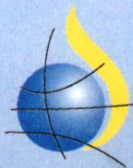




**STRENGTHENING
JUDICIAL REFORMS IN KENYA
Volume V**

*PUBLIC PERCEPTIONS
OF THE MAGISTRATES' COURTS*



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JUDICIAL REFORMS IN KENYA**

Volume V

**PUBLIC PERCEPTIONS
OF THE MAGISTRATES' COURTS**

ICJ KENYA



USAID



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ICJ Kenya also extends its gratitude to various legal practitioners, members of the Civil Society, the business community and the general public who volunteered to give this information.

Lastly, ICJ Kenya is very grateful for the funding support from USAID Kenya, with whose support this report is published, under the aegis of the ICJ Kenya *Public Perceptions Index and Links for Action Project*.

The views in this report however are those of ICJ Kenya.

Kagwiria Mbogori

Executive Director

Foreword

This is the fifth publication in our '*Strengthening Judicial Reforms*' series of publications that endeavours to support effective interest group demand for judicial reform.

ICJ Kenya continues to perform internal analysis of the Judiciary as well as content analysis of its reform proposals and implementation, mainly to test them for parity with ICJ Kenya and other stakeholders' demands.

Under this project, ICJ Kenya has sought public perceptions to interpret reform needs and leverage reform demand. Information is gathered through quantitative and qualitative surveys carried out by ICJ Kenya on judicial corruption, efficiency and effectiveness in the Kenya Judiciary whose findings have been published in our previous reports¹.

This publication closely examines the Magistracy with a view of assessing its effectiveness and efficiency in the administration of justice, as well as examining the level of corruption in the subordinate courts. ICJ Kenya recognises the important role that these courts play in the administration of justice, and also recognises that adequate and effective judicial reform can only be achieved by paying special attention to these courts. The independence of magistrates and their general working conditions must be addressed in the same breadth as judges if we hope to have an efficient, effective and corrupt-free Judiciary.

It is encouraging to note that in a bid to reducing the chronic case backlog problem in the Judiciary, the pecuniary jurisdiction for the Magistrate's Courts has been raised. This will help ease pressure on the higher courts, which are already over-stretched due to among other factors, inadequate number of judges.

As is the case in the High Court and Court of Appeal, most Kenyans stated that there is massive corruption in the subordinate courts. In an attempt to curb this problem, the Judiciary raised the judges' remuneration. ICJ Kenya hopes that the same shall be done to the magistrates who are currently working under difficult conditions in comparison to the judges. However, as a lasting solution to some of the problems in the Judiciary, ICJ Kenya advocates for a Code of Conduct that will guide and regulate both judges and magistrates' conduct equally.

-
- ¹ Strengthening Judicial Reforms – Performance indicators: Public perceptions of the Kenya Judiciary, 2001
 - Strengthening Judicial Reforms in Kenya, Volume II: The role of the Judiciary in a patronage System, 2002
 - Strengthening Judicial Reforms in Kenya, Volume III: Public perceptions and proposals on the Judiciary in the new Constitution, 2002
 - Strengthening Judicial Reforms in Kenya, Volume IV: Public perceptions of the Court Divisions, Children's Court and the Anti-Corruption Court, 2002

INTRODUCTION

THE MAGISTRATES' COURTS

The Act of Parliament, Chapter 10 of the Laws of Kenya, establishes the Magistrates' Courts. These courts are supervised and controlled by the Chief Justice.²

RESIDENT MAGISTRATE'S COURTS

The Resident Magistrate's Court is established under s. 3 of the Magistrate's Courts Act. This court is presided over either by: -

- Chief Magistrate, or
- Senior Principal Magistrate, or
- Principal Magistrate, or
- Senior Resident Magistrate, or
- Resident Magistrate

Jurisdiction

This court has jurisdiction throughout the country. The Judicial Service Commission appoints all the magistrates of this court.

The Resident Magistrate's Court has a limited power of appellate jurisdiction. The appeals in some civil and criminal cases against the decisions of third class District Magistrates can be made to the Resident Magistrate's Court.

All appeals, civil or criminal, against a decision of the Resident Magistrate's Courts lie with the High Court. There is a provision for a further appeal to the Court of Appeal.

The Resident Magistrate's Court exercises such jurisdiction and powers in proceedings of a criminal nature as conferred on it by the Criminal Procedure Code or any other written law³.

² S.19 of the Magistrate's Court Act.

³ S. 4 of the Magistrate's Court Act

The jurisdiction and powers in proceedings of a civil nature are as follows⁴:

- Chief Magistrate - Pecuniary Jurisdiction, Kshs 3,000,000/-
- Senior Principal Magistrate - Pecuniary Jurisdiction, Kshs 2,000,000/-
- Principal Magistrate - Pecuniary Jurisdiction, Kshs 1,000,000/-
- Senior Resident Magistrate - Pecuniary Jurisdiction, Kshs 800,000/-
- Resident Magistrate - Pecuniary Jurisdiction, Kshs 500,000/-

THE DISTRICT MAGISTRATE'S COURTS

The District Magistrate's Courts have been established in Kenya on district level. The Courts are established under s. 7 of the Magistrate's Courts Act. There are three classes District Magistrate's Courts, namely first, second and third class District Magistrate's Courts. The courts are established for every administrative district in Kenya but the Chief Justice may designate any two or more districts as one district.

Jurisdiction

The Court has jurisdiction throughout the district.

These courts are given some limited powers of original jurisdiction but only the first class District Magistrate has some limited appellate jurisdiction.

This court exercises jurisdiction and powers in proceedings of a criminal nature as conferred on it by the Criminal Procedure Code or any other written law⁵. However, the Chief Justice may, by order, empower magistrates' courts of the third class to deal with particular offences⁶.

A District Magistrate's Court exercises jurisdiction and powers in proceedings of a civil nature where either, the proceedings concern a claim under customary law or the value of the subject matter in dispute does not exceed Kshs 5,000, or Kshs 10,000 in case of first class District Magistrate's Court⁷.

Just as the Resident Magistrate's Courts, the District Magistrate's Courts are subordinate to the High Court. The Judicial Service Commission appoints district Magistrates.

⁴ S. 5 (1) of the Magistrate's Court Act

⁵ S. 8(1) of the Magistrates' Courts Act

⁶ S. 8(2) of the Magistrates' Courts Act

⁷ S. 9 of the Magistrates' Courts Act

NUMBER OF MAGISTRATES IN KENYA

There are 278 Magistrates in Kenya compared to a population of about 30 million people. This translates to over 100,000 people per magistrate.

The following is a breakdown of the number of magistrates in different Magistrate's Courts.

| Court | Number |
|------------------------------------|---------------|
| Chief Magistrate | 13 |
| Senior Principal Magistrate | 18 |
| Principal Magistrate | 27 |
| Senior Resident Magistrate | 84 |
| Resident Magistrate | 73 |
| District Magistrate (Professional) | 44 |
| District Magistrate (Lay) | 19 |
| Total | <u>278</u> |

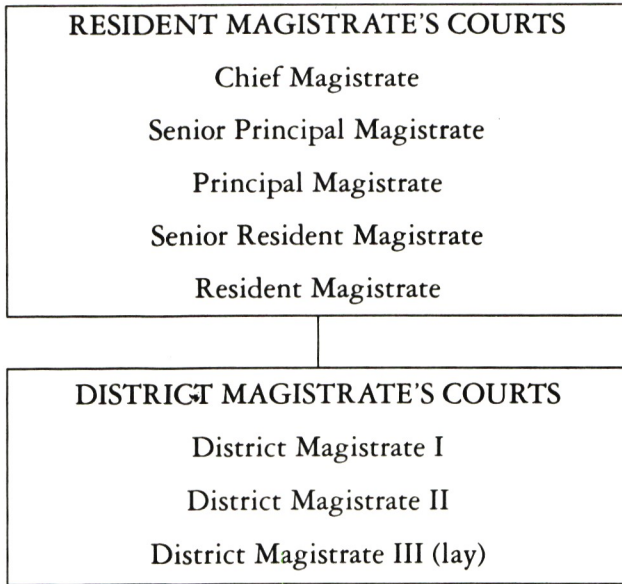
Gender Distribution in different Magistrate's Courts.

| Court (Percentage %) | Male (Percentage %) | Female |
|------------------------------------|----------------------------|---------------|
| Chief Magistrate | 47 | 53 |
| Senior Principal Magistrate | 78 | 22 |
| Principal Magistrate | 48 | 52 |
| Senior Resident Magistrate | 53 | 47 |
| Resident Magistrate | 52 | 48 |
| District Magistrate (Professional) | 68 | 32 |
| District Magistrate (Lay) | 100 | 0 |
| Total (Average) | <u>63</u> | <u>37</u> |

63% of the total number of magistrates in Kenya are male. However, female magistrates form majority of magistrates at the Chief Magistrate and Principal Magistrate levels. This means therefore, that female magistrates compete favourably with their male counterparts at the senior level of the magistracy. There is no single female District Magistrate (Lay)⁸ out of the 19 magistrates.

⁸ Refers to judicial officers serving as magistrates, but do not possess the minimum academic qualifications to be appointed a magistrate i.e. a degree in law.

THE STRUCTURE OF THE SUBORDINATE COURTS.



QUALITATIVE SURVEY

This survey was conducted in Nairobi within the month of February 2003 and it mainly targeted the general public at various courts namely, The High Court, Milimani Commercial courts, Makadara and Kibera Courts.

