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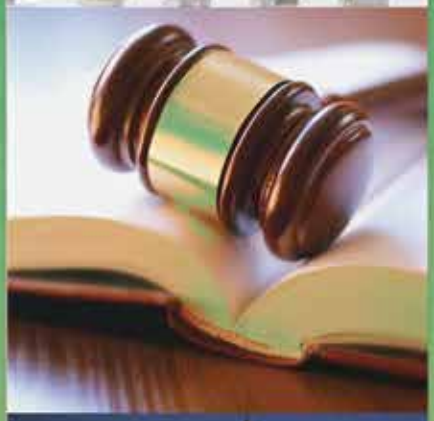
ISIDIMA – MAGISTRATES COURT USER SURVEY REPORT 2023



WORKING PAPER SERIES

Isidima – Magistrates Court User Survey Report 2023

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Executive Summary

This survey of six courts in two provinces provides some insights on the state of South African courts today, from the perspective of users of the courts. The findings reveal that some of the greatest challenges faced by our courts - how court users are treated - have largely been resolved: in the main, court users are treated with respect, regardless of their race or gender.

The findings reveal that some of the greatest challenges faced by our courts - how court users are treated - have largely been resolved.

In addition, the availability of legal representation and issues of language and interpretation did not emerge as a challenge from the perspectives of court users. This suggest that constitutional guarantees in this regard are largely being met.

A somewhat lesser fraction of court users approved of the outcome of court decisions. Furthermore, the evidence suggests that overall positive views are steadily undermined by unnecessary delays, with more frequent returns to court associated with a switch from positive to negative ratings. These delays are occasioned most commonly by missing dockets and court files, and the unavailability of witnesses, which in turn may be a result of multiple postponements.

A disquieting number of court users said they were aware of sexual harassment and physical assault in the courts. While this may be a reflection of South African society, courts should be places of safety and not places where people experience similar or greater threats than those faced in ordinary society. Some attention to safety around courts, and safeguards within courts, accordingly appears to be required.

Corruption and bribery have the potential to undermine the entire project of justice. The extent to which it is noted by court users is concerning. This in turn is related to

missing dockets and court files, again suggesting an urgent project to bring order and safeguarding to court records. "Making a file disappear" should neither be a possible nor effective means of subverting justice.

Better management of court records, more efficient use of the court day, and courts starting on time, will all likely lead in the long run to a reduction in pressure on the courts while raising the number of finalisations, thus better meeting the unmet demand for justice. This is the task ahead now that other transformation goals appear largely to have been achieved.

1. The Court User Survey

1.1 Geographical representation

The courts are centrally controlled by national government under the framework of national legislation on law, procedure and the courts. For this reason, although the current survey was only carried out in two provinces at three sites in each province, there is no reason to believe the survey results would be different in other parts of the country, although the survey is not technically representative of the whole country and nor was it designed to be.

"The survey is not technically representative of the whole country and nor was it designed to be."

Table 1: *Number of interview per site*

Court	Interviews
Cape Town	298
Gqeberha	298
King Williams Town	75
Mthatha	149
Oudtshoorn	75
Paarl	146

Although 1041 interviews were completed among 'court users' 108 of the interviews were concluded with court employees. As the employees have demographic, social and attitudinal profiles that differ from general members of the public they were excluded from the analysis. The resulting analysis is thus confined to the 933 members of the public.

1.2 Interpreting the court user survey

When interpreting a survey of this nature, it is important to be aware of who is or who is not represented in the survey. The survey can only speak to those people who have come to the courts and who continue to choose to use the courts. A court user survey cannot provide the views of those who decided against pursuing their dispute in court, or those who might fail to return to court after initially coming to court (perhaps risking contempt of court, or a default judgment). The survey also does not include those accused in custody, who would have been in court cells, and therefore not accessible to interviewers.

"The court user survey presents the views of a sample of those who continue to use the courts by choice."

Accordingly, the court user survey presents the views of a sample of those who continue to use the courts by choice, who, it may be theorised, may be more likely to have positive views of the courts at the outset of their interaction.

2. Overall views of the court before and after attending court

Respondents were asked to agree or disagree that they had an overall positive view of the courts, before and after the current time at court. Some 77 percent agreed that they had a positive view *before* the current visit.

