



**THE LAW SOCIETY
OF ZIMBABWE**



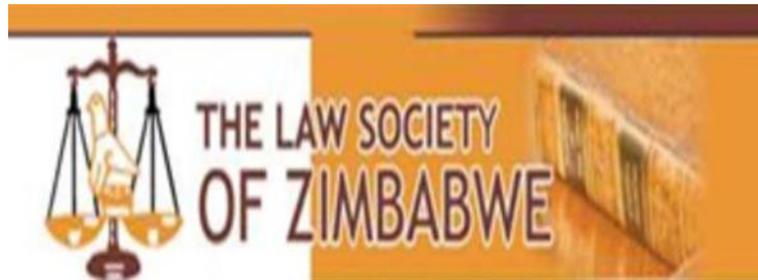
JUSTICE DELIVERY SECTOR

**SURVEY REPORT
ZIMBABWE (2018)**

Supported by



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Table of Contents

1.0 EXECUTIVE SUMMARY	5
1.1 GAPS RELATING TO ACCESSIBILITY OF THE JUSTICE DELIVERY SYSTEM.....	5
1.1.2 INADEQUACY OF LEGAL ASSISTANCE PROGRAMMES.....	5
1.1.3 COSTS OF ACCESSING JUSTICE	6
1.2 GAPS WHICH COMPROMISE INTEGRITY, EFFICIENCY AND EFFECTIVENESS OF THE JUSTICE DELIVERY SYSTEM.....	6
1.2.1 CORRUPTION	6
1.2.2 LACK OF KNOWLEDGE, SKILLS AND ATTITUDES	7
1.2.4 UNWELCOMING AND UNFRIENDLY ENVIRONMENT AT COURTS AND THE POLICE.....	7
1.2.5 INADEQUATE RESOURCES.....	8
2.0 INTRODUCTION.....	9
3.0 CONCEPTUAL FRAMEWORK.....	10
4.0 METHODOLOGY	12
4.2 DATA COLLECTION TOOLS.....	13
4.3 SAMPLING.....	14
<i>4.3.1 Sample for focus group discussions.....</i>	<i>15</i>
<i>4.3.2 Sample for Key Informant Interviews</i>	<i>15</i>
4.3.3 DESCRIPTION OF STUDY PARTICIPANTS.....	16
4.4 LIMITATIONS	17
5.0. FINDINGS.....	18
5.1. ACCESSIBILITY OF THE JUSTICE SYSTEM.....	18
<i>5.1.1 Complexity of Court Procedure and the Law</i>	<i>18</i>
5.2. AVAILABILITY OF LEGAL AID SERVICES AND ADEQUACY OF THE SERVICES.....	23
<i>5.2.1. Existence of Legal Aid Programmes</i>	<i>23</i>
<i>5.2.2. Awareness by Court Users of the Programmes</i>	<i>23</i>
<i>5.2.3. Awareness by Other Actors in the Justice Sector.....</i>	<i>24</i>
<i>5.2.4. Adequacy of the Programmes</i>	<i>25</i>
5.3. COST OF ACCESSING JUSTICE	29
5.4. CORRUPTION.....	35
5.5. UNAVAILABILITY OF RECORDING MACHINES IN SOME COURTS.....	44
5.6. GAPS IN SKILLS, KNOWLEDGE AND ATTITUDES.....	45
<i>5.6.1. Knowledge, Skills and Attitudes-JSC Staff.....</i>	<i>45</i>
<i>5.6.2. Knowledge, Skills and Attitudes-Lawyers.....</i>	<i>46</i>
<i>5.6.3. Knowledge, Skills and Attitudes-Police</i>	<i>48</i>
<i>5.6.4. Skills, Knowledge and Attitudes-Prosecutors</i>	<i>50</i>
5.7. LACK OF PROFESSIONALISM.....	52
5.8. DELAYS IN SETTING DOWN HEARING AND HANDING DOWN JUDGMENTS	53
5.9. UNDERSTAFFING.....	57

THE SENTIMENTS BY THE LAWYERS GENERALLY CONFIRMED THE FACT THAT THE JUSTICE SECTOR WAS UNDERSTAFFED AND THAT AFFECTED THE VARIOUS ACTORS 'ABILITY TO DELIVER QUALITY JUSTICE TO THE GENERALITY OF ZIMBABWEANS.....59

5.10 UNWELCOMING AND INTIMIDATING ENVIRONMENT AT JUSTICE INSTITUTIONS59

5.11. RESOURCES CONSTRAINTS60

6.0. RECOMMENDATIONS63

LIST OF ABBREVIATIONS

CALR	-	CENTRE FOR APPLIED LEGAL RESEARCH
CATCH	-	CARE AT THE CORE OF HUMANITY
EU	-	EUROPEAN UNION
FGD	-	FOCUS GROUP DISCUSSION
IFP	-	<i>INFORMA PAUPERIS</i>
JC	-	JUSTICE FOR CHILDREN
JSC	-	JUDICIARY SERVICE COMMISSION
LAD	-	LEGAL AID DIRECTORATE
LRF	-	LEGAL RESOURCES FOUNDATION
LSZ	-	LAW SOCIETY OF ZIMBABWE
MOC	-	MESSENGER OF COURT FEES
NPA	-	NATIONAL PROSECUTING AUTHORITY
TIZ	-	TRANSPARENCY INTERNATIONAL ZIMBABWE
VFU	-	VICTIM FRIENDLY UNIT
WILSA	-	WOMEN AND LAW IN SOUTHERN AFRICA
ZWLA	-	ZIMBABWE WOMEN LAWYERS ASSOCIATION
ZRP	-	ZIMBABWE REPUBLIC POLICE

1.0 EXECUTIVE SUMMARY

The survey had the following three broad objectives:

- 1) Identifying and documenting challenges in the justice delivery system from the perspective of both users and service providers.
- 2) Establishing whether there are programmes in place to assist the marginalised and vulnerable to access justice and assessing the adequacy of such programmes.
- 3) Coming up with recommendations on how the challenges can be addressed and also assisting the LSZ to develop a tool to monitor the implementation of measures which shall be adopted.

The study used a mixed methodology approach but with greater reliance on the qualitative approach informed by the need for LSZ to gain in-depth understanding of the gaps in the justice delivery system and how such gaps can be addressed. The study used a sample purposively drawn from 18 districts of the country.

SUMMARY FINDINGS

1.1 GAPS RELATING TO ACCESSIBILITY OF THE JUSTICE DELIVERY SYSTEM

1.1.2 Inadequacy of legal assistance programmes

The study revealed that the majority of litigants who make use of the justice delivery system in the magistrates' court do so without legal representation. Court officials estimated that an average of 65% of the people who approach the magistrates' courts in urban areas and 85% of those who access magistrates' courts in rural areas do so without legal representation, yet the procedure is complex and technical. The study established that legal aid programmes for the marginalised and vulnerable are not adequate as demand for the services is high and the institutions and organizations offering legal assistance are constrained in terms of capacity. Most of the service providers offer assistance in urban areas making it difficult for the rural populace which has the greatest need to access the services unless they travel to the urban centres. The study further revealed that most CSOs offering services to the indigent target women and children with the generality of the indigent not benefitting from the services. It was established that the IFP (Informa Pauperis) intervention is being underutilised because people are not aware of this facility. It was

further established that lawyers are not interested in taking up IFP cases and the JSC has resorted to referring most of the people in need of assistance to the Legal Aid Directorate and to Civil Society Organisations.

1.1.3 Costs of accessing justice

The survey revealed that the costs of accessing justice are very high, with the result that most people faced challenges in pursuing their cases to finality. All the respondents; judges, magistrates, clerks, lawyers and the police, were in agreement that MOC and Deputy Sheriff fees were unreasonably high. There was consensus that court fees were nominal and in as much as people struggled to raise these, they were not as inhibitive as the MOC and Deputy Sheriff fees. Court fees specifically relating to appeals were cited as being on the high side. The survey established that indigent women were the worst affected with the issue of the inhibitive costs.

1.2 GAPS WHICH COMPROMISE INTEGRITY, EFFICIENCY AND EFFECTIVENESS OF THE JUSTICE DELIVERY SYSTEM

1.2.1 Corruption

The study revealed that the perception amongst most of the respondents who participated in the survey is that corruption is prevalent within the justice system. The magistrate's court was singled out by lawyers as the institution where corruption is prevalent with prosecutors, clerks of court, registry staff and other support staff being labelled as the most corrupt. All the lawyers who participated in the survey indicated that prosecutors were the most corrupt officials in criminal proceedings. The findings revealed that due to information asymmetry self-actors fell prey to unethical conduct of some clerks and support staff at courts and sometimes paid money to get papers drafted for them and to get directions on how to proceed with their case. The findings however revealed that corruption is a complex phenomenon because of the "willing buyer, willing seller" concept with the result that very few cases are reported. The study further established that other forms of corruption did not necessary involve the exchange of money but were cases of abuse of power and authority where political and powerful figures used their influence through instructions for arrest and prosecution of opponents or protection of their relatives or friends facing

criminal charges. The study also established that perceptions which the public has with regard to corruption were partly due to lack of awareness and knowledge of how the justice system works.

1.2.2 Lack of Knowledge, Skills and Attitudes

The findings revealed that generally police lacked skills to investigate economic crimes, complex crimes, crimes where ICT is used and sexual offences. It was further established that they lacked an understanding of issues relating to the rights of accused persons, with the result that accused persons rights were violated. The study also revealed that most young lawyers lacked skills in drafting papers and in courtroom advocacy with senior lawyers not doing enough to train them. Findings were made to the effect that police and army prosecutors did not have the requisite prosecutorial skills and that generally prosecutors needed refresher courses and continuous development programmes to build their capacity to deliver effectively and efficiently. No major issues were raised with regard to the skills and knowledge of magistrates and judges.

1.2.3 Delays in Setting Down and Finalisation of Cases

The survey established that generally there were delays in setting down criminal matters for trial with the result that courts end up refusing further remands. It was established that the delays in the justice delivery system were due to staff shortages within both the NPA and JSC, poor case management by the police and NPA and poor work ethic on the part of lawyers, magistrates, police and prosecutors. A finding was made to the effect that self-actors experienced delays in finalisation of their civil cases in the magistrates' court due to postponements because they would not have not filed correct papers. It was established that there had been a marked improvement in turnaround times at the High Court with the result that cases were set down and finalised within fairly reasonable times. The study however established that some lawyers still experienced delays in the handing down of judgments in the Supreme Court and Constitutional Court.

1.2.4 Unwelcoming and Unfriendly Environment at Courts and the Police

The study established that the environment at courts and police stations was generally unfriendly and unwelcoming particularly for self-actors. The study revealed that the police generally had no

respect for complainants and the set-up at the reception area was such that complainants were forced to disclose their cases in the hearing of other officers, which was very uncomfortable for sexual offences and gender-based violence survivors. The study established that clerks of court were generally rude and intimidated court users, giving them the impression that court procedures were very complex and, self-actors resorted to paying money in order to get assistance from them. The study also revealed that the court environment was also intimidating to female victims of sexual offences who in most cases are not aware that the prosecutor represents their interest and should explain to them how their case will proceed. It was noted that there are no confidence building measures in place for survivors of sexual offences and other gender -based violence cases.

1.2.5 Inadequate Resources

The study established that the police are the worst affected by inadequate resources, which compromises their ability to carry out effective investigations particularly in sexual offences and gender-based violence. The survey revealed that the VFU in particular is woefully and this partly contributes to poor investigation of cases and acquittals. The study further revealed that prosecutors do not have libraries and find it difficult to carry out research in respect of cases they will be handling. The lack of recording equipment in some criminal courts was cited as an impediment to justice. The study established that staff shortages in both the NPA and JSC are also affecting justice delivery thus the delays in setting down of matters and handing down of judgments.

2.0 INTRODUCTION

The justice delivery sector consists of various actors whose mandate is enforcing and dispensing justice. Centre for Applied Legal Research (CALR), in its report titled Citizen Perception Mapping of The Justice Delivery System in Zimbabwe, defined justice delivery as the institutional and administrative character of justice.¹ This definition implies that any discourse on justice delivery focuses on the various institutions whose mandate is to provide justice to the public. The Judicial Service Commission, in its 2016-2020 Strategic Plan, states that the justice sector is made up of a number of actors whose functions are intricately interdependent in their common pursuit of justice delivery.²

The JSC lists the ZRP, the JSC, the LSZ and its members, the NPA, the ZPCS, the Zimbabwe Anti-Corruption Commission and the Ministry of Justice, Legal and Parliamentary Affairs as some of the actors within the justice delivery system. Civil society organisations offering legal services to facilitate access to justice for the marginalized, vulnerable and human rights defenders are also part of the justice delivery system, given the nature of the services they offer. It is important to note that the organizations, together with members of the LSZ, are both suppliers and users of the justice delivery system. They supply services to the general public, but they also make use of the other institutions that dispense justice in the process of facilitating access to justice for their clients.

