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# The Right to Justice:

## Providing Legal Aid Services in Zimbabwe

*A qualitative analysis of the legal frameworks that treat the provision of legal aid  
services & the realities of their implementation*

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# Abstract

This aim of this research was to investigate possible reasons for the large gap between legal frameworks and policies in comparison to the practical implementation of Legal Aid Services in Zimbabwe. The responsibility of the state to provide legal aid, protection and civil legal aid necessary to ensure this provision for those who cannot afford such is affirmed by international legal instruments, which confirm the state's obligation to ensure this. Our study focused on women as they belong to the great majority of those who seek legal aid. Furthermore, they are disproportionately exposed to poverty as well as Human Rights Violation and Violence in Zimbabwe. Through our textual analysis on the implementation of these policies, it is clear that this is a matter of financial resources, capacity, priority as well as poorly defined policies. The government has failed to provide legal aid and has transferred its responsibility. Instead, private organisations have taken over the 'burden' of providing legal aid. However, this is not without challenges. Without a holistic understanding of the society, culture and norms, this issue will remain poorly prioritized, underfunded, and neglected whereby the victims will remain without justice. As one of our respondents stated that, "We need to tackle causes and not the symptoms, this is an endless work and a tragedy for those we cannot help."

*Key words:* Legal Aid, Implementation, Policy, Legal Frameworks, Public Services, Human Rights, Justice, Women, Failed State, Weak Governance, Social, Economic, Development, Zimbabwe

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# List of Abbreviations and Acronyms

CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination
DV	Domestic Violence
GBV	Gender-based Violence
ICCPR	The International Covenant on Civil and Political Rights
IOM	International Organisation for Migration
LAD	Legal Aid Directorate
LRF	Legal Resources Foundation
MDC	The Movement for Democratic Change
MWAGCD	Ministry of Women Affairs, Gender and Community Development
NGO	Non-governmental Organisation
Protocol	The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
UN	United Nations
VAW	Violence against Women
WHO	World Health Organisation
WLSA	Women and Law in Southern Africa Research and Education Trust
Sida	Swedish International Development Cooperation Agency
ZANU-PF	Zimbabwe African National Union - Patriotic Front
ZWLA	Zimbabwe Women Lawyers Association

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# 1 Introduction

Legal aid denotes a “limited means grants or for nominal fees, advice or counsel to represent them in court in civil and criminal matters” (Encyclopaedia Britannica, 2014). Internationally, the state responsibility to provide legal aid is affirmed by numerous international legal instruments, jurisprudence and rulings<sup>1</sup>. These are ratified and reaffirmed by the Zimbabwean government, and obliges the state to ensure justice and legal protection for all its citizens.

The national legal frameworks; *2013 Constitution of Zimbabwe*, *Domestic Violence Act (DVA)*, and the *Legal Aid Directorate (LAD)*, are aligned to international legal frameworks and function as Zimbabwe’s legislative rule for legal aid provision in the country. Civil legal aid is necessary to ensure access and provision for those who cannot afford legal services. However, these policies face great challenges when it comes to implementation in the Zimbabwean context (Musasa, 2013; LRFb, 2013).

Zimbabwe is still recovering from a complete economic collapse, which has also resulted in vast social and political consequences. This has weakened the country’s ability to provide for the necessary services for its citizens. Accordingly, in 2013, Zimbabwe ranked 10th out of 178 on the Failed States Index, indicating alarming increases in demographic pressure, deterioration of public services, violations of

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<sup>1</sup> Some include the *Universal Declaration on Human Rights*, the *CEDAW* and the *ICCPR*

<sup>2</sup> The support for MDC, Movement for democratic change, grew immensely during this time. Since then, Zimbabwe has faced silenced dissent with almost a decade of violence and political turmoil as the government pursued a campaign of repression that was specifically aimed at “the elimination of all existing, and potential, opposition” (Amnesty International, 2014; OECD, 2013:367).

<sup>3</sup> The land reforms posed by ZANU-PF forced white farmers to leave their land, within one week of receiving an eviction notice. This created tension between racial groups as white farmers gave land to black families and created widespread economical issues (OCED, 2013:367).

<sup>4</sup> UNODC Guidelines to the Provision of legal aid free of charge states: “Whenever States apply a means test to determine eligibility for legal aid that is free of charge, they should ensure that: (a) Persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted or where it is ~~it~~

Human Rights and weak Rule of Law (Fund for Peace, 2013). Moreover, the government has been criticised for violating Human Rights by several international and non-governmental organisations (hereafter NGO's) (The Independent, 2013-12-13; The Herald, 2013-12-10; Fund for Peace, 2013).

Despite state obligations, Zimbabwe has failed to provide basic public services, including a functional legal system and access to legal services. Consequently, justice in Zimbabwe is therefore challenged (The Independent, 2013-12-13; Fund for Peace, 2013). This leads to great lack of justice for victims of any crime, especially for the poor parts of societies who cannot afford legal services (UNDP, 2013).

Evidence of weak implementation of legal aid services is most apparent in the devastating consequences of the lack of legal aid. For example, it has caused increased vulnerability of women since they represent the majority of the poor (UNDP, 2013). Therefore, rampant numbers of violence and discrimination against women continue to rise (MWAGCD & Genderlinks, 2013; ZimStats, 2012; LRF, 2013). Without access to legal aid many survivors of Violence Against Women (hereafter VAW), are forced to remain in abusive relationships, and be violated without any assistance (Musasa, 2013:1-2). These women are often forced to withdraw police reports by influence of traditional leaders and male family members (ibid.). Free legal aid, information and training are therefore crucial in order to end gender-based violence (hereafter GBV) and achieve justice, which is needed for the development of Zimbabwe. Accordingly, many private organisations and NGO's offer legal aid in Zimbabwe to achieve gender equality and justice. However, these organisations rely solely on the international community for funding without any government support. It is therefore not a sustainable solution in terms of guaranteeing legal rights in the future, which all citizens of Zimbabwe are entitled to (Interviews with R.nr.1-3).

There is an undeniable gap between the legal frameworks treating legal aid services and their implementation. This research therefore explores the possible reasons for weak implementation, since providing legal aid is essential to curb



injustice, reduce the under-reporting of crimes, decrease human right violations, and ensure the future safety of victims.

## 1.1 Statement of Purpose

This research aims to investigate the reasons for weak implementation of Legal Aid Services in Zimbabwe. Firstly, it explores the *Role of the State in Legal Aid Service Provision*, through analysing international and national legal frameworks. This examines the actions of the Government of Zimbabwe in fulfilling their obligations in accordance to international and national law; and reveals the challenges for implementation. Further, the context of Zimbabwe, as a failed state, is considered with the purpose of analysing the ways in which these legal instruments are applicable and/or appropriate to the Zimbabwean setting.

Secondly, this paper aims to discover where the main *'burden' of implementation* lies in a situation where Legal Aid Services are supposed to be provided by a state that may not be able to facilitate implementation. Therefore, this part also explores the *role of private organisations* that provide legal aid in Zimbabwe and the possible challenges that may hinder implementation from their perspective.

Although this paper does not aim to conduct a gender analysis, we focus on women as the main seekers of legal aid because they represent the majority of the 'clients' for existing legal aid services, and represent the majority of the poor in Zimbabwe. Overrepresentation of women as 'clients' complies with alarming statistics of GBV in Zimbabwe. However, it must be emphasised that women are not the only ones who suffer from the lack of legal rights and justice in Zimbabwe. Nevertheless, because this paper is focused on the legal frameworks and the implementation thereof, it is specifically the role of legal aid providers, i.e. the state and private organisations, which hold as the main subject for analysis and not the 'clients' of these said services per se. Instead, cases of weak

implementation are *exemplified* by discussing women's challenges since they are the majority of seekers of legal aid in this country context.

To analyse the reasons for weak implementation of legal aid in Zimbabwe, this paper incorporates three main aspects, specifically; the role of the state, legal frameworks and policies, and the 'burdens' caused by weak government efforts for implementation. With this, we explore the policies treating legal aid, to determine who is responsible for their implementation, what challenges hinder this process and; what the consequences are for private legal aid providers. Our main research questions are therefore divided in accordance to the two parts of analysis, namely; *the role of the state* and of *private organisations* in Legal Aid Service Provision. With this, we aim to explain reasons for weak implementation of Legal Aid in Zimbabwe by analysing state obligations and assessing the 'burden' caused by the vast gap that exists between policy and implementation.

## 1.2 Research Questions

### *Research Question 1:*

- How well have Legal Frameworks and Policies regarding Legal Aid Provision been implemented in Zimbabwe?

### *Research Question 2:*

- What are the challenges for private organisations that provide Legal Aid Services in Zimbabwe?

This thesis intends to contribute towards the accumulation of knowledge and awareness of the firm linkage between the 'lack of implementation of law' and 'legal justice'. Further, it highlights the importance of the legal sector as a means to development by way of protecting human rights. Weak access to legal aid has widespread effects on development, particularly in the social and economic spheres (United Nations Zimbabwe, 2012). Furthermore, poor implementation reinforces social inequalities instead of defying them. By exploring legal aid services in Zimbabwe, one can add to the existing gap of knowledge in global

research by highlighting the crucial linkage between legal aid implementation and development. The relevance of this topic is therefore, not only useful to Zimbabwe, but is also globally relevant since the legal aid sector is one that is often under-prioritised in development.

## 1.3 Relevance

As this is an under-researched topic in the development sector, a specific focus on access of the public to legal services, and particularly its impact on gender equality is much needed. While many argue that access to basic health care and education are the most prominent issues for research, there is a knowledge gap concerning legal services. If one cannot access and safe keep their rights to education and basic health care, they are ultimately denied access altogether. This gap therefore has overarching effects on other parts of development, such as curbing sexual violence for example; as victims cannot report crimes or seek protection. Until all individuals are able to seek protection, and utilise the law, their access to human rights will remain hindered.

Private organisations especially, plead for help in this area and need immediate assistance to tackle the demand for legal services among the population. Providing legal aid services is crucial to development, justice and human rights and our paper intends to fill at least a part of this existing gap within development research.

## 1.4 Thesis Outline

In order to understand the layout of our research, and how the questions will be answered, it is important to understand the basis of the study presented by our contextual analysis of Zimbabwe. Thereafter, previous research and relevant theoretical frameworks will be outlined. The methodology, research process and design will then be reviewed in order to clarify how this research was conducted.

The study then includes a qualitative analysis of relevant legal frameworks and interviews with legal service providers in Zimbabwe. The two complement each other, as it is important to understand the meaning of the policies and to explore how they are implemented in reality. Implementation theories therefore overlap frameworks in relation to the analysis. The final chapter will conclude our main findings and provide suggestions for future research.

## 2 Getting into Context: Implementing Aid in Zimbabwe

In order to understand the context in which legal aid is severely needed, the challenges of Zimbabwe present where, and why, implementation of legal aid services are crucial.