By contrast, the most recent Afrobarometer Survey found only 43 percent of the general public saying that they trusted the courts all or most of the time. Although 'trust' is not exactly the same metric, the results do suggest a more positive view among actual court users than among the general public of the courts, as postulated above.

Attending court on the occasion of the interview was however associated with a 5-percentage point drop in respondents' likelihood of being positive, with 72 percent agreeing they had an overall positive view, *after* the court visit.

Whether this change relates to experiences in the court will be explored below.

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3. Experiences in the court related to timeliness

3.1 Correlates of change from positivity to negativity

While it is possible that the drop of 5 percentage points in positivity referred to above may be the result of sample error, when there is a correlation with variables relating to the experiences of court users at court, this becomes less likely.

When checking for correlates of the change in opinion, it emerges that the single strongest determinant of a change in opinion was the number of times the person had been to court. The average number of times that those who remained positive had been to court, was 2.87 times, while those that became negative had been to court an average of 3.75 times.

"The average number of times that those who remained positive had been to court, was 2.87 times, while those that became negative had been to court an average of 3.75 times."

The other main variables associated with a change in opinion, were those who disagreed they got things done in a reasonable time – this correlation was confined to the four courts outside of Cape Town and Umtata. Women in this subgroup were much more likely to change their opinion than men.

Another group who was inclined to change their opinion were those that agreed that they could get things done in a reasonable time, but thought the magistrate did not have all the necessary information to make a decision (irrespective of which court location), which may suggest a need to return to court again in future. Missing dockets or court files were the largest cause of unnecessary delay identified by court users (see below).

"Missing dockets or court files were the largest cause of unnecessary delay identified by court users."

These correlates suggest that the drop in positivity has real drivers and that the best way for the courts to retain

the positive views of court users is to ensure matters are finalised with the fewest possible returns to court and in an efficient manner at court, including ensuring that the necessary documentation for decisions is available and ready at court.

3.2 Number of times to court and number of cases

Respondents were asked how many times they had been in court over the past 12 months. One-third indicated that their current appearance had been the only one. A far greater proportion, 63 percent, indicated that they had been to court more than once in the past year. Over one-third (37 percent) had been to court 3 or more times in the last year.

"Over one-third (37 percent) had been to court 3 or more times in the last year."

Most people came to court these multiple times only in relation to one or two cases. The number of cases people had been to court ranged from 1 to 15; however, 82 percent of respondents had been to court in relation to only one case. Another 10 percent had two cases. Only 8 percent had three or more cases. Accordingly, the number of times to court cannot be accounted for by the number of cases and reflects repeated returns to court on the same case.

Mthatha and King Williams Town respondents had, on average, been to court 2.7 and 2.4 times over the past year. By contrast respondents from Oudtshoorn had been to court an average of 3.7 times in the last year. Those attending to obtain an order had, on average, been to court more often than respondents in other categories (3.8 times). Witnesses had been on average 2.9 times.

3.3 Able to do what needed to be done in a reasonable time

Respondents were, generally, of the opinion that they were able to accomplish what they needed in a reasonable amount of time with 80 percent agreeing with the statement that "I was able to do what was needed in a reasonable time",

"Respondents were, generally, of the opinion that they were able to accomplish what they needed in a reasonable amount of time."

with no statistically significant difference among court user type.

