and started prostituting her at age 13 but did not report it to the police: “For seven years, no one including my mother or my grandparents talked about my step-father’s practices of sexual abuse, but they knew about it.” Another example of this is Danai, 37, a mother who has albinism and has visual impairment had a similar experience with her family when falling pregnant with the child of her rapist: “When my pregnancy started to show my father said I must quietly go to the village and deliver the baby in my parents’ care. My family decided not to report the rape to the police.” Maher *et al.* (2018) observe that Typically women with disability are conscious of the cultural bias against them and this can operate as a barrier to disclosure in the first place (Lodenius,2020:39)

Lodenius (2020) also provides an example of a woman with a disability who upon being raped by her neighbour was forced to marry him. Such fear of cultural and societal stigma robs the GWWD of access to justice services and having to live with the consequences. Uncertainty on the part of people with disabilities, and third parties, regarding what constitutes a crime, and when reporting of an incident should take place. People living with disabilities can often believe that abuse does not warrant reporting and women and girls are not immune to this.

Harmful patriarchal attitudes are also a cultural impediment to girls and women with disabilities receiving justice. Patriarchal attitudes and notions about men's superiority over women, and the naturalness of segregated gender roles in which women are primarily caregivers and men are breadwinners, predominate (Chikate, 2020). Such gender and disability attitudes further marginalise girls and women with disabilities from access to services and justice. Chikate (2020) goes on to observe how when you combine this with the existing patriarchal forces, you have a vulnerable community for disabled women and girls. As argued by a national poll conducted in 2013, there are roughly 1.4 million people in Zimbabwe who live

with disabilities and of these 44% are women (Choruma, 2007). The same gender-biased perspectives support significant social tolerance or even justification of domestic abuse.

Beqiraj, McNamara and Wicks (2017) also assert that, vulnerability connected to and deriving from disability is partly inherent and partly generated, for instance, by societal, cultural, legal and physical barriers to the full enjoyment of human rights. Yet, international policy-makers and stakeholders have not historically recognised or prioritised disability issues within international development efforts. Rosmalinda and Arif (2018) also attribute the failure of accessing justice in Medan and Binjai areas of Indonesia to cultural, communication and financial barriers and give the following examples of cultural barriers. It was noted that both Australian Parliament House APH and legal aid provider staff could not speak sign language which is used by people with hearing impairment who need an interpreter. In this case the victim was never sent to school because as farmers the parents did not enough money to send their daughter to the Sekolah Luar Biasa (SLB), a special education school in Binjai, Indonesia. Lack of public transportation from their house which is in the palm oil plantation becomes the main consideration to not send the girl to SLB. As a consequence, the girl lacks education. Furthermore, when the girl finally had access to legal aid, no interpreter could understand her sign language as she used informal sign language while the interpreter used the formal one though her family members did understand her informal sign language. However, it was 'taboo' in the community for elder people talk directly to the girl about the incident of sexual harassment.

Yeo and Moore (2003), cited in Dziva (2018), depict disability and poverty cycles as contributory factors to lack of access to justice for women and girls with disabilities. Choruma (2007) and Dziva (2018) acknowledge that the economic situation in Zimbabwe, alongside poverty, makes the process of accessing justice for PWDs and WWDs difficult, due to the lack of disposable income to pursue the course of justice. Figure 2.3 shows the disability and poverty cycle.

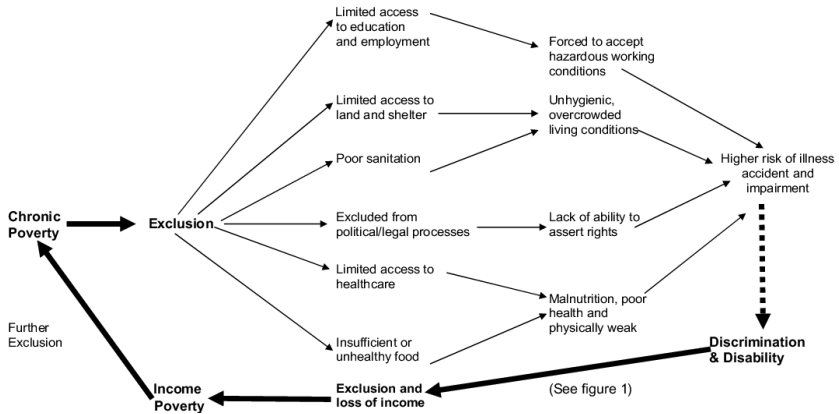


Figure 2.3: The disability and poverty cycle: how poverty leads to disability (Yeo and Moore, 2003:572).

Figure 2.3 above depicts poverty as leading to disability which increases the chances of individual victimisation. Yeo and Moore (2003) suggested that poverty, especially when it becomes chronic, triggers exclusion. That in turn leads to all sorts of negatives such as acceptance of hazardous work, living in crowded conditions, lack of ability to assert one's rights and malnutrition, poor health. Arising from this, again is higher risk of illness, accidents and impairment that ultimately generates disability. The process repeats with disability regenerating exclusion and poverty. The cycle goes on and on, unless some measures are taken to break it. Pinilla-Roncancio (2020:1) makes the following argument, in support of the poverty-disability trap:

It is estimated that around 15% of the global population lives with any type of disability and 80% of those, live in Low to Middle Income Countries. Understanding the relationship between disability and poverty has gained increasing attention. Lack of access to basic services due to poverty such as lack of finances to access to healthcare in some cases causes disabilities.

The author further postulates the strong relationship between vulnerable group and the measuring poverty on all its dimensions. These two aspects have increased the visibility of people with disabilities in the development agenda and also have made a call to calculate and analyse the levels of multidimensional poverty of this group: Figure 2.4 elucidates the assertions

made by scholar Pinilla-Roncancio and depicts that disability and poverty are linked and one often results in high incidences of the other.

