
Legal assistance for indigent women

A critical analysis of services provided by Zimbabwe Women lawyers association in Bulawayo

Sethulo Ncube

Dissertation submitted in partial fulfilment for the Masters Degree in Women's Law,
Southern and Eastern African Regional Centre for Women's Law, University of
Zimbabwe, 2004

Dedication

This research work is dedicated to my mother, Sikhathele, my father Victor Fine, my sisters Sandisiwe and Wenzokuhle, my brothers, Mahlabezulu and Mayberry, last but not least my niece Zimiso who encouraged and supported me throughout my studies.

ACKNOWLEDGEMENTS

I wish to express my sincere gratitude to NORAD for sponsoring the women's law masters programme.

Secondly, special thanks go to Zimbabwe Women Lawyers Association and the respondents for their useful information and sharing with me their very rich experiences.

Thirdly, thank you Dr A.S.Tsanga for your guidance and valuable comments on this research.

Fourthly, thank you Peter for typing my work and for your ceaseless support throughout this research.

Fifthly, I would like to thank all my friends for the wonderful friendship we share, especially Noku, Janet and Carina.

Last but not least, I would like to say *Ngiyabonga lingadinwa lakusasa!* to my family, Sikhathele, Victor, Sandisiwe, Mahlabezulu, Mayberry, Wenzokuhle and Zimiso for your support throughout the research.

Contents

Acknowledgements

CHAPTER ONE Introduction.....

CHAPTER TWO Law and literature

CHAPTER THREE Methodology

CHAPTER FOUR Data finding..... 26

CHAPTER FIVE Discussion and conclusion

CHAPTER SIX Recommendations.....

Annex

Statutes

Legal Aid Act number 18 of 1996

The Constitution of Zimbabwe

The Matrimonial Causes Act 5:07

The Maintenance Act 5:09

High Court (Civil) Rules

Magistrates Court (Civil) Rules

Matrimonial Causes Act 5:07

General Laws Amendment Act 8:07

International instruments

Convention on the Elimination of all Forms of Discrimination against Women

Table of cases

Chapendama v Chapendama 1998 (2) ZLR 18 (H)

Mtuda v Ndudzo 2000 (1) ZLR 710 (H)

Abbreviations

CEDAW Convention on the Elimination of all forms of discrimination against women

UCLU Unregistered customary law unions

SASFS Semi-autonomous social fields

ZWLA Zimbabwe Women Lawyers Association

CHAPTER ONE

Introduction

The main aim of this research is to critically analyze the legal services provided to indigent women by ZWLA, Bulawayo office. The research looks at legal aid, legal education and empowerment programmes. An investigation was carried out to verify whether women are getting the quality legal service that ZWLA promises them.

In the Findings chapter, the research looks at what actually happens on the ground so that a comparison can be made with ZWLA's strategic plan, and what other authors say about the provision of legal services to indigent people. The chapter explores what the staff say about the services provided, their own attitudes towards clients and their matters and what clients themselves say about ZWLA. An in-depth analysis was made into the programmes and the hurdles that the staff face in carrying out their duties and the ones that women face that may hinder them from realizing their rights.

Finally recommendations are made on the way forward.

Background to Zimbabwe Women Lawyers Association¹

Zimbabwe Women Lawyers Association (ZWLA) was established in 1992 by a group of women who were lawyers in private practice, government service, the academia and the non-governmental sector. It was registered as a trust in 1996 and is also a member of the Law Society of Zimbabwe. It currently has a membership of about fifty. ZWLA started its work as an organization in Milton Park, a low-density area in Harare. In 1997 a needs assessment was undertaken and as a result of this ZWLA decided that the needs of poor women in high-density and peri-urban areas were greater than those in the low density areas in Harare and it then shifted its offices to Highfield, a high-density, low income suburb in the south of Harare. At that time the main focus was on legal aid to women. This involved not only giving legal advice verbally or through correspondence but also drafting court papers and representing clients in court in Harare. Legal aid comprises cases where the client is given advice or if there is need for litigation her papers are drafted and she is either trained to be a self-actor or the lawyer represents her in court.

In 1998 the organization employed its first full time director and hired an additional lawyer and secretary. Legal education workshops were commenced at that time with women in high-density communities around Harare. In 1999 the advocacy department was set up and initially its focus was on the need for constitutional reform, in particular section 23 of the constitution which is prejudicial to the status of women in Zimbabwe as it allows for gender discrimination in family law and customary law matters. As a result of this campaign against this section, the Women's Coalition (a network of non-governmental organizations) was established to lobby for women's equal participation in the constitutional reform process and to educate women on the Constitution of Zimbabwe.

¹ ZWLA's Strategic Plan 2002-2005

ZWLA's main objective is to promote and enhance the legal status and rights of women and children in Zimbabwe by providing them with legal advice and assistance. Its main programmes are legal aid, legal education and lobbying and advocacy.

The organization has two offices, the headquarters in Harare and the Bulawayo office. The Harare office takes care of the northern half of the country while the southern part is taken care of by the Bulawayo office which was established in 2000. The organization also has mobile legal clinics in the rural and peri-urban areas. In Harare the mobile legal aid clinics are in Murombedzi, Murehwa, Shamva, Mvurwi, Norton and Chitungwiza. The Bulawayo office concentrates on legal education and legal aid. Legal education at the moment is concentrating on training peer educators who are at grassroots level as points of reference in Matshetsheni area, a rural area in Matabeleland South, about forty kilometres from Bulawayo. The local language in Matshetsheni is Suthu although the community speaks SiNdebele. Murombedzi is eighty kilometres away from Harare and the community there are Zezuru although they are grouped with other tribes and called the Shona. The community speaks ChiShona. The two communities discussed have different cultures and beliefs. Generally the Shona are known for following their customs in a strict manner and the family structure is held in high regard. They believe strongly in their ancestral spirits and perform a lot of ceremonies to appease them.

In 2001 empowerment sessions began to try to empower women with simple magistrate's court cases in both offices so that these women would become self-actors and represent themselves in court. This was meant to reduce the need to try and provide legal representation in individual cases in the magistrate's court and create time and space for representation in complex legal cases in the High Court and the Supreme Court and cater for test cases and class action suits for the extension of legal rights to whole classes of women. The empowerment programme targets women who want to claim maintenance either as first claimers or for variations. This department also has peer educators who have gone through the empowerment session and successfully taken their matters to court. These women are trained so that they can assist other women with similar maintenance problems when making claims in court.

Legal aid and mobile outreach programme objectives²

- 1 To enable women to access and use the justice system in Zimbabwe through the provision of free legal assistance at the Harare and Bulawayo offices as well as at the mobile outreach sites.
- 2 To initiate test case litigation that challenges sex and gender discriminatory laws and practices.
- 3 To document women's experiences with the law.

The main objectives for empowerment³

- 1 To facilitate the decentralization of ZWLA's legal aid, legal education and advocacy activities.

² ZWLA's Strategic Plan (2002-2005) page 16

³ Ibid page 16

- 2 To capacitate communities that ZWLA works with to be sufficiently empowered to be their own advocates in relation to issues pertaining to women's legal rights and legal reform in Zimbabwe.
- 3 To facilitate the creation of a group of people in the communities who operate as simple paralegals within those communities.
- 4 For the long-term sustainability of ZWLA's work.

The main objectives for legal education⁴

- 1 To raise awareness on legal issues that are pertinent to the status of women and children.
- 2 To train community legal educators in identified communities.
- 3 To train administrators of justice and implementers of the law to take on board gender considerations.
- 4 To provide training materials and awareness raising materials on various aspects of the law problematic to women.
- 5 To conduct media campaigns on women's legal rights.

The main purpose of the legal education peer educators' programme⁵

To equip or develop skills and capacity within adult peer educators and school peer educators in Matshetsheni to promote continual learning and safeguarding of legal rights on critical issues governing women's, children's and men's legal rights vis à vis inheritance, property rights, marriages and so on.

Other organizations working in the same field

Before the establishment of ZWLA other organizations and institutions that offer legal services were already in existence like Msasa Project, the Legal Projects Centre, Ministry of Justice, Parliament and Legal Affairs and the Catholic Commission for Justice and Peace (CCJP) which has since closed down. These organizations will be discussed briefly.

Msasa Project

Msasa Project⁶ was established in 1988. It is registered as a welfare organization. It is a public education, counselling and research project on violence against women and children. Its main focus is on domestic violence and sexual assault. It also deals with child abuse, particularly child sexual abuse. Its main objectives are:

⁴ Ibid page 22

⁵ Gender Equality Support Project (CIDA) and ZWLA Agreement (2003)

⁶ Tsanga A.S Review of Women's Legal Rights Materials in Zimbabwe; Ministry of National Affairs, Employment Creation and Cooperatives (1996) page12

- 1 To educate the public and authorities on the illegality and non-acceptability of violence against women and children.
- 2 To counsel survivors of domestic violence, sexual assault and or child abuse.
- 3 To provide legal and any other assistance to the survivors of domestic violence, child abuse and sexual assault.
- 4 To train volunteer counsellors.
- 5 To co-operate with any groups prepared to tackle the issue of violence against women.

To realize these objectives Msasa Project does the following activities: public education; counselling of the assaulted women and children; research on the extent of crimes of rape, domestic violence and the attitude of the law and society and the impact of the organization itself; training the police to be gender sensitive and training volunteer counsellors; giving legal advice to women; and drafting affidavits for peace orders. The organization produces materials on domestic violence in the form of posters, pamphlets, manuals, fliers and videos.

At present the Bulawayo office which was opened in 2002 does not have a registered legal practitioner, therefore as far as legal services are concerned the paralegal only drafts affidavits for peace orders and if the client wants to claim damages at the High Court or wants divorce or some other remedy that requires the services of a lawyer then the woman is referred to ZWLA. At present Msasa does not offer a holistic service and concentrates mainly on counselling.

