



Africa Criminal Justice Reform  
Organisation pour la Réforme de la Justice Pénale en Afrique  
Organização para a Reforma da Justiça Criminal em África



# Magistrates' Perceptions of Prosecutors

## Survey Analysis

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## Table of Contents

1. EXECUTIVE SUMMARY .....	4
2. INTRODUCTION .....	6
3. METHODOLOGY .....	7
3.1. <i>Representative Sample Checks</i> .....	7
3.2. <i>Questionnaire</i> .....	8
4. NATIONAL FINDINGS .....	8
4.1. <i>'Prosecutors are respectful of other court users'</i> .....	8
4.2. <i>'Prosecutors ensure justice is done'</i> .....	9
4.3. <i>'Prosecutors are corrupt'</i> .....	9
4.4. <i>'Prosecutors are biased'</i> .....	10
4.5. <i>'Prosecutors are competent'</i> .....	10
4.6. <i>'Prosecutors request postponements too easily'</i> .....	11
5. FINDINGS FOR GAUTENG.....	12
6. CONCLUSION .....	13



# 1. Executive Summary

The opinions of magistrates about prosecutors are likely to be informed by their direct experiences. This survey of magistrates about their perceptions of prosecutors had some important findings. Some 61% thought prosecutors treat court users with respect, a key positive on which to build. Respectful treatment is crucial to public experience of the criminal justice system.

Unfortunately, less than half thought prosecutors ensure that justice is done. Of deep concern is that some 20% of magistrates agreed that prosecutors are corrupt, and only 45% were prepared to affirm that prosecutors are not corrupt. By way of comparison, magistrates' perceptions of corruption were worse in relation to the police but magistrates rated other magistrates as somewhat less corrupt than either prosecutors or police.

Magistrates' actual experience of bribery does not appear to be driving corruption experiences, although 1 in 9 knew of an attempt to bribe a magistrate, but none of these attempts were alleged to be by a prosecutor, suggesting other actions by prosecutors drive perceptions of corruption.

A majority of magistrates appear to be doubtful of the competence of prosecutors and significant minority the independence of prosecutors. A minority of magistrates agree that prosecutors are competent, and this is worse among district court magistrates. A significant minority (one third) agree prosecutors are biased, and this view is correlated with perceptions of corruption, suggesting that apparently biased prosecutor actions may drive corruption perceptions.

Better educated magistrates are more likely to think prosecutors are competent, but the opposite applies in respect of older magistrates, who may be more experienced. The vast majority (4 out of 5) of magistrates agree that prosecutors request postponements too easily. Addressing the tendency toward postponements may be a key entry point for improving perceptions of prosecutors.

A separate analysis was possible for Gauteng magistrates. This analysis suggests only slight differences from the rest of the country on most measures, except the extent to which magistrates hold the perception of prosecutors being corrupt. This fraction is more than 50% higher amongst Gauteng respondents than in the rest of the country, suggesting a problem with corruption or the perception of corruption in Gauteng.

The results suggest there may be multiplier effects of any interventions given the linkages between findings. The results further suggest a specific intervention in Gauteng is necessary, given that other studies also point to anomalously poor performance in the province.



## 2. Introduction

Perceptions of prosecutors held by the public are often influenced by factors not related to people's direct experience of the prosecution, such as television coverage of high-profile cases. This is because very few people attend court as witness, victim or suspect and accordingly few have direct experience of prosecutors. Thus, for example, analysis of the 2007 Victims of Crime Survey found that perceptions of the courts were better amongst the few who had actually attended court than those who had not, suggesting that at the time, factors other than direct experiences were driving negative perceptions among the public.<sup>1</sup>

The same survey found that satisfaction with the way in which perpetrators were dealt with within the courts jumped from 41% cent in 2003 to 61 per cent in 2007 amongst those who had actually attended court.<sup>2</sup> This suggests relatively rapid and large improvement in the experiences of people interacting with the court is possible in a relatively short space of time.