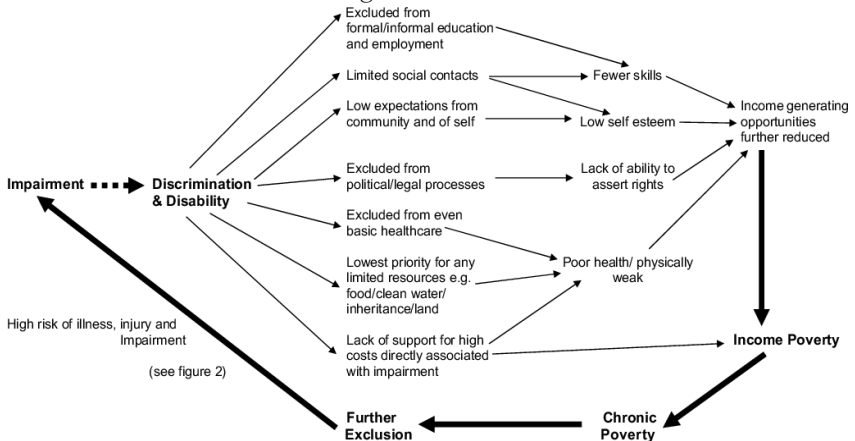


Figure 2.4: The disability and poverty cycle: disability as leading to poverty
Source: Yeo and Moore (2003: 573)

Figure 2.4 depicts disability as a causal factor of poverty. Choruma (2007), Shughuru (2015), Beqiraj *et al.* (2017) assert that, poverty and disability are synonymous and this results in the huge gap in terms of accessing basic human rights amongst these the right to justice. Beqiraj *et al.* (2017:26) advance the fact that the relationship between poverty and access to justice is in some respects rather straightforward. If an individual has limited financial ability, they are likely focused on basic survival and thus have little time and resources to pursue costly and/or lengthy legal proceedings, and engage and pay for quality legal counsel services. Unfortunately, lack of financial resources usually leads to increased vulnerability to exploitation, and the necessity of access to justice becomes correspondingly more crucial. Lodenius (2020) is of the view that financial barriers increase exposure of WWD to crime and not to attain justice due to being paid off due to family financial vulnerabilities.

Furthermore, lack of trust and fear by people with disabilities of the criminal justice system, and police as a source of authority is cited as some of the

examples that deny women and girls living with disabilities access to justice. Examples below cement the above assertions that:

- Lack of clear recording procedures for crimes as they relate to people with disabilities; and
- Variability in police policies and practices relating to who deals with people with disabilities when they report a crime.
- Edwards et al. (2012) outline the following as barriers faced when presenting evidence at court and police stations for women with disabilities:
- Lack of accessibility of many courtroom buildings. This may include physical accessibility and unclear information and signage.
- Lack of other adjustments made to accommodate people with disabilities: for example, lack of flexibility around hearing times, or not factoring in or not using frequent breaks during trials;
- Intimidating nature of court buildings and lack of separate waiting areas for victims and accused;
- Confusion due to the use of legal jargon in the court process, both inside and outside the courtroom; and
- Failure on the part of agencies such as the police to identify and communicate a person's impairment to court personnel that would facilitate putting in place special measures.

Rosmalinda and Arif (2018) posit that prior to 2016 there were many atrocities and abuses faced by persons living with disabilities particularly sexual violence towards women and children with disabilities. They found that the children with disabilities in the Medan and Benjai areas failed to access justice on the basis that, victims and witnesses of PWD or families of victims and perpetrators of PWD were afraid to advocate their rights due to the cost being very high. Results of the study further illuminate those issues such as poverty and distance needed to be travelled to city centre to report cases meant that a majority of cases remained unreported.

Singh and Fordham (2020) are of the view that there is a saying that in the United States: the justice one receives, is the justice one can afford. All too often, this saying that proves true for both lower- and middle-class individuals. For the greatly impoverished, the access to justice crisis is

twofold: part of the problem is knowing when to seek legal help and another is ensuring adequate delivery of legal assistance on request. It is in this context that the researcher sought to gather information and assert whether findings in literature are relevant, relative to the situation of women and girls with disabilities in Zimbabwe context. This is presented in later sections on findings of the research project.

The emphasis in the adversarial justice system on ‘orality’ – giving evidence verbally in person – has the potential to disadvantage people with disabilities with communication difficulties, or who require specific supports to communicate (for example, sign language interpreters);

- Negative assumptions of legal personnel and jurors regarding people with disabilities’ capacities to be reliable witnesses. Studies have shown there is often uncertainty on the part of barristers and judiciary regarding how to best communicate with people with intellectual disabilities;
- Types of cross-examination questioning can significantly disadvantage a person with intellectual disabilities.
- Lack of clear guidelines to provide supports for people with disabilities as vulnerable witnesses; such as providing ‘supporters’ in court, allowing different modes of giving evidence, such as through CCTV or pre-recorded evidence.
- Lack of clarity in terms of determining the competence and capacity of certain groups of people with disabilities to be ‘reliable’ witnesses.

People with disabilities arguably face a range of other barriers in accessing courtrooms and premises. The intimidating nature of the court environment and premises can be compounded for people with intellectual disabilities. Edwards *et al.* (2012) also observe that women with disabilities face accessibility barriers, these are not particularly structural but lack of accessibility to law enforcers due to limitations in perception. Research from England highlights that people with learning disabilities “tended to mention that the formality and authority of the court building was intimidating” (Edwards *et al.*, 2012). As such, Maher *et al.* (2018:34) argue how in spite of all

these barriers there is a need, “to listen to the voices of women with disability and believe them”.



