

Access to Justice Dynamics for Women and Girls with Disabilities: The Zimbabwean Context

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Abstract

A democratic country has a mandate to guarantee access to justice for all its citizens without discrimination based on disabilities. Therefore, lack of access to justice by persons living with disabilities in Zimbabwe is controversial. The central argument of this article is that the violation of human rights of girls and women with disabilities in Zimbabwe requires urgent intervention from the international community as mandated by local and international conventions. Since Zimbabwe is a signatory to these conventions, it is obligated to enact laws that uphold these rights. The study opted for a mixed method as part of the research methodology. The findings revealed that there are significant barriers to access to justice that still need to be overcome. These hindrances include attitudinal hurdles that make accessing justice difficult for women and girls living with disabilities. The article further acknowledges that access to justice is a fundamental right for persons with disabilities.

Keywords: access; justice; dynamics; women and girls; disabilities

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Introduction

This article is directed towards the often-overlooked position of women and girls with disabilities seeking access to justice, as well as how and why women and girls, particularly those with disabilities, are being mistreated and denied their fundamental rights to access to justice. Access to justice is a serious challenge for girls and women living with disabilities, and minority groups remain isolated and underprivileged. The basis of this study lies in the definition of key concepts such as justice, disability, and access to justice. According to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (2006:4), “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 definition considers disability to be both a mental and physical condition that influences the societal aspect. Access to justice, on the other hand, has been defined as “having legal ‘rights’ and the freedom to demand remedies for civil wrongs or, when faced with a criminal charge or a civil infraction, the existence of a fair and transparent forum in which to defend oneself and an opportunity to be heard by an impartial decision-maker” (Preston,2017:1994).

Access to justice for women and girls, particularly those with disabilities, is a contemporary topic in Zimbabwe, and numerous studies have identified a slew of difficulties that impede their access to justice. According to an earlier study by Lang and Charowa (2007), the position of women and girls with disabilities in Zimbabwe is precarious since they are constantly vulnerable to persecution, harassment, and sexual exploitation. Furthermore, this is supported by both Rotkangmwa and Lalu (2016), who argue that justice is one of the most important social services that every human being – regardless of culture, race, gender, tribe, religion, or disability – should have access to. According to Hayashi and Naami (2004), women with disabilities all over the world face several challenges because of their gender and disability.

Nyakanyanga (2007) is of the view that disability and sexual abuse also imply that it is acceptable for women with disabilities to be abused since they are seen as useless and worthless. In light of this, the study concluded that people with disabilities feel excluded and unrepresented in the court system. According to Lodenius’s (2020) research, the society still views women and girls with impairments as unimportant. The researcher gained a great interest in the topic under study as a result of studies like these. However, section 22 of the Zimbabwean Constitution shows the Government’s desire to remove all barriers to access for people with disabilities 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. According to Sweden’s International Development Cooperation Agency (2014), in terms of international instruments, the Zimbabwe Government signed and ratified the United Nations Convention on the Rights of Persons with Disabilities in September 2013 and sent its first report on the Human Rights of Persons

with disabilities thereafter. However, despite ratifying and being part of different global protocols, such as the Convention on the Rights of Persons with Disabilities, access to justice for women and girls living with a disability remains questionable.

The major loophole in the Zimbabwean Constitution regarding persons with disabilities is that it enshrines the rights of persons with disabilities in writing but does not adequately emphasise the role that the Government should play in enforcing these rights, in alignment with the UNCRPD. Ngwena, in the African Disability Rights Yearbook (2013), depicts the 2005 Constitution as having insignificant mention of persons with disabilities because it only adds physical disabilities under the non-discrimination clause. Chikate (2020) depicts Zimbabwe as one of the countries that have constitutions that are non-discriminatory to persons with disabilities. As previously stated, section 83 of the Constitution stands for equal access to services and access to justice, in this case for all persons with disabilities. Access to justice for disabled persons in Zimbabwe is an endless phenomenon, borne out of the need to address human rights violations and disability rights. Before the 2005 Constitution, there was no mention of persons with disabilities let alone girls and women living with disabilities. The Zimbabwean justice system has, however, taken strides to accommodate persons with disabilities at the courthouses by modifying existing physical structures and creating what is described as “disabled access-friendly spaces”. To validate the above argument, Mantsha (2015:27) further suggests that the Disabled Person’s Act (DPA) should be scrapped from the list of statutes because the use of “disabled persons” is pejorative and unpleasant.

Problem Statement

Zimbabwe still faces challenges in the provision of access to justice. To address challenges in access to justice, certain legal reforms have been adopted, such as the provision of logistical support for witnesses to attend court. However, it has been observed that there are loopholes in the Zimbabwean justice system and this has affected how women and girls living with disabilities access justice. Therefore, it is vital to state that this is an analysis of the justice system in Zimbabwe in response to victims and perpetrators who are women and girls living with disabilities. Though legislation and policies have been put in place, concerns have been raised that women and girls living with disabilities continue to encounter barriers in accessing justice. Moreover, although these policies have been implemented, scholars have highlighted a lack of monitoring and evaluation of these. As a result, there exists a gap between what is stated in the policy and what is taking place on the ground, and if these policies are sufficient to cater to women and girls living with a disability. To date, reports concerning the plight of girls and women with disabilities have been made in Zimbabwe. Among these are those made by organisations such as ReliefWeb and United Nations Trust Fund. Choruma (2006) posits that persons with disabilities in Zimbabwe are a “forgotten tribe” despite legislation and conventions that have been adopted and implemented. She further notes that out of the Millennium Development Goals, only the right to education for persons with disabilities is highlighted and the other goals do not pay any particular homage to