Zimbabwe gained its independence in 1980. Up until 2009, the ruling party of Zimbabwe was *ZANU-PF*, lead by president Robert Mugabe (Amnesty International, 2014). The party was overpowered in 2000 by a national referendum that provided a *new constitution*. Simultaneously, support and strength of the opposition party grew immensely<sup>2</sup>. The three main political parties of Zimbabwe collaborated by establishing an inclusive government in 2009. This power sharing agreement led to a new era of rare opportunity in Zimbabwe where authorities began to address “*a long-standing legacy of impunity for human rights violations and build a culture of accountability*” (Amnesty International, 2014). This political shift is viewed as the pioneering movement that later led to the human rights ‘*clampdown*’ of the country (ibid.).

Political turmoil lies at the core of social and economic disputes. The renowned land reforms<sup>3</sup> spurred immense economical issues for the whole country (OCED, 2013:368). Subsequently, Zimbabwe still severely struggles to strengthen their economy and address the consequences of an economic crisis, while poverty and

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<sup>2</sup> The support for MDC, Movement for democratic change, grew immensely during this time. Since then, Zimbabwe has faced silenced dissent with almost a decade of violence and political turmoil as the government pursued a campaign of repression that was specifically aimed at “the elimination of all existing, and potential, opposition” (Amnesty International, 2014; OECD, 2013:367).

<sup>3</sup> The land reforms posed by ZANU-PF forced white farmers to leave their land, within one week of receiving an eviction notice. This created tension between racial groups as white farmers gave land to black families and created widespread economical issues (OCED, 2013:367).

unemployment continue to rise and productivity has decreased immensely (OECD, 2013:367). To illustrate this, a report from WHO (2013) showed that one third of the population is entirely dependent on food aid for survival. Zimbabwe's state of food insecurity has directly influenced women's vulnerability. Maringira and Sutherland claim that this tragic situation is "*a direct consequence of the combined impact of the country's eco-political state and the normative gender roles that favour males*" (2010:1).

Therefore, the social context of Zimbabwe greatly derives from the complex political setting. Political campaigns, marked by violence, spurred social movements, which led to an opposition response that was greatly supported by international communities (Amnesty International, 2013). Moreover, Zimbabwe has been criticised for violating Human Rights such as the neglect to provide; housing, health care, access to Rule of Law, education and freedom of speech (Amnesty International, 2013b; The Independent, 2013-12-13). Among others, the United States and European Union executed sanctions as a response to the increased violence and political progressions (OCED, 2013:367). This impasse has yet to be solved.

For a country notorious for human rights violations, (The Independence, 2013-12-13; Amnesty International, 2013a) it is surprising that the implementation of laws securing the human right to seek protection are not a main priority in Zimbabwe. Overlooking or ignoring this issue sends the message that this problem is not important, and even more that the victims are not important enough (Boréus & Bergström, 2005:77-78).

The lack of legal aid leads to a situation where one is deprived from the security of the law. Legal aid therefore secures justice within a country, as "*each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all*" (Wilkins, 2008:117). Hence, the provision of legal aid for the poor encompass humanitarian considerations and aim to assist people affected by poverty, particularly those who are in difficult social and economic situations.

In contemporary and traditional terms, 'legal aid' is regarded "*a system of government funding*" for those who are unable to afford the costs involved in seeking legal advice and/or representation (Mittal, 2004:12). Government budgets for legal aid, should aim to cover the full range of services that are to be provided, which is key for implementation (UNODC, 2013:14). In Zimbabwe, 72.3% of the population lives below the poverty line (World Bank, 2013). Consequently, the majority of the country is unable to afford legal fees. Further, since the majority of the poor in Zimbabwe are women, it is important see women as the most vulnerable group in regard to accessing Legal Aid.

## 3 Methodological Approach

This research consists of a textual analysis of legal frameworks and policies to explore how applicable these are for Zimbabwe; determine the main challenges; and assess how efficient these frameworks are. Interviews with private organisations, that provide legal services, are incorporated to assess the burdens of implementation and shed light on their perspectives. This chapter presents the process, design, assumptions, sampling, techniques, validity, reliability, limitations and ethical considerations that were used to conduct this research.

### 3.1 Research Process

Initially, the aim of the research was to look into services available to female migrants whose rights had been violated, through violence and rape, during migration processes. Due to Zimbabwe's strict rules and regulations, we did not obtain pivotal permission for our research, particularly in Beitbridge, which was the original area intended. The crime rates are alarming in Beitbridge and, according to our contacts; the number of rapes and assaults of women are extensive. What is worrying, and also a contribution to difficulties of receiving permits, is that many of the perpetrators are allegedly employed by the police, military and government.

During our preparations we were increasingly disturbed by how few medical and legal services were available for these survivors of violence. We therefore began investigating services available for victims and the process of seeking justice. It became apparent that legal aid services were scarce and costly in Zimbabwe, especially for the poor women who were the most prominent clients seeking legal aid. Despite shifting focus, we remained in the same field of studies which allowed us to maintain the same methodological approach. We adopted another



theoretical framework that complemented our findings, and allowed for a holistic approach. Moreover, this shift was more rewarding in filling research gaps, since it explores the cycle of a state that has failed to fulfil its responsibilities, weak governance and democracy.

## 3.2 Qualitative Research

This study aspires to gain a deeper understanding as to why implementation of legal aid policies is difficult in Zimbabwe. Qualitative methodological techniques are useful in order to process information from a smaller number of cases (Creswell, 2007:304; Brikci, 2007:2). Consequently, our data for analysis consists of legal frameworks and a small, yet in depth, collection of interviews. There are various ways to analyse qualitative data, by using a thematic or descriptive approach, or more in-depth methods. Nevertheless, the most frequent qualitative analysis-technique used is the “thematic approach” (Brikci, 2007:23). A thematic analysis explores all the qualitative data to identify common issues that may provide a pattern for reoccurrence.

Mack et al. suggests that qualitative studies draw on the *human side* of research (2006:2). Our study mainly consists of qualitative methodologies that aim to reveal the human perceptions of reality i.e. the reality for those who work with legal aid, those in need of legal aid, and those who currently seek legal aid. A qualitative approach does not only capture human perceptions and experiences but also identifies factors that are intangible – *social norms, socioeconomic status, and gender roles* (Mack et al. 2006:1), which are vital aspects of our research.

## 3.3 Research Design

The first steps to qualitative research design are formulating a question, conducting literary research to ensure the study has not already been done, asking whether your research questions are problematic and relevant for the topic, and questioning whether qualitative methodologies are the most appropriate (Brikci,

2007:7). Correspondingly, our questions regarding the Zimbabwean problems of legal aid implementation are currently under-researched. This can be investigated by conducting personal interviews and dialogues with legal aid service providers as Brikci claims: “*if you want to observe a process in depth and understand the perspectives of participants, then qualitative methodology is appropriate,*” (2007:7-8). Therefore, qualitative methodological techniques are adopted.

The second step to qualitative research designs is to adopt a research protocol, which contains aims and objectives, background, methods, ethical issues, resources, time scale and dissemination/output (Brikci, 2007:8). Our aim is presented in the ‘aim and purpose,’ while our key objectives were the interviews with the leading legal aid service providers of Zimbabwe. Ethical considerations were made to protect the participants. Since our participants were all fluent in English, our research did not require many resources such as a translator. Our time scale, which was roughly eight months, allowed us to conduct extensive research on the topic before speaking to the organisations and it allowed us to visit most participants more than once. Consequently, we were able to collect sufficient data for our planned dissemination and output data which we intend to share with our main target audiences once completed, these include employees currently working with legal aid service provision in Zimbabwe and in similar country scenarios.

The final step of qualitative research design is *sampling*, as it is vital to select sample in regards to methodological considerations even though statistical representations are not the aim of qualitative measures (Brikci, 2007:9). In accordance to the sampling techniques of qualitative research, *purposive* data sampling is most used, which we applied to our research as we carefully selected participants based on the likelihood that they would be able to generate useful information to our research (ibid). Consequently, we chose our sampling strategy based on the purpose of our research topic. Moreover, referring to Brikci and Creswell, since there are few organisations providing legal aid in Zimbabwe, our sample of six organisations was sufficient enough for our research. Although there were two more agencies that we could have interviewed, we asserted that we had reached our point of saturation after 11 in-depth interviews and follow-ups of

personal communication. Moreover, the chosen organisations operate on a large scale, involving up to 80.000 people per year. Due to the size, we chose to focus on interviewing specific key persons within each organisation.

### 3.4 Data Sampling and Techniques

The legal aid providers who participated in our study were chosen based on their leading role within their field in Zimbabwe. Therefore, our purposive data comprises of legal frameworks appropriate to the issue of legal aid in Zimbabwe. Through our contacts at UN Women in Zimbabwe, we conversed with relevant stakeholders within legal aid and support services, or who has expertise knowledge in relevant fields. Following organisations have been interviewed as they receive clients and provide legal aid support and other legal services and or due to their experience and expertise within this field (see Appendix: *Presentation of Organisations* for more information).

The legal aid organisations all divide their work into two main areas: legal aid and legal education. Legal aid and support services include free services--such as legal advice, help with drafting, and legal representation. The legal education includes trainings and spreading of information, advocacy, communication, institutional development, research and referrals to shelters and counselling.

Figure 1. Respondents Guide

<i>Organisation</i>	<i>Nr. of Interviews</i>	<i>Date</i>	<i>Respondent</i>
Legal Resources Foundation National Office	2	February 2014	R.nr.1
Legal Resources Foundation Harare Office	2	February 2014	R.nr.2
Women and Law in Southern Africa Research and Education Trust	1	January 2014	R.nr.3
International Organisation for Migration	4	October 2013 February 2014	R.nr.4
Musasa National Office	1	February 2014	R.nr.5
UNHCR	1	October 2013	R.nr.6

As a tool for the interviews, interview guides were developed. The guides assisted in getting the most out of the interviews, comparing the answers, and drawing conclusions. The interviews were constructed to include semi structured, in depth, interviews and to adopt an open-ended approach, which could stimulate discussions and follow-up questions, in line with Brikci's suggestions (2007:11).

The second part of the interviews consists of 'private' communications, referred to as *personal communication*, in which the respondents could share their thoughts without feeling they would be hindering the reputation of their organisations and/or be held responsible for sharing. We used guideline questions for our personal communications and this qualitative approach was very much open-ended.

Standard qualitative procedures for the interviews were abided. Accordingly, as suggested by Mack et al (2005:9), the interviewees were informed about the purpose of the research and offered their consent for this study. Moreover, 'sensitive' data needs to be treated with confidentiality (Mack et al., 2005:9). Although the purpose of our study was shared, and consent given, the interviewees revealed information that is considered 'sensitive'. We therefore chose to remain unspecific of the respondents' statements in their off-record discussions that criticize/negatively chastise the government and its institutions. Such statements will be referred to as *personal communication* hereafter, without specifying identity.

*'Personal communications'* has been a well-recognised technique for in-depth qualitative research of sensitive information. Brikci refers to the same as 'oral data', as informal conversations can be far more informative than formal interviews since the respondent is most likely to share their true perceptions in an informal setting (2007:21). Other information from the interviews will be referred to as seen in figure 1 above.

