



**TRANSPARENCY  
INTERNATIONAL  
ZIMBABWE**

the coalition against corruption

# Judicial Corruption in Zimbabwe

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# List of Abbreviations

<b>CCJE</b>	Consultative Council of European Judges
<b>CPI</b>	Corruption Perceptions Index
<b>GoZ</b>	Government of Zimbabwe
<b>GCR</b>	Global Competitiveness Report
<b>HRW</b>	Human Rights Watch
<b>ICAB</b>	International Council of Advocates and Barristers
<b>ICS</b>	Investment Climate Statement
<b>JSC</b>	Judicial Service Commission
<b>LRF</b>	Legal Resources Foundation
<b>LSZ</b>	Law Society of Zimbabwe
<b>NGOs</b>	Non-Governmental Organisations
<b>RBZ</b>	Reserve Bank of Zimbabwe
<b>TI Z</b>	Transparency International Zimbabwe
<b>TI</b>	Transparency International
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNDP</b>	United Nations Development Programme
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>WILSA</b>	Women in Law in Southern Africa
<b>WJP</b>	World Justice Project
<b>ZWLA</b>	Zimbabwe Women Lawyers Association



# Executive Summary

Corruption in Zimbabwe has become endemic and systemic as it has permeated almost all sectors be it public or private institutions. Whilst the Government of Zimbabwe (GoZ) has established various institutional and policy frameworks to combat corruption including public pronouncements on fighting graft and establishing specialised anti-corruption courts, such efforts have been seen as mere tokenism as they are yet to yield the desired results. More so, institutions that ought to be at the forefront of combating corruption, such as the judiciary are also perceived to be compromised and are often distrusted by citizens they ought to impartially serve. The quality of justice delivery in Zimbabwe and the judicial system in general, have since the turn of the millennia been challenged as not independent and hence of questionable integrity and transparency. A judiciary that is corrupt or perceived to be corrupt corrodes the rule of law, fuels impunity and reduces the quality of justice. In cases where not only judicial officers are corrupt but the institution itself is corrupt, it becomes impossible to deal with any level of corrupt practices. Hence it is imperative that studies examining the corruption risks and vulnerabilities within the judicial sector be undertaken in order to find ways to minimise the effects of judicial corruption on the rule of law and society at large.

This study by Transparency International Zimbabwe brings to the fore examples of judicial corruption including how ordinary citizens and key stakeholders such as magistrates and legal practitioners perceive corruption in the judiciary. It highlights the urgent need to curb what is slowly becoming institutionalised corruption within Zimbabwe's judicial sector. Factors such as effectiveness, competency, professionalism, responsiveness and integrity need to be

instilled in judicial staff members so as to reduce the perception of the existence of corruption. As in other jurisdictions, the study highlights that corruption in the judicial sector in Zimbabwe occurs as either administrative corruption, operational corruption or both. The study further notes that the effect of perceived corruption should not be underrated as corrective measures require both "marketing a non-corrupt image and rebuilding the legitimacy of, and confidence in, the system". Perceptions often take time and are more difficult to address as opposed to actual actions of corruption.

Thus, the study concludes by proffering recommendations on how to address judicial corruption in Zimbabwe. Some of the recommendations include improving working conditions for judicial officers; appointing judicial officers based on merit in a transparent and fair manner and adopting whistle blowing policies to enable lawyers, court users, media and civil society to report cases of suspected or actual breaches of the code of conduct, or corruption by judicial officers. Through this study, TI Z seeks to provide stakeholders in the judicial sector with an opportunity to zoom in and reflect on the actual issues that are affecting the independence and integrity of the judicial sector in Zimbabwe. It is hoped that the relevant stakeholders will adopt and implement the recommendations stated in this study, hence contributing to an independent, transparent and accountable judiciary.





# 1

*Photo by Bill Oxford on Unsplash*

## **Introduction and Background**

# 1 Introduction and Background

“...the real source of judicial power is the public recognition of the moral authority and integrity of the judiciary.”

The United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11, UNODC, 2015

Corruption in Zimbabwe has become endemic and systemic in almost every facet of the public and private sectors. This is evidenced by Zimbabwe's poor rankings on various governance indices such as the Transparency International Corruption Perceptions Index (CPI)<sup>1</sup> and the World Justice Project (WJP) Rule of Law Index.<sup>2</sup> Sadly, the judiciary has also not been spared. Citizen's perceptions of corruption within the judicial sector in Zimbabwe have grown remarkably since the turn of the millennia. This is despite that in the 1990s, the Zimbabwean judiciary, in particular its Supreme Court (which was at the time the highest and most important court) had gained regional, perhaps international reputation as an independent court with fearless determination to uphold human rights, especially civil and political rights (Moyo, 2007).

Corruption and lack of integrity within the judiciary undermines the administration of

justice, undermines public confidence in the judiciary and the effectiveness of other governance institutions (Schultz, 2009). The judiciary is not only one of the three arms of the State but is also the custodian of the rule of law and the harbinger of justice and people's rights. In its narrow sense, the principle of the rule of law posits that no one is above the law, regardless of their status or standing in society. Therefore, it is paramount that the judiciary be and must be seen to be incorruptible at all times.

Article 11(1) of the United Nations Convention against Corruption (UNCAC) to which Zimbabwe is a State Party to, recognises the important role of an independent judiciary in fighting corruption. State Parties are therefore encouraged to take measures to strengthen judicial integrity and to prevent opportunities for corruption among members of the judiciary. Further, the Freedom House (2018) posits that the regulatory framework for judicial integrity can be achieved by promoting and implementing the principle of zero tolerance of corruption in the justice system through a three-pillar strategy; that is

- i. Efficiently combating corruption in the justice sector;

<sup>1</sup> The Corruption Perceptions Index ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople, uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean. In 2019 Zimbabwe was ranked 158 out of 180 countries with a score of 24 out of 100. <https://www.transparency.org/country/ZWE>

<sup>2</sup> The **WJP Rule of Law Index**® measures countries' rule of law performance across eight factors: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice. In 2019 Zimbabwe was ranked 116 out of 126 countries on the WJP Rule of Law Index with a score of 0.4. The scores range from 0 to 1, with 1 indicating the strongest adherence to the rule of law. <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>





- ii. Strengthening mechanisms for implementing ethical and anti-corruption conduct standards in all institutions of the justice sector; and
- iii. Developing a culture of intolerance of corruption via self-administration bodies.

In Zimbabwe, there is widespread belief that the executive tends to influence judges and magistrates and often interferes in politically contentious issues (Magaisa, 2016), although in commercial cases, the judiciary is generally regarded as impartial (ICS, 2015). This is not withstanding allegations that companies report that informal payments to influence courts' decisions are sometimes realised (Global Competiveness Report, 2015-2016). The Constitution of Zimbabwe Amendment (No.20) Act 2013, guarantees in section 69 the right to an impartial trial and in section 164 guarantees the independence of the judiciary. However, corruption in the justice sector (whether perceived or real) has also had negative effects on the poor and marginalised citizen's ability to access justice. According to the 2019 Global Corruption Barometer – Africa<sup>3</sup>, citizens who took part in the survey perceived the police as corrupt, whilst 25% viewed the magistrates and judges as corrupt. This perception creates a level of mistrust between these public institution and the citizens. The United Nations also states that among the institutions most affected by corruption are the judiciary and police.<sup>4</sup>

The promotion of access to justice and fighting corruption in the justice sector has been recognised internationally as reiterated in Sustainable Development Goal (SDG) 16. SDG 16 calls for states to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. As a result, some of the targets under SDG 16 include substantially reducing corruption and bribery in all their forms (Target 16.5) and developing effective, accountable and transparent institutions at all levels (Target 16.6). A judiciary that is corrupt rescinds basic human rights such as the right to a fair hearing<sup>5</sup> as it becomes “captive to political and economic interests and bends judgements to serve the interests of a few”, (TI Romania 2015:7). During the 2018 opening of the legal year, Chief Justice Luke Malaba also acknowledged the importance of having a corrupt free judiciary, one which is impartial and independent,

“ A corrupt judiciary cannot claim to be totally independent and impartial. A corrupt judiciary is a hindrance to an effective justice delivery system and ultimately access to justice.<sup>6</sup> ”

For its part, the Judicial Service Commission (JSC) has committed to combat corruption in the judicial sector. Table 1 below shows statistics of cases of corruption and misconduct dealt by the JSC the period beginning 2018 to as of this writing.

3 <https://www.transparency.org/en/publications/gcb-africa-2019>  
 4 <https://www.un.org/sustainabledevelopment/peace-justice/>  
 5 Section 69 of the Constitution of Zimbabwe Amendment (No.20) Act, 2013.  
 6 <http://www.veritaszim.net/node/2311>



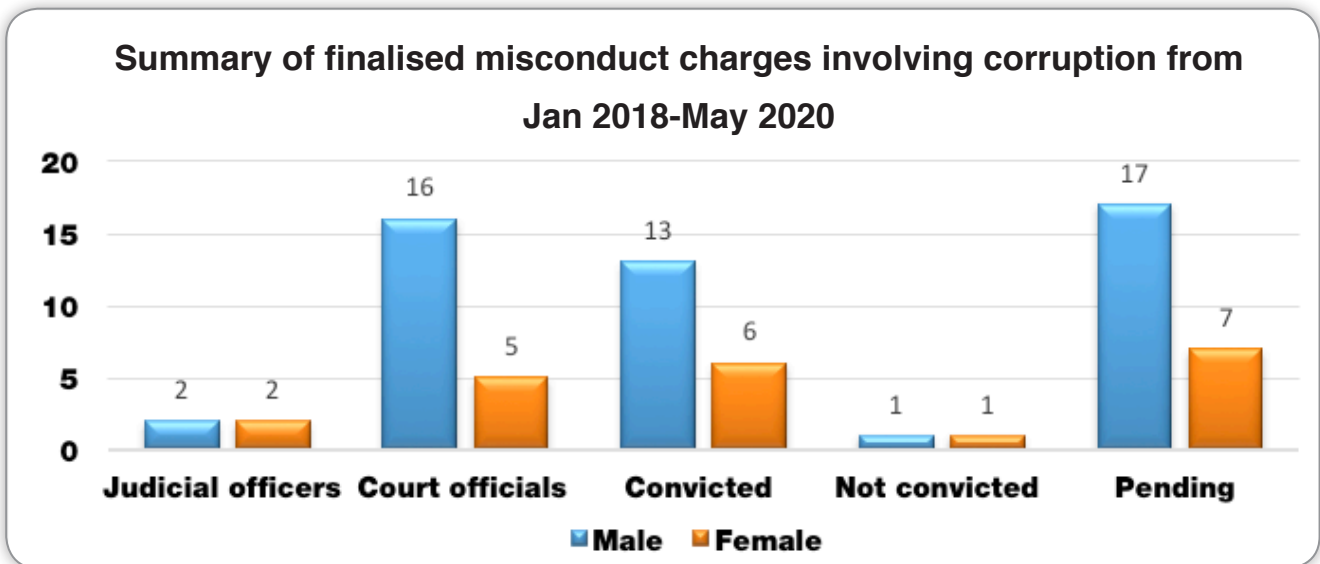
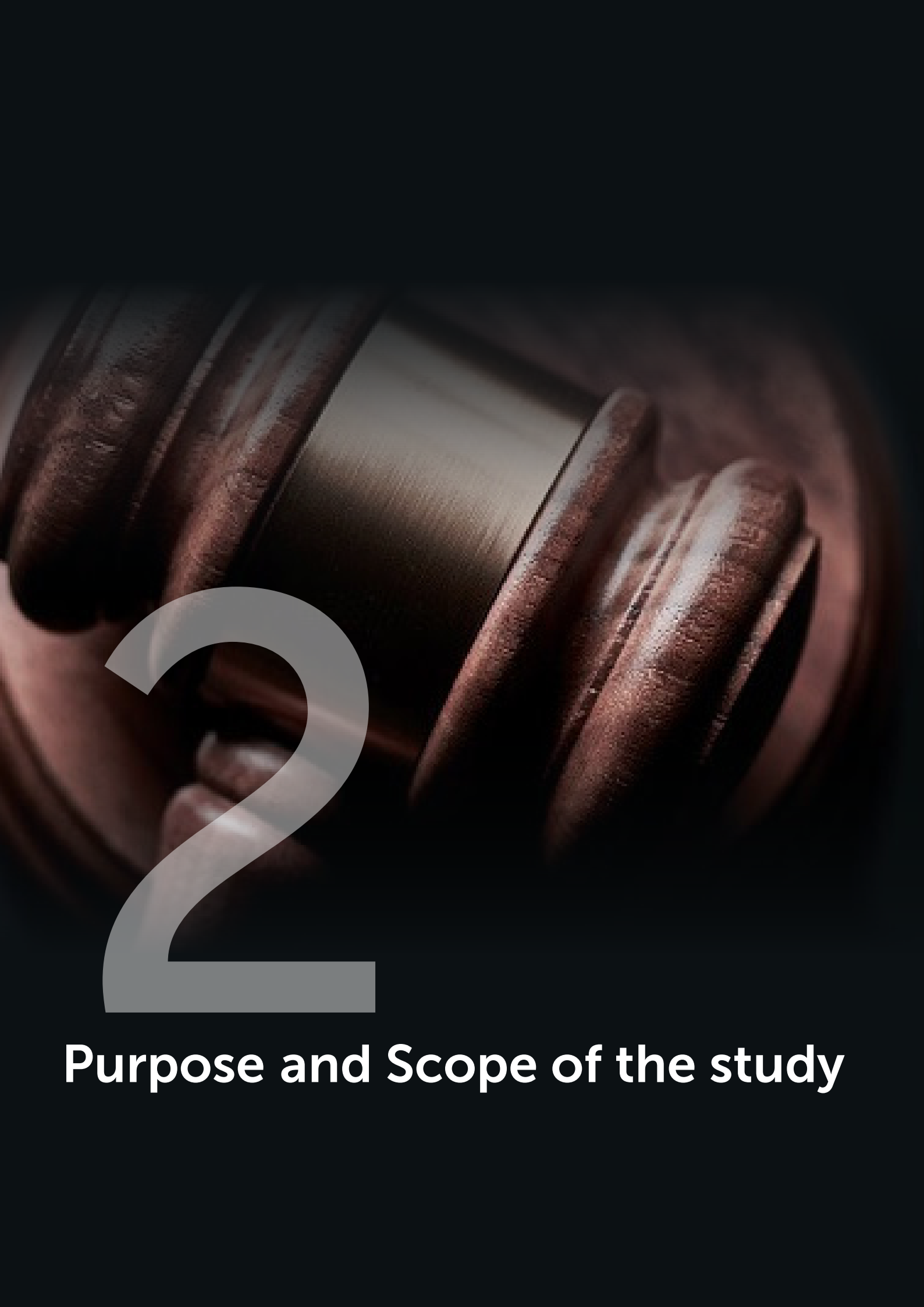


Table 1: Source JSC

It is important to qualify that there are instances where ordinary citizens, due to a lack of understanding of how the courts function or on not getting a favourable outcome may cite corruption as the cause yet this may not be substantiated by facts. This is true for legal practitioners as well, where upon losing a case and acknowledging that the other party had a stronger case, they can apportion blame on “corruption” within the judicial system. However, Barret (2005) avers that the effect of perceived corruption should not be underrated as corrective measures require both “marketing a non-corrupt image and rebuilding the legitimacy of, and confidence in, the system”. Perceptions often take time and are more difficult to address as opposed to actual actions of corruption.