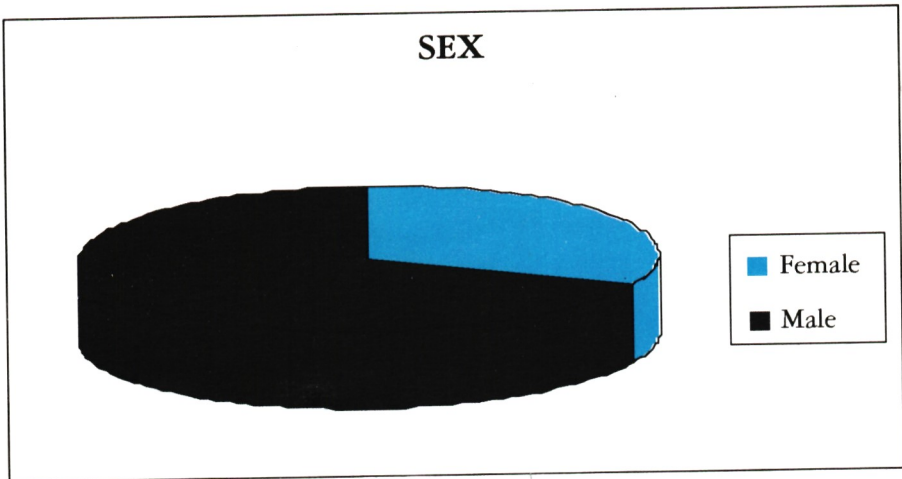
Objective

The key objective of conducting this survey was to identify the public's perceptions of the Magistracy.

Methodology

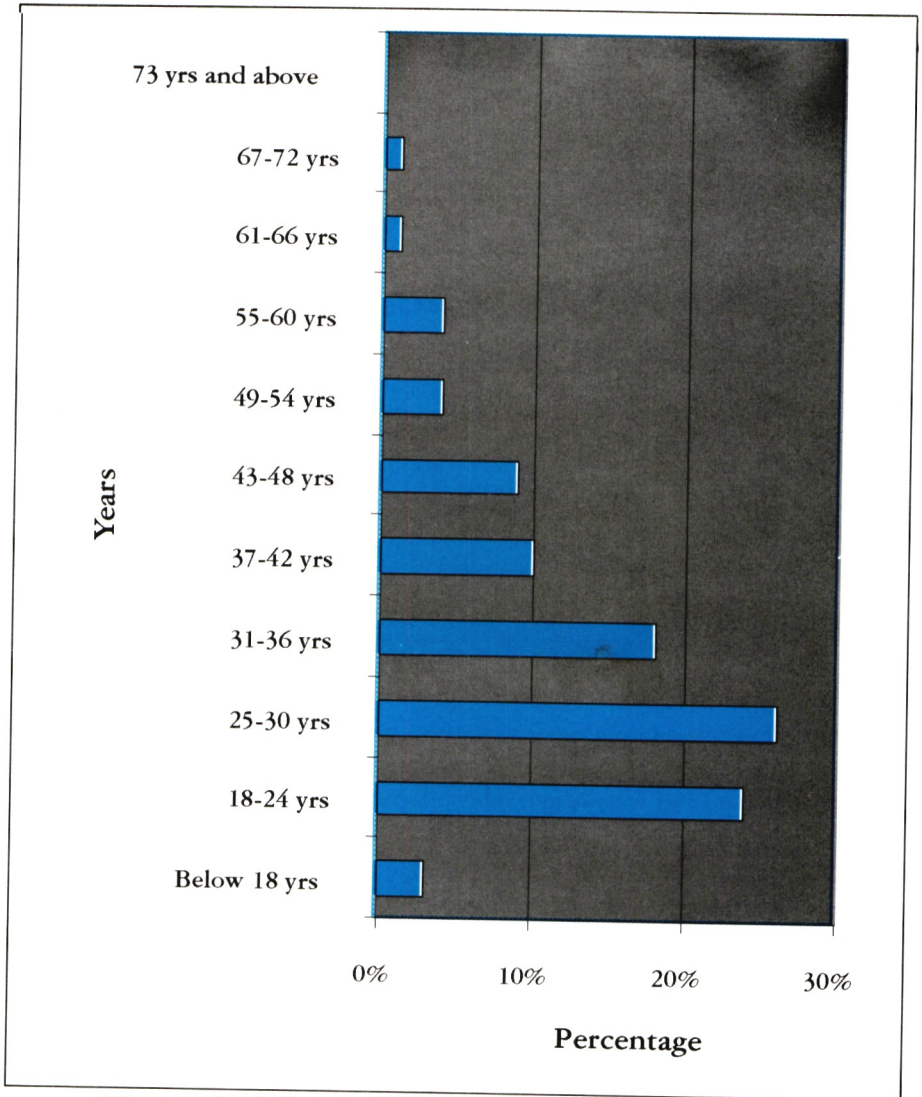
A questionnaire was used to capture a representative sample of consumers of justice. A total of three hundred (300) face-to-face interviews were carried out.

SAMPLE DISTRIBUTION BY SEX



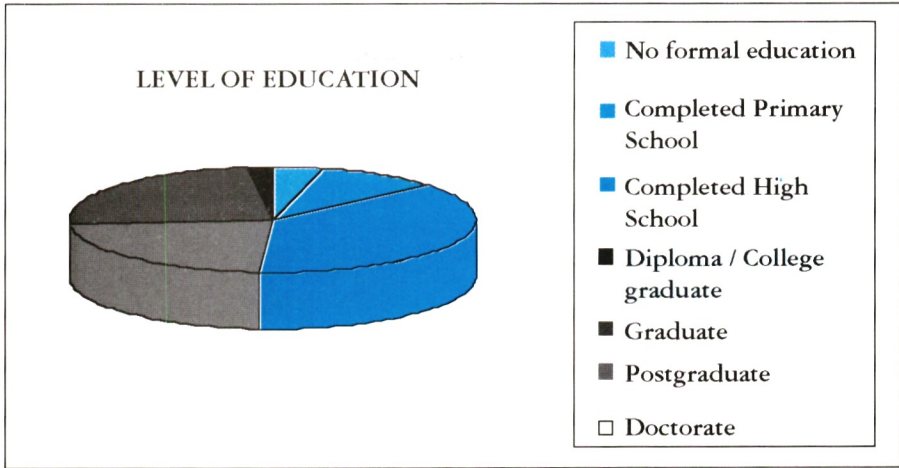
68% of the respondents were male while 32 % were female.
It was observed that women were more reluctant to answer the questionnaire.

SAMPLE DISTRIBUTION BY AGE



Majority of the respondents were aged between 25 and 30 years (26%).
No one above 73 years was interviewed.

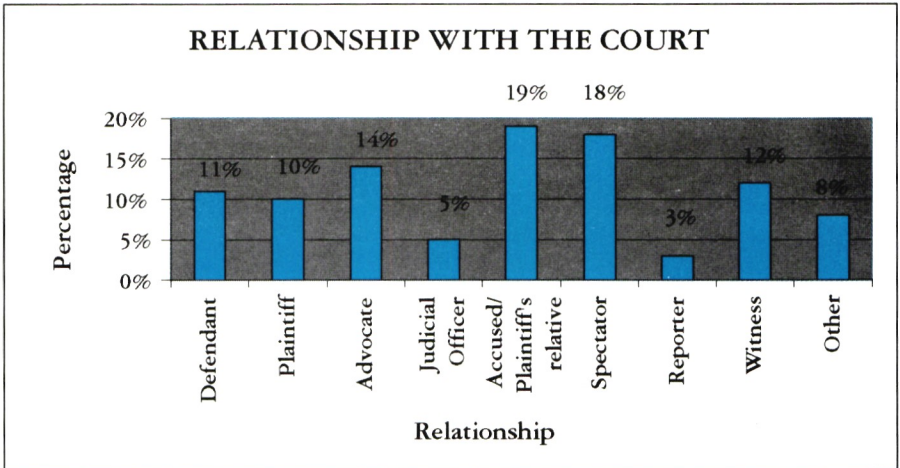
SAMPLE DISTRIBUTION BY LEVEL OF EDUCATION



Only one respondent interviewed had a doctorate degree.

Majority had completed high school.

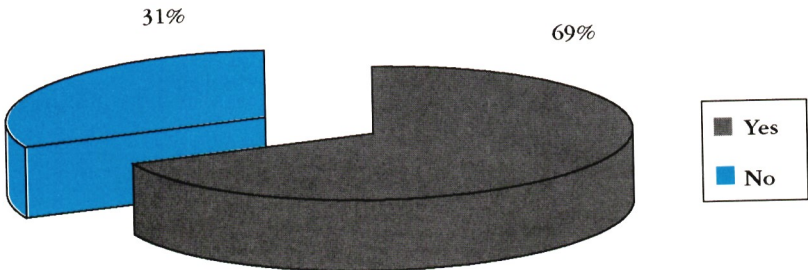
| LEVEL OF EDUCATION | Percentage |
|----------------------------|------------|
| No formal education | 4% |
| Completed Primary School | 10% |
| Completed High School | 37% |
| Diploma / College graduate | 23% |
| Graduate | 24% |
| Postgraduate | 2% |
| Doctorate | 0% |



Eight percent of the respondents interviewed were law students either attached to a judge's chambers or on pupillage, court clerks and passer bys.

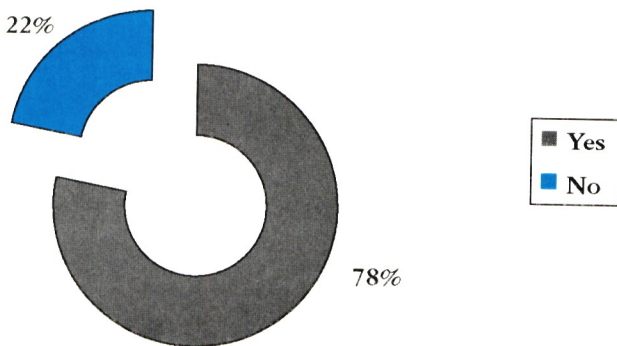
THE LEGAL SYSTEM

Do you consider the current legal system to be complicated ?