## *Policies and Legal Frameworks*

The analysis is of a qualitative nature and the policy reports are seen as most crucial when relevant to a research topic since it often provides the necessary framework (Brikci, 2007:21). In order to scrutinize the first part of our research, which explores the role of the state in legal aid provision, the *international and national legal frameworks* that bind the state to the obligation of legal aid provision are examined.

A qualitative textual analysis is used as the main method to treat these policies and legal documents as it allows for contextual and interpretational discussions. Textual, contextual and interpretational analyses are therefore qualitative and analytical tools. They are often used to scrutinize written forms of human communication--such as laws, policies and documentation (Babbie, 2010:201). The qualitative aspect to this methodology allows one to explore the ‘meanings’ and ‘norms’ behind the textual content of the legal frameworks as a means to interpret and contextualize each document.

Figure 2. International Instruments

<i>International Instruments</i>	<i>Adopted</i>	<i>Ratified</i>
The Universal Declaration on Human Rights (UDHR)	Adopted by the General Assembly in 1948	N/A
The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Adopted by the General Assembly in 1979	Ratified in 1991 by the Government of Zimbabwe
The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (The Protocol)	Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo in 2003	Signed in 2003 and ratified in 2008 by the Government of Zimbabwe
The International Covenant on Civil and Political Rights (ICCPR)	Adopted by the General Assembly in 1966	Ratified in 1991 by the Government of Zimbabwe

Firstly, our primary data of *International Legal frameworks* is chosen according to its relevance to legal aid provision laws (see Figure 2). Therefore, the international laws, which treat the role of the state in providing legal aid, were selected and consist of four main international legal frameworks. Secondly, the three main

Zimbabwean Legal Frameworks that treat legal aid provision were selected as primary data for the *National Legal Frameworks* analytical discussions (See figure 3).

Figure 3. National Instruments

<i>National Instruments</i>	<i>Adopted</i>	<i>Information</i>
The Constitution	2013	In May 2014 the laws had not yet all been aligned to the Constitution.
The Legal Aid Directorate (LAD)	1997	The government of Zimbabwe established in 1981 the Legal Aid Provision to respond to the growing needs of persons who could not afford to access legal services. In 1997 was the department created to deliver services.
The Domestic Violence Act (DVA)	2007	Signed in 2003 and ratified in 2008 by the Government of Zimbabwe

Necessary secondary material, such as reports and news articles, have also been collected in order to capture how different actors experience the implementation process as well as the provision of legal services on a grass-root level.

### 3.5 Validity and Reliability

This thesis investigates how the government lives up to its obligation to provide legal aid, and to what extent these policies have been implemented by the government and/or private organisations. The selection of participating organisations was made together with our key contacts in Zimbabwe. Most of the organisations are among the greatest (in size of staff/offices/clients). The selection had an inclusive scope and most importantly each organisation covered great parts of Zimbabwe, including rural areas through offices as well as mobile offices and outreaches. All our interviews with these organisations were conducted in the capital, Harare, which could question the validity of our data. Nevertheless, our focus in this study is on legal documents and *the experiences* of organisations working throughout Zimbabwe. It was a concern as to how many interviews were needed in order to generalise and draw conclusions. However, we

decided to have, as described previously, fewer but more in-depth interviews (6 organisations and 11 interviewees) with organisations that had extensive documentation (to allow for desk research), reputation and had received many clients. For example, each organisation has several offices throughout Zimbabwe and involve up to 80 000 people yearly (LRFb, 2013). To include more than one employee per organisation seemed more favourable than including an additional organisation. However, the selection of organisations was inclusive as we have small to large organisations working in rural and urban areas and who target women, men and children. It could be argued that the responses are relatively similar, with the alike understandings of the problematic and comparable challenges on this matter. This could be partly explained by the collaboration between these legal aid providers in Zimbabwe.

A challenge has also been the lack of documentation concerning, the participation of the Government, in particular the department of LAD. There is an inordinate lack of accessible records from, and of, the LAD as well as other governmental law enforcement actors. To strengthen parts where data is lacking, the study has dual research methods to analyse and understand implementations of policies, laws and frameworks and to collect information on how the legal aid system is working through private organisations.

However, the participating organisations work with the government and have shared their opinions about the departments' success. It is important to be cognisant of the political situation in Zimbabwe, in which our respondents live. Zimbabwe is frequently criticised for violating Human Rights and the president is often considered a dictator in western society (The Herald, 2013-06-13). Because of this, NGO's as well as the UN are often blamed for spreading lies contributing to this image (The Herald, 2013-12-10). One could question how genuine these shared opinions are, and how much the interviewees have chosen to share with us. To avoid this, we have chosen to remain use anonymity of the respondents in discussions and statements regarding the government and its institutions. Furthermore, the lack of documents and records is not necessary lack of information as this could also be an indication of information that they do not wish to share with this study.

## 3.6 Limitations and Ethical Considerations

The considerations of ethical issues are core elements of qualitative methodologies, because research has the possibility to expose the unexposed (Brikci, 2007:5). We therefore conducted our thesis within the guidelines of the principles of ethical concerns by Tom Beauchamp and Jim Childress (1989): *Autonomy*, as a means to respect the rights of the individual. *Beneficence*, to ensure your work is “doing good” for the situation. Additionally, *consent* and *confidentiality* are key to qualitative research (Rocha, 2004:7-11). All participants in this research have freely *consented* to participate in this research and were given information regarding the nature of our study. Additionally, much of the consent we received was largely due to our promise of *confidentiality* as all measures were taken to protect the names and personal details of the individual participants as not to have the information they have shared inflict them negatively.

This study focuses on women and legal aid as they are the majority of legal aid clients and are according to statistics disproportionately exposed to violence. However, women are not the only ones suffering from the lack of human rights in Zimbabwe. Moreover, due to our selected scope, we have identified a limited number of legal instruments, policies and frameworks that are relevant for our study. Several other policies concern the provision of legal aid and the state’s obligation to provide such. However, they are not included due to space limitations, as we selected those most commonly used by the participant organisations. Since our thesis partly concerns the government and how well it has lived up to its obligations, any critique towards the state will therefore be considered sensitive.



## 4 Previous Research

Since Legal Aid Service Provision in a Failed State is a neglected topic, examples of legal aid in other parts of the world have proven to be rather incompatible to the unique Zimbabwean context, given the country's unique background and socio economic culture. Therefore, most relevant previous research concerns the 'principle of law' and the 'international perspectives' on criminal justice. Additionally, some previous research on Zimbabwe covers gender norms and illustrates that women are the central 'clients' of legal aid. With this, it is therefore possible to discuss how the laws guiding Zimbabwe may, or may not, be appropriate to their context and explain possible challenges for implementation.

### 4.1 The Principle of Law and Civil Aid

When analysing legal frameworks, it is important to consider the basis by which laws are formed. This is particularly applicable to the legal dogmatics relevant to Zimbabwe. Esser (1956) and Dworkin (1977) provide arguments on *the principle of law*. Esser argues that judges form principles while Dworkin, states they restrict the judge's decision. Hence, for Esser, principles are not related to ethics but required to justify. Dworkin refutes as he considers principles to be ethical, as the existence of principles derives from positivist understandings of rights and morals (Narits, 2007:3-4). Thus, when analysing laws, both the 'written source' and the ethics/morals of the executors need to be considered (Narits, 2007:16-17).

Previous research on *civil law theory* argues for the provision of legal aid services to ensure human security and justice, especially in countries where the majority of the population are poor (WHO, 2013). The main idea is that *principle of law* and *the objective of the law* cannot be separated (Narits, 2007:17). 'Principles' are aimed towards finding a 'traditional provision-based generalisation' while Civil Law

incorporates considerations of the relevant political and moral context (ibid.). Therefore, it is especially important to consider the context in which the law should be followed and the principles formed.

## 4.2 Gender Norms and Justice in Zimbabwe

In the case of implementing legal aid services in a failed state, previous studies convey that without legal aid, criminal justice is not ensured. The United Nations Principles on Access to Legal Aid in Criminal Justice System directly highlights the issue of access legal aid, as there is a clear gap between policy making and implementation. This confirms the *right to legal aid*<sup>4</sup>, is especially for the poor who cannot afford/access it (UNODC, 2013). The UNODC further emphasises that provisions need to be made for children, women and girls, as consideration should be given to all subordinated groups within policy-making and implementation (2013:16). Therefore, when researching implementation of aid, considerations for the majority its users are crucial (Hindin, 2003:53).

In Zimbabwe, women and girls are particularly vulnerable when it comes to the access to, and need of, legal aid. Gender studies illustrate that during and after country conflicts there are higher levels of violence and GBV (Stemple, 2007:616; Schott, 2011). A study from 2011 revealed that two thirds of the women in Zimbabwe have experienced GBV in their lifetime (MWAGCD & Genderlinks, 2013:12) and 92% of victims of GBV report their current or former spouse or partner as the perpetrator (ZimStats, 2012). The Global Peace Index 2009 reveals that 80% of all murder victims in Zimbabwe were women (Musasa, 2013:5).

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<sup>4</sup> UNODC Guidelines to the Provision of legal aid free of charge states: “Whenever States apply a means test to determine eligibility for legal aid that is free of charge, they should ensure that: (a) Persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted or where it is in the interest of justice to provide such aid, are not excluded from receiving assistance; (b) Persons urgently requiring legal aid at police stations, detention centres or courts are exempted from the test; (c) The criteria for applying the means test are widely publicized; (d) Persons who are denied legal aid on the basis of the means test have the right to appeal that decision; (e) If the means test is calculated on the basis of the household income of families but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test” (UNODC, 2013:6)

Moreover, studies conclude that VAW is widespread but widely under-reported (Abdullah-Khan, 2008:26; Davies et al., 2008:534). The GBV Baseline Study 2013 exposes that only one out of fourteen women who were physically/sexually abused, and only one in seven rape survivors, reported to the police (MWAGCD & Genderlinks, 2013:12). Further, nearly 50 % of cases reported to police are later withdrawn (Musasa, 2013:6).

Negative sociocultural attitudes, norms, and weak policy implementation reinforce discriminatory behaviour and GBV (Musasa, 2013:5). Women's social, cultural and economic dependency on men limits their access to legal aid (Musasa, 2013:6). Attitudes regarding gender norms are deteriorating, demonstrated by a study which illustrated that in Zimbabwe, younger women are more likely to find spousal violence justifiable than the older women (Hindin, 2003:55). Over half of all women believe that wife beating is justifiable in at least one given circumstance (ibid).

Limited legal aid has disastrous consequences not only for the victims, but also for the society. A study by the Swedish International Agency and UN Zimbabwe estimated that VAW in Zimbabwe costs up to 2 billion US dollars per year (United Nations Zimbabwe, 2012). Consequently, VAW should therefore be considered a major hindrance to development in Zimbabwe.