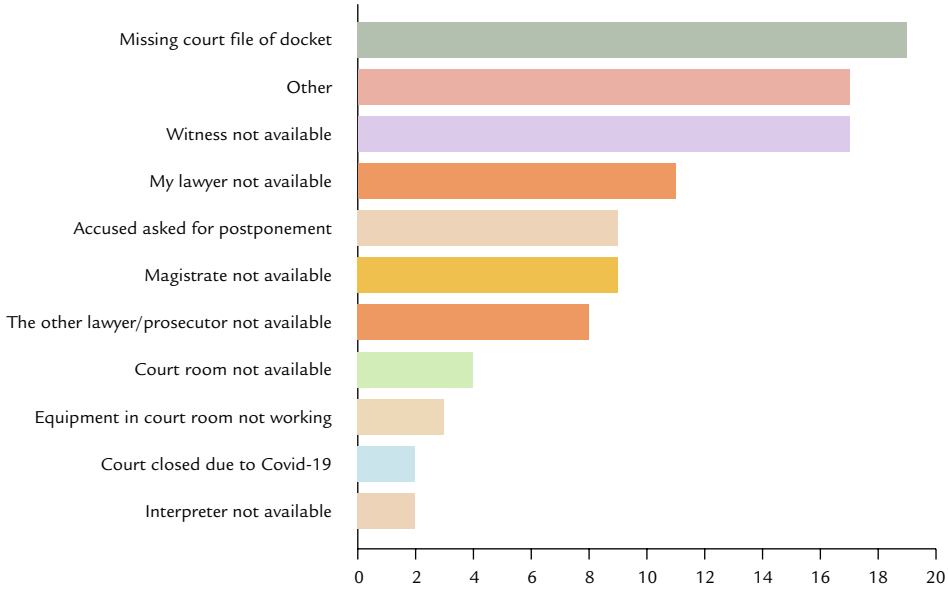
This finding relating to "reasonable time" may however refer to an unexpectedly attenuated process on the day concerned, given that 2 in 5 referred to "unnecessary delay", suggesting that some respondents who said matters were concluded that day in "'reasonable time" nevertheless experienced unnecessary delays. These will be explored in more detail below.

3.4 Unnecessary delays

A significant minority of 39 percent (2 in 5) agreed that that their case had been delayed *unnecessarily*. The sentiment was relatively consistent among respondents regardless of the reason why they were in court. Court delays thus constitute the greatest source of negative sentiment. The main reasons for unnecessary delay were also identified by respondents, with the most common reason being missing dockets or court files (see figure below).

"Court delays thus constitute the greatest source of negative sentiment."

Figure 1: *Causes of unnecessary delay, among those experiencing unnecessary delay*



Indeed, it is of some concern that many of the reasons for delay were in control of the court: missing files, magistrate not available, court room not available together accounting for around one third of the reasons. These are all issues in control of the court or for which the court could plan. Docket or files missing in particular is of grave concern and suggests serious problems with proper storage and safeguarding of court records.

"Docket or files missing in particular is of grave concern and suggests serious problems with proper storage and safeguarding of court records."

In addition, "witness not available", at 17 percent, may relate to witnesses failing to return to court; witnesses, on average, had been the fewest times of any user (2.9 times), which in turn is also a result of previous delays. It may be postulated that a witness may be less tolerant of multiple returns to court than other parties, who have a direct interest in the matter. This suggests there may be a threshold number of postponements for witnesses choosing to return to court. However, it is also possible that witnesses are only called at a later stage in the procedural process, and thus are in court less often. Whatever the reason, their absence, at 17 percent that causes unnecessary delay, suggests the system does not assist or incentivise witnesses to be at court.

It was postulated that long travel distance might make respondents more sensitive to delays and the issue was explored after deriving distances from the court and the respondents' origin. This postulation proved to be incorrect. While 41 percent of respondents who travelled less than 20km felt the delay was unnecessary, only 34 percent of those travelling 20km or more thought the delay unnecessary. This suggests that frustrations with delays are less associated with the level of personal inconvenience occasioned by travelling, than they are with the "legitimacy" of the delay.

It was postulated in turn that perceptions of the legitimacy of the delay depend on the number of delays. To investigate this, the respondents were grouped into two: those that disagreed with the statement that "the case was delayed unnecessarily" and those that agreed with the

"those who felt the case had been delayed unnecessarily had indeed been subject to more frequent returns to court."

statement. Their replies were correlated to the question as to how many times they had been to court in the past 12 months. Those that agreed with the statement had been an average of 4.2 times. Those that disagreed with the statement had only been to court an average of 3.5 times. In other words, those who felt the case had been delayed unnecessarily had indeed been subject to more frequent returns to court.

3.4 Whether court started on time

"Just over a third (34 percent) said that court did not start on time."

Just over a third (34 percent) said that court did not start on time. Witnesses and those in court to obtain a court order (protection order, maintenance order, divorce order) were slightly more likely to say court did not start on time.

4. Views on magistrates

Some 91 percent agreed (and only 7 percent disagreed) with the statement that they were treated with respect by the magistrate, with no statistically significant differences by race, gender or income of respondent observed. This is an excellent result for the magistracy.

