

THE EUROPEAN UNION'S EDF PROGRAMME FOR ZIMBABWE

# MID-TERM EVALUATION OF THE SUPPORT TO RULE OF LAW AND ACCESS TO JUSTICE FOR ALL PROGRAMME

Letter of Contract SIEA-2018-1307

Final Report

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April 2021



The project is financed by  
the European Union



The project is implemented by IBF International Consulting  
In collaboration with

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# TABLE OF CONTENTS

Abbreviations and Acronyms.....	5
1 Introduction.....	7
1.1 Background.....	7
1.2 Objectives, users and evaluation period.....	8
1.3 Methodology.....	8
1.4 Country and sector context.....	9
1.4.1 Political context.....	9
1.4.2 Economic context.....	10
1.4.3 Law and policy.....	10
1.4.4 Sector context.....	11
2 Findings.....	12
2.1 Relevance.....	12
2.1.1 Relevance at design stage.....	13
2.1.2 Relevance over time.....	14
2.2 Effectiveness.....	16
2.2.1 Introduction.....	16
2.2.2 Specific Objective 1.....	17
2.2.3 Specific Objective 2.....	22
2.2.4 Specific Objective 3.....	28
2.2.5 Challenges: implementation modalities and management arrangements.....	32
2.2.6 Contributions to Government priorities, SDGs, gender equality and re-engagement.....	33
2.3 Efficiency.....	34
2.4 Sustainability.....	36
2.5 Coherence, added value and complementarity.....	38
3 Lessons learned.....	41
4 Conclusions.....	43
5 Recommendations.....	45
5.1 Recommendations for the current Programme.....	45
5.2 Recommendations for future programming.....	48
Annexes (Separate Volume).....	50
Annex 1. Overview of projects.....	50
Annex 2. Terms of Reference.....	50
Annex 3. Methodology.....	50

Annex 4. Evaluation Matrix .....	50
Annex 5. List of persons interviewed .....	50
Annex 6. Documents consulted .....	50
Annex 7. List of current EIDHR grants.....	50
Annex 8. Map of Zimbabwe .....	50
Annex 9. Experts' CV .....	50
Annex 10. Answers to the Evaluation Questions, judgement criteria and indicators .....	50

## ABBREVIATIONS AND ACRONYMS

CALR	Centre for Applied Legal Research
CCL	Cabinet Committee on Legislation
CSO	Civil society organisation
Danida	Danish International Development Agency
DFID	Department for International Development
DP	Development partner
EU	European Union
EUD	European Union Delegation
EUR	Euro
FCDO	Foreign, Commonwealth and Development Office
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
ICJ	International Commission of Jurists
IMT	Inter-Ministerial Taskforce on the Alignment of Laws with the Constitution
JSC	Judicial Services Commission
LAD	Legal Aid Directorate
LRF	Legal Resources Foundation
LSZ	Law Society of Zimbabwe
M&E	Monitoring and evaluation
MoJLPA	Ministry of Justice Legal and Parliamentary Affairs
NAO	National Authorising Office
NDS	National Development Strategy
NPA	National Prosecuting Authority
OECD/DAC	Organisation for Economic Co-operation and Development's Development Assistance Committee
SAPST	Southern African Parliamentary Support Trust
SDG	Sustainable Development Goal
SGBV	Sexual- and gender-based violence
TRACE	Transparency, Responsiveness, Accountability, and Citizen Engagement
TSP	Transitional Stabilisation Plan
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFPA	United Nations Population Fund

UNICEF	United Nations Children's Fund
ZHRC	Zimbabwe Human Rights Commission
ZIMASSET	The Zimbabwe Agenda for Sustainable Socio-Economic Transformation
ZPCS	Zimbabwe Prisons and Correctional Services
ZRP	Zimbabwe Republic Police

# 1 INTRODUCTION

## 1.1 Background

IBF International Consulting has been contracted by the European Union (EU) to conduct a Mid-Term Evaluation of the Support to Rule of Law and Access to Justice for All Programme. The evaluation was implemented by:

- Greg Moran: Team Leader.
- Dorothy Mushayavanhu: Human Rights and Access to Justice Expert.

The Support to Rule of Law and Access to Justice Programme ('the Programme') targets four areas where major challenges were identified during the identification and formulation missions: (1) provision of legal services (2) institutional capacity development (staff and systems), (3) research, data analysis and coordination and (4) the fight against corruption. The overall objective of the Programme is to support the rule of law through justice sector reform and increased access to justice for all. It includes three specific objectives, each with its own results:

- **Specific Objective 1:** To increase the independence, competence, integrity and professionalism of the judiciary.
- **Specific Objective 2:** To enhance efficiency, transparency, integrity accountability of the justice delivery systems and constitutionality of the law reform process.
- **Specific Objective 3:** To enhance the capacity of all people, especially women and vulnerable groups<sup>3</sup>, to exercise their rights and access to justice.

The Programme was intended to run from 2016 to 2021 but was extended to 2023 because of delays in finalising the service contract under the programme. It has included 11 'projects', as set out in the attached list of projects attached as **Annex 1** and as further described in the body of this report<sup>1</sup>. It had an initial budget of EUR 12m, later increased with a further EUR 2m. However, with the cancellation of the service contract for technical assistance was terminated in early 2020 and the intended programme estimate was not finalised, much of the funding included for the service contract and programme estimate (approx. EUR 3.9m) was redirected towards the fight against the pandemic in Zimbabwe during 2020.

The Programme employs three main implementation modalities:

- Indirect management with the Government of Zimbabwe (under a service contract and programme estimate).
- Indirect management with GIZ and the United Nations Development Programme (UNDP).
- Direct management-grants with civil society organisations (CSOs).

As designed, the intended **direct beneficiaries** of the Programme were the:

- Ministry of Justice, Legal and Parliamentary Affairs (MoJLPA).
- Judicial Services Commission (JSC).
- National Prosecuting Authority (NPA).

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<sup>1</sup> As can be seen from Annex 1, some of the projects have come to an end, others have been added after the start of the Programme, while some of which have been extended as a result of delays caused during 2020 as a result of the COVID-19 pandemic.