The justice delivery system plays a key role in facilitating access to justice for those seeking redress. A well-functioning justice system contributes significantly to the observance of the rule of law as users are confident that they can approach the various actors within the system to seek redress when wronged and to defend claims that may be instituted against them. On the other hand, gaps within the justice delivery system erode confidence in such a system, with the result that people resort to self-help, promoting lawlessness and anarchy. Justice delivery institutions have the mandate of delivering justice to the general public effectively and efficiently. Gaps in the justice delivery system impact on the quality of justice delivered, with the result that the end user, who is supposed to benefit from the services, may suffer injustice. Interventions to strengthen the justice delivery system should therefore focus on ensuring that the end users of institutions within the justice delivery system have their needs and expectations met. One characteristic of a good

¹Citizen Perception Mapping of Justice Delivery Systems in Zimbabwe, Centre for Applied Legal Research, 2016

²Judicial Service Commission Strategic Plan 2016-2020

justice delivery system is the extent to which it is accessible to the general public, including the marginalised and vulnerable groups. Accessibility in this regard denotes the ability of all people to make use of the system and pursue justice without suffering undue hardship. High costs and complexity of procedure make it difficult for the general public to access justice. People expect their cases to be expeditiously dealt with and if the system is slow and inefficient, this erodes people's confidence in the system.

The LSZ, as an organization mandated to uphold justice in Zimbabwe, commissioned a survey in March 2018 to establish gaps within the justice delivery system in Zimbabwe. The LSZ, as one of the main actors in the justice delivery system with one of its mandates being to foster public confidence in the justice delivery system, has over the years brought to the attention of some of the actors within the system challenges raised by its members and the public. However, it has been difficult to address some of the challenges as they are considered to be anecdotal. The survey thus focused on gaining an in-depth understanding of the challenges and gaps within the justice system with a view to coming up with recommendations as to how such gaps and challenges can be addressed.

The survey took into account the fact that CALR conducted a research titled Citizen Perception Mapping of the Justice Delivery System in 2016 focusing on the perceptions of the citizens on justice delivery. Whereas the CALR perception mapping survey sought to get perceptions on the justice delivery system from the general public, the LSZ sought to understand the challenges within the system not only from the users of the system but also from the service providers who are actors within the system.

This approach helped to validate the issues brought out by the different stakeholders who participated. There was a triangulation of findings and at the same time deeper insights were gained on issues raised by the different stakeholders as they either confirmed, explained or refuted the different views given by each stakeholder.

3.0 CONCEPTUAL FRAMEWORK

The conceptual framework developed for this study was premised on the understanding that the LSZ is aware there are numerous challenges within the justice delivery system as reflected in their proposal to the EU. The study acknowledged that there are recognised benchmarks of a functional

justice, such as accessibility (cost, simplicity of procedure and proximity of courts), expeditious disposal of cases, fairness and impartiality, including the absence of corruption, competent officers and a well-resourced system able to deliver on its mandate. These standards guided the framing of the research questions and the tools designed to collect data.

In his address during the Opening of the Legal Year in 2018, the Chief Justice of Zimbabwe stated that a judicial system that is inaccessible, unaffordable, slow and whose procedures are incomprehensible to the people whom it is expected to benefit effectively denies those people access to justice.³ He went further to state that the concept of access to justice demands that there be no physical or technical barriers that frustrate litigants from accessing justice.⁴ The survey sought to get the views of the different respondents on the barriers within the justice delivery system which impede users from accessing justice.

The aim of the research was to gain an in-depth understanding of some of the gaps identified by the LSZ and to identify other gaps which may be in existence, not only from the perspective of the main actors in the justice system, but also from the users of the system. This study was grounded in the qualitative approach as the objective was to explore the feelings, views and experiences of people who have interfaced with the justice delivery system and those who are part of it.

Court users who participated in the survey are those who used the justice system in the past year. Some had cases which were pending whilst others were interviewed during their visits to the Help Desks at the courts in March 2018. The survey also relied largely on the experiences of lawyers who have been doing litigation work and interacting with the justice delivery system on a day to day basis.

³<https://www.herald.co.zw/judiciary-stands-ready-to-fulfil-mandate/>

⁴<https://www.herald.co.zw/judiciary-stands-ready-to-fulfil-mandate/>

4.0 METHODOLOGY

4.1 Survey Design

The study utilised the mixed methodology approach, which considered both quantitative and qualitative data collection methods. The qualitative approach focused on getting perceptions, positions, views, experiences and practices related to justice delivery by the users and suppliers in the system. The quantitative methodology was directly targeted at lawyers throughout the country through an online survey.

Although a mixed methodology approach was used, the study largely relied on the qualitative research approach due to its ability to produce a detailed description of respondents' feelings, opinions and experiences as well as giving the respondents the ability to express their views regarding their experiences with the justice delivery sector. The approach further allowed the respondents to interpret their actions and clarify their positions so that they were captured well. The responses were supported by facts, opinions and perceptions, which resulted in the report providing these experiences in the form of quotations to support and validate the points raised by respondents. This approach was preferred because of its ability to probe for substantive data to document the challenges faced as well as to proffer solutions needed. The voices of the respondents presented in the form of quotations are taken to represent the feelings, views, opinions, experiences and perceptions of the respondents who participated in the survey

The approach enabled the researchers to interact with participants and develop trust, resulting in comprehensive and detailed experiences being shared. For court users, they would open up and talk about their experiences only once a sense of relationship was established, which would have been lost with quantitative approaches such as administering questionnaires. The interviewers and FGD facilitators were able to probe and get clarification, unlike with the online survey which targeted lawyers.

The qualitative approach was however, infused with quantitative methodologies, which entailed the use of a structured questionnaire asking respondents to rate their responses, thus enabling the LRF to get numerical values on various variables such as delays in the system, costs of accessing justice and corruption. This approach was used to validate responses that came through qualitative

methodologies as well as for cross tabulation purposes, where indicators were developed from common threads arising from both approaches used.

4.2 Data Collection tools

Field data was collected using both qualitative and quantitative tools

a. Focus group discussions

Focus group discussions (FGDs) were conducted with people in the communities who had interfaced or were at that time interacting with the justice system as litigants. FGDs were used for purposes of understanding the experiences of court users in going through the justice system. FGDs are ideal when you want to get different views and allow discussions for purposes of understanding complex phenomenon. The method was used to allow the research team to reach as many people as possible on a limited budget yet get rich data from people who have used the justice system. The FGDs were conducted in 18 districts with each focus group having between 15-20 respondents. A total of 511 court users participated in 36 FGDs. Respondents were drawn from litigants who were assisted by legal aid institutions to access justice; those who appeared as self-actors without assistance from legal aid providers, those who appeared as self-actors using papers drafted by legal aid institutions and 5 clients who engaged the services of private lawyers. FGDs provided perspectives from the users of the justice system relating to their experiences in accessing justice for their peculiar issues.

b. In-depth Key Informant Interviews

In-depth interviews were conducted with the JSC staff members, police officers in the ZRP, Zimbabwe Prisons and Correctional Services officers, representatives of the NPA, Messengers of Court, the Deputy Sheriff and lawyers based in the 18 sampled districts/towns. Key Informant interviews were used to get the different views of the actors with the aim of triangulating the findings in respect of the different actors across the 18 districts. This helped to validate the findings.

c. Rapid Online Survey

The Online Survey was the main quantitative tool used and 119 lawyers participated in the survey. The online survey was used mainly due to budgetary considerations and the time frame

within which the survey was to be completed as this did not allow individual enumerators to administer questionnaires to the different target groups.

d. Social Media

Discussions by lawyers on social media pertaining to the justice delivery system were also followed and extracts from such discussions were analysed and included in the report. Social media was considered as a data source as it is a very important information-sharing platform where people can easily share their views in an informal and relaxed setting.

4.3 Sampling

The survey employed purposive sampling methods to come up with the number of respondents. Purposive sampling was used as the study required participants who had an understanding of the phenomenon under study. Random sampling would not have helped in getting such people. The objective was to bring together people who had used the courts and could outline their experiences with the justice delivery system. Officers in the different state institutions were selected according to the different roles they play in the justice delivery system. Different purposive sampling methods were used, depending on the data collection methodology for a specific category of respondent.

a. Survey for lawyers

In order to collect data from the lawyers, a targeted purposive sampling methodology was employed. This included a rational sampling criterion to ensure the respondents were drawn from across the country. The study utilized the LSZ database for practicing lawyers and derived respondents based on the number of lawyers in each province and district.

A formula $n=t-y/x$ was utilized for the lawyers. (n= number of lawyers surveyed, t= total number of lawyers, y=proportion of lawyers as representative of the local lawyers, x= total number of lawyers.)

This ensured that Harare, by virtue of it housing more than 50% of all practicing lawyers and having a greater number of courts compared to other areas, received a cumulating sample for the lawyers, followed by Bulawayo, Masvingo, Mutare and Gweru in the same cumulative ratios. A total of 200 lawyers were sampled for the study.

Proposed sample	Actual responses	Response rate
200	119	60%

The survey was administered through an online survey platform, Kobo Humanitarian Toolbox, where lawyers completed the tool online and responses were received within a minute of completion. 56.8 % of respondents were women and 43.2% were men. 53% of the lawyers had more than 7 years practicing experience. 59% handled more than 50 cases per year. This reflects the level of experience and validity of the responses.

4.3.1 Sample for focus group discussions

FGDs were conducted in 18 districts across the country including Harare and Bulawayo. Two FGDs were conducted per court in each district, composed of respondents who had accessed the courts in the past as well as ordinary community members who had not utilized the court system. All in all, 36 FGDs were conducted. CSOs, namely ZWLA, WLSA, Justice for Children and the LRF, assisted in the identification of participants who had sought help from their offices. Participants were also identified at courts across the country and were requested to participate in the FGDS. Those at the courts included people who were appearing as self-actors and some who were seeking assistance at Help Desks.

Proposed sample	Number of districts targeted	Actual responses	Response rate
30 people per district= 540 respondents	18	511	94.6%

4.3.2 Sample for Key Informant Interviews

A purposive sampling methodology was used for key informant interviews, respondents were drawn from the 18 districts. The sample was drawn from the following departments:

- Judicial Service Commission (Judges, Magistrates, Clerks, Sheriff, MOC)
- Lawyers working in private practice and CSOs.
- Zimbabwe Republic Police (Officers in Charge, police officers and VFU officers)

- Zimbabwe Prisons and Correctional Services (officers in charge and prison officers)
- National Prosecution (Prosecutors across the country both junior and senior)
- Ministry of Justice (Legal Aid Directorate Lawyers)

4.3.3 Description of study participants

A total of 148 people was interviewed as key informant respondents. 13.5% were magistrates; 16.2% clerks of court; 15% prosecutors; 18% members of the police and 18.2 % lawyers who were targeted based on their professional experience as well as level of knowledge in the related issues.

Official designation	Number sampled	Actual responses	Response rate
Judges	6	3	50 %
Magistrates	18	20	111%
Sheriff	4	4	100%
Clerks of Court	18	24	133.3%
Police	18	27	150%
Prisons	18	3	16.7%
Victim Friendly Unit	18	14	77.8%
NPA	18	22	122%
Legal Aid Directorate	4	4	100%
Messenger of Court	18	7	38.8%
Lawyers targeted as KIIs	40	31	77%

A total of 511 respondents participated in the focus group discussions. 63% were women and 47% men. 72% of respondents represented smaller towns⁵, and thus had clients who would mainly have visited the magistrates court, showing a strong incline in the results towards lower courts. Majority of clients had sought assistance in civil cases.

A total of 119 lawyers responded to the online survey questionnaire. 51.6% were women while 48.4% were male respondents. 63.5% of the respondents were lawyers based in Harare. A significant 12.8% of the respondent lawyers were based in small towns like Beitbridge, Zvishavane and Shurugwi and 23.7% from cities such as Mutare, Gweru and Masvingo

⁵ Clients falling outside Harare, Bulawayo and Masvingo

69.1% of the respondents dealt with both civil and criminal law cases, while 59% dealt with civil issues against 41.3% of the lawyers who dealt with mostly criminal law cases. The average number of cases handled by each lawyer was 44.5 for the survey respondents. On average male lawyers handled 12 cases more than females per year (a nominal average of 32.8 against male lawyers with an average of 44.8). A significant majority of lawyers who handled criminal cases (70%) were male compared to women (30%) whereas there was parity on civil cases.

Gender vs Town of Operation Distribution of Lawyers

Count

		Sex		Total
		Female	Male	
Town of	Beitbridge	0	2	2
operation	Bindura	0	6	6
	Bulawayo	4	3	7
	Gweru	2	2	4
	Harare	42	33	75
	Kwekwe	2	3	5
	Masvingo	8	0	8
	Mberengwa	0	1	1
	Mutare	3	2	5
	Shurugwi	0	1	1
	Zvishavane	1	4	5
Total		61	57	119

4.4 Limitations

- 1) Due to budgetary constraints the survey was confined to 18 districts of the country where the LRF, which was collecting the data, is based.
- 2) There were delays in getting clearance from some of the government departments and that delayed the finalisation of the survey. Furthermore, departments such as the ZPCS had not cleared the organisation to conduct the survey at the time of preparation of the report.