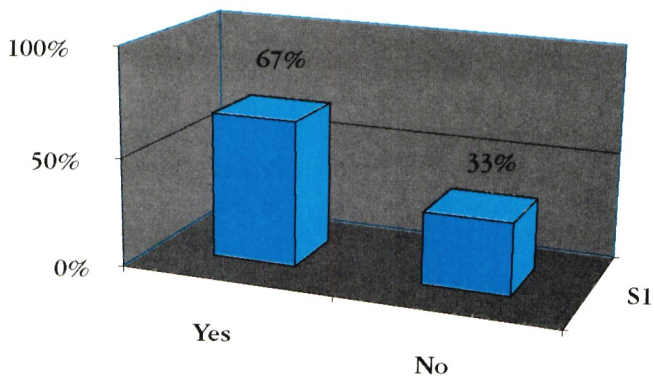
69% of the respondents consider the current legal system to be complicated.

Do you understand the language used in court ?



Majority of the respondents said that they understood the language used in court.

Do you understand the proceedings used in court ?



67% of the respondents said that they understood the court proceedings.

Do you understand the various court divisions and where each case should be filed ?



47% of the respondents did not understand the various court divisions and where each case should be filed. ICJ (K) is continually producing court guides to assist the public in accessing justice from the court system. There are currently four court divisions in Kenya, the Civil, Criminal, Family and Commercial Court division.

The Civil division courts hear all civil cases that are not of a commercial nature. These include insurance claims, constitutional interpretation, prerogative orders under Order 53 of the civil procedure rule, civil appeals and election petitions.

The Commercial court division court hears matters pertaining to bank cases, matrimonial, personal injury claims and employment contracts.

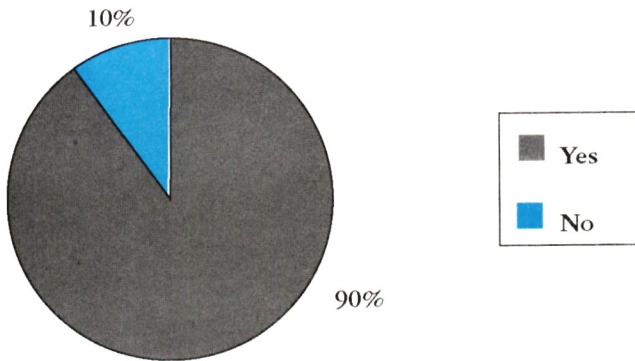
The Family court division covers matters of adoption, custody of children, matrimonial property, succession, separation and maintenance and other cases of family law.

The Criminal court division listens to criminal cases and the criminal process is regulated by the Criminal Procedure Code (Cap 75) and the Evidence Act (Cap 80).

The Civil, Criminal and Family divisions have their registries and operations housed at the High Court buildings in Nairobi, whereas, the Commercial division which was launched in 1997 is situated in a separate building at Milimani. Each one of these divisions has its own registry and is headed by a judge of the High Court of Kenya who oversees the general operations of the courts⁹. A qualified magistrate, called a Deputy Registrar, manages the day-to-day operations of each division.

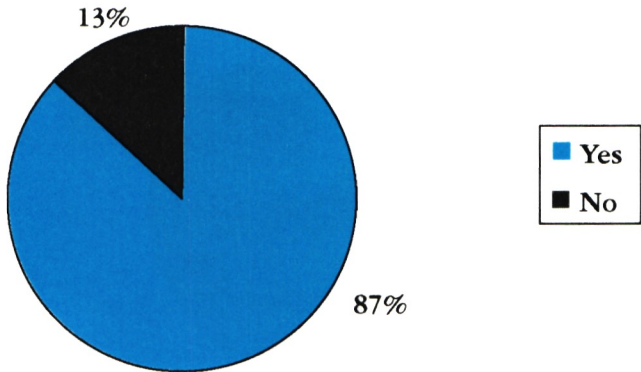
⁹ - Criminal Division is headed by Justice Mbogholi Msagha
- Commercial Division is headed by Justice Tom Mbaluto
- Family Division is headed by Justice Joyce Aluoch
- There is no permanent head of the Civil Division as yet. This is done on rotational basis monthly.

**Do you understand the
role of a judge in the judicial system ?**

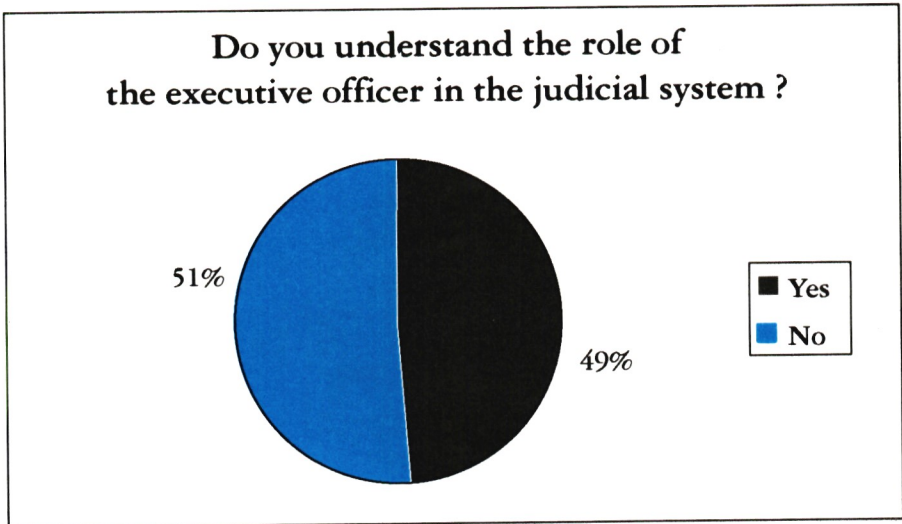


Majority of the respondents (90%)
understood the role of a judge in the judicial system.

**Do you understand the
role of a magistrate in the judicial system ?**

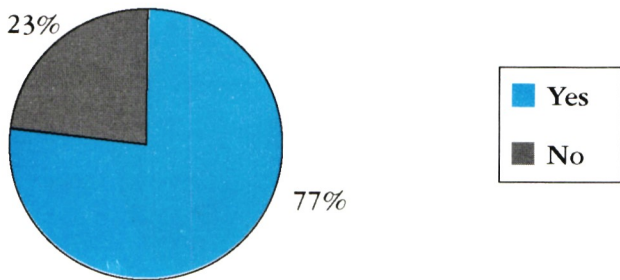


Majority of the respondents (87%)
understood the role of the magistrate in the judicial system.
It was however noted that most of the general public refer to a magistrate as a judge.



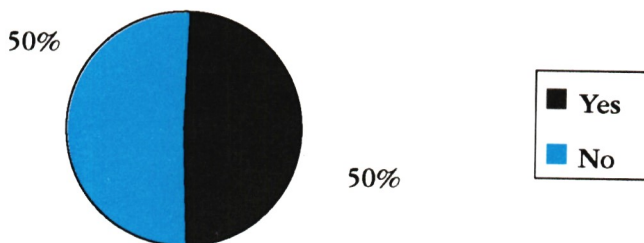
51% of the respondents did not understand the role of the executive officer.

Do you understand the role of a court clerk?



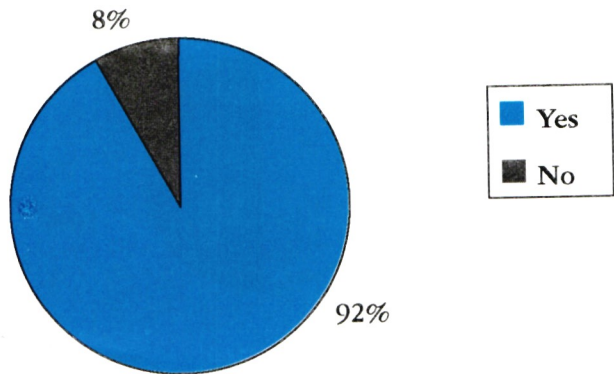
Majority (77%) of the respondents understood the role of a court clerk.

Do you understand the role of a process server ?

