

Factors Contributing to Delayed Justice Delivery in Zimbabwe

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ABSTRACT

The study explored and analyzed the various factors contributing to delayed justice in Zimbabwe. In conducting the study, a qualitative research was used. The study made use of semi-structured interviews and focus group in conducting the study, with a sample size of 36 participants. Participants used included prison officers, police officers, magistrates, prosecutors, lawyers and inmates who experienced prolonged pre-trial detention. The sample was purposively sampled. The research used the social disorganization theory. The following main factors contribute to delayed justice in Zimbabwe; shortage of magistrates, shortage of resources, lethargic lawyers, poor infrastructure, shortage of resources, poverty and absence of witnesses. The findings highlight the need to implement policies aimed at reducing the delays in justice delivery.

Key words: Exploration factors contributing, delayed Justice, justice delivery, Zimbabwe

INTRODUCTION

The issue of delayed justice delivery has always been a thorn in the flesh, globally as it leads to placement of accused person on prolonged pre-trial detention (Pelvin, 2017, APCOF, 2017; APCOF, 2015; Heard and Fair, 2017 and Walmsley, 2017). The authors noted that delay in justice provision leads to prolonged pre-trial detention. Bhandari (2014,) highlights that delayed justice is caused by lack of magistrates, archaic laws, prosecutor's constant tricks to postpone and constant postponement of cases by the magistrates and judges. Ayuba, 2019; Amnesty International, 2018; Heard and Fair, 2019; Majmunder, 2018; Colo, 2021 and Demit, 2018 highlighted that delayed justice is most common in Bangladesh, India, Nigeria, Haiti and Brazil and is silent on Zimbabwe

According to Shah, Khan and Farid (2014), the causes of delayed justice in Pakistan include the transfer of judges, a local culture of delay and unnecessary and endless court adjournments. APCOF (2017) explores how some African studies have adhered to Luanda Guidelines in relation to ensuring justice in line with pre-trial detainees. The study revealed how Ghana, Malawi, South Africa, Tanzania and Uganda have failed to adhere to the Luanda Guidelines. These countries have failed to stick to the 48-hour rule, failure to provide legal assistance to the accused in custody, lack of adequate food and other provisions stated in the Luanda Guidelines. Kozah (2018) states that Zimbabwe is failing Luanda Guidelines by failing to provide adequate food and legal services to the accused persons. The study by APCOF (2017) & Khoza (2018) focuses mainly in accessing the extent how these countries, Zimbabwe included and their level of adherence to the Luanda Guidelines and devoid of the causes of delayed justice

The Transparency International report (2020) hinted that corruption has become rampant in the judicial sector and other arms of the law. The study by Transparency international (2020) focuses on corruption and its forms as the major cause of judicial delays, thus it focuses on a single variable as a cause of delayed justice delivery. The authors views are that the delay in justice delivery cannot be solely hinged on one variable, but there are many and various reasons why justice is being delayed, hence the introspection into the factors leading to delayed justice in Zimbabwe, not solely focusing on corruption alone as a causal factor

Theoretical Framework guiding the study

The study used Shaw and McKay's (1942) social disorganization theory, which states that community institutions should function properly. Their functional power ensures stability and reduces chaos within a

community. Zimbabwe has institutions with a constitutional mandate to ensue justice delivery; namely the police, magistrates (Judicial service commission), Prosecutors (through the National Prosecuting authority) and Prisons. Failure by these institutions to uphold their mandate lead to violation of human right to freedom.

MATERIALS AND METHODS

The research used a qualitative research design to explore and analyse factors leading to judicial delays in Zimbabwe. Thirty-six (36) participants were involved in the study. These were representatives of magistrates, practicing lawyers, Zimbabwe Republic Police, and prison officers. Prison inmates on prolonged pre-trial detention and their household members were also involved in the study. The study participants were purposively selected on the basis of their potential to provide useful information on justice delivery in Zimbabwe, in line with the study as attested by Palinkas et al (2015). Reflections of the participants were collected using semi-structured interviews and focus group discussions as suggested by Miles and Huberman, 1994, Palinkas et al, 2015 and Kelly, 2010).