# 5 Theoretical Framework

The following chapter presents an outline of the theories that permeate the analysis. Firstly, legal dogmatic theory is used as a guideline for the analytical treatment of legal frameworks. Secondly, implementation theory serves as the main theory as it provides an understanding as to why and how implementation might fail, and what is needed for successful implementation of law. Thirdly, failed state theory is used to explain how the lack of good governance contributes to poor access to legal services. Lastly, provision and accessibility theory is discussed, with a touch on gender theory, as it allows for the analysis of the main ‘clients’ of legal aid in Zimbabwe.

## 5.1 Legal Theoretical Framework

When dealing with the analysis of legal frameworks, there are specific legal theoretical tools by which this should be done. Fittingly, *Legal Dogmatic Theory* is used to depict the ‘meanings’ and ‘norms’ behind the laws we are analysing. Accordingly, our legal frameworks are divided into *the two traditional levels of dogmatics*, and then aligned to their *area specific legal dogmatics*.

### *Legal Dogmatic Theory*

*Dogmatic* refers to a ‘study’ within an existing and set of a legal framework (Narits, 2007:22). Dogmatics therefore provides tools that can be used to describe, categorise, interpret and analyse laws as structure of norms (Dalberg-Larsen, 2004:171). Legal dogmatic theory presents the most efficient way to tackle issues such the creation and implementation of law (Narits, 2007:20). Legal dogmatics embody the multilevel study of law and is therefore most related to reality (ibid.).

There are two traditional levels for dogmatic analysis: 1) “*General Dogmatic Understanding*” 2) “*Sentences that Form a Certain System*” (Narits; 2007:22). However, these levels can be criticised to ‘fail the test of time’ in cases where the *two levels* of dogmatics are applied without considering the *area specifics*. Because dogmatics is supposed to fundamentally depict something unchanging and petrified, it challenges reality where the prerequisites are ever-changing (Narits, 2007:22). Therefore with the ‘two level’ approach, *area specifics* need to be constantly revised for successful implementation of the law, especially in countries like Zimbabwe, where drastic changes are occurring on a political, social and economic scale.

## 5.2 Implementation Theory

Because of the complex nature of implementation, related theories are numerous and no single approach could be considered universal. The more complex and intricate a policy is, the harder it is to find a suitable implementation model to use (Evans et al., 2004:32). To investigate the realities and challenges of implementing legal aid in Zimbabwe, implementation theories are used to reveal possible reasons for successful and/or weak implementation. Specifically; the ‘classic’ theory by Lipsky and Sabatier (1980), and Birkland is used to analyse ‘contemporary’ challenges of implementation. Failed State theory is used to contextualise implementation in Zimbabwe’s case. This not only provides guidelines for policy making, but also presents a basis by which improved implementation can be formed.

### *Bottom Up & Top Down Approaches in Failed States*

To analyse the structural issues surrounding poor implementation in Zimbabwe, Lipsky (1980) is used to both understand, and categorise, the obstacles faced by Zimbabwe, especially concerning private organisations that provide legal aid. *The bottom up approach* by Lipsky (1980), describes that local levels are the ‘implementers’ of policies and are mandated from the top. Lipsky defines ‘street level bureaucrats’ as “*public service workers who interact directly with citizens in the course of*

*their jobs, and who have substantial discretion in the execution of their work*” (1980:2-3). Therefore, he argues that local levels hold the power of implementation, which establishes policy goals and determines their success, due to their individual ‘freedom of choice’ in either implementing, partially implementing, or disregarding the policies made by high-level bureaucrats (Lipsky, 1980:3). Like in Zimbabwe, the services delivered by the government are ultimately created and upheld by the actions of the ‘street level bureaucrats’. The *critique* that the street level bureaucracy model receives is mainly that it puts too much emphasis on the ‘power’ on the ‘street level’ public service providers.

For a more linear perspective on implementation, Sabatier and Mazmanian (1980) provide a detailed implementation model. The first assessment defines characteristics accompanying the policy, actors and systems involved. The model is divided into three categories: “*tractability of the problem*”, “*ability of the statute to structure implementation*”, and “*non-statutory variables affecting implementation*” (1980:541). ‘Tractability’ is deeply linked to behavioural change, which shapes implementation (Sabatier and Mazmanian, 1980:541-2). Consequently, societal issues and behaviours will result in lower rates of implementation success (ibid). The categories that structure implementation are linked to the ways in which policymakers choose to address them (Sabatier and Mazmanian, 1980:541-2). During the implementation process policymakers decide the goals and how to reach those goals. They must therefore create policies with an execution-based view (Theodoulou et al., 1995:155).

While creating a policy it is important to *distinctly define the problem* with “*clear, explicit, precise, measurable and reliable objectives that are ranked in importance*” (Sabatier and Mazmanian, 1989:542-3). The process of structuring implementation entails the incorporation of a legitimate *causal relationship* where the policy should therefore include a ‘means to an end’ approach (Sabatier and Mazmanian, 1980:545). *Resources* are the next implementation characteristic to take into account, as there needs to be adequate financial, and other resources, readily available during the entire implementation process (1980:546). Further, incentives are important for compliance (ibid). *Compliance* is presented in a four part implementation model and includes: attitudes/behaviour of target groups

regarding the legitimacy of the rules; sanctions for non compliance; costs for target group to comply; and the likelihood that non-compliance will be exercised. Policies need to consider all aspects of compliance to ensure successful implementation (Sabatier and Mazmanian, 1980:546-9).

Birkland's (2001) contemporary perspectives are used to investigate the current trends of Zimbabwe and the outcomes of such trends. Birkland (2010) acknowledges Lipsky and Sabatier's theories, yet explains that in the contemporary world, these classic theories are no longer able to stand alone as they are far more 'connected' than they are counter theories. Accordingly, there are three main theoretical approaches to implementation: top down, bottom up and *the combined approach* (Birkland, 2001:179-180). Like *the top down approach* starts with a 'message' passed from the top that trickles down the chain, *the combined approach* includes messages being passed both up and down the chain (ibid.). *Top down* is based on the assumption that the 'message' is composed of distinctly defined objectives, a clear goal, and specified tools (Birkland, 2001:180). However, for successful implementation, grassroots need to be included in decision making process as they too have an in depth understanding of the available capacity and the level of commitment of the implementers (Birkland, 2001:184).

### ***Reasons for Failed Implementation***

The reasons for failure of the *combined approach* are due to: weak levels of consensus regarding the main goal; rejection or weak cooperation between the state and grassroots; sanctions or poor incentives for compliance; and contesting interests of stakeholders (Birkland, 2001:179-181). Failure also derives from: too high expectation from local power; the assumption that groups are committed to their participation; and the possible lack of resources that are needed for implementation (ibid.). This approach therefore assumes that the end goals are mostly over ambitious, not clearly defined and could contest with existing legal frameworks. If local level implementers are given higher bargaining propensities within decision-making, the policy could instead be made by a network of stakeholders (Birkland, 2001:182-183).

In the case of Zimbabwe, one needs to address the effects of a *Failed State* on implementation. The Failed State Index focuses on three aspects: social, economic and political (Fund for Peace, 2013). This is characterised by: erosion of legitimate authority to make collective decisions; inability to provide public services; inability to interact with other states as a full member of the international community; loss of control over territory; or lack of the legitimate use of physical force within its territories (ibid.). The Failed State Index has received critique regarding its vague, and sometimes misleading, ways of measuring the instability of country (The Guardian, 2013-06-28). However, considering Zimbabwe's unique economic and political history, the case of implementing legal aid greatly correlates to challenges presented by the failed state nature of Zimbabwean.

### 5.3 Provision and Accessibility

Access to legal justice is a Human Right and fundamental part international law, where minimum standards of compliance are defined and the obligations for states to follow are legally binding (Hellum et al, 2007:25-26). Thus, the state has an obligation to provide, and is accountable for, the provision of legal aid. Individuals seeking legal representation, who cannot afford it, should be able to rely on the state for assistance. As demonstrated by the principle of law, the state is the entity that has the mandate for administering justice (ibid.). The provision of legal aid is therefore part of state's obligation to *secure internal justice* for all of its citizens (Gross, 1977:39).

According Harris et al. (2001), the reasons determining access to legal services is not only financial assets, because even with subsidised/free aid, the poorest parts of societies will still have the least access. Harris's notion is highly applicable to our study as the poor often live in rural areas (2001:774). Rural areas are far from the larger cities and therefore, transport costs may be too high for the individuals to seek 'free' legal services. In cases of poverty, the individual is also more prone to have a higher workload which will further constrain their ability to leave their home, even for a short while (Harris, 2001:774). For women, this could mean child-care and household chores (Hellum et al, 2007:25). Thus, the 'costs' of



seeking legal services are not only monetary, but of time as well. All 'costs' are higher to the poor and the subordinated parts of a society (Harris, 2001:775).

## 5.4 Gender and Policy-making

Gender issues are given low priority by many governments due to women's subordinate status and "*their invisible role*" in development, particularly in the Third World (Moser, 1993:2). Inclusion of gender is important as state liberties control the lives of women through legal policies; for example, domestic violence (hereafter DV) and women's economic dependency on men (Moser, 1993:41). Many regard this as state control over the 'private sphere' thus states must firmly support women (Moser, 1993:44).

Traditionally, women are excluded from decision making due to 'socially constructed' views and, instead of this focus, the social position of women needs to be included in gender planning (Moser, 1993:3). Over the last decade, theories have begun to explore social relationships between men and women to explain women's subordinate position in the society (ibid.). These highlight that attitudes and norms of the society must be taken into consideration during policy-making. Failure to develop/implement gender policies often occurs since decision-makers are predominantly male and gender-blind, a common result of normative gender roles that favour men (Maringira & Sutherland, 2010:1). Formal training on gender is needed for all, since hiring females with the assumption that they 'naturally' understand women issues and can therefore provide solutions is not sufficient (Moser, 1993:5). Studies show that even women with feminist values do not always work in accordance to their beliefs as it could hinder their careers (Breuning, 2005:4). Instead, values of a *society* have the greatest impact on gender-successful implementation as it reflects on policies, rather than solely focusing on female representation (Breuning, 2005:2).

Gender-sensitive policy making in developing countries must be prioritised and based on aspects such as ethnicity, class and location (Moser, 1993:37). Maringira and Sutherland highlight the need for rural/urban differentiation in policies, as women are often the majority in rural areas (2010:1). Furthermore, Moser argues

that the state must take responsibility from planning stages and in implementation in terms of economic, social and environmental needs (Moser, 1993:84).

## 6 Legal Frameworks and Policies

Human rights are a fundamental part of international law where the minimum standards of compliance are defined, and the obligations for states to follow the same are made law (Hellum et al., 2007:25). As a sovereign state, Zimbabwe has the obligation to respect, enhance and protect Human Rights as set out in these legal documents.

### 6.1 International Instruments

Internationally, the state responsibility to provide legal aid is affirmed by UN and regional instruments. Zimbabwe is part of a number of international conventions that provide for gender equality and legal rights, and has ratified all listed documents; The CEDAW, The Protocol and the ICCPR.