- Legal Aid Directorate (LAD).
- Traditional Courts.
- Parliament of Zimbabwe ('Parliament').
- Zimbabwe Republic Police.
- Zimbabwe Prisons and Correctional Services.
- Zimbabwe Human Rights Commission (ZHRC).
- Law Society of Zimbabwe (LSZ).

The only **indirect beneficiary** is the include the Zimbabwe Anti-Corruption Commission (ZAAC), while the **ultimate beneficiaries** are the citizens and residents of Zimbabwe, especially women and populations in situations of vulnerability. The National Authorising Office (NAO) is the contracting authority for the component under indirect management with the government of Zimbabwe (to be implemented under the service contract and programme estimate) and is a signatory to the Financing Agreement.

## 1.2 Objectives, users and evaluation period

According to the terms of reference (ToR) for the evaluation<sup>2</sup>, the **objectives** were to provide the relevant services of the EU, the Government of Zimbabwe, the interested stakeholders and the wider public with:

- An overall independent assessment of the past performance of the Programme, paying particular attention to its intermediate results measured against its expected objectives; and the reasons underpinning such results.
- Key lessons learned, conclusions and related recommendations to improve current and future EU Delegation (EUD) interventions in the justice sector for the period 2021 and beyond.

The evaluation is thus both **summative** and **formative**. The **main users** are the EUD, the MoJLPA, JSC, NPA, Parliament, LSZ, Zimbabwe Chiefs Council, the NAO, CSOs and project implementing partners<sup>3</sup>. The **evaluation period**, as agreed with the EUD during the inception period, is 25 April 2017 to 31 December 2020.

## 1.3 Methodology

The evaluation began on 18 January 2021 and ran until approval of the Final Report on 30 April 2021<sup>4</sup>. The evaluation was based around five **key evaluation criteria**: the standard Organisation for Economic Co-operation and Development's Development Assistance Committee (OECD/DAC) criteria (relevance, coherence, effectiveness, efficiency and sustainability). Since it is a mid-term evaluation, impact as a criterion was not assessed. In addition, the evaluation was required to assess one EU specific evaluation criterion: the EU added value. In addition, the evaluation was also required to consider whether gender was mainstreamed; the relevant SDGs and their interlinkages were identified; the principle of Leave No-

<sup>2</sup> The ToR are attached as **Annex 2**.

<sup>3</sup> The implementing partners for the Programme are GIZ, UNDP, LSZ, International Commission of Jurists (ICJ), Legal Resources Foundation (LRF), Centre for Applied Legal Research (CALR) and Southern African Parliamentary Support Trust (SAPST). The company contracted to implement the service contract and programme estimate was Quarein SPRL.

<sup>4</sup> A detailed description of the methodology is attached to this report as **Annex 3**.



One Behind and the rights-based approach methodology was followed in the identification/formulation documents and the extent to which they have been reflected in the implementation of the Intervention, its governance and monitoring. All of these issues were captured in a set of evaluation questions and indicators included in the Inception Report as an Evaluation Matrix and attached to the current report as **Annex 4**.

The primary limitation faced by the evaluators was the travel and health restrictions related to the COVID-19 pandemic, which meant that the evaluation was conducted remotely using various videoconferencing and telephonic communication platforms. Although conducting evaluations remotely has challenges, the team were able to meet all of those listed in the inception report, save for the Council of Chiefs, by extending the period for interviews slightly from what was included in the original workplan. The team also actively sought to consult those with institutional / historical memory of the design phase and early stages of implementation who had either left Zimbabwe or moved to different Ministries. All in all, the team was able to consult<sup>5</sup>:

- Seven current and previous staff of the EUD.
- Seven members of the NAO.
- Current and former staff of the MoJLPA.
- Direct and indirect beneficiaries (Parliament, JSC, ZHRC, LAD, NPA and ZACC).
- All of the implementing partners.
- Member States and other Development Partners (DPs) supporting access to justice and rule of law in Zimbabwe.

The team also consulted all relevant EU and Government of Zimbabwe policies and strategies, project documents (grants, reports etc.), legislation and other research studies and reports. The list of all of documents read and considered is attached as **Annex 6**.

At the end of the field phase, the team considered all of the data provided to them, triangulated with responses received during interviews and consultations, and prepared a Draft Final Report that was shared with the Reference Group on 12 March 2021. A presentation on the report was conducted with the Reference Group and implementing partners on 18 March 2021. After receiving written comments to the report on 6 April 2021, the team revised the draft report to address all comments received and submitted the current Final Report on 9 April 2021.

## 1.4 Country and sector context

### 1.4.1 Political context

The political landscape for Zimbabwe has been through two decades of tumultuous economic and political meltdown and multiple layered crises. This has resulted in Zimbabwe struggling to open up democratic and political space; weak governance institutions with a low levels of policy implementation; antiquated infrastructure; a 'brain drain' of qualified citizens to foreign countries leading to loss of institutional memory.

Zimbabwe witnessed a military-assisted change of Government in November 2017. Following the removal of the former President Mugabe from political power, a new political dispensation sought political and economic re-engagement with the Western Countries. The 2018 Harmonised Elections

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<sup>5</sup> A list of all of those consulted during the evaluation is attached as **Annex 5**.

were observed by many observation missions including the EU Election Observation Mission<sup>6</sup>. However, the political and human rights reform agenda was eroded by the killing of protestors by the military on 1 August 2018, soon after the 2018 Harmonised Elections<sup>7</sup>. The Government's austerity measures and the 200% increase in the price of fossil fuels in January 2019 led to riots, looting and destruction of property. This was followed by suppression of protestors and increased shrinking space for civil society actors and human rights defenders.

### 1.4.2 Economic context

Zimbabwe has a population of around 15 million (52% women and 70% youth), a Gross Domestic Product per capita of USD 583<sup>8</sup>, and currently ranks 150<sup>th</sup> (with a score of 0.571) on the United Nations Development Programme's (UNDP) Human Development Indicator for 2018 (although it has been steadily improving)<sup>9</sup>. The Poverty Income Consumption and Expenditure Survey (2019), indicates that the percentage of Zimbabweans living in extreme poverty increased from 29% in 2017 to 38% in 2019 (10% of urban dwellers and 51% of those living in rural areas)<sup>10</sup>. Food shortages are increasingly common and, in April and May 2019, 30% of households ran out of food for around 6.4 days in the previous 30 days<sup>11</sup>. High levels of poverty have been compounded by policy inconsistencies and incoherency in relation to monetary policies and currency regime in the country. Additionally, extreme weather conditions such as Cyclone Idai and its devastating effects in Eastern Part of Zimbabwe in 2019, recurring droughts, and the COVID-19 have impacted negatively on the economic situation, which continues to deteriorate.

