ACCESS TO LEGAL AID FOR INDIGENT WOMEN:  
AN ANALYSIS OF THE SERVICES OFFERED BY THE LEGAL AID DIRECTORATE IN HARARE, ZIMBABWE

Abstract

This dissertation evaluates the performance of Zimbabwe’s Ministry of Justice’s Legal Aid Directorate in terms of the Legal Aid Act which provides free legal services to, inter alia, indigent women. It is the State’s sole attempt at realizing its duty to fulfil their human right to fair access to justice in terms of local and international Human Rights legislation which binds Zimbabwe. The writer employs several gender-focused methodologies (including the Women’s Law Approach) and data collection methods to expose the strengths and weaknesses of the Directorate’s performance as perceived by a sample of women attempting to access its services.

While its weaknesses (e.g., poor staff pay and morale) currently outnumber its strengths (e.g., fully staffed by qualified lawyers), the writer suggests several helpful legal, economic and social reforms to improve the Directorate’s performance.

BY

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DEDICATION

For my beloved dad, Mr S.T. Mbanga for giving me the chance to shine.

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CHAPTER 1

1.0 INTRODUCTION

The provision of legal aid to indigent clients by the state has been explained along several different bases such as on moral grounds, the need for social-justice and for political reasons (Skinnider, E 1999:2). Legal Aid is a form of social welfare for clients to ensure that those who cannot afford the cost of legal services are still able to have access to justice. This research was carried out to examine the extent to which women are assisted by the state in the provision of legal aid, by looking at the only state department that deals with the needs of the indigent.

1.1 Background to the Research

As an employee in the Ministry of Justice, Legal and Parliamentary Affairs, as a senior law officer in the department of Policy and Legal Research, I observed that a number of women visited the Ministry in need of legal assistance. It has always been mechanical that any legal problem has to be referred to the only department that deals with clients. However, sometimes the same clients return to seek ministerial interventions and when referred to the Legal Aid Directorate, they sometimes stated that they have been there before and their problems had not been solved.

1.2 Statement of the Problem

According to the last census women make up 52% of the population of Zimbabwe (2002). In a country with a higher number of women it is prudent to ensure that they are granted rights on an equal level with their male counterparts. Women who are in paid employment occupy the lower end of the employment ladder and are found mostly in the educational and health fields. In a normal economy, these are the women who can afford to pay for their legal services. With the hyper inflationary environment more than 60% of Zimbabweans are living below the poverty datum line and can only afford to purchase the basic commodities. When people can only afford to pay for their basic commodities, it becomes the least of their concerns to hire lawyers when they have a legal problem. As a
result of the economic situation in Zimbabwe, the state is expected to assist more people in terms of their social welfare, in this case, with their legal assistance. The cost of legal services is high and can only be afforded by the rich clients. The Law Society of Zimbabwe has resorted to changing its Tariff of fees on a monthly basis because of the inflationary environment. Hiring a lawyer in private practice has gone beyond the reach of many clients, all the more reason why legal aid services are needed. On the other hand women cannot afford to pay for the cost of legal services and are, therefore, more inclined to seek for legal services from the state department. A number of clients each year visit the legal aid directorate and clients continue to complain that the department does not assist them. Some of the clients who sought Ministerial assistance were often referred to the Legal Aid Directorate and would complain that they could not go there to be assisted.

1.3 Other Organizations Engaged in the provision of Legal Aid
A number of organizations offer legal aid services in Zimbabwe. These players execute different functions in the provision of justice for the poor. These include the Zimbabwe Women Lawyers Association (ZWLA), the Legal Resources Foundation and the Catholic Commission for Justice and Peace.

Legal Resources Foundation
The Legal Resources Foundation is an organization which was established in 1984 to deal with the marginalized people such as the poor, women and children. It has a number of programs with one of them being the Legal Services program which has the overall objective of increasing justice for the poor, the marginalized and vulnerable people. The organization tries to ensure that the clients are empowered to use the legal system to solve the problems that they have. The organization has five urban, five suburban and 19 rural legal advice centres run by 42 paralegals and monitored by lawyers.

Zimbabwe Women Lawyers Association
This is a women’s organization carrying out various programs for the assistance of women in different problems. The organization was established in 1992 with the aim of
promoting and enhancing the legal status and rights of women and children in Zimbabwe. The organization has two offices in Harare and Bulawayo and also has mobile clinics in rural and peri-urban areas. The legal Aid program is meant to enable women to access and utilize the justice system in Zimbabwe. The lawyers at ZWLA assist. Empowerment sessions are carried out by ZWLA to assist women with simple magistrate’s court cases so that the women can be self actors and represent themselves in court. The organization also has mobile clinics in Murombedzi, Murewa, Shamva, Mvurwi, Norton and Chitungwiza.

1.4 The Legal Aid Directorate

Although there are a number of other organizations that deal with legal aid, they do so in assisting the state carry out its function as the giver of rights to individual in their access for justice. In accordance with Human Rights principles, state parties have the obligation to ensure that they provide legal aid as a social service to the indigent.

The Legal Aid Directorate is the state department that deals with the indigent in need of justice. Although there is the Ombudsman’s office, it only deals with complaints which are directed at employees of the state. The Legal Aid department has only one office countrywide and only assists a fraction of the individuals who need assistance because of its geographical location. It is set up in terms of the Legal Aid Act, [Chapter 7:16] which provides in the preamble that it is an Act to provide for legal aid to the indigent. Section 3 provides for the setting up of the Department with the Director and the Law officers and other support staff. The Act does not focus on women but provides for all persons who are in need of legal aid assistance.

1.5 The History of Legal Aid

Legal aid has evolved over the years from traditional forms of waiving fees for indigent clients in the courts, to the extended forms of legal aid such as the provision of legal advice. In the 19th century the concept of legal aid was seen as assisting clients in court. Churches and trade union organisations covered the broader aspects such as legal advice. The Legal Aid Directorate started assisting indigent clients for free in 1980 after
independence. A Principal Law officer from the department indicated that the department served a number of clients who were from the lower income bracket. A lot of clients visited the centre from the early 1980s through to the 2000. It was noted that the department could not dispense justice without funding. Clients were often asked to photocopy their documents and print them outside the premises of the department. It was seen that some of the costs would be forced on the department which had to foot the bills where the client could not afford to do typing and photocopying on their own. This led to the department introducing a scheme where the clients had to contribute to their legal aid in 2006.

1.6 The Research Assumptions
The following assumptions were used as a basis for the research.

1. Only a small fraction of the indigent women who visit the Legal Aid Directorate access legal aid.

2. Most poor women are not aware of the services offered by the Legal Aid Directorate.

3. The scope of the legal aid offered by the Directorate is limited to civil law and family matters; those with criminal law and other issues cannot access legal aid.

4. The legal aid offered by the Directorate is limited to preparing court papers and does not extend to court representation and is therefore not beneficial to the indigent women.

5. The screening process for those who qualify turns away a number of women who are not in a position to pay for legal services.

6. Some cases are not dealt with to finality because clients cannot afford the costs of preparing legal documents.
7. Legal Officers do not provide quality service to the satisfaction of clients.

8. The Legal Aid Directorate does not have adequate resources to deal with the needs of indigent women who access legal aid.

1.7 Research Questions

The following research questions formed the basis of the research.

1. What proportion of indigent women who seek assistance from the Directorate actually receive legal aid?

2. Are women aware of the services offered by the Legal Aid Directorate?

3. Does limiting legal aid to civil law and family matters create a barrier for those women who need assistance in criminal cases and other matters?

4. Is the legal aid offered by the Directorate limited to preparing court papers and not extended to court representation? Is this beneficial to indigent women?

5. Does the screening process turn away other poor women who cannot afford legal services?

6. Does the Directorate deal with its cases to finality and if not, what are the reasons for not completing the cases?

7. Do the legal officers provide the best quality service and are women satisfied with the services offered?

8. Does the Directorate have adequate resources to deal with the legal aid needs of indigent women?
1.8 Justification for the Study
Legal aid is an important component of any democratic state and as such, each state should ensure that marginalized people, such as women and children are assisted. The government must take centre stage in providing legal aid as part of its social responsibility. There is a need for it to properly invest in Legal Aid and to create robust institutions that provide such (Saki 2007). This research was carried out to determine the level of assistance that the Legal Aid Directorate offers to women and how the women view the assistance they receive from it. The study is necessitated by the fact that there is not much research on the Legal Aid Directorate and the service that it provides and yet it is a key department in offering legal aid. There is no evidence of the department having ever been assessed to ascertain the effectiveness of the state in providing legal aid for women as a marginalized group. The study is also meant to find out the views of women on the legal aid that they get from the state and whether it is sufficient for them. This also gives way to the possible solutions on how the state legal aid should be handled.

1.9 Limitation of study
The research coincided with a strike by the Magistrates and Prosecutors over conditions of service. Most of the clients who sought legal aid were referees from the Magistrates court. The strike meant that cases were not dealt with and that the effectiveness of the lawyers at the Legal Aid Directorate could not be assessed by the Magistrates during that period. However, new clients still visited the Directorate and the problem was with mostly returning clients whose matters were postponed until the strike was called off.
1.10 Outline of Chapters

Chapter 2 will be a literature review and will examine the literature that is available on legal aid. Chapter 3 examines the methods and methodology that were used in the research. Chapter 4 is on the findings of the research. The fifth chapter discusses the findings and conclusions. The Dissertation ends with the recommendations in Chapter 6.
CHAPTER 2

LITERATURE REVIEW

2.0 Introduction
The Chapter explores the law in relation to Legal Aid in Zimbabwe as well other jurisdictions. The Human rights instruments which are relevant to the granting of legal aid are outlined and the state obligation defined. Legal Aid has been defined as a scheme designed to assist members of the public who are or who will be involved in legal proceedings and are unable to afford the service of an advocate.

2.1 Provision of the Law on Legal Aid
The provision of legal aid to the indigent in Zimbabwe has been a subject which has been dealt with by the statute laws of the country.

The Constitution of Zimbabwe
The Constitution of Zimbabwe provides in section 18(3) (d) that an accused person shall be permitted to defend himself in person and at his own expense with a legal representative of his own choice. Although the Constitution does not have specific provisions on the giving of legal advice to indigent clients, the government made a commitment for the granting of legal aid through the setting up of the Legal Aid Act [Chapter 7:16].

The Legal Aid Act [Chapter 7:16]
The Legal Aid Act provides in the pre-amble that it is;

‘An act to provide for the granting of legal aid to indigent persons; to provide for the establishment and functions of a Legal Aid Directorate and a legal Aid Fund...’

Section 3 of the Act provides for the establishment and functions of the legal aid directorate which shall have the mandate to provide legal aid to persons who are eligible in connection with any criminal or civil or related matter. Zimbabwe has good legislation
for the provision of legal aid for the poor and what remains to be looked at is the practice and policies on the ground as well as the exercise of evaluating if the needy are indeed getting legal aid when they need it.

The Legal Aid Fund Regulations, Statutory Instrument 234/2006

Section 14 of the Legal Aid Act provides for the setting up of the Legal Aid Fund. The Fund according to the Act consists of the following;

(a) Moneys appropriated for legal aid by Parliament;
(b) Any contributions made by the aided person;
(c) Any deductions made from damages that have been awarded to an aided person;
(d) Any other monies that may accrue to the Legal Aid Fund.

The Legal Aid Fund is meant to meet the expenses arising from the engagement of a legal practitioner employed outside the department and meeting the costs that arise in giving legal aid. The cost of getting legal aid is to be met from the fund.

The Magistrates Court Rules and the High Court Rules

The Magistrates Court Rules of 1980 make provision for the poor to apply to the court for legal aid in Order 5 Rule 1-5 which provides that ‘a person desiring to sue or defend as a pauper may apply to the court for legal aid.’ The means of the indigent client are assessed and thereafter the court can grant legal aid using lawyers from private practice.