The Legal Resources Foundation

The Legal Resources Foundation⁷ was established in 1984. It has its origins in the limited availability of legal aid and the problems of rights awareness arising from the existence of a dual system of laws in Zimbabwe. It is a registered trust, which operates through project centres in the major cities. Its goal is to create a more just society by ensuring that law facilitates justice and that people have the opportunity to make use of it. Its objectives are:

- 1 To initiate and support projects which promote the development of legal resources in Zimbabwe.
- 2 To establish and maintain libraries to which individuals and organizations in Zimbabwe shall have access.
- 3 To train paralegal personnel and provide them with a support service.
- 4 To promote public legal education.
- 5 To contribute to legal research and publications.
- 6 To assist in the training of law students, legal practitioners, persons holding judicial office, court staff and administrators.
- 7 To support organizations which provide legal advice and assistance to the public.
- 8 To initiate law reform.
- 9 To engage in or provide assistance for any related activities which in the opinion of the trustees are likely to further the interests of law and justice in Zimbabwe.

⁷ Ibid page 4

To achieve the above stated objectives the following activities are carried out: paralegal training, information dissemination, legal advice and voter education. The organization also has direct services to the legal profession where law enforcement agencies are trained; law libraries established and legal materials are published. The materials cover various topics like: domestic violence, making a will, declaration of rights, marriage and the law and so on.

Bulawayo Legal Projects Centre gives free legal services to communities. The centre does not specifically deal with women but caters for both males and females who earn less than a certain amount set by the organization. It also does not specifically deal with areas that affect women the most like custody, divorce and guardianship and other family law matters, although legal advice may be given in these issues.

The Ministry of Justice, Legal and Parliamentary affairs provides free legal aid in certain instances but does not focus specifically on women, it caters for everyone who qualifies according to the means test. In civil matters one can apply to the High Court for representation under *informa pauperis*. This is for matters that go to the High Court. In criminal matters an accused person can apply for free representation (*pro deo*), normally for cases to be tried in the High Court and the Supreme Court. This system therefore applies to complicated cases or cases where if the accused is found guilty, the sentence would be severe.

In terms of the High Court Rules, Order 44 Rule 393 makes provision for a poor person to apply to the registrar for legal assistance. The registrar may refer the applicant to a district officer of the Department of Social Services for a report on the means of the applicant and the lawyer, who has been appointed by the registrar using a roster from the Law Society, inquires into such person's means and the merits of the case. Rule 394 sets the means test to be applied and states that household goods and effects should be excluded, property of less than five thousand dollars (US\$1.1, using the rate of US\$1=ZW\$4500), wearing apparel, tools of trade, and so on. In terms of Rule 395, the lawyer is not at liberty to withdraw his or her services, settle or compromise such proceedings without leave of a judge.

In terms of the Magistrate Court (Civil) Rules, Order 5 Rules 1–5 make provision for poor people to apply to the magistrate's court for legal assistance. The court investigates the means of the applicant and whether he has a prima facie right of action or defence. The court can grant free issuance and service of process excluding the messenger of court's fees (which the applicant would have to pay) or a lawyer may be appointed to act for such applicant or the clerk of court can be ordered to write such process, affidavits, notices and other documents as may be required to comply with this rule. Applicant need to have written consent from the lawyer who will act for them, have to satisfy the court that they are illiterate or for some other good reason are unable to conduct their case in person. In reality this order is not put to use mainly because not many people are aware of it (although a survey was not carried out) and the fact that the magistrate's court entertains unrepresented individuals means that no emphasis will be put on the order as the case may still be heard. Few people would attempt to benefit from this service because very few people who own so little property would be concerned about suing people; they are usually concentrating on bread and butter issues. Moreover it is only very few lawyers who would want to take up a matter without payment.

From the above it is apparent that ZWLA was addressing a perceived need by giving women free legal services, in that the organizations that were in existence did not address women's legal needs in full. The emphasis on women only is because they are generally more disadvantaged than their male counterparts because of the gender roles they play. Usually it is a woman who sees to it that the children have eaten and are well cared for and for this reason

she will apply for maintenance if the father is not supporting the children according to his means. It is a fact that women are economically disadvantaged therefore the little money they realize is likely to be for family consumption rather than to be used in pursuing legal matters. ZWLA was therefore established to fill in the gap after realizing that a lot of women are affected negatively in the area of family law.

Statement of the problem

In Zimbabwe it is estimated that women and girls constitute 51 per cent of the population.⁸ According to the Central Statistics Office (1998), wage income is more accessible to men than it is to women. About 75.6 per cent of all Zimbabweans are poor and 47.2 per cent are very poor.⁹ On average people cannot afford to pay lawyers for legal services and this situation is worse for women who also have to take care of their families (refer to the Legal Practitioners' tariff –annex 1). ZWLA has been giving legal aid and education to women with the aim of improving women's situation and their understanding of law and legal issues.

It is important to measure the efficacy of ZWLA in view of the fact that there are different kinds of women from different backgrounds. The research seeks to analyze the programmes on offer and how they assist the target groups. Previously little had been done to seek the target group's views on the programmes and to see if there are any gaps or needs which they feel have been neglected or overlooked by ZWLA as a service provider.

Objectives of the research

The main objectives of the research are as follows:

- 1 To find out whether the assistance that women get at ZWLA Bulawayo is enough and whether it solves their problems.
- 2 To find ways of improving the quality of services provided by ZWLA Bulawayo.
- 3 To critically analyze the issues for which women receive legal assistance from ZWLA Bulawayo.

Assumptions

The following assumptions were formulated at the onset of the research. These were based on what I perceived could be areas of investigation and also were used as a guideline in carrying out the research.

- 1 That women go to ZWLA because they feel that since it is a women's organization their problems will be better understood and solved by the women staff there;
- 2 That clients do not want legal assistance that disturbs the status quo, that is, clients want solutions that the law cannot provide;

⁸ ZWLA Strategic Plan (2002-2005)

⁹ According to Central Statistical Office, *Poverty in Zimbabwe* (1998), the prevalence of poverty in a region is the number of people below the poverty line divided by the total population in the region at 27

- 3 That limiting matters handled by ZWLA to family law matters creates a barrier for other women who seek legal assistance in other branches of the law;
- 4 These legal practitioners do not always give the best quality of assistance because they are overloaded with work;
- 5 That providing legal aid services per se does not empower women to be able to solve their own legal problems;
- 6 That the criteria used to choose clients is a barrier to women accessing legal assistance.

Research questions

Based on the above stated assumptions, this study sought to address the following questions:

- 1 Do women who go to ZWLA with their problems think that their problems will be better understood and resolved by the women staff who work there?
- 2 Do clients want other solutions to their problems besides legal solutions and do they accept legal solutions that may change their status quo?
- 3 Does limiting matters handled by ZWLA Bulawayo to family law matters create a barrier for women with other legal issues for which they may need to access legal services?
- 4 Do legal practitioners provide the best quality of services and, if not, what are the reasons?
- 5 Does providing a legal aid service empower women to be able to solve their own legal problems and, if not, what other extra-legal services should be provided?
- 6 Does the criterion used to choose clients create a barrier to women accessing legal assistance; if so how can it be modified?

CHAPTER TWO

Law and literature review

Legal aid has been defined as 'legal assistance in clarifying, avoiding, obtaining and utilising existing legal positions.'¹⁰ In other words legal aid is about assisting with coping with the technicalities of the law. It entails taking instructions from clients, advising the clients, drafting legal process and litigation. Richard L. Abel states that there is a tendency to identify legal aid with the waiver of court costs or with relief from potential liability for an adversary's legal fees but according to him the real obstacle the poor encounter is the inability to hire a lawyer.¹¹ It would seem that a lot of jurisdictions construe legal aid to mean that the poor person in need of legal aid is exempted from paying costs either for the legal services rendered to him or her or paying the opponent's costs if he or she loses the case. According to this assertion these are not as much barriers to the poor as the inability to pay for the services of the lawyer.

Legal services have been defined as encompassing more than legal aid. The term encompasses training of paralegals, the production of simplified legal materials, information dissemination, counselling, mediation and negotiation.¹²

To come up with a target group it is important to do a needs assessment programme and to study the community for a better understanding of the social environment in which the programmes are to be implemented. Therefore it is important to analyze the community problems and then tailor the programmes to suit their specific needs when planning programmes. In examining ZWLA's background a needs assessment was done in Highfields when the organization had already come into being. Thereafter these were overlooked even when new programmes were introduced to the organization.

A lot of writers advocate for legal services for the poor and it is important to know exactly who the target group is. According to Barbara A. Curran,¹³ in the American context poor includes those people whose income is 'below that which was determined by the United States government to be necessary for a minimal standard of living in keeping with basic American consumption patterns.'

Kees Schuyt¹⁴ states that the legal services should be for people below a certain income level. Those who are in a position to provide and finance their own legal aid through other channels are expected to do so. The author says this is cost-effective.

Several strategies have been suggested to reduce the existing needs for legal aid. These are as follows:¹⁵

¹⁰ Johnsen T.J. *Innovations in the legal services research on service delivery*-“Problems in Planning Legal Services” Cambridge, Oelgeschlager, Gunn and Hain Publishers p 19

¹¹ *UCLA Law Review*, Volume 32 (I-3) of 1985 p475

¹² *Legal services in rural areas in Africa* (International Commission of Jurists- 1997)

¹³ *Innovations in the legal services research on service delivery*-“Research on legal needs: patterns of lawyer use and factors affecting use’, p40

¹⁴ *Ibid* p20

Training

In this instance community-based workers are trained to be legal literacy workers or to act as intermediaries between the beneficiaries and the appropriate referral agencies as they have a good knowledge of the environment in which the programme will be implemented. It is important to take into account the content of the training, level of education of the trainers, the voluntary nature of their work and the perception of trainers of the overall training programmes. These people help to promote the understanding of the law within the context in which people live.

Trainers

The trainers are usually lawyers or legal professionals with expertise in law. It is important to use a multi-disciplinary approach to law in order to give effect to the law or to promote a better understanding of its role in people's lives. It needs to be approached from a holistic perspective which acknowledges the impact that other semi-autonomous social fields such as the family, cultural beliefs and practices have on the efficacy or otherwise of the legal strategy. The curriculum has to be clear. Jean Kaman, Director FIDA, Kenya, states:

...the basic problem stems from the fact that whilst the lawyers know the law, they do not know how to impart it to different categories of people outside the framework of those whom they are trained to serve.