- 3) The researchers could not get access to clients who were assisted by the LAD as there were indications to the effect that clearance had to be sought from the Ministry and it was too late to seek such clearance when the FGDs had already been conducted and concluded.
- 4) The rapid survey for the lawyers was administered using an online model which proved to be a challenge for some respondents. This entailed having to follow up with printed copies of the questionnaires to some respondents who could not utilize the online system. Out of the targeted 200 Lawyers, only 119 responded to the survey.
- 5) It was difficult to secure appointments with lawyers to conduct the interviews with some of the interviews having to be conducted in the evenings. The response rate in Harare was low as lawyers kept rescheduling appointments for interviews.

5.0. FINDINGS

5.1. Accessibility of the justice system

5.1.1 Complexity of Court Procedure and the Law

The survey established and confirmed that self-actors faced challenges presented by the complex court procedure and lack of knowledge of the law. There was consensus among all justice players and court users that the complexity of court procedures and the law inhibited indigent people from accessing and enjoying justice.

JSC PERSPECTIVE

The survey established through court officials that an average of 70-75% of the people who appeared in the magistrates' court in the districts which participated in the survey were self-actors. Court officials at rural courts such as Zaka, Gutu, Gokwe and Mutoko indicated that lawyers seldom appeared in rural courts and they estimated that an average of 80-85% of people who presented cases at rural courts were self-actors.

“We hardly have lawyers appearing in the magistrate’s court at centres such as these I would say about 80-85% of the people appearing in our court do not have legal representation” (Magistrate Court Mutoko)

“We hardly have lawyers making court appearances at rural courts. Most people appear in court as self-actors particularly with civil cases” (Gokwe)

“Rural court users are the worst affected because they just draft the papers on their own or they are taken advantage by bogus lawyers some who work in cahoots with court officials. In some districts there are no CSOs and as a magistrate you just end up proceeding with the case though some papers may be badly drafted”

“Most people appear in court as self-actors. It is in very few cases where we have lawyers representing clients.” (Magistrate Court Zaka)

There was consensus that most people who appeared in the magistrates’ courts did so without legal representation. Legal representation in this case refers to actual court appearances by lawyers. It was established that some of the litigants who appeared in court without legal representation would have been assisted by lawyers and paralegals in CSOs and the LAD with drafting of court papers and legal advice, but for various reasons the lawyers could not accompany them to court. A finding was made to the effect that in the High Court, unlike the Magistrates’ Court, an average of 10-15% of the people appeared as self -actors.

“I would say about 10% of the litigants appear as self-actors” (High Court Judge, Harare)

“We do get some people who appear as self-actors here at the High Court, but they are few compared to the Magistrate Court.” (High Court Judge, Harare)

The survey established that self-actors, both in the High Court and Magistrates’ Court, faced significant challenges as they were ignorant of the law and did not understand the procedures to be followed. There was consensus amongst court officials that self-actors faced challenges presented by complex court processes and the technical nature of the law. There was also consensus that in most of the cases the courts were unable to assist other than pointing out the deficiencies in their papers as aptly captured in the quotes below:

“Self-actors do not have knowledge of the procedure of the courts, they do not know the rules of procedure which govern the operations of the courts and as such they fail to effectively present and articulate their cases. As a result, such cases end up being dismissed on technicalities.” (Judge of the High Court)

“Ignorance of the law and the procedures. Magistrate court is created by statute and has rules to govern procedure which self-actors have difficulty appreciating. Many of their cases, especially civil cases, are dismissed on failure to adhere to procedure. We try to direct them but at the end of the day you cannot do everything e.g. if procedural issue is raised you cannot do anything you have to dismiss.” (Magistrate, Mutare)

“Rules of procedure are complicated. If lawyers struggle to understand some of the provisions of the rules what more of self-actors?” (Judge High Court)

“Civil procedure is technical in nature. As the court we do not run legal coaching clinics so we cannot assist them.” (Magistrate)

“Upon conviction, self-actors face challenges to do with their appeals. The procedure is technical also.” (Magistrate)

“Lack of knowledge of rights, inability to express themselves, inability to adequately cross-examine state witnesses. We assist by explaining their rights and assisting in cross-examining state witnesses to an extent.” (Magistrate)

“Most of the people are from rural areas and they do not know the law but we can only assist them to such an extent that we remain impartial.” (Magistrate,)

“Most of them are ignorant of the law. They do not even understand the offence they will be facing or the procedure which is expected of them to know or what kind of evidence to adduce in court to be exonerated. They at times self-incriminate themselves.” (Magistrate)

“As much as judges bend over backwards to assist self-actors by pointing out the irregularities in their papers and giving them time to make amendments, any assistance by the court is very limited because the court’s hands are tied...To that extent judges end up only advising the self-actors to approach the Registrar for in forma pauperis representation or to approach other independent organizations involved in rendering free legal services to the indigent.” (High Court Judge)

“There is not much that a judge can do to assist because litigation is party driven and the judge presides. If the party attempts to help in civil cases, particularly where the other party is represented, then they may be seen as being biased. Judges are limited in terms of what they can do. (High Court Judge)

“The courts sometimes will not insist on formalism as long as the court has an understanding of the issues. A court will sometimes bend backwards and look at substance of cases. It is easier to do so when both parties are self-actors. However, if the other party is represented it will give an impression of bias if a lawyer raises technical aspects and the court does not give due consideration to same. (High Court Judge)

“Topmost according to me is the inability to present their cases. As judicial officers we can assist with procedure but when it comes to substantive law we cannot assist them. Self-actors cannot present and package their cases well. Procedural law is even difficult for lawyers so for unrepresented litigants it is even worse.” (High Court Judge)

COURT USERS’ PERSPECTIVE

The court users confirmed the views of court officials regarding the complexity of procedures and a lack of understanding of the law which impacts negatively on their ability to access justice. They indicated that they did not understand the complex court procedures and in cases where they did not have legal representation they faced challenges, particularly with filing the correct papers and presenting their cases.

“We are told that papers are not properly brought before the court and there is no case before the court and the matter is dismissed.” (Court User Nyanga)

“We are expected to file papers in a certain format and to present our cases in certain ways and most of the time we do not understand what is going on.” (Court User Masvingo)

“Even though our papers would have been drafted by the legal aid providers, it is still difficult to understand what will be going on in court and also to ask witnesses questions.” (Court Users Harare)

“Lack of awareness of rights affects confidence, this often results in people with genuine issues shying away from courts.” (Court user, Murambinda)

“We are told that papers are not properly organised and there is no case in the papers and as a result the case is dismissed.” (Court user, Mutare)

“People are generally afraid of going to court, especially when there is no representation. The court setting only works more for represented litigants.” (Court user, Nyanga)

“The first challenge is in writing the papers in English and the second challenge is knowing what to write on the papers and the format which the papers should take. Because we cannot afford lawyers you end up paying some of the clerks to get help” Court User Gutu

“I struggled with filing the correct papers until I was referred to the LRF. On my own I would not have been able to succeed with my case” Court User Gokwe

ZRP PERSPECTIVE

The police have a special role of investigating cases and taking accused people to court. The police who responded to questions on the challenges which unrepresented accused persons faced further confirmed the court officials and court users’ perspective on complexity of procedures and the law. The police indicated as follows:

“The unrepresented accused do not know court procedures and processes and they struggle to defend themselves. If myself as a police officer I am not sure of the procedures at court what more of a layperson.” (Police officer Masvingo)

“Unrepresented accused persons cases take longer to be finalised. The accused persons often face challenges in cross examining witnesses and this can result in grave miscarriage of justice where an accused person may be convicted because they have failed to put through their cases. (Police officer (Harare)

There was consensus amongst court users, court officials and lawyers that court procedures are complex and the law is technical, making it difficult for those without legal representation to navigate the justice delivery system.

5.2. Availability of legal aid services and adequacy of the services

5.2.1. Existence of Legal Aid Programmes

The survey established that there are legal aid services provided by the state department, the LAD and CSOs such as the LRF, JC, ZWLA, ZLHR, Abameli Trust, WLSA and CATCH. The research also established that organisations such as Musasa and Childline offered psychosocial support to female victims of GBV and child survivors of abuse respectively.

5.2.2. Awareness by Court Users of the Programmes

The survey revealed that most court users are generally not aware of programmes aimed at assisting marginalised and vulnerable groups. They only became aware of such programmes through the courts, police, law firms and other organisations when they were referred to service providers by those stakeholders. About 80% of those who participated in the FGDs indicated that they only became aware of the services offered by different organizations and the LAD when they went to court or to the police. Of note was that participants were not aware that the government, through the LAD, offers legal services to the indigent. 90% of participants indicated that they did not know that there was a government department offering services and that they had heard about it for the first time during the FGD. None amongst the participants were aware that there is provision of IFP assistance through the High Court. In one of the FGDs one participant stated that:

“We did not know all our entire lifetime that we could get assistance for free” (Court User Nyanga)

The LAD confirmed that most court users were not aware of the services they offered and the majority of the clients they attended to were referred by the courts and other actors in the justice system.

“People are not aware of our services and people are generally referred by the courts, we hardly have people coming direct to us.” (LAD lawyer)

The 20% who indicated they were aware of such programmes and were not referred by the courts or police stated that they had attended the CSOs education activities, were referred by relatives or friends who had attended such activities or had been assisted by the organisations. People are generally not aware of legal services offered by the LAD and CSOs and this affects their ability to access justice because they may be taken advantage of by bogus lawyers and corrupt court officials

5.2.3. Awareness by Other Actors in the Justice Sector

92% of the court officials at magistrates’ court who participated in the key informant interviews indicated that they were aware of legal aid programmes to assist the marginalized and vulnerable. The one programme which they all mentioned was the Help Desk initiative being implemented by WLSA, ZWLA, LRF, JC and ZLHR. 10% of the court officials mentioned that they were also aware of the mobile legal clinics services which were being offered by some of the organisations. The court officials listed ZWLA, CATCH, LRF, JC, ZLHR and WLSA as the organisations offering legal aid through their offices. Court officials also pointed out that Childline offered assistance to children who were survivors of abuse whilst Musasa Project offered assistance in GBV-related cases.

Lawyers in the LAD indicated that some court officials and police were not aware and did not have an understanding of the services the LAD provided. Examples were given where a provincial magistrate had refused a lawyer from the LAD audience indicating that she did not have the mandate to provide legal representation in civil cases. Another example was where police had to call the Ministry of Justice to establish whether there was a government department with the mandate to represent indigent people. In the other instances actors insisted on the LAD lawyers producing LSZ practising certificates.

Respondents based at the High Court indicated that there was the IFP and the Pro-deo programmes meant to support indigent clients to navigate the justice delivery system. Respondents in the JSC indicated that there was a general lack of awareness of the IFP and Pro-Deo interventions, which explained why there were very few who applied for IFP.

5.2.4. Adequacy of the Programmes

The survey established that services within the justice delivery system offered to the marginalised and vulnerable were inadequate, with the result that a significant number of people were either unable to access the services or the services did not meet their needs and expectations.

JSC PERSEPECTIVE

Inadequacy in Respect of Nature of Cases Handled

92% of the court officials interviewed indicated that the programmes being carried out by the LAD and law-based organisations were not adequate to the extent that those benefiting from them were mostly litigants in civil matters and none of the CSOs offered assistance to indigent adults facing criminal charges. Some of the court officials indicated that ZLHR through its members offered assistance in criminal cases but only to human rights defenders. Court officials indicated that the LAD was the only institution offering assistance to accused persons in criminal cases. This was confirmed by the LAD representatives, that they provided legal representations in criminal cases. They, however, indicated that they handled more civil than criminal cases though they had noted an increase in demand for services in criminal matters.

Inadequacy in Respect of Scope of Services

The survey established that whilst the Help Desk Services offered an effective way of improving access to justice at the magistrates' courts, the limitation was that the services were not offered at all courts and at some courts the services were offered once or twice a week. They further indicated that the service was restricted to drafting of court papers and provision of legal advice, but no legal representation was given and some clients still struggled to argue cases on their own in court.

“The Help Desk services at the magistrates’ court are helpful but they do not offer legal representation and at our court, services are not offered every day.” (JSC staff Zaka)

“The Help Desk should be provided more regularly at least 3 times a week.” (JSC staff, Chipinge)

The court officials stated that the organisations offering legal aid services did not assist every person in need of assistance as they were guided by their casework policies. Resultantly, a significant number of people had to navigate the justice delivery system without legal representation.