Figure 2.5: Social model of disability (Yokotani, 2001 in Cojocaru *et al.* 2015:42)

Yokotani (2001) cited in Cojocaru *et al.*, (2015:43) designed the social model as depicted in figure that is "mostly accepted in developing countries like Malaysia where the disabled people are structured with the socio-political and cultural contexts". Yokotani (2001) cited in Cojocaru *et al.*, (2015) mentions that, the social model puts emphasis on the socio-political context, and strongly suggests that problems are situated in the social structure which tends to exclude disabled people. It is because of both physical and institutional inaccessibility and altitudinal segregation with prejudicial views underpinned by cultural and religious beliefs. Rohwerder (2015) observes that the stigma towards persons with disabilities is also rooted in that,

Stigma of disabled people can also occur because of the expectation that people with disabilities are less able to contribute to the good of the family and the community, and the assumption that they are a burden.

Wulandari (2018) reflects the analogy that, a form of injustice is that women with disabilities as victims get various obstacles and difficulties in giving evidence; and often their evidence is questioned by the law enforcers. In addition, they also get intimidation from various parties, ranging from criminals to law enforcers. Another thing that happens is that people with disabilities are considered incapable of law, and the absence of an adequate translator in the court process. In addition, they often get intimidation from various parties ranging from criminals to law enforcers. This is inseparable from the influence of substance, culture and legal structure.

There are several stakeholders that play key roles on the road to justice. The roles are complementary, designed to ensure coherence and complementarity in the delivery of justice for all categories. Adekunle (2017) claims Coordination is essential in the pursuit of common goals in any system including more than one stakeholder. Individual duties conducted independently by different organisations must be coordinated and appropriately synchronized to fulfil justice sector objectives. UNDP (2005) supports this assertion and states the roles of the following stakeholders Parliament - Ministries of Foreign Affairs, Ministries of Law and Justice, National Human Rights Commissions, Law Reform/Legislative Commissions, Legal drafting cells of relevant ministries, Ministry of Education as being legal protection and legal awareness champions. As argued by Adekunle (2017:3), a typical criminal justice system comprises of many stakeholders such as the investigator, prosecutor, court, legal practitioners, and prisons. As a result, seamless coordination among essential stakeholders is required for the system to be effective and well managed. This section considers roles played by key stakeholders that participants were able to identify, in addition to the statutory ones. These include Government and its various arms, civil society and communities.

Like for any other service or function, the Government is the chief player in the delivery of justice to its citizenry. This is in accordance with its duty

bearer function. The primary duties of the government system emanate from the ratification of treaties and conventions, and the creation of laws and legislatures that safeguard individuals' rights and give solutions to aggression against GWWD. As argued by UNDP (2005:6), the government provides a normative framework that is defined as:

... individual, institutional and collective capacities to ensure that justice remedies to disadvantaged people are legally recognised, either by formal laws or by customary norms.

The fundamental function of government systems, albeit not the only one, is to offer legal protection. Treaty ratification and implementation of domestic law, constitutional law national legislation, implementing rules, and regulation. It is crucial to emphasise that Governments play different responsibilities in the access to justice process. As argued by Frohmader and Ortoleva (2014:9):

clear cross-cutting duty of States to eliminate discrimination and ensure substantive equality in the enjoyment of rights. This means that in addition to refraining from adopting discriminatory laws, policies, programmes and expenditures, States should take specific, deliberate and targeted measures (including gendered measures) to ensure rights are enjoyed equally, in practice and in law.

The Government is also responsible for establishing the machinery for implementation of the policies it sets on various issues. This includes structures and procedures and other programmes that facilitate the implementation process.

Formal or conventional law, or both, might confer legal footing. It involves establishing capacities to ensure that people's rights are recognised within the framework of legal institutions, and providing access to remedies through formal or customary procedures. Legal protection provides the legal framework for all following stages of the access to justice procedure.

The courts' primary function is adjudication.

UNDP (2005:7):

Describes the process of determining the most adequate type of redress or compensation. Means of adjudication can be regulated by formal law, as in the case of courts and other quasi-judicial and administrative bodies, or by traditional legal

systems. The process of adjudication includes a series of stages such as (i) investigation, (ii) prosecution, and (iii) decision ...

It is apparent that the court is the final arbiter in all criminal cases. Often, this is headed by a Presiding Officer, assisted by other court officials: prosecution, interpreters, legal aid personnel. This appears to be standard practice across many jurisdictions. As argued by the Judicial Services Commission, the Regional Magistrate would preside over such cases but is assisted by other officers such as the prosecution and interpreter.

In cases involving witnesses with disabilities, such as those covered by the current study, the courts have adapted the courts to ensure availability of victim friendly facilities, including modification of buildings to make them accessible, the availability of interpreters to bridge the communication gap between presiding officer and the witness (Fernandez-Molina et al., 2020; Judicial Services Commission, 2012). A free Government legal aid facility is also available. In Zimbabwe, the Victim Friendly Court, a specialised Court that is enacted by law to allow vulnerable witnesses to give evidence through closed circuit television, is instituted to support such victims. In spite of such efforts, much criticism is labelled against the courts on account of weak functionality (Fernandez-Molina et al., 2020). This study explores all these issues in the context of enhancement of access to justice for girls and women with disabilities.

The police in justice situations are the first respondent to a case and determinants of the progression of the case. Benedet and Grant (2012:3) posit that “Police and prosecutors decide whether their story is unfounded and whether there is a likelihood of conviction sufficient to warrant proceeding with the charge.”. Police also play the role of enforcer and are a core part of the law enforcement system. Enforcement systems are key to ensure accountability and minimise impunity, thus preventing further injustices (UNDP:2005).

Zimbabwe defines the role of the police in the delivery of access to justice as “to police violence against women and children, particularly sexual offences and domestic violence” (Protocol, 2012, p33). Whereas any police officer can carry out this duty, especially when it comes to matters of arresting suspects,

a specially trained police cadre 'specially trained to handle vulnerable witnesses (Protocol, 2012, p33). The VFU officers have a delicate balancing role to play. On the offender side, they are trained to investigate cases once reported, arrest offenders, compiling documents and making referrals where necessary. On the victim side, they are expected to ensure a conducive, friendly reporting that guarantees confidentiality (Protocol, 2012).