It is against this backdrop that Transparency International Zimbabwe (TIZ) commissioned this research focusing exclusively on corruption within the judiciary.





# 2

**Purpose and Scope of the study**

# 2 Purpose and Scope of the Study

## 2.1 Purpose of the study

The primary purpose of this study was to identify types, causes and effects of judicial corruption and to guide engagement on anti-corruption measures that can be taken to curb corruption in the justice sector in Zimbabwe.

## 2.2 Objectives of the study

The main objectives of this study were to:

- a) Identify corruption risks and vulnerabilities within the judicial sector in Zimbabwe.
- b) Assess the prevalence of corruption in the judicial sector, its forms and causes.
- c) Proffer recommendations on how to mitigate these risks and vulnerabilities.

## 2.3 Justification of the Study

The judiciary has a strategic importance in the fight against corruption, hence the reason why Transparency International Zimbabwe chose the courts, as the only public institution to focus on in this study. A fair and efficient judiciary is key to any sustainable anti-corruption plan hence it is important to address corruption risks within this sector. In any event, an independent, impartial, fair and equitable legal system and a non-corrupt judiciary is at the core of the rule of law, human rights implementation, supervision of the executive as well as economic development. If the judiciary is corrupt, then many other rights lose their significance. The judiciary is the ultimate upholder of individual rights and is therefore supposed to fight corruption and, not be tainted by allegations of corruption.

## 2.4 Methodology

This study was based on a qualitative rapid assessment, largely dependent on two main methods; a comprehensive literature review

analysis and key stakeholder interviews. These two methods were primarily meant to complement one another through the triangulation of key facts as well as to ensure data integrity, taking into consideration of the perspectives of each group. Although the justice delivery system is made up of many stakeholders, this study was focused on court users in the magistrates' court<sup>7</sup>, magistrates and legal practitioners. A total of 374 litigants from the Magistrates Courts- civil division, 30 magistrates and 43 legal practitioners were interviewed. The qualitative approach was aimed at getting the perceptions and experiences of the users and suppliers within the judicial system. This enabled the identified respondents to produce their personal accounts and experiences regarding judicial integrity and transparency and how corruption within the Magistrates Court impedes them from accessing justice, where it was applicable.

The responses were supported by facts and perceptions, which resulted in the report providing these experiences in the form of quotations to support and validate the points raised by respondents. The approach enabled the researchers to interact with participants and develop trust, resulting in comprehensive and detailed experiences being shared. Court users 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 perceptions of the litigants were further augmented by information gathered during

<sup>7</sup> The court users were delimited to members of the public using the selected magistrate courts at the time of the study.



focus group discussions. Ten focus group discussions were conducted with 132 participants to explore their views and experience of the court system in Zimbabwe.

Structured questionnaires requesting respondents to rate their responses, were used to collect the numerical positions on various variables such as the function of the court, conduct of judicial officers and rating of relevant administrative frameworks. This approach was used to validate responses that came through the qualitative methodologies as well as for cross tabulation purposes.

## 2.5 Delimitation of the Study

The term 'justice sector' refers not only to judges and the courts but also to actors and institutions that constitute the wider apparatus of the justice system such as prosecutors, police, prison officials, and lawyers (UNDP and U4, 2016). It was not possible to cover every aspect of corruption in the justice sector in this study. Further, the judiciary on its own is composed of different court systems such as the primary courts and the so-called superior courts. As a result, it was not possible to cover the entire judicial sector, hence this study focused on the Magistrates courts (the magistrates and their support staff and lawyers situating them within the broader justice system and exploring the impact of judicial corruption on the political, legal, social and economic development and governance in Zimbabwe.

## 2.6 Limitations and challenges of the research

This study contains limitations which must be considered when evaluating the results and their generalisations. These include the following:

i. Due to limited funding, the respondents to the study were confined to magistrates, litigants at the Magistrates Court and legal practitioners from four provinces (Bulawayo, Harare, Mutare and Matabeleland South (Gwanda))

ii. It was difficult to secure appointments with some lawyers and judicial officers to conduct the interviews with some of the interviews having to be conducted in the evenings. The response rate was low as they kept rescheduling appointments for interviews, this delayed the finalisation of the study. This might be attributed to the sensitivity of the research itself. The judicial sector is perceived to be highly bureaucratic and requesting more information from some workers can be deemed as unorthodox.

iii. The study focused on three main respondents i.e. litigants, lawyers and magistrates. Clerical staff particularly clerks of court were auxiliary respondents wherein they were interviewed in relation to concerns, positions and information that emerged from other respondents that related to the functions of their offices.

Notwithstanding the above limitations, the study remains credible and provides a baseline for future studies that are more empirical and analytical.

## 2.7 Ethical considerations

The study dealt with human participants and thus adhered to strict ethical guidelines in order to ensure that research participants did not suffer any form of harm or discomfort due to their participation in the study. Participants were treated with the uttermost sensitivity, respect and care. They were informed of the purpose of the study and its benefits. Participation in the study was therefore voluntary and on the basis that respondents had been fully informed and understood the basis of the study. Participants were informed of their rights not to continue with the study or not to answer questions they were uncomfortable with. Due to the sensitivity of the study the identities of participants were withheld. Confidentiality was a key aspect of the conduct of the survey.





3

**Literature Review**

# 3 Literature Review

## 3.1 Conceptualisation of terms

### 3.1.1 Corruption

Transparency International (TI) defines corruption as the “abuse of entrusted power for private gain”.

### 3.1.2 Judicial sector

For the purposes of this study, the judiciary is defined in its broad sense to refer to the system of courts of law and the people who operate within it, including, the prosecution service and the people who operate within it.

### 3.1.3 Judicial corruption

Danilet (2009) defines judicial corruption as any act through which workers in the justice system (presiding officers, prosecutors, court personnel and other justice sector personnel) are negatively influenced (by any actor) in a manner that affects the impartiality of judicial proceedings for the purpose of obtaining an illegitimate benefit for themselves or other persons. Similarly, Barret (2005) defines judicial corruption as the abuse of power, for personal benefit, by a public official entrusted to administer the application of laws in a fair and judicious manner. The gain or benefit can be either material gain, or benefits of any other nature derived from corruption. Cristi (2009) goes on to further classify judicial corruption (negative influences within the justice system) into two, that is, the influence that impedes the independence of the justice system or judiciary and influence that impedes on the fairness of legal proceedings.

It is important at this juncture to point out that in consonant with several studies Buscaglia (2001) identified that judicial

corruption in most developing countries such as Zimbabwe occurs as administrative corruption or operational corruption. He defines **administrative corruption** as corruption which occurs when court administrative employees violate formal or informal administrative procedures for their private benefit. Brooks (2019) classifies this type of corruption as petty corruption within the judiciary. By way of illustration this form of corruption include cases where court users pay bribes to administrative employees in order to alter the legally-determined treatment of files and discovery material, or cases where court users pay court employees to accelerate or delay a case by illegally altering the order in which the case is to be attended by the judge, or even cases where court employees commit fraud and embezzle public property or private property in court custody. These cases include procedural and administrative irregularities. On the other hand, **operational corruption** typically occurs as part of grand corruption schemes where political or considerable economic interests are at stake. This form of corruption usually involves politically-motivated court rulings where judges stand to gain economically and career-wise as a result of their corrupt act. These cases involve substantive irregularities affecting judicial decision-making (Buscaglia 2001). Langseth and Stolpe (2001) posits that in all countries where judicial corruption is perceived as a public policy priority, it occurs as a mixture of both types of corruption, that is, the existence of administrative court corruption usually fosters the growth of operational corruption and vice versa.



### 3.1.4 Judicial integrity and transparency

Public confidence in the judiciary is anchored on the integrity and transparency of the system.

The UNODC (2015) aptly defines **integrity** as it relates to Article 11 of the UNCAC as the ability of the judicial sector or any member within the judiciary to resist corruption while upholding the value of stated in the Bangalore Principles of Judicial Conduct, that of, independence, impartiality, personal integrity, propriety, equality, competence and diligence. The Bangalore Principles of Judicial Conduct note that the behavior and conduct of a judicial officer must reaffirm the people's faith in the integrity of the judiciary and justice must not merely be done but must also be seen to be done.<sup>8</sup> Thus it can be deduced that integrity within the judiciary context comprises of independence from political or other external influences and accountability of the court system to users and the general public (Schultz, 2009). In the Zimbabwean context integrity is placed as a core value of every member of the judiciary in the Judicial Service (Code of Ethics) Regulations, 2012.<sup>9</sup> The Code of Ethics also notes that a judicial officer shall ensure that their conduct in or outside court is above reproach in the view of reasonable, fair-minded and informed persons.

**Judicial transparency** on the other hand, is a legal principle which describes legal processes and procedures characterized by openness<sup>10</sup> and unrestricted access to timely and reliable information on decisions and performance (UNDP and U4, 2016). It is a fundamental characteristic of modern

democracies, in that it empowers citizens to hold the judiciary accountable on its obligations to uphold integrity whilst at the same time remaining independent, impartial and advancing equality.<sup>11</sup> Judicial transparency also encompasses independence of the judiciary through the appointment processes, and accountability mechanisms of judicial officers. The definition outlines a general consensus on how the judiciary should function- as an effective system that safeguards human rights, facilitates access and provides transparent and impartial recourse to the public. The principle of judicial transparency requires the judiciary to demystify the judicial processes.

## 3.2 Typologies

In Zimbabwe, as elsewhere, the scourge of corruption in the judicial sector is extremely difficult to prove. However, TI has provided guidelines on how judicial corruption can be identified through analysing the behaviour of judges or prosecutors in conducting cases, such as finding bias in the gathering, hearing and judging of arguments and evidence, committing intentional procedural errors that void trials or exclude significant evidence, or improperly sentencing those convicted of crimes (TI Romania, 2015). Hence, using the framework provided by TI Romania, this study goes beyond the mainstream literature that classifies judicial corruption into two classes, which is political interference (by the executive and the legislative branch) and bribery (TI, 2017). It identifies the types of corruption that are widely common in the judicial sector from the Zimbabwean perspective.

<sup>8</sup> [https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentary\\_on\\_the\\_Bangalore\\_principles\\_of\\_Judicial\\_Conduct.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentary_on_the_Bangalore_principles_of_Judicial_Conduct.pdf)

<sup>9</sup> Judicial Service (Code of Ethics) Regulations, 2012

<sup>10</sup> Commentary on the Bangalore Principles of Judicial Conduct, hereinafter referred to as the commentary

<sup>11</sup> *ibid*





### 3.2.1 Bribery and Gifts

TI defines bribery as the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc.).

**Example:** Former Chitungwiza Municipality chamber secretary, Priscila Vengesai, 37, allegedly tried to bribe a High Court judge with an undisclosed amount of money. According to court papers, Vengesai tried to bribe Justice Felistus Chatukuta. Chatukuta reportedly recorded the conversation before reporting the matter to the police. She had presided over a case involving Avondale Holdings (Pvt) Ltd and TM Supermarkets (Pvt) Ltd and ruled in favour of Avondale Holdings. Prosecutors say the approach to Justice Chatukuta followed the latter's visit to Chitungwiza municipality to process a relative's papers in May 2014. She approached Vengesai for assistance and the reportedly pair exchanged phone numbers. The following day Vengesai allegedly sent a text message to Justice Chatukuta requesting to see her. She later booked an appointment on June 26 before proceeding to Chatukuta's chambers. Vengesai, the State alleged, told Chatukuta that she had been sent by the owners of Avondale Holdings (Pvt) Ltd to deliver a token of appreciation for the favourable judgment. She took out a khaki envelope from her hand bag which had cash and tried to hand it over to Chatukuta. The judge refused to accept the cash and expressed her displeasure about Vengesai's conduct. She then recorded their conversation before making a report to the police, it is alleged (*adapted from a various Newspaper clips*).

The practice of gift giving has attracted

attention from various practitioners and academics in Zimbabwe and is worth further examination. In particular a case in 2008 concerning the Reserve Bank of Zimbabwe (RBZ) which was said to have donated houses, luxury cars, plasma television sets and generators to judges in addition to directly augmenting their salaries over and above the constitutionally guaranteed remuneration from the State (The Standard, August 8, 2008)<sup>12</sup>. A report by the Human Rights Watch (2008:18) concluded that:

“The government's practice of providing extra-legal “gifts” to judges has an impact beyond how it might affect the rulings of judges in individual cases. This deeply rooted corruption undermines public confidence in the judiciary.”