“We have cases where we refer people to organisations and they say they do not take some type of cases.” (JSC staff, Bulawayo)

“The organisations have their own criteria, it is not everyone who is referred who will get assistance. Some will come back to us crying saying that they could not get help.” (Gweru JSC)

The survey established that the LAD offered assistance in all cases as long as the person met the qualifying criteria. However, some court users suggested that they did not get assistance from the LAD because they failed to raise the contribution fee which the department asked for. It was established that the LAD offices were only in urban areas thus rural court users are not benefitting from the services.

The researchers could not get more court users who could comment on the extent to which the contribution fee hindered access to justice, apart from the two quoted below. Legal Aid Directorate LAD lawyers indicated that most of the clients were able to pay the fees and that they assisted people who could prove that they were not able to secure money for the contribution fee. They pointed out that some people would indicate that they were going to look for money but did not return. The LAD lawyers were not able to give an estimate of the percentage of people who failed to raise the fees.

“I was referred to the LAD for help but was advised that I was expected to pay a fee and I could not raise the fee.” (Court User, Masvingo)

“At court I was told that I would get free legal assistance but when I got to the LAD I was told that I was supposed to pay a fee. I could not raise the fee and I went away and was told by a friend that I could seek for assistance at ZWLA.” (Court User, Gweru)

The study revealed that the contribution fee is not fixed but it is calculated based on the earnings of the client. It can range from \$10 up to \$80 depending on the case. Lawyers working for CSOs indicated that the contribution fee is a barrier to accessing justice because people whom they refer to LAD for assistance will go back to the CSOs for assistance after they fail to raise the contribution fee.

All the JSC staff who participated in the survey indicated that generally demand for the services exceeded the capacity of the institutions offering the services, with the result that not all indigent people were able to access justice

LAWYERS’ PERSPECTIVE

30% of the lawyers who participated in the online survey indicated that the programmes meant to assist the marginalised and vulnerable were adequate to meet the needs of the marginalized and vulnerable whilst 25% indicated that they were not adequate and 26.4% indicated that they did not know. It is important to note that the online survey was completed mostly by lawyers in private practice who did not have an in-depth understanding of the programmes being offered to assist the marginalised and vulnerable, thus 30% indicated that such programmes were adequate. The key informant interviews, which sought to gain a deeper understanding of the responses given during the online survey and were also used for purposive sampling by targeting lawyers involved in litigation, revealed that 90% of the lawyers who participated in the interview were aware of the programmes meant to assist the marginalised and vulnerable whilst 10% were not aware of such initiatives. 50% who were aware of the existence of the programmes indicated they just assumed that when indigent people sought assistance from the different organisations they would get assisted. This explains why 30% of the respondents who participated in the online survey indicated that the programmes were adequate. The interviews revealed that 90% of lawyers were of the view that the programmes were inadequate.

Scope of Services

Respondents pointed out that the programmes were confined to areas where the organizations had a physical presence and not necessarily all areas in Zimbabwe and this meant that it was not everyone who could access the services. They also indicated that the services were being offered by most service providers in urban areas.

Lawyers confirmed the view given by the court users that legal aid services were inadequate because those who sought assistance at the LAD were expected to pay a fee called a contribution.

“The LAD is now demanding payment which ceases to help the marginalized.” (Lawyer, Bulawayo)

Lawyers were of the view that payment of a contribution fee defeated the whole notion of legal aid.

The lawyers who were interviewed indicated that the *pro-deo* initiative was a good one though most of the cases were allocated to junior lawyers, who may not necessarily have the requisite experience. None of the lawyers mentioned the IFP programme confirming the JSC’s views that most lawyers always give excuses and end up not handling the cases allocated to them.

COURT USERS’ PERSPECTIVE

There was consensus amongst all FGD participants that the programmes were not adequate to meet the needs for the marginalized and vulnerable. They were quick to point out that demand for the services exceeded supply, with the result that when they approached the organisations offering the programmes they did not get immediate assistance but had to make appointments as the officers would be busy assisting other clients. They further pointed out how sometimes they had to queue for the whole day to get help at the offices of the service providers and at the Help Desks.

The study established that some court users did not benefit from the programmes meant for the marginalised and vulnerable because their cases did not fall within the casework policy of the organisations. They ended up making use of the Help Desk where their papers were completed or drafted, but still they did not get the legal representation which they were looking for.

“I was told that they could not help me with my case because of their laws and policies so I had to go to court on my own.” (Court User Harare)

The court users, whilst appreciating the services in respect of drafting of papers and being prepared and coached to present their cases, indicated that the services were inadequate as they were not accompanied by a lawyer to court. This finding is in sync with the finding made under the section on the perspective of court officials wherein the court officials indicated that some litigants who may have had papers drafted by the different organisations would still face difficulties in presenting their case without legal representation.

Rural court users indicated that they still faced challenges in accessing justice through programmes meant for the marginalized and vulnerable because the offices were located in urban centres and the litigants had to travel to get the services. Court users indicated that most of the time they did not have the funds and they were not able to pursue their cases. In demonstrating the inadequacy of the legal aid services, the court users had this to say;

“Legal aid sometimes takes time to deal with cases, they are sometimes overwhelmed with high number of cases.” (Court user, Mutare)

“Staff shortage at the LRF, which is the only legal advice centre is a challenge.” (Court user, Nyanga)

In 2017 the organizations offering legal services through the Help Desk Services offered assistance to 13157 at the magistrates’ court. During the opening of the 2018 Legal Year the Chief Justice indicated that the magistrate court had dealt with 88067 cases in 2017. It is thus evident that most of the litigants who appeared in the magistrate court civil division may have done so without legal representation.

5.3. COST OF ACCESSING JUSTICE

The survey revealed that court officials, lawyers and court users all agreed that MOC and Deputy Sherriff fees were a barrier to accessing justice. All the court officials who participated in the survey indicated that litigants struggled to raise MOC and Deputy Sherriff fees and some litigants ended up abandoning their claims and also failed to enforce judgments. It is important to note that

amongst the lawyers who participated in the survey were lawyers in private practice who assisted fee-paying clients. The findings thus reflect that MOC fees and Deputy Sherriff's fees were not only a barrier to indigent clients accessing justice, but even to those who could afford lawyers in private practice. All the respondents were in agreement on the need to review MOC and Deputy Sherriff fees.

There were differences in views regarding whether or not court fees were a hindrance to justice. 90% of the court officials indicated that court fees per se were not a hindrance to accessing justice in most cases. Below are some of the responses extracted from the interviews:

"They can raise court fees, most of them fail to pay the MOC to serve the process." (JSC staff, Bulawayo)

"Civil cases litigants fail to raise fees. Court fees are affordable ranging from a dollar to 10 dollars, but they face challenges with messenger of court fees." (JSC staff, Bulawayo)

"No, court fees are not a challenge. Parties who cannot raise fees can proceed Informa pauperis. The challenge is with the raising of MOC fees to serve or execute on judgments." (High Court Judge Harare)

"I do not believe that court fees hinder access to justice because those fees are, in the main nominal. It is however the Sheriff's fees which are exorbitant and therefore constitute a hindrance. This is particularly so at the present moment where notices of set down are required to be served by the Sheriff by virtue of a recent practice note." (High Court Judge)

Court users who participated in the FGDs confirmed the court officials' views regarding MOC and Deputy Sheriff's fees. They, however, differed on the issue of court fees. All respondents across the 18 districts indicated that court fees were out of the reach of most indigent litigants and a barrier to accessing justice. They indicated that in most cases they would have borrowed money to travel to court and when the courts asked them to pay \$5 to get their papers issued they either had to borrow, delay instituting proceedings or abandon the claim. All the respondents pointed out that MOC and Deputy Sheriff fees were very high and at times they had to make payment plans with the MOC. They indicated that they ended up delaying some processes as they struggled to raise the requisite MOC or Deputy Sheriff fees. The court users' views were confirmed by lawyers who

assist the marginalised and indigent who indicated that most indigent clients are unable to raise court fees and MOC fees. One organisation indicated that they have a legal assistance fund but the fund cannot meet the demand as most clients are unable to raise the fees which are required.

“I did not have the money which the Messenger of Court wanted and I had to make a payment plan with the MOC.” (Court User Nyanga)

78% of the lawyers who participated in the online survey indicated that court fees were a hinderance to accessing justice. The online survey responses were clarified through interviews with lawyers who do civil litigation indicating that court fees per se were not a barrier to accessing justice but it was the fees relating to noting of appeals and fees where large sums were being claimed which most litigants failed to raise. There were indications that court fees in appeal cases could range from \$168 upwards.

“Appeal fees are exorbitant. They should definitely be reviewed. I have clients who have failed to pursue their cases to higher courts because the fees were just too high.” (Lawyer. Chiredzi)

“In appeals they fail to pay for preparation of court records.” (Lawyer, Harare)

“Court fees are exorbitant for noting appeals.” (Lawyer Bulawayo)

An example was also given wherein in a claim for \$23 000 000 the plaintiff was expected to pay \$1.400 000 and in another case a client was expected to pay \$100 000. The examples demonstrated that where large sums are concerned court fees may actually impede justice because the plaintiff may be financially constrained such that they will not be able to raise the fees.

All the lawyers who participated in the survey were in agreement that MOC and Deputy Sheriff’s fees were a barrier to accessing justice.

“Lawyers end up advising their client to raise MOC/ Deputy Sheriff fees first before client pays legal fees” (Gweru)

“Even where parties are consenting to divorce in matrimonial issues the Sheriff still wants them to pay \$20 when he has effected service in his office

“MOC and Deputy Sheriff fees for enforcement of judgments are on the very high side. The two officials will not enforce judgments unless a deposit in the region of \$500 is paid. Its really punishing the person who has succeeded in his claim.”

“Imagine that service of process in Harare in the CBD is \$26 per defendant. In most public interest cases you may have 3 to 4 defendants and an indigent has to pay close to \$104 in MOC fees.”

“The MOC fees are too high. You need \$600 for simple eviction process.” (Masvingo)

“...Some people leave their processes midway. Academic judgments if litigant cannot afford money for execution.” (Gweru)

“Sheriff fees for service of summons. Why ask litigants to pay \$22 for serving the defendant in the sheriff’s office. The fees are too high and unreasonable.”

“They (MOC fees) are too high and people give up on their cases because of the high fees being charged.” (Lawyer, Bulawayo)

“Fees are too high; thus, clients do not take up their cases as they cannot afford the fees.” (Lawyer, Matabeleland North)

“Most court fees to file papers are reasonable. At the High Court some of the fees can be a bit high e.g. typing of record.” (Lawyer, Bulawayo)

“MOC fees are too high and unjustified, they hinder access to justice as people give up due to the high fees which at times can be higher than value involved in the action. To poor people every cent counts thus they want to claim their money but are discouraged by the high court fees.” (Lawyer, Bulawayo)

“I have in excess of 50 orders which my clients have not been able to enforce because of they cannot raise MOC or Deputy Sherrif Fees (Harare Lawyer)

“What impedes justice are sheriff fees, court fees are nominal. Take for example a place like Masvingo. The Deputy Sheriff has to serve papers in Chiredzi, Chilonga and he will

charge about \$300 for one trip. Few litigants will be able to raise such money.” (Masvingo Lawyer)

One lawyer gave an example of a case which she was handling where her client’s property had been attached for a debt of \$2500. The parties then agreed that the MOC releases the property as there was an error that had been picked up. The property has not been released as the MOC is demanding payment of the sum of \$500 while the Auctioneer wants \$700 in storage costs. It is evident that such fees are rather on the very high side and they impact on access to justice.

The Messenger of Court confirmed that generally, litigants fail to pursue their cases because they failed to raise the requisite fees. On being asked the question, **“How often do you have cases of people who fail to raise the fees which you require for service of process?”** these are the responses which were given:

“It happens a lot especially for those from the rural areas we allow them to pay part of the money.” (MOC official, Masvingo)

“Several times, people fail to raise fees.” (MOC official, Gutu)

“A lot of times but we adjust our fees in order to assist them with what they afford especially the old age.” (MOC official, Bindura)

“About ¾ of clients fail to raise fees sometimes services are offered for free where possible.” (MOC official, Zvishavane)

A few messengers downplayed the issue of fees as captured in the quotations below:

“I usually get processes at execution level only when they have been siphoned of their monies by other institutions...The fees are okay because we are very flexible.”

“It is not often. Maybe here and there, one or two.”

Below is a schedule which reflects the fees which are charged by the MOC and Deputy Sheriff:

Location	Fees Charged
Masvingo CBD(MOC)	\$20.24
Mutare CBD(MOC)	\$21/ \$18
Mutare Urban-Yeviol(MOC)	\$25
Mutare Westlea(MOC)	\$23
Mutare Chikanga(MOC)	\$33
Mutare Danganvura(MOC)	\$48
Mutare Rural Areas(MOC)	\$1 per km plus service fee of \$12
Execution-Urban (MOC)	\$300 deposit plus 5% of judgment debt
Execution Rural(MOC)	\$1 per every km plus \$300 plus 5% judgement debt
Deputy Sherriff	\$0.52 per km
Deputy Sherriff (Service in Chitungwiza)	\$60-\$70
MOC Bindura- Furthest rural areas	\$492

One notable challenge with MOC fees was raised in relation to the Small Claims Court. The intention of establishing the Small Claims Court was to provide for ease of access to justice seekers with very small claims and to provide for easier court process for people who would ordinarily fail to access justice in the normal court process. This objective, however, was defeated when it came to service and enforcement of writs at the MOC offices. In many cases respondents were charged fees twenty times higher than their claim, with majority of the cases returning with *nulla bona* certificates.