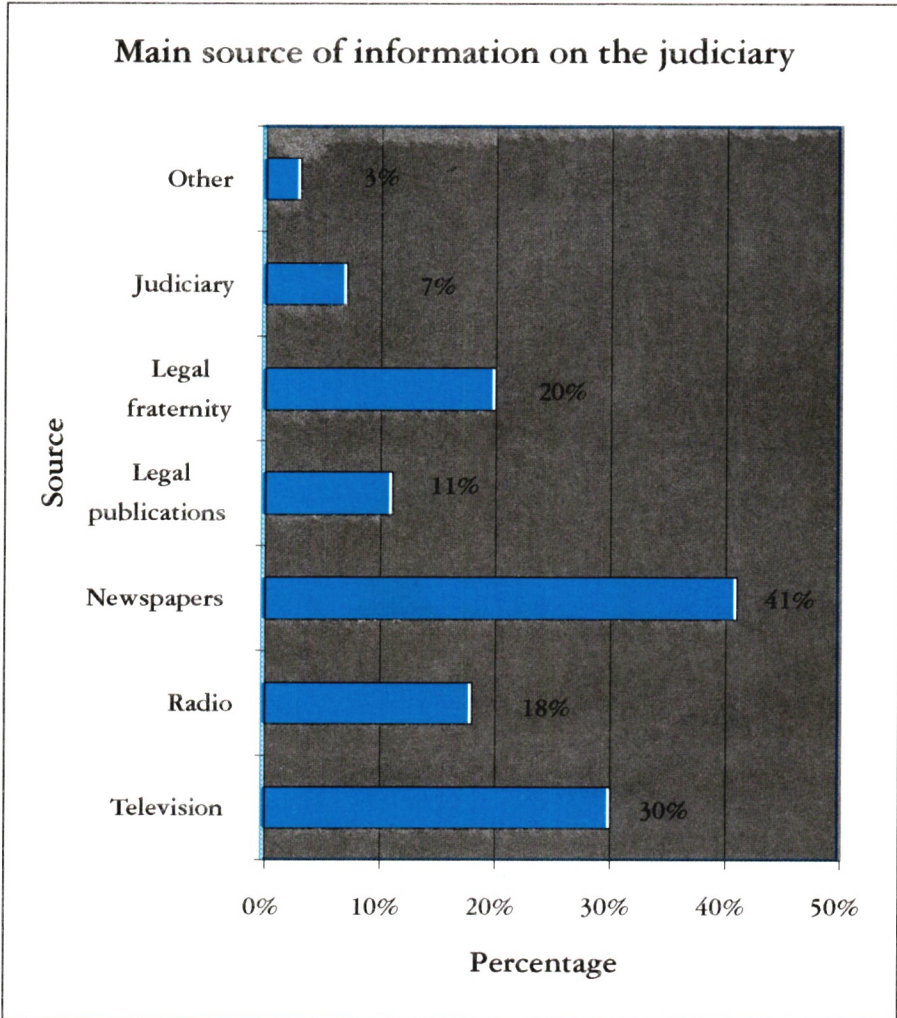


An equal number of respondents understood and did not understand the role of a process server.

**Do you understand the
role of an advocate in the judicial process?**



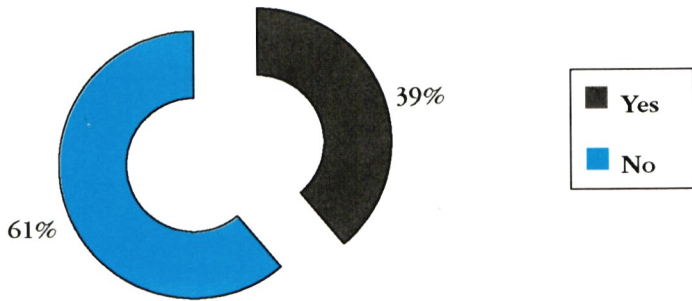
**Majority (92%) of the respondents
understood the role of an advocate in the judicial system.**



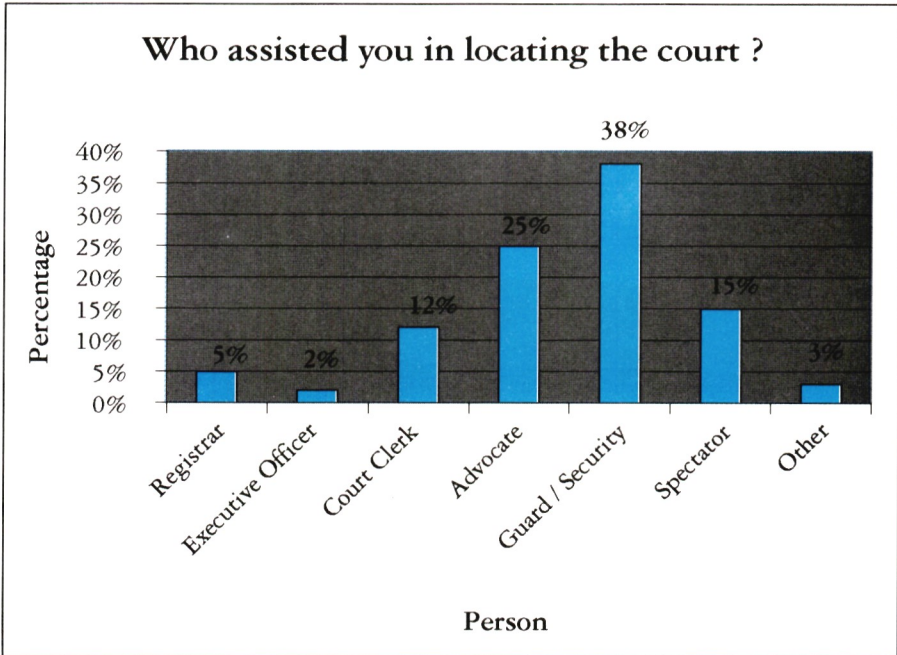
Newspapers were considered the largest source of information on matters pertaining to the judiciary. Other sources (3%) included other people and information gained in school.

ACCESS TO JUSTICE

**Did you have a problem
locating which court you were to attend?**

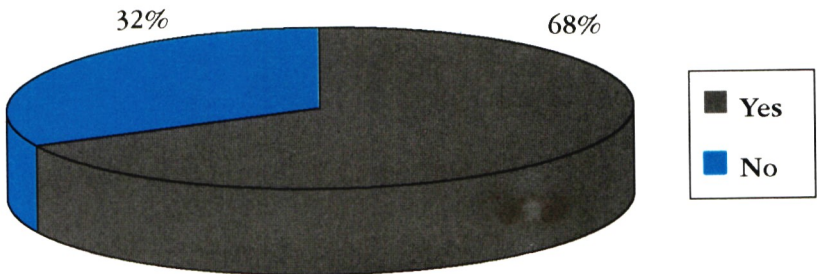


39% of the respondents had a problem locating which court to attend.



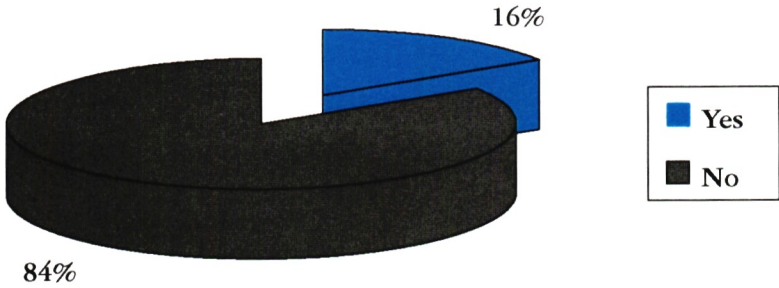
Majority of the respondents who had a problem locating the court they were to attend were assisted by the court security guard. It is imperative that subordinate court staff receive training in gender equity and equality standards, general etiquette and public relations, as they are the regular point of contact with the public.

In terms of location do you think this particular court is easily accessible ?

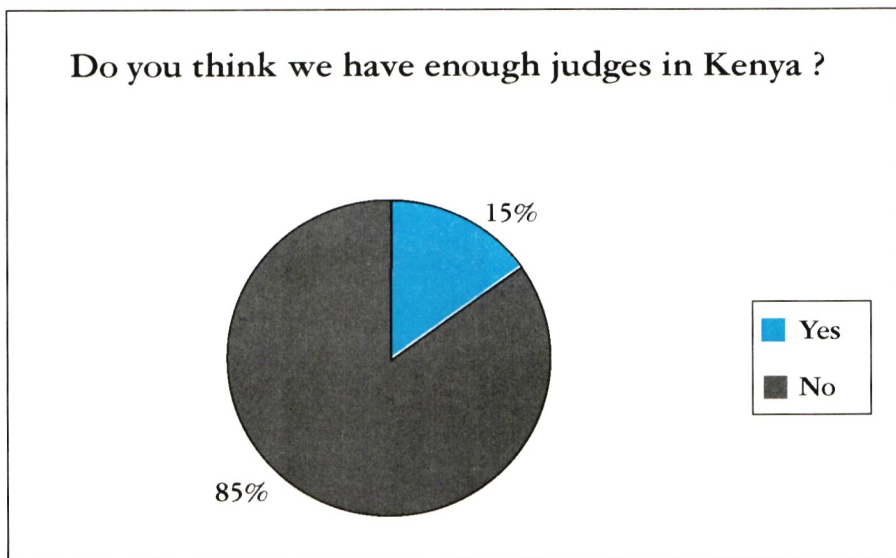


32% of the respondents did not think that the court they were attending was easily accessible. One respondent added that people sometimes do not know where to go and there is no one to direct them to the proper court.

Do you think we have enough courts in Kenya ?

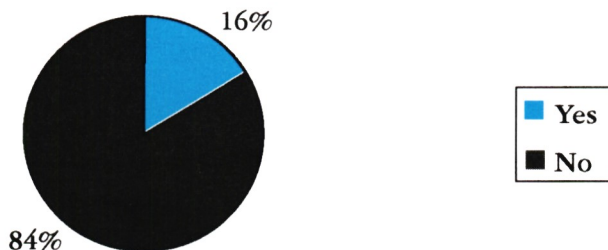


84% of the respondents did not think we have enough courts in Kenya.