The High Court Rules also have the same provisions for those clients who are eligible to sue in the High Court. The High Court Rules, 1997 provide that a person wishing to bring or defend proceedings in forma pauperis may apply to the Registrar of the High Court. The same procedure applies in the High Court for the eligibility of clients to legal aid.

2.2 Components of Legal Aid

Legal aid takes three different forms which are legal advice, legal representation and legal drafting. A legal aid lawyer should be prepared to offer legal services up to the final stage of representation in court if there is a need. On the other hand, legal services are not only rendered at the court room stage and lawyers should not feel that the necessary
aspect of legal aid is courtroom representation (Gross 1977: 32). Legal aid is referred to as the organised rendering of services by advocates and or attorneys in the nature of consultation and advice or in the nature of representation in court or before administrative tribunals, to persons unable to engage legal representation through indigence. Legal aid services are given to those who are considered poor by a society and also those of small or moderate means (Moorhead 1998: 367). It is important that legal services should be targeted at those who cannot afford the costs of hiring lawyers and those who can afford should be advised to seek assistance elsewhere as a cost effective measure. Moorhead (1998: 367) states that legal aid is a service predominantly for the poor, although the scheme may also emphasise specific groups such as women and children.

2.3 Purpose and objective of legal aid

‘The role of legal aid should be to ensure that less well off people have access to justice on a broadly equal basis to everyone else.’ (Moorhead 1998: 365)

Legal aid aims at ensuring that an indigent person is able to obtain legal assistance without having to pay for the costs (Moorhead, 1998: 366) Legal aid to persons who cannot otherwise afford legal representation is necessary in any democratic state. Failure to provide it would deprive such persons of access to the court system. Legal aid therefore requires an element of indigence and need for legal services. If persons who cannot afford legal services, are denied access to the court system then the principles of equality before and due process under the rule of law are violated. The purpose of legal aid is therefore not only biased towards assistance of the poor but is also a necessary tenet of a democratic state. Tsanga (1997: 16) states that legal aid permits individuals and groups to assert their rights and to practically respond to difficulties so that in the end the rule of law applies. In order to uphold the rule of law and to enable citizens to be equals, it is imperative that the state should assist its citizens. In a democratic state, citizens should be able to enjoy a bundle of rights which allow them to command democratic participation.
2.4 Legal Aid Lawyers

Discussion on the legal aid system would not be complete without consideration of the lawyers who carry out the duties. Calmore (1999:4) points out that the legal profession needs lawyers who commit themselves and their legal skills to furthering a vision of the good society. Providing legal aid is one form of ‘moral activism’ which can put a humane face on lawyering instead of the value neutral image that is associated with the lawyers (Calmore 1999: 4) In order to consider the effectiveness of the lawyers in the public department it is also important to consider the lawyer in the private sector. Lawyers in the private sector are driven by economic factors and will deal with any case to its conclusion, including an appeal. Moorhead R(1998: 381), aptly points out that a lawyer in private practice will pursue individuals rights as far as any system sensibly allows as he is driven by the economic aims. Legal Aid lawyers on the other hand cannot be driven by the same need because they are publicly funded. According to Katz (1985:1) the working conditions of a lawyer in legal aid practice are often inferior to those of their peers in the public sector. This results in the lawyers taking a relaxed approach to the work and handling the cases in a routine fashion.

Because of the relentless pressures facing legal aid lawyers who assist indigent clients for free, their work output is bound to suffer leading to a search for better prospects. At the end of the day the lawyers who remain at such organisations are young and with less than two years experience (Fuchs 1993: 271). Even the bright and aggressive young lawyers end up being absorbed into the system and they become frustrated because the system does not recognise them. Fuchs (1993:271) says that improving the lot of the poor is negatively valued and the legal practitioners who represent them are often defined as not being very successful. The performance of legal aid lawyers is also affected by external forces such as the external supervision such as boards to perform better or worse (Meadow 1983: 237). It was found that when there was no external pressure, the lawyers acted in a routine fashion and thus reduced the quality of the process and outcome for their clients. Thus it is important for the Department of legal aid to report to a body such as Parliament, which provides a driving force for their work output. It is not only an external body that can provide the need for the lawyers to perform better. Lawyers can be
driven by other forces such as moral responsibility and the lawyer’s own political and ideological persuasions (Meadow 1983: 239). Lawyers driven by such personal values will obviously perform whatever task before them involving indigent clients to the best of their ability.

The work of the legal aid lawyer is sometimes seen as routine and trivial because they deal with clients’ problems. The perception is that legal aid lawyers do not carry out an important function in society. This view seemed to have been confirmed in relation to the legal aid lawyers as will fully be discussed in Chapter 5.

2.5 State Obligation in the provision of legal aid

The state’s role in rendering legal aid may be justified on the grounds that legal aid is a form of social welfare and just as the state provides other forms of social welfare to individuals who cannot cater for their needs, so too should it participate in the provision of legal aid (Gross 1977: 39) for the individuals who cannot afford to hire a lawyer. The other reason is that the state has the mandate for administering justice and therefore legal aid falls within the scope of the state’s role of securing internal justice for its citizens, in its administration of justice (Gross: 1977: 39).

Obligation under Human Rights Instruments

The obligation to provide legal aid has been spelt out under different human rights instruments. Human rights obligations form a part of international law and lay down the minimum standards that states should adhere to. The language of rights has been valuable to women as it has drawn states to know their obligations regarding its citizens (Stewart in Hellum et al: 2007:25). Human rights also give the minimum standards which the state should adhere to.

Various instruments give the obligation of the state to provide legal aid in relation to human rights. These obligations are cited in Conventions, which are binding on states as well other instruments which are meant to provide guidelines such as Declarations, Rules, Recommendations and guidelines.
• **The International Covenant on Civil and Political Rights (ICCPR)** sets out specific obligation on the state to provide state funded counsel for indigent clients. Article 14(3)(d) provides that;

> **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 idea of legal aid in this context is fixed on the concept of equality of all persons. Therefore indigent persons should be granted an opportunity to defend themselves on an equal basis with those who are able to afford legal representation. However, the right is only specified according to criminal matters and therefore supports the traditional view of legal aid, focusing on matters of criminal law in terms of representation and advice in court proceedings (Skinnider 1999: 12). In relation to legal aid lawyers, the Human Rights Committee on ICCPR, in the case of Reid v Jamaica, Communication no. 250 of 1987, stated that counsel should be remunerated adequately for providing legal assistance under a legal aid plan.

• **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** in Article 15(1) provides that state parties shall accord women equality with men before the law. The emphasis on this instrument is on states obligations to ensure equality between men and women especially in civil matters in particular in contracts and the administration of property.

• **The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa** in Article 8 provides for access to justice and equal protection before the law. Article 8(1)(a) provides that state parties shall take all appropriate measures to ensure ‘effective access by women to judicial and legal services, including legal aid.’ It is the one instrument with specific provisions on the right of women to get legal aid and it does not differentiate on the kind of legal aid that they are entitled to. Article 8(1) (b) provides for the support to local, national,
regional and continental initiatives directed at providing women access to legal services, including legal aid. Although the nature of support is not stated, the state has the obligation to ensure that institutions which provide access to legal services are able to do so through government support.

- United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly Resolution 43/173 of 1988 provides that the ‘Government shall ensure the provision of sufficient funding and other resources for legal services to the poor and as necessary to other disadvantaged persons.’

The various International Instruments mentioned above, provide some of legal aid that the state should provide for its citizens. The Zimbabwean government has a duty to its citizens to ensure that even those who are indigent can access to legal aid.

2.6 Examples of Legal Aid in Other Jurisdictions

Australia – National Legal Aid Commission
Australia has 8 National Legal Aid Commissions which were set up as independent statutory Commissions. Any person is entitled an initial session on any matter and the service is for free. However, if a client is granted ongoing assistance a contribution will have to be paid. Clients are expected to pay an initial fee of US$55 for legal assistance which can be paid in installments. Another contribution is made depending on the cost of the suit.

Legal Aid in South Africa
The Legal Aid Board is an autonomous statutory body which was established by the Legal Aid act of 1969. The government of South Africa set up the Legal Board which is an autonomous statutory body with the primary objective of rendering or making available legal aid to poor persons. The legal board has over 58 Justice Centers and satellite offices spread throughout the country. The Board covers civil and criminal
matters and also gives priority to divorce and other matters as well as labour matters and asylum seekers. Clearly the board has a huge jurisdiction and with numerous centers to reach the indigent. The board assists over 300 000 people with the lawyers spending most of their time in court.

**Legal Aid in Namibia**

The system is similar to that of Zimbabwe and is provided for in accordance with section 96(h) of the Namibian Constitution. The Legal Aid department is housed by the Ministry of Justice and Attorney General to give legal service to those who cannot afford to pay for the service of a legal practitioner.

The accepted forms of legal aid in other states which seem to perform better are those that have been made into autonomous body. These are not Ministry departments but stand alone bodies created by statute. In some of the countries, the amount of contributions to be made by clients is specified in the Act. This differs from the provision the Zimbabwean context were there is no specific provision for the clients to pay.

**Conclusion**

This chapter carried out the literature review on legal aid issues and the provision of various international and national instruments on legal aid. The Chapter began by looking at the provision of the Zimbabwean Law on legal aid. In addition, the Chapter looked at what different authors say about what legal aid entails, its purpose and objectives and the lawyers who provide the legal aid service in private and public institutions. Legal aid is also provided for under various International Instruments and these where discussed in relation to the role of the state in providing legal aid. A number of other national legal aid systems from other countries where looked at with the view to comparing with the system in Zimbabwe.
CHAPTER 3
METHODOLOGICAL FRAMEWORK AND RESEARCH METHODS

3.0 Introduction
This Chapter discusses the research methodology and methods that were used for the data collection. The chapter also seeks to explain the reasons for the chosen methods and methodology and the challenges faced therein.

I carried out the research in a department known to me as an employee of the Ministry of Justice, Legal and Parliamentary. The Legal Aid Directorate is one of the departments in the Ministry of Justice and in the past, I had met with some of the officers during meetings. It was therefore easier for me to get permission to do the research as I was known to the Minister and the Acting Secretary and the Director of the Legal Aid Directorate. As one of the senior employees I was obviously not viewed with suspicion but it was hoped within the corridors of justice, that I would present solutions to the problems that faced the legal aid department. I was assisted in getting the information that I needed especially on the budget. It was possible to get honest answers from those law officers who knew me from the Ministry and those who thought that the Dissertation could be used to present their problems for speedy resolutions. The difficulty arose after a few days of research where some of the support staff would react to my presence by calling for the lawyer on duty to attend to the clients. This was meant to present a better picture of the department than the norm.

3.1 Women’s Law Approach
I used the women’s approach in as far as its concept of equality touches on the right of women to obtain equal justice on an equal basis with men. One of the tenets of the Women’s Law approach is the interplay between law and life. Although the law provides for an institution to provide legal aid to both men and women through the provision of free legal aid, it was necessary to look at the situation of women on the ground and to assess the extent to which they access legal aid from the state.
Looking at the provision from a feminist perspective point of view, the patriarchal state cannot legislate in the interests of women (Saulnier 1996: 34). Thus, there is a need to overhaul the way the system works in order to achieve a more women-oriented centre to deal with their issues. This methodology was useful in looking at two institutions that offer legal aid, one being male dominated in the form of the state and the other which is an example of an altered environment, female oriented and to assess the effectiveness of each. The legal aid directorate assists both men and women whilst ZWLA assists only female clients. The women’s law approach was used to get the women’s perceptions on the services on offer at the Legal Aid Directorate and at ZWLA.