Messenger of Court Fees- Small Claims Court

A woman who was charged \$329 in Gutu being fees for enforcement of a writ of execution for a debt of \$89 and was told the fees would be recovered. Later, the messenger issued a *nulla bona* and she could not recover her money.

Magistrates felt that the purpose of the Small Claims Courts is being defeated by the unreasonably high Messenger of Court fees; they passed judgements, which they knew would not be executed owing to failure by litigants to raise money for MOC fees.

*“60% of small claims judgments are not being enforced due to failure to raise court fees.”
(Magistrate)*

There was consensus amongst court officials, lawyers and court users that MOC and Sheriff’s fees were a barrier to accessing justice and it was one of the major challenges faced by court users. The MOC and Sheriff’s offices confirmed that people faced challenges in raising fees for serving of process. Lawyers and Courts were in agreement that court fees in general were not a barrier to accessing justice but that specifically, costs related to appeals and costs for claims of large sums of money were on the very high side.

5.4. CORRUPTION

The different groups of respondents gave different views with regard to the prevalence of corruption in the justice delivery system bringing out how complex the phenomenon is. However, the general findings suggested that there is a general perception that corruption is prevalent in the justice system. Court users indicated that they were made to pay money by clerks of court who promised that they would influence positive outcomes of their cases. They further pointed out that they paid money to get their papers drafted. The study established that there were very few cases where employees working for justice sector institutions had been reported and convicted of corruption and because of this most players in the sector believed that corruption is not rife but it is an issue of perceptions. The study however revealed that most cases were not reported because the court users who in most cases were the victims were not prepared to report since they were party to such transactions. It was further established that it was mostly self-actors who were victims of corruption as they were taken advantage of due to their lack of information and desperation to get assistance in their cases. Police, clerks of court, magistrates and prosecutors were seen as being corrupt by lawyers and court users. Lawyers pointed out that corruption was rife amongst these groups due to poor remuneration, difficult working conditions and a general lack of integrity.

JSC PERSPECTIVE

90% of the JSC respondents were of the view that the perceptions which the public has regarding corruption within the JSC arises from lack of knowledge and understanding particularly on the part of the court users on how courts operate. They indicated that when court users were not satisfied with the outcome of their cases they alleged that the JSC staff members were corrupt. Below are some of the responses which they gave:

“...Especially if state fails to build a prima facie case and a person is acquitted. People do not accept cases that are won on merit. People expect cases to be dealt with in the way they want to. People fail to understand limitations of courts due to issues of jurisdiction. (JSC staff)

“Not everyone understands justice. (JSC Staff)

“While there are bad apples in the system ignorance of the law creates perceptions of corruption. (JSC Staff)

The view given by the JSC respondents was confirmed by TIZ, an anti-corruption watchdog working towards ending corruption in Zimbabwe. TIZ pointed out that indeed some members of the public did not have an understanding of the law and how courts operate and were quick to conclude that there was corruption. However, TIZ representatives pointed out that notwithstanding the lack of knowledge, the perception is that corruption was prevalent in the justice sector and perception is reality.

6% of the JSC respondents indicated that there were court officials who were corrupt and such people were tainting the image and reputation of the courts. They were, however, quick to point out that the court users were the ones who initiated the corruption and court officials accepted the bribes given the tough economic environment currently prevailing. Below are some extracts from the key informant interviews targeting JSC staff:

“Some are corrupt and some are not. People actually offer money and they should stop. Justice is for free and they should let the court processes run their course.” (JSC Court Official)

“Corruption is done in secrecy. There are some who are corrupt and we are uprooting them. People are now too obsessed with corruption and when they lose cases they allege corruption.” (JSC Court Official)

“Corruption is there. The public coerces the court officials. Court officials do not approach the public but they come to us and with poor remuneration we are tempted to accept.” (JSC Court Official)

The above responses point to an acknowledgement of the existence of corruption, but with court users being accused as initiators of corruption. 4% of the JSC respondents admitted that there was corruption within the system but pointed out that it was not everyone who was corrupt. They further pointed out that it was talked about, but reports are not made thus it might simply be an issue of perceptions.

“We have had isolated reports of such indiscretions. All of them were investigated and disciplinary proceedings instituted against the staff involved. A few have been convicted of the offences. The majority of complaints turn out to be challenges of perceptions. Although we have bad apples like in any other organisation, it is not a problem we would say is widespread

“We cannot deny that there is corruption”

“Not all of us are corrupt. We just have to improve our service quality for people to see that we are not corrupt because the public has lost confidence in us yet we provide an essential service” (JSC Official)

“Perception is reality. The public has lost confidence in the judiciary. The only solution is to fight corruption” (JSC Official)

LAWYERS’ PERSPECTIVE:

100% of lawyers interviewed and 93.5% who participated in the online survey noted that corruption was one of the biggest challenge affecting the justice delivery system in Zimbabwe.

Respondents indicated that corruption was rampant at magistrates' court compared to the other courts:

"Magistrates courts are the most corrupt ones especially on rape cases." (Lawyer, Harare)

"The problem is mainly at the magistrate courts." (Lawyer, Matabeleland North)

"The magistrate courts are too corrupt, at the higher courts service is more organized and good." (Lawyer, Bulawayo)

"Corruption is rife especially because prosecutors are not being adequately rotated between the stations. Staff rotation is paramount to fight corruption." (Lawyer)

The Lawyers who participated in the interview indicated that support staff, particularly the clerks and registry staff, are the worst culprits as far as the issue of corruption was concerned. In response to the question on their views on corruption they gave the responses below:

"Corruption is high at magistrates' court. At the High Court it is mainly the support staff who are involved." (Lawyer Harare)

"Corruption is rife as judicial officers and support staff form syndicates in the lower courts." (Lawyer Mutare)

"...Some have syndicates which start at the lower courts." (Lawyer Harare)

"Some judgments made by judicial officers are quite arbitrary to the point of indicating that there may be some bias that is influenced by corruption." (Lawyer Bulawayo)

Some lawyers indicated that the support staff sometimes used the names of magistrates and judges, giving the impression to court users that the magistrates and judges were involved in their request for a bribe when this was not the case. This view was confirmed by judicial officers who indicated that sometimes their names were tainted by the support staff. Judicial officers indicated that there

were instances when such support staff were exposed and necessary disciplinary measures taken against them.

“We had a case where one of our support staff got money from self-actors promising them that they would talk to the judge on their behalf and when judgment did not go in favour of the person that was how the story then came out. (JSC)”

“We hear that they prepare papers for court users and because some of the staff members would have listened to the case, followed the case and have an idea of the likely outcome of the case based on other similar cases, they will ask for money stating that they will facilitate judgment in client’s favour and they use the names of judges.” (JSC)

Lawyers pointed out that the complexity of court procedure and lack of awareness on the part of self-actors contributed to corruption of convenience. They indicated that there was information asymmetry with clerks of court having information which self-actors did not have. The clerks took advantage of the lack of information and demanded bribes. The survey established that in some cases the clerks of court worked with bogus lawyers who will be milling around the court and they refer self-actors to the bogus lawyers where they are made to pay a fee for work that never gets done. CSOs who participated in the survey indicated that these people are ultimately referred to them for assistance.

“Corruption especially for self-actors... The court officials entice them and syphon money from them. Those who cannot pay do not have access to justice. They are coerced by support staff at courts who do paperwork for a fee.” (Lawyer, Gweru)

“The only challenge is that sometimes there is no evidence but corruption is prevalent in the justice system and it is not just an issue of perceptions. If the JSC would send people disguised as indigent litigants they would arrest a number of court officials without any major challenges.”

“People without legal representation are the ones normally taken advantage of because they do not know what to do and they rely on the support staff for information.” (Lawyer Masvingo)

“Generally, the system at the High Court is becoming efficient but corruption is rife among the registry staff.”

Lawyers indicated that corruption was also in the form of instructions from powerful and influential people who ordered for the prosecution of business partners so that they took over the businesses or those who sought protection for friends and relatives who may have committed criminal offences. Lawyers cited examples of cases where power was used to direct the prosecution of people who had not committed criminal offences.

There was consensus among the lawyers from the 18 districts who participated in the interviews and from the 119 lawyers who participated in the online survey that corruption is rife. The responses given by lawyers rebut the view given by the JSC staff that court users who did not understand how the courts operate were the ones who alleged corruption. From the responses of the lawyers, it was noted that corruption was not uniform across the different court levels, but it was rife at the magistrates’ courts. More than 80% of the lawyers were in agreement that the superior courts were more transparent and organized than the magistrate’s courts.

95% of the lawyers who participated in the interviews indicated that the police were corrupt and this impacted negatively on the criminal justice delivery system.

“Some police officers work hand-in-hand with police prosecutors and if you are given instructions they will approach your client and advise him that it’s pointless for him to secure the services of lawyers because the lawyers will not secure his acquittal but the prosecutor working with the magistrate can secure the accused person’s acquittal.”
(Lawyer, Harare)

COURT USERS’ PERSEPTIVES

During the FGDs court users indicated that the police, clerks and the prosecutors were corrupt. The court users reported that the clerks of court offered to help them for a fee and out of desperation to get good outcomes in their cases they ended up paying. Court officials at 55% of the courts in the districts where the survey was conducted were mentioned as being corrupt. The following statements highlight the perceptions of court users regarding corruption:

“Police work in cahoots with the criminals affecting justice delivery, police end up not taking any action. They threaten complainants.” (Court user, Mutare)

“Corruption is rampant when we go to court we are called separately by clerks of court who solicit for bribes.” (Court User)

“Police and some court officials are very corrupt, they want bribes.” (Court user, Nyanga)

“Police should be transparent and accountable, they are not assisting people at all.” (Court user, Nyanga)

“They are sometimes paid not to serve maintenance papers.” (Court User Gweru)

Lawyers confirmed the views by court users regarding corruption and indicated that not only did some of the clerks ask for money but also for sexual favours. A lawyer gave an example of a woman who gave a sexual favour to a clerk in return for a favourable maintenance order and when the case did not go her way she shared her story with the lawyer.

PROSECUTORS’ PERSEPECTIVES

70% of prosecutors confirmed the prevalence of corruption within the justice delivery system. They, however, refused to put all prosecutors in one blanket as they noted that there were some who were not involved in corrupt activities. Some noted that corruption did exist but was fueled by poor conditions of service such as low remuneration. The following statements highlight the views of prosecutors regarding corruption.

“The issue of corruption cannot be downplayed, it is a fact happening which needs to be holistically addressed.”

“I believe there are few bad apples that corrupt the good name of prosecutors.”

91% of the lawyers who participated in the interviews confirmed the prosecutors’ view that there was corruption within prosecution whilst 9% indicated that there was no corruption. The lawyers pointed out that:

“Public Prosecutors try every means to make clients pay them instead of hiring a lawyer. Clients end up opting to pay less to the prosecutors.” (Masvingo, lawyer)

“Some prosecutors are corrupt. Some ask for “Chicken Inn” for a case to be postponed. Poor remuneration is contributing to corruption. Some cannot even afford to buy lunch every day.” (Gweru lawyer)

“Cases where the litigant is not represented is even worse as the accused person is threatened with all kinds of things that they are left with no choice but to look for bribes to give to the prosecutor.” (Lawyer Harare)

“Corruption was prevalent within this institution, not sure with the coming of the new government.” (Lawyer, Harare)

“It is very high, the norm of the day. Nothing is done without first paying a bribe, hopefully with the new dispensation things will change.” (Lawyer, Bulawayo)

“Corruption is rife in criminal litigation to such an extent that it is quite frustrating to have a criminal matter right from the police station up to Rotten Row. The magistrates, police and prosecutors will be expecting kickbacks and they can make the process painstakingly slow and really frustrating because you have not paid ball. You only get real justice when you take your case on appeal or review to the High Court”

Some judges who were interviewed indicated that though there may be no evidence of corruption there were cases which they presided over as appeals where they picked up that such cases were designedly weak to secure the acquittal of an accused person.

ZRP PERSPECTIVES

80% of the police refused to acknowledge the existence of corruption within their ranks unlike the other actors who acknowledged that there may be people who were corrupt within the various institutions. They noted that their institution was against corruption and in most cases the public

was not aware of how they operated and were quick to allege corruption within the police services. The following statements by the police summarize their views regarding corruption:

“I think there is a knowledge gap in the society on the criminal procedure and because of this they just allege corruption when the public is not satisfied.” (ZRP, Nyanga)

“Corruption is now a problem at the courts, also backlog of cases, court officials too much interested in the accused rather than providing help and justice to the survivor.” (ZRP, Bindura)

“All criminal cases are decided by the courts and for one to say police are corrupt is not true.”