Information dissemination

This is to raise legal awareness among ordinary people and to get people's opinion about the law. This is a way of getting input from the target group and reducing people's dependence on legal service institutions. This can lead to a reduction of lawyers' monopoly on legal assistance. The materials used have to be user-friendly and simplified in accordance to the literacy level of the target group. Testing the materials is a useful strategy.

Simplification of the existing legislation

This remedy may enable people to solve more problems by themselves. Legislation must not necessarily have an abstract, general form, which creates difficulties for individuals when they want to find a solution to their specific problem.

Legal aid

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 prevails. Legal aid is usually gratuitous but sometimes money can be required for filing court process. The organizations that give such service normally prioritize negotiation, mediation and conciliation as means of settling conflicts.

¹⁵ Ibid p35

Objectives of legal services

According to the International Commission of Jurists (1997), the provision of legal services is based on several objectives. Those that focus on the dual legal system often have as their immediate objective, improving people's knowledge and access to the law and in general bridging the gap between the law and the people. Those focusing on women's legal rights intend to improve the position of women in society by stimulating an increase in the level of awareness amongst women and the wider society in general on problems affecting women.

The significance of legal aid

Richard L. Abel says legal aid is the object of class struggle. People are interested less in procedural justice than in what they can win or avoid through the law. Legal aid is valued to the extent that the law is considered an important, or at least an indispensable instrument to achieve desired goals. The poor avoid the law for the same reason that they take no other action: out of despair, resignation, fatalism, and recognition of their powerlessness and a fear of retaliation.

He asserts that the reason why caseloads are so high is because it is hard for a legal aid office to turn clients down when it knows that it represents the last resort; particularly once the office has established an open door policy. Clients themselves are reactive, often bringing cases to legal practitioners so late that there is little to be done except minimize the damage.

A number of commentators have argued that extending its eligibility ceiling to include the middle-class to extract a broader political support and enjoy higher levels of funding would strengthen legal aid. Creating a clientele that is more diverse is commendable but at the same time there is a fear that the middle class always consumes more than its share.

Handling of legal matters by lawyers

According to J. Katz, civil aid lawyers for the poor repeatedly experience discontinuity within cases and continuous pressure to limit the significance of cases to the people immediately involved. The writer states that legal aid lawyers struggle to imbue both the content and structure of their work with significance in the face of client problems that all too easily come to be defined as routine and trivial, working conditions vastly inferior to those of their peers in the private sector and their limited career prospects. In other words, the writer alleges that very few matters actually reach the courts, that there is a lot of pressure involved in this work mainly because there are so many cases that need to be handled and not enough time to pay adequate attention to each case. Therefore the cases cease to be of any importance to the legal practitioner who deals with them. It would seem that the writer believes that the lawyers struggle to understand what their work is all about, whether the law is relevant to that particular case and how to go about the matter and therefore will handle all the matters in the same manner. The assertion is quite correct especially when referring to the legal aid in ZWLA and this will be discussed fully in chapter four.

He further asserts that legal aid lawyers handle their cases in routine fashion, with the least possible expenditure of effort as evidenced by a lot of negotiation and letter writing. The writer says this could be because of caseload pressure. Most matters never reach litigation. When they do, the great debate within legal aid concerns the relative emphasis that should be

given service work (that is, the routine handling of individual cases) and law reform. Routine services dominate the dockets of legal aid offices. Lawyers devote little time to the research necessary to transform routine cases into occasions for law reform. He stresses that very few cases actually go to court.¹⁶ High case loads, emotional intensity and repeated defeats lead to burn-out on the lawyer's part. In other words all the work and little time to handle matters can lead to clients losing and the lawyer suffering from burn-out.

Barriers to accessing the law

According to Udo Reifner¹⁷, barriers to accessing the law are that the law is a 'secret science'. Rights are formulated in a vague and complicated manner, there is factual or legal monopoly of attorneys and the law is over formalized, incomprehensible and accompanied by expensive court procedures. The geographical location of the service provider's offices can be a barrier, limited financial resources, limitations of paralegals – such as their acceptance by the community, their depth and quality of training – the role of the state and lack of systematic follow ups to the programmes by the service providers, can also be barriers.

The law

Zimbabwean constitution

Section 18 of the Zimbabwean constitution provides for the protection of the law. It reads:

Subject to the provisions of this Constitution, every person is entitled to the protection of the law.

It gives emphasis to criminal law and the conduct of a fair trial. The section does not recognize free legal representation as a legal right.

Article 15 of Convention on the Elimination of all forms of Discrimination Against Women

Article 15 states that 'State parties shall accord women equality with men before the law'. It goes on to say women and men should be treated equally at all stages of procedure in courts and tribunals; the emphasis is on legal capacity of both women and men in contracts and administration of property, choice of residence and domicile.

The Legal Aid Act Chapter 18 of 1996

The Act provides for the granting of legal aid to indigent persons. Section 3 makes provision for the Legal Aid Directorate to provide legal aid to persons who are eligible for such aid in connection with any criminal, civil or other related matter. The Act goes further to explain how that will be achieved in section 3 (b) which reads 'to do all things necessary to promote the provision of legal aid under this Act' and this includes (section 6), 'the right to issue out

¹⁶ *UCLA Law Review* Volume_32(1-3) of 1985 p511 'Law without politics: Legal aid under advanced capitalism'.

¹⁷ *Innovations in the legal services research on service delivery* – 'Types of legal needs and modes of legalization: The example of the Berlin tenants initiative', page37.

summons or process or commence, carry on or defend any proceedings in any court in the name of an aided person’.

The means test under this Act includes taking into account how much the applicant earns. The figure is not given in the Act or guidelines. It goes on further to state the property that is excluded like the dwelling house, beds and bedding, furniture, household utensils, tools and implements necessary for one’s trade and occupation.

Examples of legal services from other countries¹⁸

Cameroon

The Association des femmes juristes (AFJ), a non-governmental organization, was founded in 1980 by women lawyers. Legal services started in 1992 when membership was increased to include university professors, judges, bailiffs, scholars, company lawyers, police superintendents and associate members who are not legal experts. The organization has four main organs and these are:

- 1 The General Assembly
- 2 National office
- 3 Committees
- 4 Local branches

The main objectives of the organization are:

- 1 To contribute to the law – making process in Cameroon, especially the elaboration of the laws governing the status of women and children.
- 2 To fight against and denounce any discrimination against women.
- 3 To gather and disseminate all the information on the legal, economic, social and cultural status of women and children.

Under legal aid services the AFJ has two legal clinics in Yaounde and Douala run by a woman co-ordinator who is a lawyer by training. Other lawyers are volunteers. They give legal advice and do consultations after hours. They use the radio and television for debates. They also publish brochures written in simple language.

AFJ has paralegal training which started in 1996. There are women volunteers from among leaders who are fluent in local languages and are able to read and write. These women have an educational qualification of at least GSCE, which is at least sixteen years of schooling.

Ghana

FIDA-Ghana was established in 1973 and was officially inaugurated in 1974 to:

- 1 Promote the principles and aims of the United Nations in Ghana’s legal and social aspects;

¹⁸ *Legal services in rural areas in Africa* (International Commission of Jurists- 1997)

- 2 Enhance and promote the welfare of children realizing that the home and strength of society is dependent on women and children's wellbeing.

FIDA started off with a focus on law reform by examining laws affecting women and children and initiating legal amendments. In 1985 the focus broadened to include legal aid. The time and money were volunteered. Currently there is a full-time lawyer who is the administrator. The organization relies on its members although there is an elected president and committees. The activities carried out include the following:

- 1 Giving legal advice, counselling and representation in court.
- 2 Legal literacy programmes aimed at simplifying and translating laws into local languages, particularly those that affect women and children.
- 3 Advocacy for both the amendment and passage of gender-sensitive legislation that advances the status of women and children.
- 4 Research into socio-legal issues affecting the status of women.
- 5 Establishing networks and linkages with other developmental and women's groups for the advancement of women.

Unfortunately, due to limited resources time, it was not possible to find out about the learning experience of these organizations. It would have assisted the research to find out to what extent these organizations have assisted their clients and how their programmes have been working for the organizations and for the clients and how they have managed to improve their services if they have been improved.

CHAPTER THREE

Methodology

In order to verify the assumptions, the women's law approach was used. This is a woman-centred legal discipline which takes women's actual lived experiences and life situations based on sexuality, birth, care and domestic work as a starting point for the analysis of the position of women in law and society.¹⁹ This involves looking at practices and perceptions of women and men. It was pertinent to get women's perceptions of the services on offer at ZWLA as they are the main target group. General practices will also affect the choices they make of whether to resort to legal action to solve their problems or to go to semi-autonomous social fields as an alternative. Their social standing, the way they perceive themselves and the way ZWLA and society perceives them and their other roles in society, have an impact on how far they will go with matters. An analysis was also made on other forces that impact on women, including cultural forces. There was a need to interrogate and investigate the law and how it responds to women's needs. Other disciplines were taken into consideration outside the legalistic approach to get a holistic view on issues that affect women and how they react to them as well as the socio-economic and cultural forces that impact on women who seek legal services from ZWLA.

Empirical data was acquired through the use of the grounded theory approach.²⁰ By interviewing women invaluable information was extracted on how they perceive ZWLA, the court and what hindrances they face in realizing their rights.

Information was gathered from key informants, women clientele, men and women through individual interviews, focus group discussions, participation and observation.

Methods of data collection

The following methods of data collection were used for in-depth knowledge.

Interviews

A total of 29 women at ZWLA offices were interviewed. The first interview was with 11 women immediately after an empowerment workshop aimed at teaching women how to claim maintenance and the purpose of this interview was to find out if these women felt confident to handle their matters in court and, since they were first claimers, to see if they had benefited from the programme. At the same time the clerk of court was interviewed to capture her attitude towards women who go to court seeking maintenance since she is the first person they see. Of these women seven were re-interviewed to find out whether they still held the same views about ZWLA and the courts after their claims were heard. This is in line with the women's law approach which centres on women's lived realities. Eleven legal aid clients

¹⁹ Bentzon A.W. *Pursuing grounded theory in law: South-North experiences in developing women's law*, Harare, Mond Books pg 91

²⁰ Ibid pg 25

were also interviewed to gain in-depth knowledge on their views about the services provided by ZWLA. It seemed easier for respondents to talk when other people were not listening and some respondents' matters were so personal that it was easier for them to express the depth of their problems knowing that no one else was listening. Open-ended questions were used with the help of guidelines to avoid losing track of the information to be extracted from the respondents. This also allowed for discussions and for the respondents to realize that they were not just limited to *yes* and *no* but could explain their responses further. This way it was easy to probe without seeming to.