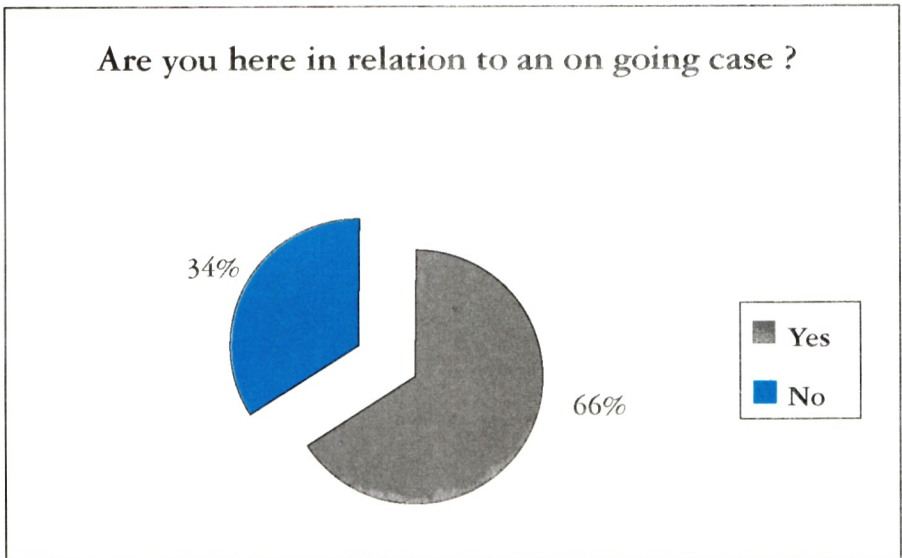


85% of the respondents did not think we have enough judges in Kenya.
Currently Kenya has 48 judges.

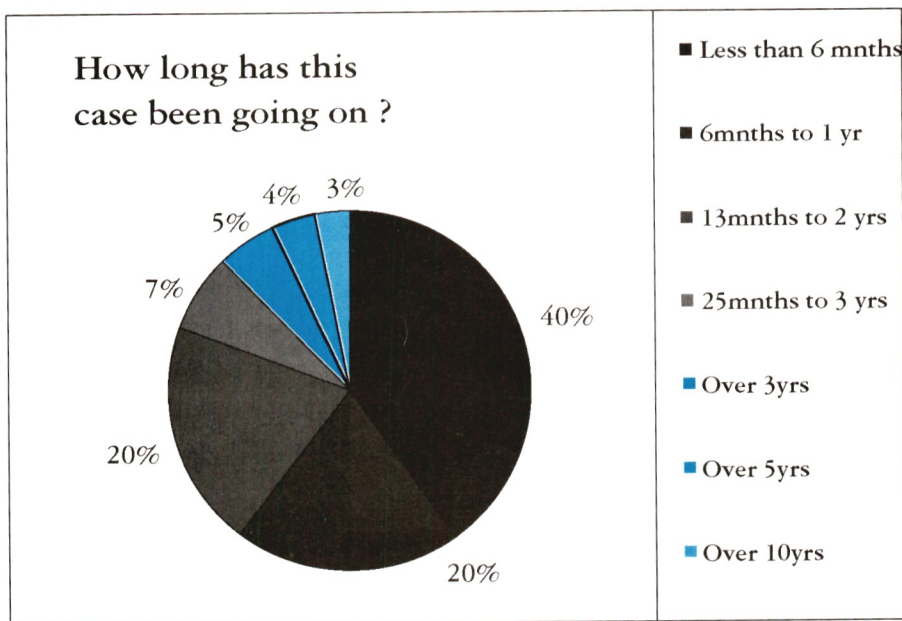
Do you think we have enough magistrates in Kenya ?



84% of the respondents did not think that we have enough magistrates in Kenya. Currently Kenya has 278 magistrates.



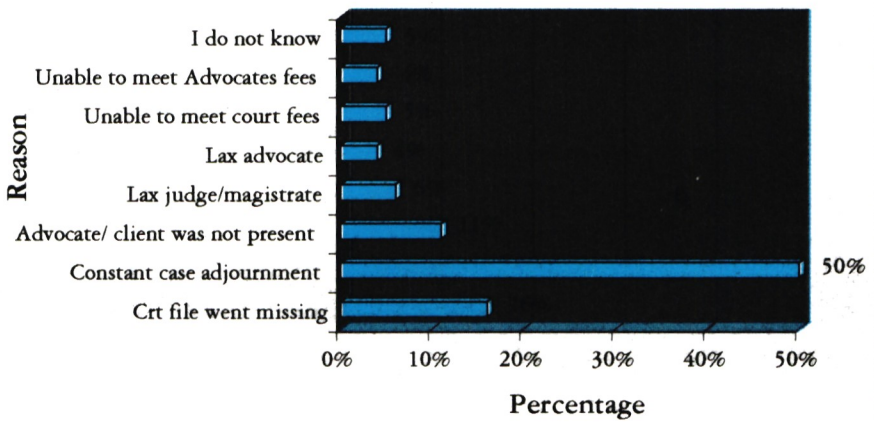
34% of the respondents were not at the court in relation to an on going case



12% of the respondents had cases, which had been going on for over three years and more.

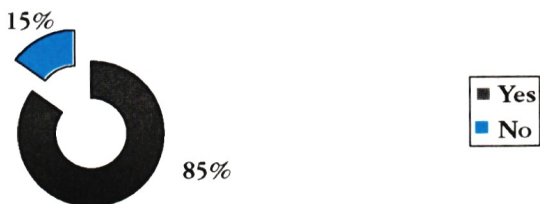
One respondent complained that cases sometimes proceeded in the absence of one of the parties and not at the times stipulated earlier.

**If your case has been delayed
under what circumstances did this occur**



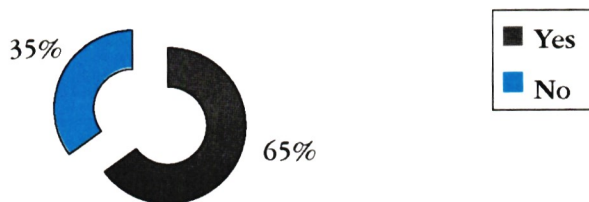
50% of the respondents said that their cases had been delayed due to constant case adjournments.

At the village level are you aware of disputes being resolved by chiefs or council of elders?



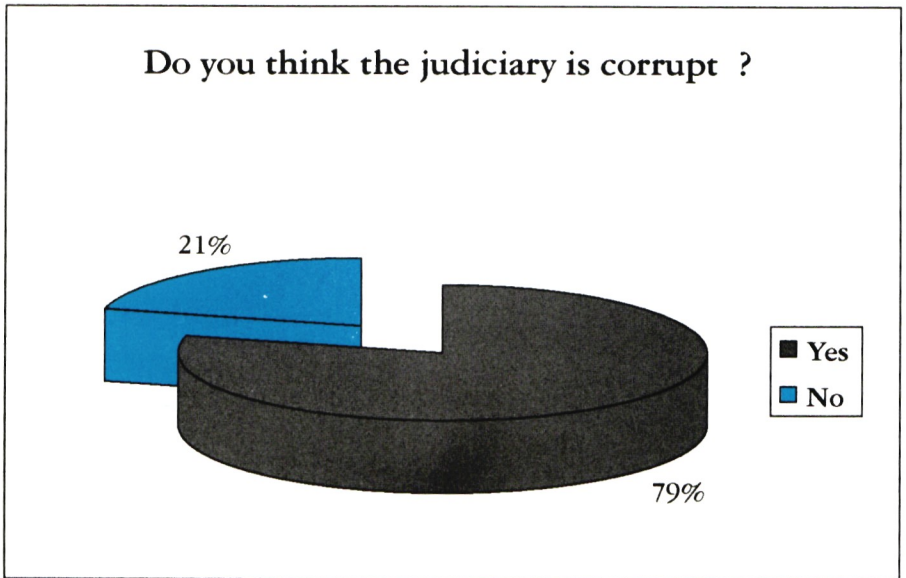
85% of the respondents were aware of dispute resolution at the village level.

Do you think that the mechanism mentioned above should be given formal recognition ?



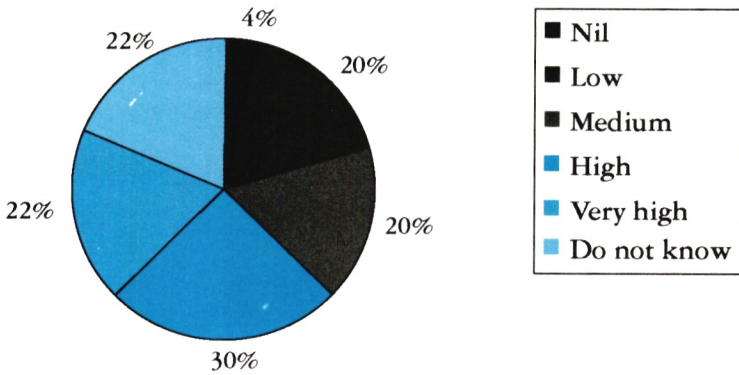
Majority of the respondents (65%) thought that village dispute resolution should be given formal recognition.

CORRUPTION

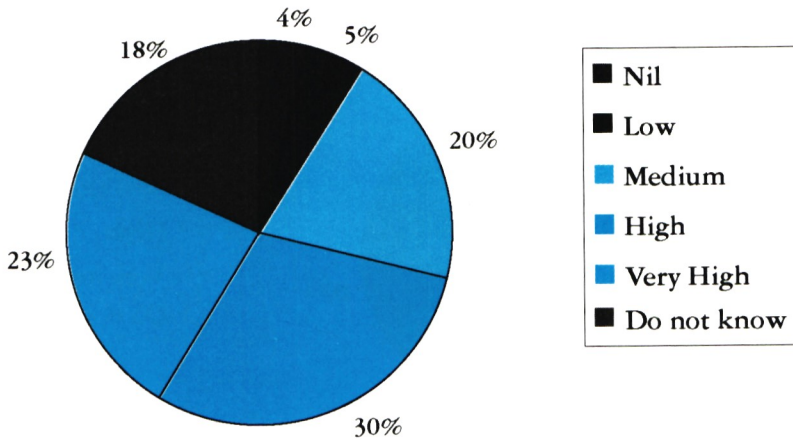


79% of the respondents thought that the judiciary is corrupt.