### 3.2.2 Conflict of interests

TI defines conflict of interests as a “situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests”.

**Example:** Sukai Tongogara, the Anti-Corruption Commission investigations manager, said cases of bribery involving magistrates, prosecutors, clerks of court and lawyers in private practice continued to rise. She said some of the graft involved judges presiding over cases involving relatives and friends without disclosing their interests. As of this writing a judge of the High Court is accused of conflict of interest in that he phoned a lawyer in a dispute, asking him to consider settling a civil dispute in a case that involves, a firm owned by the judge's relatives (*adapted from a Newspaper clip*).

<sup>12</sup> <https://www.thestandard.co.zw/2008/08/08/rbz-splurges-on-judges/>



### 3.2.3 Undue influence and other forms of interference

Linked to the previously discussed forms of corruption is undue influence. Undue influence is a more subtle form of corruption as interest groups often make use of legal mechanisms to influence the decision-making process.

**Example:** In February 2003 a Zimbabwean judge was hauled from his chambers and detained by the police. The charges state that in early 2003 the said judge asked two fellow judges to change the bail conditions of a business colleague who was facing murder charges. He wanted the judges to release the business colleague's passport so he could travel abroad. Unknown to him, one of the judges alerted the police after the initial approach. The second telephone conversation between the two was recorded by the police and was a major part of the evidence against him. He was later found guilty of corruption (*adapted from a Newspaper clip*).

Other forms of interference may be indirect taking the form of patronage defined by TI as the form of favouritism in which a person is selected, regardless of qualifications or entitlements, for a job or government benefit because affiliations or connections.

### 3.2.4 Extortion and misuse of funds and resources

Extortion, as defined by TI, is the act of utilising, either directly or indirectly, one's access to a position of power or knowledge to demand unmerited cooperation or compensation as a result of coercive threats.

Misuse of funds and resources is closely linked to embezzlement which occurs when a person holding office in an institution, organisation or company dishonestly and

illegally appropriates, uses or traffics the funds and goods they have been entrusted with for personal enrichment or other activities.

**Example:** In Filabusi a magistrate has been arrested for allegedly embezzling court funds amounting to \$431. Mzingaye Ephraim Moyo (33), who is the resident magistrate in charge of Filabusi Magistrates Court, was not asked to plead when he appeared briefly before Gwanda regional magistrate, Mr. Mark Dzira, facing a charge of criminal abuse of office (*adapted from a Newspaper clip*).

## 3.3 Causes

The cause of corruption in the justice sector will be analysed from a political, economic, social and legal perspective.

### 3.3.1 Political interference

According to several studies the core vulnerabilities that hamper the effectiveness of the judiciary as a whole, irrespective of the legal nature of the cases is political interference. Politics affects the due process and overall functioning and performance of the judiciary - the result of an improperly established rule of law in any country. When it does so, for instance, the constitutional safeguards for the judiciary are not sufficient to secure its independence, transparency, accountability or institutional capacity, or they are not implemented into a comprehensive legal framework that ensures their adequate application in practice.

Examples of ways in which political interference in the judiciary by political actors manifests itself include the manipulation of judicial and prosecutorial appointments and removals, manipulation of judicial, court staff and prosecutors' salaries and



conditions of service or reassigning judges and prosecutors perceived as problematic away from politically sensitive cases and allocating those cases to more pliable judges or prosecutors (TI Romania 2015). Political interference can also occur when judicial officers are rewarded for aligning with certain political players. TI has advised that these core vulnerabilities must always be assessed against the national context where they happen, in order to determine their real scope and appropriate solutions (TI Romania, 2015).

In Zimbabwe the land reform issue presents a unique political situation that is believed by many commentators to have contributed to the corruption of the judicial sector. Moyo (2007) in her seminal article in TI's *Global Corruption Report 2007* identified political factors that have compromised the judicial sector in Zimbabwe as follows:

The beginning of 2000, the government began a purge that resulted in most independent judges being replaced by judges known to owe allegiance to the ruling party. This reconstituted judiciary has conspicuously failed to protect fundamental rights in the face of serious violation by legislative provisions and executive action. Corruption has also played a role in compromising judicial independence because the allocation of expropriated farms to several judges has made them more beholden to the executive. Most accounts of the trajectory of judicial independence in Zimbabwe inextricably link its decline to government policies adopted in 2000 aimed at accelerating the protracted land reform process. (TI 2007: 35)

A depressing example is the case of the resident magistrate for Chipinge, who was dragged from his courtroom in August 2002 by a group of veterans and assaulted after he dismissed an application by the state to remand five officials of the opposition political party in custody. The attack took place in full view of police who did not try to prevent it. This is not an isolated case as there are several court officials were also assaulted during their official duty (Daily News (Zimbabwe), 17 August 2002 and Moyo 2007).

Likewise, political interference and intimidation has led to the resignation of several judges: Justice Michael Gillespie (who resigned and went into exile); Justice Ishmael Chatikobo (who came under pressure after ruling in favor of a private radio station). Justice Sandra Mungwira went into exile after acquitting three MDC activists accused of murder; Justices Ahmed Ibrahim, James Devittie and Nick McNally (were also forced into exile after receiving threats of violence when they accused the government of undermining the judiciary). In 2004 Justice Michael Majuru fled into exile and faxed his resignation after he was publicly criticized and threatened with investigation by the government when he ruled in favor of an independent daily newspaper that the government had banned (Mushonga, 2006).

Finally, it is also important to note that in some cases, undue influence on judicial rulings comes not from politicians directly, but via the judicial hierarchy (Gloppen, 2010). Typically, such influence may be the result of direct pressure from superiors;



more subtle incentives based on a judicial officers’ anticipation that a ‘wrong’ decision in an important case could have career consequences; or selective allocation of cases to judicial officers who are likely to rule in a particular manner. Along this, internal procedures can be misused for example to limit individual judges’ ability to voice criticism, for example by refusing dissenting judgments. Hence, where the judicial leadership – and in particular the chief justice – is (seen to be) close to the sitting regime, this can taint the entire judiciary. Even where judicial appointments are otherwise effectively regulated in ways that place them beyond executive influence, the executive often has a much stronger say over the appointment of the chief justice and judge presidents (Gloppen, 2010).

### 3.3.2 Economic

Several studies offer path-breaking contributions to the economic analysis of corruption. For example, the World Bank report compiled by Buscaglia and Dakolias (1999) focusing exclusively on the judicial sector present the following finding:

the economic models of corruption stress that all individuals, to a lesser or greater degree, are susceptible to the offer of illegal incentives. Corrupt activities occur when the marginal returns from crime exceed the marginal returns from legal occupation by more than the expected cost of the penalty (Buscaglia and Dakolias 1999:3).

Low compensation and weak monitoring systems are traditionally considered to be

the main causes of corruption. However, the study goes beyond the simple descriptive and symptomatic studies of official corruption and focuses on the search for empirically tested causes of official corruption. The report identified further that:

Assume a given specific level of deterrence, external monitoring systems, and salary structures within a public agency. This organizational/market-power model predicts that the capacity of public officials to extract additional illicit fees for services rendered will be enhanced by the following:

- a higher concentration of internal organizational roles concentrated in the hands of fewer decision makers within a public agency-for example, judges concentrating a larger number of administrative and jurisdictional roles within their domain;
- an increase in the number and complexity of procedural steps, coupled with a lack of procedural transparency within a government agency supplying a service-for example, closed bids in government procurement;
- an increase in uncertainty related to the prevailing doctrines, laws, and regulations-for example, inconsistencies found in the application of jurisprudence by courts due to, among other factors, defective information systems within the courts and the lack of a jurisprudence database;
- a decrease in alternative sources of the product or service demanded from the government-for example, the lack of alternative dispute-resolution mechanisms causes low implicit price elasticity of demand;
- an increase in collusive behavior among



the parties demanding a legal or illegal service from a public agent or agency- for example, bribes offered by isolated individuals as opposed to the collusive behavior found in organized crime. (Buscaglia and Dakolias 1999:4).

The above framework will of course depend on other contextual issues. As was mentioned in the introduction to this study, the deterioration of judicial corruption in Zimbabwe has gone hand in hand with the stalling economic climate and worsening political environment. Here is another example in the newspaper headline “Magistrate quits, rants at govt over poor salaries” (*Daily News, December 20, 2016*) a former magistrate was quoted saying:

All the magistrates are tired of your lies. God is not happy though because you killed my dream. I swore an oath to God when I was appointed. You made me corrupt.

Lamenting low salaries of \$600 the magistrate continued in his rant:

Why should any magistrate send a person who earns \$1 200 to jail when they can offer the magistrate \$600 and still have more than the magistrate? A magistrate in Zimbabwe earns \$650 dollars.

Finally, as elsewhere insufficient court funding is well known to be an obstacle to achieving the rule of law in Zimbabwe. However, data limitations and measurement difficulties have prevented scholars from establishing a link between court funding and judicial corruption. Beyond anecdotal accounts, few studies

have unraveled the causal mechanisms linking court funding and judicial outcomes. In his speech Chief Justice Malaba lamented the lack of adequate funds needed for the full operation of the judiciary as well as the independence to manage its finances. In the words of Chief Justice Malaba:

It will therefore be a self-defeating exercise for Treasury to attempt to unnecessarily ring-fence the JSC’s budget and stifle the Judiciary from accessing its budgeted funds timeously. Any such measures are a threat to the independence of the Judiciary and to the rule of law. An independent Judiciary is one that receives enough funding to run the courts in order to protect the rights of citizens. It is only a Judiciary that is truly independent which decides matters impartially without fear, favour or prejudice; and is impervious and immune to extraneous influences.<sup>13</sup>

### 3.3.3 Social

There has been little published information on the social-psychological causes of corruption, especially at the individual level. However, there is a steady growing number of empirical studies that have investigated why a person might act dishonestly, and in particular consider how an individual’s tendency to commit corrupt acts may depend on both the person’s moral identity and the surrounding circumstances.

Some scholars note that individuals can come

<sup>13</sup> <https://www.jsc.org.zw/jscbackend/upload/Speech/chiefjusticespeech.pdf>



to perceive ordinarily unethical acts as ethical through disengagement of moral urgency. This can happen in several ways, all of which relate to whether or not the actor sees human consequences to his/her actions. When the harm inflicted by corruption is more remote or abstract, individuals are less likely to see the conduct as unethical. Consistent with this general view, other researchers have found that corrupt behavior often originates because certain individuals do not see the corrupt act as an ethical issue (Darley, 2005).

A 2018 study by TI Z notes that in some instances corruption is a norm and “accepted” as a way of conducting business (TI Z, 2018). When some individuals in an organization behave corruptly, others may imitate them, perhaps because they also come to view the behavior as acceptable, or simply because they think that everyone else is doing it. Darley (2005) notes that in some instances individuals may feel a sense of commitment to the group or person committing the corrupt act hence, opt to at least remain silent rather than participate.

This is notwithstanding that some individuals’ personalities and moral dispositions may change when they become part of a group. “Social identity theory” suggests that a person can think and act morally before becoming a part of the group. Their personality changes to conform to the predominant identity of the group (Krivins, 2018). It has been argued that this social identity theory may indeed explain why corruption can persist in a system long after the original corrupt actors leave.<sup>14</sup>

In the TI Global Corruption Report, Mary Noel Pepys (2007) expressed that social tolerance of corruption in many countries is a result of social interactions that are governed not by law but by customary or familial codes of conduct. Therefore, to regard as corrupt judicial officers who support the interests of their relatives overlooks the notion that it may be more dishonourable for that person to ignore the wishes of a family member than to abide strictly by the law.

### 3.3.4 Legal

The operating legal environment within an organisation contribute to judicial corruption. For instance, there can be structural and functional gaps and loopholes that may affect the phases of the justice system (TI Romania, 2015). For example, the lack of formal, transparent and limited certainty in how internal organisational roles within the judiciary are allocated to court employees can result in corruption. Buscaglia (2001), avers that in such organisational environments the adjudicational roles and administrative functions are often subject to unrestrained discretion, hence making it possible for corruption to thrive. Furthermore, the lack of ethics and professional obligation and standards of conduct for judicial officers can also lead to corruption within the judicial sector.

For a long time, Zimbabwe did not have a written code of conduct applicable to judges and magistrates. The JSC adopted a code of ethics after many years of debate on the matter in terms of Section 18 of the Act

<sup>14</sup> <https://globalanticorruptionblog.com/2015/08/28/the-social-psychology-of-corruption-lack-thereof/>

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(Judicial Service Act) in 2011. This of course is regrettable and may be attributed to some of the conduct that have tainted the judiciary as Crozier (2009) has pointed out in dealing with inflation that eroded their salaries and adjudicating in land redistribution cases. However, the code of ethics only applies to “judicial officers”. The term ‘judicial officer’ is defined narrowly to include only judges of the Supreme Court, judges of the High Court, Presidents of the Labour Court and the Administrative Court. Magistrates remained regulated under the Public Service regulations for public servants generally. However, in 2019, the JSC adopted the (Magistrate’s Code of Ethics) Regulations. Both codes of conduct are still nascent and evolving and so far, they have not been a critical analysis of their effectiveness.

Also linked to the above point, the JSC currently does not have a truly organic performance appraisal process for the courts. The deputy Chief Justice, Honourable Justice Gwaunza admitted that: “we have to date operated on the basis of a rough framework for judicial performance assessment. We lacked ownership of the process” (2019). The role of a proper performance appraisal to curb judicial corruption cannot be over emphasized. According to the Consultative Council of European Judges (CCJE) in 2018 report: “Properly done, a system of evaluation is a very effective means to make promotion and advancement decisions more objective and reliable. This also contributes to the transparency of the judicial system as a whole.”