#### *The CEDAW*

The Convention confirms that states are obliged to ensure legal protection of women and that civil legal aid is necessary to fulfil that obligation. Specifically, women's equality must accord with men's before the law, in all national objectives (CEDAW, 1979). The CEDAW is greatly relevant as it legally binds Zimbabwe to states obligations that ensure equality between men and women, and the provision of legal aid.

#### *The ICCPR*

The International Covenant on Civil and Political Rights specifies exact obligations held by the state for the provision of state funded legal aid to destitute and indigent clients; *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:...(d) to have legal assistance*

*assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*' (The ICCPR, 1966: Article 14:3:d)

With this, it is apparent that legal aid is aligned with the theoretical framework of Hellum (2007) as this article is based on the aims of equality of all individuals. For that, the state needs to ensure equal provision of human rights, such as legal aid (Hellum et al., 2007:25). Therefore, individuals who are unable to afford legal services must be given aid that grants them with the opportunity, and human right, to defend themselves on an equal basis to individuals who can afford legal representation. Nonetheless, it is important to notice that although this article binds the state to provide legal aid, the right to such is only specified in regard to 'criminal matters'. This is aligned to Skinnider's theory that suggests legal aid is focused on criminal charges, representation and advice in court proceedings (1999:12). In terms of legal aid lawyers, the Human Rights Committee on ICCPR, in Communication no. 250 of 1987, states that the counsel should be "*remunerated adequately for providing legal assistance under a legal aid plan*" which is managed and held by the state's welfare system (1999:13).

### ***The Protocol***

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa strives for access to justice to be based on, and provided with, gender equal protection in accordance to the law. Article 8 specifies "*state parties shall take all appropriate measures to ensure effective access by women to judicial and legal services, including legal aid*". This legal instrument specifies the right of women to receive legal aid and does not specify the 'type' of legal aid that they are entitled to. This is followed by a paragraph regarding provision of support to "*local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid*". Even though the nature of the support is not specified, the state has the definite obligation to make sure institutions that provide legal aid services can rely mainly on government support.

## 6.2 National Instruments

In order to investigate if Zimbabwe lives up to its obligations, relevant national frameworks treating legal aid are included; the Constitution (2013), the DVA (2007) and the LAD (1997).

### *The Constitution*

The Constitution provides policies, regulation and rules that guide the society and has been recognised for its firm commitment to gender equality. The third chapter of the Constitution concerns provisions to secure the protection of law including; the right to legal representation, a trial within reasonable time and handling of procedures in an understandable manner (The Constitution: Chapter 3, 2013).

### *The Legal Aid Directorate*

The policy was established in 1981 in response to the growing demand for legal services. It addresses the provision of legal advice, drafting and representation (Baseline Study, 2013:101). In 1997 the LAD was created under the Ministry of Justice to provide these services. The LAD only has offices in Bulawayo and Harare. The LAD assists men, women and children in civil, criminal and labour matters. In order to seek legal aid via the LAD, one needs proof of economic status and insufficient means to obtain services (Baseline Study, 2013:102). The LAD does not, in theory, require any legal fees, but requests a mandatory *contribution* (with a fixed minimum amount) to the legal aid fund - even though clients have proven to have insufficient means.

The majority of LADs clients are women seeking peace and protection orders (MWAGCD & Genderlinks, 2013:102). The department however, has a referral system and often refers clients who cannot be assisted in cases such as; a person who cannot pay the mandatory contribution fee, children who require specialised services and older clients. LAD refers to ZWLA, Musasa, Padare and LRF among others. Currently, the LAD does not receive any grants from the government (ibid.).

### *The Domestic Violence Act*

This Act was considered a major success for women's rights in Zimbabwe when it became law in 2007. It provides protection, and relief, for DV victims and focuses on police, courts, legal aid support, and medical facilities (Musasa, 2012). The DVA specifies the rights of women and recognises women's needs (DVA, 2006). DVA is developed to promote gender-sensitivity in society such as courts, policies and legal aid providers in order to increase reporting and access to legal services, which increases protection for women (Musasa, 2012).

Further, the Zimbabwe National GBV Strategy Framework 2012-2015 specifies the provision of free legal aid as part of the strengthening of service provisions for GBV survivors. However, this has not been implemented due to lack of funding according to the Baseline Study of VAW in Zimbabwe (MWAGCD & Genderlinks, 2013:111).

## 7 Analysis

The first part of the analysis concerns research question 1: “How well have Legal Frameworks and Policies regarding Legal Aid Provision been implemented in Zimbabwe?” This therefore examines which Legal Frameworks bind the State to the provision of legal aid in Zimbabwe, assesses if these policies are applicable to Zimbabwe, and explores the challenges to implementation. The second part of the analysis explores research question 2: “What are the challenges for private organisations that provide Legal Aid Services in Zimbabwe?” by analysing how they contribute to the provision of legal aid and discovering who bears the ‘burden’ of carrying out implementation of legal aid in the failed state of Zimbabwe.

### PART 1: The State’s Responsibility to Ensure Legal Aid in Zimbabwe: Policies and Realities of Implementation

The legal dogmatic method theory emphasises the importance of analysing ‘words’ in alignment to the ‘contemporary context’ i.e. the specific area in which they are to be implemented (Peczenik, 1990:45, Rütters, 2005:2). ‘*Area-specific dogmatics*’ is referred to as, “*collections of right decisions, i.e., decisions that are reasonably grounded in the framework of the current legal order*” (Narits, 2007:21). Therefore, with legal dogmatic method theory, one can begin to investigate the extent to which the legal frameworks implemented in Zimbabwe are in fact appropriate and/or applicable in the Zimbabwean context.

The country has made great progress in creating the legal instruments through enacting laws such as the DVA, the Criminal Code, Labour Relations Act, and Administration of Estates Act. The new 2013 constitution has several provisions that respond to the advancement of women's rights and is often recognised as

having a gender-sensitive approach. Despite the achievement of creating gender-sensitive laws, policies, and framework to enhance women's legal rights, little has been done when it comes to implementation. How much does increased rights matter if there is no effort to implement these policies and if people cannot access legal services and justice to claim these rights? For example, marital rape was prohibited in 2006 (UNECA, 2012). However, when there is no access to seek legal services, the law cannot be properly enforced. To protect human rights, and particularly legal rights for women, implementation of these policies is key. From the linear theoretical approach from Sabatier and Mazmanian (1980), the implementation model of ensuring successful implementation reveals the necessary characteristics of the relevant policy, involved actors and current system in place. This is presented as three categories: "*tractability of the problem*"; "*the ability of the statute to structure implementation*"; and the "*non-statutory variables affecting implementation*" (1980:541).

## 7.1 Are the Policies Applicable to Zimbabwe?

The three categories concerning behaviour, resources and compliance by Sabatier and Mazmanian (1980) can be used as a tool to analyse how appropriate these policies are to the Zimbabwean context and to explain successful or failed implementation.

### *Do the Policies Comply to the Norms and Behaviour of the Society?*

The *Tractability* category is deeply linked to behavioural change (Sabatier and Mazmanian, 1980:541), which can greatly affect the process of implementation. Particularly, in the case of Zimbabwe, behavioural changes are prominent as they are spurred by the economic and political turmoil in the country. Moreover, the theory suggests that it is also societal issues that result in lower rates of implementation success (ibid.). Therefore policies or laws created in social, economic or political turmoil must be appropriately adaptable to these societal



changes and possible behavioural changes that may come as a result (Theodoulou et al., 1995:155).

Therefore, behavioural change is deeply connected with implementation (Sabatier and Manzi, 1980:541). From our interviews, under-budgeting and low priority was stated as the main limitations of implementing existing frameworks. Low status of women has led to low priority on women's issues. Moser explains this low priority as due to societal norms and women's subordinate position (Moser, 1993:2). Moreover, no adequate financial means are made available which hinders implementation. However, the fact that laws regarding women and legal rights have not yet been aligned to the Constitution indicates that this issue has low priority. In this case, the gender-sensitive legal frameworks held by Zimbabwe are theoretically not connected to the poor societal norms concerning women and/or the behaviour towards women as a whole in Zimbabwe, as was noted in the interviews with service providers.

The interviews revealed that all organisations have a similar work-structure, divided into legal support and legal education (R.nr1-6). Part of the legal education, is behavioural and attitude changing interventions (WLSA, 2012). More specifically, legal education includes working with:

- Establishment of Victim Friendly Units within the police, courts, and centres.
- Mass media campaigns to reach out nationally
- Challenge existing practices that are unfair to women
- Inform and educate people regarding the legal rights
- Train paralegals in villages
- Challenges negative attitudes towards women in public and private spheres

Thus, policies such as the DVA and the Constitution are given great recognition for being gender-sensitive despite them missing to include practical strategies to tackle these issues. Lipsky's implementation theory argues that all public services, such as legal aid, are upheld, and often established, through the efforts of 'street level bureaucrats' (1980:3,9).

The private organisations have recognised the need for behaviour-changing interventions in order to tackle the issue of implementation. An interviewee from one of the largest legal aid organisations stated:

*“It’s an endless work. There are so many who needs assistance. There is a great need to tackle the causes and not only the symptoms. That is the most important thing. We do not have the resources to help the great masses that seek legal assistance, and even more those who don’t, but are in need of it. We need to work with attitudes, knowledge and change the society” (R.nr.1).*

Lipsky argues that street level bureaucrats have the ‘power’ to implement or depose policies (1980:9). However, this approach is highly unfair to the private organisations that are not receiving any government funding to do so. To transfer the responsibility – and the state’s obligation to provide legal services – is both unfair and, due to the dependence of private organisations on international funding, highly inconsistent. However, another respondent added:

*“It is maybe not fair to hold the government accountable for the weak implementation levels of legal aid as they too have scarce resources as do we. However we pull together as smaller entities and that is why we are able to provide the services we do. I would say that the government main downfall is in their lack of participation with all of us. We have tried to involve them but too often our invitations remain unanswered, for this I would hold them accountable” (Personal Communication: Questionnaire 2:E1, E2, E4).*

Policy-makers need to be aware that established policies comply with the social and cultural environment and make sure that attitudes comply with the set policies. Furthermore, they need to make certain that policies comply with existing resources to make implementation possible. This brings us to the next important characteristic for implementation: resources.

### ***Do the Policies comply with Available Resources?***

Resources are the next implementation characteristic to take into account as Sabatier and Mazmanian draw upon the vitality of there being adequate financial, and other needed resources readily available during the entire implementation process (1980:546). Resources cause both the implementers and target groups to

follow policy rules, monitor their compliance, and ensure information sharing regarding policy objectives and structure. Incentives to comply and sanctions for refusal are also key to implementation (ibid). As stated by the respondent above, the LAD is suffering greatly from being under-funded and understaffed. Difficulties with implementing the LAD can be therefore be linked to the major under-budgeting and understaffed situation in which the LAD is operating. Most organisations state that the LAD consistently refers clients to private organisations providing free legal aid, even though they are responsible for implementing the law. However, this could also be explained by having ‘different interpretations’ of the law. Nevertheless, a more likely explanation would be the low priority and the weak link between policy-making and available resources.