However, despite the finding that 91 percent of court users felt *they* were treated with *respect*, almost a quarter (24 percent) of respondents *disagreed* that magistrates treat men and women *equally*. (Although women were slightly *less* likely to hold this view, the gender difference is not statistically significant.)

Interpreting the above two results together suggests that the quarter of respondents observing a gendered difference in treatment by magistrates may not have observed it in relation to themselves, or the gendered difference did not manifest in disrespect.

It was also the case that 15 percent *disagreed* that magistrates treat people equally, irrespective of race. The responses did not vary significantly by the race of the respondent, suggesting that the perception was not related to the race of the respondents themselves.

Some 73 percent agreed (but 14 percent disagreed) that magistrates understood and applied the law correctly; however, more than 1 in 5 (21 percent) of those trying to obtain a court order or access information *disagreed*. It is unclear what drives this higher percentage among this category.

A small but not insignificant proportion (14 percent) of respondents disagreed with the statement that the magistrate listened to "all sides". The data shows that those

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in court to access records or get information (25 percent) were most likely to disagree with the statement.

While 65 percent of all respondents felt magistrates were not influenced by personal feelings, 17 percent felt they were, with this rising to 25 percent among those trying to access court records or get information. Again, it is unclear what drives this higher percentage among this category.

"Some 69 percent of respondents felt their case was handled fairly."

Some 69 percent of respondents felt their case was handled fairly. Conversely 22 percent of respondents thought that the case in question was not handled fairly. A relatively low proportion of those accused of an offence or defendant in a case (16 percent) thought their case was not handled fairly.

5. Treated with respect by court officials

Respondents were asked if they felt that were treated with respect by various court officials. As indicated above only 7 percent felt they were *not* respectfully treated by magistrates. The figures for other officials, from best to worst are: interpreters (6 percent), court clerk (8 percent), their own lawyer (8 percent) prosecutors (9 percent), police (13 percent). There was little variation between respondent by reason they were coming to court. The finding of 8 percent in relation to 'own lawyer' is concerning as only half were represented, and 74 percent of these by Legal Aid lawyers.

"Only 7 percent felt they were not respectfully treated by magistrates."

6. Legal representation

Just over half the respondents (53 percent) said they had legal representation. However, there were massive regional variations with one-quarter (27 percent) of Paarl respondents and three quarters of Oudtshoorn respondents applying in the affirmative. Less than one-in-three Mthatha respondents said they had legal representation.

The question arises whether this trend is related to income. The monthly incomes of 844 households were declared by respondents. When these respondents are separated into two groups (lower/higher income), the disaggregation reveals insignificant differences between the two income groups, suggesting income does not account for legal representation. This is in line with the finding that 74 percent were represented by a Legal Aid lawyer.

Very few respondents gave reasons for not having a lawyer; most indicated it was because it was not necessary. This strongly suggests that income does not drive the lack of representation, but rather the perceived need for a lawyer.

"This strongly suggests that income does not drive the lack of representation, but rather the perceived need for a lawyer."

7. Views on accessibility

7.1 Navigating the court building

The vast majority (78 percent) of respondents found it easy to find out where to go in the court, but those accused of an offence were more likely to have difficulty (29 percent). There were significant regional differences in ease of finding out where to go, with 62 percent of Gqeberha respondents saying it was very easy but only 8 percent of Mthatha respondents saying similarly.

"There were significant regional differences in ease of finding out where to go."

7.2 Ease of understanding proceedings and language

The vast majority (86 percent) said that court proceedings were easy to understand, and even more (92 percent) said they were able to understand the language used, with little difference here among different language users.

"The vast majority (86 percent) said that court proceedings were easy to understand."

8. Safety in the courts

According to Statistics South Africa's 2022/23 GPSJ survey, some 81 percent of people feel very safe or fairly safe walking alone during the day in their home area.

In the court user survey, only 73 percent agreed that they felt safe outside around the court building. This suggests that the area outside courts is less likely to feel safe than a person's own area. This may relate to the fact that courts are often located in busy urban areas.

However, some 86 percent agreed that they felt safe inside the court building – unfortunately some 12 percent (1 in 8) did not feel safe inside the court building, despite security screening and the presence of police officers.

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This feeling of lack of safety by a significant minority may be related to sexual and physical assault experienced or witnessed in the courts.