Though the police insisted that there was no corruption it is important to note that 75% of the lawyers who participated in the interviews indicated that there was corruption amongst police officers. All the court users who participated in the FGDs and had interacted with the police confirmed that there was corruption within the police as an institution and that they were not confident to approach the police with complaints.

Corruption -Messenger of Court/ Sheriff

Lawyers who participated in the interviews indicated that the offices of the Sheriff and Messenger of Court were corrupt. They pointed out that:

“These offices are sometimes paid so that they do not serve summons.” (Lawyer Mutare)

“They sometimes render nulla bona services even where there is property to be attached if they are bribed by the judgment debtor.” (Lawyer Harare)

“The staff in the office will notify a debtor that their property will be attached and ask for a bribe so that such property is not attached or to give the debtor ample time to hide the property.” (Lawyer Gweru)

Lawyers gave examples of cases which show that there is corruption:

Case A

In one case the MOC went to an insurance company we had successfully sued together with their insured and attached useless things like coffee tables and filing tables and trays worth nothing yet there were computers and several cars. I had to visit the premises on the day of the removal and observed that there were cars and computers. I put pressure on the MOC to attach the cars and immediately the Insurance Company made a payment.

Case B

In another case the Deputy Sherrif attached vehicles and trailers at a bus company and on the day of the removal they only took away trailers leaving behind the vehicles. They then rendered a false return of service to the effect that they had removed everything and taken it to the auctioneers. In cases such as these they would have been paid not to remove the goods by the judgment debtor.

5.5. UNAVAILABILITY OF RECORDING MACHINES IN SOME COURTS

This issue was mainly raised by lawyers who specialise in criminal litigation. The findings revealed that the non-availability of recording equipment was a challenge particularly when lawyers wanted to prepare notices of appeal.

“The lack of recording equipment at the magistrate’s court is a serious challenge. When you want to immediately lodge an appeal you have to go through voluminous paper with handwriting which you cannot decipher.” (Lawyer Harare)

“Sometimes you notice that the magistrate is not writing and this can cause problems should your client be convicted and you want to appeal and important evidence is not on the record. However, if there is recording equipment you always refer to the transcribed record.” (Lawyer Harare)

The lawyers’ concerns were confirmed by judges who handle appeals. They indicated that there was need to equip the magistrate court as this was the court where most appeals emanated.

“Trial courts are important because they are courts of record and the records must be correct.” (High Court judge)

“Legal practitioners have an unenviable task in terms of appeals because appeals are confined to the record and if the record is incomplete and information which supports their appeal is missing then they face challenges.” (High Court Judge Harare)

5.6. GAPS IN SKILLS, KNOWLEDGE AND ATTITUDES

The survey sought to establish the extent to which gaps in skills, knowledge and attitudes affect the smooth delivery of justice in Zimbabwe.

5.6.1. Knowledge, Skills and Attitudes-JSC Staff

The view from 90% of respondents was that generally magistrates, have the requisite knowledge, skills and attitudes. Lawyers were of the view that the magistrates have the necessary skills and knowledge but they were pre-occupied with quantity at the expense of quality, thus some of their judgments gave the impression that they did not have the necessary skills and knowledge. Below are some of the responses:

“Magistrates do have the skills and knowledge but there is the problem of emphasising clearing backlog which affects the quality of decisions. The quality of work should be monitored.” (Lawyer, Bulawayo)

“Judicial officers appear to be driven by fear of backlog as opposed to ensuring that justice prevails and this compromises the quality of their judgments.” (Lawyer Harare)

“The emphasis is on clearing backlogs such that magistrates now sentence accused persons to sentences that will not go for scrutiny or review.” (Lawyer Masvingo)

One Judge confirmed that the quality of some of the judgements churned out of the magistrate’s court left a lot to be desired. It was pointed out that they were of poor quality and it was not clear as to whether it was an issue of incompetence or the focus on quantity rather than quality with the result that magistrates compromised on quality in their bid to dispose of as many cases as possible.

“Quality of some of the judgments from magistrate court is not impressive.” (High Court Judge)

Lawyers pointed out that it was difficult to establish whether some of the poor judgements which were delivered were a result of corruption or skills and knowledge gap. This was aptly captured in one of the responses which was given by one respondent where it was pointed out that:

“High Court is better than magistrates courts; with magistrates it is difficult to tell if it is corruption or incompetence or both.” (Lawyer, Bulawayo)

5.6.2. Knowledge, Skills and Attitudes-Lawyers

There was consensus that most junior lawyers lacked the skills which are expected at their level. Court officials indicated that that most junior lawyers lacked knowledge and skills relating to procedural aspects of the law, drafting of papers and cross-examining witnesses. The judges indicated that some of the lawyers appear in court ill-prepared, while others are just given files by senior lawyers yet they have no appreciation of issues in the cases which they will be handling. The courts ended up guiding such junior lawyers and did not benefit from the submissions.

“Only a few lawyers, mainly senior ones, exhibit adequate skills and knowledge. The majority of them lack drafting skills and in-depth knowledge of the law and research skills. No doubt there is a pressing need for continuing legal education because the products currently being churned out of universities are far from ready to practice law effectively.” (Judge of the High Court)

“New lawyers are not aware of procedure, they do not understand basic procedure-the standard of education is going down especially on civil procedure.” (JSC staff,)

“There are some law firms which do not train junior lawyers and throw them into the deep end. This is now common, with the mushrooming of law firms, the senior partner is also junior and did not receive adequate training. The quality of such lawyers’ work is poor.” (Harare Lawyer)

“Lawyers approach the courts ill- prepared and they short-change their clients and do not help the courts as they make poor submissions.” (JSC Official)

“It’s not just junior lawyers who lack the requisite skills. Its only that they are the ones who are in the limelight because they make court appearances. What you should know is that some of the papers which the junior lawyers present will have been presented by senior lawyers” (Harare Lawyer)

“The quality of work being produced by lawyers has generally gone down and this is particularly bad with most junior lawyers. You do not blame junior lawyers because they are just thrown into the deep-end with minimal or no supervision.” (High Court Judge)

“Senior lawyers are not giving junior lawyers an opportunity to learn from them whilst they are in action in court. The junior lawyer is just given a file and half the time they do not understand some of the issues in the file and they get stuck when questions are put through to them.” (Magistrate)

“Senior lawyers do not want to attend court and they just send junior lawyers who are not adequately trained. The role that a lawyer plays in litigation is to assist the court but this is not happening because the quality of submissions and papers drafted are poor.” (High Court Judge)-

“Lawyers take the view that a lawyer is a lawyer and once they start working they can only eat what they kill. These junior lawyers are therefore under immense pressure to earn fees and they rush to make court appearances before they are ready. In any case some of their senior partners are busy pursuing other business interests and they do not have time to train the junior lawyers.”

There was consensus amongst magistrates and the judges that most junior lawyers lacked drafting skills and their papers were badly done, which resulted in cases taking long to be resolved contributing to delays in finalisation of cases. The researchers visited the High Court to observe lawyers in court. In the motion court on one particular day the court did not grant orders in 26 out of 41 cases as there were errors in the papers. Most such errors reflected lack of training and supervision. The survey established that most law firms do not have internal training programmes.

This was particularly noted in the small towns and cities where lawyers indicated that they did not have any training programmes for their law firms and they basically relied on the training offered by LSZ.

The study also revealed that lawyers in Masvingo where the High Court was opened about 2 years ago were also facing challenges due to limited experience in handling High Court matters. Below is an extract from an interview conducted with one of the judges

“I will tell you that the level of skills is very low in Masvingo comparing it with other areas- rather it was very low. You compare with Harare and Bulawayo the skills gap is quite significant. Lawyers generally lack preparation and they take things for granted. They are casual in the way they prepare their documents and in how they prepare for court. A typical example I can give you is a case of young lady lawyer from Zvishavane. She was given an appeal to handle by a senior lawyer from her firm. She had no idea about the subject matter or relief being sought. She was lights out. It was a clear example of lack of proper supervision. Skills gap is high but there is an improvement after we started engagement with lawyers.”

The study further brought out that most lawyers graduated from law school without practical skills and adequate exposure to the actual work which they will be doing when they start practising. There was consensus amongst all the respondents that one essential area missing from the university curriculum was exposure to practical work in the High Court and Supreme Court. There was also consensus that it should be a requirement that all law students render assistance at the Legal Aid Clinics at the different faculties so that they get the requisite exposure while they are still studying.

5.6.3. Knowledge, Skills and Attitudes-Police

92% of court officials interviewed stated that most police officers did not carry out their investigations properly and as a result accused persons ended up being acquitted. All the prosecutors who participated in the survey felt that the police did not follow proper procedures when investigating matters, with the result that accused persons were acquitted, not because they did not have a case to answer, but because of gaps in cases. The views expressed by the prosecutors were confirmed by lawyers, who indicated that the greatest challenge with the police was that they did not conduct investigations properly. The findings revealed that this is due to both lack of skills

and resources. All the magistrates who participated confirmed the views given by prosecutors and lawyers regarding the general lack of investigative skills but the magistrates added that police officers lacked skills and knowledge in investigating economic crimes as it appeared that they were outmanoeuvred by criminals. They pointed out that most police officers lacked skills in investigating fraud cases and criminal offences where ICT is used.

“For the petty cases yes, the police have the skills, but now the crimes are becoming more complex, especially the white-collar crimes where technology is used. The police cannot collect evidence properly and, in most cases, it is lost. Cases such as fraud which at times are borderline civil or criminal pose a lot of challenges for police” (Magistrate)

“In fact, they have no skills especially when it comes to cases which need forensic evidence and evidence which is technologically based. They have no knowledge on Internet and computer-based crimes. How they can follow up on bank account fraud in bank”. (Lawyer Masvingo)

The judges further confirmed that investigative skills generally lacked amongst police officers:

“I think a lot needs to be done in equipping the police with the necessary investigative tools starting with training personnel on how to handle investigations.” (High Court Judge)

Whereas the magistrates and lawyers were of the view that police officers in general found it difficult to investigate complex cases, the prosecutors who largely rely on the evidence gathered by the police were of the view that it was particularly the junior officers who faced challenges in dealing with complex cases. This finding is important as it can be used to influence the content of training for junior police officers so that they are fully equipped with skills needed to investigate complex cases.

It was further highlighted by the JSC staff that police needed training on investigating sexual abuse cases against children. This view was given by nearly all magistrates who participated in the survey.

“Police fail to gather evidence and some accused persons end up being acquitted because investigations would not have been conducted properly.” (Regional Magistrate)

The police officers working in the VFU confirmed this position and indicated that there was need for police officers in the VFU to be trained on the management of sexual offences. The VFU officers indicated that one of the challenges prevailing in the department was that staff who had received training may be moved to other departments, with the result that new staff members without the requisite training are posted to the unit.

Magistrates, judges and lawyers all agreed that police lacked knowledge on the rights of accused persons:

“They also need to be thoroughly trained on the rights of accused persons which they are currently violating with reckless abandon.” (High Court Bulawayo Judge)

“They detain accused persons who are not flight risk and they arrest to fix people.” (Lawyer Gweru)

“They sometimes over-detain clients, violating their Constitutional rights.” (Prosecutor)

“Police officers do not explain to accused persons their rights and they harass and humiliate both accused persons and complainants.” (Lawyer Gweru)

Some of the lawyers interviewed indicated that whilst it was true that some of the police officers lacked knowledge and skills, it was important to note that others had the wrong attitudes and were not willing to work.

“I think the police when they want to investigate they can. It is a matter of what is at stake for them that motivates them to investigate.” (Magistrate Harare)

5.6.4. Skills, Knowledge and Attitudes-Prosecutors

The survey established that whilst prosecutors who hold LLBS qualifications generally had prosecutorial skills the majority needed skills strengthening in research and courtroom advocacy. Respondents were in consensus that police prosecutors generally lacked the requisite prosecutorial skills.