### 1.4.3 Law and policy

The Constitution of Zimbabwe<sup>12</sup> promotes rights-based approaches, good governance principles, gender balance, access to justice, and the establishment of independent commissions such as the Zimbabwe Human Rights Commission and the Zimbabwe Anti-Corruption Commission. The Constitution ushered in the legislative alignment agenda of national laws and policies with the Bill of Rights and other constitutional provisions as well as Zimbabwe's obligations and commitments to international and regional agreements.

Zimbabwe's main economic development policy at the start of the evaluation period was the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET): Towards an Empowered Society and a Growing Economy (October 2013 – December 2018). ZIMASSET was based on Vision 2030<sup>13</sup> and promoted a number of initiatives that included improved access to justice by indigent persons through decentralised legal aid services to all Provinces in Zimbabwe. The Social Services and Poverty Eradication Cluster in particular promoted the expansion of legal aid services by the Legal Aid Directorate<sup>14</sup>.

Following the change in political leadership in 2017, ZIMASSET was replaced by the Transitional Stabilisation Plan (TSP) (2018 – 2020) in October 2018. The TSP promoted, amongst other things, improved access to justice, including for women and other vulnerable groups, while at the same

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<sup>6</sup> The Mission's recommendations include constitutional alignment of the Electoral Act; Access to Information and Protection of Privacy Act, Broadcasting Services Act, Public Order and Security Act, Criminal Law and Evidence Act and Disabled Persons Act. *EU Election Observation Mission, Zimbabwe Harmonised Elections 2018: Final Report*. See Recommendations 1, 14 and 16

<sup>7</sup> <https://www.hrw.org/news/2018/08/03/zimbabwe-least-6-dead-post-election-violence>

<sup>8</sup> <http://openaid.esteri.it/en/code-lists/recipients/265/>

<sup>9</sup> <http://hdr.undp.org/en/countries/profiles/ZWE>.

<sup>10</sup> [https://pubdocs.worldbank.org/en/510081586355010399/pdf/ZIMREF0Newsletter0January02020\\_1.pdf](https://pubdocs.worldbank.org/en/510081586355010399/pdf/ZIMREF0Newsletter0January02020_1.pdf)

<sup>11</sup> *Ibid.*

<sup>12</sup> Amendment No 20 of 2013.

<sup>13</sup> Which includes improved governance and the rule of law; re-orientation of the country towards democracy; respect for human and property rights; and attainment of responsive public institutions.

<sup>14</sup> ZIMASSET, p 73. The outputs included: indigents legally aided; compliant legislation promulgated; and amended and new legislation put in place.

introducing austerity measures. The TSP sought to address the main barriers regarding access to justice that include:

- Complex civil and criminal court procedures.
- Lengthy, cumbersome and frustrating court processes.
- Lengthy delays in finalising judicial cases.
- High costs of litigation.
- Limited availability of legal aid service providers.
- Physical inaccessibility of formal courts located largely in urban areas<sup>15</sup>.

In addition, the TSP noted that accessibility to justice by vulnerable and marginalised communities is further compounded by poverty and social differences based on gender, age, disability, and health status. It also recognised particular challenges faced by persons with disabilities that included inaccessibility of courts; the lack of availability of court documents and procedures in braille; limited use of sign language during court hearings, as well as limited legal aid and awareness services for this community. The TSP advocated for the decentralisation of Court Houses and construction of new courts by the JSC.

The TSP was replaced in 2021 by the National Development Strategy (NDS) 1: Towards a Prosperous & Empowered Upper Middle-Income Society by 2030 (2021 – 2025). NDS 1 seeks to “prioritise improving the rule of law through complying with the Judicial Court Decisions and strengthen rule-based governance”<sup>16</sup>. It seeks, *inter alia*, to:

- Strengthen and decentralise state institutions responsible for justice delivery (Legal Aid Directorate and courts).
- Establish an integrated electronic case management system.
- Improve access to courts by people with disabilities.
- Improve access to justice for vulnerable people and minorities.
- Review and simplify courts procedures.
- Align legislation to the Constitution<sup>17</sup>.

NDS 1 identifies various programmes to promote improved justice delivery: access to justice; institutional capacitation; adherence to rule of law; human rights protection and promotion; and administrative justice<sup>18</sup>.

#### 1.4.4 Sector context

Zimbabwe scores poorly on the 2020 World Justice Project Rule of Law Index<sup>19</sup> and is ranked 119<sup>th</sup> out of 128 countries (28<sup>th</sup> out of the 31 countries in the region) with an overall score of 0.45. It scored badly with regard to protection of fundamental rights (score 0.34 / rank 121) but considerably better when it comes to criminal justice (score 0.37 / rank 88). Its overall governance score on the 2019 Ibrahim Index of African Governance (IIAG), while improving, remains low at 44.7, with a ranking of 39<sup>th</sup> out of 54 countries covered by the Index. On the same Index, Zimbabwe shows continuing improvement but still ranks 39<sup>th</sup> (score: 41.6) in **rule of law**, with a score of 46.5 **for access to justice** and 44.6 for **independence of the Judiciary**; and 44<sup>th</sup> (score: 27.6) for **human rights**. Some of the major challenges in human rights and access to justice include:

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<sup>15</sup> TSP, p 298.

<sup>16</sup> NDS 1, p 222.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, p 223.