RESULTS AND DISCUSSION

Poverty

During the period of study, most of the research participants highlighted that they could not afford to pay for legal fees because they were poor to the extent that they could not afford a lawyer. One of the research participants by the name Pink (not his real name) highlighted thus. 'Poverty is bad, otherwise I would not have spent 3 years on Remand, just imagine'. Grey (not real name) who had been at Kwekwe Remand for 4 years said, *'we are just too poor to afford a lawyer to represent me on this case.'* Grey's mother confirmed thus, *'I can't afford to pay a lawyer late alone paying rentals for this house.'*

The findings from the study are like the findings by Schointech (Schointech, 2014, Schointech, 2018; Amnesty International 2018 and Afro-Barometer report, 2020) who state that poverty works against most people, leading to their placement on prolonged pretrial detention. This is because these poor people are resource strained.

Lethargic Legal Agency (lawyers)

Lawyers were accused of constantly using tactics to delay cases and calling for endless postponements as they sought more clarity on the case. During an interview, Brown (not his real name) a prison officer highlighted that, layers have a tendency of calling for further time to look at a case and these legal tactics do affect the effectiveness of delivering justice within a reasonable time. The findings are similar to those by Hesham (2020) who pointed out that in most cases, Lawyers are the major reasons for delayed justice delivery in Egyptian courts as they come up with frivolous and flimsy reasons to postpone a case. This may be because if they increase the number of days of postponement, they benefit financially as lawyers are paid according to the number of courts sited for.

Shortage of magistrates and judges

The delay in effective justice delivery is partly a result of shortage of magistrates and judges within the Zimbabwean justice system. The shortage of magistrates and judges makes the courts saddled with huge case backlogs as court officials become overwhelmed by cases. Magistrates who participated in the study also bemoaned the shortage of staff. A Bulawayo magistrate who chose to be called Mr Brown (not his real name) said, *'Indeed, one of our challenges is the shortage of Magistrates in Bulawayo. The Bulawayo Magistrates court used to have 12 supporting magistrates, but now it has 5. This results in a single magistrate handling many cases, thereby increasing his /her workload.'* The effects of staff shortage were also highlighted by Agbonika, 2014, Ayuba, 2019 and Schointech, 2014 who added that postponement of cases may affect the accused emotionally and psychologically due to stigma as due to delayed justice delivery.

The Covid-19 pandemic

The Covid 19 pandemic is a contributory factor towards delayed justice delivery in Zimbabwe. During the pandemic (period 2020-22) lockdowns legal trials were placed on hold except for cases (Sibanda, 2020) leading to a huge case backlog and an affront to justice (Muchadehama, 2020). Interview with a prison officer revealed, *'Covid-19 pandemic lockdowns were an affront to justice delivery. This was because no inmate would be sent to courts, except that their warrants were taken to the courts for further endorsements of their remands.'* Muchadehama (2020) and Venis (2021) underscored that Covid -19 added a burden to system that was already strained. It may take a longer time for the justice system to clear the case backlog.

Corruption

Corruption has been touted as one of the factors affecting justice delivery in Brazil, India and Ghana (Bbandari, 2014; Afro-Barometer report; 2020 and Demetti, 2018). The same could be said of Zimbabwe. A case of Lastozh (not real name) paints a grim picture on access to justice, as she said, *'I and my friend were told by police officers that our case was minor, and that it could die a natural death if we bribed them with US\$300. When we failed to raise the bribe, we got detained in jail for 6 months on acquittal.'*

The findings are consistent with the Legal Resources report (2018) and Transparency International (2020) which stated that the justice system was so corrupt to the extent that most police, magistrates and prosecutors are rotten. The study has also revealed that the police, prosecutors or magistrates can easily fall in the trap of being corrupted by the public (Magwaya, 2023; Ghosh and Sidique, 2015; Afro-Barometer, 2017). Corruption leads to the disappearance of dockets, unnecessary case adjournments or striking of the case from the court roll.