3.3 Grounded Theory
Grounded Theory refers to the discovery of theory from data obtained from social research and the use of comparative analysis as a strategy to develop new theories (Glaser and Straus in Tsanga 2003: ). Although I set out my research with my assumptions these had to be further informed by the information gathered in the field. Going to the Legal Aid Directorate on a daily basis ensured the acquisition of data which proved to be important for the research. Grounded theory is a research paradigm in which theory is developed from the data. The data that is collected then forms the theory upon which to proceed with the research. The women who visited the Directorate where interviewed on a daily basis to ascertain the process which they went through when seeking legal aid. Grounded theory emphasizes that the researcher ‘goes native and has a prolonged stay at the site of the study so as to study the phenomenon in its natural state’ (Malinowiski in Nyarawanda 1988:15). Data collection and analysis were simultaneously done and this made follow ups on issues possible. For instance, I had an assumption that the screening process meant that those who were entitled to legal aid were often excluded. The information that I gathered on the ground was that what the clients paid was dependent on the way they filled in the vetting form. The clients themselves found this form difficult to fill in, an issue which I had to take back to the Department so that they could improve their screening technique. Two other organizations which offer legal aid were investigated with a view to getting a position of those who offer legal aid and those that are offered legal aid. Part of my use of the grounded theory approach was in the
application of referrals by the Directorate to the other two organizations. It emerged during the research that women were being referred to other organizations and as part of the chain of events I had to follow up with those organizations.

3.2 Actors and structures
The Director in the Legal Aid Division and his lawyers emerged as the main actors in this approach as the persons who give legal aid to women. Others actors were brought as the interrogation process proceeded such as the Finance Department in the Ministry of Justice and Government as whole in the funding process of the department. The police and the clerks of court in the civil courts also influenced the legal aid that the women got as they acted as reference points for women who needed legal advice. I had to visit the Ministry of Justice, Legal and Parliamentary Affairs to find out about the funding of the department and the problems that resulted in the department getting inadequate funds. The department does not function on its own and has to rely on other departments in its activities. Bureaucratic tendencies affect government departments in one way or the other and thus the need to determine those actors and structures affecting the Legal Aid Directorate.

3.3 Legal Centralism
The activities of the Legal Aid Directorate are governed by the Legal Aid Act [Chapter 7:16] which provides for the setting up of the department. Since there is a law in place, it became an important starting point to assess the way in which the department responds to women. When legal centralism is taken as a starting point, it is ranked as the most important normative order. The law is here seen as the command of the state applied by a single set of institutions uniformly to all persons (Bentzon 1998:31). In this research the law had to be taken as a starting point to determine the Directorate’s compliance level and the problems that are faced in implementing the Act. The Women’s Law approach does not disregard the law but its main purpose is to juxtapose law versus women’s lived realities so as to get a better understanding the position of women in law and society. Law should be included together with the different sources to give an interpretation of the problems faced by women. In that respect the legal centralist approach became an
inevitable approach to use in assessing what the law and other sources provide on legal aid and the reality of women’s lives in seeking legal aid. CEDAW and other International instruments which make provision for women’s access to legal aid were an important starting point in seeking solutions for women’s problems in accessing their rights.

3.4 Research Design

Qualitative and Quantitative Data

The research design was shaped by the use of both the quantitative and quantitative data. The quantitative data was obtained from the files and reports from non-governmental organization on the records of the number of cases that were dealt with by the Legal Aid Directorate and the other organization so as to access the effectiveness of the former. The figures assisted me in assessing the effectiveness of the department in dealing with female clients. Qualitative data was obtained from interviews with clients and through reports of different organizations.

3.5 Research Methods

Structured individual interviews were held with women to obtain their views on the activities of the Legal Aid Directorate and Zimbabwe Women Lawyers Association. It was necessary to get information from those organizations to which women were referred by the Directorate in order to assess whether, in the end, they got the assistance that they needed. In addition, the other organizations were also used in assessing the level of assistance that women received from the state department.

3.6 Interviews

Interviews have the advantage over other data gathering techniques as the researcher gathers the research directly from the respondents in face to face contact. McNamara (1999) observes that interviews can be used to get a person’s impression and experiences. In my research the use of interviews assisted in getting the views of women in the type of
legal aid that they were getting. It was further possible to observe their fears in the presence of staff at the Directorate and their responses when they were not.

Both structured and unstructured interviews were used depending on the situation that I was faced with. Structured interviews were used with senior officers who needed their time to attend to other duties. I had to prepare my question beforehand. However the disadvantage was that they would only answer the questions that I had and would not contribute any further details. Unstructured interviews were used with clients who visited the department and it was advantageous in that they would volunteer other information which I would normally not have asked.

Interviews were conducted with women and men. It was difficult at times to get the views of the women at the Legal Aid Directorate as there was always a guard present when I needed to carry out the interviews. I had to get around the problem by ensuring that I held the interviews in the absence of the guard or in the office of the law officers. However there was also an element of mistrust from some clients who because of seeking further assistance could not be seen to be attacking the services on offer.

3.7 Observation

Observation was an important method used during the research to determine the quality of services that was given at the Legal Aid Directorate. I would observe the time that the lawyers started working and the way that they treated their clients. At ZWLA I was unknown to the officers and would sit on the benches with the clients and listen to their conversations to get an understanding of how they viewed the services that they obtained. For instance, I observed that from such conversations that I discovered that they have problems in accessing the department due to the transport costs. The observation method assisted me in getting information on the time taken to serve clients.
3.8 Triangulation of research methods

Triangulation of research methods is necessary in researching real life contents because of the multiple causes that affect human behavior (Tsanga 2003:45). I did not restrict my research to the Legal Aid Directorate as I needed to hear the views of other organizations which offered legal aid and their thoughts about the Legal Aid Directorate. Triangulation therefore assisted in getting complete information on the functioning of legal aid in the country. In comparing the state organization to these non-governmental organizations I was able to pick out the shortcomings of the former and to make the necessary recommendations. The information was also verified as the legal aid organizations carry out virtually similar functions.

3.9 Conclusion

The Chapter stated the research methodology that was used in the research which included the women’s law approach, the legal centralist’s and grounded theory approaches. The data collection methods were also discussed together with their usefulness in this particular research.
CHAPTER 4

FINDINGS AND ANALYSIS

4.0 Introduction
This Chapter contains the research findings which were based on the assumptions that had been formulated at the beginning of the research. The following assumptions were formulated at the onset of the research:

- Only a small fraction of the indigent women who visit the Legal Aid Directorate access legal aid.
- Most poor women are not aware of the services offered by the Legal Aid Directorate.
- The scope of the legal aid offered by the Directorate is limited to civil law and family matters; those with criminal law and other issues cannot access legal aid.
- The legal aid offered by the Directorate is limited to preparing court papers and does not extend to court representation and is therefore not beneficial to the indigent women.
- The screening process for those who qualify turns away a number of women who are not in a position to pay for legal services.
- Some cases are not dealt with to finality because clients cannot afford the costs of preparing legal documents.
- Legal Officers do not provide quality service to the satisfaction of clients.
- The Legal Aid Directorate does not have adequate resources to deal with the needs of indigent women who access legal aid.

These were then merged into themes which are set out as follows; the scope of legal aid offered by the Directorate, the number of women assisted, women’s awareness of the services offered, the quality of service that the lawyers give, the resources of the department and the cases that are dealt with by the Department. The findings are considered after looking at the steps that are taken by a client who seeks legal aid at the Directorate.
4.1 Steps to obtaining legal aid

The Legal Aid Directorate operates under the Ministry of Justice, Legal and Parliamentary Affairs. The legal assistance is provided by 12 in-house lawyers. The lawyers are paid by the Public Service Commission. The Director indicated that assistance is not only rendered to the indigent but also to those clients who have their funds frozen after having been specified by the Minister of Justice, Legal and Parliamentary Affairs for economic cases or frozen for other reasons. When a client enters the Directorate seeking legal aid there are three steps that have to be undertaken to get legal aid and these are the means test, testing for the type of matter and a merit test.

4.1.1 Merit test

The merit test has to be done to determine whether the client is likely to succeed in the case and whether the matter is worth taking up. This is the first port of call for the client before anything else is done. Two lawyers are responsible for the vetting of the clients on each particular day to determine if there is any merit in the case that has been brought by the client. It is largely the discretion of the lawyer to determine whether the case is worthy of receiving legal aid. This is done on a daily basis especially in the mornings although this is not a practice written in stone. The afternoons are usually reserved for returning clients.

4.1.2 Type of matter test

The clients who visit the Directorate have to go through a vetting process where the lawyers on duty verifies whether the matter is worth pursuing or if the case can be attended to by the lawyers at the Directorate. Lawyers do not deal with certain types of cases such as defamation, adultery and seduction damages. This derives from the view that a poor person’s reputation is less valuable than that of his rich neighbour (Lester 1974). However, a lawyer from Legal Aid Directorate was of the opinion that defamation damages are so low and not worth pursuing where the poor are concerned. This was said to be the same for adultery and seduction damages. In practice however, some female clients did bring adultery cases and these were dealt with by the lawyers. There were two cases of adultery which the Directorate was defending in which the actions were being
taken by plaintiffs who were represented by lawyers in private practice. In both cases the women were being sued for adultery and because ZWLA does not deal with such cases, the lawyers at the Legal Aid Directorate took them up.

However clients were sometimes turned away even for cases that were supposed to be dealt with by the Directorate. Cases of divorce and custody cases where referred to other organizations such as ZWLA and Justice for Children Trust. The following reason for the referrals was given by two lawyers at the Directorate who indicated that:

‘It's not that we do not deal with divorce cases, we do but divorce matters are boring and besides for women they are better dealt with by ZWLA. Those organizations which specialize can deal better with some issues and that would be advantageous to the client.’

The clients did not complain that they were referred to other organizations but only sought to be assisted. One woman who wanted to get her two children from her husband complained when she was advised to visit Justice for Children Trust so that court applications could be made for her.

‘I just wanted to be assisted here I did not want to go to court with my matter, I had hoped that the matter would be finalized and I get my children immediately.’

Some women wanted their cases to be solved at this stage as seen from the above scenario.

Another matter on conveyancing was also referred to Legal Resources Foundation. The client, who was male, indicated that he wanted property which had been bought to be transferred into his name. The lawyers said that poor clients did not have resources to transfer property. However one lawyer said that there was no need to dismiss such cases as there may have been different circumstances under which the property was purchased.

‘We should deal with conveyancing matters depending on the circumstances of the client. The cases should not be dismissed without hearing the client’s story.’

1 I knew one of the lawyers from college and this assisted in getting honest answers from her.
The Legal Aid Act provides in section 3 that the functions of the Legal Aid Directorate shall be to provide legal aid to persons who are eligible for such aid in connection with any criminal, civil or other matter. In practice however the lawyer has the discretion to decide on whether the case is worth pursing or not. The lawyers seem to deal with any case and exclude the cases which they may deem technical, which becomes prejudicial to the client.

4.1.3 The means test

The Legal Aid Act provides for the steps to be taken when assessing the means of the client. These include the place where the client stays, the furniture in the house and the food and drink necessary to meet the needs of the client and members of the family. This determines whether the client can afford a private lawyer by testing his means against the income. The client is required to fill in a form (see annexure) in which they fill in their details on their income (if they have any) and their expenditure. Clients indicated that the form is difficult to fill in and they often asked for assistance from the guard manning the premises and the lawyers. Lawyers were in concurrence with the clients that the form is too technical and difficult to fill in. However one lawyer stated that it is important to fill in the form despite its complexities because;

‘Clients can lie about their income, but the form contains a section on expenditure and other details which make it easier to deduce the truth.’

The Director agreed that the form was long and difficult to fill and that it was not available in the local languages as compared to the ZWALA form. He further stated that there is a need for paralegals at the department who could be in charge of assisting clients in this regard, instead of the lawyers.