“We have only a few prosecutors who are reasonably (not adequately) skilled. The rest of them need assistance especially in research skills and advocacy.” (Judge of the High Court)

“It is the air force, police and army prosecutors who stand out as lacking in skills and knowledge. How do you expect someone who has not been to law school to argue a case against someone who received training in the law for over 4 years?” (Harare, Lawyer)

“Police prosecutors must be removed from the courts as they are compromising the quality of prosecutions.” (Lawyer Masvingo)

“Prosecutors trained at the judicial college are too rigid and do not appreciate that the law is dynamic and changes with time. They lack the legal skills.” (Lawyer Masvingo)

“They know the criminal procedure and evidentiary rules, but most do not seem to appreciate the comprehensive rights accused persons have in terms of the Constitution (Lawyer, Mutare)

“Majority do not have the necessary skills... The use of police prosecutors affects justice delivery as most of them are not trained on aspects of the law.” (Lawyer, Bulawayo)

“There is just high staff turnover at the NPA and this might explain the poor quality of work exhibited by some prosecutors.” (Judge High Court)

The respondents also highlighted that while some prosecutors lacked the knowledge and skills, their greatest challenge was that they did not have access to libraries and the internet, making it difficult for them to research and prepare for their cases well. Below are some of the responses which respondents gave:

“The NPA does not have a library in Masvingo and prosecutors are left to their own devices. They do not have access to Internet for research.” (Lawyer Masvingo)

“Prosecutors are overloaded and have no time for adequate preparation.” (Lawyer Gweru)

“Prosecutors are not adequately resourced. They do not have libraries. Some ask lawyers to print for them Acts of Parliament.” (Lawyer Masvingo)

“Due to lack of resources prosecutors do not exhibit necessary skills and knowledge resulting in acquittals and delays in finalising cases.” (Lawyer, Matabeleland South)

“Prosecutors have the necessary skills and knowledge but need resources and also opportunities to attend further training and refresher training on different, but relevant skills.” (Lawyer, Harare)

The responses from the lawyers and JSC staff indicate that the prosecutors generally needed continuous capacity building and refresher courses in order to keep abreast with the changes in the legal field.

“Prosecutors have necessary skills and knowledge but need resources and also opportunities to attend further training on relevant skills.” (Lawyer, Harare)

“We now have modern crimes e.g. bank transfers trends using IT, they really need training. They have lost a number of cases due to lack of skills as laws are amended they also need to be trained on the amendments ...” (JSC staff, Bulawayo)

There was consensus that most of them were demotivated due to the working conditions and this affected their ability to deliver well:

“One gets the distinct impression that most prosecutors are demotivated as they do not appear keen on the cases they are handling” (High Court Judge)

5.7. Lack of Professionalism

There was consensus amongst JSC staff that the police lacked professionalism generally. It was noted amongst magistrates and clerks that police officers were reluctant to serve maintenance

papers and domestic violence papers thus disadvantaging female self-actors. The court users who participated in the survey also confirmed that police refused to serve their maintenance papers and applications for protection orders.

All the prosecutors who participated in the survey pointed to the following as unprofessional behaviour on the part of the police: delays in returning dockets which have a ripple effect on finalisation of cases; failing to serve witnesses with papers timeously with the result that accused persons ended up being removed from remand; forging signatures on subpoenas,

Lawyers bemoaned the delays in court sessions commencing at the different magistrates' courts across the country. Lawyers stated that some magistrates' courts sat very late. They indicated that some courts sat after 10am while others sat at 11am despite the fact that lawyers and litigants would be at court by 9am. This inconveniences litigants and lawyers.

On social media this was aptly captured by one lawyer who wrote:

"...will that day come when courts as much as possible observe set court sitting times?"

In response another lawyer wrote:

"xx Court will humble you. I think it started from around 10am and I had been waiting from 8am"

The response to this comment was:

"Worse happens at xx court. Eish. No communication about who is doing what..."

The statements by the lawyers highlight the lack of uniformity and set standard times for starting courts across the country.

5.8. DELAYS IN SETTING DOWN HEARING AND HANDING DOWN JUDGMENTS

The study revealed that the JSC, prosecutors, police and lawyers were all to blame for delays in finalisation of cases. The issue of delays in the hearing and finalisation of cases was raised by lawyers and court users, particularly those appearing as self-actors and those attending court as

witnesses. Court users in the magistrates' court stated that courts postpone cases and this delayed finalisation of cases.

“Courts keep on postponing and referring and we travel long distances and when the matter is finally dealt with we will not be available.” (Court user, Mutare)

“Sometimes judgements are delayed after a case has been finalized, and you have to travel back to court to get the judgment and order (Court user, Masvingo)

“...His court roll and postponed matters are now unmanageable.” Extract from a WhatsApp conversation on a lawyers group commenting about a particular magistrate.

Lawyers clarified this issue and pointed out that generally there had been an improvement in expeditious disposal of civil cases in both the Magistrates and High Court. They noted, however, that with self-actors the matters could be postponed several times because they would not have prepared the correct papers.

Lawyers interviewed generally pointed out that there was a significant improvement in turn around times at the High Court with most judgments being handed down within reasonable times.

“The High Court should be commended for a significant improvement in expeditiously disposing of matters and handing down judgments. Actually, as lawyers sometimes we even fail to keep pace...The Case management system has greatly improved the efficiency of the High Court.” (Harare Lawyer)

“The inordinate delays at the High Court which used to characterise proceedings in that court are a thing of the past. If you are an efficient lawyer generally you will be able to finalise your case within reasonable time” (Harare lawyer)

“There has been an improvement though you sometimes get one or two cases which take long to be set down for trial. My observation is that recent cases are set down ahead of old cases. So, for example, I have cases from 2015 which have not been set down for trial yet.

The judges indicated that where well written heads of arguments and submissions were made, they did not delay but it was mostly in cases where shoddy work had been done that they took time in researching and ultimately handing down judgments.

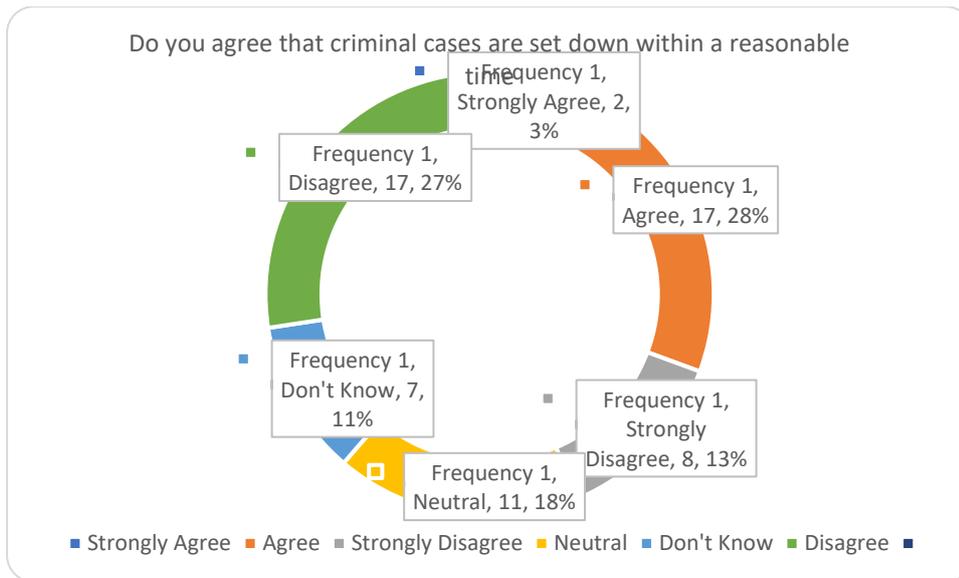
“The role of the lawyer is to assist the court and when the lawyers’ heads of arguments and submission are weak the court will not get assistance from such a lawyer. The judge has to take time researching so that they come up with a good judgment informed by their own research and not what the lawyer would have submitted.” (High Court Judge)

There was consensus from all lawyers who participated in the interviews that delays in the handing down of judgments were experienced at the Supreme Court and Constitutional Court:

“I have a total of 4 cases in the Supreme Court where judgments have not been handed down. In all the four cases its now 2 years since the matters were heard the” (Harare Lawyer)

“The corporal punishment judgment has been outstanding since 2015 when the matter was heard. The late Chief Justice Honourable Chidyausiku retired without handing down the judgment and there has been no explanation as to why it has not been handed down. In the meantime, courts are breaching the Constitution by imposing corporal punishment.” (Harare Lawyer)

The lawyers further pointed out that delays in setting down matters were experienced with criminal cases. The results for the online survey are captured in the diagram below:



40% of the lawyers who participated in the online survey disagreed with the perception that criminal cases were set down within reasonable time, whereas 29% were not sure. Most of the challenges were attributed to delays by the police in preparing dockets, personnel inefficiencies, the outdated system of registry at criminal courts and corruption. 100% of the lawyers who were interviewed confirmed that delays are experienced with criminal matters. The judges also indicated that there were delays in setting down of matters:

“I do not know what criterion is employed in choosing cases to be brought to court, but the main challenge with the NPA relates to delays in prosecuting cases. Even when the police have completed investigations still cases are held back for several years before the commencement of prosecution. As it is now we have cases which are more than 18 years old being brought to court now in clear violation of the accused persons constitutional right to a fair trial within a reasonable time”. (High Court Judge)

“In some cases, adjournments proposed by prosecution are often accepted as a matter of course with minimum justification and this affects justice delivery.” (Lawyer Harare)

“Magistrates try to have cases finalised expeditiously but the problem is with the NPA. At times they have too many trials set down for one day resulting in some cases being postponed to another day.” (Lawyer Bulawayo)

“We sometimes learn of the delays in bringing the matter for trial when complainants lodge complaints with our office indicating that they would have been coming to court several times but prosecutors just tell them that the matter is not ready to kick off.” (Magistrate)

Asked about the challenges that court users face in accessing justice, the lawyers also shared the same sentiments with the court users regarding the delays in finalising cases by the courts:

“... postponements or delays in hearing matters. Court users have to spend a lot of time and money to come to and from court for their matters to be heard.” (Lawyer, Harare)

Court officials indicated that one of the challenges presented by lawyers related to unnecessary requests for postponement, which resulted in delays in finalisation of matters. The court officials indicated that this contributed to the backlog of cases. They further indicated that some lawyers bring frivolous applications and these delayed court processes.

“Lawyers do not want to do cases, there are unnecessary postponements, dragging of cases.” (JSC staff, Harare, Rotten Row Court)

“Lawyers lack professionalism. They seek postponements in a manner that undermines justice delivery. In most instances litigants are not given proper legal advice.” (JSC staff)

“Most lawyers are not honest. They try to seek postponements of cases, do unnecessary applications which delay clients’ cases. The LSZ should monitor the conduct of lawyers”. (JSC staff)

“They abandon cases midway “(JSC Staff)

There was consensus that the different actors were responsible for postponement of cases; prosecutors were responsible for delays in setting down the matters whilst the judicial officers were responsible for delays in handing down judgments.

5.9. Understaffing

The research established that understaffing was a challenge and manifested itself in delays in setting down matters, handing down judgments, postponement of matters and the quality of judgments as court officials worked under pressure. An example was given by lawyers at the LAD where on one day two magistrates at Harare Civil Court handled a total of 80 maintenance hearings.

The Chief Justice in his address during the opening of the 2018 Legal Year stated that understaffing was one of the challenges affecting the JSC, that out of a total establishment of 250 there were only 191 magistrates, resulting in the closure of some stations due to the freeze on recruitment.

Below is an extract from a conversation on a lawyers' WhatsApp group in one of the cities:

“Maintenance Court is now a nightmare. It is worse for some of us who frequent it most. Been there since 8:30 told the magistrate is dealing with weddings then at 11:30 the magistrate was now in small claims court only to be told at 12:15 pm to come back at 14:15. Senior Counsel please assist this happens almost on daily basis especially on Tuesdays and Fridays when there are weddings. Maintenance court starts after the weddings and small claims court have been dealt with. I stand guided though isn't it the reason for lawyers having their matters dealt with first before self-actors is to protect the public from being charged huge amounts as a result of the hours they would have spent waiting. It is now discouraging to take up maintenance matters as well as juvenile court at times...I cannot help I am sure there are other junior lawyers who have found themselves in the same predicament as we are the ones who frequent these courts and I have also waited with some other senior counsels at times, it's high time something is done at ... at least we be treated as professionals.”

In response the other lawyers indicated:

“My take is x is overloaded these days. Am not sure whether he is also doing maintenance but his court roll and postponed matters are now unmanageable.”

“We once engaged the provincial magistrate recently on the civil courts and the court roll and he highlighted that they are seriously understaffed.”

“Lack of judicial officers. Some courts especially in smaller towns do not have enough judicial officers hence cases postponed. Some courts have one magistrate and if that magistrate is on leave there is one who comes twice a week to do cases which delays cases and is inconvenient.” (Lawyer,)

The sentiments by the lawyers generally confirmed the fact that the justice sector was understaffed and that affected the various actors ‘ability to deliver quality justice to the generality of Zimbabweans.

5.10 Unwelcoming and Intimidating Environment at Justice Institutions

The survey revealed that generally the court environment was intimidating and unfriendly to court users and it was worsened by how rude and unwelcoming the clerks of court were. The intimidating and unwelcoming environment at courts and police officer particularly affects women with GBV reports. Court users narrated how they were harassed to the point that they were confused and did not know what to do. The following statements by court users demonstrate that the court environment is generally intimidating:

“Courts are very intimidating....” (Court user from Buhera, Murambinda)

*“Courts are intimidating for self-actors who face challenges in presenting their issues.”
Court user, Mutare)*

“People are generally afraid of going to court, especially when there is no representation the court setting only works more for represented litigants.” (Court user, Nyanga)

Due to their constant relationship with the litigants, the lawyers also confirmed that the court environment was not friendly for the court users and as such they failed to navigate the system freely.