Besides the statutory duties of receiving reports, investigating, arresting and referrals, the police unit has additional special roles to execute. These include supporting (such as escorting) the victim to receive urgent medical attention, taking special measures if the victim is a minor or has a disability and ensuring referrals are made to social worker or psychologist. Questions of capacity to execute such a critical function in the justice process are raised amid accusations of dropping the ball. It is well documented that the well documented protocols may slacken due to resource challenges and lack of commitment from the police charter that does not create a clear career path for VFU officers, leading to high attrition rates due to transfers or other assignments outside the VFU functions for which they may not are trained (Chiweshe, 2021).

Health delivery systems are supposed to be Safe havens where women and girls with disabilities are supposed to receive medical assistance, particularly after experiencing violence and trauma. An interviewee in the Human Rights Watch (2018: para 51) argues that,

Instead, cases come to us from hospitals when girls come in for medical care. Social workers, journalists and child welfare committees are more often the ones to take cases to the police.

Healthcare providers serve a dual purpose in the reaction to sexual violence: they give therapeutic therapy while also assisting with criminal investigations. As argued in the Indian law, all hospitals, whether public or private, must give free first aid or medical treatment to survivors of sexual violence, and rapid medical assessment and reporting in accordance with established legal requirements (Human Rights Watch, 2018). In this case, the hospital not only serves as a location for receiving medical help following infractions, but also serves as a referral point in the court system.

To a large extent, the Indian requirements are not different from expectations of the health providers in Zimbabwe. As argued by the Judicial Services Commission (2012), Ministry of Health is mandated to ensure that survivors in cases involving sexual violence are given free medical attention and care within the prescribed standard of 72 hours. In all cases, their purpose is dual: to provide emergency medical and forensic examination and take measures necessary to mitigate the effects of the traumatic experience and to provide the medical affidavit that may be used as evidence in court (Judicial Services Commission, 2012). This is done to ensure safety of the victim while ensuring prevention of loss of evidence that may be interpreted as obstructing the course of justice. By virtue of their role, the health system makes an important contribution to access to justice. A special note of significance to this study is the requirement that in the case that the survivor is a child or person with a disability, special measures needed to ensure their access to justice is not compromised.

Judicial Services Commission (2012), through the Multi-Sectoral Protocol on the Management of Sexual Abuse identifies other Ministerial roles seeking to ensure access to justice service provision. Other Ministries and Departments that play complementary roles on the prevention and response side include; (a) Ministry of Public Service, Labour and Social Welfare, as the Custodian of the Children's Act, has a special role to protect children from all forms of abuse. In its case the Probation Officer provides that linkage role with all other service points and takes special care to ensure the victim is protected from further abuse, all meant to ensure smooth access to justice; (b) Ministry of Primary and Secondary Education, with access to the majority of children in schools, is tasked to ensure awareness of children's right to protection from violence and abuse. This widespread awareness is expected to enhance and strengthen prevention and reporting efforts when an abuse has occurred and (c) Ministry of Women's Affairs, Gender and Community Development mandated to handle issues related to the coordination of Gender Based Violence and community education on referral systems.

As argued by UNDP (2005:115), civil society actors carry out five functions to promote access to justice which are:

1. As campaigners and advocates pressing for reform.

2. As monitors, fostering accountability within the justice sector.
3. As disseminators and communicators of information.
4. As educators through legal empowerment and legal literacy initiatives.
5. As direct agents helping people access justice through legal aid and representation services.

Women and girls with disabilities who are victims of crime must be actively involved in all aspects of the legal system. Critically, the role of civil society organisations of disabled women and girls is critical in this process (Frohman and Ortoleva, 2014). Chaney (2020:376) seconds this assertion and argue how “role of civil society as a political space for resistance to oppression and the realisation of PWD rights”

Despite the vital role they play, NGOs and Disabled Persons' Organisations (DPOs) in low- and middle-income countries are often seen as simply plugging service gaps, raising community awareness, and reaching marginalized groups (Molefhe, Hanass-Hancock, Keakabetse, & Mthethwa, 2020). This perception overlooks the crucial watchdog and monitoring functions they perform in relation to the justice system (UND: 2005). Ultimately, strengthening overall accountability within the justice system often depends on the contributions of these civil society actors.

The Judicial Services Commission (2012) provides space of the participation of Civil Society Organisations (CSOs) in processes of providing access to justice for victims in general and girls and women with disabilities in particular. They bring on board Faith Base Organisations (FBOs), Non-Governmental Organisations (NGOs), Community Based Organisations (CBOs) and other pressure groups found at all levels of society.

Due to their presence at various levels, they are well placed to identify cases of abuse, support survivors to access statutory services and through such means as psychosocial support, assist families and the survivor to cope with the situation. Facilitation of reintegration of survivors in their communities and holding service providers to account roles are key roles that have special significance in the quest for justice (Judicial Services Commission, 2012:62).

The former is often neglected as processes are deemed to end when perpetrator is incarcerated, with little attention being paid to: 'so what next' regarding the survivor. The watch dog function over service provision and alerting the authorities on any slip ups is critical to ensure services do not lapse and decay. Besides, CSOs are well placed to establish links with service providers at every level "from which they can negotiate and leverage social, economic and psychological resources that can address root causes of violence and abuse"

How these CSO roles as depicted in literature and in the protocol pan out is part of the purposes of this study. If already happening well, it will be time to maintain what is there but if there are lapses as well, recommendations will come up for improvement.

Most abuse cases take place at the community level, in the homes and other community facilities. It is anticipated that much of prevention efforts can happen at that level and when cases have occurred, it is also at the community level that response efforts can be most meaningful because they are closest to the scene of crime. There is, however, a complex mix of interaction of traditional and community leaders, ordinary community members, caregivers and the potential victims - girls and women with disabilities.

Governed by the Traditional Leaders Act (Chapter 29:17), traditional leaders preside over cases. However, they are expected to protect children from harmful practices and once cases are deemed to be of a criminal nature, they are expected to channel them to the formal justice system (Judicial Services Commission, 2012). They are also expected to establish linkages with other service providers to ensure smooth referral of victims through the system.