persons with disabilities and their rights to access services such as the justice system. SDG5 pinpoints key issues for women and girls with disabilities and advocates for the closure of data gaps on gender and disability. Browne (2017:3) elucidates that in target 5.1 of SDG5 women and girls with disabilities lack legal capacity and, in turn, have reduced power and status. Browne postulates that in target 5.2 “while affecting women generally, women and girls with disabilities are disproportionately at risk of violence due to factors relating to systematic discrimination and stigma”. The author underpins that the 2030 Agenda for Sustainable Development needs to mainstream the rights of women and girls with disabilities into all efforts to promote gender and disability equality. Statistics show that there was a rise in the number of reports on the barriers that affect women and girls with disabilities to access the justice system between 2015 and 2017. According to a *Sunday News* report dated 17 December 2017, to date, 200 cases of abuse of girls and women living with disabilities have been reported in Zimbabwe. The report does not consider the slew of cases that go unreported, nor does it consider whether justice was served. It just mentions a number. Such reports as the one alluded to above demonstrate the lack of attention that victims with disabilities receive, particularly the failure to access justice. These reports influenced the researcher to conduct this victimology study to assist the Zimbabwean Government by providing a clearer picture of the position of girls and women with disabilities as victims of crime seeking justice.

Literature Review

A literature review was considered a cornerstone of this article to expose the existing conditions that complement or support the unfair treatment of women and girls living with disabilities. Apart from signing documents stating their rights, Government and society have done little to campaign for the rights of women and girls living with disabilities, and little progress has been made to enforce them. This has led scholars such as Dziva, Shoko, and Zvobgo (2018) to propose that section 83 of the Constitution be translated from theory to practice because it directs the State to advance persons with disabilities’ issues by developing concrete measures to ensure that women and girls living with disabilities are not marginalised. Scholars believe that the Zimbabwean Government participated in several treaties, laws, and ratifications in good faith in order to promote access to all services and equality for people with disabilities. The Zimbabwean Government is striving to improve access to all services and equality for those with disabilities and those without them, as well as to remove the context of ableism. Despite the foregoing, Mandebvu (2015) highlights the gaps in the Zimbabwean legal system, particularly for girls and women with disabilities. This gap resulted in the formation of Victim Friendly Police Units (VFU), which are manned by officers with special responsibilities to offer a safe environment 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. However, on the ground there have been no concrete implementation processes

to ensure access for women with disabilities, and access to justice is not an exception (Deaf Zimbabwe Trust/Disability Observer:2022). The Protocol on Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe, implemented in 2003 and revised in 2012, was designed to strengthen and clarify the roles and responsibilities of service providers and agencies with statutory and thus obligatory responsibilities in the delivery of age, disability, and gender-sensitive, survivor-centred services, thereby improving their positioning and condition. According to Maphosa and Rugoho (2017), ample evidence demonstrates that girls and women with disabilities slip into the cracks of intersectional marginalisation simply because they are women and disabled. Meanwhile, section 83 of the Zimbabwean Constitution highlights the importance of implementation and further enshrines the enforcement of equal rights for persons with disabilities. The Government of Zimbabwe has since taken other policy and legislative steps that show commitment to promoting the rights of persons with disabilities. Zimbabwe has a long way to go in terms of enforcing the rights of persons with disabilities (Chikate, 2020). For instance, it is one of the countries largely criticised for flagrantly violating the same conditions that it agreed to uphold, that of promoting and protecting human rights for all, especially girls and women with disabilities (Chikate, 2020). Beqiraj, McNamara, and Wicks (2017:110) share that justice systems are both formal and informal and posit that:

It starts with the existence of rights enshrined in laws, and awareness and understanding of those rights. In terms of achieving complete access to justice for women and children living with disabilities, Zimbabwe still faces a debilitating task. It placed Zimbabwe on the constitutional reforms map depicting that equality is a guaranteed right for all persons with disabilities, including women and girls. 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.

Beqiraj, McNamara, and Wicks (2017) identified hindrances (barriers) to access to justice by girls and women with disabilities namely, structural, economic, attitude, and lack of knowledge barriers that guided this article. These barriers are used as a culture of normalisation of violence within service systems and society. Structural barriers appear at varying levels, including but not limited to, the traditional and socio-cultural systems that exist in Zimbabwe. There are factors influencing access to justice for girls and women with disabilities, and patterns of crime committed against girls and women with disabilities, such as rape and violence. Yeo and Moore (2003), cited in Dziva (2018) regarding economic barriers, depict disability and poverty cycles as contributory factors to the lack of access to justice for women and girls with disabilities. Pinilla-Roncancio (2020:1) makes the following argument, in support of the poverty-disability trap. It is estimated that around 15 per cent of the global population lives with a type of disability and 80 per cent of those live in low- and middle-income countries. Furthermore, Pinilla-Roncancio (2020) indicated that the relationship between disability and poverty has gained increasing attention. Lack of access to basic services

due to poverty, for example, lack of finances to access healthcare in some cases causes disabilities.

People with disabilities face an onslaught of unfavourable attitudes and opinions concerning the nature and characteristics of their disability. Despite these declarations and Article 6 of the UNCRPD being signed and ratified by 187 countries, international evidence, manifesting through literature, suggests that people with disabilities experience barriers in all three stages of the justice system (Harold, Edwards, and Kilcommins, 2012). Women with disabilities suffer double discrimination; first, as women and second, as persons with disabilities. 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 access gap for persons with disabilities. Cotter and Savage (2019) paint a grim picture of the depiction of women with disabilities and highlight the unique ideas that, whether imagined or not, fuel the rate of abuse and subsequent depiction of women and girls as victims of crime.