<sup>19</sup> <https://worldjusticeproject.org/rule-of-law-index/country/Zimbabwe>

- Selective application of the law, with allegations of the Zimbabwe Republic Police using arbitrary arrest of political opposition, and the level of independence of the Judiciary, especially when dealing with politically sensitive matters, is questioned<sup>20</sup>.
- The slow process of aligning laws to the Constitution.
- Impunity of state security agents and limited investigation of allegations of torture, abduction, forced disappearance and extra-judicial killings.
- Violations of the rights of arrested, accused and detained persons as well as victims and witnesses and children in contact and conflict with the law throughout the criminal justice process.
- Lengthy delays in finalising cases, major backlogs, prison overcrowding and high levels of pre-trial detainees<sup>21</sup> with all of the attendant violations of the rights of those in detention.
- Limited access to legal aid, especially for women and the poor, coupled with the high costs of securing legal representation and the high court fees related to civil matters.

**Corruption** is also reportedly rife within the justice sector and Zimbabwe ranks 158<sup>th</sup> out of 180 countries in the 2019 Transparency International corruption perception index<sup>22</sup>. Zimbabwe fares better on the IAAG when it comes to gender, ranking 10<sup>th</sup> out of the 54 countries with a score of 68.2 and with a score of 58.3 when it comes to laws on **violence against women**. Nonetheless, violence against women and girls, and particularly gender-based and domestic violence, remains an issue, with 37.6% of women over the age of 15 having experienced violence by an intimate partner according to the to the United Nations Development Programme (UNDP) Human Development Reports.

The effects of COVID-19 pandemic (such as self-isolation and limited mobility by women and girls) has increased tension within the household that have reportedly resulted in increased risk to intimate partner violence.<sup>23</sup> Sexual and gender-based violence (SGBV) is also reported to have increased as women and girls were placed under the increased strains that came from concerns of health, psychosocial, and income. Many women and girls were under lockdown with their abusers<sup>24</sup> and were unable to access shelters because of restricted movement during the lockdown.

## 2 FINDINGS

### 2.1 Relevance

'Relevance' is a determination of whether or not the Programme, as designed, was aligned to Zimbabwe's and partner institutions' needs, policies, and priorities at the start of the evaluation period, whether it was in line with the EU's own priorities for Zimbabwe as reflected in the National Indicative Plan (NIP) (2014-2020) and related policies, and whether it remained aligned as circumstances changed<sup>25</sup>. The following evaluation questions were included in the Inception Report:

<sup>20</sup> The ongoing debate on Constitutional Amendment 1 of 2017 on the President's role in appointing key Judiciary functionaries such as Chief Justice, Prosecutor General and Attorney General points to this problem.

<sup>21</sup> Estimated at around 19% of the total prison population in April 2019. <https://www.prisonstudies.org/country/zimbabwe>

<sup>22</sup> <https://www.transparency.org/en/cpi/2019/results>.

<sup>23</sup> [https://www.unodc.org/pdf/criminal\\_justice/WA2J\\_Consolidated.pdf](https://www.unodc.org/pdf/criminal_justice/WA2J_Consolidated.pdf) at page 23.

<sup>24</sup> Spotlight Communications officer at: <http://zw.one.un.org/newsroom/news/urgent-action-looming-violence-against-women-during-covid-19-pandemic>

<sup>25</sup> <http://www.oecd.org/dac/evaluation/revised-evaluation-criteria-dec-2019.pdf>

### Evaluation questions: Relevance

- To what extent was the Programme aligned with Government of Zimbabwe and EU policies, strategies and policies, SDGs, the 'Leave No One Behind' principle and the human rights-based approach at formulation (relevance at design)?
- What changes have occurred in the context since design and to what extent was the Programme able to adapt to changing needs (relevance over time)?

#### 2.1.1 Relevance at design stage

The design of the EU Programme included both an identification and formulation mission. Although both were reported to have experienced difficulties<sup>26</sup>, there was significant consultation with potential Government beneficiaries and civil society to determine their needs and priorities. Support was also closely aligned to the strategic plans of the institutional bodies concerned to strengthen ownership. Consideration was given to both the political climate at the time, the prevailing Government development policy - Vision 2030 and ZIMASSET - and the NIP (2014-2020). Although ZIMASSET only included a minor focus on rule of law and access to justice, it also included a focus on SGBV - primarily on raising community awareness on rights, laws and services dealing with the issue - and there are passing references to corruption and improving the public administration (including building three Magistrates Courts). The Programme was thus aligned with both Vision 2030 and ZIMASSET. It was also well aligned with the NIP<sup>27</sup>, the 2015 EU Civil Society Roadmap for Zimbabwe, and EU policies related to gender and human rights. All of the Government officials consulted during the evaluation agreed that it reflected some of the most pressing issues in the area of rule of law and within their institutions as they existed during the design phase.

The Programme included a focus on all formal justice institutions to enhance their capacity to deliver justice and provide legal aid to the indigent, including the Traditional Courts, as well as support to civil society to provide legal advice, assistance and aid. It thus complies with the principle of '**Leave No One Behind**', which is a central commitment in the **Sustainable Development Goals (SDGs)**. By including a focus on survivors and victims of SGBV, Traditional Courts, and requiring gender to be mainstreamed into beneficiary institutions (in line with the gender analysis undertaken during identification and formulation<sup>28</sup>), the Programme aimed to contribute to **SDG 5 (Gender Equality)**. The Programme also aimed to support the constitutional alignment process, although support focused only on the Executive level at design stage. And by focusing on building the capacity of key justice sector institutions, rule of law and access to justice, it also specifically aimed to address **SDG 16 (Peace, Justice and Strong Institutions)** and included a level of alignment with the EU's **rights-based approach to development** (although with relatively limited inclusion of public participation in the alignment of laws with the Constitution at design stage)<sup>29</sup>.

<sup>26</sup> The identification team was replaced for the formulation mission at the request of the EUD and the team leader for the formulation mission took ill and was not available for part of the mission.

<sup>27</sup> Which includes 'supporting the rule of law through judicial reforms and increased access to justice' under Specific Objective 2 of the governance and institution building focal sector?

<sup>28</sup> The analysis identified in particular the need to ensure greater gender equality and compliance with human rights in Traditional Courts, GBV, and the need for mainstreaming gender for the police, prosecutors and others.

<sup>29</sup> The EU's rights-based approach to development is set out in COM (2011) 886: 'A Rights-Based Approach, Encompassing All Human Rights for EU Development Cooperation' endorsed by the EU Council of Ministers on 19 May 2014. The approach includes five key principles: (1) legality, universality and indivisibility of human rights; (2) participation and access to the decision-making process; (3) non-discrimination and equal access; (4) accountability and access to the rule of law; and (5) transparency and access to information.