For the community and family level, the expectation is to prevent occurrence by ensuring basic safeguards such as not leaving the disabled persons alone at home. Spreading the word about the dangers of violence and abuse and prompt reporting of cases when they occurred is a basic expectation. Regrettably, this is where the ball is lost as communities in perceived efforts to avoid spoiling relations, they sometimes conceal perpetrations that have taken place. Of course, it goes without saying that the potential victims

themselves can make their contribution to prevention and response efforts to cases of violence and sexual abuse of the girls and women with disabilities.

Victims of crime can also play a significant role in their varying capacities. As argued by Benedet and Grant (2012), the position of GWWDD in the legal system is first that of a reporter of a crime that has occurred. It is logical to then assume that order for a case to occur, a victim must report the incident. However, some authors argue that victims sometimes do not come forward to report.

Sibanyoni (2018:89) buttresses the view that the extent of under-reporting of abuse in the disabled population is not known. Culturally, there may be shame associated with being either disabled or abused. On a social level, there may be fear of institutionalization of the child (and the potential of subsequent abuse) or under-reporting may be due to disenchantment and suspicion of the legal system. On an infrastructural level, raw data regarding disability are often not collected routinely due to financial, educational and time constraints. The lack of systematic gathering of information.

Nareadi (2013:626), observes that there is a tendency for under reporting of sexual abuse of mentally disabled teenagers to the following reasons, (a) teenagers' limited understanding and communication; (b) family's fear of stigma attached to disability; and (c) professionals' lack of expertise.

Edwards *et al.* (2012:69) contend that women with disabilities face difficulties in reporting due to fear of attitudes and power roles. Edwards *et al.* (2012) further argue how, the experience of reporting a crime can be a stressful process, in which people with disabilities can find themselves confronted with barriers. These barriers can mean that people with disabilities fail to report crimes. Lodenius (2020) observe that cultural societal fears also dictate whether girls and women living with disability seek justice after a crime is committed against them. Such barriers are at times aggravated and pushed by family fears of community perceptions.

Cotter (2018) asserts that women with disabilities are less likely to report violence committed against them out of fear of physical and emotional

consequences. Dziva (2018) observe that persons with disabilities are largely marginalised and voiceless. Dziva (2018) goes on to share that 70% of persons with disabilities live in rural areas. Their localities and nature of disabilities tend to render GWWD to be voiceless and not able to speak up against abuse.

Beqiraj *et al.* (2017:20) observe that, whether in religious texts, eugenics essays that or present-day media, persons with disabilities are repeatedly and erroneously portrayed as inherently 'wicked', 'abnormal' or 'deviant'. This means their access to justice is not an issue on account of their traits, suggesting that access to justice can be afforded to the able-bodied. Chikate (2020) asserts that accurate data on disabled people in Zimbabwe cannot be effectively collected given some social and cultural norms that have kept disability and disabled people highly stigmatised. The hiding, in homes and institutions, of disabled people often skews data, and an accurate count is difficult to establish. Choruma observes how many negative beliefs on the causes of disabilities persist in Zimbabwe, such as associating disability with witchcraft or maternal promiscuity. The culture in Zimbabwe is still to look at disability as a curse." There is, therefore, no way in which these populations can get access to justice because they are not easy to bring forward.

Access to justice will remain a pipedream for most of them. These cultural phenomena and the lack of complete social acceptance of disabled people in Zimbabwe are an active barrier against providing full access to disabled people. Lodenius (2020) in cognizance observe that, women with disabilities are further marginalised by fear of community perceptions. Lodenius (2020) provides an example of a woman with physical disabilities who is forced to marry her rapist instead of reporting the case to maintain social coercion. Social stigma is largely borne out of cultural connotations and discrimination. Rohwerder (2018:2) lists the following, key findings as drivers of disability stigma:

Lack of understanding and awareness regarding the causes of disabilities and their resulting characteristics is a key factor in the stigma experienced by people with disabilities.

Misconceptions about the cause of disabilities often result from cultural or religious beliefs. Disability is often blamed on: misdeeds of ancestors; misdeeds of parents; misdeeds of the person with disabilities; supernatural forces such as demons/spirits; witchcraft; or punishment or fate from God. Rohwerder (2018:2) lists the following, key findings as drivers of disability stigma:

As a result, people with disabilities may be thought to be not quite human or a source of shame that has serious consequences for how they are treated. Misconceptions about the nature and abilities of people with disabilities, including that they are unable to contribute financially; that they are not able to have a normal relationship; that they will be unable to report sexual abuse; that their disability is contagious or they bring bad luck; that their bodies have magical powers; or that they are witches, also contribute to the stigma, discrimination and abuses they experience. Discriminatory legislation and policies reinforce prejudice and discrimination, while segregation of people with disabilities perpetuates negative stereotypes. Attitudes towards disability are not the same within countries, communities, or even families.

The above may be focusing on disability as an issue but the inference is that as long as these perceptions persist, the opportunities for accessing justice will remain diminished. For access to prevail, the perceptions must be right in the first place.

Mapuranga, Musodza and Gandhari (2017), suggest that some communities perceive disability as being born out of promiscuity and witchcraft and community members tend to distance themselves from persons with disabilities and their families. Rohwerder (2018) also elucidates that, cultural beliefs about the causes of disability often underpin stigma towards disabled persons. Rohwerder provides a detailed account and listing of negative cultural and religious beliefs about disability in Africa stating the following:

Ancestors: Research in Cameroon, Ethiopia, Senegal, Uganda and Zambia indicates that beliefs about the causes of disability include that it is an ancestral curse (DSPD, 2016:5; see also: Mostert, 2016: 9; Aley, 2016:15; Parnes *et al.*, 2013,: 24; Groce and McGeown, 2013: 4).