The most important parts of implementation are ‘defining the problem’ and ‘stating clear, measurable and reliable objectives’ (Sabatier and Mazmanian, 1989:542ff). According to the interviews, sufficient legislation and policies exist, and the DVA in particular was seen as holistic. However, DVA’s implementation has experienced severe challenges (Musasa: Gq3, 2010:3). Upon closer inspection of the act, and its specific objectives, it becomes apparent that societal structures have not yet caught up with the policies. As Rütters argues, laws and policies may not be appropriate and effective where there are large social changes occurring which are not aligned (Rütters, 2005:1). The DVA is often blamed for having failed its implementation due to various social, economic and cultural reasons. These are for example, increased awareness of the act, impartial police officers, corruption, weak commitment from the police, acquiring protection orders should be free, women should be allowed to speak in court and that withdrawal should not be allowed (Musasa, 2013:9).

The National GBV Strategy Framework 2012-2015 includes a provision of free legal aid as part of the strengthening of service provisions for GBV survivors. However, this has not been implemented due to lack of funding according to the Baseline Service of VAW in Zimbabwe (MWAGCD & Genderlinks, 2013:111). This is yet another example of policy-making that has not complied policies with available resources which Sabatier & Manzmanian (1980:546) and Birkland (2001: 179-181) point out as crucial. For successful implementation, it is important that

clear goals are created and that important stakeholders have a common and shared view on what is to be achieved. Birkland explains that the most common reasons for failure are weak levels of consensus regarding the main goal; rejection or weak cooperation between the state and grassroots regarding the said implementation; sanctions or poor incentives for compliance; and contesting interests of stakeholders (2001:179-181).

This issue serves as the basis for a call to action of the Zimbabwean government to prioritise this problem, despite the lack of resources. The fact that the laws have not yet been aligned to the Constitution could be due to economic constraints, but also a result of a lack of effort and low priority of this issue. This leads to double punishment for the victims. Firstly, victims cannot receive justice. Secondly, by overlooking or ignoring the issue, it sends the message that neither the issue nor victim is important (Boréus & Bergström, 2005:77-78).

### *Is Everyone On board?*

Sabatier and Mazmanian's model complies with Birkland's theory on 'why implementation fails'. They focus on solutions and argue that *compliance* is key to implementation. This four-part implementation model includes attitudes/behaviour of target groups towards the rules: sanctions for non-compliance, costs for target group to comply, and the likelihood that non-compliance will be exercised. Policies need to consider all aspects of compliance to ensure successful implementation (Sabatier and Mazmanian, 1980:546-9). In the DVA it is clear that the main challenges with its implementation is weak cooperation, and no joint understanding, between police, courts, legal service providers and health centres (Musasa, 2012:3ff). The LAD, created by the government to provide free legal services to those in need, demands mandatory 'contributions' (Musasa, 2013:11). This makes the 'free' service inaccessible for the poor; with a majority are women, who seek justice. In other words, the LAD has not complied with the international policies, signed and ratified by Zimbabwe, which obliges the government to fulfil its responsibility to those in need.

Further, the traditional courts, which are often used in Zimbabwe, do often not recognise or practise the DVA objectives (Musasa, 2012). Although the

international frameworks provide an explicit rule that states are to provide legal aid, it could be questioned if such international guidelines are appropriate and applicable to the failed state of Zimbabwe?, due to corruption and a severe lack of resources. It is difficult to hold the state accountable for not fulfilling its obligations in accordance to legal frameworks when there is a high possibility that they are unable to follow these legislations due to the failed state context of Zimbabwe. On the other hand, it seems evident that the government do not prioritise the need for legal aid, as Zimbabwe has not yet aligned the laws to the national 2013 Constitution. The respondents stated that they had been promised an alignment several times. The last government announcement was that laws concerning women and law would be aligned by mid May 2014 (Interviews, R.nr.1-6). Yet there has been no progress or sign that indicates alignment. None of the organisations thought this would happen (R.nr.1-6).

## 7.2 What are the Challenges for Implementation?

Zimbabwe's implementation of Legal aid sees a mainly 'top down' approach. Yet, beside the creation of the LAD, participating organisations feel the government does not do enough for the implementation of the LAD. Even though the successes of legal aid provision are mainly due to private organisations, a bottom up approach to implementation is not appropriate in the case of Zimbabwe as smaller organisations have little to no say in policymaking.

### *The Lack of Accountability and Mutuality*

The mixed 'modern' approach to implementation would best suit Zimbabwe according to respondent organisations. However, their communication with government is weak. Further, these organisations feel that their work is often accredited to the government, while their successes are mainly due to partnerships with similar organisations and international funding. Although it seems implementation successes are due to private organisations, our questionnaires

reveal that respondents feel understaffed and under-resourced and therefore have too high of a workload. Further, the data strongly suggests that Zimbabwe follows a predominantly 'top down' approach in terms of the policy formulation and legal frameworks that serve as borders in which organisations must operate. However, in cases where organisations and NGO's have tried to encourage government action, efforts have been mostly rejected. For example, all service providers that were interviewed in this study stated that they received women seeking legal aid than what they could take on, even though these women are lawfully entitled to their services. Nevertheless, there is no way to demand accountability when the state has failed follow their obligations, as evident in the international frameworks.

Drawing on the theoretical perspectives regarding the failures of both of the top down and bottom up approaches, Birkland (2001) argues that in contemporary terms the mixed approach provides for efficient implementation (2001:184). Although this theory may hold in most of the world, it is not currently possible in Zimbabwe due to a strict political rule, and top down nature that governs that country. This is because the combined approach is specifically dependent on key processes of communication and negotiation (Birkland, 2001:184), which would require government's participation with organisations.

### *The Lack of Awareness*

Awareness is crucial to implementation for the public realisation of policies. This includes awareness among the population concerning legal rights, illegal practices, how/where to seek assistance, and awareness among the executioners of law. From the interviews, the all organisations stated that there is a great lack of knowledge concerning legal rights and awareness of the law is almost non-existent (R.nr.1-6).

Low awareness and knowledge contributes to immense underreporting. This also contributes to the low confidence for police, courts and magistrates because the language used is too complicated for the majority of the population (Musasa,

2012:6). All interviewees stated that awareness about one's legal rights is a crucial aspect in ensuring legal justice.

Further, The DVA has been criticised for excluding important aspects for successful implementation. Moser's theory argues that decision-makers are male dominated and often gender-blind (1993:3). The lack of understanding gender issues reinforces gender stereotypes and the subordinate position for women ((Maringira & Sutherland, 2010:1). For example, corruption has not been dealt with sufficiently which leads to major obstacles for women who seek assistance at police and law enforcement (Musasa, 2013:10). Bribes, 'sexual favours' and threats have been widely reported (ibid.). There is also a lack of knowledge of how to receive, treat and refer GBV survivors. This is referred to as a 'severe knowledge gap' that hinders implementation by Moser (1993:5). Victim Friendly Units have been set up in courts and at police stations. However, these are few and mainly rely on 'donors', making it inaccessible for most of the population, rural populations in particular (Musasa, 2013:11). Survivors therefore do not receive the assistance that they are entitled to. Referrals by government to health clinics, legal aid providers and counselling are not satisfactory and many victims are sent home since incidents 'between husband and wife' are considered a 'private matter' (Musasa, 2013:10).

To increase awareness among law practitioners there are guiding legal instruments such as the Domestic Violence Act, the Criminal Code, Labour Relations Act, and Administration of Estates Act (MWAGCD & Genderlinks, 2013:91ff). They address issues such as the need of Victim Friendly Units at the police stations and courts, and increased understanding among judges and policemen concerning violations against women's rights from a cultural, economic and social point of view (ibid.). Interviewees described the lack of awareness to often lead to worsened situation for victims. For example, victims are forced to go the police stations before receiving medical assistance, leaving them with lifelong medical issues, and, victims are sent home because DV is a private matter (LRFb, 2013:2). Lack of awareness is therefore not only a sign of passivity but it reinforces and maintains gender stereotypes and violates human rights.

### *The Lack of Alignment to Social and Cultural Norms*

From the theory by Harris, the most prominent factor that determines access to legal services is not necessarily mainly financial assets (2001:774). Therefore, even though legal aid is provided under the assumption it is offered for free to those who cannot afford it, Harris's arguments can be used to analyse the social and cultural contexts that may affect the access of women (2001:774). Although his theory is not gender specific, he suggests that even if legal services are free, the poorest parts of societies will still have the least access. This is due to other burdens such as roles in the family, subsistence farming and traveling distance into the city, which does not allow the individual the time needed to access legal services. With this, one can look into the gender theory that states that 70% of the poor are women (UNDP, 2013). Therefore, since women are the poorest of the poor; and due to the Zimbabwean social and cultural contexts that place women with the highest work burdens at home; women in the poorest areas are least likely to be able to access legal aid services. This, as suggested by Harris, is not a burden imposed only by financial constraints but by time constraints that hinders the ability of rural women to seek legal aid, even if it is free of charge. This also relates to the discussion of legal frameworks where it is noted that for improved implementation, a differentiation between rural and urban areas in needs to be considered during policymaking.

## 7.3 Are these Policies Sufficient Enough?

The Constitution has amendments that are particularly relevant for women and the enhancement of women's rights (Constitution of Zimbabwe, 2013:38). Nevertheless, provisions of legal aid, specifically for poor women, are not specified. Since women are overrepresented in the poorest parts of Zimbabwe, as suggested by Harris, all 'costs', i.e. not only financial, are higher to the poor (2001:775). Therefore, the constitution should specifically highlight the struggles faced by these women.



Further, increased gender sensitivity needs to be applied to all international law, especially in the case of human rights. Often, human rights documents addresses 'citizens' which neglects the specification of 'women' as main seekers of legal aid (Hellum et al., 2007:22). Although, this mechanism ensures the inclusion of 'all citizens', it has created a gap resulting in women's vulnerability. By not specifying the language used within these instruments, the barriers specific to women are not highlighted, as these may not form a part of the barriers to 'citizens' in general (Hellum et al., 2007:25). The interviewees all declared women's particular vulnerability as crucial, due to gender stereotypes and women's specific exposure to violence. This particularly concerns women as disproportionately exposed to DV, while expectations are to keep such family matters 'private'.

Conversely, Zimbabwean legal frameworks are quite renowned for being highly gender sensitive. However, the lack of priority and resources reduces the realisation of these policies and constrains their very aim, and dubs them ineffective. The previous high demands for gender sensitive policies have been partly silenced by the adoption of new policies, yet they remain ineffective until implemented successfully.

Further, legal services and courts are often blamed for being inaccessible due to complicated proceedings, poor drafting and language (Musasa, 2013:11-12). According to the Constitution, the government has tried to increase awareness regarding the Constitution and one's rights. Yet from our respondents' experiences, the Constitution itself has often been blamed for using a complex language that leaves room for misinterpretation among both victims and lawyers (Interviews, R.nr.1-6).