Research Methods

The study was conducted using mixed methods to achieve its objective. The study's use of this approach was significant since it allowed the researchers to address the study's research questions. In keeping with the mixed methodology, the study used a questionnaire and in-depth interviews to collect data and explained the data analysis techniques that would be used. The research was set in Mashonaland Central Province of Zimbabwe. The province was selected due to indications that it has the highest rate of abuse of girls and women with disabilities. The participants' responses offered detailed information about guardians' perspectives on the government's commitment to access to justice for girls and women living with disabilities in Zimbabwe. The non-probability sampling approach was used to develop the purposive sampling methodology, which was used to pick participants for the study. Sample sizes of 50 participants were recruited. In terms of data collection, girls and women living with disabilities were interviewed in depth. Furthermore, questionnaires were distributed among Zimbabwe Republic Police (ZRP) VFU officers and interviews were conducted with key informants such as disability specialists, senior police officers, regional magistrates, and private disability organisation leaders as highlighted in Table 1. Both thematic and Statistical Package Social Sciences (SPSS) were used interchangeably to analyse the data and draw this article's conclusion. The researcher applied for an ethics clearance certificate (no. MAG021SSHU01) before external gatekeepers such as ZRP, Bindura Regional Magistrates Court, and Mashonaland Central Province issued permission letters. Furthermore, informed consent forms were distributed together with the information sheets to all participants after gatekeepers granted permission. Bwalya and Kalu (2017) suggest that the trustworthiness and credibility of a study can be achieved by using various methods such as interviews and focus group discussions, which are appropriate and well-recognised research methods within qualitative research. Therefore, it was imperative for this study to remain neutral and not provide or lead participants' responses.

Table 1: Research participants by category and data collection method

| Target groups | Population | Target | Reach | Data Collection Method |
|-------------------------|------------|--------|-------|-------------------------|
| ZRP VFU Officers | 112 | 50 | 34 | Questionnaire |
| Disability specialist | 1 | 1 | 1 | Key informant interview |
| Girls with disabilities | 6 | 3 | 3 | In-depth Interview |
| Women with disabilities | 9 | 3 | 3 | In-depth Interview |
| Senior Police Officers | 5 | 5 | 5 | Key informant interview |
| Regional Magistrate | 1 | 1 | 1 | Key informant interview |
| Disability Organisation | 1 | 1 | 1 | Key informant interview |
| Social Development | 1 | 1 | 1 | Interview |
| Community Leaders | 3 | 1 | 1 | Interview |

Table 1 shows that all other categories were reached as planned except for VFU officers, where 34 (68 per cent) of the targeted 50 responded. This is less than the optimum return rate and this is because the questionnaire was self-administered and some of its distribution was left in the hands of the senior officer at each station. Some of these were “lost” along the way. A population size of 112 was expected ($p=112$). However, this was not the case on the ground as a few of the VFU officers under the Mashonaland Central Province occupy non-active posts. For example, it emerged that they were involved in clerical, administrative, and managerial positions that excluded them from field activities and direct victim assistance. Some of the respondents who could have taken part in the study were on administrative leave such as study, maternity, and others were in the process of transferring to other stations and provinces. Therefore, this article has provided an analysis of the data gathered from 34 questionnaires and findings from 16 interviews.

Interpretation and Analysis of the Findings

Table 2: Codes for respondents

| Respondents | Data Collection Instrument | Identification Codes |
|------------------------------|------------------------------|------------------------------|
| Regional Magistrate | Judicial services Interviews | RM1 |
| Disability Specialist | Judicial services Interviews | DS1 |
| Senior Level Police Officers | Interviews | SOP1, SOP2, SOP3, SOP4, SOP5 |
| VFU Officers | Questionnaire | VFU1 – VFU34 |
| Disability Organisation | Social Services Interviews | DO1 |
| Social Development | Social Services Interviews | DSD1 |
| Girls with disabilities | GWWD Interviews | GWD1, GWD2, GWD3 |
| Women with disabilities | GWWD Interviews | WWD1, WWD2, WWD3 |
| Community Leader | Interviews | CL1 |

Given the hugely qualitative nature of the data, Table 2 shows codes used for different respondent groups and individuals for ease of reference.

Table 3: Distribution of respondents by sex

| Category of respondent | Male | Female | Total |
|-------------------------|------------|------------|-----------|
| VFU Officers | 18 (52.9%) | 16 (47.1%) | 34 (100%) |
| Provincial Magistrate | 1 | 0 | 1 |
| Disability Specialist | 1 | 0 | 1 |
| Senior Police Officers | 3 (60%) | 2 (40%) | 4 |
| Girls with disabilities | 0 | 3 | 3 |
| Women with disabilities | 0 | 3 | 3 |
| Disability Organisation | 0 | 1 | 1 |
| Social Development | 1 | 0 | 1 |
| Community Leader | 1 | 0 | 1 |

Table 3 shows the sex of respondent categories offering support services skewed towards males (52.9 per cent against 47.1 per cent for VFU officers, 60 per cent against 40 per cent for senior police officers, male provincial magistrate, male disability specialists, male social development officers, and male community leader). This shows that the justice system structures are male dominated, which might have a bearing on the extent to which GWWD opens up in reporting and discussing their cases, most of which are highly sensitive.

Common Crimes Committed Against GWWD

Findings from the questionnaire distributed among VFU showed a disturbing figure relating to common types of crimes committed against girls and women living with disabilities. From the perspective of VFU officers, the study found that there were high incidences of sexual violence. Data revealed that rape and attempted rape were the most common crimes committed against GWWD. Table 4 shows responses from 32 VFU officers and the locations where the crimes occurred.