Another study in Uganda and Kenya found that many communities believed that disability was a curse resulting from transgressions of former generations in the family (Aley, 2016).

In Nigeria false beliefs about the causes of disability include that it is due to ancestral violations of societal norms (DSPD, 2016).

Actions of the disabled person: A study in Uganda and Kenya found that some communities believed that people became disabled because they had caused accidents and not been properly cleansed (Aley, 2016:14). In Nigeria disability is sometimes thought to be due to simple misfortune (DSPD, 2016:5).

Supernatural – demons/spirits: Research indicates that beliefs about the causes of disability in Cameroon, Ethiopia, Senegal, Uganda and Zambia include that it is due to demonic possession and that people with disabilities are not really human (DSPD, 2016, see also: Mostert, 2016; Aley, 2016; Parnes *et al.*, 2013, Groce & McGeown, 2013,4).

Witchcraft: Disability has also been attributed to witchcraft and magic (Mostert, 2016, Stone-MacDonald & Butera, 2012, Groce & McGeown, 2013,). In Nigeria false beliefs about the causes of disability include that it was caused by witches and wizards (DSPD, 2016). Many Kenyans believe that a disability results from witchcraft spells placed on the family or the disabled individual (Mostert, 2016); McConkey *et al.*, 2016; Parnes *et al.*, 2013).

God – punishment/fate: In Nigeria false beliefs about the causes of disability include that it is a curse from God (DSPD, 2016). Research in West Africa also found common beliefs about the causes of disability were that it was a curse from God or was the child's "fate" (Parnes *et al.*, 2013:24). In Nepal, some parents believe that the disability of their child is due to fate and God's will (Inguanzo, 2017).

These different understandings of causes of disability give often result in negative reactions towards PWDs thus reducing their access. Rugoho and Maphosa (2015) indicates that strides to reduce stigma of girls and women with disabilities are seen and some conducted in the form of awareness

campaigns that advocate for GBV rights amongst all women including those with disabilities.

Women Enabled (2019) argue how girls and women with disabilities make up almost a fifth of the world's population. Despite the large representation, women and girls with disabilities that are marginalised due to the fact that they are both female and disabled, there are barriers due to harmful gender and disability stereotypes that hamper the justice process for girls and women with disabilities (UNDoc comment on CRPD, 2016).

It is at this juncture imperative to note that there is a disparity and despite the large representation in the populace their representation in accessing justice is does not correlate with their numbers. In addition, there is a large disparity in representation of girls and women with disabilities as compared to their male counterparts or to any other group (Women Enabled, 2019).

Harmful gender stereotypes as barriers that place the girls and women living with disabilities to a disadvantage in receiving any valuable knowledge. They are discriminated against when it comes to attending school and marginalised not only on the basis of their gender but also of their disability (Maruzani & Mapuranga, 2016) Lwiindi (2020) goes on to argue how the marginalisation of girls and women with disabilities is largely borne out of feminist intersectionality and social model of disability underpinnings. This sets them apart and marginalises them further from receiving information necessary for their thought processes and general knowledge that able-bodied counterparts receive.

Shumba and Zhou (2018) drive home the fact that, despite numerous efforts made by the Zimbabwean government and other partners on addressing gender-based violence for girls and women, through legislation, policies and programmes, the scourge remained widespread and appears to continue without abating, especially for girls and women with disabilities. Seemingly in agreement Manatsa (2015,) also observe that, from the foregoing, one can discern that apart from the Constitution of Zimbabwe; other laws addressing disability in the country have more weaknesses than strengths. The picture that has emerged above is that almost all of Zimbabwe's disability laws make

reference to physical and mental disability to the exclusion of other types of disabilities which are currently recognised under Article 1 of the CRPD at the international level. It has also been shown that most statutes addressing disability rights in Zimbabwe predates the CRPD. Access to justice is not a unilateral process. Women Enabled (2019) observe that, access to justice also depends on the fulfilment of other rights—realisation of the right to accessibility, for instance, will often determine whether women with disabilities have effective access to the justice system.

Kivunja (2018:46) argues:

A theoretical framework comprises the theories expressed by experts in the field into which you plan to research that you draw upon to provide a theoretical coat hanger for your data analysis and interpretation of results. Put differently, the theoretical framework is a structure that summarizes concepts and theories that you develop from previously tested and published knowledge w you synthesise to help you have a theoretical background, or basis for your data analysis and interpretation of the meaning contained in your research data.) Analysis of the definition reveals the need for sets of tried and tested theories in the field of research interest, that one can draw upon to guide the research processes, from design to analysis and interpretation of research data. The theoretical framework can facilitate an orderly and efficient process of bringing things together in a coherent manner. Evans, Coon and Ume (2011) conceived the notion and use of theoretical framework as an academic tradition that serve as organisational "hooks" on which research initiatives might be 'hung'. The implication is that any study undertaken without a theoretical framework is weakened from the onset.

The current research on “Access to justice for female victims of crime: A Study of Girls and Women with Disabilities in Mashonaland Central Province” is based on two theoretical frameworks: The Routine Activities Theory and the Human Rights Approach.

As argued by the International Encyclopaedia of the Social & Behavioural Sciences (Second Edition), (2015), the Routine Activities Theory has become one of the most cited in the field of criminology, emphasising crime opportunity as a key theoretical construct. It was first proposed by Cohen and Felson, as part of their explanation of crime rate changes in the United States between 1947 and 1974 (Cohen and Felson, 1979). In essence, the theory revolves around three issues: “potential offender, a suitable target, and

the absence of a capable guardian” (Bottoms and Wiles, 1977, p 320). Reiterating; Drawve *et al.*, (2014:21), put issues differently as (a) an accessible target (b) the lack of capable guardians who could intervene (c) the existence of a motivated perpetrator. The three components must come together to define the occurrence of any criminal activity. Figure 2.6 shows the elements of the Routine Activity Theory.