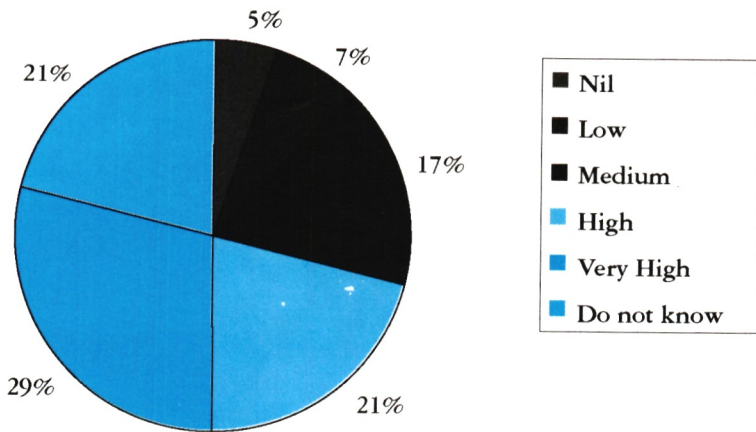
How would you rate the level of corruption of a judge?



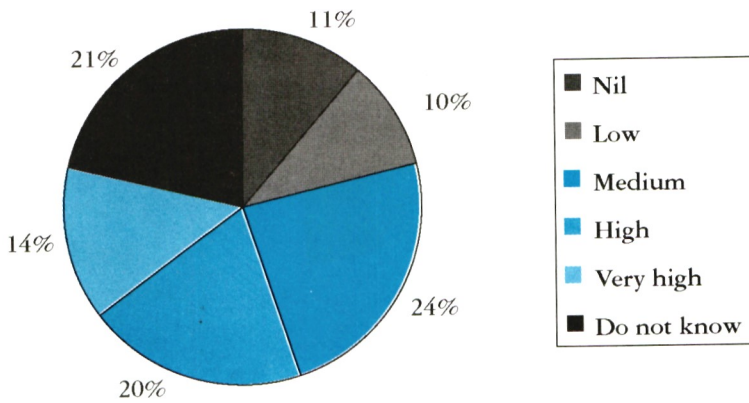
How would you rate the level of corruption of a magistrate ?



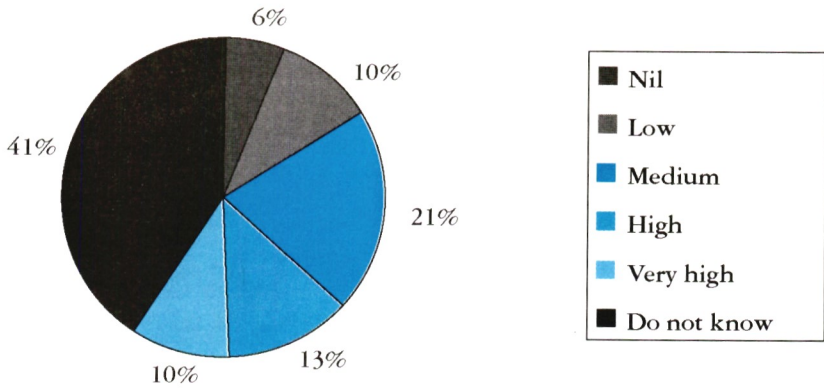
How would you rate the level of corruption of a State Counsel /prosecutor?



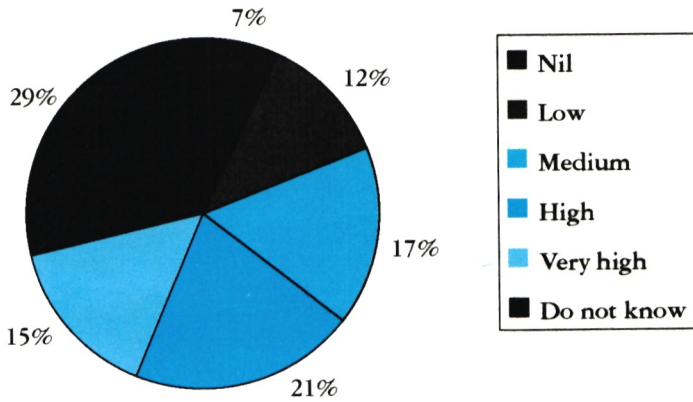
How would you rate the level of corruption of an advocate?



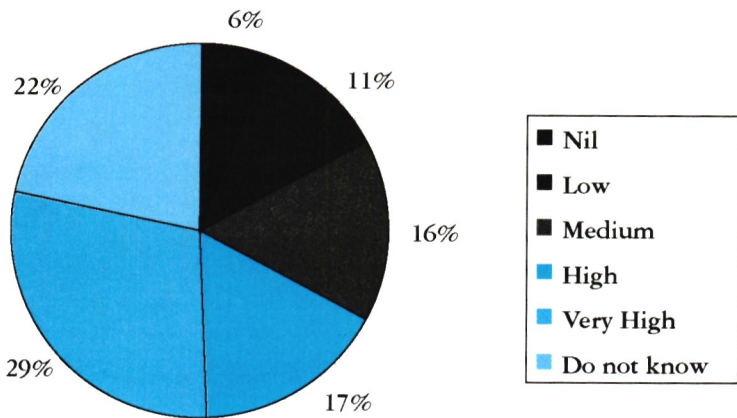
How would you rate the level of corruption of an executive officer ?



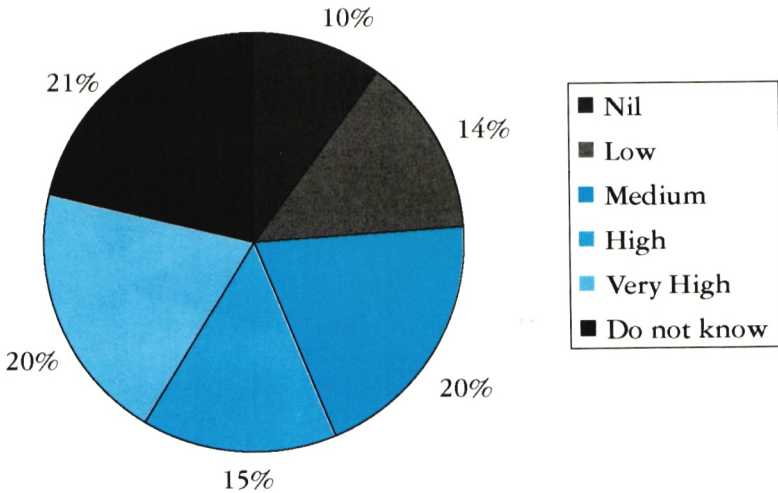
How would you rate the level of corruption of a registrar?



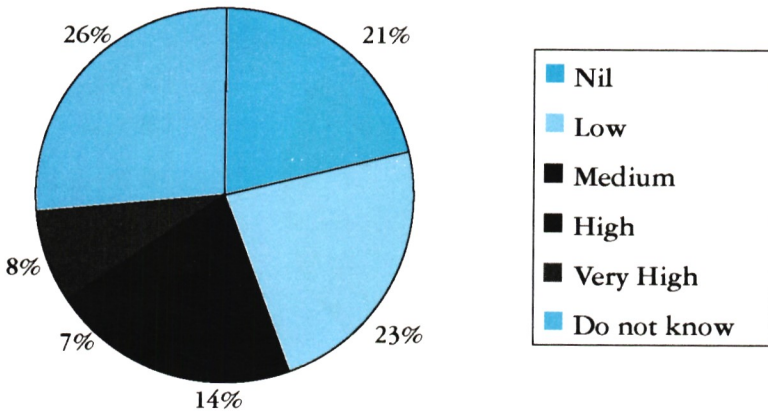
How would you rate the level of corruption of the registry clerks



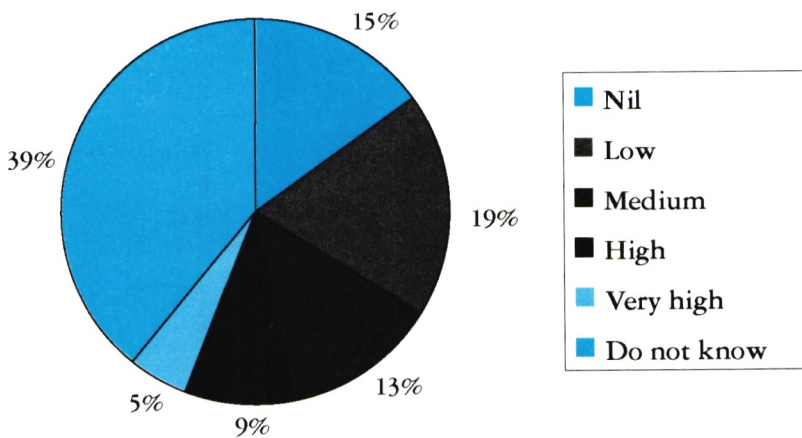
**How would you rate
the level of corruption of court clerks**



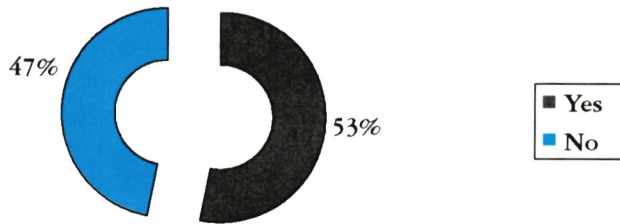
How would you rate the level of corruption of court security guards?