## PART 2: Implications of Weak Implementation: Challenges for Private Organisations

In order to analyse the ways in which private organisations contribute to the provision of legal aid services in Zimbabwe, we begin by assessing the role of the state as it, to a large extent, provides the guidelines by which each organisation needs to follow. The obligation to provide legal aid is primarily the responsibility of the state as it is the entity that needs to uphold international human rights, and an effective judicial system (Gross, 1997). However, if one draws upon the implementation of the LAD that was discussed in the first part of the analysis, it seems as if the content of this policy and the realities of its implementation do not match.

### 7.4 The Contribution of Private Organisations Implementing Legal Aid

#### *The Relationship Between Government and Grass-root Organisations*

The ‘bottom up’ approach to implementation theory suggests that all public services, such as legal aid, which are delivered by the government, are in fact upheld, and often established, through the efforts of ‘street level bureaucrats’ (Lipsky, 1980:3,9). With this, one could say that while the government of Zimbabwe plays a role in forming legal frameworks for legal aid, e.g. LAD, it is precisely the actions of the grass root and civil organisations that hold the burden to uphold the implementation of these laws.

Further, it is mainly through ‘street level’ services that individuals meet the government while it is often their only means of encounter. This government ‘image’ is therefore signified to the public through the organisations who hold the power of ‘representation’ (Lipsky, 1980:3,9). One of our respondents stated:

*“It seems that in the case of legal aid provision in Zimbabwe, the government is applauded for the creation of the LAD which is often interpreted as the foundations of successful implementation efforts. But when it comes to the practicalities of implementing this policy, they are nowhere to be found. Therefore, this duty becomes one for private organisations like ours”* (Personal Communication: Questionnaire 2).

As mentioned by the respondent above, government is being ‘applauded’ while it is actually private organisations doing the vast majority of the job. In line with Lipsky’s theory (1980), the organisations and NGO’s successfully dealing with legal aid are therefore signalling a positive government image to the public, even though the majority of these organisations are internationally funded. This means that the government’s efforts to implement such laws are often overlooked while the nongovernmental implementation rates are measured. Fittingly, the Constitution has one paragraph that affirms the promotion of public awareness of it. This means to disseminate awareness, and to increase the knowledge, regarding the rights of people. Private organisations and UN agencies play a large role, when it comes to simplifying the language used, and spreading awareness regarding legal rights so that people can actually claim their rights. This was emphasised during a participation observation at UN Women’s partner meeting on the new constitution. Without knowledge regarding one’s rights, there is no will to seek justice and legal services. However, the respondents also stated that this causes difficulties for the organisations, which will be discussed further down.

More than half of the respondents claimed to have sought communication with a government ministry and had not received a response (Questionnaire 1:D8). With this one could draw upon the ‘contemporary mixed top/bottom approach’. For this to happen, communication between the top and grass roots is key. In the case of Zimbabwe, weak levels of communication between private organisations and government ministries seem to have a negative effect on legal aid service provision.

Further, 5 respondent organisations claimed to work in partnerships with other organisations (Questionnaire 1:D7), and personal communications revealed that the success of most implementation of the LAD was greatly due to the joint

efforts of private organisations (Questionnaire 2:E6). Therefore, in the case of Zimbabwe, the ‘bottom’ and ‘grassroots’ are responsible for the successes concerning legal aid provision. Nevertheless, this scenario has led to a questionable situation in Zimbabwe where the ‘burden’ of implementation lies in the hands of small organisations funded internationally. Yet, the public sees their success as a ‘reflection of government actions’ and the poor efforts of the LAD go unnoticed. This leaves organisations and NGO’s in a tough situation, as the over represented clients seeking legal aid are aware of their rights to receive this service and assume the capacity of these organisations are far greater than they actually are.

### *The Organisation’s Views on the Policies*

Our data collection from the interviews with organisations shows that 90% of our participants felt that the LAD was good on paper but was not practical due to the lack of government support, and lack of resources (Personal Communication, Questionnaire 2). From the participants’ answers to the questions: “What are the greatest challenges for your organisation? What are the resources that you need?” (Questionnaire 1:D9) the most common answers were;

- *There are not enough resources, including financial, staff and office space, to facilitate and handle all cases in need of legal aid, which leads to inconveniences for victims. A common example given was, ‘cross referrals’ as that often makes it harder for people who seek legal aid. They would then have to use travel fare to go between organisations/LAD, and in some cases are still not be sure if they can be helped.*
- *More funding is needed to reach rural areas, primarily to spread information and knowledge, to advocate for legal rights and increase awareness and change attitudes.*

These statements not only highlight the burdens faced by private organisations, but also the need for greater government involvement. Specifically in terms of resource allocation, clearer objectives in policy making that distinguishes rural from urban spheres for implementation, increasing awareness, social interventions for attitudes regarding access and the reasons for so doing. Over the last decade, theories have begun to look into the ‘social relationships’ between men and

women and women's subordinate position as a means to explain why implementation fails and how this can be connected to societal 'attitudes and norms' (Moser, 1993:3). Drawing on this theory, and on greater 'compliance' (Sabatier and Mazmanian, 1980:546-9), the organisations need support from the LAD and the government. Fittingly, in an interview R.nr.1 stated, "*There is a strong need to tackle the cause and not only symptoms*" (Questionnaire 1:D). With this, one can see that while the LAD treats policy plans for the provision of legal aid, it needs to take greater consideration for the 'causes' of the issues that the LAD intends to solve. Accordingly, with a more 'bottom up' approach to implementation (Lipsky, 1980), organisations such as LFR could be heard and ideas like these incorporated into policy making. This statement works specifically against the obligation of the state as the *ICCPR* and *CEDAW* clearly say that not only does government has the obligation to provide legal aid, but as a part of this, the state needs to assist with sufficient *resources and funding* to services that are providing legal aid to disadvantaged persons.

Drawing upon our textual analysis of legal frameworks, in combination with our interviews with legal aid providers, it is apparent that the government is not filling their international and/or national obligations to provide legal aid. However, one could question if that responsibility is a realistic one in the context of Zimbabwe? As a result, of this, private organisations hold the highest rates of providing legal aid and therefore play a prominent role in Zimbabwe's legal aid service provision.

Nevertheless, from Lipsky's theory of street level action (1980), it can be argued that the Zimbabwean government has in fact played its part as all of the organisations that have participated in our study work closely together with the LAD. The organisations all state that they work in partnerships with one another. However, as the organisations state, this sometimes leads to cross-referrals whereby the clients are sent between the organisations without receiving any assistance due to the heavy workloads (R.nr.1-3). The organisations also refer clients who have needs beyond what can be offered. For example, survivors of rape and DV are referred to health clinics for testing, police stations for reporting and social services for counselling. In cases where there is a need for reporting the matter to the police, all organisations offer assistance and support if needed. As a

result, even with tireless efforts made by these organisations, it is too often the case that the implementation processes remain weak despite their efforts and international funding.

Correspondingly, the theory of *the failed state* characterises a country like Zimbabwe to have a loss of legitimate authority that can be used to make collective decisions. This leads to a profound inability to provide public services; and an inability to interact with other states as a full member of the international community; or loss of control over territory; lack of the legitimate use of physical force within its territories (Fund for Peace, 2013). From the participating organisations, all stated that most clients that they receive have been referred from health clinics, police stations, LAD, NGO's etc. who are aware of their work. The other major group of clients are received from outreach activities in urban and rural areas, such as legal rights trainings, public outreaches with flyers, and trainings with local chiefs and traditional leaders. Once a client comes to the centres there will be an evaluation of 'how the client can best be helped' and what kind of legal aid service and/or support is needed. Further from our 'personal communications' one respondent stated that:

*"It is unfortunate but the reality is that the government does not hold the know how that we do, our capacity is strong especially because we work together with partner organisations and other stakeholders. The government also has no financial resources to invest. We and our partners manage from international funding which may be low but at least it is something to work with"* (Personal Communication, Questionnaire 1).

Accordingly, the majority of participating organisations found the national LAD to be 'good on paper' but too difficult to implement. Also, respondents did not feel they received help from the government in implementing the LAD. With Zimbabwe as a failed state, it seems that the government may be unequipped in terms of capacity, structure, organisation and resources to implement the LAD, which they have written. Therefore, from the respondents it seems that - international funding - and joint efforts of NGO's with public services has helped small organisations provide legal aid, yet on a small scale.

## 7.5 What are the Challenges for Private Organisations?

### *The Lack of Power to Change*

The 'bottom up' theoretical approach is heavily criticised for assuming too much power unto the grass roots and the individual (Evans et al. 2004:32), in the case of Zimbabwe it is fitting as it seems the private organisations are the ones holding up legal aid services while this is too high of a workload for these small organisations. They also have little to no power to change anything due to scarce resources. Drawing on statements from the respondents such as:

*"We cannot help them all" "it's an endless work" "There is a great need to tackle the causes and not only the symptoms. That is the most important thing. We do not have the resources to help the great masses" "due to lack of resources we are unable to help all" (Personal Communication).*

This clearly shows that the organisations are struggling and are not in control over decision-making. This is supported by Evan's theory, which argues that the street level bureaucracy model puts too much emphasis on the 'power' of the individuals (2004:32).

### *Working with Social Norms, Culture and Attitudes*

Drawing on the interviews, all interviewees stated that awareness of one's legal rights is a crucial aspect in ensuring legal justice. The DVA has often been criticised for missing out on important aspects for successful implementation. For example, corruption has not been dealt with satisfactory which leads to major obstacles for women who seek assistance at police and law enforcement (Musasa, 2013:10). Bribes, 'sexual favours' and threats have been widely reported (ibid.). There is also a lack of knowledge of how to receive, treat and refer GBV survivors. Victim Friendly Units has been set up in courts and at police stations. However, these are few and mainly relying on funding, which make the inaccessible for the larger part of the population, in particular in rural areas (Musasa, 2013:11). Consequently, survivors do not receive the assistance that they

are entitled to. Referrals to health clinics, legal aid providers and counselling are not satisfactory and many victims are sent home as incidents between husband and wife are considered a 'private matter' (Musasa, 2013:10). For example, The implementation of the DVA in courts are often criticised to have failed when it comes to corruption, lack of information and not being victim friendly. Fees to access legal services and courts are high making it impossible for women to seek justice (Musasa, 2013:11). Further, the traditional courts, which are often used in Zimbabwe, often do not recognise or practise the DVA. Legal services and courts are often blamed for being inaccessible in the sense that due to complicated proceedings, drafting's and language few do not know their rights and can therefore not practice them (Musasa, 2013:11-12).