‘The ideal situation would be to have officers assisting the clients to fill in the forms instead of being assisted by the guard. But lawyers should be dealing with other areas such as research instead of filling in forms for clients. It would be helpful for the clients to have the forms in other languages instead of our technical form.

It emerged that the lawyers were aware that the form was difficult to fill in and when approached with the ZWLA forms they appreciated its simplicity and that time would not be wasted in filling in the form.
The means test at the Directorate was usually carried out by a lawyer with experience such as the Principal Law Officer and the senior law officer with 5 years experience. Clients explained that they did not know that they would be required to contribute to legal aid. One woman indicated that;

‘I was told to pay $300 000 but since I am not employed I explained that I could afford $150 000 and the lawyers agreed.’

The contribution is therefore negotiable with indigent clients and is not meant to put a strain on them. All the lawyers at the Directorate attributed the low turnout of clients (as discussed in the heading number of clients assisted) to the contributions that have to be made. At the Magistrate Court, the Clerk of Court who was interviewed indicated that the legal aid offered by the Directorate was no longer free and so they informed clients who visited the Magistrates court that although it was not free, clients who were extremely poor, could be assisted for free.

‘We tell them that now legal aid is not for free and when they say they have no money we inform them to just try because they may be assisted for free.’

The Director said that they used to have a threshold for the clients who were to benefit from legal aid but had since stopped using one. He said that when a client indicates the income and expenditure on the form it is up to the officer assessing the means to determine how much the client pays.

4.2 Accessing the department: Women’s knowledge of the Legal Aid Directorate

One of my assumptions was that women are not aware of the activities of the Legal Aid Directorate. The level of awareness was measured by asking those who had arrived at the department of how they had learnt about the department. It emerged that there were four major departments which acted as reference points for women to access the Legal Aid Directorate. The table below shows where the women were referred from.
Most of the clients who came during the period from October 2007 to January 2008 were referred from the clerk of court. The lawyers without looking at the statistics agreed off hand that most of their clients were referred by the clerks of court. A visit to the clerk of court revealed that they did not only refer clients to the Legal Aid Directorate. There was a chart in the reception area with a list of ‘free’ legal aid lawyers. The list included Legal Aid, Harare Legal Projects, Msasa Projects, ZWLA and Citizen’s Advice Bureau. A clerk of court interviewed revealed that the chart was prepared sometime ago thus the provision which states free lawyers.

‘We just tell the client to choose the organization that they would want to go to from the chart. We do not choose an organization for them. We have to change because now the Citizen’s Advice Bureau is not functioning as there have no lawyer. We were also advised that Msasa Project has no lawyer.’

A total of 9 women indicated that they had been told to visit the department after they had tried to report to the police with civil cases. One of the women said she wanted a peace order and was informed to visit the Directorate. It emerged that most of the women who were advised to visit the Directorate by the police had matrimonial disputes and sought to apply for peace orders.

The rent board, referred people to the Directorate after they visited that organization with eviction cases. They were advised to have their papers drafted by lawyers at the Legal Aid Directorate.

The ‘other’ in the table represents those women who were directed to the department from other organizations such as Msasa. There was one case were the client claimed that she had been referred from ZWLA and Msasa Projects. When briefed on the subject of the client’s awareness of the department, the Director, Mr. Zvidzayi, said that it was in
their plans to hold a campaign were they would inform people about the department and also about their legal rights;

‘People are not aware of their rights and where they can get assistance. We are planning to hold legal rights awareness campaigns in the three major languages. I hope that we will be able to go to the radio to air these campaigns so that people are aware of their rights. There is a lot that we can do if we are able to source resources for such activities.’

He admitted that the Directorate did not carry out any outreach programmes and awareness campaigns. This means that women may not be aware that the state has a department which can be utilized in solving their legal problems. There is also one office which is responsible for legal aid for the whole country. An officer from ZWLA said that the Legal Aid Department should widen its net by using the courts as centres for legal aid. ZWLA has outreach programmes in Hatcliffe, Murombedzi and Norton. As a result of their legal education and legal aid programs around the country, they are able to reach more women.

The issue of access also had another dimension for some female clients who complained that they had difficulties finding the building because it lacked a banner. Two female clients admitted that they had difficulty finding the building.

‘I searched for this place but when I came here I could not tell which of the building the Legal Aid was. They should put up a banner so that we can easily find the place.’

Most of the clients however said the building was not difficult to find once they were informed of the directions. A visit to the ZWLA offices showed that there was a clear sign showing that the building belonged to the ZWLA. It reflects on the commitment of an organization to have clients visit and that their offices are a public office with an open door policy.

**Summary of findings on Women’s Knowledge of the Legal Aid Directorate**

From the perception of women it emerged that the Legal Aid Directorate is known mostly by clients who visit the clerk of court. Some of the clients came from departments such as the rent board and a few women learnt about the department from their neighbours.
Although no awareness campaigns are being held there are other departments which act as reference points.

4.3 Women assisted by the Legal Aid Directorate

The number of women who visited the Directorate was determined by visiting the directorate on a daily basis as well as looking at the cases that were being dealt with by the law officers from the records available during the time of the research.

A total of 390 files were opened for clients since January 2007. However, there was no disaggregated data on the number of women who had been assisted from the administrative clerk. The clerk from the Directorate said that he did not keep disaggregated data and would consider doing so in the future. The data on the period covering the three months of research had to be obtained by asking the lawyers and sitting in during the vetting process and to count the women who were assisted. It was established that only a small fraction of the women who visit the Legal Aid Directorate were actually assisted. The women who visited were screened by the lawyers first of all if their cases were worth pursuing and secondly if they qualified for legal aid. Most of the cases were referred to the Zimbabwe Women Lawyers Association a Non-Governmental organization which assists women with their legal problems.

The graph below shows the number of women who visited the Directorate, those who were given legal advice and those who were turned away because their cases did not qualify for assistance.
The graph shows that the majority of women who visited the Directorate were referred to other organizations. This means that less women actually accessed legal aid from the Directorate. Women were referred to places such as Justice for Children Trust on any custody case and to ZWLA for divorce. Asked why they referred the cases of divorce one lawyer indicated that;

‘Divorce cases are boring, its not that we cannot prepare the papers we just find it better to refer to ZWLA. The divorce cases that we deal with are usually in defense of a client if the woman is already represented at ZWLA.’

Some of the women who were referred to ZWLA professed ignorance on why they could not be assisted at the Directorate. One lady who I found at ZWLA indicated that she started off at the Legal Aid Directorate but was referred to ZWLA with a property dispute. Before going there I had the view that only divorce cases were referred there from the Directorate.
Although lawyers at the Directorate indicated that they only referred divorce and custody cases, it became apparent that some property cases and other cases which were deemed to be difficult were also referred. One woman who had been excluded from a will by her husband in 2001 brought her case to the department to challenge the will. She said that the estate had been distributed and she had not obtained anything from it. At the time she said the husband’s brother benefited most from the estate. She explained that she wanted to challenge the will so that she could get some of the property that her husband had left behind. She was advised as follows;

‘You are late in challenging the will. You should have come when it happened. We cannot assist you.’

After the woman persisted explaining that she was suffering and needed assistance, she was informed;

‘If you think that the advice that we have given you is inadequate go to Msasa or ZWLA’

The woman indicated that she had been to those places but had not been assisted. She was visibly affected by the way that lawyers treated her and expressed it through crying. Her reasons for the delay were not pursued. Although the lawyer was right that the will had been challenged out of time, the way that the client was informed made the legal aid unworthy for the client.

An employee with Msasa Projects indicated that the organization does not have a lawyer, which explains the referrals to the other organizations which have lawyers. At ZWLA, a lawyer indicated that some clients do not want to accept the legal advice they are given which leads them to seek assistance elsewhere. Six lawyers interviewed indicated that they were dealing with a reduced number of clients because of the scheme which demanded that the clients pay for the legal assistance. They acknowledged this was not the scenario in the past 5 years as each lawyer could deal with up to 10 clients a day.

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2 Mrs Muzofa, explaining a case where client had come from Bulawayo and could not be assisted because her matter was being dealt with by other lawyers.
Some of the lawyers said that with the contributory scheme, fewer women visited the department in preference of the organizations which did not demand any contributions.

The table indicates that out of the 75 men and women who visited the Directorate there were generally high numbers of referrals as compared with other organizations. Women accounted for 69% of all referrals whilst the men accounted for 31%. When asked about the number of female clients that he was assisting, one lawyer also indicated that he thought that he had files belonging to more males than to women. Upon counting the number of files it emerged that 50% belonged to females.

Besides referrals, the low numbers of women assisted was a result of the turning away of clients who were informed that nothing could be done about their cases because they were not legal issues. One female client came with a custody case. She was asked where she resided and she indicated that at that moment in time, she had been evicted by her husband who had another wife. She was advised that she could not claim custody because she had nowhere to shelter the children. This advice was not correct as she could have claimed for maintenance for the children. The two lawyers who were vetting on that day indicated that they felt that clients brought in cases that were impossible to deal with.

Another woman came with an eviction matter. She indicated that her husband died leaving her in occupation of the house. The husband’s second wife and child also moved in after the husband’s death and she wanted an eviction order. She indicated that the woman had come for a visit and that they had a place to stay. The eviction papers were not prepared as the lawyers advised that;

‘If there are just a few items in the house brought by the second wife and her son we cannot apply to the court for an eviction order. It will be a waste of money. The messenger of court fees are $300 million. Just go and solve the matter amicably.’

The issue was trivialized and reduced to an issue of money. The real matter was not seriously considered. At the end of the day, some of the women were not assisted because the lawyers erroneously believed that nothing could be done about their cases.
4.4 Cases handled by ZWLA

The table below shows the cases that were dealt with at ZWALA.

<table>
<thead>
<tr>
<th>Case</th>
<th>September/October</th>
<th>November</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Divorce</td>
<td>135</td>
<td>40</td>
<td>175</td>
</tr>
<tr>
<td>Deceased Estate</td>
<td>85</td>
<td>19</td>
<td>104</td>
</tr>
<tr>
<td>Custody</td>
<td>25</td>
<td>6</td>
<td>31</td>
</tr>
<tr>
<td>Other Civil Cases</td>
<td>251</td>
<td>65</td>
<td>316</td>
</tr>
</tbody>
</table>

In contrast to the 75 cases that were dealt with at the Directorate in a period of three months, ZWLA assisted a total of 526 women. Since this was a female environment it is possible that most women found it easier to visit that organization in contrast to the government department. As can be seen from the data, the number of clients assisted by the Directorate is very low as compared with those assisted at ZWLA. One lawyer from ZWLA when asked what she though about the Legal Aid Directorate remarked as follows;

‘I don’t think that lawyers at the Legal Aid work, they just refer all their female clients to ZWLA.’

Another lawyer interviewed from ZWLA indicated that there are only 3 lawyers and 1 paralegal in the legal aid section staffing the Harare office. There are fewer lawyers than there are at the legal aid directorate, yet they assisted more clients. The lawyers also operate outreach programs in other areas, accounting for the high volumes of cases that they deal with.

The study revealed that a high number of women were not assisted by the Directorate but were instead referred to those organizations which were thought to have specialized services. The Directorate has a mandate to assist indigent clients, irrespective of whether they are male or female and the exclusion of some female clients is not in accordance with the principles of equality. Although it is commendable that the Directorate wanted to
ensure that the women received specialized services elsewhere, the department should represent more women in view of the high number of female lawyers that they have.

4.5 Cases handled by the Legal Resources Foundation
The Legal Resources Foundation assists both men and women and the department formed part of the research in order to provide a comparative analysis of the number of cases handled.

The table below shows the cases dealt with by the Legal Resources Foundation. Although the data obtained does not cover the three months of the research, it does, however, give some picture of the cases that were dealt with by the Legal Advice Centres.