How would you rate the level of corruption of process servers

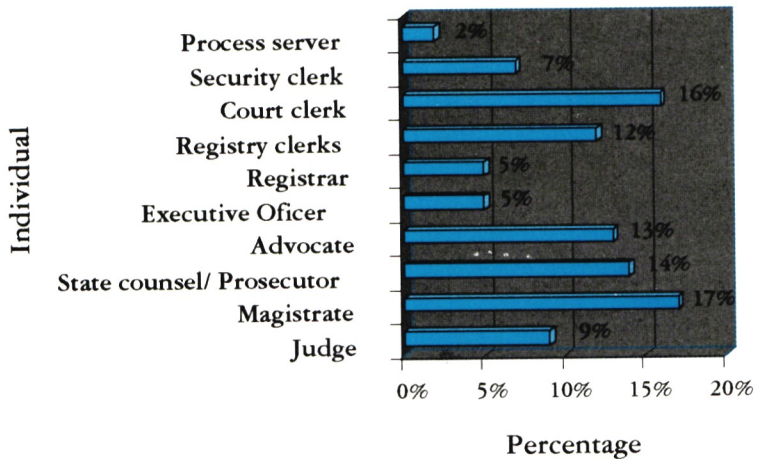


Have you ever witnessed corruption in court?



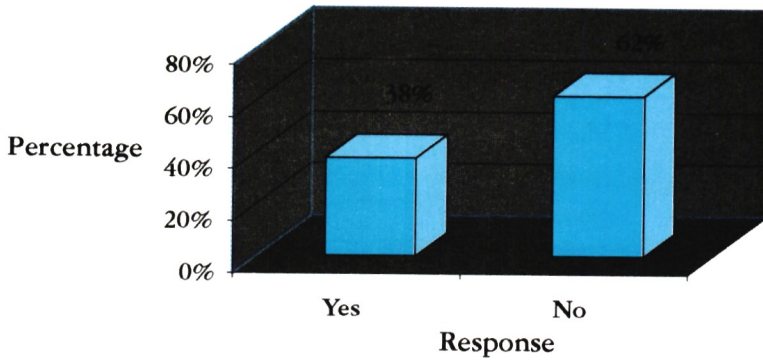
53% of the respondents had witnessed corruption in court.

Who did the corruption involve ?



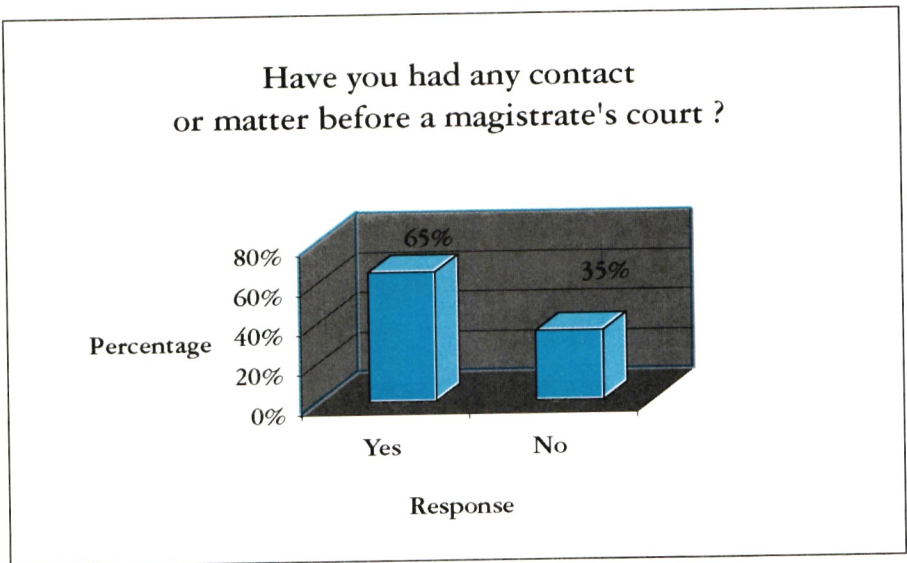
Majority of the corruption witnessed in court involved either a magistrate (17%) or a court clerk (16%). One respondent felt that litigants should be included as part of the persons who practise corruption.

Do you think the judiciary is accountable ?



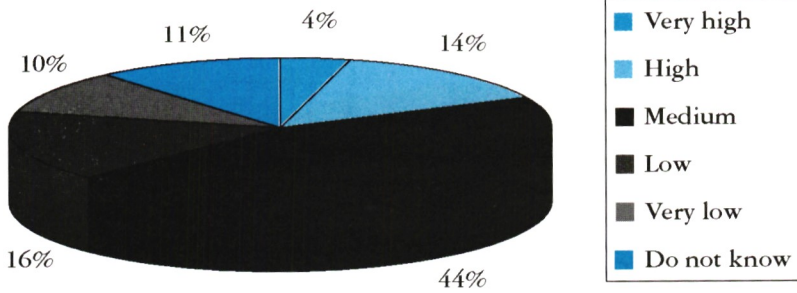
62% of the respondents did not think the judiciary is accountable.

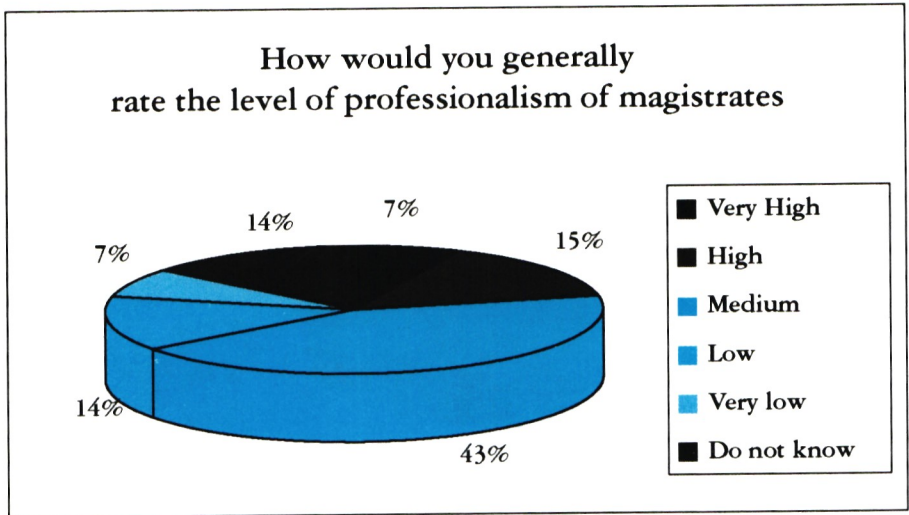
JUDICIAL EFFICIENCY



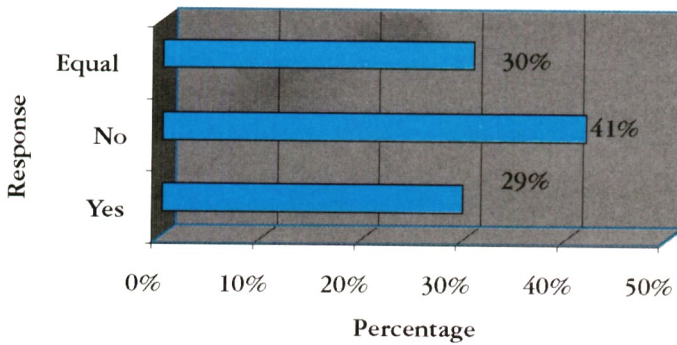
Majority of the respondents had had contact with or a matter before the magistracy.

How would you rate the
level of efficiency of Magistrate courts ?





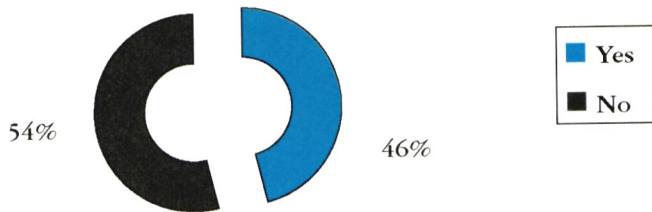
**Do you think magistrate's courts
are more efficient than the High Court ?**



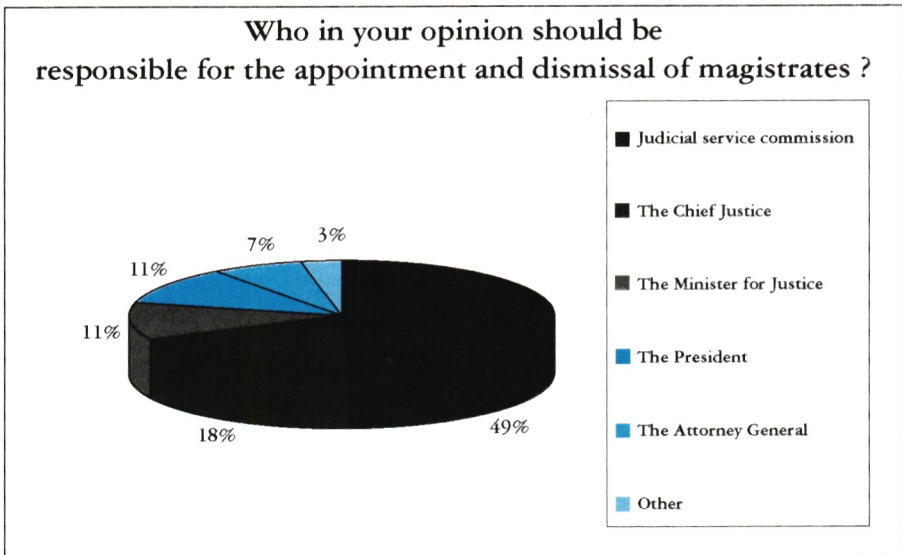
Majority (41%) of the respondents thought that the High Court was more efficient as compared to the Magistrate's Court.