8.1 Sexual harassment in the courts

According to the GPSJ Survey, the percentage of people experiencing discrimination or harassment on the basis of gender or sex in the last 12 months increased to 1.4 percent in 2021/22, from 0.8 percent in 2018/2019.1 Although the GPSJ survey conflates discrimination and harassment, it suggests a base level of sexual harassment among the general public from which it is possible to make comparisons.

By comparison some 1.9 of all court users said they, or a person they knew, experienced sexual harassment at court. Confining the results to female court users, raises this to 2.7 percent. Given that many court users will be

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1 Page 11 https://www.statssa.gov.za/publications/P0340/P03402022.pdf

approaching the court in relation to protection orders and maintenance matters, it is particularly concerning that approaching a court may make them vulnerable to or expose them to sexual harassment.

Indeed, among type of court user, the incidence of awareness of sexual harassment was highest among those (male and female) who said they were at court in order to obtain an order (2.3 percent), rising to 3.4 percent among female court users at court to obtain an order.

Court users who said they were or knew someone sexually harassed were most likely to identify SAPS police officers (27 percent) as being responsible for the sexual harassment. SAPS are present at court as court orderlies in criminal matters and are responsible for bringing prisoners in custody to court. They may also be present at court as witnesses in criminal matters. It is not clear in which context people experiencing sexual harassment from SAPS members engaged with SAPS members.

Contrary to expectation, the fraction feeling safe who knew of sexual harassment was *higher* than the fraction feeling safe among those who did not witness or experience sexually assaulted. This suggests the respondent was not themselves a victim of the sexual harassment, or may speak to the nature and context of the sexual assaults, or may simply be a result of sample error due to the small numbers involved.

"Court users who said they were or knew someone sexually harassed were most likely to identify SAPS police officers (27 percent) as being responsible for the sexual harassment."

8.2 Physical assault in the courts

According to Statistics South Africa's 2022/23 GPSJ survey, which had detailed questions on individual experience of crime not asked in the previous iterations of the survey, some 0.8 percent of men (1 in 125) indicated they had been physically assaulted in the last 12 months while 0.5 of women (1 in 200) said the same. 2

Accordingly, it is of some concern that almost 8 percent of court user respondents said they were or knew of someone physically assaulted at court, with 30 percent of

"Accordingly, it is of some concern that almost 8 percent of court user respondents said they were or knew of someone physically assaulted at court."

2 https://www.statssa.gov.za/publications/P0341/P03412023.pdf

these saying it happened more than once. Some 9 percent of men (1 in 11) and 6 percent of women (1 in 16) said they were assaulted or knew of someone assaulted.

The experience of being physically assaulted or being aware of physical assault at court was most likely among those attempting to obtain a court order (9 percent).

Court users who said they were assaulted or knew of an assault in court were asked to identify who did the assaulting. Some 29 percent identified a police officer, while 18 percent identified another member of the public, and 6 percent a prosecutor. The latter finding is extremely concerning, given the senior role of prosecutors in the court,

Unsurprisingly, the fraction feeling safe in the court building among those physically assaulted or aware of physical assault was lower than among those not. Some 87 percent of respondents who had never been or were not aware of someone assaulted in court felt safe in court. This dropped 8 percentage points to 75 percent among those who had been assaulted or were aware of an assault, suggesting that three out of four still felt safe despite being assaulted or aware of an assault at some stage in court.

This may speak to the relative seriousness of the assault, which may in turn be related to the natural limits on the extent of an assault possible in a place such as a court, and to whether the respondent themselves was the victim of the assault.

9. Bribery in the courts

Surprisingly, only three respondents refused or failed to answer the question, "Were you, or a person you know, asked to pay a bribe, give a gift, or do a favour in order to get the assistance that you or they needed from the courts?".

Some 94 percent said that has never happened. However, some 6 percent of respondents (1 in 17) answered yes, with one third of these (2 percent) saying this happened a few or many times. Also surprisingly, more than half indicated that the bribe was in fact paid.

SAPS members accounted for almost half (43 percent) of all such requests, with none from magistrates or interpreters. Lawyers and clerks accounted for 14 percent and prosecutors 13 percent, according to respondents.

More bribes were solicited to "make the process go in my favour" (25 percent) rather than any other purpose, followed by "to make documents get lost" (19 percent).