### 3.4 Conclusion

In order to understand the challenges of corruption in the judicial sector in Zimbabwe in all its breadth and complexity, and to subsequently provide recommendations it is imperative to share findings from the respondents who participated in this study. The next chapter unpacks findings from the respondents.





## Findings from Respondents



# 4 Findings from Respondents



In this study an inquiry into the social backgrounds of the interviewed court users was very important as an indicator of effective access to justice. Effective access to justice in a functional system should not be determined by one's social background. This inquiry was done only in respect of primary respondents. Thus, the sample was anchored on the Magistrates' Courts as an institution rather than the numbers of respondents reached out to. The sample can thus be sufficiently used as a reflective analysis of the key issues within the judiciary.

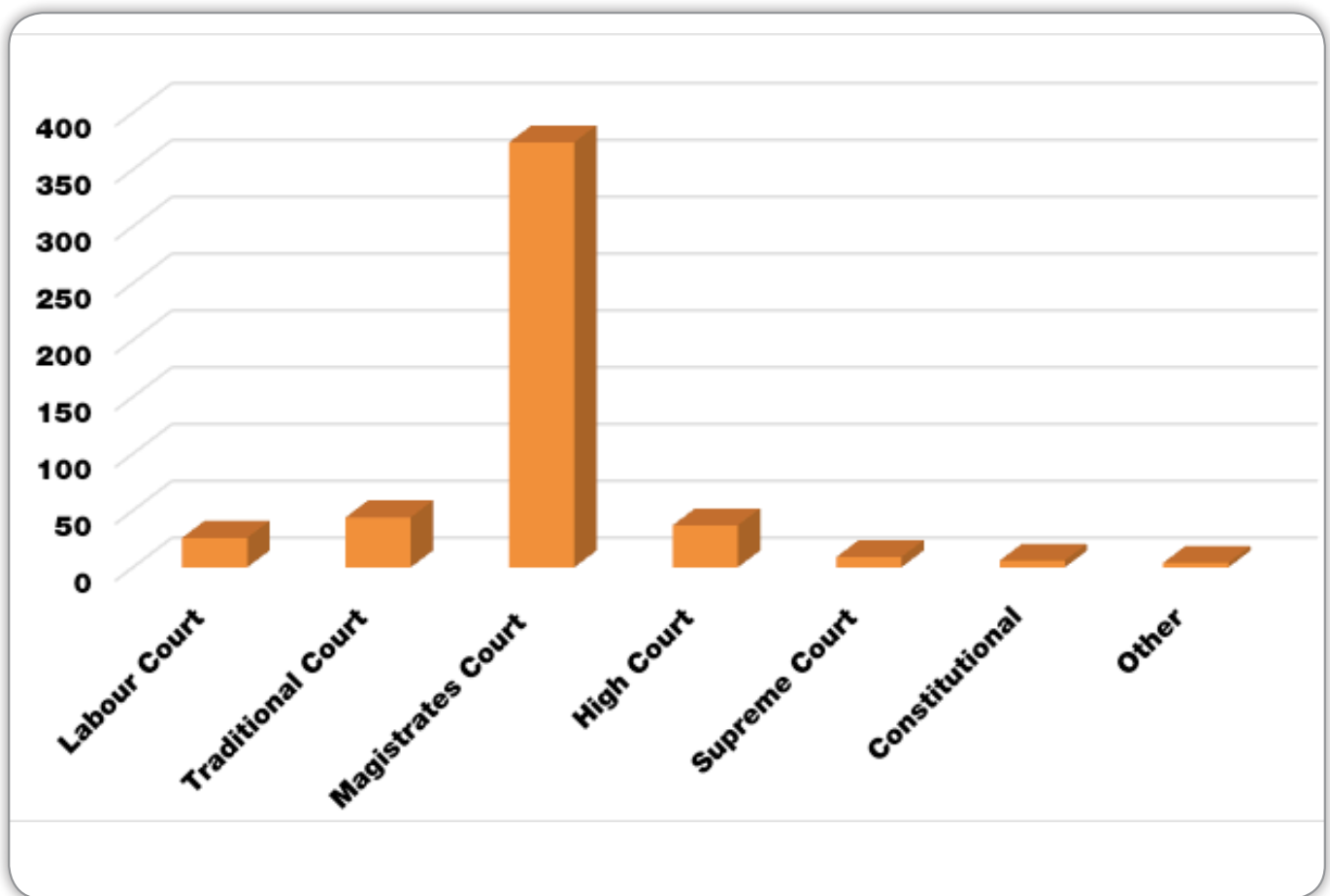


Figure 1: Litigants sampled for the study showing court being utilised.

## 4.1 Socio-economic and demographic characteristics of primary respondents

From the survey conducted, there were more female court users than males more females mainly because they were dealing with maintenance claims and domestic violence cases.



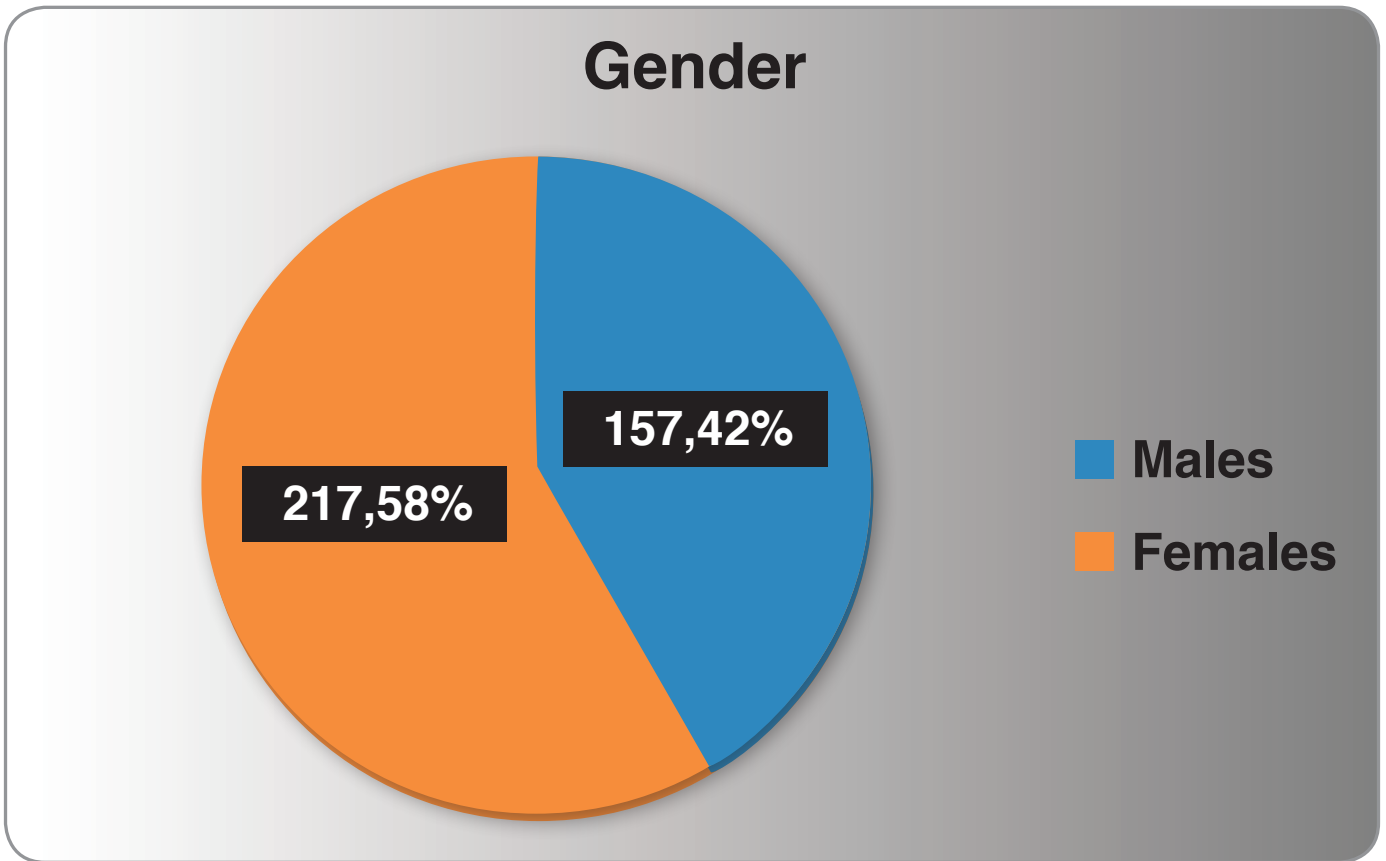


Figure 2: Gender demographic of respondents

Figure 3 below shows that the most users of the Magistrates' Courts were young people between the ages of 26-35 years.

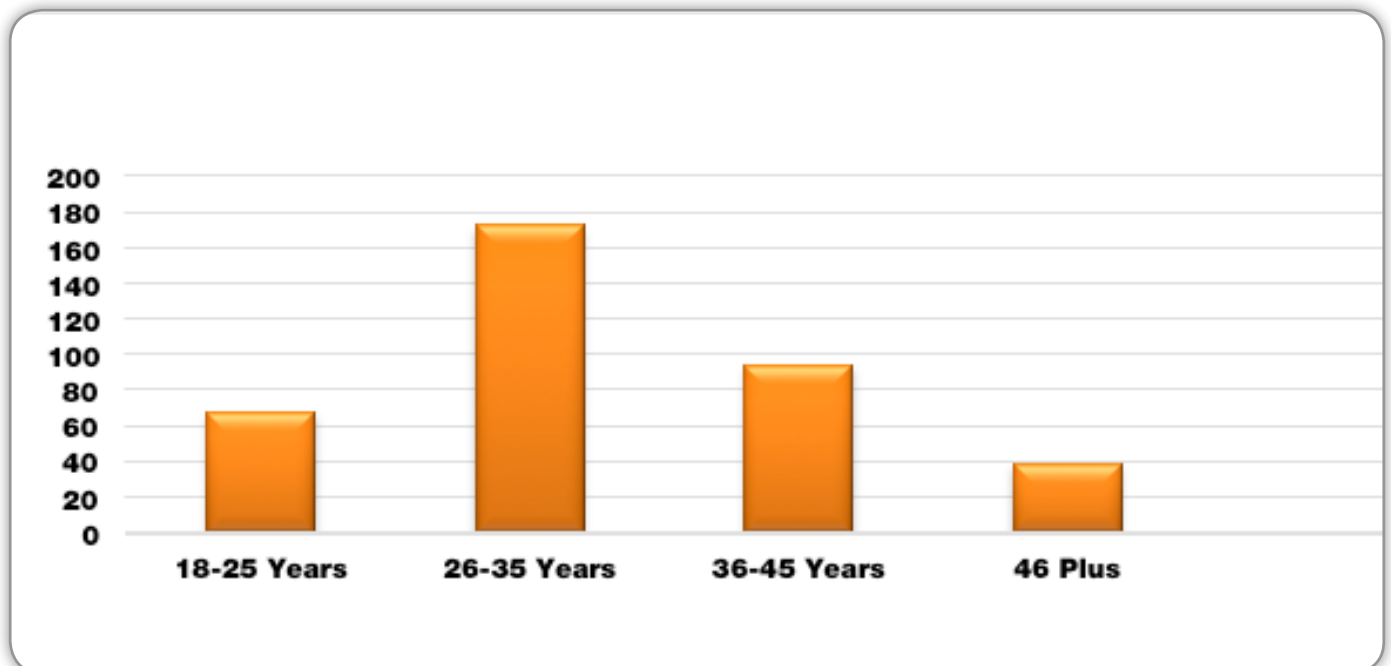


Figure 3: Age demographic of respondents



The majority of the respondents had completed secondary school and the least had completed the Zimbabwe Junior Certificate. This could generally be explained by the basis that the majority of people in Zimbabwe complete their ordinary levels which is form 4 (secondary level). The participation of fewer persons with higher educational levels can be generally be attributed to the assumption that they have a higher income and hence they can engage legal practitioners to handle their matters or in other instances they utilize alternative dispute resolution mechanisms. The levels of education also gave an insight into the generalized expected ability to comprehend, use and follow court proceedings particularly without help. Generally, the test of the effectiveness of the justice delivery system should lie in its user-friendliness particularly by the less sophisticated.