Group discussion

A group discussion with ten women and five men was held at Gwanda Hotel. These were the peer educators chosen within the legal education programme. Information was sought as to the peer educators' knowledge of the basic law, their role in their communities and if there were any conflicts with their roles and the roles of community leaders. It was easy for the women to talk about legal situations they had witnessed within their communities where they had taken an active role. This method was engaged because it seemed easier for the peer educators to talk as a group rather than as individuals. Domination of the discussion by a few individuals was avoided through encouraging everyone to speak. Being a group from the rural areas a lot of the women gained confidence through talking in a group, as they did not feel they were singled out. Because each area had more than one respondent it was easy to get truthful information, as respondents were restricted from exaggerating. This also encouraged those with the same experiences to speak out.

Key informants

The maintenance court magistrate and the clerk of court were interviewed in order to compare their views to those of women who had been to court. This gave an insight into why there are so many complaints concerning the two departments.

Other key informants were the ZWLA staff themselves. Questions were posed pertaining to how they handle their clients and their matters and how they manage their programmes. This information was used to compare with the clients' views on ZWLA and the reception clients get.

Observation

Observation of fifty matters was made at the Maintenance court proceedings. All the claimants were female. It was very easy to observe how confident or not, the claimants were by the way they answered questions or posed questions to the respondents. This was most apparent in the way the applicant posed questions to the respondent, that is, a loud steady voice meant the applicant knew her right to ask questions and was asserting that right. The same method was used to observe the court personnel's attitudes towards women seeking maintenance.

Participation

It is important to evaluate programmes so as to measure their impact on the target group. This helps organizations to decide whether it is worthwhile continuing the service they are giving or to change or improve on the service, if it needs to be improved. The evaluation can give pointers as to how the programme can be more relevant and beneficial to the target group.

I sat in two evaluation workshops where ZWLA was measuring the impact of its programmes, namely legal aid and empowerment. The evaluation methods were mainly filling in pre and post session evaluation forms (questions summarized under Findings chapter and for legal aid attached as annex 2). The participants were broken into groups to discuss and answer questions and thereafter required to report back to the rest of the women. After their presentations, their answers were discussed by the whole group to get different views and to see if everyone was in agreement. Finally there was a question and answer session.

Library research

The purpose of the library research was to ascertain what other writers say about free legal services in their countries. Commentaries were read to ascertain views of experts and other individuals on the efficacy of legal aid and its role in society. It was pertinent to read on the laws applicable in Zimbabwe that pertain to legal aid such as CEDAW, the Zimbabwean Constitution and the Legal Aid Act. This was to ascertain how far the law addresses the issue of women accessing legal services. Thereafter there was need to read materials provided by ZWLA to see whether ZWLA follows what it promises to deliver to its clients, that is, whether proposals to donors address the issue of access to legal services and how realistic the activities are and whether the strategic plan has relevance to ZWLA's activities.

Limitations of the research

One major limitation was that it was not possible to interview anyone from the counselling non-governmental organizations. An interview with a counsellor from Msasa Project would have been informative mainly because a lot of the women who found themselves at ZWLA had been referred by Msasa Project. Several appointments were made with the counselling officer after talking to the co-ordinator but she did not avail herself.

The research would also have benefited from interviews with traditional community leaders, specifically those from areas where the legal education peer educators were functioning to see whether their roles are any different and how they feel about peer educators. Unfortunately there were not enough resources to complete the necessary arrangements.

It would have been highly informative to find out from the clients who had abandoned their matters why they had done so. Unfortunately there were not enough resources to look them up at their last known addresses in order to track them down.

CHAPTER FOUR

Data findings

A lot of women showed their satisfaction with ZWLA services through the praises they sang for ZWLA. The importance of semi-autonomous social fields clearly came out during interviews and also the general problems women face in court.

This chapter starts by presenting data on ZWLA's target groups. Each programme sets out its primary target group and how these are selected. Firstly there is a presentation on the legal aid target group and then the peer educators under both the legal education and the empowerment programmes.

The second area of data presentation looks at matters handled by ZWLA. This includes matters that clients perceive to be legal matters but in actual fact are not. An analysis of issues that ZWLA does not handle is done, that is, matters involving seduction and adultery and the feminist implications of not handling such matters.

The chapter then looks at the clients' perception of ZWLA. Nearly all the clients interviewed were happy with the services they are getting from ZWLA and only a few said they could not comment, as they had not seen any fruits of the services.

Under legal aid a table was drawn up to show issues and the ages of the clients so that a comparison could be made showing which age group has the most problems and what kind of problems these are. This would help with finding ways of protecting that age group or finding of ways of curbing their problems.

Discontinuity of matters is also discussed. A table was drawn up, showing the stages when matters were abandoned and the perceived reasons are explored. Thereafter there is a discussion on which matters clients are given advice on and the stages where negotiation takes place where the matter is settled through negotiation.

The fear of changing status quo is discussed and why clients are so afraid to divorce and see this as the last resort, which should be avoided at all costs.

The relevance of semi-autonomous social fields is discussed and what kinds of social fields likely to be used by the clients and whether they assist the women or not.

Workload is discussed in view of the fact that Bulawayo is still a small office with a lot of programmes that are similar to the ones done in the Harare office where the staff complement is higher.

Major aspects of the empowerment programme are presented. A table showing amounts claimed by women, the amount granted and how many matters are settled through consent is shown. This is to illustrate the view that a lot of women who appear in the maintenance court have their rights stifled by the court in so far as they are not given a chance to air their views.

Court monitoring results are also presented as women have made several complaints concerning the courts. With this data it becomes clear why women feel some resentment towards the court and its structures.

Some aspects of the legal education manual are presented, mainly that the manual was compiled mainly for Murombedzi and was then translated for use in Matshetsheni.

Finally data is presented on the monitoring and evaluation methods used by ZWLA so as to illustrate how effective or not these are in measuring the impact of the various programmes.

Target groups

Legal aid

According to the legal officer in Bulawayo, ZWLA's current target group is the women who earn less than forty thousand dollars per month (US\$8.89). She indicated that if the woman is informally employed and according to their investigation realises more than the forty thousand dollars then ZWLA does not consider her as a client.

Peer educators

a) Legal education

The following criteria are used to select peer educators:

- 1 Ownership of the programme;
- 2 Leadership skills;
- 3 Potential, willingness to learn about the law and women's rights in particular;
- 4 Basic literacy;
- 5 Ability to sacrifice time for training.

On average the legal education peer educators had studied up to grade seven and their ages ranged from 32 years to over 60 years and there were fifteen of them. These peer educators were trained to be community legal advisors but because they had just started they were going to be points of reference. A pre-training session had been done where ethics on what they are supposed to do or not do were covered. None of the peer educators had any special role within their communities. On being interviewed they stated that they were not sure what their role as peer educators was exactly since their communities have traditional leaders who advised villagers whenever they had problems. They were advised that people have to choose where they want to go and if they go to the peer educator but they feel she or he can not assist then they are supposed to refer the matter to ZWLA. ZWLA had talked to the traditional leaders who had promised to introduce the peer educators to the communities so that the communities would know them and it would be easy for them to work within the communities as they would be given due recognition.

b) Empowerment

The target group for the empowerment sessions are any women, irrespective of their earning capacity, who are contemplating or have initiated court proceedings in the magistrate's court in the areas of maintenance, divorce and division of property, custody and inheritance.

The target group for the peer educators is the women who have undergone the empowerment training, have successfully represented themselves in court and have basic literacy skills.

Eight women were chosen to be peer educators to broaden the referral base for the maintenance programme. They are trained on what maintenance is, what 'responsible person' means and how to fill in the maintenance forms correctly. At the time of interview the programme officer indicated she wanted to reduce the number because she felt there were too many.

Matters handled by ZWLA

Generally ZWLA handles family law matters only. When interviewed, the lawyer indicated that ZWLA has widened its scope and women are being represented in many legal issues, including criminal matters, formation of companies and debt collection but she said ZWLA could not advertise that because this would result in them exceeding their budget. And yet she does not handle matters like breach of promise to marry, seduction damages, adultery and sharing of property under unregistered customary law unions. This leaves a gap for women who need such services. ZWLA does not handle adultery cases mainly because a woman who is in a monogamous marriage would be suing another woman for taking away companionship, love and affection from her by having an affair with her husband. Although adultery damages are recognized in Zimbabwe, the reality is even if the plaintiff is awarded such damages, it is unlikely that the affair would end. At the end of the day, it does not serve any purpose, nor does it assist women in attaining any rights.

After the promulgation of the Legal Age of Majority Act (now section 15 of the General Laws Amendment Act Chapter 8:07) women above eighteen were granted majority status which meant they were given the capacity to sue or be sued without the need of a guardian. ZWLA does not handle seduction matters and damages for breach of promise to marry because seduction involves two consenting adults who engage in a sexual act and no force is used on any of the parties. To sue would be using women's energies in matters that are considered relatively unimportant. Prioritizing women's issues is important as this way a lot more women would be assisted instead of only those involved in the matter. This also gives the impression that women do not really know which important issues to focus on.

The concept of seduction damages is that because the woman would have lost her virginity then her lobola (given to her father) would be reduced. The whole concept of seduction damages pushes the patriarchal agenda ahead at the expense of women. This is especially so when considering that lobola according to the law is not a prerequisite to marriage even though in practice lobola is still being paid. The concept of lobola has changed and become a commercial transaction where the woman is bought by her husband and this has not assisted women in any way as it is now used as an excuse for gender-based violence.

Some of the matters brought to ZWLA are not legal per se, for example one client wanted her husband to be called and asked in front of everyone if he still loved her so that she would know. Another client wanted ZWLA to ask her husband to let her know each time he sold

their cattle. From the instructions she indicated she was not opposed to the sale but wanted to be advised beforehand.