Unfortunately, the most recent National Victimization Survey in which broader public perceptions about the courts is measured (which includes the prosecution) found that satisfaction in the courts had dropped from 64% in 2013/14 to 41% in 2017/18<sup>3</sup> This was a return to 2003 levels. Subsequent survey reports have not reported on similar questions. While the perceptions of the public are important, and negative perceptions must be taken seriously, whether or not such perceptions are reflective of what is actually happening in the courts must be determined by referring to other information which is informed by actual experience. The opinions of magistrates may be such a source. Magistrates may be expected to have views informed by actual experience and day-to-day contact with the prosecution. Accordingly, more weight can be given to Magistrate's perceptions as being reflective of underlying trends, than that of the broader public.

The vast majority of criminal matters are heard in the District and Regional Courts in which magistrates preside, with only a few hundred per year being heard in the High Court where judges preside. Furthermore, almost all matters commence in the Magistrates Courts before being set down in the High Court.

The NGO "Magistrates Matter" (MM) is an independent civil society platform dedicated to bringing transparency to the South African magistracy. Magistrates Matter, in conjunction with the University of Cape Town's Democratic Governance and Rights Unit's (DGRU), conducts periodic surveys of magistrates' perceptions of their work environment, with a view to identifying problems and improving the operation of the courts.

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<sup>1</sup> O Donovan, M. South Africans' perceptions of the police and the courts: Results of the 2007 National victims of crime survey Institute for Security Studies Paper 176 (2007) available at <https://issafrica.s3.amazonaws.com/site/uploads/Paper176.pdf>

<sup>2</sup> O Donovan, M. South Africans' perceptions of the police and the courts: Results of the 2007 National victims of crime survey Institute for Security Studies Paper 176 (2007) available at <https://issafrica.s3.amazonaws.com/site/uploads/Paper176.pdf>

<sup>3</sup> STATSSA Victims of Crime Survey 2017/18 available at <https://www.statssa.gov.za/publications/P0341/P03412017.pdf> p89

Prior to MM and DGRU's most recent survey (2022), ACJR requested that their survey include a limited number of questions regarding magistrates' perceptions of prosecution services. The intention was to create a benchmark of magistrates' perceptions from which to measure change and to gain the informed views of magistrates. The survey questions were included and the data provided to ACJR on completion of the survey. ACJR is grateful for the cooperation with MM and DGRU.

This paper provides an analysis of those aspects of the survey of magistrates which reflect on the prosecution service, with a view to identifying interventions for the improved operation of the courts through improved prosecution.

## 3. Methodology

The survey conducted by Magistrates Matter is a self-completion on-line survey which relies on respondents to dedicate some effort to completing the questionnaire. The accuracy with which self-completion surveys reflect the wider population is always a concern. This is because those who make the effort to participate may not reflect the wider population of all magistrates. Self-completion surveys also lack the rigorous sampling that is usually used to ensure representative participation and thus the generalisability of results. Without such sampling, it is possible that results may be skewed towards particular perspectives. Some due-diligence is therefore required to check for any evidence of bias before generalising the findings to all magistrates, given the anonymity assured respondents. For on-line surveys this diligence includes examining who participates in the study.

### 3.1. Representative Sample Checks

#### 3.1.1. Dispersed IP addresses of respondents

Fortunately, analysts can trace the electronic origin of responses. In this survey 80% of responses came from single-use IP addresses (and thus from individuals logging in independently). The remaining 20% of responses come from two particular IP addresses. Using the SAIX lookup facility the origin of the addresses was identified. The first of the two IP addresses was identified as the High Court in Pretoria. The second IP address was traced to a residential address in Grabouw. Neither are places expected to be sources of multiple survey participants. It was established however that a Judicial Officers Association of South Africa event at which magistrates were asked to participate in the survey likely explained the former. In relation to the latter, an IP data address may simply be the office of the office or person who registered the IP address. The question then arises as to whether there were significant differences between responses from either of these IP address and from elsewhere. Marked differences could suggest an attempt to influence the survey results and their inclusion in the analysis would bias the findings. Fortunately, the results are very similar and the results from these two IP addresses do not seem to skew findings in relation to the prosecution service.