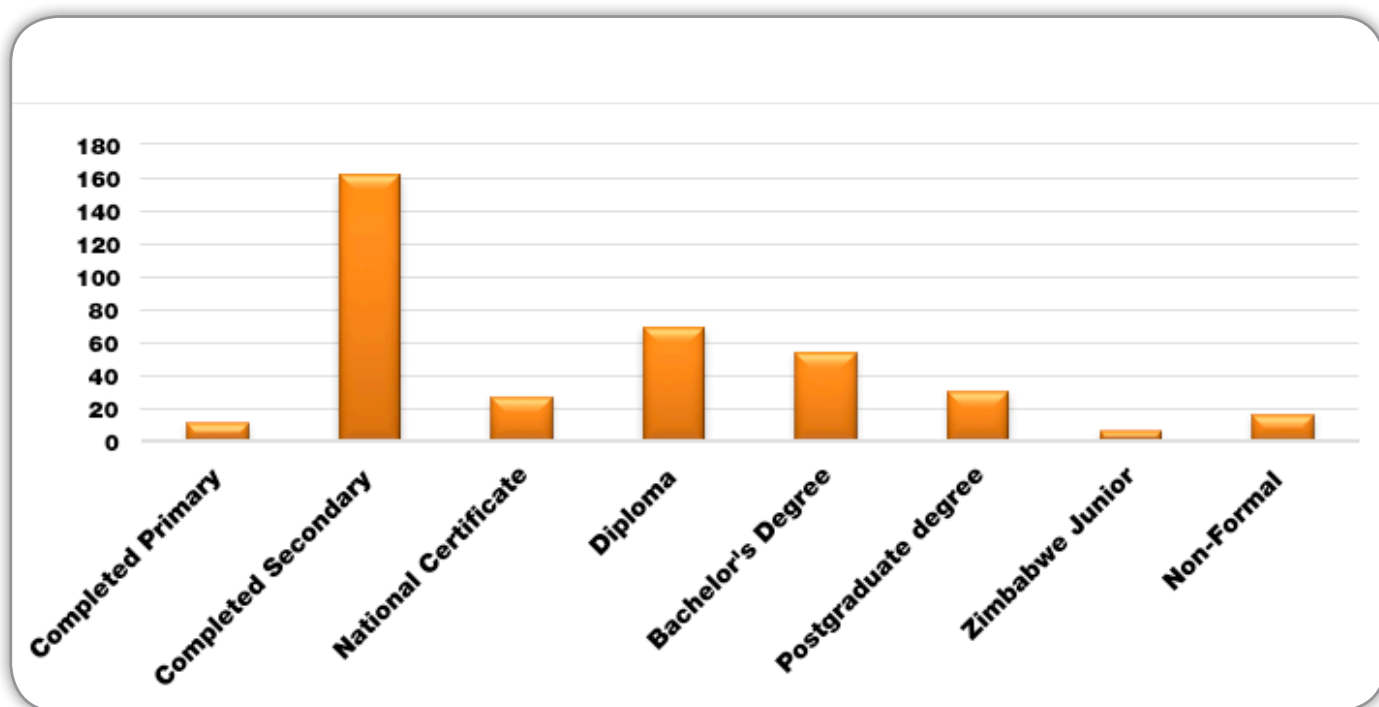


Figure 4: Educational levels of respondents

## 4.2 Perceptions of the primary respondents (litigants)

Public perceptions may be unreliable and may reflect an exaggerated picture, blown out of proportion to the real problems but such perceptions should not be ignored.<sup>15</sup> Even if the public wrongly believes that the judicial sector is corrupt, the reasons for that mistaken belief and what contributes to such negative perceptions, need to be identified and remedied, since the real source of judicial power is the public recognition of the moral authority and integrity of the judiciary.<sup>16</sup>

Public confidence is a crucial element in fostering and maintaining judicial integrity and transparency hence the public views around the satisfaction or dissatisfaction of the court

<sup>15</sup> The United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11

<sup>16</sup> *ibid*



users is very crucial. Perceptions however can be influenced by various factors, including lack of adequate and correct information on the function of the system, personal experiences with the systems, inordinate delays, and fraternisation of stakeholders (particularly magistrates and lawyers). However, it should be noted that in some instances perceptions of corrupt practices within the judiciary were largely emanating from a generalized feeling that all public servants are corrupt and inefficient. The limitation with public perception could be that actual experiences may not always be truthfully reported thus for example in the case of corruption, respondents may not feel comfortable admitting openly that they once bribed a judicial officer or a member of the court staff. Despite the foregoing, these views are crucial as they influence policy recommendations.

In this survey, substantial differences were noted regarding the experiences and perceptions of participants which could have also been influenced by the varying socio-economic and demographic characteristics. In particular, the indigent, both in terms of monetary resources and educational background, as well as cultural minorities, tended to have worst experiences with the court system and subsequently negative perceptions of the judicial system. Both experiences and observations are highly relevant for the purpose of gaining a deeper insight into the levels of justice delivery, as well as the linkages between causes and consequences.

#### 4.2.1 Perceptions of primary respondents regarding:

##### a) The general status of judicial system

Respondents were asked their perceptions regarding the general status of the judicial system.

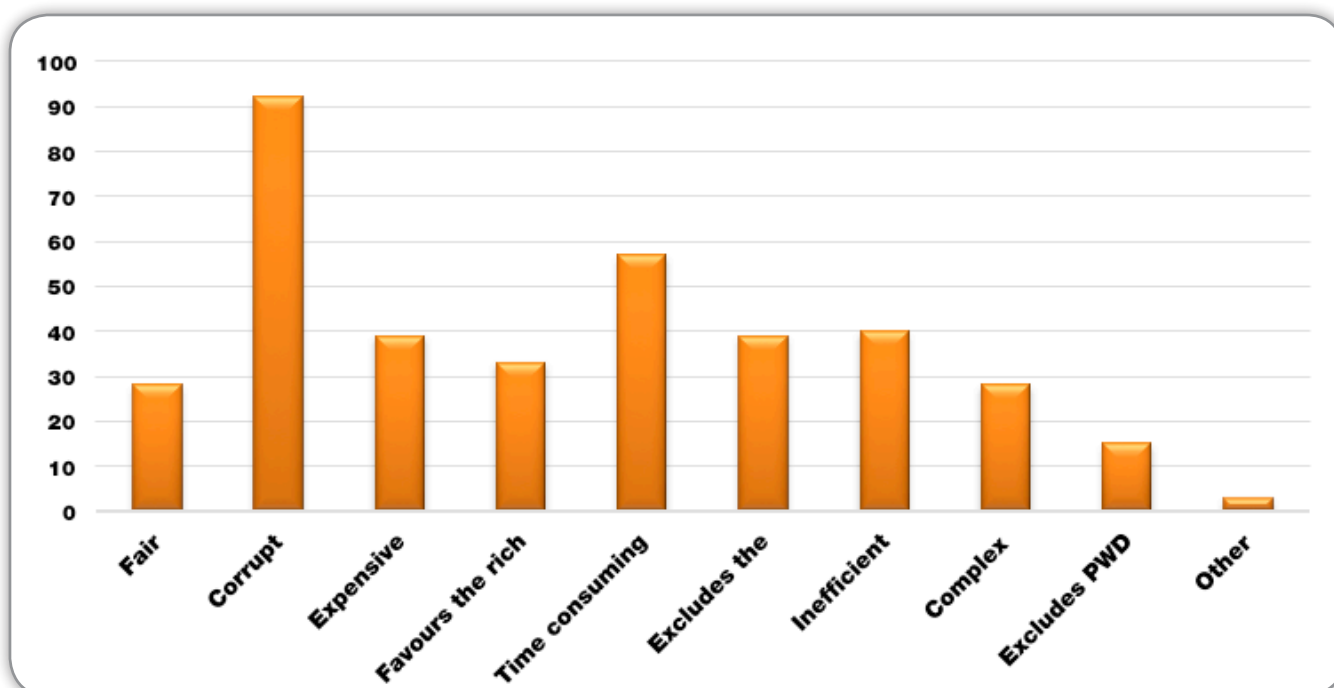


Figure 5: Perceptions of respondents regarding the judicial system



According to the responses given only 7 per cent of the primary respondents thought that the judicial system is fair. This suggests that the system may be generally unfair as perceived by these respondents thus deviating from the expected mandate of the judiciary to handle matters in a fair and equitable manner and also without outside influence. Most respondents (25 per cent) were of the view that the judiciary is corrupt. Such corruption was reported to be more rampant and unchecked in the magistrates' courts. It was further indicated that there was little or no real 'political will' or capability to handle cases of corruption. Sweeping averments were made that corruption was also at the instance of political interference in influencing the decisions of the courts. Such incidents could not be established neither could they be ruled out. Thus the study noted that political interference with civil proceedings is very minimal.

There were also assertions of lack of efficiency and probity on the part of some judicial officers. This was said to be evidenced by levels unpreparedness exhibited by some magistrates resulting in several postponements of matters and delays in the finalization of matters. It also emerged that the processes need to improve so that people are served timeously and expeditiously in order cut costs related to litigation and reduce opportunities for corruption to take place (15 percent stated that the judicial processes take time). It was noted that postponements

by and in some instances the non-availability of the opposing lawyer also resulted in the matters taking long to be finalised. Litigants were however, less concerned about the period within which the matter was finalised provided it is done within the guidelines. What was of more concern was the number of times one had to come to the courthouse. The respondents indicated that more often than not they could not comprehend the reasons for the postponements. This proved very costly for most court users.

*“ The matter may be resolved in a shorter period yet within that period, one would have made several trips to the courthouse. Transport is expensive and you end up choosing not to bother with court processes because you lose twice, the expenses to come to court end up being commensurate with your claim (Court user, Harare) ”*

*“ In the courtroom you are advised that the court will sit at 8 o'clock in the morning. However in practice, the court hardly starts at that time. No one explains the reason for the delay. Sometimes you are then called into court later in the day to be advised that the matter is being postponed, perhaps because the lawyer of the other party so requested. This is unfair as you are not allowed to object to the postponement. It seems the process is rushed, biased and lawyers are listened to more (Court user, Bulawayo) ”*



In such cases the majority of the respondents were not aware of what action to take to have their matters finalised within a “reasonable time frame”, neither were they able to lodge any complaints. The failure to lodge complaints was ascribed to lack of knowledge. A small number that tried to look for such information on the JSC website indicated that it was not useful. Some respondents acknowledged that they had made desperate complaints to other offices such as the Law Society of Zimbabwe, the Office of the President and Cabinet or Office of the First Lady, which offices did not help them either because it is not within their mandates.

The respondents recommended that the court processes should be more clear, transparent and user friendly. Most respondents advocated for clear minimum time frames within a matter should be finalised. Some further suggested the need for each Court to have a Customer liaison office that receives complaints on the quality of services rendered and the manner in which such service is rendered. On the other hand, judicial officers and lawyers noted that more often self-actors, especially first time court users hardly appreciate laid down procedures or timeframes. Thus they end up mixing up processes consequently prolonging the timeframe.

Respondents also stated that the procedures in court must also be made simple for the public to understand each and every stage of the matter and proceedings in order to minimize corruption risks.

*“We don’t know how the court system functions; the laws and procedure are complicated. This is the reason why we end up paying officials for assistance. (Court user, Nkayi)”*

*“In most cases, if you don’t give the judicial officer who is handling your case a bribe, it will take long to have your matter resolved. Sometimes they will intimidate you so that you become vulnerable and scared of losing the case. When such things happen, you will be indirectly forced to give them a kick-back for assistance.... (Court user, Gwanda)”*

There was consensus amongst all FGDs participants that access to justice was also being compromised by inadequate court equipment and resources. Participants were quick to point that, if a court is not sufficiently resourced, there are immediate consequences such as inconvenience to the both the complainant and the defence, as well as the court officials themselves, which resultantly affects service delivery and ultimately compromise access to justice.

*“Some cases need to be attended to with urgency and our courts need to be fully equipped to handle cases expeditiously. Erratic electricity supply and poor office equipment (computers, printers,) have paved way for officials to demand money from court users to expedite the process. This has disadvantaged the most marginalised litigants who cannot afford to pay the bribes, especially the elderly and women. (Court user, Harare).”*



## b) Respondents satisfaction with the court system

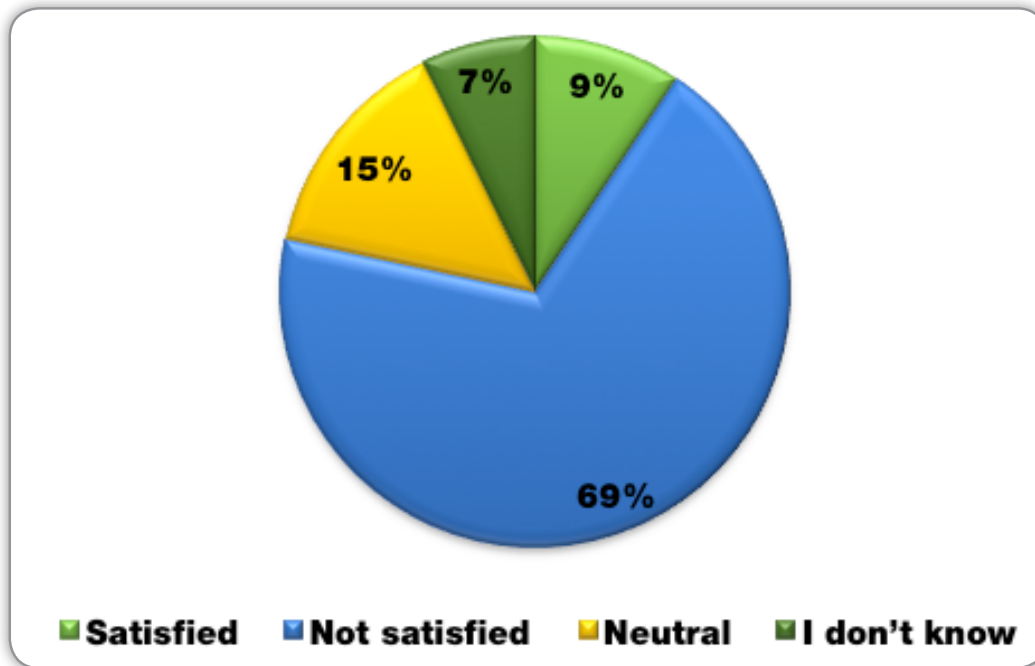


Figure 6: Respondents satisfaction with the court system

69 percent of the interviewed primary respondents indicated that they were not satisfied with the court system, 9 percent were satisfied, while the rest were indifferent and cared about the finalisation of their matters only. The reasons for dissatisfaction varied. However the main one was unfair rulings. The study was cognisant of the fact that fairness is a subjective concept, and hence does not serve as an efficient indicator with regards to the integrity and transparency of the judicial system. Other reasons for non-satisfaction included inordinate rulings and biased processes. The court system was described to be biased against the poor and uneducated self-actor. This therefore suggested that the concept of access to justice to court users is relative.