Clients' perception of ZWLA

Many of the clients were happy with the assistance they got from ZWLA. They felt their situations had improved because ZWLA had intervened. A lot of the people sang praises for ZWLA like:

'ZWLA keep it up!'

'Thanks for teaching us our rights to maintain our children if they (our rights) are being abused.'

'Keep up the good work. I think your sessions are helping more mothers who are being abused when it comes to support.'

One client indicated that although she was very happy with the way ZWLA had handled her divorce she was at a loss as to how to execute her judgment. She said she did not know how she would get the property the court had awarded her and indicated ZWLA had not explained to her how to enforce her order. This lack of communication creates victory on paper and none in reality. All the maintenance claimants also indicated that they had not received their maintenance and did not know what to do to realize the money. This gap can be used as an indicator of the women's training needs.

One client who had been advised to claim maintenance from her late husband's estate since her husband had not included her in his will, indicated that she had seen the lawyer only once in the past three months and that she kept getting appointments but when she went the lawyer was out attending workshops. She emphasized that the lawyer was very busy and that if she did not find her that day, she would ask to see another one who was less busy.

One client indicated that the lawyer had promised to write a letter to the housing officer stopping the sale of the matrimonial home by her husband in October 2003 but this had not yet been done by January 2004. She said it was therefore difficult to comment on ZWLA since she had not seen any results. One woman said it was not the first time for her to be assisted by ZWLA and that they work so hard and have women's interest at heart, she would definitely recommend it to other women who have similar problems to her.

Another client said that although ZWLA was assisting her she could not raise the deputy sheriff's fees of nine hundred thousand dollars and ZWLA had promised her only one hundred thousand dollars which was not enough. She emphasized the importance of the organization to women and explained that when a problem faces you it is difficult to know what to do and you need someone to intervene on your behalf.

Legal aid

When a client fills in the registration form, instructions are taken but if for one reason or another a file is not opened, the form is termed hopeful. Usually it would be because the matter is not proceeding to litigation. This could be because the client was given verbal advice or there are gaps that need to be filled in before a file can be opened. These are usually incomplete matters, which are at a foetal stage. The indicators for success include the outcome of cases, that is, whether the client got what she expected from ZWLA. Previously

the organization used to consider the number of clients it received, that is, the higher the number, the more successful the programme but later realized that this meant other organizations that offer legal aid were no longer doing their work as they too were referring clients to ZWLA. Now ZWLA considers whether it has managed to reach its target or not as set out in its proposals to donors.²¹

The following table shows the different ages of clients whose forms are hopeful and the legal aid clients whose files have been closed, and the types of matters they bring. The importance of taking age into consideration is to get the number of the age group that faces the most problems in comparison with other age groups and to see which one is likely to seek legal remedies when faced with problems or takes advantage of the free services offered by ZWLA for recourse.

ISSUE	19-25	26-40	40+
Divorce (5:11)	3	35	12
Divorce (5:07)	2	4	9
Unregistered customary law unions (UCLU) (property distribution)	4	15	2
Custody	2	5	1
Inheritance (UCLU)	2	15	12
Inheritance (civil)	3	2	10
Maintenance/ variation	2	1	6
Property dispute		10	11
Delictual damages		4	10
Eviction			3
Peace order			2

Clients who give instructions on divorce rank the highest, followed by those who want property distribution under unregistered customary law unions. There may be various reasons why clients want to separate from their partners and from the instructions given it would seem that they would have had enough of their abusive partners. Maintenance and variation have the least numbers because the empowerment programme absorbs these. From the figures it is apparent that there are still many unregistered customary law unions. It is one area with a lot of problems not only in property distribution but also in inheritance matters.

There are various legal problems that women in unregistered customary law unions face. The major problem is in distribution of the 'matrimonial' property. Section 7 of the Matrimonial Causes Act (Chapter 5:07) which gives a guideline on the distribution of property at divorce does not apply. This Act applies to registered marriages only. For a woman in an unregistered customary law union to get a share of the 'matrimonial' property, she has to prove that the union was a tacit universal partnership or prove unjust enrichment. Under unjust enrichment the plaintiff would have to show that she made a contribution and leaving it would impoverish her and will leave the husband enriched at her expense. Tacit universal partnership is defined as one where the parties agree that all they may acquire during its continuance and every kind of commercial venture shall be 'partnership property'. It is tacit if it can be inferred from the

²¹ According to the legal aid programme manager

conduct of the parties.²² The four requisites for a partnership to exist may be summarized as follows:

- a) Each of the parties must bring something into the partnership or must bind himself or herself to bring something to it, whether it be money, labour or skill;
- b) The business to be carried out should be for the joint benefit of the parties;
- c) The object of the business should be to make a profit ;
- d) The agreement should be a legitimate one.²³

From the evidence given the intentions of the parties must clearly come out. In the same case Justice Garwe in his judgment went on to say:

Even if the plaintiff's claims were accepted in full, the services rendered by her did not go beyond those ordinarily expected of a wife in her situation.

This means that a woman's services should go beyond those which society expects from a married woman. This is not just the ordinary everyday household chores but there should be an element of a business transaction.

Although the court realizes that women have to be protected, it insists that the woman must establish her cause of action. Not only is it difficult for the woman to satisfy the requirements of tacit universal partnership, but not many people are aware of these requirements. The burden on the woman is therefore doubled as she cannot understand that after staying in a 'marriage' which is recognized by the community and the court to a certain extent, on separation her right to 'matrimonial' property is not recognized unless she fulfils these requirements. Very few women would compare their marriages to business transactions where each partner has to bring something in for the benefit of the business.

According to Dr Sithole, although unregistered customary law unions have limited legal recognition, they are very common because the concept of registering marriages in Zimbabwe is not part of customary practice and the process of marriage is still governed by customary practices in most instances.²⁴ In other words even those who marry civilly or in church usually follow the customary practices to a certain extent – like by payment of *lobola* – so a woman will still customarily be recognized as someone's wife as long as *lobola* has been paid even if the union is unregistered. This is because usually marriages are initiated by the payment of *lobola* before registration.

The age that seems to face a lot of problems is the 26–40 years range. In nearly all the issues this age range ranks the highest. The reason could be that if their marriages are not working out then they look for ways for leaving such marriages. Under inheritance (unregistered customary law unions) the number is high because a lot of women are in such unions. Maybe ZWLA's marriage law reform campaign will address this issue.

Currently there are thirteen running files from 2002, ten for divorce where the defendant has not been served or there is a dispute of fact, one for delict, one maintenance and finally one

²² *Chapendama v Chapendama* 1998 (2) ZLR 18 (H) at 32

²³ *Mtuda v Ndudzo* 2000 (1) ZLR 710 (H) at 716

²⁴ Sithole E. 'Towards a theory and practice of access to civil justice for the poor in Zimbabwe: Law and dispute resolution in a pluralistic society', 1997 (Doctor of Judicial Science, Faculty of Law, University of Toronto)

on enforcement of a court order where the couple divorced under customary law. Twelve divorce matters went to court, of these only one went to trial and the rest were resolved through consent judgments. The legal officer advocates for settling matters through consent especially for divorce as she states that:

‘For some clients it is easier to settle for them especially if they are not working. It depends on the woman. There are powerless women who just agree to everything. If you ask them what share of the house they want they say anything. I then have to explain to them that I am not there to make decisions for them but to take instructions.’

Hopeful matters were stopped at different stages of processing and for different reasons. Broadly the numbers and the stages are as stated below.

After letter of demand	11
After issuing of summons/ application	4
After giving instructions	9
After drafting summons/affidavits before issuance of process	10
Verbal advice	50
Request for further instructions	16
Referred back to her lawyers	7
Negotiation/ solved amicably	18
Abandoned by ZWLA after instructions	17
Matter postponed sine die	1
Completed (will)	1
Self actor no outcome	2
Referred for counselling	2

There were various reasons for the abandonment of matters stated on the forms. In the seventeen matters that were abandoned it was not clear what had happened after the client gave instructions. It was not clear from some of the letters calling in clients why they were being called.

Three letters were written to clients advising that if they were still interested in pursuing their matter they should bring a revenue stamp, which is Z\$37.50 at the magistrate’s court or Z\$200 at the High Court and Z\$750 as the Messenger of Court fees or Z\$3000 for the deputy sheriff. If they were unable to raise the money then they were supposed to notify ZWLA so that the organization would assist them by using the Legal Assistance Fund. The client would not bother responding and the matter would be abandoned.

There are 50 matters where the clients were given legal advice and thereafter did not call back. The research did not investigate why these women never called back because the resources inadequate to follow these women to their last known addresses. Generally these matters included instances where the women were in abusive relationships and wanted to know their options and also how the court would distribute the matrimonial property. Some women wanted their late spouses’ deceased estates registered in instances where they were in unregistered customary law unions and their spouses’ relatives were not co-operating as the courts require that they be present in court when winding up such estates. These were advised to go to the clerk of court who would issue out summons calling in the relatives for the hearing. In such instances if the relatives are served with the summons and they do not turn

up at court then a warrant of arrest may be issued. The deceased man's relatives are the ones who should say that they recognize the woman as their late relative's wife as there would be no marriage certificate for proof. This usually puts women in difficult positions especially in instances where the relatives want the estate or are no longer on talking terms with the 'widow'. This is one area of law where women are short-changed and ZWLA should extend its services to actually seeing to it that women's rights are not breached by the bureaucracy.

In all the matters the opponent would first be written a letter inviting him or her to come and discuss the issue at hand so that it would be resolved amicably. This worked with a lot of divorce cases where the parties just wanted to go their separate ways. A round table conference would be held and thereafter if parties agree a consent paper would be drawn up.

From the above it is apparent that many cases do not reach the courts. According to ZWLA records at least 148 cases in 2002 did not reach the courts.

Fear of changing the status quo

One client did not want to get divorced even though her husband had chased her away from home. Her fear was that divorce meant the house would be sold and her share of the proceeds from the sale would not be enough to buy another house.

According to the ZWLA legal officer some women who go to ZWLA have been angered by their spouses and their immediate feeling is to divorce them but when the papers are drafted they do not call again as they have changed their minds. In such instances she advises them to go for counselling.