<table>
<thead>
<tr>
<th>New Cases</th>
<th>Urban</th>
<th>%</th>
<th>Rural</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>3,462</td>
<td>55</td>
<td>5,094</td>
<td>61</td>
<td>8,556</td>
<td>58</td>
</tr>
<tr>
<td>Men</td>
<td>2,830</td>
<td>45</td>
<td>3,301</td>
<td>39</td>
<td>6,131</td>
<td>42</td>
</tr>
<tr>
<td>Total</td>
<td>6,292</td>
<td></td>
<td>8,395</td>
<td></td>
<td>14,687</td>
<td></td>
</tr>
</tbody>
</table>

The table shows cases that were dealt with in a period of twelve months by 29 Legal Advice Centres. A total of 14,687 cases were dealt with. Although the figures for the relevant months of the research could not be obtained, the figures show that the Organization deals with a high number of cases as compared to those of the Legal Aid Directorate. The national networking of the Legal Resources Foundation has 29 Legal Advice Centres run by only 42 paralegals. Dividing the 14,687 cases between the Centres gives a total of 1,223 cases for each Centre which is a high total as compared with that of the Directorate which had 389 cases from the beginning of the year to November 2007.

4.6 TYPE OF CASES HANDLED BY THE DIRECTORATE
The Directorate has the ability to deal with any case that is before it because the lawyers are trained at the University of Zimbabwe just as are lawyers in private practice. The cases that are dealt should therefore cover both criminal and civil law. According to the
Legal Aid Act, the Directorate deals with civil, criminal and any other matters. I interviewed 8 lawyers to get a feel of the types of cases that they dealt. Although the Act provides that they should deal with all sorts of cases, I found out that depending on the lawyers some of the categories were dealt with whilst others were not.

No criterion was used for determining the kind of cases that could be dealt with by the Directorate. The cases which were excluded were seduction, defamation and adultery damages. Upon perusing the files, I found that some of the lawyers dealt with adultery cases and when asked they indicated that they had defended clients against actions prosecuted by lawyers in private lawyers. There were two cases of adultery being worked on by one lawyer at the Directorate. Seduction damages were not dealt with and there was no one who brought such a case. No cases of defamation of character were brought.

**Cases brought at the Legal Aid Directorate**

<table>
<thead>
<tr>
<th>Case</th>
<th>Eviction</th>
<th>Divorce</th>
<th>Custody</th>
<th>Sharing of property</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>6</td>
<td>10</td>
<td>9</td>
<td>11</td>
<td>36</td>
</tr>
<tr>
<td>Men</td>
<td>15</td>
<td>6</td>
<td>3</td>
<td>5</td>
<td>29</td>
</tr>
</tbody>
</table>

The above table shows that women brought cases arising from matrimonial issues. The cases that women brought included divorce.

No client brought a criminal case from October 2007 to January 2008. All the lawyers interviewed indicated that there were only a few criminal cases that the Directorate dealt with. Three lawyers gave the reason that the Rotten Row courts were too far and the Ministry sometimes did not have transport to ferry the lawyers to deal with the cases.
Although the lawyers indicated that the department has a mandate to deal with both criminal and civil cases, no client had come with a criminal matter between October 2007 and January 2008. One lawyer indicated that he used to deal with lots of rape cases but that he had stopped representing clients because he feared that he could be attacked for representing rapists. Five lawyers indicated that they did not have any criminal cases files on their desks. One of the lawyers indicated that this was because the Magistrates court was situated some distance from their offices. Transport is usually a problem because the Ministry of Justice does not have transport or sometimes fuel to enable them to attend court. They preferred to deal with the civil cases whose courts are a block away from their offices.

The Director of the Legal Aid Directorate said some of the lawyers were selective about the work that they did.

‘Lawyers are supposed to be jack of all trades, to handle civil, criminal and labour cases. Although some of the lawyers would not have dealt with a particular course at school, I tell them to do all the work and seek assistance from elsewhere instead of turning the client away.’

Although it is not the policy of the department to deal with some cases and not the others, the lawyers adopted this practice as a way of getting around the cases that they viewed as being difficult cases. They also attributed their reluctance to deal with criminal cases to the shortage of fuel and the unavailability of transport.

4.7 Scope of Legal Aid offered
The scope of legal aid refers to what actual ‘legal aid’ is to consist of. Legal aid should consist of legal advice, legal representation and the drafting of necessary papers for the carrying out of legal aid. The Legal Aid Act provides in section 11 for the scope under the heading ‘Nature of Legal Aid.’ Section 11 provides that legal aid shall consist of doing anything that may be properly done in the interest of the client. The Legal Aid Act does not define the scope of legal aid that the Legal Aid Directorate should cover. The onus remains on the lawyer to ‘properly do whatever he deems fit for his client.’ The lawyers cannot be held accountable for acting outside the margins of the Act because there is no provision for what they are expected to do for the clients.
The legal aid offered by the Directorate is limited to preparing court papers in what they term minor cases such as maintenance, eviction and only extends to court representation in cases such as divorce where the lawyer deems it fit that he represents the client. Lawyers said they are not motivated to go to court because of their conditions of service. Because most of the cases of divorce are referred to other organizations, it means that the lawyers do not spend a lot of time representing clients in court.

One client with an eviction case indicated that the assistance she was getting was in the form of drafting legal papers. She was satisfied with just having her papers drafted because in the past the client had to do more than appear in court by themselves.

‘The lawyer who is dealing with my case drafts legal papers and I take them to the court. It is better than in the past when I brought my divorce case and had to have my own papers typed and photocopied.’

Two clients who had property disputes were being presented up to the level of court representation. It emerged that the lawyers could choose when to represent clients in court. There was one case of a client who returned claiming that the Magistrate had asked her to bring her lawyer. The lawyer dealing with the case stated that there was no need for her presence at a pre-trial conference and concluded that the client was lying. It could have been that the client felt she needed the reassurance of the lawyer when the other side had a lawyer.

8 lawyers stated that they did not go to court for all issues but they selected the cases which they thought warranted their presence in court. One lawyer said;

‘I don’t go to court most of the times because there is no motivation for me to do so. Lawyers in private practice can represent their clients in court because they are well remunerated. Here there is just no reason to go court.’

Another lawyer said that he selected the cases for which he could attend court.

‘I don’t always go to court; I select the cases that I can go to court for, if they are difficult such as divorce and property disputes I find that it’s necessary for me to go.’
Others however attributed their restriction on giving legal advice and drafting court papers to the fact that they are sometimes busy and do not have the time to attend court. But this assertion could not have been the case because of the very low volumes of cases that the whole Directorate dealt with.

The Chief Magistrate seemed to appreciate that the Directorate drafted papers and did not represent their clients in court. He indicated that the Magistrates were required to refer those clients who could not articulate their problems to the Directorate to have their papers properly drafted and that would be enough for them.

‘Usually when a clients papers are in order it is easier for the Magistrate to appreciate the nature of the case and make an informed judgment without the presence of the lawyer.’

The Clerk of court who was interviewed expressed the view that those clients who had been assisted by the Directorate could articulate their problems better than those who just came on their own with legal problems.

The scope of the legal aid provided by the Directorate is not defined in the Act which gives the lawyers too much discretion in representing the client. The women can therefore be prejudiced when they are not represented up to the level that they deem appropriate.

4.8 Dealing with cases to finality
My assumption had been that the clients cases were not dealt with to finality because of the resources that were needed to photocopy documents and have them typed. However, since the introduction of the Legal Aid Fund, clients were not required to use their own funds to photocopy documents. Most of the clients who started on their cases ensured that they pursued them until they were finalized. Most of the lawyers said that they did not have files which had not been completed.

The clients pay a one-off sum which covers the preparation of the documents. The amount that is paid by the client was viewed as inadequate to cover all the processes that
the lawyers did on their behalf. The clients were not asked to pay further fees for their legal assistance and this meant that their cases were dealt with despite their financial contributions.

One client discontinued her case and returned to be assisted after two years. She said that she had been unable to pursue her matter because of personal problems.

‘There are many reasons why I did not come to check on my case such as ill health and finances. Transport is now expensive, I stay in the rural areas.’

The matter had already been granted default judgment and she was told that she could not challenge it after such a long time. Because of the few cases that were not finalized the lawyers gave reasons for the clients who did not complete their cases. In the case of divorce, one lawyer said that the client may have found alternative ways of solving her dispute.

At the Department of Policy in the Ministry of Justice, there was one client who sought assistance from the law officers and when she was asked for her papers, it emerged that her matter had been dealt with by the Legal Aid Directorate. She sought assistance after her case had been decided by the Magistrates Court. She was advised that she could still use her lawyers for an appeal but because she was unhappy with the service, she wanted someone else to assist her.

Two clients indicated that although they got assistance, the problem was the transport cost to follow up on the progress of the matter. One of the clients said that when the matter is serious it is difficult to give up on it before it is finalized. She however agreed that if she did not pursue her case, it was because she could not afford the transport costs.

The transport issue which the respondents alluded to is an indication that the Legal Aid Directorate is not strategically placed to assist indigent women. All the clients had to travel for their cases to be heard and some of the clients viewed this as a sufficient reason not to pursue their cases. On the other hand ZWLA and Legal Resources Foundation carry out outreach programs which enable the department to reach indigent clients.
Summary on findings on Dealing with cases to Finality

The research found that when women pursued their cases they were dealt with to finality. However, the clients felt that the issue of transport costs was a problem as they had to travel each time when they needed to follow up on their matters. This is because the Directorate only has one office in the Central Business District and does not carry out any outreach activities.

4.9 Quality of service offered by the Legal Aid Directorate

The quality of legal aid offered was determined by the responses of the women: that is on how they viewed the service offered by the Directorate. It was also deduced from the views of other lawyers in the field of legal aid in other organizations. It was useful to use observations in determining the quality of service by looking at the time that was taken to serve clients and the legal advice that they were given.

Time taken to attend clients

The time taken to attend to clients also reflects on the quality of service that is given to the clients. A lawyer who attends to the client on time ensures that justice is not delayed. The study found that the time that was taken to attend to clients depended on the lawyers on duty on that day.

The study found that there was no notice as to the time that the clients could be assisted. As a result some of the clients sought assistance in the afternoon and had to be told to return the following day. New clients were dealt with in the mornings only, but there was no reason to do so because the lawyers complained that their case load had decreased. On the other hand the lawyers who carried out the vetting exercise were not expected to deal with any new case as they assigned the cases to the other lawyers. In essence there was no question of the time being taken up by the workload.

A woman complained that she had come to the Directorate on three occasions and yet she still could not get anyone to assist her.

‘This is the third time I am here, the first time I was told I came late, the second time I came but I was told that I should come today. Maybe I will be assisted today.’
Another woman indicated that she was a returning client and wanted to be assisted on a sharing of property issue.

‘The lawyer who deals with my case is not here I have only been told now when I have been sitting for an hour I wish they could give me someone else to look at my case’.

The problem of the time taken to serve them also came up. One woman just complained that the lawyers were very slow in assisting clients and stated that;

‘They spend more time talking to each other than to the clients. Some of us want to return to work otherwise we will be in trouble.’

The woman clearly wanted to be assisted and waited because she had no other choice as she wanted her case solved. Service was clearly slow and that impacted on the way that the client viewed the lawyers at the Directorate.

The lawyers were aware that they were doing an injustice to the clients but preferred to leave the clients to the person who was responsible for the vetting on that day. In the clerk’s office and reception, there was a duty roster which showed the officer who was responsible for vetting the clients or attending to them. The problem arose when the officers on duty were away. It meant that the clients would wait for long periods without being attended to. In one scenario, two lawyers left for interviews in South Africa even after being denied permission by the Director and this led to clients not being served during the time they were supposed to be served. One of the officers, who asked for anonymity, said that at times he had to tell the lawyers to attend to the clients after seeing that clients sit on the bench for too long. On some days however, clients would indicate that they were served within a reasonable period of time.