Given that 16 percent identified missing dockets or case files as a cause of delay (see above), measures to better secure such documents would go some way to undermining a key means of subverting justice or perceptions of corruption.

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"More bribes were solicited to "make the process go in my favour" (25 percent) rather than any other purpose, followed by "to make documents get lost" (19 percent)."

Discussion

"It is an achievement for the courts to score well on measures of respect and accessibility, with little difference by race, gender, or income."

"The extent to which respondents refer to sexual and physical assault in the court building is cause for concern."

"The priorities of the courts should now shift to the practical matters of court record-keeping, diary management, and minimising the number of times people must come to court."

It is an achievement for the courts to score well on measures of respect and accessibility, with little difference by race, gender, or income. Unfortunately, issues of delay, complete and accessible court records, and corruption and sexual and physical harassment have the potential to undermine these achievements.

The extent to which respondents refer to sexual and physical assault in the court building is cause for concern. The incidence of bribery, although low, is certainly not negligible, and the nonchalance with which court users refer to the paying of bribes, is concerning. While this is reflection of South African society, an august institution such as the courts should aspire to be relatively immune to such issues. The fact that it is not, suggests that interventions are necessary, particularly with police officers allocated to court duty, who appear to be more implicated in such incidences than any other category.

It is an achievement for the court system that among court users, views on respectful treatment by magistrates and other officials do not appear to be informed by differential treatment on the basis of gender, race or income, and are in the main positive. This suggests that the crucial work of transformation of the court system as one which serves all South Africans with respect, has advanced to a significant degree. With this in place, it does suggest that the priorities of the courts should now shift to the practical matters of court record-keeping, diary management, and minimising the number of times people must come to court.

The fact that data from the Department of Justice reflects that courts are only sitting for around two hours per

day while court users refer to unnecessary delay, suggests that courts are managing the load with postponements, and not by making better use of the court day.

It is a matter of arithmetic that postponements and delays have the paradoxical result, in the long run, of worsening the load, while seeming to lighten it in the short term. This is in turn undermining the initially positive views of the those accessing court.

"It is a matter of arithmetic that postponements and delays have the paradoxical result, in the long run, of worsening the load, while seeming to lighten it in the short term."

According to Statistics South Africa's Governance, Public Safety and Justice (GPSJ) 2021/22 Survey, the percentage of the population aged 16 and over experiencing disputes in the last two years doubled from 11.8 percent in 2018/19 to 21 percent in 2021/22.3 However, only 8.2 percent of these sought help from a court or tribunal in resolving their dispute.4 Accordingly, court users are a small subset of those people experiencing disputes, who in turn are a minority subset of South Africans.

Translating those percentages into numbers, however, suggests 3.4 million people may have turned to the courts over two years, or around 1.7 million people per year. For the Eastern and Western Cape adult population, this suggests an estimated 170 000 court users in the Eastern Cape and 210 000 in the Western Cape.

Across the country, there are approximately 2000 magistrates and 340 judges who must deal with all the matters brought to the courts. This suggests possible burden may be in excess of 700 matters per judicial officer per year, or around 3 per working day. With such numbers it is absolutely crucial that matters that can be resolved expeditiously, be so resolved. The data suggests they are not.

"Across the country, there are approximately 2000 magistrates and 340 judges who must deal with all the matters brought to the courts."

According to the Office of the Chief Justice, data could not be published relating to the number of cases in the magistrates' courts in the last two reporting periods due to a failure in the ICT system – again a failure of record-

3 Page 17 https://www.statssa.gov.za/publications/P0340/P03402022.pdf

4 Page 24 https://www.statssa.gov.za/publications/P0340/P03402022.pdf

keeping. The most recent report with such data relates to of 2019/20, which indicates that in the regional courts, 40 883 criminal matters and 38 702 civil matters were disposed of, making a total of 79 585 matters. With around 350 regional magistrates, this suggests less than one per working day, assuming 260 working days. In the district courts, 124 563 criminal matters were finalised, suggesting one criminal matter every third day (magistrates must of course deal with a variety of other matters too.) This suggests a large mismatch between possible demand and the number of finalisations, suggesting many more cases remain incomplete.

"According to the DGRU Magistrates' Perception Survey, magistrates feel overworked."

Yet, according to the DGRU Magistrates' Perception Survey, magistrates feel overworked. This may be largely because postponements and matters outside of court are taking up an increasing amount of time without yielding matters brought to their conclusion.