Recognising that the justice system is a joined-up system that involves multiple stakeholders, the design of the Programme adopted a holistic approach including a range of institutions and roleplayers on the supply side of justice as well as key CSOs on the demand side. The inclusion of the Traditional Courts, which constitute the most accessible level of the Judiciary, and CSOs, which are key providers of legal education and awareness, legal aid, assistance and advice to the poor, also increased the Programme's relevance significantly.

As a result, the Programme is adjudged as **largely relevant at design**. Although its relevance is diluted to some extent by the 'scattergun approach' included in the programme, targeting multiple institutions and organisations and various issues at the same time, the approach is understandable in the context. This was the first EU governance programme after 15 years of disengagement and, although it is not stressed in the Action Document, it was clearly intended to open as many doors as possible to determine where opportunities might exist for increased policy and political dialogue around broader governance reforms. But it does mean that access to justice and rule of law are targeted in a somewhat piecemeal fashion rather than focusing attention and effort on one or two key areas where support might have been more likely to achieve results: for example, access to legal aid or criminal justice sector reform. And while the inclusion of survivors of SGBV and pre-trial detainees helped to ensure some focus on vulnerable groups, other groups in situations of vulnerability - such as children in conflict and contact with the law, human rights defenders and political activists and detainees - were not specifically included. Further, although some of the main issues such as limited access to legal aid, SGBV and the efficiency and independence of the Judiciary were identified, it is questionable whether the methods chosen to address them were the most relevant or effective (as further elaborated in Chapter 3 below).

### 2.1.2 Relevance over time

As briefly described in Section 1.4.1, Zimbabwe underwent significant changes in the political landscape during the evaluation period, including the change in political leadership in 2017 and elections in 2018. This did not result in a change in the ruling political party though and did not directly impact on the relevance of the Programme, but some of those consulted were of the view that it may have led to decreased levels of Judicial independence that the Programme did not specifically pivot to target (although, as mentioned in various parts of this report, the ability of a programme to address judicial independence when the Judiciary itself does not jealously guard its own independence are limited). At the same time, the periods leading up to, during, and following the 2018 elections and the increase in fuel prices in 2019 saw a spike in protests and detention of protestors, political opponents and activists that the Programme did not specifically try to address. The 2019 protests also led to the introduction of a process to fast-track trials of protestors that was reported to have impinged on the rights to bail and a fair trial<sup>30</sup> and that created difficulties for implementing partners focused on the JSC, but there was no significant programmatic response such as withholding funding or limiting activities for the JSC and Judiciary until such time as the rights of those arrested to a fair trial were sufficiently protected. The space for civil society was also reported to have shrunk somewhat, but mainly for those CSOs, activists and human rights defenders. The space for CSOs providing services such as legal assistance and legal

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<sup>30</sup> According to ICJ, "several hundred Zimbabweans were arrested and dragged before the courts, in many instances removed from their houses in the middle of the night, detained without charges, brought before the courts without access to their families, medical care or legal representation. The courts in turn proceeded with the trials without due regard to the rights of the accused. The trial process was fast-tracked and over 90% of accused were denied bail", ICJ Interim Narrative Report, 16 October 2019, page 6.

aid was not reported to have shrunk significantly although, as described in Section 2.2.2 below, levels of protest does appear to have reduced the ability of project partners to monitor some Traditional Courts.

The TSP introduced by the new Government included a greater focus on rule of law, human rights, access to justice, legal aid, and public institution building, as well as a specific (and new) focus on alignment of legislation with the Constitution<sup>31</sup>, which made the Programme even more relevant than when compared to ZIMASSET. Although SGBV is still not a major focus of the TSP, other than when it comes to health care services for survivors<sup>32</sup>, it was also not a major focus of the Programme. The recently adopted NDS 1, under which the remainder of the Programme will fall, also includes a focus on justice service delivery, rule of law, combating corruption, human rights, access to justice and institution building, as well as citizen participation in democratic and governance decision-making processes. The Programme will thus continue to remain relevant with regard to Government's development policy and agenda over the remainder of the programme period. At the EU policy level, the NIP came to an end at end 2020, the new Multi-Annual Indicative Plan is currently being formulated, and it is not yet possible to determine whether the Programme will remain relevant under it. However, it is highly likely that future EU programming to Zimbabwe will continue to include a focus on governance, rule of law and access to justice.

The relevance of the Programme with regard to the **constitutional alignment process** was increased over time with the inclusion of support to Parliament and to public participation in the law-making and alignment process<sup>33</sup>. Compliance with the Constitutional imperative for public participation and the rights-based approach also increased as a result. However, 'relevance' was affected by the failure of the service contract and programme estimate in 2020 described in more detail in Section 3 below. For example, the cancellation of the contract meant that the balance of the Programme shifted to the demand side, with key roleplayers on the supply side no longer included as intended. The focus on anti-corruption was also diminished when the contract was cancelled. More importantly, although some opportunities for **political and policy dialogue** remained<sup>34</sup>, these were not maximised and opportunities for engagement and joint planning of activities with Government were missed - including those that might have been created if the envisaged **Programme Steering Committee** (to be supported by the Technical Advisors) had been constituted and able to meet regularly. Opportunities for better coordination and joint activities across the projects and between Government and civil society - central to a joined-up approach - were also greatly reduced. Although the focus on alignment of legislation with the Constitution increased, the Programme's relevance related to SDGs 5 and 16, the Leave No One Behind, and the rights-based approach was undermined. Many of those consulted were also of the opinion that there has been a decline in the independence of the Judiciary since the start of implementation. Although little was done by programme implementers to confront the issue and no signs of adaptation in this area were reported, the evaluators note that Judicial independence is a complex issue to address via a capacity development programme or project and is unlikely to be successfully tackled through training alone (see further discussion on this issue in the textbox in Section 2.2.2 below).

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<sup>31</sup> Under Part VII (Governance Reforms).

<sup>32</sup> Paragraph 1651 on page 279.