**Drafting of Court Process**

The lawyers assisted each other in drafting court process. The junior lawyers often asked for precedents in drafting responses to divorce cases. The study found that there was no client who had an issue with the court papers that had been drafted. The problem that emerged was that of the time that was taken in drafting. Clients often came in to find out if their papers had been drafted. In one case a client came to the see the lawyer for the third time and because the typist was away, ended up having to have the papers typed in town.
One woman came back with her papers after losing her case and asked to see a lawyer. When she was informed that the person who had drafted her papers was a lawyer, she expressed disappointed and stated that she thought her papers had been done by a clerk. She admitted that the Magistrate had not informed her about that but that she had just reached that conclusion after she lost the case. A respondent from ZWLA indicated that the papers drafted at the Directorate were not up to standard as compared with those drafted by ZWLA or lawyers in private practice. When pressed further on what she meant she remarked;

‘It’s not that they cannot draft, but you can just tell that the papers were done there. Sometimes the presentation layout is not so neat. Some papers are photocopied whilst others are typed, leaving the application to appear as if it’s not uniform.’

The statement shows that not much time is given to the preparation of the court papers by the lawyers at the Legal Aid Directorate.

Most of the clients did not see anything wrong with the papers that were drafted for them. This may have been because they could not compare them with those done by a lawyer in private practice. Clients also usually assume that as long as their papers are drafted by a lawyer, they must be well drafted and in order.

**Attitude of the lawyers to the Clients**

The attitude of the lawyers clearly differed from one lawyer to the other. Those with their clients at heart treated them in a way that was respectful. Some of the lawyers had the view that clients were a problem and did not treat them in the right way. The fact that most of the lawyers are female was reason enough to believe that they treated women well. The Principal Law Officer said that he felt the Directorate treated indigent women well because most of the lawyers are female.

‘Most of our lawyers are female and I think because of that they are able to treat the female clients with respect.

The senior lawyer believed that just because most of the lawyers are female then clients were satisfied with the treatment that they received. The response on the ground shows a different scenario.
A female lawyer stated that working for the legal aid was depressing and that sometimes clients came with thoughts that because they had the influence of a political figure, they could get the lawyers to do as they pleased.

‘We make sure that we put clients in their rightful place, if you do not do so you end up being taken for granted.’

She said this in response to a question on the harsh attitude that they had displayed to some clients. Because some of the lawyers were afraid of bonding with the client they adopted a distant attitude so that the client would not take them for granted. Some of the clients appeared too scared to go back to the lawyers to ask for assistance when they did not understand a certain point. After being assured that she had been treated satisfactorily by her lawyer, an interviewee then asked me to assist her with an explanation of what a peace order entails.

Another lawyer indicated that one of the reasons for the numerous referrals was that the lawyers sometimes become impatient and do not want to hear what the client has to say. He stated that there were numerous reasons for the referral of clients to other organizations such as the fees and insufficient papers that the client would have brought.

‘Sometimes the lawyers can be impatient and refer a client who is slow in explaining their problem. It is possible to misunderstand the client.

This kind of attitude shows that the lawyers can adopt an attitude of impatience to some clients. When dealing with legal aid clients, it has to be borne in mind that they are laypersons and they may have difficulties in explaining the legal aspects of their matter.

One client complained at length about the service at the Directorate and expressed surprise that it was staffed by lawyers.

‘I did not think that they were lawyers because of their mannerisms, lawyers have a way of dealing with clients. There should be a rapport between the clients and their lawyers. The clients should not feel like they are being punished for seeking assistance. I have visited the Directorate 4 or 5 times and the way I was treated gave me the impression that they are not lawyers. Lawyers should not be judgmental. If a lawyer has a bad attitude, then the client would not be forthcoming with information.’

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3 A female lawyer after telling a client to have her own papers typed.
4 A male client who visited the Directorate and declined to give his name.
This client aptly summarized the views of many clients who are indigent when they seek assistance from lawyers. They already have the burden of being cases of charity as they are not in a position to pay for the legal services. The worst that can happen is for the lawyer to mistreat them in connection with their case. It makes the client lose confidence in the system which is supposed to be of assistance.

Not all the lawyers were viewed as having the wrong attitude towards their clients. One client indicated that the older lawyers could treat their clients with respect as compared to the younger ones.

‘The older lawyers treat their clients well unlike these young lawyers who have no respect. Standards have decreased, in the past the lawyers treated clients better.’

The attitude was often blamed on the low salaries and conditions of service. The Director of the department appreciated that some of his officers were impatient and sometimes treated their clients harshly. He said that sometimes he talked to them about their behavior and attributed their lack of change in behavior to external pressures.

‘I tell them to deal with all the clients and their cases in a diligent way. I think the problem is with the salaries and the benefits otherwise there’d be commitment to the department.’

**Legal Advice Given**

To determine the quality of service offered it was also necessary to listen to the advice that the clients were given by the lawyers. On this issue, the clients could say whether the advice they had been given was what they expected from the lawyer. On a number of eviction cases the clients would be informed not to pursue that course of action because it was expensive. A female client who had been given advice said she was happy with the advice that she got because she had no money.

‘I am happy because they told me what to do. I do not have $300 million to pay for their things to be removed, so I will try and talk to the younger wife and her son so that they leave’

The above statement shows that the lawyers also use the conciliatory approach in assisting some of the clients. The participant meant that she did not have money and not that she was happy about the service that she obtained. The Directorate has a fund to
cater for the fees of the messenger of court if the client is indigent. The Director indicated that the Fund did not have adequate funds but was supposed to cover such eventualities.

The lawyers did not take time to explain the law to clients. The advice is sometimes given in a hurry and the client may leave not understanding what the law is. A woman came after she had been granted a peace order and said that when she was harassed by her husband she went back to the Directorate to be assisted in drafting a second peace order.

'I did not know that I could use the peace order. I was just given the documents and did not know how to use it. After coming for the second time I have been informed that I should have gone to the police so that he could be arrested. If only they had explained when I came the first time.'

The statement shows that the client came to the Directorate for assistance but was not given an adequate explanation as to how the peace order works. This showed that some of the lawyers did not take adequate time to tell the client what the law entailed.

One administrative clerk interviewed confirmed this view by saying that the lawyers where at times dismissive and did not take enough time to listen to the client’s problem.

'Sometimes the client is told that the case cannot be solved and the client leaves unsatisfied. If only the clients could appeal to the Director so that he has the last word on the kind of assistance that could be given.

The Legal Aid Act provides in section 7(4) that if the client is not satisfied the Director may at any time reconsider any decision made on the eligibility of any person to receive legal aid. It was not the rule of the Directorate that a client who was not happy about the decision could seek further assistance from the Director. During the research, the clients who were informed that they had no case did not seek further audience with the Director because they were not aware that this was an option available to them.
4.10 Quality of service at ZWLA

A visit to ZWLA showed a different scenario from that at the Legal Aid Directorate. A banner at the reception displayed the time that the clients could be seen by their lawyer. According to the notice on the banner, the clients could only come three days a week and could only be assisted between 8 am and 1 pm. Clients were served when the office was opened at 8am and this proved to be the case during the week that the research was carried out. Out of the sample of 10 women interviewed, no client complained of having to wait for the service for a long time.

Generally the clients were pleased with the services at ZWLA and only one client expressed displeasure after she had been informed that she could not be assisted because her matter was being attended to by another organization. An official from ZWALA indicated that although there was no formal induction for the lawyers in their treatment of clients, the lawyers are told how to handle their clients.

Summary on the Quality of Service offered by the Directorate

The findings unveiled an inferior service to women at the hands of the lawyers at the Legal Aid Directorate. The time that was taken to serve them did not reveal a desire to dispense justice to the poor. The legal advice that was given was at times tailored according to the resources of the department instead of being in line with the principles of justice. The attitude of some of the lawyers was that of rudeness to the women and lack of respect on the grounds that they were poor. The standards of the service offered by the Directorate were inferior to those offered by ZWLA as evidenced from those interviews which were carried out at ZWLA.
4.11 Resources of the Legal Aid Directorate

In this section the resources of the Legal Aid Directorate in relation to the clients that they deal with were an important aspect of the study. The human resources as well as the financial resources were looked into to determine whether the department was sufficiently equipped to deal with the indigent poor who came with their problems.

Human Resources

The Director stated that the department had a full staff complement. One lawyer resigned when I was in the middle of the research. She had two years experience and said that she wanted to join a law firm. There was a Director and 3 law officers who had been with the department for over 4 years. The rest of the 12 lawyers had either graduated recently or with two years experience or less. 1 officer was on maternity leave and only returned when the research was nearing completion when another went during the month of November. The department was therefore at its height, with a full staff complement after many years. There was therefore no complaint about a shortage of lawyers because it was the only Ministry department with so many lawyers. There was a vacancy for a Chief Lawyer to deal with administrative issues as well as to supervise the junior officers.

Office Environment

The offices of the legal are situated along Fourth Street and Samora Machel Avenue in Zimbabwe’s capital city, Harare. The house is in a dilapidated state and clients often complain about the nature of the offices which they described as ‘shabby’. The environment of the department is clearly important in ensuring that clients access legal aid in a satisfactory manner. Lawyers complained that the clients did not hold them in high esteem because upon entering the premises, the client saw a building which was not fit to have justice administered. One lawyer complained that;

‘I think clients do not take us seriously because of the state of our offices. If only we could be moved to a better building and give us computers so that our offices at least look presentable.’
The Director had a wooden chair in contrast to the other Directors in the Ministry and other law officers in departments such as Policy and Legal Research, Legal Drafting and Legal Advice. Although I did not ask about the state of the office, the issue was brought about during our discussion.

‘I want to ensure that during this year’s budget renovations are made to the building. The place needs to be painted and officers need decent office furniture.’

He appeared to have a clear picture as to how the change in the premises would contribute one way or the other to the administration of justice. Each office is shared by two lawyers. At times it was difficult for a client to know which lawyer was to deal with their case where two officers were in one office. The sharing of offices does not ensure privacy when dealing with clients. I observed that the lawyers sometimes would listen to the client’s case and both would ask questions so as to understand the situation that the client was presenting. This meant that the client would listen to two lawyers both trying to share their learned opinions with the client who did not know about the law. The Legal Aid Act provides in section 21 that legal aid should not affect the legal practitioner and client relationship.

‘(2) A law officer who has been assigned to provide legal aid to an aided person shall be entitled to the same rights and privileges, and be subject to the same obligations, in relation to the aided person’s affairs as a legal practitioner in relation to his clients affairs.

The lawyers in legal aid have the same obligations as those in private practice in relation to their clients. Because the lawyers share offices, it was possible to have two clients at the same time albeit with different lawyers. This meant that the clients could listen to each others matters. The atmosphere is therefore not conducive to female clients who may wish to express themselves in private, before their lawyers.

The Directorate also has one toilet facility marked ‘males’ although in practice even female members of staff and the male and female clients use that facility. The ZWLA offices on the other hand have a toilet facility for the clients making the environment more receptive to clients. Although the issue of the toilet was not raised as an issue by the female clients, it was clearly not comfortable to first knock on the door and wait for a
response. On the first day of the research I asked to use the toilet and was directed to the one marked ‘male’. I returned to the female law officers and told them that I did not find the one for females and was advised that;

‘We all use that one (the one I had seen). Just make sure that you knock in case there is someone (a man) inside’

The Legal Aid Directorate does not have adequate resources to deal with the needs of indigent women who access legal aid.