Better management of court records, more efficient use of the court day, courts starting on time, will all likely lead in the long run to a reduction in pressure on the courts while raising the number of finalisations, thus better meeting the unmet demand for justice. This is the task ahead now that transformation has largely been achieved.

Recommendations

The research survey results have revealed that one of the greatest challenges faced by our courts has largely been resolved, namely that the treatment of court users is equal across all races and gender. This is a great achievement towards the transformation of the court system. However, as outlined above, the research findings also suggest that there are several areas for improvement. Ideally there would be only one and a maximum of two recommendations. However, considering that the challenges identified in the courts are interlinked the recommendations herein touch on all those challenges.

Postponements / Delays in the finalisation of cases

The research shows that the number of times that a person must be at court does have an impact on their perception of the courts. Returning to court a multiple number of times is detrimental to access to justice and positive views of the court system. Postponements should be kept to a minimum .

There are Norms and Standards issued by the Chief Justice of the Republic of South Africa in terms of section 8 of the Superior Court Courts Act 10 of 2013, read with section 165(6) of the Constitution. The norms and standards, at 5.2.5., specifically state that "all judicial officers must strive to finalise all matters, including outstanding judgments, decisions or orders as expeditiously as possible". The magistrates' courts must finalise all civil cases within 9 months from the date of issue of summons.

Regarding the finalisation of criminal cases "to give effect to an accused person's right to a speedy trial enshrined in the Constitution, every effort shall be made to bring the accused to trial as soon as possible after the accused's arrest and first appearance in court." The Judicial Officer must ensure that every accused person pleads to the charge within 3 months from the date of first appearance in the Magistrates' Court. To this end Judicial Officers shall strive to finalise criminal matters within 6 months after the accused has pleaded to the charge." "All Judicial Officers are enjoined to take a pro-active stance to invoke all relevant legislation to void lengthy periods of incarceration of accused persons whilst awaiting trial."

"The heads of the Magistrate's Court must take steps to ensure that all Judicial Officers adhere to the Norms and Standards and are held to account should they fail to do so."

The heads of the Magistrate's Court must take steps to ensure that all Judicial Officers adhere to the Norms and Standards and are held to account should they fail to do so.

Online court system

"An online court system to keep documents is long overdue."

One of the reasons postponements are frequent is missing court files. An online court system to keep documents is long overdue. This will contribute to keeping postponements to minimum and the adherence to the norms and standards.

Having an online court system will also assist in combating corruption in the courts. 19 percent of court users noted that bribes were solicited "to make documents get lost". When documents get lost a case will have to be postponed to the detriment of the parties, especially if one of the parties is incarcerated. This hinders access to fair and speedy justice. "Making documents get lost" will be close to impossible with an online court system.

Consolidation of certain cases

"Court cases that can be consolidated must be."

Court cases that can be consolidated must be, to prevent people going to court many times in respect of different cases with the same set of facts. i.e., in maintenance matters involving domestic violence, such matters should

be consolidated. This will also minimise the caseload in the Magistrates' Courts.

Limiting the number of times witnesses must attend court

It is also extremely challenging to secure witnesses, and this contributes to the numerous postponements in court cases. If witnesses are called to court for different cases relating to the same set of facts, the likelihood of the witness going to court many times becomes less. This leads to postponements because witnesses are unavailable. This leads to lack of access to justice. Hence a consolidation of court cases relating to the same set of facts is necessary.

Court hours are adhered to

It is imperative that the heads of courts put measures in place to ensure that court hours are adhered to, and that court starts on time. The norms and standards require that the court sits for 4.5 hours per day. Witnesses and those in court to obtain a court order (protection order, maintenance order, divorce order) were slightly more likely to say court did not start on time.

"Witnesses and those in court to obtain a court order (protection order, maintenance order, divorce order) were slightly more likely to say court did not start on time."