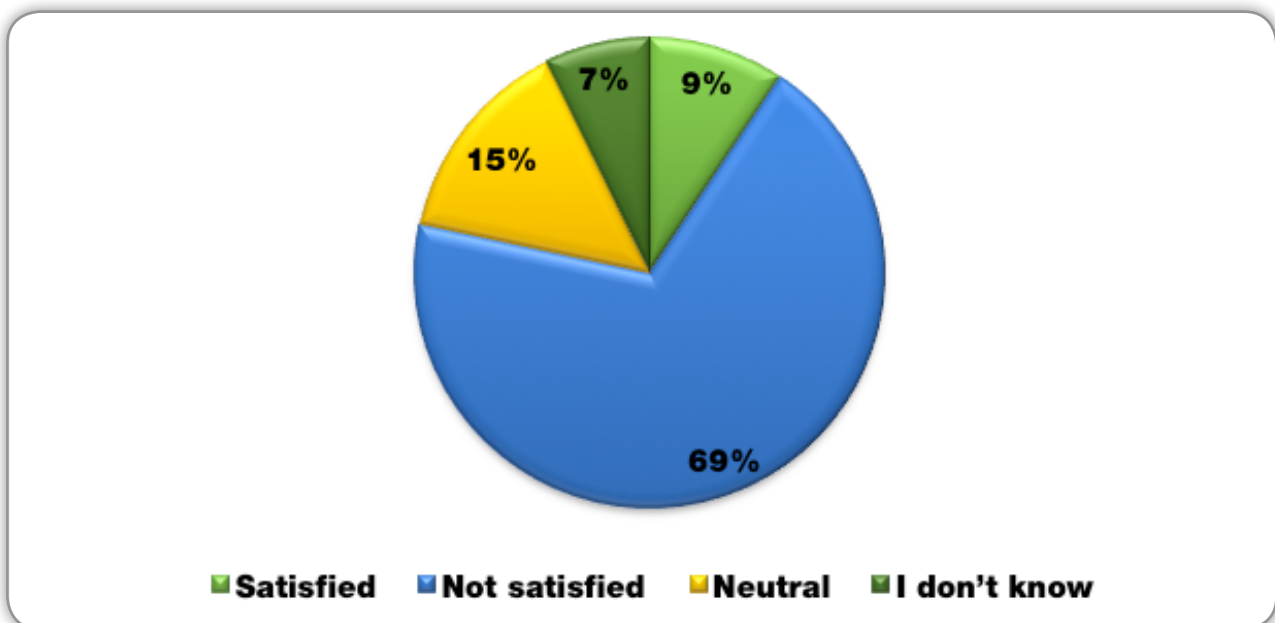


Figure 7: Reasons for not being satisfied



### c) Barriers blocking access to justice

Respondents were also asked to list what they viewed as the main barriers affecting access to justice at the magistrates' courts:

- Fees directly related to litigation, including Court filing fees, file copying fees, transcript fees;
- Communication barriers, including where language spoken, read and understood by individual with legal problems is not language in which information or services are made available;
- Inaccessible legal information, whether due to language and literacy or medium of delivery;
- Too many processes such that an individual loses interest or feels defeated
- Complex processes for simple matters;
- Unclear instructions to complete documents or undertake processes;
- A gatekeeper mentality among court officials, who view their role as restricting rather than facilitating access;
- Slow response of legal and court systems to technological advances that could enhance access to justice;
- Misapprehensions and misconceptions about how the legal system works and what kinds of remedies and outcomes are achievable;
- Lack of motivation or lost motivation on the part of court officials to execute duties diligently;
- Over-burdened legal systems not adequately resourced in terms of staff, technology or facilities;
- Over-reliance on the non-profit sector to provide legal aid;
- Legal fees – both in terms of their unaffordability and their uncertainty and
- Rampant cases of corruption which go unpunished.

Figure 8 below summaries the 4 most prevalent barriers to accessing justice at the magistrates' courts as stated by the respondents.

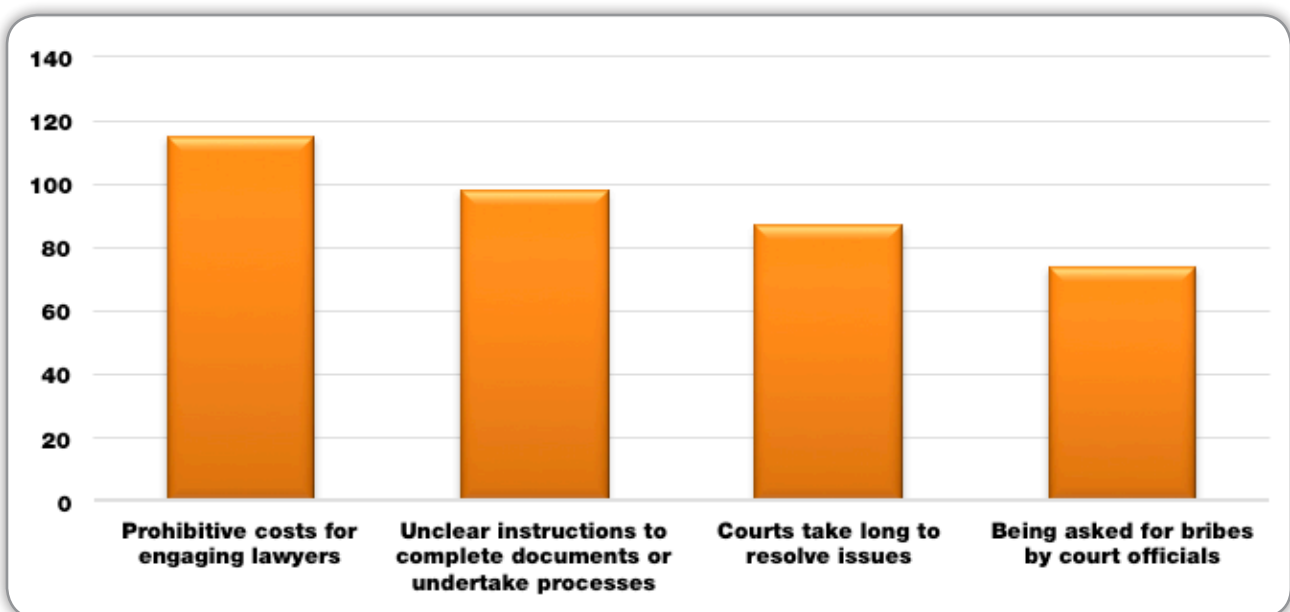


Figure 8: Barriers to accessing justice at the magistrates' court





To sum up the above, it should be noted that the lack of accessibility to the courts as a result of the barriers mentioned above, inevitably affects the trust and confidence of the people in the ability of the judiciary to assume its institutional role as an embodiment of integrity and justice. According to UNODC (2006) analysing the transparency and integrity of the judiciary addresses the issue of accessibility. Accessibility encompasses issues such as general affordability of the justice system, the complexity of the procedures, whether the costs in terms of court or lawyer fees are too expensive. Thus the inaccessibility of courts is not confined to physical inaccessibility, but should extend to its user friendliness, that is, can any ordinary man effectively use the court.

It was noted from the discussions with the respondents from the survey and participants from the FGDs that costs of legal fees were very exclusionary, defeating the objective of access of to justice, which is inclusive in nature. The litigants indicated that the clerks of court are of little help when it comes to assisting them to complete the required forms and usually refer them to various places outside the court area where there are bogus lawyers that purport to assist litigants. However, in most instances litigants end up being swindled of their money and at times losing their matters in court because of ill advice.

Respondents commended organisations such as the Legal Resources Foundation (LRF), Women in Law in Southern Africa (WILSA), Zimbabwe Women Lawyers Association (ZWLA), and Legal Aid Directorate among others for setting help desks at the courts. They stated that the availability of legal help desks played an important role in easing the aspect

of unaffordability of legal representation. However, in some respondents complained that such services are only availed for a short period of time in a day and most of the time litigants wait for long periods before they can be assisted.

### 4.3 Secondary respondents

Secondary respondents mainly comprised of magistrates and lawyers. The sample size focused on 30 individuals who are or were employed by the Judicial Service Commission as judicial officers in the targeted Magistrates Courts. Not all respondents were based at the civil court at the time of the survey. With regards to legal practitioners, the sample focused on a total of 43 legal practitioners practicing in Harare, Mutare and Bulawayo. In general, their years of experience as legal practitioners ranged from 5 years to 15 years.

#### 4.3.1 Perceptions of the lawyers

Lawyers were asked to share their perceptions regarding reasonability of judgements, appointments of magistrates, corruption at the Magistrates Courts and accessibility of the courts by the general public.

##### a) Reasonability of judgements

75 percent of the respondents were of the view that the judgments issued at the Magistrates Court are not well reasoned. This was premised on many factors that included allegations of rampant corruption and also that the magistrates work under a lot of pressure and unfavourable conditions. From this aspect it was noted that there are few magistrates as compared to the workload. In addition, other respondents also noted that magistrates are sometimes given a directive by their superiors to pass a particular judgement even where the position



of the law, the evidence and the facts do not support such a judgment. This was, however, not a real issue in the civil court as the disputes rarely involved the state.

### **b) Appointments of magistrates**

The legal practitioners indicated that they are aware of the process of the appointment of magistrates in Zimbabwe. However some pointed out that the process is not transparent and can be improved by involving the LSZ both on the appointment and also on promotion of magistrates. The participating legal practitioners also acknowledged that magistrates are trained judicial officers who are qualified to execute their duties diligently but they expressed concern over the fact that magistrates often work under directives from superiors, and because of fear of victimization hence they sometimes fail to handle matters appropriately due to fear of victimisation. It was further recommended that in order to improve the efficiency of magistrates, the LSZ should also organise training sessions targeted magistrates just the same way legal practitioners are required to undergo “continued professional development”.

### **c) Corruption at the Magistrates Court**

In relation to the existence of corruption in the judicial system and how it affects the decisions of magistrates, lawyers were also asked if they had been involved in a matter where they suspected that the other party had corruptly influenced the decision of the magistrate. The following is an outline of their feedback:

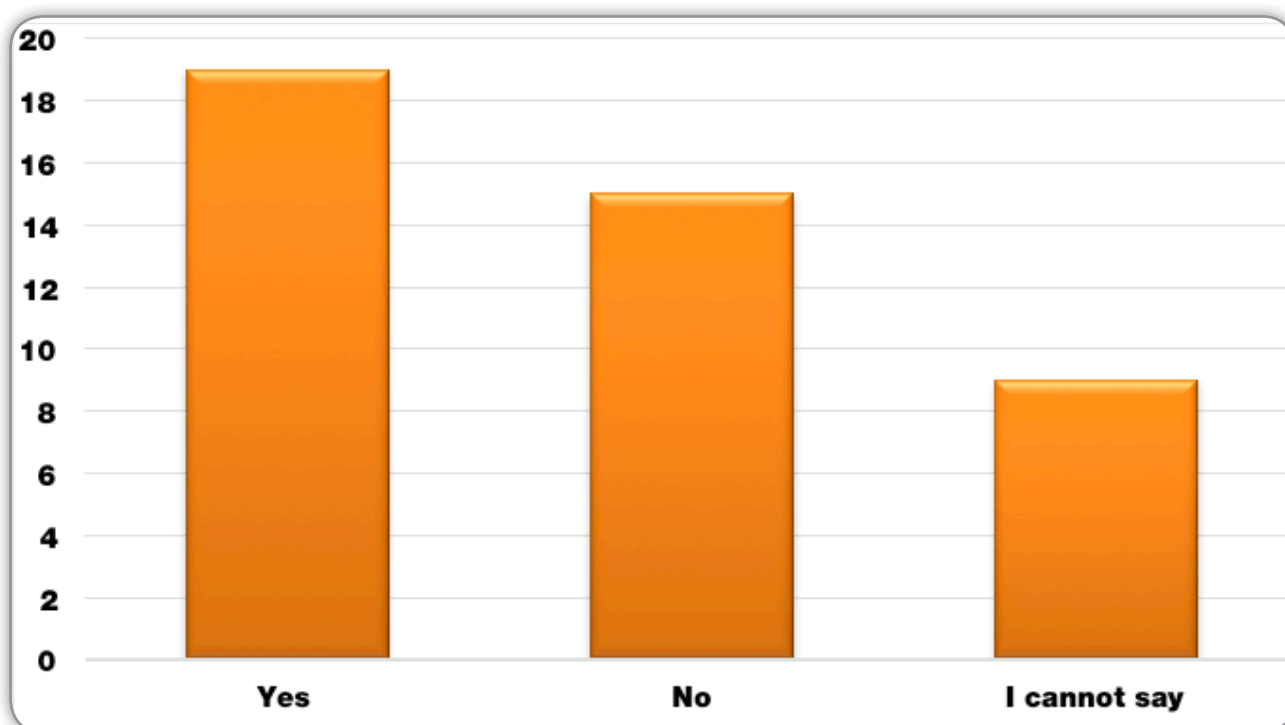


Figure.9: Legal practitioners' responses on being asked if they had been involved in a matter where they suspected that the other party had corruptly influenced the decision of the magistrate.

From the above, it was noted that the majority of the lawyer participants were once involved in matters wherein they reasonably suspected that the other party had corruptly influenced the decision of the magistrate. However, despite the existence of such reasonable suspicion,



the majority of these lawyers also indicated that they did not take any steps to have such corruption investigated by the appropriate authorities. Although the participants did not give any reasons as to why they did not report their suspicions of corruption, several reasons can be proffered to explain such conduct. Firstly, it could be that these lawyers are not certain of the anonymity of the process and thus fear victimization as they will need to continue to appear before the same court throughout their practice. It could also be because the lawyers do not have confidence in the way complaints related to corruption are handled thus perceive any reporting to be a waste of time and resources.

The legal practitioners were further asked the following aspects relating to corruption within the court system:

- whether or not they had ever been asked by their respective clients to facilitate payment of a bribe to a magistrate,
- whether or not any of the support staff at the Magistrates Court ever asked for a favour in order to assist the legal practitioner in some way pertaining to a matter,
- whether or not a magistrate had solicited a bribe from a legal practitioner and
- Lastly whether or not legal practitioners themselves are facilitators of corruption.