**Office Equipment**

The twelve (12) lawyers and the Director did not have computers and printers. They wrote down instructions and relied on two secretaries who did the typing for the whole department. In one case the secretaries were all absent and one lawyer who had drafted court papers for the client, gave the client to have the papers printed in town. Some of the lawyers stated that the work could be done faster if they had computers and printers ‘like the officers in other departments’. Two lawyers admitted that they did not have computer skills even if they were to be given computers. It was admitted that the number of cases being dealt with by the Directorate had since dropped but the need for computers cannot be ignored. There was only 1 photocopier for the whole department which was said to serve the needs of other departments in the Ministry which had broken down photocopiers.

**Budget for Legal Aid Directorate**

The Directorate is funded by Treasury and it emerged that the budget is never adequate for the activities of the department. The Ministry of Justice, Legal and Parliamentary Affairs has a number of departments which may be considered to be of priority. An officer in the Finance division said that the Ministry of Justice is ‘top heavy’ with too many departments. The Justice ministry houses major Commissions such as the Judicial Services Commission responsible for the country’s judge’s conditions of service and the Zimbabwe Electoral Commission responsible for elections. The officer said that although funds came from treasury these are not usually what the department would have bid for.
Most of the funds for the year 2008 were channeled towards the harmonized elections and so the funds for legal aid were less than what the Directorate required for its operations. The Director said that the amount that the department got for 2008 was ‘better’ when they went to bid in 2007 but had since been eroded by inflation.

‘We got $1.5trillion although it was less than what we wanted but at that time it would have gone a long way in meeting our needs. Considering that the prices of goods and services will go up and that we receive the money in batches, it will be nothing by mid-year.’

The Director indicated that although they got funds from Treasury these were handed over to the department in quarterly phases which meant that by the time they got the funds, they would have been eroded by inflation. He also said that bureaucratic procedures were also an obstacle in the running of the department.

‘At times when we want bond paper, we have to apply to the Head Office, who have to source for quotations and by the time that they agree to buy; the price would have gone up. We do not have an administration department and so we rely on the one staffing the whole Ministry to deal with our issues’.

With the setting up of the legal aid fund, the Ministry of Justice was trying to assist the department to raise its own funds to ensure that the department does not grind to a halt due to lack of funding. Clients who contribute only provide a nominal fee which was considered to be inadequate by the Director in meeting the needs of the department. Most of the women who visited the directorate indicated that they were not formally employed. Most were vendors and did not have a monthly income. It was noted that the lawyers did not ask for a fixed amount of money but relied on the information of the client to deduce the amount that the client could afford to pay.
Below is a table showing the trend of contributions made using 10 files obtained from one lawyer.

<table>
<thead>
<tr>
<th>Name and Sex</th>
<th>Employment</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Learnard (M)</td>
<td>Electrician</td>
<td>Z$3 500 000 (US$0.87)</td>
</tr>
<tr>
<td>Charity (F)</td>
<td>Vendor</td>
<td>Z$1000 000 (US$0.25)</td>
</tr>
<tr>
<td>Aloise (M)</td>
<td>Guard</td>
<td>Z$1 500 000 (US$0.38)</td>
</tr>
<tr>
<td>Ngoni (M)</td>
<td>Gardener</td>
<td>Z$2 500 000 (refunded)</td>
</tr>
<tr>
<td>Kettle (F)</td>
<td>Vendor</td>
<td>Z$200 000 (US$0.05)</td>
</tr>
<tr>
<td>Manyara (F)</td>
<td>Gardener</td>
<td>Z$500 000 (US$0.13)</td>
</tr>
<tr>
<td>Chipo (F)</td>
<td>Maid</td>
<td>Z$50 000 (0.01)</td>
</tr>
<tr>
<td>Crylet (F)</td>
<td>Vendor</td>
<td>Z$100 000 (US$0.02)</td>
</tr>
<tr>
<td>Rensisi (F)</td>
<td>Unemployed</td>
<td>Z$600 000 (US$0.15)</td>
</tr>
<tr>
<td>Annet</td>
<td>Unemployed</td>
<td>Z$600 000 (US$0.15)</td>
</tr>
</tbody>
</table>

The table shows that the contributions amounted to less than US$1 for both the employed and unemployed. This shows that they were nominal contributions which most of the clients did not complain about. Only one female client complained about the contribution but she agreed to pay a lower contribution after negotiating with the lawyer. A woman who had brought a second case to the Directorate said that she found that the department functioned better with the contributions from clients.

‘In 2004 I came with a divorce matter and the department had no paper, I had to go and have the papers printed in town. This time I brought an eviction case and did not have any problem when I came my papers were done and there was no excuse of not having bond paper.’

This shows that the funds are a way of boosting the performance of the department rather than to burden the clients. All the lawyers in the department said that they assisted those who were really poor for free. However those women who could not afford to pay any contribution were referred to ZWLA. A female lawyer remarked;
‘There are very few people who come here who cannot afford to pay even a nominal fee. But when such people come, we assist them for free.’

A clerk of court interviewed also agreed with the view of the lawyer that those who were truly indigent could get assistance from the Department;

‘There is a woman who came and when I told her that she could go to the Directorate, she said she could not afford to pay any money. I told her she should just try; she may just be assisted for free.’

The contributions from the clients are an innovative way of dealing with the problems of finances that the governments face. There was no client who said that they were made to pay when they could not afford to. The issue was that they thought that the lawyers assisted for free only to get there to contribute to the legal aid. Since the issue of contributions was not raised as a problem by the clients, the numbers of those women who visit the Directorate should be higher than the figure that was dealt with.

**Conditions of Service of Law Officers**

The study revealed that the lawyers had poor conditions of service and remuneration packages. Whenever an interview was held with the officers, the issue of the salaries kept on being referred to. One officer said that they needed to be paid better in order to perform their functions more effectively. During the time of the research the junior lawyers at the Directorate were earning less than US$10. During the month of December 2007, the lawyers said that their morale was low and that the bonus that they had received was not enough to purchase groceries. At the time the lawyers earned Z$40 million dollars inclusive of bonuses (about US$20).

On the other hand their counterparts in private practice received better salaries. The lawyers in the N.G.O earned their salaries in US dollars, a practice adopted to ensure that their salaries were not eroded in Zimbabwe’s hyper inflationary condition. Because of the low salaries, the lawyers at the Legal Aid Directorate were not eager to carry out their duties.
Summary of Findings on Resources at the Legal Aid Directorate

The resources of the legal aid directorate are inadequate in meeting the needs of indigent women. Although there is an adequate number of lawyers manning the department their efforts seem to be hampered by the environment that they operate in, their conditions of service and the unavailability of transport when they want to travel to court for some matters. The Budget which the department gets from treasury comes in batches and therefore by the time it needs to be used it would have been eroded by inflation. The clients make contributions towards their legal aid but this is never sufficient to cover costs such as Messenger of Court fees. This leads to women not getting the legal aid that they require but rather legal aid that is tailored to the means of the department.

4.12 Conclusion

The chapter presented the findings of the research on the number of women assisted at the Directorate, the scope of the legal aid covered by the Directorate and whether cases were dealt with to finality by the lawyers. The Chapter also looked at the resources of the Legal Aid Directorate in terms of the staff compliment, the office building and office equipment. The chapter presented the women’s views on the services that they received from the Directorate and the cases that they brought. The findings chapter also presented two other organizations which acted as a chain of reference for the Legal Aid Directorate to assess whether at the end of that chain, the women eventually obtained access to legal aid.
CHAPTER 5

DISCUSSION AND CONCLUSION

5.0 Introduction

This chapter deals with a discussion of the findings in the preceding chapter and the conclusion. The following major conclusions were drawn from the research findings.

5.1 Quality of Service

The research revealed that the quality of service that is offered by the Directorate is not highly rated by some clients and other lawyers who are not employed by the Directorate. The fact that some of the clients remained unclear about the assistance that they had been given points to a lack of patience on the part of the lawyers to fully explain the law and to deal with the clients to their satisfaction. The lawyers often defended their lack of enthusiasm to work for indigent clients on the conditions of service and general neglect by government.

The quality of service that is offered at any centre which offers legal aid should not be inferior to that offered in the private practice. Gross (1977) indicates that indigency should not be a material factor in determining the quality of legal aid which an individual may obtain. He adds that legal aid work should be fought with the same zeal that a private practitioner would use in fighting for his paying clients. The government lawyers do not seem to have the ability to deal with the needs of poor. The lawyers at ZWLA on the other hand and other Non-Governmental Organizations work with zeal and ensure that their clients are satisfied. This point is confirmed by Dias (1981:370-372) who says that unless the lawyer is highly placed or at least has strong persuasions, a government lawyer may lack the means to solve the concerns of the poor.

The lawyers have a duty towards the clients of ensuring that their cases are dealt with to finality and wholeheartedly. In this case the lawyers should be made aware that they perform an important function of giving legal assistance to the poor so that everyone is
equal before the law. Fuchs states that the work done by legal aid lawyers is more important for constitutional liberty than a dozen Supreme Court decision (Fuchs 1993: 65). This is because legal aid lawyers carry out the function of ensuring that citizens in a state stand equal before the law and they do this on a daily basis. The Supreme Court lawyers on the other hand have to wait for a case to be brought to them to ensure this constitutional liberty.

5.2 The Number of Clients accessing the Legal Aid Directorate
The study revealed that the number of clients that the Directorate deals with is too low for a department with a full staff complement. The number of clients who visited the Directorate was also less than in previous years. In the past the lawyers indicated that they dealt with a total of five new cases a day. Although the lawyers attributed this to the increased costs of transport, the numbers assisted at other organizations such as the legal Resources Foundation and ZWLA remained high. The number of cases dealt with by the Directorate point to a poor trend by the government department in dealing with legal aid issues. As shown in the following conclusions, the low number of cases could be due to a number of factors such the lawyers’ lack of motivation, the quality of service and financing of the department.

The state has also tended to refer potential female clients to women only organizations which have been recently established. This explains the main reason for the referrals of women by the state department to other organizations. Although it emerged that the women’s organization dispensed with more cases by dealing with women and that the women were happy with the services on offer, the state should still remain responsive to the needs of women. It is not the role of the Ministry of Women’s Affairs to deal with all government issues to do with women’s rights, but is the duty of the state as a whole. It is also not the role of the ZWLA to deal with all cases pertaining to women.

5.3 The Resources of the Legal Aid Directorate
Although the Directorate has a full staff complement, it comprises mostly of young lawyers with two years experience or less. This confirms a view held by Fuchs (1993)
that government legal aid lawyers are usually frustrated leading to high staff turnover. Those who remain are therefore young and inexperienced and driven by the need to make money and not to develop legal aid. The budgetary allocation of the department is inadequate and has meant that the office environment is largely unsuitable for clients. There is no schedule for payment which means that the lawyer on duty has the discretion to determine if the client pays and the amount that can be paid. Treating each case on its merits is highly desirable as people’s circumstances can never be the same. Each client pays according to what they can afford. It seems that with the introduction of the Legal Aid Fund the clients are happy with the service as they are no longer required to use their own funds for photocopying and typing services. The government has made efforts in ensuring that the department is adequately funded in its programs through the setting up of the Legal Aid Fund. The legal aid fund made up of client’s contribution and sources of funding from elsewhere, is meant to provide adequately for the department so that it does not entirely rely on funds from treasury. Gross states that the government has the responsibility to provide adequate funds for legal aid work (Gross 1977: 69).

However, the department has not sourced funds from outside and has been largely reliant on the funds from treasury and contributions from clients. Because the contributions are from those clients who are in a lower income bracket or unemployed, they are never enough to sustain the whole department. The department is therefore viewed with a lack of seriousness and the lawyers are seen as clerks. The furniture of the department shows that the department is not ranked as highly as other offices. Legal aid offered by the state is therefore not taken seriously and organizations do not assist in making the department comply with its human rights duties of access to legal aid for women. This view is also aptly expressed by Fuchs (1993: 271) who says that improving the lot of the poor has been negatively valued when the department is not properly financed.