The legal officer noted that some clients are quick to reconcile and if the divorce goes through quickly the clients become unhappy and want the matter to drag on whilst they make up their minds about what to do. From the interview Msasa Project had sheltered one client because her husband was violent and thereafter referred her to ZWLA for divorce. The client had finally divorced her husband and had this to say:

'My parents had advised me to divorce but I didn't want to even though his behaviour had not changed. I finally decided to divorce him on my own as he was already staying with another woman.... When I came here I knew I wanted a divorce...'

Client X who is sixty-three years old and is living separately from her husband indicated:

'I do not want a divorce. I just want to live my life separate from him'

Semi-autonomous social fields

A lot of women would have sought relief from semi-autonomous social fields such as the family and the church and would have exhausted that area before resorting to legal remedies. According to Holleman²⁵ under customary law the 'link' sister was the first person the couple

²⁵ Holleman J.F. Chief ,council and commissioner: Some problems of government in Rhodesia_(1968) (Assen: Koninklijke van Garcum) at 100

(particularly the wife) would turn to for assistance in resolving marital disputes. Her brother was bound to take her advice because it was 'her' cattle (that is, the bride wealth cattle paid by her own husband) that enabled him to marry his own wife. She was also a special counsellor to the children born of the marriage. Therefore before a woman reports her spouse to outsiders, society expects her to first go to her spouse's sister and if that fails then the whole family can try to resolve the issue. Society does not expect one to air one's marital problems in public.

The advantages of using these semi-autonomous social fields is that there are no constraints on the admissibility of evidence and rules concerning hearsay evidence, leading questions, questions concerning character and the right to cross-examine one's own witness or attack his or her credibility do not apply. The procedures in traditional dispute resolution mechanisms are therefore informal.²⁶The main problem is that:

'Changes in socio-economic relations have weakened the extended family with the result that disputes which were previously resolved informally at the family level are being taken to the formal courts.'²⁷

Now the extended family structure has broken down due to economic implications which, for example, may hinder women from travelling to their spouses' aunts if they live far from each other.

Other problems with semi-autonomous social fields are that these 'lack formal enforcement powers, they generally rely on consensus and moral sanctions rather than legal ones. Where these are not effective, they are powerless.'²⁸This is why a lot of women turn to ZWLA for assistance after the semi-autonomous social fields have failed to enforce the ruling agreed upon.

One client indicated that ZWLA should hold on to her divorce summons as the families had decided to sit down and try to resolve the issue. Thereafter she never called back to say what had taken place in her marriage, that is, whether the informal advice she got was working for her or not. It is noted that in some instances semi-autonomous social fields work, as the clients inform ZWLA that they have reconciled and the husbands have returned home. The twelve interviewees had all tried to seek help from family members and other institutes but these had not been fruitful and they were turning to legal means as a last resort. They therefore expected ZWLA to solve their problems since informal mediation had failed. Six of the clients had been referred to ZWLA by court officials, four by Msasa Project, one by Bulawayo Legal Projects Centre and the last one by SIGOFOTI (client did not know the full name of the organization)

Two clients had sought marriage counselling from their churches, that is, the Apostolic church and the Guta raMwari but their husbands had refused to attend the sessions.

Workload

The lawyer indicated that according to the donor's proposal, Womankind, she is supposed to see fifteen new clients per week. In reality she said she sees nine booked clients and two or

²⁶ Ibid at 112

²⁷ Ibid at 115

²⁸ Ibid at 120

three walk-ins with urgent matters .She indicated that the target is the same for Harare office and yet in Harare the programme manager has a legal officer, an assistant and an intern. At the time of interview the Bulawayo office had only one lawyer who was running the legal aid programme and overseeing the office activities, two legal assistants, one running the children's desk and empowerment and the other running the legal education programme. The lawyer was therefore overburdened as she was responsible for screening new clients. She said she has had to turn away some clients who wanted property to be shared under unregistered customary law unions and those that had been sent by the Bulawayo Legal Projects Centre. She cannot make follow-ups on self-actors because of lack of personnel so she was not able to tell how they had fared in court. One client interviewed emphasized that the lawyer was very busy and difficult to see.

The legal officer said sometimes it was difficult to explain every stage of the case because there are too many clients and there is a serious shortage of staff. She said however that she does usually try to explain the processes but was quick to admit that due to stress she may not always think clearly when dealing with clients. She emphasized that some matters are similar and lawyers generally are detached from their work. It would be advisable to have pamphlets that have guidelines addressing all similar matters or explaining the stages in civil matters which can be given to clients so that the lawyer saves time.

Empowerment programme

The legal officer defined empowerment broadly by saying it is accessing a service that you would not ordinarily get. It includes getting to know something you did not know before, bettering yourself and acting on the knowledge you have acquired.

The programme officer explained that the sessions include confidence building because due to women's background many of them cannot speak for themselves. Confidence building was introduced to dispel fears about the court environment always being intimidating. It was noted that at the session attended no confidence building was done as explained by the programme officer. ZWLA had also indicated that it does court monitoring so as to compare those women who have gone through their hands and those who had gone straight to court. On the day of court monitoring this was not done but the reason for this was not explained.

The programme officer acknowledged that she is aware that the magistrates carry out hardly any enquiries as she stated:

'The problem now is it is very rare for matters to go to trial. There are over one hundred cases per sitting and one magistrate so there is pressure to make the women consent to judgement...But magistrates say it is the only way to handle the matters. They defend it to the disadvantage of our clients...We have explained to the judiciary that it is wrong but they do it all the same.'

It could not be established what ZWLA is doing about this serious problem and what their future plans are in curbing such tendencies.

Before the maintenance court sits, the clerk of court advises the parties that if they want their matters to be heard that same day, they have to reach a consensus on the amount otherwise the matters will be postponed until the parties agree. The parties are given a few minutes for discussion. The clerk of court then advises those who have reached a consensus to move forward when their names are called, the court finds out the amounts and endorses on the

court record that the amount is by consent. Because of economic constraints, women are coerced into agreeing to amounts which are usually less than their children require; the reason being that it is better to have that small amount of money to feed the children than to let the matter be postponed several times whilst the children starve. The women's gender roles – taking care of her children – may force her to make decisions that are not necessarily favourable to her but will temporarily assist in resolving her immediate problem. Some women take into consideration that even if the amount is small it will be varied in due course.

With regard to variation it was noted that there is a lot of misinformation. The programme officer stated that it is claimed six to eight months after initial claim but the magistrate told the women in court that they could claim after a year. During the interview she defended her assertion by saying salaries go up at the beginning of the year so the respondent's situation would not have changed during the year. During a maintenance session the clerk of court advised the women that they could claim variation after six to seven months. This is really confusing for the women and moreover some have actually been turned away by the clerks when the six months have not lapsed. Section 8(7) (b) of the Maintenance Act 5:09 makes provision for variation when:

‘...the means or circumstances of any of the parties have altered since the making of the direction or order or any variation thereof, it (the court) may vary the direction or order ...’

In other words if the circumstances change regardless of the time that has lapsed the parties should be able to apply for variation; unfortunately they might not succeed since the clerk of court might not accept the application in the first place. The application may never reach the court.

The following table shows the results of some of the women who had gone through the empowerment programme and had taken their matters to court.

Amount claimed Z\$	Amount granted Z\$	Genuine consent/ coercion/enquiry	Payslip shown/ not asked to show	Execution procedure
109 000.00	30 000.00	Genuine	Shown	No clue
50 000.00	30 000.00	Genuine	Shown	Not checked
275 000.00	Interim 50 000 Paternity dispute	Enquiry done	Old payslip Not shown	No clue
75 000.00	60 000.00	Coercion	Shown	No clue
140 000.00	90 000.00	Coercion	Not shown	No clue
175 000.00	Withdrew matter			

Genuine consent is where the applicant makes an informed decision without any pressure being exerted on her. Coercion in this instance is taken to mean that the applicant is pressured into making a decision that is not necessarily favourable to her. Circumstances drive the applicant to agree just to remove the pressure from her.

The women raised a lot of concerns with the court. One indicated that her husband alleged that he was earning Z\$250 000.00 and had a letter from his workplace that he was yet to

receive his payslip but at the time of the interview she had the payslip and it was written Z\$727 730.00 as the net salary .She indicated that the magistrate had advised her to look for it from his workplace and if there was a discrepancy to report to court. She was advised to alert the clerk of court and if she faced problems to call back but there was no follow up to check if she had done so or not.

The client who withdrew her case indicated that she was still in love with her boyfriend and that her parents were interfering with the relationship that is why her boyfriend had stopped maintaining the baby. The parents had finally decided that if they wanted to marry they could go right ahead and there was therefore no need for the maintenance issue to proceed.

The rest of the women who alleged coercion said the problem was that the respondent brought his relatives who would also put pressure on them and they felt they could not fight against more than one person.

In the paternity dispute matter the woman had been advised by the respondent’s relatives to withdraw the matter from the courts as it was viewed as an embarrassment to the family but she refused and she was told in very clear terms that if she proceeded with it the responsible person would deny paternity and paternity was denied. One woman alleged that the magistrate advised her to date a very prominent businessman and politician if she wanted more money than what the respondent could afford. This shows the insensitivity of some magistrates.

Court monitoring

I observed in the maintenance court proceedings of 55 cases. The following is a table showing the outcome of some of the matters that were handled that day.

Case outcome	Number of cases with similar outcome
Judgment by consent	10
Enquiry	7
Paternity dispute	2
Matter struck off the role and no return of service	33
Default judgment	3

Claimants were advised by the clerk of court to go outside the courtroom and have dialogue with respondents and agree on how much maintenance the responsible person was going to pay. After a few minutes they were called back and asked how much they had agreed on, that is why the figure for consent to judgment is so high. As already mentioned, one woman alleged that the respondent had produced a fake payslip and the magistrate responded by saying she should go and investigate at the respondent’s workplace and if she finds that it is a fake one then she should go back to court and make a report. She was not told how exactly she would obtain the slip.

Women who did not have legal representation were not given adequate time even if they were unclear about what to do or just needed some clarification. Their issues were just brushed

aside. The magistrate seemed to pay attention to the respondents, especially in cases where the respondent alleged that he was married and had other children. The court would take that into consideration, including his transport costs, food costs and his new family.