<sup>33</sup> EU support to Parliament had previously been channeled through a UNDP multi-donor programme to support Parliament and the Auditor-General that ran from 2015-2018. A separate agreement was then entered into for UNDP to support Parliament's role in the constitutional alignment process and to play its oversight role under the EU Programme. UNDP continue to support the Auditor-General, but with funding provided by Sweden.

<sup>34</sup> For example, the Ambassador and senior Delegation are reported to have better access to the Minister of Justice prior to COVID-19 restrictions (at least partly as a result of the engagement in the design and implementation of the Programme) and the Ambassador participates in discussions and meetings around the constitutional alignment process.

At the same time, the deterioration in the economy since 2016 and the COVID-19 pandemic have increased levels of poverty and made justice services provided by Traditional Courts and CSOs even more relevant over time. Responses to the pandemic by Government (in the broad sense of the term) have also helped to fast-track processes such as **virtual courts** and online consultation and public hearings by Parliament (as part of a movement to ‘**e-Parliament**’) that could increase access to justice and public participation in decision-making over time. But despite these positive developments, the overall assessment is that the Programme has struggled to remain relevant or to adequately respond to changes in the political economy over time and, given that the budget has largely been committed and that most projects have ended or will end relatively soon, it is difficult to see how it will be able to adapt or pivot in the remaining time.

## 2.2 Effectiveness

The following evaluation questions were included in the Inception Report:

**Evaluation questions: Effectiveness**

- To what extent have the expected objectives and results (including programme objectives and results, contributions to SDGs 5 and 16 and gender equality, and contributions to the results of the NIP, to the EU and Zimbabwe re-engagement agenda, and to the national development priorities of the Government of Zimbabwe) been achieved or are likely to be achieved by the end of the Programme?
- What challenges have been experienced (including with the implementation modalities and management arrangements and with the structure and tools of the benefiting state institutions (including the NAO), implementing partners and events)? How have these been addressed, and how effective have these changes been in ensuring the Programme achieves its results?

### 2.2.1 Introduction

The OECD / DAC define ‘effectiveness’ as “the extent to which the intervention achieved, or is expected to achieve, its objectives, and its results, including any differential results across groups”<sup>35</sup>. To measure effectiveness, evaluators need to determine whether or not the Programme has implemented its activities and delivered its anticipated outputs, and whether the activities and outputs have contributed or can be expected to contribute to the intended results and objectives. Although there are some problems with the way outputs and outcomes/results are presented in the Programme’s Action Document<sup>36</sup> and some baselines and targets were expected to be determined in year 1 (which was not done), none of these obstacles are insurmountable. We begin this section with an assessment of the degree to which activities have contributed or can be expected to contribute to the intended results as well as the challenges that projects faced under each Specific Objective. We then provide an overall analysis of the contributions of the various projects to the intended results as well as the contribution of the Programme as a whole to the broader objectives under the SDGs, the results of the NIP, the EU and Zimbabwe re-engagement agenda, and the national development priorities of the Government.

<sup>35</sup> <https://www.oecd.org/dac/evaluation/daccriteriaforevaluatingdevelopmentassistance.htm>

<sup>36</sup> Most of the output indicators listed in the logframe are really outcome indicators. These have also been used when assessing contributions to results in the sections that follow.



## 2.2.2 Specific Objective 1

Specific Objective 1 aims to increase the independence, competence, integrity and professionalism of the judiciary'. It has the following two results:

### **Result 1.1: Enhanced functioning of the formal courts through improved management competencies and technical capacities of the JSC in line with the institutional strategic plan.**

The project directly related to Result 1.1 is the 'Strengthening the Rule of Law in Zimbabwe and Protection of Human Rights for All' project implemented by the International Commission of Jurists (ICJ). The project specifically works with and supports the JSC in its role of providing continuous professional development to the Judiciary<sup>37</sup>.

ICJ have a long history of providing capacity development to the Judiciary (with EU support), initially aimed at the higher levels<sup>38</sup>. Under the current project, some support is provided to the higher courts, but the focus largely shifted to **Magistrates Courts** and their supporting staff to improve the functioning of the courts and reduce the backlog of cases. A capacity development plan was produced, and training provided according to it during 2018 and 2019<sup>39</sup>. Training during 2020 was negatively impacted on by COVID-19 and training activities were largely put on hold (save for training on anti-corruption for High Court Judges; Regional, Provincial and Senior Magistrates; and Registrars from the Superior Courts in January 2020). The pivot to online learning in the face of the pandemic was slow though, with only one online training for the Zimbabwe Anti-Corruption Commission (ZACC) provided (see Result 2.3 below).

The project has also included:

- Exchange visits to the Southern Africa Chief Justice Forum annual conference in Malawi and the Annual Jurists Conference in South Africa for judicial staff (2018).
- Research on electoral law and the impact of COVID- 19 on access to justice.
- Guides and publications on various rights and corruption related issues for Judges, other legal practitioners and students<sup>40</sup>.
- Support to the digitisation of courts, together with the United Kingdom's Transparency, Responsiveness, Accountability, and Citizen Engagement (TRACE) programme, to enhance the use of online court processes.

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<sup>37</sup> The JSC is a Constitutional body, established by Chapter 8, Part 3 of the Constitution. The project includes a range of beneficiary institutions (JSC, Universities Legal Aid Clinics, NPA and ZACC) and is not limited to Result 1.1: it crosses over into support to other results under the programme, as dealt with as appropriate in the sections that follow. The grant was expected to end on 14 October 2020 but has been extended to 16 April 2021 as a result of COVID-19.

<sup>38</sup> Judges of the Constitutional, Supreme, High, Labour and Administrative Courts.

<sup>39</sup> The following is included in reports (as amplified during consultations):

- Training in year 1 of the grant (October 2017 - October 2018) focused on training for magistrates designated to preside over election disputes (together with UNDP under the UNDP governance programme). Training for judicial support staff in 2018 was delayed at the request of the JSC because of the upcoming elections. Some training was provided to Judges in on adjudication of corruption cases. white collar crime and the death penalty.
- Training in year 2 (October 2018 - October 2019) included training for 252 magistrates on fast tracking of criminal cases; 54 Judges on judgment writing, court orders and how to conduct a trial; 46 prosecutors and 58 magistrates for anti-corruption courts, and 105 court clerks on client centred service. Support was also provided for 19 judicial researchers to attend specialised training in South Africa on judicial ethics, accessing judgments, accessing research materials, judgment writing and memo writing.