One example of how the policies have not reached out to all important sectors are the protection orders. This was mentioned as a major challenge for GBV victims by more than half of the interviewees (R.nr.1-3, and R.nr.5). As part of the organisations' mandate, legal advice constitutes a major part. In order to protect victims from further violence, they encourage women to seek protection orders. The organisations provide forms, assistance to fill them out accurately and send them for approval. However, once approved, they provide little protection in reality. According to Respondent 1, lack of access to police officers, low priority, and slow reaction time, many fall victims to further violence (R.nr.1). In order to make protection orders, and the work of legal aid providers, one need to include others. As Birkland argues, the main reasons for failed implementation are weak levels of consensus regarding goals, and weak cooperation between the state and grassroots regarding the said implementation; sanctions or poor incentives for compliance; and contesting interests of stakeholders (Birkland, 2001:179-181). Drawing from the interviews, it is therefore clear that the weak cooperation and low understanding of violence against women as a whole, weakens the work of organisations and complicates the implementation of policies.

In order to increase gender sensitive and victim-friendly approaches amongst police, courts and government, all respondents have included training and legal education to their services. This corresponds to the bottom up approach where street level workers play a pioneering role in implementing national policies



(Lipsky,1980:3). The difficulties with transferring the ‘power’ and *implementing role* to private organisations are how frail this set up is, particularly when the Government does not invest resources and make financial means available for those who carries the main burden to implementation. Since the organisations are relying on funding from the international community and other donors, the proportion and continuation of the operations are strictly depending on the external actors. The lack of funding and resources create challenges for the organisations as well as victims. One respondent answered:

*“It is a tiresome work, there are so many who seek help, and there are so many sad stories. We can’t help them all. Often victims withdraw reports, protection orders and so on due to threats or social stigma, and even though they often need the extra push to continue, we do not have the time to do all the follow-ups necessary. They often come back in a few months, if it’s not too late by then. It’s hard not to bring the work home and everyone who works with this do this because they are passionate about it. Otherwise one wouldn’t last” (R.nr.5).*

It is apparent that the organisations trying to implement the policies lack the resources to adequately do so. This puts great pressure on the employees, both when it comes to workload and mental wellbeing. Another respondent stated:

*“due to the lack of resources we are unable to help everyone who comes here. We work together with others such as WLSA, Musasa, the LAD, ZWLA amongst others, and we try to refer those we cannot help. It happens that victims are being cross-referred between all these organisation and still end up with no assistance, at least at that point. This is both costly for them but it also creates insecurity for them which may lead to them giving up and go home” (R.nr.2).*

### ***No Rural – Urban Differentiation***

The legal frameworks have also failed to include the differences between rural and urban areas. Two of the organisations interviewed stated that they mainly work in rural areas where the need of interventions, education and information is the highest. For example, 67 % of LRFs legal education has targeted rural areas whilst 33 % has targeted urban areas (LRFb, 2013:7). These 1493 outreaches was attended by 70 686 participants (ibid). The data collected from the outreaches show that females in most cases was the majority of the attendees but outreaches and workshops targeting community leaders had a majority of male attendees in rural areas (LRFb, 2013:8).

## 8 Conclusion

The international *legal frameworks and policies* that treat the provision of legal aid are; The Universal Declaration on Human Rights; The International Covenant on Civil and Political Rights; The Convention on the Elimination of All Forms of Discrimination against Women; and The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. All of which hold the State accountable for the provision of legal aid services as it can be seen as a human right, which ensures justice in a country. According to the international legal frameworks, Zimbabwe's government has an obligation to provide for legal aid services. These treat the policymaking and implementation of legal aid services and are appropriate to Zimbabwe as the government is bound to comply by international law. Nevertheless, our findings show that these said policies are not extensive enough to be applicable in the Zimbabwean context due to the severe lack of resources and the failed state nature of the country, they are therefore not appropriate as they do not include too many crucial factors. As a result, although international legal frameworks treating legal aid guide Zimbabwe, there is little to no evidence that these policies are being implemented by the state.

Nevertheless, from the National Legal Frameworks, it is apparent that the main policy treating legal aid is the LAD and the 2013 constitution, which by Zimbabwean Law, overrides any international policy which contradicts it. From a gender perspective it is apparent that while national policies include 'women' specifically as receivers of legal aid, international law does not specify 'women' directly in their content. Since 2004 the government of Zimbabwe has made great progress towards providing legislative, planning and implementation frameworks for increased gender equality and women's rights (MWAGCD & Genderlinks, 2013:91ff.). However, Legal aid services for women in Zimbabwe has been stagnated by awareness issues and the social and cultural situation, which highlights that there is a strong, need for Victim Friendly Units. Our study has shown that working towards increasing knowledge of, and changing attitudes and

norms, are crucial for gender development and implementation of policies. This complies with the theories on implementing gender policies by Moser and Breuning.

Furthermore, Moser argues that the state must take responsibility from planning to implementation stages when it comes to economic, social and environmental aspects. Without doing so, the people most in need of assistance are less likely to receive it. For example, our study showed that poor women are the least likely to be able to seek legal aid, due to the costs involved, which are not only financial. The efforts by legal aid service providers are mainly situated in the cities and are therefore inaccessible for rural spheres.

The ways in which *private organisations*, often funded by the international community, contribute to the provision of legal aid immensely as they account for the main implementers as most of the legal aid services available in Zimbabwe are those of private organizations. They therefore play a large role in implementation of policies such as the LAD and try to fill the gap when the state is failing. Nevertheless, the majority of participating legal aid organizations found the LAD to be ‘good on paper’ but difficult to implement. This corresponds to our findings proving that the policies are not appropriate to their context. The main challenges faced by these implementers of legal aid, is lack of support from the government, due to weak government capacity, structure, organisation and a lack of resources to implement the LAD which it has created. Despite the states obligation to providing legal aid, it is the private organisations, with international funding, that hold the greatest share of the burden for implementation of Legal Aid.

Zimbabwe’s challenges to implementation of Legal aid sees a mainly ‘top down’ approach through policy-making. Especially the LAD, while the implementation is carried out on a ‘private’ grass root level. Participating organisations therefore feel that their work is often accredited to the government while their successes are mainly due to partnerships with similar organisations and international support. Yet respondents feel understaffed and under resourced and therefore are left with too high of a workload.

Our personal reflections are that the root cause of this problem has much to do with other aspects too such as corruption and ‘non-transparency’ of the state. In Zimbabwe, the lack of resources is not enough to excuse the government from not fulfilling their obligation since they also do not prioritize legal aid, and need to improve the communications with private organisations. There is a strong need for government participation and the involvement of organisations in policy-making, as they are the main implementers. This calls for a scenario of mixed ‘top-down and bottom up’ approach to implementation where Zimbabwe could make use of international funding while at the same time strengthening the government capacity in legal aid service provision to ensure sustainability. To ensure justice, implementation of legal aid services needs to be strengthened and strongly supported by the government.

Future research could be carried out to further assess other ways in which the government could improve their implementation rates, besides that of priority, resources and participation, given their complex state context.

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Musasa Organisation  
*Interview in Belgravia, Harare in February 2014*

International Organisation for Migration (IOM)  
*Interview in Emerald Hill, Harare in November 2013 and February 2014.*

United Nations High Commissioner for Refugees (UNHCR)  
*Interview in Mount Pleasant, Harare in October 2013*

Women and Law in Southern Africa Research and Education Trust (WLZA)  
*Interview in Avondale, Harare in January 2014*

Other organisations that have participated through 'personal communication' have not been listed here.



# Appendix 1. Participating Organisations

## The Legal Resources Foundation

The organisation was established in 1984 to meet an expressed need to improve the accessibility of legal and information services to all sections of the population. The organisation has offices in Harare, Bulawayo, Gweru, Mutare and Masvingo. The LRF believes that disadvantaged people, particularly women, can be empowered to assert their rights. The LRF's mission is to improve access to justice and promote human rights in Zimbabwe by educating, offering legal services, providing legal and civic information, promoting law and policy reform, promoting citizen participation in Governance, monitoring human rights abuses, and training service providers in the justice system and legal sector.

## Musasa

Musasa, initially named Musasa Project, was established in 1988 to work against the high levels of violence against women and to meet the need of support services for victims. Musasa is a non-governmental organisation and has offices in Harare, Bulawayo, and Gweru. The vision of Musasa is a society in which all women are free of GBV and are able to fully participate in development. The mission of Musasa is to work towards ending gender based violence, promote laws and policies in order to end gender based violence, to provide victims with legal services, counseling, life-skill trainings and shelter, and to work with advocacy and public education and trainings on legal rights and access to information.

## International Organisation for Migration

IOM is an intergovernmental organisation. It was initially established in 1951. It is the principal intergovernmental organisation in the field of migration. IOM is dedicated to promoting humane and orderly migration for the benefit of all. It does so by providing services and advice to governments and migrants. IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, be they refugees, displaced persons or other uprooted people. The IOM Constitution gives explicit recognition to the link between migration and economic, social and cultural development, as well as to the right of freedom of movement of persons.

## Women and Law in Southern Africa Research and Education Trust

WLSA is an established Southern African Human Rights organisation that coordinates and supports evidence based interventions to particularly to promote and protect women and girls rights through legal and policy reform and changes to discriminatory socio-cultural practices. WLSA has offices in Zimbabwe, Zambia, Swaziland, Mozambique, Malawi, Lesotho and Botswana. WLSA's vision is a society in which justice is accessed, claimed and enjoyed by women and girls in all spheres of life. WLSA offers programmes within legal aid and support services, action research, legal rights education and training, advocacy and communication, and institutional development.

# Appendix 2. Interview Guide

## Study on Legal Support Services in Zimbabwe

### Questionnaire 1: Questionnaire for Legal Aid Providers

A1. Name:

A2. Organisation:

A3. Work title:

A4. Sex:

A5. Address:

A6. E-mail:

B1. When was the organisation established?

B2. What services/assistance does your organisation provide?

B3. What other activities does your organisation work with?

B4. How many clients does the *organisation* receive each week?

B5. How is the organisation funded and from who?

C1. What are the legal aid and support services that your organisation provides?

C2. How many clients does the legal section receive per week?

C3. How many clients do *you* receive per week?

C4. Do you work with the government and/or the police? How?

C5. What other organisations/institutions do you work with?

C6. What do you know about the Legal Aid Directorate? How successful has it been?

D1. What are the most common issues that client seek legal aid and support for? Please list 5 reasons in order of importance.

D2. How aware would you say that people are about their legal rights?

D3. Would you say that there are any rural and urban differences? What kind?

D4. Estimate roughly how often police reports lead to convictions?

D5. What are the main barriers to why people do not seek legal aid or report crimes?

D6. What do you think about the legal framework? Is it sufficient enough and is it implemented well? If no, what is missing/needed?

D7. What are the greatest challenges for you as an organisation? List three.

D8. What are the main reasons why people come to your organisation? Does the government provide the same kind of support services?

D9. Do you think that you have enough resources to help those in need? If no, what would you need?

### Questionnaire 2: Guiding Questions for Personal Communication

E1: How has the government assisted your organisation? And how do you think you should be assisted?

E2: What do you think the government could do to improve legal aid service provision?

E3: What, in your opinion, are the main challenges in legal aid service provision?

E4: Do you think that there is enough government action in terms of implementing the LAD?

E5: Do you think that the government prioritizes legal aid service provision?

E6: What are the main reasons for successful cases of implementation?