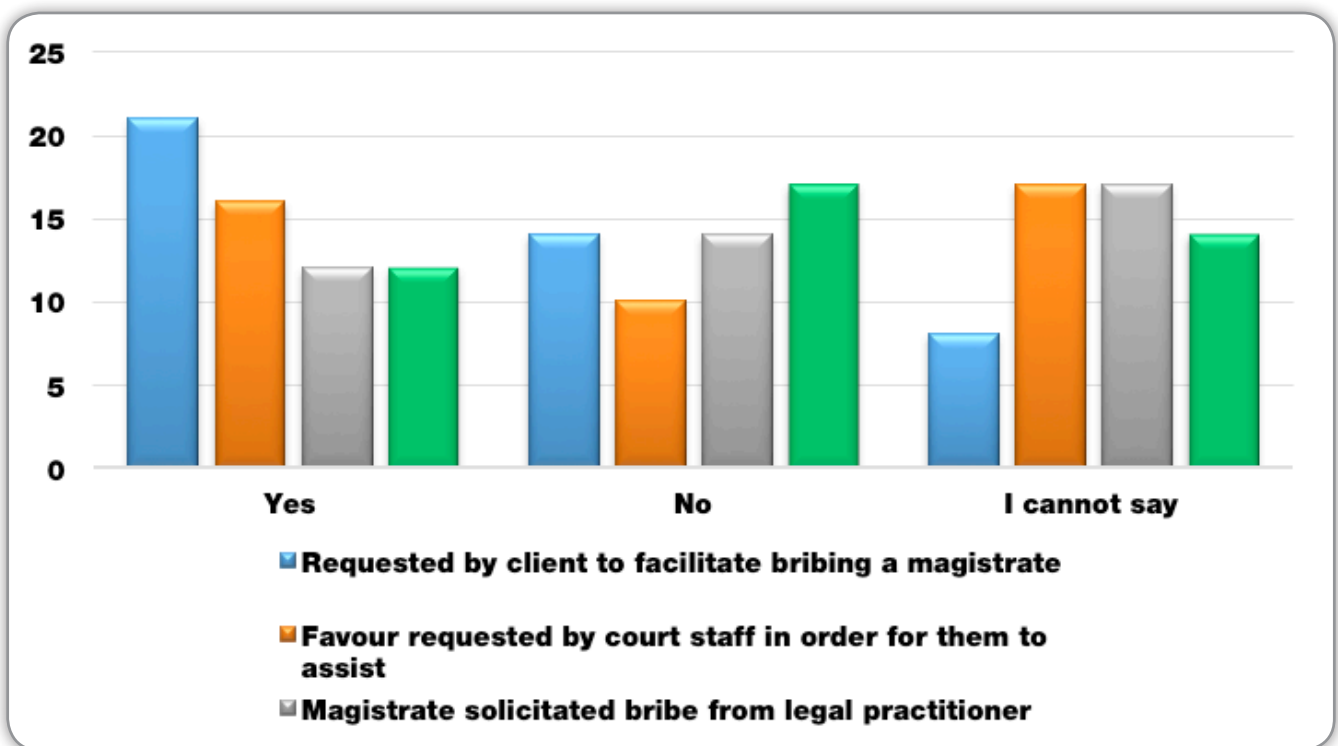


Figure 10: Legal practitioners' responses on various aspects relating to corruption within the court system

An analysis of the feedback revealed that there are several players in the judicial system who contribute to corrupt activities that have the potential of compromising the judicial system's integrity. Such factors include litigants, lawyers, magistrates as well as other members of the court staff. One of the reasons proffered in this survey was that the corruption in the judicial system is a reflection of the overall corruption within every sector in Zimbabwe which has been caused by the economic crisis.



#### **d) Accessibility of courts by general public**

In general, the legal practitioners confirmed that the magistrates' courts are accessible to members of the public. However they were not in favour of the proposition that the magistrates should be more accessible to the general public in order to promote transparency. Accessibility of the magistrates by the general public was viewed as an exercise that can be utilized as an avenue to promote corrupt activities by both the litigants and the magistrates themselves.

In conclusion, the insights and perceptions by the legal practitioners revealed that both the litigants and legal practitioners have lost confidence in the judicial system and the existence justice thus they feel the need to bribe judicial officers in order to get favourable judgments. The requests for favours, payments or rewards of any sorts by magistrates and other court staff can also be attributed to inadequate remuneration. It is therefore important that the salaries and benefits of judicial officers and court personnel be revised so that they can be cushioned against inflation and the increased cost of living. There is also a need to improve the effectiveness of the disciplinary measures which can act as deterrents to any members of staff within the court system who might want to receive bribes or any favours of whatever form from litigants.

#### **4.3.2 Perceptions of magistrates**

Magistrates were similarly asked to share their perceptions on the state of the justice delivery system in Zimbabwe, public confidence in the judiciary, complaints mechanisms and corruption within the judiciary as well as accessibility of the courts by the public.

#### **a) The state of the justice delivery system in Zimbabwe**

The feedback from the magistrates regarding their perception of the country's justice system was quite opposed to the views of the general public as outlined in this study. 72 percent of the magistrates who participated in the survey were of the opinion that the country's justice system is effective, and in verbatim in others referred to it as being '**world class justice**'. The ordinary court users on the other hand were of the view that the justice delivery system was corrupt, it takes time to resolve disputes, it does not function efficiently and it is complex and sophisticated among other views. This dichotomy is however understandable considering that magistrates are some of the key stakeholders in the country's justice system and their work and conduct plays an important role in the promotion of transparency and integrity within the of the justice system in Zimbabwe.

However, it is recommended that the JSC be alive to the fact that the way magistrates handle matters also plays a significant role in influencing the general public's and or court user's perception of the justice system. In that regard, there is need for an intentional introspect by the magistrates in particular and the JSC as a whole in general so as to ensure that the public can perceive the system to be efficient and towards world class. Specific focus should be paid to areas such as appointments and discharge of magistrates, the work and conduct of magistrates as well as the complaints handling mechanisms. There was unanimity from the respondents that more resources be availed to judicial officers so that they can execute their tasks diligently.

64 percent of the magistrates who took part in the survey stated that although the system is effective, there is a room and need for



improvement. They highlighted that the appointment processes, transfers and the discharge thereof were often are often biased and not transparent and in most cases done with “so much vindictiveness”.

### **b) Public confidence in the judiciary**

The survey also inquired from the magistrates what they perceived to be the public’s level of confidence in the judiciary (see figure 11 below).

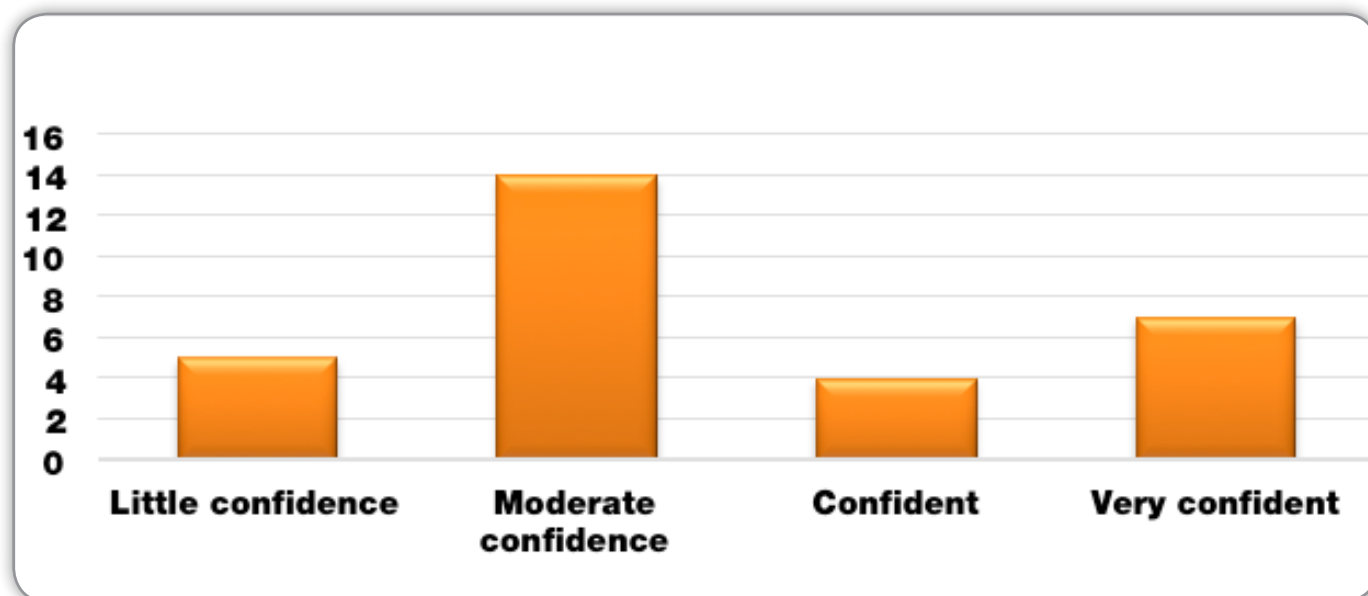


Figure 11: Perceptions of magistrates regarding the public’s level of confidence in the judiciary

Ironically, despite the majority of the magistrates previously highlighting that they considered the justice system as efficient (72 percent), only 37 percent of the interviewed magistrates stated that they were of the opinion that the general public had confidence in the judiciary. Several measures were proposed to restore or strengthen the public’s confidence in the judicial system and this included higher remuneration for judicial officers so as to curb corruption. It was further proposed that organisations that work closely with the justice system such as the LRF, WLSA, ZWLA and Legal Aid Directorate should engage in more outreach programmes offering the legal help desks in the marginalized communities. The respondents also stated that the level of the public’s confidence in the judiciary was also being hampered by lack of knowledge on how the system operates. For example, it was noted that when litigants are not given a favourable judgement or ruling over their matter, they automatically think that the magistrate was bribed. As a proposal to address this issue, the respondents suggested that the aforementioned organizations should also educate the public on how the court system works , including advising the general public about mechanisms for appeal and review if a litigant is not satisfied with the outcome of their matter.

### **c) Complaint mechanism**

The survey also did an analysis of the mechanisms that are in place for the reporting and curbing of corruption at the courts and also whether or not the JSC has effective mechanisms to combat corruption. From the feedback received, 60 percent of magistrates confirmed that



there is in place a mechanism/system that allows alleged corruption to be reported by any person with evidence of its existence. 12 percent reported that there is no such mechanism whilst 28 percent were indifferent. A similar pattern was also noted on the effectiveness of the JSC’s mechanism to combat corruption. This therefore calls for a clear strategy by the JSC on how corruption can be reported and curbed within the courts and all actors within the justice system should be made aware of the efforts that have been made to address corruption within the justice system. The complaints mechanism was perceived to be biased against judicial officers as it operated within an invisible premise that they must prove their innocence. It was suggested that an independent investigating mechanism must be triggered by the complaints which allows complaints to be resolved without necessarily invoking disciplinary procedures at the same time. With regards to complaints received against members of the judiciary, some of the respondents were of the view that the high volumes of complaints received is an indicator that the public has confidence in the complaints mechanism. Whilst this could be a positive indicator relating to the complaints mechanism, it can also be used as an indicator to question the integrity of the system and the work and conduct of the court personnel.

#### d) Corruption within the judiciary

70 percent of the respondent magistrates stated that they had never been offered any bribe, payment or reward for services by a litigant or legal practitioner (probably for fear of being purged). 17 percent chose not to disclose whilst 13 percent confirmed that such offers had been made (they chose not disclose if they had accepted the bribes or not). In relation to the role that legal practitioners play in facilitating corruption, 63 percent highlighted that they were not aware of the contribution of lawyers in promoting corruption in the judicial sector. It was however noted that the physical structure of the courts plays a role in promoting judicial corruption as it is a hub for bogus lawyers and there is no mechanism put in place to screen people who can access the magistrates’ office. It was said some litigants visit magistrates’ offices without passing through the reception or without having been authorized to do so.