The fact that the lawyers from the Directorate are paid by the Public Service Commission means that their salaries are on the low side as compared with those of their counterparts in private practice or private organizations. There is therefore a high staff turnover and the legal aid lawyers are frequently looking for greener pastures. The legal aid lawyers
only stay for two years or less just enough to acquire the requisite basic experience and thereafter they move on. This means that the department always has inexperienced lawyers, whose inexperience will show on the quality of service that they give to clients. Because of low remuneration the lawyers are not committed to the rights of the poor and women. Roshier (2001: 258) states that it is not only enough to have an adequate number of lawyers at a legal aid department but their motivation is equally important for them to dispense justice to the poor. This is because when remuneration is low, combined with the excessive legal aid work, only a few lawyers end up doing legal aid work.

This point is further emphasised by McQuid-Mason (2001: 207) who says that experience has shown that the chances of maintaining a successful comprehensive legal aid scheme are minimal unless lawyers are properly paid to deliver legal services.

Although lack of payment should not be the reason for the poor treatment of indigent clients, underpaying lawyers frustrates them and leads in turn to the poor treatment of their indigent clients. Regan (1999:132) says that the payment of lawyers in a legal aid system is critical. He emphasizes that the forms that legal services delivery take, are dependent on professional lobbies whose interest is adequate remuneration. In this respect, adequate remuneration does indeed determine the type of service that the client gets at the end of the day. This is also true of the lawyers in other government departments and not only at the Legal Aid Directorate who should also be adequately remunerated. This will go some way to ensuring that their quality of work is improved.

5.4 The scope of Legal Aid offered by the Legal Aid Directorate
According to the Legal Aid Act section 8, the nature of legal aid to be dealt with by the Directorate should cover

‘...doing anything that may be properly done by a legal practitioner for or in the interest of his client.’

(2) The nature of legal aid provided to a person in any case shall be in the discretion of the Director, taking into account the needs of the person concerned and the resources of the Directorate and the Legal Aid Fund.’
It emerged that the lawyers were competent to receive and deal with all cases as they arose. All the lawyers at the department received their training from the University of Zimbabwe which qualification is the same for all the lawyers in private or public practice. However, the lawyers tended to select the cases that they could deal with. Divorce cases and custody cases where not dealt with but were referred to ZWLA or an organization that dealt with children. Conveyancing cases could be dealt with but they were referred to the Legal Resources Foundation. The practice of referring those cases which the department feels like getting rid of makes the lawyers appear incompetent in dealing with difficult cases. In essence this practice makes them redundant and unwilling to carry out complex matters. This would lead them to be less capable than their counterparts in private practice who are able to deal with any matter presented to them. This is confirmed by views held by Dias and Paul (Dias 1981: 380-387), who say that those lawyers with talent do not want to join the government. They further assert that public lawyers become satisfied in dealing with routine work and do not see the need to bring in any creative or innovative work.

Dias (1981: 380-7) also points out that those lawyers who are assigned public roles are disinterested in claiming that role or influencing it. He asserts that the public lawyers do not influence the character of public departments that they serve but rather they end up being ‘influenced by it, blending in with the bureaucracies that they serve’. Government lawyers in Zimbabwe are thought to be less committed to their work than their counterparts in private and non-governmental organizations. Instead of the lawyers in legal aid changing this trend, they have become complacent in their positions. Government reporting structures are not as strict as those of smaller organizations and a disciplined official ought to be able to work effectively and efficiently with little or no prompting. The employer of the Directorates lawyers is the Public Service Commission which is housed in a separate building, which means that the officers are not accountable to the one who employs them.
5.5 Type of cases dealt with by the Directorate

The Legal Aid Directorate was put in place to deal with both civil and criminal cases. It emerged that the department dealt with all the types of cases and therefore did not prejudice women in those matters which the department did not deal with. Although the department dealt with both criminal and civil cases, the study found that there was no one who came with a criminal case matter. It also emerged that the lawyers did not go out of their way to find those clients who needed assistance in criminal matters because they were not motivated to do so. The distance from the Directorates offices at 4th Street to the Rotten Row courts proved to be a major obstacle for the lawyers to assist those who had criminal cases.

The South African Legal Aid Board deals with both criminal and civil matters but the reason that they are able to deal with the cases may be associated with the fact that they are an autonomous body. The South African Legal Aid Board is a semi-autonomous board which is established in terms of the Constitution of South Africa. The Legal Aid Directorate on the other hand is not a government department with autonomy. The prosecutors are also employed by the Public Service Commission and are also state lawyers. This means that if the Directorate accepted a criminal case, two government lawyers would oppose each other. This may be ineffective in dealing adequately with the clients cases.

State legal aid is not contributing much to the development of the poor in Zimbabwe. Not only is the department neglected, the lawyers are not engaged in creative or innovative work. Richard L. Abel (1985:572) states that;

*Legal Aid lawyers handle their cases in routine fashion, with the least expenditure of effort...Is it because of case load?*’

The issue of case load is not the problem at the Directorate but rather the lack of will to dispense with justice for the poor. The issue of doing some cases in routine fashion is also alluded by Meadow (1983: 237-56) who says that because lawyers do some cases in a routine fashion, this tends to reduce the quality of the process for their clients. This
means that the way that the lawyers handle their work has an impact on the finished product for the client. In this case, the clients receive cases which are of an inferior quality compared to those who are in a position to pay for the services of a lawyer.

The state mechanism of legal aid seems to be fundamentally weak compared to that of the other non-governmental organizations. This is because of a number of factors which impact on the performance of the lawyers in giving legal aid to the poor. These factors include poor remuneration which in turn leads to high staff turnover and limiting of the services that should normally characterize a legal aid department.

5.6 Women’s Awareness of the Directorate
The department of legal aid should be known by its clients, thus the importance of advertising services. Although most women had been referred from other organizations the department itself did not carry out any awareness raising campaigns. Gross (1977:36-40) states that the fact that legal aid organizations do not seek to market their service at a profit does not diminish the need for awareness and recognition of the department.

5.7 Location of the Directorate and Number of Offices
The Directorate is situated in the Central Business District a situation which could mean that most of the indigent who are found in poor neighborhoods are not reached. The Directorate has no other offices other than the one in the Harare. This means that its work is clearly not addressing the problem of legal aid for the majority of the poor who live in the rural areas. The view is confirmed by Gross (1977) who says that;

‘It would seem apparent that a decision to locate the offices in a poor neighborhood with it a number of advantages. The legal aid scheme will in this way be rendered more accessible to the intended beneficiaries.’

The decision to locate the offices in town is an indication that the poor who are in need of legal aid are excluded from it. With the economic crisis in Zimbabwe, only a few people can afford to spare money to seek legal aid, all the more so considering that government lawyers earn an equivalent of US$20. The women who visit the legal aid offices are few in number because of the location of the offices. The small fraction of women assisted by
the Directorate is therefore also largely influenced by its location and the fact that there is only one office countrywide. ZWLA, an NGO, carries out outreach programs in poor settlements and ensures that those women who are poor are reached. Another NGO, the Legal Resources Foundation, also has a number of project centres countrywide and this is reflected in the large number of cases that they are able to deal with.

5.8 Conclusion
The Research has shown that the state mechanism for dealing with legal aid is generally weak and, in relation to women, inadequate for their needs. It further shows that women are assisted better by other institutions outside of government where indigent women are treated with respect and dignity. The state mechanism is weakened by a number of factors which, if not improved, will mean that state legal aid will only deteriorate.
CHAPTER 6

RECOMMENDATIONS

6.0 Introduction
The following recommendations are made for the improved operations of the Legal Aid Directorate. Although it was concluded that the state lawyers are not able to deal with the problems of the poor, it is submitted their lack of ability to do so is because of failure to support the legal aid lawyers. Considering the state of the economy, it is appreciated that the state institutions are performing at their lowest potential because of financial problems. The core of the recommendation is that state legal aid should not be abolished but that ways of improving its functions should be adopted.

6.1 Networking of bodies offering Legal Aid
The Directorate should work closely with those organizations that offer legal aid such as ZWLA and the Legal Resources Foundation. There should be a mechanism of ensuring that the department does not become redundant by referring all its cases to the other two organizations. If the department produces a report it should be shared with the other organizations. The sharing of reports can be a boost for the Legal Aid Directorate as it would be encouraged to tally on the number of cases with the other organizations. Legal Aid societies should hold workshops where they present and review each other’s work. This would be an opportunity for the organizations to name and shame the each other in the event of laxity in the performance of duty towards the poor. The purpose of networking can also be to see the areas of improvement and areas that need further attention.

6.2 Funding of the Legal Aid Directorate
The department is funded by the state and it remains inadequate. The lawyers on the other hand often cited lack of motivation as the force behind their input or lack of it. The lawyers have to feel motivated to perform at a proficient level and this may include better salaries and conditions of service. It is recommended that the Directorate utilize the
clause in its Act which enables it to source other funds from donors. The United Nations Development Project could be approached for assistance in programs which could be utilized in the improvements of the running of the department.

The Directorate’s lawyers clearly perform an important function and the state should be reminded of this so that their conditions of service are improved to the point that amounts to more than is sufficient for their sustenance. Government should prioritize the needs of the indigent in accessing justice by providing sufficient funds for the department. A plan of action is also needed from the legal aid lawyers so that they are made aware of the areas where the public needs their attention.

6.3 Awareness campaigns from other State Departments
Other Ministries and state departments should utilize the Legal Aid Directorate and refer clients to it in order to be assisted. Ministries such as the Ministry of Public Service Labour and Social Welfare and the Ministry of Women Affairs who deal with marginalized clients, women and the poor, should be able to refer clients for assistance by the department so that they assist a larger clientele.

6.4 Reporting mechanism to Parliament
It is recommended that the Directorate should be made accountable to a higher body for the running of the department. The Department should be made to produce yearly reports to Parliament so that its effectiveness is monitored. The Ombudsman’s department for instance reports to Parliament on the cases that it has dealt with during the period under review and this enables the legislators to monitor the effectiveness of the department. This practice will make the Directorate more accountable and give the lawyers added motivation to perform well. At the moment the Directorate reports to the Minister of Justice, who, in turn, reports to Parliament. If it were made a semi-autonomous body, its performance might improve since it would have to report directly to Parliament.
6.5 Outsourcing of lawyers to other N.G.Os
In spite of poor remuneration, the Directorate has a full complement of staff. If the Directorate networked with other NGOs (in terms of the reform suggested above) and accepted referrals from them, some funds could be raised from, say, allowances paid to the Directorate for every case so referred to it. This would be a boost for the Directorate in terms of remunerating its lawyers and ensuring that the indigent women are assisted at the end of the day.

6.6 A Legal Aid Board
The South African Legal Aid Board has improved its service because of its autonomy from the state. It produces reports on its website and an annual report which is available to public scrutiny. Its board, who oversee its work, also includes judges. These factors contribute to the welcome elements of independence, professionalism and public scrutiny which could also be injected into the Directorate if it were to be reformed along similar lines. Then, the Directorate might feel more comfortable accepting briefs to defend indigent women on criminal charges. In its current form, the staff members of the Directorate are employed/disciplined and paid by the Public Service Commission and this relationship may impair its performance.

6.7 Making Lawyers responsive to the needs of indigent women
Gender training should be introduced for the lawyers at the Legal Aid Directorate so that they are more responsive to the needs of indigent women or clients in general.

6.8 Expanding Operations
It is further recommended that the Legal Aid Directorate should have more offices in the outskirts of the city centres rather than in the CBD. This will ensure that the targeted indigent women, most of whom who live in the rural areas, are reached.
Bibliography


McNamara, C., (1999) *Research Methods, Management Assistance Program for Assistance*, Minnesota, USA


Schinider E, (1999), *The Responsibility of States to provide Legal Aid*, paper prepared for the Legal Aid Conference Beijing, China