### 3.1.2. Geographic representation of respondents

Checking the representation of the participant sample can also be attempted by comparing the demographic and geographic location of respondents to what is known about the population of magistrates. This exercise suggests there may be an over-representation of magistrates from North West province and an under-representation from KwaZulu-Natal. However, as the court system in South Africa is a national competence and forms a unified system, these differences may not be material.

### 3.1.3. Incidental nature of the questions

As outlined above, the thrust of the survey was about magistrates' work conditions. The questions on the prosecution were incidental. Accordingly, should there have been any deliberate attempt to skew results, the focus of this attempt would likely not focus on these questions, but rather on questions more pertinent to magistrates, such as their remuneration and conditions of service.

### 3.1.4. High survey response rate

Ultimately there are 230 responses to the survey, which number amounts to just over 10% of all magistrates. This is an excellent response rate for a self-completion on-line survey. The size of the sample and bias checks carried out above suggests there are reasonable grounds for generalising the responses in the survey to magistrates in general.

## 3.2. Questionnaire

In the survey several questions were posed as to what magistrates thought of prosecutors. Respondents were asked to respond to a series of statements, both positive and negative, such as "Prosecutors treat court users with respect" or "Prosecutors are corrupt". Respondents were asked the extent to which they agreed or disagreed with the statements provided, and were also given the option to say they did not know. There were also questions elsewhere in the survey which shed light on respondents' views of the prosecution service as it operates in the criminal justice system, which followed a different format.

# 4. National Findings

## 4.1. 'Prosecutors are respectful of other court users'

Respect is a crucial factor operating to influence trust in the criminal justice system. The evidence from other sources suggests that where people are treated with respect, the outcomes are more acceptable to them, even if the outcomes

are not in their favour. Accordingly, it is encouraging that the majority (61%) of magistrates agreed or strongly agreed that prosecutors are respectful of other court users. On the other hand, it is deeply concerning that one out every three magistrates disagreed with the statement. This suggests that there is unevenness in the extent to which respectful behaviour toward court users by prosecutors is observed by magistrates and that disrespect toward court user by prosecutors forms a significant minority of the experiences of magistrates. That the majority agreed that prosecutors showed respect suggests a strong basis on which to build further.

## 4.2. 'Prosecutors ensure justice is done'

It is the responsibility of prosecutors to ensure a just result in court. Prosecutors' duty is not to obtain a conviction, but to ensure justice. Prosecutors exert a great deal of discretion, from opposing or not opposing bail, to deciding not to prosecute or to prosecute, to ensuring they conduct the trial fairly, to deciding on alternative resolutions, to deciding on which charges and in which court to prosecute. Unfortunately, less than half (48%) of magistrates agreed or strongly agreed that prosecutors ensure justice is done, while 42% actively disagreed with the statement. A small fraction did not hold an opinion.

## 4.3. 'Prosecutors are corrupt'

The view that prosecutors are corrupt clearly would be of extreme concern if held by magistrates. One would accordingly expect that the fraction holding this view to be low, if at all present. Unfortunately, as much as 20% of magistrates agreed or strongly agreed with this statement that prosecutors are corrupt. Further, some 35% said they did not know. In other words, less than half of magistrates (45%) were willing firmly to give the opinion that prosecutors are not corrupt. This is of deep concern and may suggest (1) actual corruption (2) inconsistent application of prosecutors' discretion, giving rise to the apprehension of corruption. Additional questions elsewhere in the survey shed additional light on the perception of corruption and will be discussed below.

### 4.3.1. Comparative corruption among magistrates, prosecutors and police

Respondents were also asked: "How many of magistrates/ prosecutors/ police etc. do you think are involved in corruption, or haven't you heard enough about them to say?" The question clearly presents respondents with an opportunity to give their opinion as to the extent of corruption amongst the persons of the three institutions of the criminal justice process institutions.