<sup>40</sup> Including on the rights of pre-trial detainees; international principles on independence and accountability of judges, lawyers and practitioners; SGBV; international standards and accountability mechanisms for tackling judicial corruption (some of which are still to be finalised)

- Assistance in setting up the Special Court on Corruption (March 2018). Training was provided to the magistrates presiding over three courts in Harare and two in Bulawayo with five magistrates (with some equipment for the Harare court), and ICJ also provided equipment to one of the courts.

However, the Judicial Mentorship programme included under the grant did not get off the ground, for reasons that remain obscure<sup>41</sup>. The Judicial Clerkship programme was also dropped, in consultation with the JSC and EUD, when it became apparent that the grant does not allow ICJ to transfer funds to JSC for the implementation of the programme.

The project faced challenges in early 2019 following protests related to the increase in the fuel price as a result of the deteriorating economic situation in the country, leading to the arrest of protestors and a process to fast track their trials. In response, the ICJ issued public statements calling upon both the Government and JSC to honour their international human rights obligations. This had the potential to lead to difficulties in the relationship between ICJ and the JSC but no impact was reported by either ICJ or JSC and activities were able to continue. Progress with some activities (in particular the **digitisation of courts**) was also delayed during the process to agree on the no-cost extension of the grant.

As with all projects running during 2020, the support to the JSC has been negatively impacted by COVID-19, which led to the closure of courts for most cases and made training difficult<sup>42</sup>. In response, the ICJ has assisted the Judiciary to begin to establish **virtual courts** in line with the Judicial Laws Amendment of 2017 that empowered the High Court to develop rules for virtual courts. One virtual court has been established at the Rotten Row Magistrates Court in Harare and the Harare Remand Prison. The process remains ongoing though and, as of February 2021, work was proceeding at a further two courts and two detention facilities, with training for users and popularisation of the system to be conducted in April 2021. A further challenge reported in this regard is that some Judges are not yet fully computer literate, which may slow progress towards virtual courts in future.

## **Result 1.2: Efficient, effective, gender sensitive and human rights-oriented justice delivery in traditional courts.**

**Traditional Courts** form the lowest level of the Judiciary and are a key roleplayer in access to justice in Zimbabwe<sup>43</sup>. They are considerably more accessible than the formal courts in all respects: they are closer to where people live, use less formal procedures and local languages, and are considerably cheaper to use (which makes them increasingly relevant during periods of economic downturn).

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<sup>41</sup> According to the 2018 ICJ project report (Page 17), the JSC did not want the programme. However, JSC reported that it preferred an orientation programme for new judges over the mentorship programme but might still consider mentorship in future. The extent to which that is possible is relatively remote though given that the project is expected to end in April 2021.

<sup>42</sup> Under Practice Direction 1 of 2020, the JSC postponed all cases indefinitely and courts only entertained bail hearings and urgent cases.

<sup>43</sup> Traditional ('customary') courts are a part of the Judiciary in terms of Section 163 (1) (f) of the Constitution and their roles, powers and functions are set out in the Customary Law and Local Courts Act of 1990. They consist of Headman's and Chief's Courts - with appeals of decisions by Headman's Courts lying to the Chief's Courts. Appeals from decisions of the Chief's Courts lie to the Magistrates Courts and upwards through the judicial system from then on. Although the courts are not allowed to hear criminal cases, they do deal with the civil aspects of criminal cases such as awards for damages. At the ministerial level, they fall under the MoJLPA in terms of their judicial functions, but traditional leaders also under the Ministry of Local Government when it comes to their local government functions.

Result 1.2 is addressed by the LRF's 'Enhancing Access to Justice Through Capacity Building of Customary Courts' project<sup>44</sup>. The project targets the entire country and includes:

- Training on the law and procedural rules for the courts based on manual on the law and procedure pertaining in the courts that has been produced and shared with traditional leaders.
- Training on gender and human rights (based on the results of a baseline survey conducted in 2018 that essentially complies with the activity listed in the Programme's Action Document<sup>45</sup>).
- Monitoring of Traditional Courts to determine improvements in compliance with the law and human rights.
- Awareness raising with communities on the roles, functions and powers of the courts.

As with all projects running in 2020, training and monitoring has been adversely affected by COVID-19 while the **gender and human rights training manual** referred to in the Programme's Action Document has only recently been finalised<sup>46</sup>.

### **Contribution to results under Specific Objective 1**

The outcomes in the logframe for Specific Objective 1 are a **reduction in the case backlog at Magistrates Courts**<sup>47</sup>; and **increased public perception on efficiency and effectiveness of the courts**<sup>48</sup>. Progress in this regard is mixed. Although the training provided by ICJ was highly regarded by JSC, the project has faced challenges in reaching the anticipated outcomes - mostly as a result of circumstances beyond its control. For example, Magistrates Courts were reported to be able to deal with more cases in 2018 than in 2017, but significantly more cases were received in 2018 (211,477) than in 2017 (171,485). That led to an increase in the backlog that year from 3,845 in 2017 to 5,238 in 2018<sup>49</sup>. The backlog in Magistrates Courts increased again in 2019 even though the backlog in all other courts decreased, and further backlogs can be expected as a result of the closure of courts for larger parts of 2020.

It is somewhat difficult to determine what changes the training has made to the way Magistrates operate: ICJ conducted post-course evaluations and have attempted to track what trainees have been able to do with the training provided, but JSC prefer that ICJ do not contact Magistrates or Judges directly. Instead, the JSC has reportedly prepared its own follow up survey, but the responses have not yet been shared with ICJ. JSC undertake some assessment to determine whether the quality of judgments is improving (by checking appeals from lower courts and the results of these as well as reviewing sentences passed by magistrates), and the editors of law reports have noted improvements (according to JSC), but the assessment is not particularly scientific and it is not possible to determine what percentage of judgments are 'of good quality' according to the relevant indicator in the logframe.