Table 4: Common crimes against girls and women with disabilities

| Location Type | Rape | Attempted Rape | Total |
|---------------|------|----------------|-------|
| Growth Point | 18 | 1 | 19 |
| Town | 8 | 1 | 9 |
| Resettlement | 1 | 1 | 2 |
| Communal | 2 | 0 | 2 |
| Total | 29 | 3 | 32 |

By far, according to VFU officers, the most common crime is rape (18 of the responding 29 VFU officers cited it as predominant, occurring mostly in growth points and towns). Attempted rape was also identified as rife but with a lesser degree of occurrence in all areas). These patterns have implications for responsive programmes for geographical targeting. Buttressing the finding, SPO2 had the following to say:

Sexual violence is the predominant cause for victim status of GWWD due to the fact that perpetrators deem the victims as persons who cannot comprehend what has happened to them and are easiest to intimidate. I can confirm that our crime records show a pattern of most occurrences in areas of high population concentration such as towns and urban areas.

SOP3 alluded to the foregoing but also included domestic violence. She argued that GWWD were more likely to become victims of crime and sexual violence due to the nature of their disabilities. The study sought views of other stakeholders in the justice delivery chain on patterns of perpetrator identity, based on their experience. RM1 confirms patterns already seen in the main type of crimes against GWWD, as does DS1. Both RM1 and DS1 identified sexual violations characterised by rape and attempted rape, domestic violence, and assault. “In most instances, GWWD are raped because the perpetrator does not deem that the victim is capable of reporting what happened out of fear of not being believed,” said DS1. He further blamed the patriarchal nature of society for exposing GWWD to crime.

GWWD agree with the rest of the people in identifying the main abuse categories as centring on sexual violence. However, they also added other aspects, largely drawn from their experience. Except for GWD 1, knowledge of other prevalent crimes was not

widely shared. All were reluctant to delve into the issue, preferring to tell their story around their specific experience. GWD1 indicated that apart from rape (which she was already a victim of) other crimes included neglect and stigmatisation. She had experienced both. She reflected on what her mother had said to her regarding her physical disability:

(Hatigone kukuendesa kuchikoro nekuti kunenge pari parefu kutokuendesa ikoko mazuva ese. Iwe uchafanirwa kugara pamba nekuti kubva baba vako pavakaenda kujeri (pamhosva yavo), hapana hama iri kuda kubatsira munzira ipi neipi). We cannot manage to send you to school because it will be a tall order to even transport you there every day. You will have to stay home because since your father went to prison (for his own crime), no relative is willing to assist in any way (GWD 1).

Not only was GWD1 showing awareness of other crimes that were affecting GWWD, but she was also narrating how the community had labelled her “a cripple”. She expressed dismay about another case she had heard of. The case involved verbal violence against a mentally disabled woman by her own family and community that regarded her as a nuisance. As a result, the woman even stopped visiting the local shopping centre. GWWD suffer multiple waves of abuse even though only prominent ones like rape are exposed.

Table 5: Commonest perpetrators of violence against girls and women with disabilities

| Perpetrator category | Frequency | Percent | Valid Percent |
|--------------------------|-----------|---------|---------------|
| Relatives | 20 | 58.8 | 83.3 |
| Other people in the area | 4 | 11.8 | 16.7 |
| Total | 24 | 70.6 | 0 |

The response shows that of the 24 who responded to the question, 83.3 per cent pointed fingers at relatives of the victim while 16.7 per cent said it was other people near the victims. This reflects a general conviction, based on the respondents’ experience, that perpetrators usually come from the immediate environs of the victim. Further engagement with them indicated that even if the perpetrator was so geographically close to the victim, they may remain “unknown” because they are good at disguising themselves or hiding their identities. Examples of these are include committing the crime under the cover of darkness or the perpetrator attacking a blind victim knowing well that they cannot be seen. Resultantly, the victim may never be able to identify the perpetrator.

An interview with SPO4 revealed a similar pattern (a perpetrator from within) but in a case of gender-based violence. The case goes thus:

Perpetrators are in some cases from within the immediate family setup. For example, a husband who repeatedly physically abused his wife who had a physical disability. Because of perceptions that this was an internal domestic issue, the case was never reported (SPO4).

This assertion is further supported by SPO3 who indicated that,

Perpetrators, surprisingly, emanate from within the victim's family, one case being that of a father in the area who, over a course of ten years, sexually violated his daughter repeatedly. This was due to superstitious beliefs that bedding a person with mental disabilities would enhance his wealth. She conceived three children out of the years of abuse, and this is when suspicions arose, and the neighbours tipped off the police.

SPO3 further stated that the perpetrators of crime against GWWDs are always in their immediate environment,

Such as neighbours who know the family set-up well and are often in contact with the victim. She goes on to state that GWWD are often victims of crime due to the fact that they are left unattended for long periods of time which makes them susceptible to abuse.

Theme 1: Barriers to Access to Justice

Various factors that stand in the way of justice were identified and discussed in detail. The VFU officers identified factors they thought stood in the way of access to justice. Figure 1 shows the distribution of their responses.