In this question, in contrast to the above, almost two-thirds (63%) of magistrates were of the opinion that some/most/all prosecutors are corrupt, arguably a worse result than the question above, although the statement "prosecutors are corrupt" can be read as "(All) prosecutors are corrupt". Only 2% of respondents thought that no prosecutors were corrupt.

By contrast, a lesser fraction, (48%) of respondents indicated that some/most/all of their magistrate colleagues were corrupt, while (6%) were of the opinion that no magistrates were corrupt.

Finally, the vast majority of respondents (83%) said that some/most/all police were corrupt, with over one-quarter (27%) of respondents saying that most or all police members were corrupt. No respondent was of the opinion that no SAPS members were corrupt. Thus, half of magistrates perceive that corruption exists in their own ranks, two-thirds think so among the prosecution, and more than four-fifths among the police.

#### **4.3.2. Extent of actual bribery experienced by magistrates**

One-in-nine (11%) respondents said they (or a magistrate they know) was offered a bribe in last two years. The results suggest that the primary avenue for corruption lies not by offering magistrates inducements or bribes but along other avenues. These other avenues may include unnecessary postponements, incompetent case presentation and the failure to present evidence.

#### **4.4. 'Prosecutors are biased'**

Prosecutors are constitutionally enjoined to carry out their functions without fear, favour or prejudice. A perception of bias would suggest prosecutors are failing in the constitutional obligation. Again, one would expect a small fraction of magistrates to believe prosecutors to be biased. Unfortunately, almost one third, a significant minority, indicated that they thought that prosecutors are biased.

##### **4.4.1. Bias and corruption**

At national level there is a clear correlation between perceptions of prosecutor corruption and bias. That correlation has a pronounced impact on NPA legitimacy – particularly in areas where corruption is more pronounced. In general, respondents who say 'prosecutors are biased' are significantly (in a statistical sense) more likely to agree with the statement that 'prosecutors are corrupt'. Conversely respondents who disagree with the statement that 'prosecutors are corrupt' are also likely to perceive them as unbiased. This correlation is probably the strongest one observed in the prosecution component of the survey. The association is in contradistinction to the less marked association between bias and other factors like competence (see below). This indicates that, for the respondents, prosecutorial bias signals corrupt behaviour and/or that corruption is manifested through biased conduct.

#### **4.5. 'Prosecutors are competent'**

Well over half the respondents (59%) disagreed (or strongly disagreed) with the statement that "prosecutors are competent". Only one-third (36.5%) of respondents agreed with the statement. Responses varied by the seniority of the court in which the respondents were based. District court magistrates were less likely to think prosecutors are

competent than regional court magistrates. This is in line with expectation, as more senior and experienced prosecutors are likely to appear in the regional court.

#### 4.5.1. Perceptions of bias and competence weakly correlated

Magistrates who agreed with the view that prosecutors were biased were also more likely to think that prosecutors were not competent. The corollary to this is the finding that respondents who thought prosecutors were competent were also more likely to think they are unbiased. Although the correlation between the two variables is not particularly marked there are some underlying patterns evident. Intriguingly, better educated magistrates (those with a Masters degree or higher qualification) were more likely to think prosecutors were not biased. This finding is discussed in more detail below.

#### 4.5.2. Educational correlates of perceptions of competence and bias

It may be expected that better educated magistrates might demand more from prosecutors in terms of their competence and lack of bias. Instead, the opposite is true. This is because there are two fairly distinct age cohorts among respondents (and thus among magistrates in general) which also have different educational profiles. All respondents under the age of 45 have a Master's Degree (or higher educational qualification). By contrast one-quarter of respondents over the age of 44 only have a Bachelor's degree as their highest educational qualification. On average, the younger magistrates have better educational qualifications than their older peers. Thus, the better educated magistrates, who are also younger, are less likely to question the competence of prosecutors. This suggests that age (a proxy for experience) rather than education is correlated with negative perceptions of competence and bias.