The theory stipulates three necessary conditions for most crime; a likely offender, a suitable target, and the absence of a capable guardian, coming together in time and space. The lack of any of the three elements is sufficient to prevent a crime which thrives on offender-victim contact, while their presence might help to reduce the level of crime.



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Figure 2.6: Graphical model of routine activity theory (Perera, 2024)

The Routine Activities Theory revolves around environment specific conditions. In their submission, Fennelly and Kitteringham (2020) argue that the Routine activity theory employs the same rational choice framework as situational crime prevention strategies. In this study it is important to note that, the targets of crime, girls and women with disability find their core

“protector” role being portrayed by guardians while the perpetrator is a male potential abuser. As long as the environment does not allow offender-victim contact is prevented, crime is unlikely to occur. How such contact can be prevented is part of the answers that this study is seeking.

Branic (2015), provides further insights into the Routine Activities Theory - an ecological, place-based explanation of crime where the behavioural patterns and crossroads of human influence when and where crimes occur. From another perspective, it depicts essentials of a crime management tool where probability of occurrence varies with environmental dynamics. In the communities of Mashonaland Central, cross-roads of human existence have to happen on an ongoing basis. Opportunities for crime and, in turn, crime patterns are a function of the routine activity patterns in society. Whereas other criminological theories suggest changes to the social, economic, and political institutions of society to alter the factors that motivate people to commit crimes, routine activities theory indicates that shifts in the availability of suitable targets; the characteristics of places; and the presence of capable guardians, place managers, or handlers can produce immediate reductions in crime (Ivyapanda, 2020). The question is: what should it take for crime to be reduced?

Charity and human rights perceptions have heavily influenced disability and victim studies. Charity approaches, for example, were premised on the belief that beneficiary communities were less capable of participation in decision-making and philanthropists, there were available to make ‘good’ decisions on behalf of beneficiaries. However, with the Universal Declaration of Human Rights in 1948, among other revolutionary changes, the dynamic began to change and give way to Human Rights Based Approaches (HRBA) (UNICEF, UNESCO, 2007).

The following excerpt summarises the essence of human rights and human rights approaches to development:

The first - and arguably most essential - aspect of human rights-based development is the employment of the concept of rights. Human rights are rooted in the recognition of the inherent dignity and equal worth of all human beings, regardless of their social background, gender, age, religion, health status, sexual

orientation or disability the second important characteristic of a human rights-based approach to development is that it only makes sense to talk of a 'right' if there is a corresponding obligation. In other words, a party who has a right must be able to assert this right against another party who holds a duty mirroring that right. In practice the duty-bearer will almost always be a public authority, that is, the state. A human rights-based approach to development therefore presupposes that it is possible to invoke the right against a sufficiently well-functioning state. (Broberg and Hans Otto 2017: 667).

In essence, the HRBA is about the basic human rights of each individual that cannot be taken away from them under any circumstances. As argued by some protagonists (Oxfam, 2014); the approach sits on three core pillars:

- a) The laws as defined in various United Nations Instruments;
- b) The Government's legal and moral duty and obligation to protect those rights;
- c) The empowerment of individuals and communities to claim their rights.

The human rights-based approach is particularly well suited to ensuring that the most vulnerable individuals have access to critical services such as health care, water, sanitation, and education. Broberg and Hans-Otto (2017) note that the approach is based on human rights, there is a natural emphasis on the employment of legal procedures in development assistance and development policy in general. 31 Advocates for a human-rights-based approach point out that such an approach ensures that individuals or groups are given legal instruments to help improve their circumstances. Fourth, research indicates that developing countries in transition from dictatorships to democracies are more likely to adhere to international obligations not to commit gross violations of human rights (such as torture and other cruel, inhuman, or degrading treatment or punishment), and that this adherence to international obligations is likely to persist. This compliance with international human rights does not appear to be due to 'rewards' provided by other states – for example in the form of development aid. Rather, a possible explanation seems to be that these states concede to (domestic and international) rights proponents.³² Fifth, and finally, more widespread campaigns for a human rights-based approach can contribute to promoting legislation that benefits the poor or groups that are discriminated against

The human rights-based approach more generally makes those people in developing countries, who are the ones who are the worst off, aware that they have rights that can be enforced. First and foremost, the human rights-based approach is particularly suitable for ensuring that the weakest citizens have access to essential services such as health care, water, sanitation and education.

The routine activities theory highlights that, accessible targets in this case are girls and women living with disabilities need to be protected by active guardians; these can be parents, justice system, caregivers and community members. Therefore, this theory sought to establish the root causes of abuse of girls and women with disabilities that eventually force them to access justice. The theory also highlighted areas that guardians that are within the justice system and community can prevent further occurrences of abuse through sensitisation training, awareness campaigns and other methods of knowledge dissemination (Shumba, 2021)

Equal access to justice, a fundamental human right, ensures that all individuals can effectively claim their rights, safeguard their interests, and seek redress for exploitation (Drawve *et al.*, 2014). This principle is essential for upholding human rights obligations. Taking a human rights approach to access to justice cannot be examined in a singular lane. A multi-faceted phenomenon can be examined in relation to components that make up an individual, in this case girls and women with disability rights.

The emergence of the Rights Based Approach, a way of thinking that is guided by legal standards found in the range of international human rights treaties and conventions, and the values and principles that inform them (Oxfam 2014). These took place against the backdrop of shortcomings of its predecessors: with development actors viewing it (rights-based framework) as a catalyst that can transform the practice of development from a focus on identifying and meeting needs to enabling people to recognise and claim their rights (Nyamu-Musembi & Cornwall, 2004:54).

As argued in such thinking, taking a rights-based approach is considered 'best practice' from the perspective of design and management of development

programmes (Oxfam, 2014). This means that provision of education and enabling social protection services should not be viewed as acts of benevolence but a fulfilment of their claim to those rights. The current study on access to justice in part, sought to understand the delivery of justice system to girls and women with disabilities in Zimbabwe. For the purposes of this research, the researcher makes inferences to both perspectives to encompass the unique perspectives that each provides to this study.