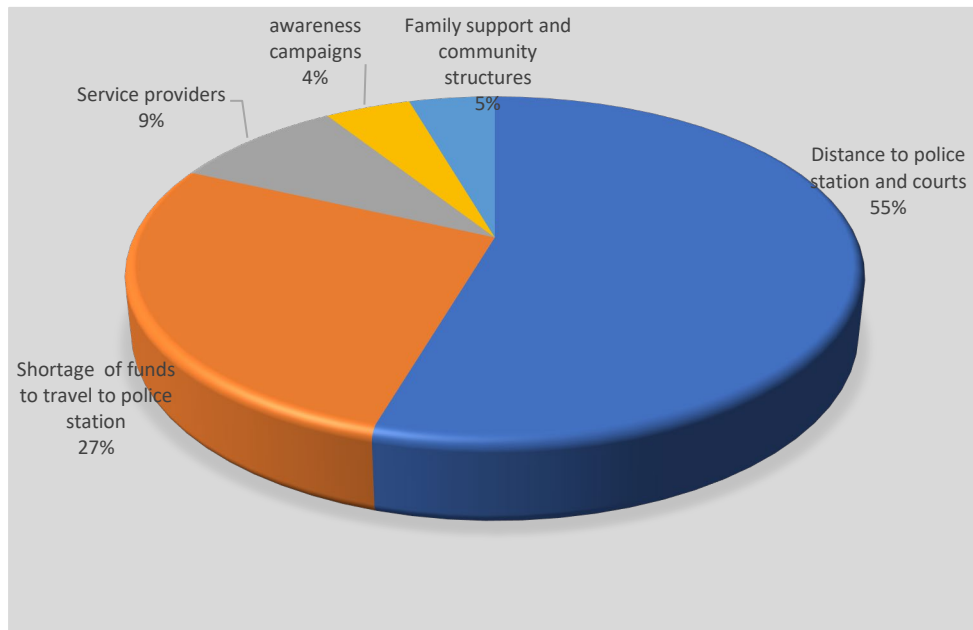


Figure 1: Barriers to access to justice for GWWD

Sub-theme 1: Distance to Police Stations and Courts

The majority of VFU officers (55 per cent) consider distance as the biggest barrier to GWWD's access to relevant service centres, including police stations, clinics, and courts. Distance to the services varied with location. Most courts are in urban areas, while the larger population resides in rural areas. This places such services out of the reach of many. According to RM1, even if the distance were to be shortened, people with disabilities struggle to move out of their homes. The GWWDs unanimously pointed out that distance to services discouraged them from even trying to take up their cases. Contributing to the discussion about distance as a barrier, DO1 said,

Except for urban areas, the service centres are usually not in the same place, meaning separate journeys for each service. The distance factor becomes a barrier to justice services.

Sub-theme 2: Lack of Suitable Logistical Support

Since distance to access justice services is a major barrier, suitable logistical support is paramount. Such support is not available in adequate measure, and this includes transport. According to 27 per cent VFU officers who responded, there are inadequate funds to support GWWD to travel to police stations, clinics, and courts that are far from their homes. Other data generated from the same VFU officers' questionnaire responses, shows that lack of finances had a 70.6 per cent influence on whether GWWD are able to access justice. SPO2 blames the inadequacy of funds largely on impoverished backgrounds. Given the concerns about how poverty might have an impact on access to services, particularly to justice, VFU3 also argues that it is important to note that most GWWD come from poor households where they can barely make ends meet, let alone afford transport costs to attend court. He believes that most cases go unreported due to the financial implications that may arise. The respondents further stated that due to the poor backgrounds of the GWWD and, particularly in the current difficult economic climate in Zimbabwe, some caregivers may opt to be paid damages or compensation in lieu of reporting the cases to responsible authorities.

During in-depth interviews, GWWD survivors confirmed that they lacked transport money, a situation that ultimately prevents them from even trying to seek these services. DSD1 reflected on experiences where the Department of Social Development would avail travel warrants that would enable witnesses to board buses for free. However, with the absence of suitable transport and the withdrawal of that facility, commuters have now been left at the mercy of private transport operators who charge exorbitant fares. One of the GWWD survivors put across the effect of this barrier very strongly and said the following:

(Rangarirai, kuti isu tifambe kubva pamba, tinoda kuperekedzwa nemumwe munhu, anodawo zvakaenzana mari yekufambisa neyechikafu. Izvo zvinopedzisa mutengo wakapetwa. Ichi chakasimba kwazvo chipingamupinyi kuti chikunde.) Remember, for us to travel away from home, we need to be accompanied by another person, who

equally requires transport and food money. It ends up being a double cost. This is too strong a barrier to surmount (WWD2).

Sub-theme 3: Lack of Awareness of Legal Services, Rights, and Procedures

In the context of low knowledge dissemination, the result is limited awareness about disability and abuse issues, and how those affected can, at the very minimum, try to access the services. Communities and families were singled out as lacking awareness, which in turn leads to lack of reporting. It was established during this research that GWWD lack information about their rights and the procedures to follow when making a report at a police station. In some cases, due to the lack of comprehension or lack of adequate knowledge, GWWD did not know how to respond to crimes committed against them. LCDZ (2015) supports the results by stating that “GWWD often lack adequate information on how to respond to such attacks”. A member of the VFU elaborated further,

GWWD may not have access to knowledge about their rights due to the fact that some of them come from very poor families that are not able to afford fees in special schools and, in some cases, in any school. Some children with disabilities are hidden away in homes for their protection and they are distanced from any knowledge of their rights or how to report if something has happened to them (VFU6).

Theme 2: Attitudinal Barriers

Community-level barriers usually arise when a community does not report cases involving GWWD. According to VFU16, this is largely rooted in the marginalisation and dehumanisation of GWWD in communities, especially those who roam around or are unkempt. It is further argued that, in some instances, cases reported are not usually the first offences committed against the GWWD, but those that can be proven. Concerning WWD2’s case, VFU4 asked: “If she had not fallen pregnant, would any report have been made?” Sometimes failure to report emanates from deliberate efforts to protect the perpetrator who may have promised compensation or result from fear of reprisals from the perpetrator and/or his family. As a result, victims are denied their right to justice.

VFU1 states that, in some cases, the community offers anonymous tip-offs when crimes are committed. He gives an example of one such case where the community raised an alert about a woman with a disability who had repeatedly been impregnated by an unknown man. Since she was born with a mental illness, she was protected by the Mental Health Act. After the tip-off, the matter was investigated and her father was found to be the perpetrator. However, in most cases, the community members feared being labelled as “sell-outs” or “gossipmongers”, so they rarely reported cases, especially those involving GWWD.