“Prosecutors do not advise complainants that they represent them. Court environment is not friendly.” (Lawyer, Harare)

“Court officials are rude and do not explain the law to them.” (Lawyer, Bulawayo)

“Clerks of court create fiefdoms at courts and they mystify things and make asking questions by court users and messengers from law firms hard. When asked about delaying processes such as pulling out files some retort “Because you do not buy drinks” suggesting that you should give them money in order for them to act.” (Lawyer Harare)

“Clerks of court are even rude to the lawyers and I can imagine what self-actors are subjected to by these clerks. The JSC has to train clerks and supervise them.” (Lawyer, Harare)

The majority of self-actors consulted indicated that they had not been welcomed well at the courts reception or at the police. In the end, they felt powerless, intimidated and less confident to engage with the justice delivery system. One respondent in Hwange raised concern that victims of abuse, rape or domestic violence were laughed at by the police and told to go and bring the perpetrator. In the end they decided to leave their cases unresolved. The researchers used observation techniques at police stations and noted how unfriendly the environment was, with the police not respecting privacy and shouting across the counters. At one of the police stations the researchers were subjected to questions which were put across in a very disrespectful manner.

Lawyers who responded to the survey felt that at some courts police officers teamed up with clerks and prosecutors to intimidate court users and justice seekers, making them feel like they could not do it on their own. That forced the users to seek direct support and favours from the officers, resulting in corruption.

The survey revealed that the court environment was not friendly to court users and that posed challenges for them in enjoying their rights as many lost the confidence that they could articulate their issues.

5.11. RESOURCES CONSTRAINTS

This issue was raised mainly in relation to prosecutors and the police. There was consensus that prosecutors were ill-resourced in terms of libraries and tools needed to deliver on their mandate. This came out throughout all the 18 districts when the survey assessed the knowledge, skills and attitudes among prosecutors, where lawyers pointed out that the apparent lack of knowledge and skills was partly due to lack of resources.

There was consensus amongst all the respondents that the police were poorly resourced and that affected their ability to discharge their duties well. The VFU was singled out as unit which is woefully resourced and that most complainants in GBV cases suffered injustices because of challenges encountered by the VFU. Respondents were quick to point out that their failure to investigate cases was sometimes due to a lack of resources.

“We reported a case of rape to the police. They then asked us to give them transport to go and apprehend the accused person.” (ChildLine)

“Sometimes accused persons and complainants in sexual crimes are taken to court together in the same car.” (CSO lawyer)

The issue of lack of transport was raised by all VFU officers who were interviewed. The prosecutors indicated that due to resource constraints the police end up going to court very late and the court was not able to open records. Serving of summons and subpoenas was affected by lack of transport. Lawyers also confirmed that lack of resources affected the ability of the police to do their work and that sometimes they were unable to serve subpoenas because they did not have resources. The issue of resource constraints was also raised by prosecutors:

“Police are inadequately resourced. They struggle to fulfil their mandate and lawyers manipulate this gap.” (Prosecutor, Masvingo)

“VFU police officers most of their time use their own money to take care of the needs of survivors of sexual offences.” Lawyer Harare

“VFU is heart breaking. It is an important department in the fight against sexual offences yet its ill-resourced.”

CASE STUDY PROVIDED BY A CSO

In a case in Chegutu court the magistrate indicated that the case had not been properly investigated. The police officer using his own resource had to travel to take the complainant and her mother to the police station for investigations.

The police officers interviewed also pointed out that they were constrained in terms of resources, making it very difficult for them to deliver well on their mandate. One officer in the VFU indicated that:

“Police have virtually nothing in terms of resources and we usually use our own resources.” Police Officer Matebeleland

“It is frustrating to work in the VFU department. We feel for the victims who need our support yet we do not have the resources to enable us to do the work.” Police Officer Midlands

“The truth is that no one wants to work in the VFU department given the challenges that one experience in that department. You will be dealing with children who have been raped and they desperately want assistance yet there are no resources. The government should resource this department”

The police indicated that with VFU the victims took time to open up. Sometimes they had to come to the police station more than once and officers ended up using their own resources to buy them food as some were indigent. They also indicated that there was no accommodation for those who ended up sleeping in the charge office.

“We need money to travel to Gweru for age estimation and no shelter to accommodate survivors and also funds to transport mentally challenged persons to Harare for mental examination. And no vehicle for the district VFU unit. Leonard Cheshire has been assisting in that regard.”

The police also indicated that they did not have stationery, computers and printers. One district in the Midlands had just one motor vehicle for all operations in the district.

The police indicated that sometimes they did not have fuel and cars to travel to court with exhibits. One officer who was interviewed in Midlands indicated that he handled a case where the exhibit was a bed and he was supposed to take the bed to court but could not do so because he had no suitable vehicle.

The foregoing findings demonstrate the challenges within the justice delivery system as seen by court users, lawyers, prosecutors, the JSC staff and the police. Below are some of the recommendations as suggested by the different actors.

6.0. RECOMMENDATIONS

1) Inadequacy of legal assistance programmes

It is recommended that a mapping exercise be carried out to establish the geographical location of service providers and the scope of the services being offered with a view to develop a coordinated approach of offering services which ensures that target groups with the greatest need are prioritised. The mapping exercise will also assist in coming up with strategies to address the challenge of duplication of efforts in light of decentralisation of the LAD to all the provinces. The government should prioritise resource allocation and capacity strengthening of the Legal Aid Directorate to enable the institution to deliver on its mandate. It is further recommended that the LSZ engages the JSC with a view of establishing how the IFP programme can be strengthened to enable indigent litigants to benefit from the programme by incentivising lawyers to take up IFP cases which are allocated to them. The LSZ may want to consider incentivising lawyers who take the IFP cases by awarding CPD points for those who would have taken up such cases. It is recommended that those facing serious criminal charges which attract long custodial sentences such as rape and those facing offences that present difficult legal concepts such as those arrested under the mining laws and stock theft be prioritised for legal assistance by the LAD. The LSZ, working with CSOs and the JSC, should conduct awareness-raising programmes informing the public of services available for the indigent.

There is need for simplification of the rules of court such that self-actors of average literacy will understand and be able to use the rules. The LSZ should also engage CSOs with a view of working with them to develop IEC material on various areas of the law which self-actors will use in legal proceedings.

2) Costs of Accessing Justice

It is recommended that the LSZ working with CSOs and Lawyers lobby for the reduction of MOC and Deputy Sherriff fees downwards to reasonable and affordable rates. It is recommended that

the LSZ and CSOs develop a position paper making a case for the downward variation of MOC and Deputy Sheriff's fees. It is further recommended that the LSZ engages the JSC regards the requirement that all notices of set down should be served by the Deputy Sheriff with a view of coming up with a solution which strikes a balance between the two competing interests of facilitating access to justice and curbing instances where lawyers do not serve such notices and snatch judgments.

3) Corruption

It is recommended that training on ethics and integrity be extended to all actors in the justice delivery system and not just the JSC. There is need for strengthening and resourcing of the IFP programme, Legal Aid Directorate and other organizations offering legal aid to enable these institutions to provide legal assistance to all indigent persons thus reducing instances where self-actors are taken advantage of by court officials. It is recommended that a whistle blower framework be put in place within the justice delivery system to encourage staff members to report cases of corruption. It is further recommended that the LSZ engages Transparency International Zimbabwe to assist actors within the justice delivery system with developing an anti-corruption strategy for the justice sector and a monitoring framework for the ACT initiative. It is further recommended that the installation of CCTV cameras at public places such as reception areas within the court premises be considered for monitoring purposes. The LSZ should also consider monitoring plans and strategies that the Judicial Ethics Advisory Committee, which was set up in 2017 by the JSC, will come up with and support such plans and strategies. It is further recommended that the LSZ engages all justice sector institutions with a view of coming up with a monitoring framework to monitor the effectiveness of the ACT initiative.

4) Skills, Knowledge & Attitudes

- a) It is recommended that LSZ, working with CSOs and the Police Legal Department, develop a training programme for the police, focusing on equipping them with skills to investigate economic crimes, money laundering, crimes committed using technology and sexual offences. Such training should have the input of the judiciary who pick out the weak areas and gaps in investigations as they preside over cases.

- b) It is recommended that Law faculties at the four local universities review their curriculum and make provision for students to be attached at the High Court as part of their studies so that they get the requisite exposure to procedure and practice in the High Court at an early stage in their training. The universities should also consider making it mandatory for students to offer their services at the legal aid clinics at the faculties in order for them to be exposed to practical aspects of the work while they are still at university. It is further recommended that the LSZ considers putting in place a policy wherein, for the first year of practise, junior lawyers should appear in court accompanied by senior lawyers. Law firms should be encouraged to develop internal training programmes to sharpen the skills of junior lawyers.
- c) It is also recommended that the LSZ in carrying out its needs assessments for lawyers training programmes gets input from the judiciary since magistrates and judges are aware of some of the gaps in skills and knowledge which they identify during court sessions. LSZ should consider using Judges as resource persons particularly in training which focuses on litigation. It is further recommended that a continuous development programme be developed for prosecutors, which covers areas that present challenges for them in their work.
- d) It is recommended that the JSC prioritises training on customer care for its clerks of court since they are the first port of call at courts. There is also need for the strengthening of supervision of support staff to ensure that they conduct themselves professionally. It is recommended that the JSC and NPA consider setting up toll free lines to be used by the public to lodge complaints against staff in the two institutions.

5) Resource Constraints

- a) It is recommended that departments such as the VFU be prioritised in terms of allocation of resources, particularly the provision of motor vehicles, given the challenges they face when investigating sexual offences.
- b) It is further recommended that the NPA be prioritised in terms of resource allocation particularly the acquisition of library resources, computers and internet connectivity as the lack of these resources has an impact on their ability to deliver on their mandate. NPA should also consider engaging ZimLII and seek for a donation of the Pocket Library, similar to that which was donated to the JSC for magistrates. The Pocket Library will enable prosecutors to access ZIMLII resources.

- c) It is recommended that the JSC prioritises the acquisition of recording equipment for all magistrates' criminal courts to alleviate the challenges faced by lawyers and litigants in preparing appeal papers.

6) Delays in Setting Down Matters and Handing Down Judgments

It is recommended that all actors within the justice delivery system adopt an integrated case management system for purposes of tracking cases and ensuring that cases are expeditiously dealt with. The issue of staff shortages within prosecution and some magistrates' courts requires urgent attention as it contributes to delays in the setting down and finalisation of matters. It is recommended that a functional legal aid system be put in place to support the indigent thus reducing the postponement of cases by self-actors.

7) Intimidating and Unwelcoming Environment at Courts and Police Stations

It is recommended that the JSC prioritizes training in customer service for clerks and other support staff who interface with the public. There is need for close supervision of the clerks of court to ensure that they serve court users well. It is recommended that the JSC sets up a toll-free line to enable people to lodge complainants against court officials. It is further recommended that the police put in place measures which ensure privacy when complainants report cases at police stations. The NPA should be trained on how to handle complainants in sexual offences case and also provide them with the information which they need to understand how their cases will proceed.

Conclusion

The survey revealed numerous challenges within the justice delivery sector. Some of the gaps which require resources may be beyond the capacity of the LSZ to resolve. However, there are gaps which the LSZ working together with other stakeholders can work towards addressing. The LSZ may want to consider prioritizing the following issues:

- a) Lobbying and advocating for the reduction of MOC and Deputy Sheriff Fees working together with CSOs in the Access to Justice Sector.
- b) Engaging the tertiary institutions offering Law Degrees with a view of influencing the content of the curriculum where practical aspects of the studies are concerned. The

introduction of attachment/ internship programmes at the Superior Courts particularly the High Court is one component which the LSZ should consider pushing for.

- c) Conducting a through needs assessments for lawyers training programmes and come up with training programmes which address some of the needs which would have been identified by other justice sector actors.
- d) Engaging the ZRP together with CSOs which are working on building the capacity of institutions within the justice delivery system to develop training programmes for the police on areas which were noted as being weak.
- e) Developing IEC material such as posters and fliers to be put in public places informing the public that if they have complaints against actors within the justice delivery system they can report same to the LSZ or any of the other actors.

The LSZ should also consider conducting bi-annual consultative meetings with various stakeholders to challenges within the justice delivery system and monitor progress on some of the measures which will have been put in place to address the gaps identified. As part of the assessment involves developing a monitoring tool/framework, the LSZ should continuously use the tool to track changes and other emerging issues within the justice sector. A comprehensive monitoring and evaluation and knowledge management plan should be put in place so that the LSZ can keep on getting feedback from stakeholders as well as learning from its interventions, thus enhancing continuous evidence- based planning as opposed to once-off surveys.