MAGISTARIAL ADMINISTRATION 

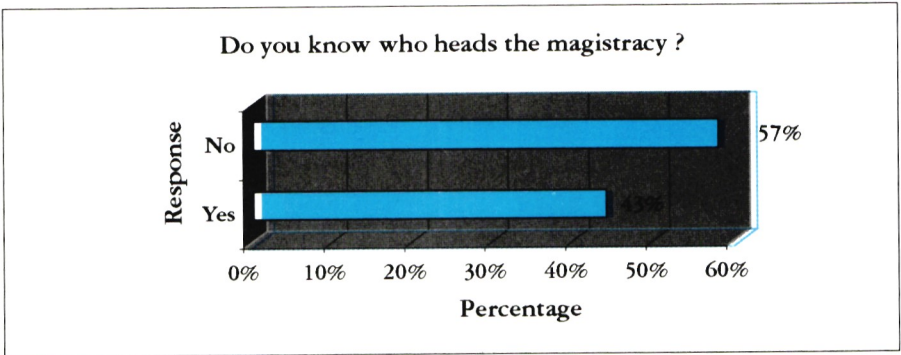
**Do you know who is responsible
for the appointment and dismissal of magistrates?**



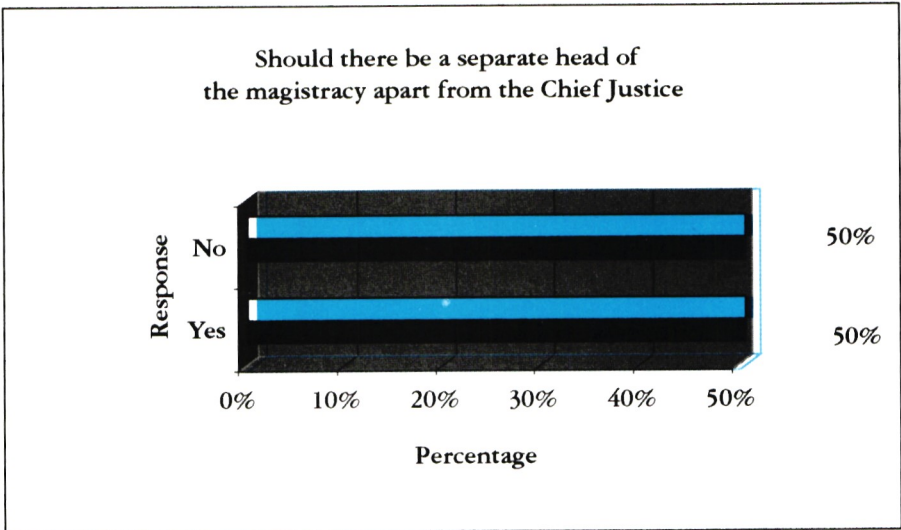
Majority of the respondents did not know who was responsible for the appointment and dismissal of magistrates.



Majority of the respondents thought that Judicial Service Commission should be responsible for the appointment and dismissal of magistrates.

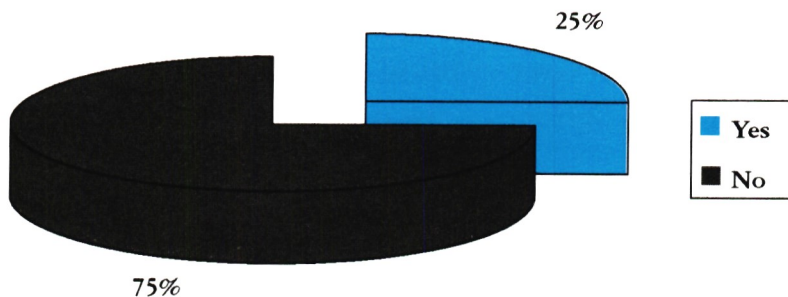


57% of the respondents did not know who heads the magistracy.



Half of the respondents thought there should be a separate head of the magistracy apart from the Chief Justice.

Do you know the current terms of service of the magistracy ?

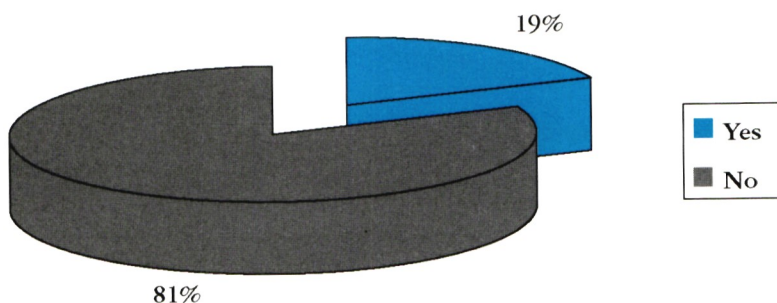


75% of the respondents did not know the current terms of service of the magistracy.

The current remuneration package for members of the judiciary is as follows:

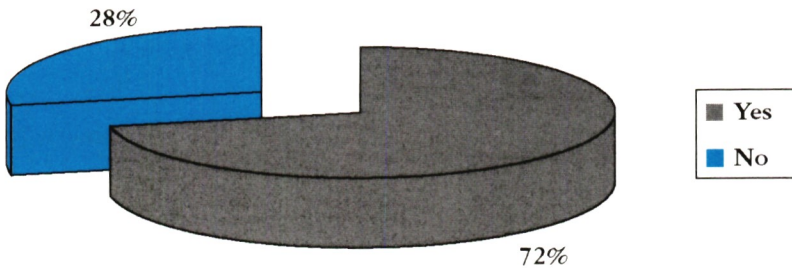
| | Salary | Allowances |
|-------------------------------|--------------------|------------|
| i) Chief Justice | 531,650 | 452,990 |
| ii) Judges of Court of Appeal | 214,635 to 277,950 | 287,590 |
| iii) High Court judges | 130,314 to 333,320 | 227,290 |
| iv) Magistrates | 18,960 to 84,055 | |
| v) Paralegal | 4,425 to 71,365 | |

In your opinion are the current terms of service of the magistracy satisfactory ?



81% of the respondents did not think that the current terms of service of the magistracy were satisfactory.

**Do you think this influences
corrupt practices in magistracy ?**



72% of the respondents thought that unsatisfactory terms of service of the magistracy influenced corruption in the magistracy.

CONCLUSION

In order to ensure that the system of justice in Kenya serves the needs of the people it is created for, it should be tailored to make it more accessible, more efficient and more accountable to the public. Only then can the courts justify their existence to the consumers of justice.

It is however apparent from the data collected that a large majority of those interviewed considered the legal system to be complicated despite the fact that they understood the language used and the proceedings. This may suggest that there is a gap that needs to be filled through greater sensitization of the public to the intricacies of the justice system.

It is also important to note that the press came out as the main source of information to people on matters pertaining to the judiciary. Whereas the role of the press in informing the public is lauded, it should be noted that media is not always objective, well informed or accurate when reporting on legal matters. The onus therefore falls on the legal fraternity and legal publications to increase their role in providing comprehensive and professional information to the public on judicial and legal matters.

It appears that many Kenyans continue to have problems locating courts and curiously it is the court security staff who seem to provide the greatest assistance to those unable to locate their courts. It is suggested that some professional mechanism be put in place within the various court stations to provide directions and simplify the process of locating courts for members of the public.

Also important to note is that there is low ratio of judges and magistrates to people and that most persons interviewed believe that there are simply not enough courts in Kenya to cater for the demand for justice. Many persons approve of resolution of disputes through the informal mechanisms of chiefs or councils of elders and this suggests that it is time that such mechanisms were given some formal recognition.

In our previous publications we have highlighted corruption as a major problem in the Judiciary today. The level of this problem was found to be high in the magistracy. For instance, 20% of the respondents found corruption to be **very high** in the magistrate's courts, while 30% thought that corruption was **high**. Thus, 50% of the respondents found corruption to be a serious problem in the magistrate's courts.

Among all judicial officers, the magistrates formed the largest number of judicial officers who have been involved in corrupt practices in the full view of the respondents¹⁰.

Majority of the respondents did not know the office/institution responsible for the appointment and dismissal of magistrates. However, majority supported the Judicial Service Commission as the one that is suited to be responsible for the appointment and removal of magistrates.¹¹ Majority of the respondents also, did not know who heads the magistracy in Kenya. There was equal vote for those who wanted the Chief Justice to be the head and those who did not want¹².

Inefficiency as far as conclusion of cases is concerned is a chronic problem in the Judiciary as a whole. Majority of the respondents identified constant case adjournments as the biggest contributor to case backlogs in the magistracy. In comparison with the High Court, majority of the respondents thought that the magistracy was less efficient¹³. In terms of the overall performance, 44% of the respondents found the magistrate's court to be average. 43% of the respondents also found the level of professionalism in the magistrate's court to be average.

Finally, many rate the efficiency of the magistrates' courts as much lower than that of the high court. One of the factors that could be a cause of this problem is the comparatively poorer terms of service available to magistrates. This may be a cause of demotivation in the magistracy and may also contribute to corrupt practices by magistrates.

¹⁰ 17% of the respondents stated that they had witnessed magistrates in corrupt practices. Court clerks followed with 16%.

¹¹ Judicial Service Commission is currently responsible for the appointment and dismissal of magistrates.

¹² The Chief Justice currently heads the magistrate's court.

¹³ 41% of the respondents found the High Court to be more efficient compared to 29% who thought the Magistrate's Courts were.

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