Access to justice is a human rights requirement under international law. Access to justice must be provided in accordance with standards set out in various human rights instruments. The first human rights 'standards' document, the Universal Declaration of Human Rights (UDHR) (United Nations, 1948), was adopted by the United Nations in 1948. Among provisions relevant to this study, it guarantees the right of all persons to 'equal protection of the law' (article 7) and 'right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him [or her] by the constitution or the law' (article 8) and the right 'in full equality to a fair and public hearing by an independent and impartial tribunal' (article 10) (UNDHR, 1948); '(Durojaye, Mirugi-Mukundi and Adeniyi 2020 :227). It emphasises the equality of all and freedom from discrimination of all before the law. On the other hand, the ICESCR reiterates the obligation of states to uphold rights in a non-discriminatory form. This will require that states put in place mechanism that will enable everyone, including disadvantaged groups to seek redress for the violations of their rights.

The United Nations has enacted many human rights treaties that address the concerns of specific groups of people in terms of access to justice. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁷ and the Convention on the Rights of Persons with Disabilities (CRPD) are two examples (2006). ⁸ CEDAW is the defining instrument in international law that promotes women's rights in general, and specifically their freedom from discrimination and access to justice. Furthermore, the CEDAW Committee (2015) released General Recommendation 33 on Women's Access to Justice that "includes suggestions on enhancing access to legal aid services for women, including women with

disabilities.” (Durojaye *et al.*, 2020:228). The adoption of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2006 directly addresses these concerns by making clear that disabled people are rights-holders. Byrne, Elder and Schwartz (2021:74)

The state is the main duty bearer in the fulfilment of the rights in accordance with human rights law. Often, non-state actors also participate as duty bearers when the state does not have enough capacity to execute its function. In the case of the current study on access to justice for women and girls with disabilities, the state is expected to deliver on this mandate through its various arms (judiciary, police, health providers). On the other hand, are the individuals who, as rights holders, can make claims on those rights, from duty bearers. In the case of the current study, rights holders are the girls and women with disabilities and their communities who are seeking access to justice.

The engagement process between individuals (rights holders) and the state (duty bearers) is a perpetual one to meet desired needs. The right holder must be empowered enough to make those legitimate claims on rights. Meanwhile, the duty bearer needs empowerment to strengthen its accountability obligations in fulfilling its obligations. Much of this empowerment should be done by the Government itself or non-state actors through training and awareness creation. The result should be change for the better in the enjoyment of those rights. This current study asks the question of roles and responsibilities of each one in enhancing access to justice for girls and women with disabilities in Mashonaland Central Province of Zimbabwe.

The literature identified six human rights principles for consideration when using HRBA to programming and responses. These include: (i) Universality and inalienability; (ii) Indivisibility; (iii) Inter-dependence and inter-relatedness; (iv) Accountability and the rule of law; (v) Participation and inclusion; (vi) Equality and non-discrimination.

Human rights are for all members of society and cannot, for any reason, be given away (UNICEF and UNESCO, 2007). In Mashonaland Central, women and girls, particularly those with disabilities, may well be having their access

to justice rights withheld or compromised for a variety of reasons; either through their own actions or those of others. Universality and inalienability are also breached for those who, due to their circumstances, are unable to exercise these rights.

The essential idea is that human rights are interdependent. Enjoying one right may well be contingent upon the fulfilment of another. When a person with a disability is denied the opportunity to be seen or heard, the likelihood of their right to justice being infringed increases. It has previously been stated that because vulnerabilities might be such a complicated mix, an isolated reaction may not give the solution. Thus, an understanding of that complex may be necessary to appreciate the access to justice right

All human beings are created equal, and there should be no grounds on which anyone should be discriminated against. This is the 'war cry' for proponents of the HRBA theory. With much of literature suggesting that people with disabilities are discriminated against just on the basis of their disability (Casebolt, 2020; Krnjacki *et al.*, 2017; Goodley *et al.*, 2019), the question for this study is whether or not the subjects of this study might be an exception. If any discriminatory tendencies are found, real or potential, HRBA should have mechanisms in place to address the sources of discrimination. The study was particularly interested in, and sought to assess, the application of this principle in the delivery of justice and the associated justice-related services, particularly in the context of girls and women with disabilities who face different circumstances and are exposed to different types of vulnerability.

The right to participation is a fundamental principle when it comes to matters that effect people. Everyone is entitled to that right, no matter their origins and circumstances. That participation must not only be voluntary and meaningful but must also touch areas such as decision-making (UNICEF & UNESCO, 2007 and Bromberg and Hans-Otto, 2017). Byrne *et al.*, (2021) observe that involving people with disabilities in research is more than just a matter of 'best practice' or a *à la carte* choice for so-called creative research procedures. Both Article 4(3) and Article 33(3) of the UN Convention on the Rights of the Child require full and effective participation. In its General Comment, the Committee on the Rights of Persons with Disabilities noted

that by ensuring the participation of organisations of persons with disabilities, persons with disabilities would be able to better identify and point out measures that could either advance or hinder their rights, yielding better outcomes for such decision-making processes. The current study probed participation in all access to justice related activities while guaranteeing their key role in research processes. What were the consequences of involvement, or lack thereof, on the efficiency of justice programs and the promotion of the right to justice?

Can the officials explain and justify their actions, or non-actions, to the public? Is there a mechanism for doing that? What institutional systems are available to enable that accountability? This is the gist of what the accountability principle is about. The study explores these roles as a means of revealing gaps or otherwise with a view to addressing them in respect of access to justice for women and girls with disabilities.

A human rights approach advocates for the development and growth of structures that allow people to demand accountability. Internal disciplinary procedures, special parliamentary commissions, the media, and other legally sanctioned avenues for demanding accountability or seeking retribution may be among these tools. Accountability of non-state actors, such as private institutions and individuals, should also be emphasised. (UND: 2005:4).