A disability organisation officer stated that the incidence of abuse of children with such disabilities is high, especially among those with hearing, speech, or intellectual

impairments, as they are perceived as not comprehending what the perpetrator has done. The above responses pinpoint that children continue to be exposed to high levels of abuse despite the existence of several policies, legislation, and programmes that raise awareness about the importance of protecting and promoting the human rights of all individuals, particularly women and children.

Theme 3: Structural and Accessibility Barriers

Structural barriers exist in two forms: physical accessibility issues and other structural issues in an existing system, such as judicial. VFU3 states that:

Some structural barriers exist in the physical sense due to limited disability-friendly modifications at some police stations and the physical location of some such as the Wemahu (not real name) station makes it difficult for a person with a wheelchair to access, due to its location on a hill.

Such physical barriers mean that persons with physical disabilities would not be able to fully access the service they seek. This also makes them feel uncomfortable and intimidated. To make these services accessible, physical modifications have been made, but they were not of the recommended standard since they had construction deficiencies caused by hastened and shoddy work.

Other structural barriers include existing “roadblocks” that are dominant in patriarchal set-ups in which GWWD live. These come in the form of a traditional justice system structures and court processes. Patriarchal structures, according to VFU2, allow for GWWD crimes not to be reported but for resolutions to be made by men, rendering the GWWD voiceless in the process. Structural barriers also exist in the modern court system, where accessibility is limited for persons with disabilities; they are often misunderstood due to stigmas associated with disabilities.

Theme 4: Communication Barriers

In its 2015 report, the Disability Organisation participating in this research reported that girls and women with disabilities – particularly those with intellectual, hearing, or speech impairment – were often vulnerable to violent attacks and sexual abuse. They reportedly found it difficult to access justice for a variety of reasons, including difficulties in being understood. For example, police stations do not always have officers who understand sign language. Such lack of sign language interpretation and communication aids throughout the justice system can prevent women with disabilities from moving a complaint through the justice system. Meanwhile, court officials reported a shortage of sign language interpreters since there is a high volume of cases running in the courts. Thus, the communication barrier can be an impediment to accessing justice for GWWDs. A disability specialist accurately described the language barrier. He outlined that the major barrier he meets in his line of work is lack of effective communication. He states:

The major challenge I face with victims, particularly those who are deaf and dumb is that most of them have not received any form of formal sign language training; they have unique sign language communications that they have learnt at home over the years and this in some cases is difficult to decipher (DS1).

The language used in courts can be very technical to the point where an ordinary person, even without disabilities, finds it difficult to understand. Unless the system has someone patient enough to interpret or explain, the witness's right to justice is compromised.

Discussion of the Findings

Access to justice is an important component of a legal and democratic state. This implies that individuals have the right to an effective remedy, the right to equal access to courts, the right to legal aid measures that improve access to courts, and the right to access to legal representation to ensure effective implementation of the law and practical enjoyment of rights by individuals. It offered different points of view on girls' and women with disabilities' access to justice. An understanding of the concept and context of the components of justice, which is at the heart of this study, was necessary to inform measures to navigate the study processes. The Access to Justice for Persons with Disabilities Toolkit for Disability for Africa (nd) adds its voice to the debate about negative attitudes and false beliefs or assumptions being a strong attitudinal barrier that diminishes or totally denies women and girls with disabilities access to justice. One of the findings is that some parents and caregivers of GWWD feel that access to justice is elusive and some of them may not even report crimes against GWWD and seek access to justice due to fear of social stigma. Also, they may not seek justice because of the belief that the justice system is corrupt. According to Markaryan (2015), human rights regulations to justice, women's rights, and their access to justice are integral parts of the overall justice system which should exclude any discriminatory activity.

The study established that awareness creation is important in accessing justice for victims and for the prevention of violence against potential victims. Awareness creation lies in the opines of knowledge dissemination for systems that propagate justice. The diverse variables come together to create a complex web of conducive conditions that can favour crime perpetration against women and girls with disabilities.

A section of the study examined some contextual abuse perpetration patterns that included the nature of the crime and prevalence, perpetrator identity, and commonest trends in locations where crime was perpetrated. The "wronged" (current subjects of the study) would fall into the realm of "victimology", the study of victims of crime, an important dimension though not sufficiently addressed for people with disabilities as a specific category of "victim" (Madriaga and Mallett, 2010).

Information and knowledge gaps among communities and the survivors are not a new phenomenon as Women Enabled (2018) found out, subsequently arguing, "Women with disability often lack knowledge about their rights and the justice system due to such

information not being made available in an alternative format.” Markaryan (2015) viewed women’s rights and women’s full and effective access to justice as integral parts of the overall justice system, which should exclude any discriminatory activity. This article has identified negative attitudes and discrimination as the strong systemic barriers to access to justice for women and girls with disabilities and calls for a change in such attitudes.

Further findings revealed the economic situation as a major barrier to access to justice for women and girls living with disabilities in the study area, “including when women and girls living with disabilities reporting a crime, in terms of whether one can serve as a witness or in making legal decisions, seeking remedies for alleged violations of their rights, or otherwise participating in legal proceedings” (Markaryan, 2015:7). With a specific focus on Zimbabwe, Choruma (2007) and Dziva (2018) pointed out that the economic situation in Zimbabwe, coupled with poverty levels, makes it difficult for people with disabilities to access justice. Most of them lack disposable income.