Legal education manual

According to the agreement between ZWLA Bulawayo and the donor, Gender Equality Support Project, Canadian International Development Agency, the Murombedzi ChiShona manual was to be translated into SiNdebele and used in Matshetsheni. It states that:

For Murombedzi a training guide or manual was developed... The same strategy and training intends to be applied in the Matshetsheni peer educators programme.

The following topics are to be covered:

- 1) Introduction to law and law making
- 2) Gender and the law
- 3) Birth certificates
- 4) Maintenance
- 5) Wills and inheritance
- 6) Conflict resolution and mediation
- 7) Child sexual abuse and the law
- 8) Marriage laws
- 9) Custody and guardianship laws

The programme officer stated that at first ZWLA chose the topics and after consultation they removed some topics and added what the community requested. On perusal of the manual it was found that the manual shows the above stated topics which were designed for Murombedzi. The programme officer noted that some of the examples given in the manual are not relevant to the Matshetsheni community and that the examples are more inclined towards an urban setting. She acknowledged the gap between the rural and urban setting. For example, there is a group activity about a couple that stayed in the United Kingdom and shared domestic duties. The participants are required to state what those duties are. The peer educators seemed not to know what kind of duties these might be. She went further to say she finds the topic on gender too abstract and that the community regards a man who cooks for the family as greedy if his wife is around. They insisted that the division of duties at home is natural and people should not interfere with it as it can lead to the break up of families. They agreed that if a man cooked a meal for the family when his wife was at home, it meant he was a greedy man or he was showing the woman that their marriage was at risk as he preferred his own cooking. It was therefore the group's view that cooking is a woman's duty even when both spouses were tired and had been working in the fields; the man can lie under a tree waiting to be told that his meal was ready.

The group was also of the view that it is a woman's duty to carry water on the head unless there were no females at home. One participant actually defended this view by saying women were created with flat heads and that is why they carry buckets of water better than men. It was not clear whether he meant that comment on a serious note or not even though he explained that that is why when they come back from the fields he takes a nap whilst his wife cooks. The male group members feared what the community would make of them doing 'women's' duties. The community members' actions were therefore controlled by what is expected of each gender and not what each family sees as right or wrong. Everyone was conforming to what society expects of him or her. According to Rayner²⁹ although culture is dynamic, cultural expectations are usually expressed in traditionalistic and conservative forms. Any deviation from the traditional norms, although necessary to accommodate socio-economic changes, may be regarded as deviant and punishable. The punishment usually involves some mystical threat from the ancestral spirits who are regarded as the guardians of culture.

There were some duties which the participants felt comfortable sharing like the chopping of firewood and fencing the fields but according to my own observation the duties that the group felt could be shared without causing any embarrassment are the duties that are ordinarily carried out by men. The group agreed that it was not because women cannot do men's work or vice versa but they have to conform to societal expectations.

She advocated for more use of semi-autonomous social fields as she felt these are more relevant to the community as, for example, registering an estate at the High Court has societal and economic implications therefore it would be better for the community to use chiefs. That way the community would save money and she went on to say property grabbing is not condoned culturally.

The programme officer stated that she felt some of the topics were not given adequate time as they would be covered within two hours including reporting back. The time is not adequate even for learning basic law, for example, marriage laws were covered within two hours and yet this topic covered marriage formation, consequences of each type of marriage and divorce laws. The participants were given a handout that summarised the issues. They could refer back to it to refresh their memories and also identify areas they had not understood. Gender and the law was also covered in two hours. The participants were not given any handouts. To expect the participants to have understood these to the extent of assisting other people in the community would be expecting too much of them. In my view, such time limit can lead to the peer educators being less effective in carrying out their duties. Law is generally complex and needs time to understand that is why for one to study law at the University of Zimbabwe, one needs at least two As and a B at Advanced Level (thirteen years of formal education) and the law is studied for four years, therefore for people with only grade 7 (seven years at formal education) level to be expected to understand the law within two hours is not reasonable.

²⁹ Rayner W. *The tribe and its successors :An account of African traditional life and European settlement in Southern Rhodesia* (London: Faber and Faber,1962) at page 50

Monitoring and evaluation

I sat in two evaluation sessions where the impact of the empowerment and legal aid programmes were being evaluated so as to improve the service or modify the programmes so that they become more useful to the beneficiaries. The empowerment programme concentrates on maintenance cases only. It teaches women about what maintenance is and helps them fill in the relevant answers. The evaluation had pre and post session evaluation forms. The pre-session evaluation forms had the following questions

- Date
- What is maintenance?
- Have you ever tried to claim maintenance before through the courts? If yes, what transpired?
- What are your expectations?

Thereafter there was a discussion on court experiences. A lot of the areas that were still confusing to the women were clarified. The participants were also able to ask questions directly of the two magistrates and clerk of court who were present. The women were then divided into groups where they were given various questions to discuss and present before the others. The questions asked were as follows:

- What could be done to improve the justice system?
- What do you think of the magistrate's request to consent first?
- What could be done to improve the maintenance empowerment programme?
- How helpful are the sessions?

Thereafter there was a question and answer session and the evaluation session ended.

On the 21 January 2004, the legal aid department also carried out its evaluation session to measure its impact on its clients. In this session there were only two participants out of the twenty that had been invited. The objectives of the evaluation workshop were as follows:

- To highlight the importance of the service given by ZWLA to the women who are violated at home.
- To inform ZWLA of its strengths and weaknesses in its service delivery to clients
- To get clarification about ZWLA's target group and limitations of its service.
- To find out how else ZWLA intends to further woman's rights besides representing clients
- Whether ZWLA is effective and efficient in its service delivery

The participants started by filling in a pre-session evaluation form. Thereafter the objectives and the clients' perception of the courts were discussed. The two were informed of who the target group is and then there was a discussion on the public image of ZWLA. Finally there was a question and answer session. Solutions were also suggested on how to improve the service given and what to do if one is ill treated in court. The post-session evaluation form (refer to annex 2) was filled at the end of the session.

Generally the empowerment evaluation workshop was more informative than the evaluation on legal aid because the women participants were posing questions directly to the magistrates and the clerk of court and they got immediate answers.

The programme officer stated that it is difficult to measure impact or success in maintenance cases because nearly all women who claim maintenance get it. She therefore regards a woman who would have claimed thirty thousand and manages to get fifteen as successful.

For legal aid only two out of the twenty-two women invited turned up and this was the first evaluation workshop since the office was opened. Because there were only two women their views are not conclusive. The legal officer blamed the other staff members for not assisting her timeously. The post-session questionnaire concentrated on the facilitator and not much on the service rendered except question eight which asks how ZWLA could improve its service delivery. (See annex 3)

CHAPTER FIVE

Discussion and conclusion

Legal aid

Generally clients were happy with the service they are getting from ZWLA and they all felt that ZWLA should continue assisting women with their legal problems. However it was noted that ZWLA Bulawayo office handles too many legal aid cases to the extent that the legal officer feels the workload is too much for her to handle. It would seem to be one of the major reasons for so much negotiation in divorce cases, although the research did not go so far as to establish if this has had any negative impact on the women. On the face of it there is nothing wrong with negotiation to resolve cases amicably, it becomes worrying when nearly all the cases are resolved that way and raises the fear that some consents may not be genuine, especially taking into consideration that the legal officer explained that there are some women who are powerless and therefore it is easier for them to settle. This confirms the assertion made by Richard L. Abel³⁰ that:

‘Legal aid lawyers handle their cases in routine fashion, with the least possible expenditure of effort. This is seen by a lot of negotiation and letter writing....Is it because of case load pressure?’

It is important for lawyers to guard the interests of their clients and advise the clients properly without taking advantage of the fact that the clients are poor, ignorant of their rights and feel powerless. With the time spent at work and the other duties the lawyers have to perform it is unlikely that they have time for any research or to give enough consideration to matters. All this can lead to burn-out or simple lack of interest in the cases they are handling, which is why the lawyer at the Bulawayo office emphasized that the work is just too samely so she ends up losing concentration.

Although it is clear that the office is under staffed, the other problem that ZWLA faces is that in Matabeleland there are very few organizations or institutes that give free legal aid. This creates an influx of clients, as they cannot get assistance elsewhere except at ZWLA and Bulawayo Legal Project Centre.

ZWLA generally has an open door policy and this means even if five clients are booked, the walk-ins will also be attended to because they have urgent matters. Richard L. Abel³¹ says that it is hard for legal aid lawyers to turn away clients because it represents the last resort especially when it has established an open door policy. This means that the workload continues to accumulate unabated.

From the interview with the legal officer it was unclear whether ZWLA has extended its scope to include other areas of law.

³⁰ UCLA Law Review vol 32 of 1985 p572

³¹ Ibid p573

Target groups

Legal aid

Many institutions and organizations that offer free legal services use a means test to screen those who qualify to get the services from those who can afford to pay lawyers. Some women still fear divorcing their husbands and the consequences thereof. It is envisaged that since ZWLA is advocating for the marriage law reform such fears may be dispelled as more women get to understand the law on divorce.

A lot of the women find it difficult to seek legal remedies without first trying to work things out with the families. This is mainly because customarily when a woman gets married she marries into a family and it is not regarded as a private affair. When problems arise she first has to consult her in-laws before making any decision to avoid being blamed for the breakdown of the marriage. Customarily the women are taught to be persevering in their marriages and that marriage is hardly ever smooth sailing. For that reason a lot of women suffer from indecision when the marriage does not work out. She may start court proceedings but if she feels they are prospects of reconciling she will withdraw her case and when she finally divorces it will be because everything else has failed. It is generally expected that a woman's first option is a semi-autonomous social field for recourse.

It is important to have a realistic means test otherwise those who earn just above the stipulated amount are left with no recourse as they cannot afford lawyers and at the same time are not considered deserving of free legal aid. Although the means test is useful theoretically, practically it may pose problems especially considering that a lot of women are informally employed making it difficult to say how much they realize per month as the amounts fluctuate. Other factors come into play, for example, ZWLA assists women who realize less than forty thousand dollars per month but stretching this amount would depend on the number of family members who depend on that for sustenance. The client information form ignores the fact that a lot of majors are still dependent on their parents for their upkeep thus reducing the family income.

Peer educators

The method used for choosing peer educators seems to be clear as they are of the same educational qualifications. Although some were not so young, what is important is whether they can do the work or not and how dedicated they are.