#### 4.6. 'Prosecutors request postponements too easily'

One key area of contention in the criminal justice system is the frequency with which cases are postponed. Prosecutors are often criticised for unnecessary postponement of cases and delays in the progress of trials. The postponements contribute to, inter alia, backlogs in the court system and jeopardise cases. The criticism is clearly reflected by the survey where 81% of magistrate respondents agreed that "Prosecutors request postponements too easily". Furthermore, there is a correlation between this perception, and perceptions of incompetence and corruption. This suggests that one way of improving perceptions of incompetence and corruption may be to reduce the propensity for prosecutors to request postponements.

## 5. Findings for Gauteng

Most respondents indicated in which province they were based. This allows for a limited geographical breakdown of responses. When the number of interviews is too low in a province, generalising to a province becomes problematic. It is, for example, unwise to generalise the nine responses from Limpopo to all magistrates in that province. However, there were a healthy number of interviews from Gauteng (56). The 56 responses from Gauteng, which comprised 24 percent of all respondents, may, with greater confidence, be taken as representative of all magistrates in that province. This makes it possible to gain some insight into some trends in this province.

In this section, the 56 responses from Gauteng are compared to those from other provinces, in order to identify any significant differences in the trends. While prosecution and the courts are a national function, other research by ACJR suggests particular differences in in Gauteng compared to the rest of the country, in particular, a lower fraction of successfully completed cases in relation to reported crime. Where there any key differences evident in this survey which may suggest reasons for this?

First, there were slight differences likely to be insignificant as they probably arise from random variation in samples rather than systemic differences in the perception of magistrates in that province. These tended to be in the direction of being more positive for Gauteng. For example, magistrate respondents in Gauteng were slightly less likely to agree with the statement that “prosecutors are biased”. Gauteng respondents were slightly more likely to agree with the statement that ‘prosecutors are respectful of other court users’. On the other hand, in the less positive direction, they were slightly less likely to agree that prosecutors were competent. None of these findings were particularly marked, and as suggested above, are likely to be result of random variation.

Second, however, there was one significant and concerning large difference evident. Recall that across all respondents one-fifth agreed (or strongly agreed) with the statement that “prosecutors are corrupt”. If Gauteng is excluded from the responses i.e. if we consider only responses from outside Gauteng, this percentage falls to only 16.5%. When Gauteng respondents are considered on their own, that percentage increases by half to reach one-quarter (25.4%). It is therefore clear that a significantly higher proportion of Gauteng magistrates agreed with the statement that ‘prosecutors are corrupt’. Given the small differences between Gauteng and the other provinces in other respects, the difference in the perception of corruption is striking.

This anomaly suggests that the insight into corruption is real rather than a product of random variation. While part of the difference may be due to the Gauteng respondents being older than the other respondents, these characteristics of magistrates may sensitise them to suspect behaviour by prosecutors. Regardless, it does not detract from the core insight that Gauteng magistrates are far more likely to see (their) prosecutors as corrupt.

The findings regarding perceptions of Gauteng prosecutors confirm the result of another ACJR study, which shows that Gauteng has an anomalously low rate throughput rate that cannot be attributed to differences in the quality of dockets

received from SAPS.<sup>4</sup> This in turn suggests particular attention must be paid to rooting out corruption, or the drivers of the perception of corruption, such as postponements and high withdrawal rates, among prosecutors in Gauteng.

## 6. Conclusion

The survey results provide both reason for optimism and cause for concern. The linkages between various perceptions suggests that interventions to address one perception will likely affect others. Addressing the issue of postponements, for example, will likely reduce perceptions of bias and corruption and may actually reduce actual biased and corrupt tactics, if such interventions reduce actual dubious postponements. Negative perceptions do seem to be too high at present. In particular, the strong pointer to higher perceptions of corruption in Gauteng, which appears to be independent of linkages to other perceptions, suggests a corruption-specific intervention is needed in that province, which may call for stronger leadership.

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<sup>4</sup> See forthcoming ACJR report.