Owing to economic difficulties and gender and disability stereotypes, girls and women with disabilities find themselves in a predicament where they cannot access justice (Women Enabled, 2018); yet the right to equality, which appears to be blatantly violated, must prevail (Holness and Rule, 2015). Scholars have recognised and documented disability and poverty to be instrumental in denying people living with disabilities access to justice (Yeo and Moore, 2003 in Dziva, 2018). In studies on the most common perpetrators of violence against women with disabilities, Lodenius (2020) and Human Rights Watch (2010) also found these to be “rarely people unknown” to the victim. With service points far from where they lived, those seeking justice had simply abandoned the chase, fitting well into the argument by Fordham (2020) that the justice one gets is the justice one can afford.

The study results show that significant strides to train VFU officers on disability issues had been made. VFU officers were being trained in sign language to enable easier communication between deaf crime victims and the police. A discussion with the VFU officer-in-charge in 2022 revealed that there is still a gap in VFU officer training on disability sensitisation.

The research found that people defined and understood access to justice differently, and these interpretations are most likely influenced by their experiences. Thus, the combination of societal biases, patriarchy, social structure, and gender stereotypes against women has a negative impact on the psychology of women seeking justice, which undermines access to justice (Tyagi, 2021). Nkatha (2020) argues the case of compromised access to justice for persons with disabilities, arising from defects in the justice system of Malawi. His argument goes further to suggest that women’s rights and women’s full and effective access to justice are integral parts of the overall justice system, which should exclude any discriminatory activity. The study found that VFSC had been sensitised on issues affecting persons with disabilities, especially GWWD.

VFU officers and senior officers confirmed that they had undergone sensitisation training on disability issues to make them more sensitive to disabled persons when they report crimes committed against them.

In summary, the role of the Government has been identified as that of providing the legal and policy environment as well as other institutional structures and programmes within and around which the rest of the implementers work. These include the following:

- the National Case Management System. This is a way of organising and carrying out work so that children's cases are handled in an appropriate, systematic, and timely manner;
- the Protocol on the Multi-Sectoral Management of Sexual Abuse and Violence in Zimbabwe of 2012. It is meant to deal with and respond to increasing cases of abuses; and
- the Victim Friendly System. It deals directly with cases of violence against women, including girls and women with disabilities.

Role of the Government of Zimbabwe

Under international law, governments have obligations to respect, protect, and fulfil the rights of women with disabilities. These rights include access to justice. It is unfortunate that even in cases where women and girls had visible physical disabilities or identified their disabilities, police failed to include specific details in the First Information Report (FIR) – the document that sets the criminal justice process in motion.

Role of the Zimbabwean Justice System: Dealing with People with Disabilities

The data presented depicts a multifaceted justice system, which indicates the need to embrace all players and strategies to make it work. This obligation requires states to take necessary measures to ensure that girls and women with disabilities can be equal and active participants in the justice system, for example, by ensuring that women with disabilities can testify in courts and be given the support they need. This includes considering the distance to the service, physical location, and general issues that influence access to courts and police stations, such as the condition of the roads that makes transport providers shun certain routes, resulting in lack of access to justice services. According to Jackson (2018), experience shows that most built environment practitioners are already treating built environment accessibility as a regulatory activity, and this is a barrier. Ortoleva and Lewis (2012) posit that physical access to the justice system is not limited to the courthouse but extends to police stations and hospitals.

It goes without saying that access to justice for girls and women with disabilities might remain a pipe dream as long as these conditions remain the way they are.

Role of Healthcare Providers

Women and girls with disabilities face multiple barriers in accessing social health services. Beqiraj and McNamara (2014) refer to such a situation as “the physical factor” of access to justice delivery in which they highlight its manifestation as “insufficient and unequal geographical distribution of justice institutions”. Lack of documentation in police reports precludes women and girls with disabilities from receiving specific need-based support from the police and judiciary. Tyagi (2021) presents some stunning arguments on how access to justice for women and girls with disabilities can dissipate at the hands of several barriers.

Coverage of awareness activities included, among other topics, basics on disability issues, the referral chain, human rights, roles, and responsibilities of stakeholders in the justice delivery, stigma and discrimination, support systems, tip-offs and reporting, and use of toll-free numbers. Within the precipice of the transformative approach, awareness is indicated for essential support systems to ensure that access to rights such as justice is fulfilled in general and in this study of GWWD victims of crime. The marginalisation of GWWD emanates from the point that they are women residing in a largely oppressive patriarchal set-up that discriminates against women and sets them up to be secondary owners of property. It also originates from the fact that they are disabled, which further marginalises them and limits their access to justice.

The findings of this research revealed that several factors pushed GWWD into becoming victims of crime. According to the findings of this research, the GWWD are often neglected and left alone for long periods due to their disabilities. The study established that GWWD assume victim status when a crime has been committed against them, and this crime is in turn brought to light. In this light, it has been found that those considered more vulnerable after experiencing a crime committed against them assume a victim status. The finding that everyone, regardless of their category, has a “feel” of what justice entails is significant to this study. The points of convergence as well as subtle differences pave the way for possible interventions.

The “disadvantage” of being disabled was clear. The GWWDs gave examples of things they could not do. This was an important aspect of this study as an understanding of disability would provide common parameters for targeting women and girls living with disabilities and the nature of support that might be needed.

The study found that rape and attempted rape are the most common crimes committed against women and girls with disabilities. Some GWWDs added gender-based violence and stigmatisation as other crimes. These findings were not unique to this study. In a related study, Ortoleva and Lewis (2012) also found that sexually inclined crimes such as rape were most common among women with disabilities. The current study’s findings on perpetrator identity concluded that these were mainly familiar people, either in the family or immediate community and that these crimes occurred mostly in the home. She argues that these patterns may influence the action that social structures, especially the

family take, such as downplaying the crime. It is further argued that some families even go on to receive money in lieu of reporting the case to the police (Lodeni, 2020). In agreement, Chikate (2020) found that GWWD are mostly attacked by abusers in their immediate environment, especially the home. The assessment of crime category, perpetrator, and location was extended to all groups under this study and the pattern of findings was unanimously agreed.