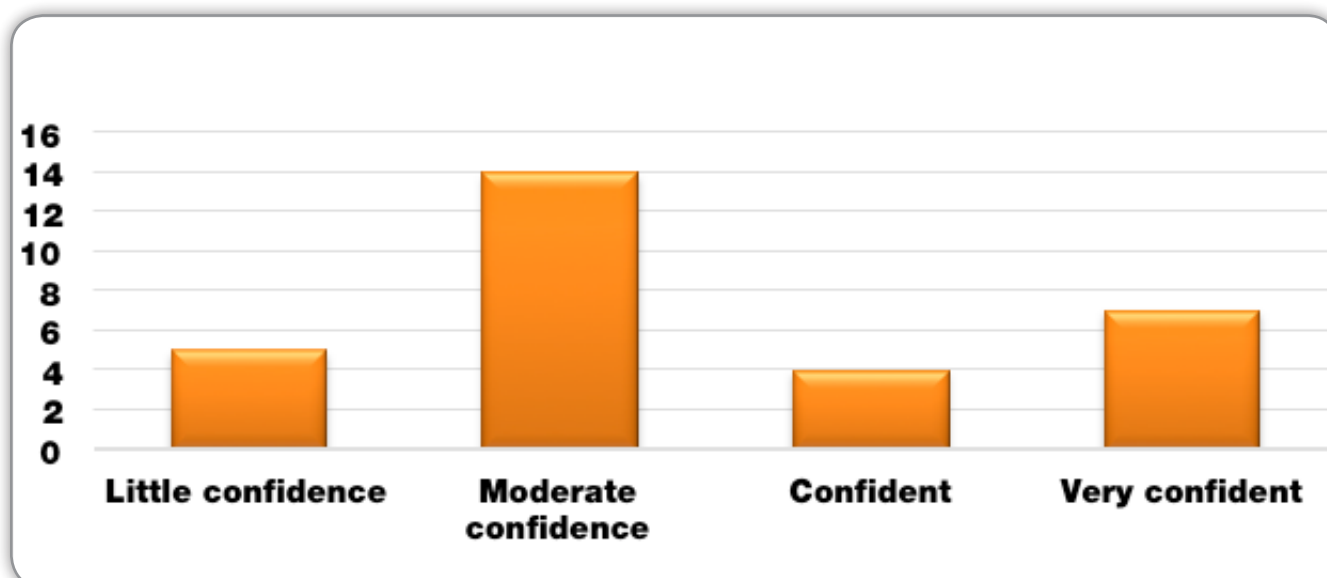


Figure 12: Magistrates response to whether they had ever been offered a bribe/reward or payment by a litigant or legal practitioner



### **e) Accessibility of the courts by the public**

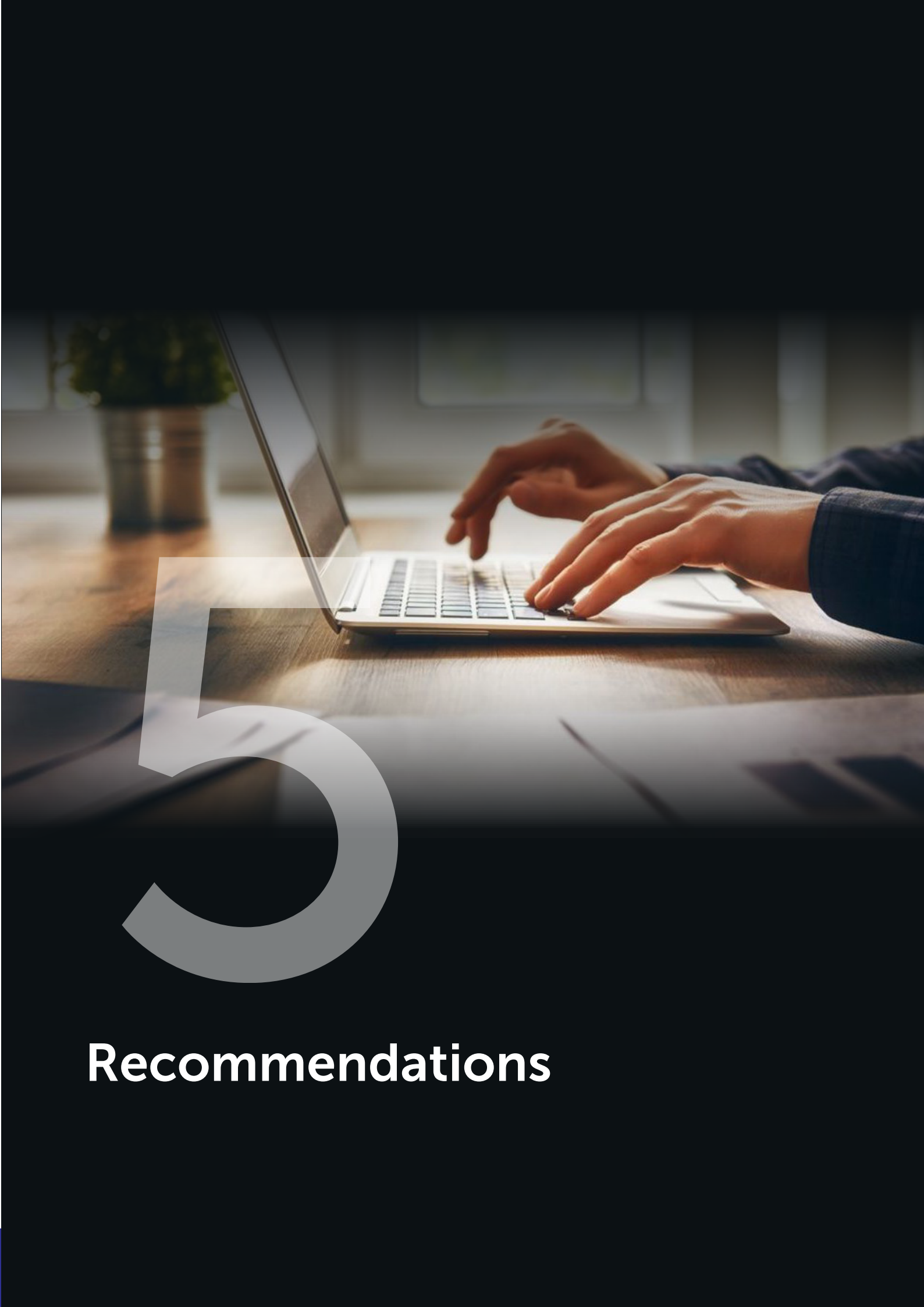
Judicial officers who participated in the survey noted that the Magistrates Courts are somewhat accessible based on location. However, with regards to the Harare Magistrates Courts (civil division), respondents cited that the fact that the court is situated amongst several and various other government offices sometimes confuses litigants especially those who are based outside Harare and those who will be approaching the court for the first time. Another factor cited as hindering access to the courts by the litigants centred on transport costs for litigants who institute proceedings as they cannot afford to be constantly travelling to attend the proceedings. This has therefore resulted in several cases being dismissed on default of appearance by the litigants and in other cases some defendants also being prejudiced as judgements against them are also entered in their absence.

In addition, other magistrates also noted that some litigants have challenges in drafting legal papers and it is commendable that there is a legal aid office at the court to address that challenge although more effort should be put in ensuring that the public is aware of the existence of such service and where it can be accessed. The legal aid office should also be adequately staffed to ensure that there is someone to attend to the litigants throughout the day instead of only a few hours. This means that there is a need to also separately assess the quality of services offered by the legal aid clinics and map out solutions for their improvement.

As a recommendation, it is important that matters should be heard and decided

on expeditiously so that litigants are not constrained financially by incurring transport costs to attend court proceedings. The magistrates should also ensure that matters are not unreasonably and frequently postponed. The judicial Service Commission should also make deliberate efforts to ensure that the public is aware of the location of the courts within their jurisdiction and more courts should be constructed to improve the accessibility of the justice system for both individuals and communities.





5

**Recommendations**



# 5 Recommendations

The following recommendations reflect best practice in preventing corruption in judicial systems and encapsulate the conclusions drawn from this study (literature review of corruption in the justice sector in Zimbabwe and responses obtained by users of the Magistrates Court). The recommendations complement a number of international standards on judicial integrity and independence, as well as various monitoring and reporting models that have been developed by NGOs and governmental entities. They highlight a gap in the international legal framework on judicial accountability mechanisms which can be useful to Zimbabwe.

## 5.1.1 Appointments of judicial personnel such as judges, senior magistrates and prosecutor general

- a) **Independent appointments body:** An objective and transparent process for the appointment of judicial personnel ensures that only the highest quality candidates are selected, and that they do not feel indebted to the particular politician or senior judicial officer who appointed them. At the heart of the process is an appointing body acting independently of the executive and the legislature, whose members have been appointed in an objective and transparent process. Representatives from the executive and legislative branches should not form a majority on the appointments body.
- b) **Merit-based judicial appointments:** The election criteria should be clear and well

publicised, allowing candidates, selectors and others to have a clear understanding of where the bar for selection lies; candidates should be required to demonstrate a record of competence and integrity.

- c) **Civil society participation:** Civil society groups, including professional associations linked to judicial activities, should be consulted on the merits of candidates.

## 5.1.2 Terms and Conditions

- a) **Salaries:** Salaries must be commensurate with the judicial officer's position, experience, performance and professional development for the entirety of their tenure; fair pensions should be provided on retirement.
- b) **Judicial protections** Laws should safeguard judicial salaries and working conditions so that they cannot be manipulated by the executive or by the legislature punishing independent judicial officers and/or rewarding those who rule in favour of government.
- c) **Judicial transfers:** There is need for an objective criteria that determines the assignment of judicial officers to particular court locations to ensure that independent or non-corrupted judicial officers are not punished by being dispatched to remote jurisdictions. Further, judicial officers should not be assigned to a court in an area where they have close ties or loyalties with local politicians.



- d) **Case assignment and judicial management:** Case assignment that is based on clear and objective criteria, administered by judicial officers and regularly assessed protects against the allocation of cases to pro-government or pro-business judicial officers.
- e) **Access to information and training:** Judicial officers must have easy access to legislation, cases and court procedures, and receive initial training prior to or upon appointment, as well as continuous professional development training throughout their careers. This includes training in legal analysis, the explanation of decisions, judgement writing and case management; as well as ethical and anti-corruption training.
- f) **Security of tenure for judges:** Security of tenure for judges should be guaranteed for about 10 years, not subject to renewal, since judges tend to tailor their judgements and conduct towards the end of the term in anticipation of renewal.

### 5.1.3 Accountability and discipline

- a) **Immunity:** Limited immunity for actions relating to judicial duties allows judicial officers to make decisions free from fear of civil suit; however, such immunity should not apply in corruption or other criminal cases.
- b) **Disciplinary procedures:** Disciplinary rules ensure that the judiciary carries out initial rigorous investigation of all allegations. An independent body must investigate complaints against judicial officers and give reasons for its decisions.
- c) **Transparent and fair removal process:** Removal mechanisms for judicial officers

must be clear, transparent and fair, and reasons need to be given for decisions. If there is a finding of corruption, a judicial officer must be liable to prosecution.

- d) **Whistleblower policy:** A confidential and rigorous formal complaints procedure is vital so that lawyers, court users, prosecutors, police, media and civil society can report suspected or actual breaches of the code of conduct, or corruption by judicial officers, court administrators or lawyers.

### 5.1.4 Transparency

- a) **Transparent organisation:** The judiciary must publish annual reports of its activities and spending, and provide the public with reliable information about its governance and organisation.
- b) **Transparent work:** The public needs reliable access to information pertaining to laws, proposed changes in legislation, court procedures, judgements, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments.
- c) **Transparent prosecution service:** The prosecution must conduct judicial proceedings in public (with limited exceptions, for example concerning children); publish reasons for decisions; and produce publicly accessible prosecution guidelines to direct and assist decision makers during the conduct of prosecutions.
- d) **Judicial asset disclosure:** Judicial officers should make periodic asset disclosures, especially where other public officials are required to do so.



**e) Judicial conflicts of interest disclosure:**

Judicial officers must declare conflicts of interest as soon as they become apparent and disqualify themselves when they are (or might appear to be) biased or prejudiced towards a party to a case; when they have previously served as lawyers or material witnesses in the case; or if they have an economic interest in the outcome.

**f) Widely publicised due process rights:**

Formal judicial institutional mechanisms ensure that parties using the courts are legally advised on the nature, scale and scope of their rights and procedures before, during and after court proceedings.

**g) Freedom of expression:** Journalists must be able to comment fairly on legal proceedings and report suspected or actual corruption or bias. Laws that criminalise defamation or give judicial officers discretion to award crippling compensation in libel cases inhibit the media from investigating and reporting suspected corruption, and should be reformed.

**h) Quality of commentary:** Journalists and editors should be better trained in reporting what happens in courts and in presenting legal issues to the general public in an understandable form. Academics should be encouraged to comment on court judgements in legal journals, if not in the media.

**i) Civil society engagement, research, monitoring and reporting:** Civil society organisations can contribute to understanding the issues related to judicial

corruption by monitoring the incidence of corruption, as well as potential indicators of corruption, such as delays and the quality of decisions.

**j) Donor integrity and transparency:**

Judicial reform programmes should address the problem of judicial corruption. Donors should share knowledge of diagnostics, evaluation of court processes and efficiency; and engage openly with partner countries.

**k) Investment in e-governance systems for administrative purposes**

such as the installation of CCTV, digital systems and adequate electricity back up services within the paper trail of the court proceedings and paperwork. Technology should be a key tool that Government can harness to close all corruption opportunities.

## 5.2 Special Recommendations

### 5.2.1 Political

a) The President's right to appoint to office, the Judge President of the High Court, the Deputy Chief Justice and the Chief Justice of Zimbabwe should be checked by the the Judicial Services Commission (JSC). The GoZ should respect the decision by the Constitutional Court of Zimbabwe to invalidate the enactment of Constitutional Amendment Bill (No. 1) of 2017 in *Gonese and Anor v Parliament of Zimbabwe and 4 Ors*. This will restore important Constitutional guarantees for the independence of the judiciary in Zimbabwe.



## 5.2.2 Economic

- a) The legislature should retain power to allocate funds to
- b) The judiciary, these funds however should not form part of the allocation to the Ministry of Justice, or indeed any other ministry. A department that is accountable to the JSC should be established to administer funds allocated to the judiciary.
- c) Timely review of judges, magistrates, prosecutors and court staff salaries in line with the inflation rate and the standards of living in the country.

## 5.2.3 Social

- a) Training to assist re-commitment to professional and impartial discharge of duties; conduct an independent and comprehensive audit of prosecutors, focusing on ethical conduct and respect for due process.

## 5.2.4 Legal

- a) Realignment of the national legislation with the Constitution to ensure the provisions in the new constitution that guarantees judicial independence are put into immediate practice.
- b) Realignment of the national legislation with the Constitution to remove legal loopholes
- c) Enforce asset declaration regulations to judges, magistrates, prosecutors and support staff of the courts.
- d) The JSC should adopt a local framework for judicial performance assessment.



## 6 Conclusion

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. Corruption in the justice sector - whether actual or perceived poses a real threat to the rule of law. For citizen's to have confidence in the justice system, judicial officers must have irreproachable behaviour and exemplary professional conduct. First impressions last and it is these impressions that have been the subject of this research. The questions being; what is wrong with the current impression of the justice sector in Zimbabwe and what can we do to improve it?

In *Singh v Basu*, India's Supreme Court noted that;

*“Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system.”<sup>17</sup>*

There can be little doubt that the JSC is alive to many of these concerns and that various efforts are ongoing to address them. A study such as this serves as continuous impetus for these efforts to remain ongoing and relevant to these challenges of integrity and transparency within the system.

<sup>17</sup> (2005) 1 SCC 201



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