Absence of witnesses

The challenge of the unavailability of witnesses due to their absence is a cause of concern. This is because witnesses are quite critical towards ensuring that justice is delivered in a fair and appropriate manner because their presence helps to exonerate an accused person or nail the person if he /she has committed a crime (Mannen, 2015; Alegh, 2015). The judicial officers who participated in the study decried the absence of witnesses as it stalled down the smooth flow of justice provision. One Prosecutor from the Gweru magistrates court named Mr Mango (not his real name) had this to say, *'when witnesses come to court they use hard currency that is united states dollars and when the court reimburses them, they are reimbursed in local currency which has lost its value, thus making witnesses not willing to be forthcoming, and in most cases they will not even attend court.'*

Most pre-trial detainees and legal experts interviewed decried the issue of unavailability of witnesses. A legal expert explained thus, *'when witnesses are not forthcoming to testify before the court, it delays the process of justice delivery as the presiding magistrate or judge is forced to postpone the case. The presiding magistrate needs to listen to the witness for him to make a competent verdict on a case.'* The finding confirms those of Mann, (2017) and Alegh, (2015) who highlight that absence of witnesses compromises justice delivery processes as it denies either the magistrate or judge from arriving at an informed judgement.

Poor infrastructure

Shortage of courts has negative ramifications on justice provision (Sawada 2015) as it leads to delays in hearing cases. The study established that Zimbabwe does not have enough court rooms. Mr Maroon (not his real name) noted during an interview, *'Gweru, for example, has 4 courts, 2 of them are regional courts (that is court 1 and court 2) while court 3 and 4 cater for provincial cases. This shortage has contributed to delays in hearing cases.'*

The study noted that districts such as Shurugwi, Zvishavane and Kwekwe do not have a regional court. Inmates are sent either to Gokwe or Whawha to be attended by the 2 regional courts. Cities such as Gweru and Chinhoyi do not have high courts. Gloria (2014) and Agbonika and Musa (2014) raise an important issue in the infrastructure narrative, they rightly point out that it is possible that court houses may have access to the Internet

or libraries which are crucial in the dispensation of justice. This paper recommends further studies on resourcing court houses.

Resourcing the delivery system

The police play an important role in justice delivery. The study established that the police do not have enough resources such as cars for use in investigative cases. One of the police officers who participated in the study said, *'As we speak, the police have no Internet, no enough bond paper or computers to use. The vehicles we have for policing purposes are not enough.'* The prison and correctional services does not have psychiatric doctors. Inmates who require services of such psychiatric doctors may have their day in court delayed as they have to wait for their turn to see the doctor. The law requires that persons accused of murder should be assessed by a public psychiatrist. Psychiatric doctors' evidence is required before the courts. The study found that Zimbabwe Prisons and Correctional Service (ZPCS) has no psychiatric doctors. Inmates who were detained in 2020 were still to be examined. Psychiatric inmates are not granted bail before they are seen by a psychiatric doctor. Thus, accused people who are psychiatric patients suffer from Judicial delays.

CONCLUSION

The study explored the various factors leading to delayed justice. The factors include shortage of magistrates, shortage of resources, poor infrastructure, shortage of resources, poverty and absence of witnesses. These factors lead to postponement of cases, overcrowding in prisons and correctional centers as accused persons stay for a prolonged pre-trial detention.

RECOMMENDATIONS

The state, the judiciary and other actors who have a role to play in justice delivery are advised to (i) Build regional courts in areas such as Kwekwe and Zvishavane to decongest the courts, (ii) Employ more magistrates and prosecutors to improve the state of justice delivery, (iii) Build more spacious courts that can accommodate 8-15 court houses, and (iv) Build high courts in provinces where they are no high courts for example, Matabeleland North and the Midlands Province.

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