Accessibility of courts

There were significant regional differences in ease of finding out where to go, with 62 percent of Gqeberha respondents saying it was very easy but only 8 percent of Mthatha respondents saying similarly. Knowing where to find the court is more of a challenge in rural areas as opposed to semi-urban areas. The Department of Justice (DoJ) must embark on drives to raise awareness of where the courts are, what they do and how they serve communities. The DoJ should also call on law students to provide free services to the courts by assisting court users

"The Department of Justice (DoJ) must embark on drives to raise awareness of where the courts are, what they do and how they serve communities."

fill in the forms and provide any other assistance. Calling on law students would give students the opportunity to see how the court system functions and meet people who can provide career guidance to them but at the same time alleviate the pressure on court staff and court users.

Further, some level of automation in relation to simple applications would assist the courts with the workload.

Training of magistrates

More than 1 in 5 (21 percent) of those trying to obtain a court order or access information disagreed that magistrates understood and applied the law correctly. This might seem like a small and insignificant number. However, having a magistrate (permanent or acting) preside over cases when they do not fully understand and apply the law correctly is detrimental to access to justice.

"There will always be a need for training. Training is especially a need for acting magistrates."

There will always be a need for training. Training is especially a need for acting magistrates. There is a huge number of acting magistrates and none of these magistrates are provided with any form of training. They learn on the job. All magistrates, regardless of whether they are acting or not, need to understand the law and apply it correctly.

"An aspirant magistrate's course is a dire need."

An aspirant magistrate's course is a dire need. The aspirant magistrate's course would focus on all areas of the law dealt with in magistrates court (both district and regional magistrates courts), i.e. civil law, criminal law, family law, evictions etc. The course must be online and self-paced because magistrates are busy and might not be able to attend in-person.

Safety in courts

Safety is not only a concern for those who make use of the courts, but it has been a concern for magistrates as well. While there are certain measures put in place, such as screening at the entry of the court building, these measures are just not enough.

In the 2019 DGRU Magistrate's Perception Survey, magistrates raised their safety as a huge concern. "Across all respondents, 44% of magistrates said that they have been personally threatened or harmed because of their judicial role (figure 14). While we see a difference between men (40%) and women (50%), age also has an effect." In 2019 it was recommended that "security within the court buildings should be addressed as a matter of priority. It should be remembered that improved court security will benefit all court users, not magistrates alone. For security outside the court building, magistrates should be provided with training to help make them aware of potential threats and how to respond to them. Facilitating the provision of private security at magistrates' homes and providing for increased personal security in cases where the risk or threat to the safety of an individual magistrate has been established, could also be considered." This recommendation still holds to this day, and we make the same recommendation in respect of the safety of court users at court buildings.

There should be cameras in every corner of a court building, and there should be security presence in each level of the court. Security should not only be provided at the entrance of the court but should be provided everywhere else in the court building. In certain courts people who are incarcerated and are literally handcuffed sit in the same gallery as other members of the public while they wait for their case to be called. This on its own is a huge safety concern. There should be a separate holding room for incarcerated people waiting to have their cases called.

"Security should not only be provided at the entrance of the court but should be provided everywhere else in the court building."

Effectively dealing with sexual harassment complaints

Sexual harassment in the courts is a global scourge that remains an open secret with few, if any, consequences for perpetrators. The barriers to the effective fight against sexual harassment in the courts include things such as the fact that the court is not a single employer - the people

who work in the building are employed by the Department of Justice; the Office of the Chief Justice, the National Prosecuting Authority (NPA) or may be a self-employed attorney or legal aid lawyer. This complicates reporting of incidents as each stakeholder has a different body that deals with conduct matters, and it is not always clear who to report to and how to report.

"For the judiciary and the courts there needs to be a policy that is implementable to deal with sexual harassment complaints."

For the judiciary and the courts there needs to be a policy that is implementable to deal with sexual harassment complaints. Sexual harassment complaints cannot be dealt with in the same manner as any other ordinary complaint. The policy must establish an independent body that deals with sexual harassment complaints. The independent body should be as diverse as possible and should include members of the judiciary, the DoJ, the NPA, the Legal Practice Council, academia, and lay person(s). The policy should have timeframes within which a sexual harassment complaint must be dealt with. A sexual harassment complaint cannot and should not take more than 12 months to be finalised. The policy should ensure that secondary victimisation is not inflicted on complainants of sexual harassment by all means possible. The policy must also ensure that precautionary suspension of an alleged perpetrator is provided for and note that precautionary suspension does not mean that the alleged perpetrator is guilty of sexual harassment.

"A sexual harassment complaint cannot and should not take more than 12 months to be finalised."


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