The findings of this study revealed crime pattern dimensions that include perpetrator identify, type, and location of the crime. Ozemela, Ortiz, and Urban (2019) make a point about the interplay between these dimensions. Figure 2 depicts the relationship between perpetrators, type of crime, and location of the crime.

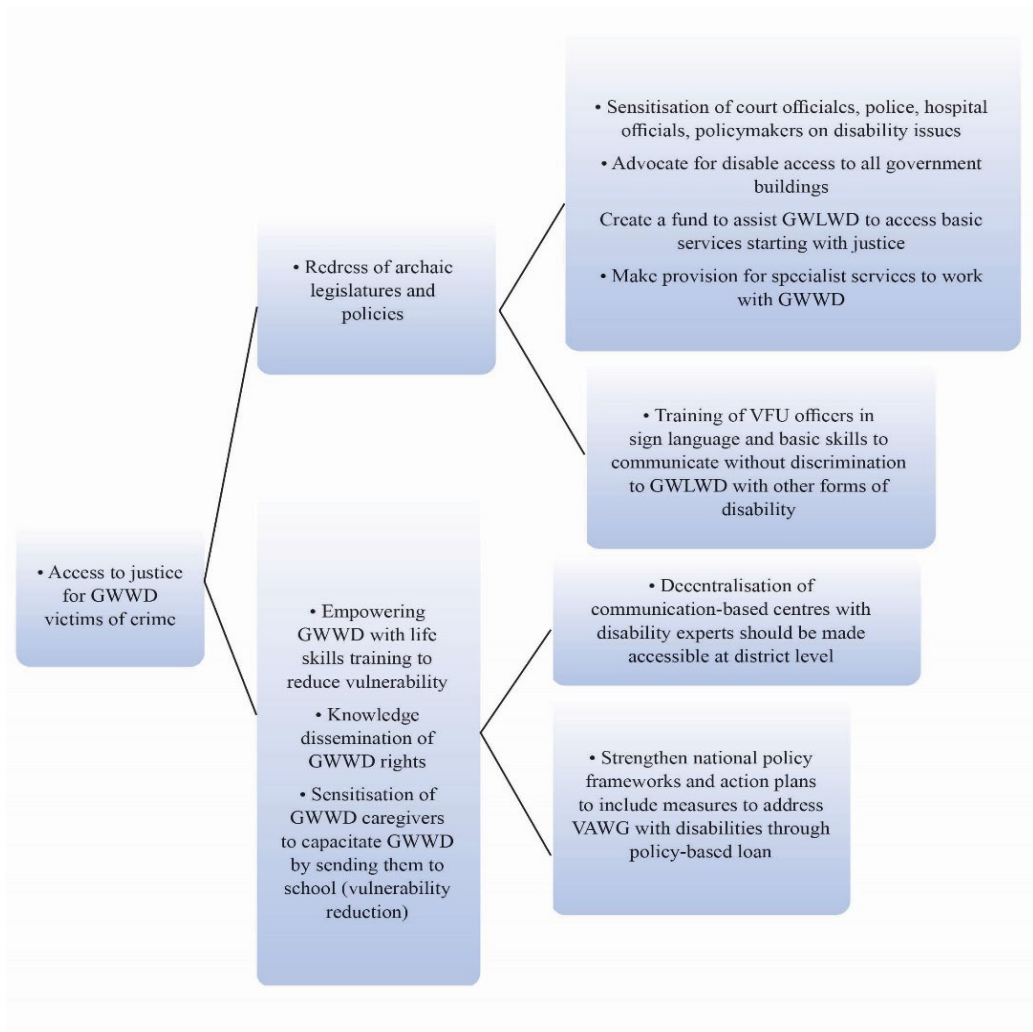
The economic situation was found to be a major barrier to access to justice. Typically, the average communal person in Mashonaland Central Province was described as poor. The situation was worse for those who were living with disabilities because they had limited to no means of earning an income. Scholars have recognised and documented disability and poverty issues to be instrumental in denying people living with disabilities access to justice (Yeo and Moore, 2003 in Dziva, 2018). With a specific focus on Zimbabwe, Choruma (2007) and Dziva (2018) have pointed out that the economic situation in the country, coupled with poverty levels, makes it difficult for people with disabilities to access justice due to lack of disposable income.

Recommendation

This article has recommended that Government should eliminate all financial barriers to accessing justice by creating a fund through different stakeholders, such as legal aid offices of the Victim Friendly System that provides free access to legal representatives (lawyers) and other sources of financial aid for GWWD when the need to seek justice arises. Government should expand national and sub-national laws, policies, strategies, and action plans to include reasonable adjustments to existing provisions/mechanisms to protect women and girls with disabilities and expand VAW services that are accessible to them. It must also improve multi-sector coordination, coordination across levels of government, and information for decision-making. The article further

developed or proposed access to justice model to guide all Government departments such as justice and stakeholder officials, including community members.

Figure 2: Access to justice model for girls and women with disabilities in Zimbabwe



Conclusion

This article identifies negative attitudes and discrimination as significant systemic barriers to access to justice for women and girls with disabilities and calls for such attitudes to change. Furthermore, this article has proposed an access to justice model to

guide different stakeholders in order to promote and maintain the protection of human rights across the country. The article responds to the growing demand for activist-oriented scholarship by examining theoretical and methodological approaches that investigate the inclusion of women and girls with disabilities in Zimbabwe in order to address the issue of access to services, particularly justice.

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