Discontinuity of matters

A lot of the matters did not reach the courts. Richard L. Abel³² states that:

‘...people are interested in procedural justice rather than in what they can win or avoid through the law.’

³² Ibid p512

In other words people want their cases resolved instantly and if not, they lose interest or as stated by Abel that the poor will avoid the law because of negative feelings like despair, resignation and the fact that they acknowledge their powerlessness. A lot of emotions are experienced by the women who go to ZWLA and it is important to note that for some women it is such a difficult step to take, especially if they are revealing their private affairs, so it is easy for these women to lose hope and leave their situations to destiny. This could be why a large number of the clients do not follow up on their matters because if they were genuinely interested they would follow them until its logical conclusion. There is therefore need to investigate what exactly hinders the women from letting their matters end conclusively. This research did not go so far as to find that out from these women.

One area of great concern is insufficient client–lawyer communication. This is apparent in that after a court order has been granted the file is closed and no one makes a follow up as to whether the victory was on paper only or in reality as well. This is most obvious in the maintenance cases. A lot of the clients were blank on how to execute their judgments even though the lawyer had indicated that every stage of the procedure is explained to the client. It would be difficult for the Bulawayo office to make a follow up on every case but at the same time it is important to go all the way so as to get the real value of ZWLA services to its clients.

Legal education manual

The fact that the training manual was made specifically for Murombedzi (Mashonaland) but is now being used in Matshetsheni (Matabeleland) creates a lot of problems for the peer educators in Matshetsheni. Because both areas are in the rural areas the communities are more inclined to follow their culture and traditions so some of the examples are not relevant. It is imperative that when a teaching manual is made a lot of testing is done on the community where it will be used to see if it is user-friendly for that community. Therefore it is not necessarily true that ‘one size fits all’.

Translating words from English to ChiShona then SiNdebele can lead to a situation where the true meanings are lost or not exactly the same, for example gender has no equivalent in SiNdebele. It must be noted that at the time of the research the translations were still being edited so hopefully they do now capture the true meanings of words.

It is apparent that ZWLA used a ‘top-down’ approach which did not create a sense of ownership of the programme in the communities. This may have negative results if the community decide that the programme belongs to ZWLA and not to them and therefore not to the benefit of the community. In future ZWLA has to guard against such tendencies as it gives the impression that ZWLA is at the top bringing light to the ignorant people at the bottom. It is important to teach the Matshetsheni people what they are interested in and not what the Murombedzi people want.

It is important to give referral materials at workshops so that the participants can refresh their minds so ZWLA should have made sure it had finished editing before starting the training. It was also noted that time spent on some topics was inadequate especially considering the levels of education of the peer educators and the fact that they are not young anymore.

Empowerment

ZWLA must be commended for initiating the empowerment programme and also on using clerks of court as facilitators since a lot of women find it difficult to go through the clerks successfully. The topics covered also help a lot of women especially since they may have difficulties in filling in the forms which are written in English and in a legalistic style. Unfortunately not much was done to boost the confidence of women claiming maintenance and negotiation skills were neglected and yet the programme officer had indicated that the women are taught to be confident so that they can represent themselves in court.

From the research women are taught the theory of maintenance and how to fill in the forms but this leaves a gap if they are not taught how to negotiate and generally what to expect in court. However, the research is not advocating for coaching women before they go to court as this may lead to fabrication of responses.

The other gap left is how to execute one's judgment. Negotiation skills help in that the women are told to go outside the court and agree with the respondent how much he is willing to contribute towards the maintenance of children. Usually the two will no longer be on good terms so this further disadvantages the woman litigant. The women are just brow-beaten into consenting and if they do not consent either their matters will be postponed or, if the enquiry is done, the woman is still short-changed. The question which ZWLA should be asking itself is how best to close this gap because if not covered their efforts will be rendered ineffective.

The biggest barrier to ZWLA realizing its goal is the court and for as long as the conditions of the magistrates are not improved, not much will be achieved.

Ineffective monitoring methods

The legal aid evaluation workshop had only two participants and this meant the impact of the programme was not conclusive. The evaluation methods were also not effective in that they concentrated too much on the presentation of the lawyer and not the value of the service given. The reason for using such an ineffective method could have been that it was the first time that kind of evaluation was carried out for that department since the office opened in 2000. It is envisaged that the office will learn from its mistakes and the future evaluations will be of more value to the organization.

In comparison the evaluation done by the empowerment programme was more informative and if the departments had worked in consultation with each other, they would have produced something better that could have measured impact more accurately especially considering that some of the staff had attended training on how to use result based management which teaches how to measure results in any project.

For peer educators it was not possible to measure how they will perform their duties as they were still being trained. There is need to see that by the time the training is complete evaluation tools have improved and that evaluation will be done more frequently.

The law

Section 18 of the constitution does not assist the ordinary indigent woman in any way in that it talks about every person being entitled to the protection of the law but does not address how that is to be achieved. At the end of the day it is very difficult for women to realize this protection when no guidelines are given. This section applies in criminal matters mainly where the accused person is protected against the state and not individuals against individuals.

The Legal Aid Act on paper gives a lot of protection to the indigent person, so in theory it is a good Act. In reality, the service is inaccessible to many. The directorate is situated in Harare far from the majority of population. It only serves its purpose for the people in Harare and possibly the surrounding areas, although it must be noted that a survey was not carried out. This assertion is made taking into account the socio-economic situation of indigent people and the high inflation rates in Zimbabwe which make it difficult for ordinary people to travel to Harare. There is need to decentralize such institutes so that ZWLA will not carry the burden alone. Therefore ZWLA must be commended for the work it does.

Conclusion

A lot of women do have access to the legal services offered at ZWLA Bulawayo Office. The main reason being that it is the only organization that offers such services specifically for women. It is apparent that the women who go to there are happy with the service. The programmes seem to complement each other although there is room for improvement.

There are various barriers that make it difficult for women to realize their rights, like the attitudes of court personnel, and it is good that ZWLA is aware of such barriers and hopefully its programme on gender sensitization of the judiciary will cover some of the gaps.

Overall ZWLA is commended for the work it does especially considering the capacity of the office.

CHAPTER SIX

Recommendations

The following are recommendations for improving ZWLA services:

- 1 Realistic targets – ZWLA Bulawayo has to set realistic targets for itself considering its office capacity regardless of the targets set by its counterparts in Harare. The offices should not replicate each other unless they are to get the same number of staff.
- 2 Training manuals – Training manuals should be tested and tailor-made to suit the target group. ZWLA should avoid translating ChiShona manuals into SiNdebele. The manuals should be ready for use before training begins so that the target group can use these to refresh their memories.
- 3 Effective monitoring and evaluation methods – ZWLA should ensure that staff are trained on effective monitoring and evaluation methods so that the real impact of their programmes can be measured.
- 4 Follow-up methods – ZWLA should track down its clients to find out why some of them abandon their cases before they reach their logical conclusion.
- 5 Reduction of programmes – ZWLA Bulawayo has too many programmes, especially considering that the staff acknowledge that it has too much work. The organization should appreciate that it cannot do everything. With the current number of staff it should concentrate on legal aid in the office and legal education and prune the children’s desk and outreach programmes.
- 6 Proposals to donors – The office should indicate to the donor what it is capable of achieving and not be tempted to include things that are difficult to implement just to please donors.

BIBLIOGRAPHY

BOOKS

Weiss Bentzon A. *et al.*, *Pursuing grounded theory in law: South-North Experiences in developing women's law*, Tano-Aschehoug and Mond Books, Oslo and Harare, 1998.

Blankenburg E. *et al.*, *Innovations in the legal services research on service delivery*, Oelgeschlager, Gunn and Hain Publishers, Cambridge, 1980.

Zimbabwe Women Lawyers Association Strategic Plan 2002-2005

International Commission of Jurists (1997) *Legal services in rural areas in Africa*, Geneva, 1997

Sithole E., *Towards a theory and practice of access to civil justice for the poor in Zimbabwe: Law and dispute resolution in a pluralistic society*, (Doctor of Judicial Science) Faculty of Law, University of Toronto, 1997.

Tsanga A.S., *Review of women's legal rights materials in Zimbabwe*, Ministry of National Affairs, Employment Creation and Co-operatives, 1996.

REPORTS

Akpalu Q. E. 'An evaluation report of FIDA legal services programme', 1994.

Chinemana F., 'An evaluation of the pilot paralegal scheme, Seke rural district, Zimbabwe' for Harare Legal Projects Centre, 1988.

Kabogoza M., 'Regional paralegal training and legal literacy evaluation workshop proceedings, Mnkono', for the Foundation for Human Rights Initiative, 1995.

Kazembe J.L. *et al.*, 'Evaluation report of the Women and the Law Project in Zimbabwe', Ministry of National Affairs, Employment Creation and Cooperatives

McFadden P. *et al.*, 'Final evaluation report of Zimbabwe Women Lawyers Association', 2001.

Nyathi P.T. *et al.* 'Evaluation of phase one of the extended paralegal programme of the Legal Resources Foundation', 1990.

ARTICLES

Blankenburg E. 'Some reasons for not legalizing', page 104 in *Innovations in the legal services research on service delivery* (see above).

Curran A.B., 'Research into legal needs and the legal services: Research on legal needs, patterns of lawyer use and factors affecting use', page 11 in *Innovations in the legal services research on service delivery* (see above).

Geerts P. 'The issue of delegalization', page 218 *Innovations in the legal services research on service delivery*, (see above).

Griffiths J. 'A comment on research into legal needs', page 29 in *Innovations in the legal services research on service delivery*, (see above).

Johnsen T.J., 'Problems in planning legal services', page 19 in *Innovations in the legal services research on service delivery*, (see above).

Paterson A.A., 'Professionalism and the legal services market', *International Journal of the Legal Profession*, in Volume 3 numbers 1-2 1996.

Reifner U. 'Types of legal needs and modes of legalization: the example of the Berlin tenants initiative', page 37 in *Innovations in the legal services research on service delivery*, (see above).

Sparer E., 'Fundamental human rights, legal entitlements and the social struggle: a friendly critique of the critical legal studies movement', page 36 *Stanford Law Review*, Volume 1-3, 1983-1984.