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<sup>44</sup> The project, expected to end in August 2020, has been extended to 31 April 2021, mainly as a result of COVID-19 and the need to adapt methodologies. Although the project refers to Customary Courts, the term 'Traditional Courts' is used in this report to align it to the definition in the Constitution.

<sup>45</sup> 'Conduct a capacity needs assessment of Headmen, Chiefs and their court assessors'.

<sup>46</sup> As was reported during the presentation of the Draft Final Report on 18 March 2021, the manual was approved after the Draft Final Report was submitted. The process has reportedly been slowed by the fact that the original plan was for LRF and NGOs focused on gender to develop the manual, but the Council of Chiefs was reportedly resistant to using NGOs to prepare the manual and two external consultants had to be contracted to develop the draft. As noted in the methodology in Annex 3, it was not possible to secure a meeting with the Council of Chiefs to determine when the manual will be approved, despite repeated attempts.

<sup>47</sup> The baseline is given as 3,216 cases (2016), with a target of 3,000 cases by 2019.

<sup>48</sup> The baseline, based on a 2014 Danida survey, is given as '66% perceived courts as fair and 68% satisfied with court staff ability to provide information' The targets are set as '76% perceive courts as fair and 78% satisfied with court staff ability to provide information' by 2019.

<sup>49</sup> ICJ 2019 Report, page 8.

Measuring changes in **public perceptions** related to the courts is being tracked by ICJ, which conducted a baseline survey in 2018 of court users' perceptions of access to justice, judicial corruption and the independence of the Judiciary<sup>50</sup>. A follow-up survey was conducted in early 2021: although final results are not yet available, preliminary findings indicate that progress is limited and there would appear to be a decline in public perceptions in most areas<sup>51</sup>. Some assessment of the efficiency of courts is also undertaken by the Legal Resources Foundation (LRF) led consortium (dealt with under Result 3.3 below), which monitors courts in the 16 districts targeted by the project. According to LRF's analysis, some improvements have been noted in compliance by the courts with standards that could contribute to increased efficiency<sup>52</sup> but the number of courts monitored this way is small and no conclusions can be drawn.

<p><b>Other outcomes under Result 1.1</b></p> <ul style="list-style-type: none"> <li>• The ICJ project (together with the LSZ) has been contributing to the development of a <b>human rights curriculum</b> and ICJ have also exposed students to human rights law through support to <b>moot court competitions</b>. While not mentioned in the Action Document or specifically targeting the Judiciary, it is probable that at least some of the students will find their way onto the bench, where the training and exposure may well contribute to the independence, competence, integrity and professionalism of the judiciary.</li> <li>• The Action Document includes activities related to <b>information kiosks and help desks</b> at selected courts as well as strengthening the 'implementation of non-custodial measures embracing community service' under Result 1.1. Support to help desks has been provided under the Programme, but these relate better to Result 3.3 and are dealt with under that result below. No support appears to have been provided to implementing non-custodial measures or community service.</li> </ul>
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There are no outcome indicators linked to Traditional Courts under Specific Objective 1 and the relevant indicator in the logframe (**number of gender sensitive and human rights-oriented judgements delivered by Chiefs**) is not specifically tracked by LRF. The gender and human rights training manual anticipated in the Action Document was only finalised in March 2021 and no training other than to members of the Council of Chiefs has been provided. However, there is some indication that support is contributing to the intended results. LRF monitors courts to determine whether they are better complying with human rights, equality and the relevant law and procedure and reports progress is being made. Although monitoring Traditional Courts is challenging at times<sup>53</sup>, that conducted during 2019-20 found

<sup>50</sup> The survey was conducted with the assistance of the Mass Public Opinion Institute in Harare, Bulawayo, Masvingo, Gweru and Mutare.

<sup>51</sup> According to preliminary analysis by ICJ (*ICJ presentation to the project Steering Committee, February 2021* and the 2018 baseline survey):

- 67% of respondents reported they had not experienced lack of impartiality in the courts (up from 59% in 2018).
- 57% report that were treated fairly by Judges while 49% reported were treated fairly by Magistrates (down from 70% for Judges and 63% for Magistrates in 2018).
- 53% expressed satisfaction with court services.
- 69% perceived Judges to be independent/very independent (a slight increase from 69% in 2018).
- 47% perceived some judges to be corrupt (compared to 43% in 2018) while 25% perceived that most/all judges are corrupt (up from 21% in 2018).

<sup>52</sup> For example, the July 2019 to June 2020 report shows that 16 courts were monitored to see whether proper processes and procedures were being observed; whether or not the courts were following the principles of natural justice; and whether self-actors were being given sufficient support by the courts to present their cases. The report notes that 75% of the monitored courts were adhering to these standards and that matters were being finalised, on average, within three days.

<sup>53</sup> For example, protests sparked by the fuel increase in 2019 led some traditional leaders to restrict access of CSOs to their communities, and some traditional leaders reportedly do not allow anyone to monitor their cases.

that 69% of courts were correctly following procedures and applying the law<sup>54</sup>. An accurate assessment of improvement in this area is difficult though since the baseline study conducted by LRF in 2018 assessed levels of knowledge of the law and procedure but not what percentage of courts correctly followed and applied it<sup>55</sup>. LRF have also not followed up the baseline survey's findings related to levels of public satisfaction with the courts as yet. But interviewees suggested that the courts are better run, reporting requirements are complied with, and compliance with human rights has increased in some cases - particularly in courts overseen by younger traditional leaders. LRF also noted that women and younger traditional leaders are better able to comply with the requirements of natural justice than their male and older counterparts. More courts are also reported to be willing to hear both sides, including where women are one of the parties (which has not always been the case). None of this amounts to a scientific assessment of course, but the changes identified by LRF are worth repeating.

### Increasing judicial independence

One of the anticipated results of Specific Objective 1 of the Programme is an increase in judicial independence. Although the preliminary results of the recent public perception survey conducted by ICJ suggest a slight increase in perceptions that the Judiciary is independent, concerns were raised by many of those consulted that the level of independence of the Judiciary has actually decreased since 2017. Two proposed amendments to the Constitution tend to suggest that these concerns might well be valid. The first of these from 2017<sup>56</sup> would have given the President the power to appoint the Chief Justice, Deputy Chief Justice and Judge President of the High Court 'in consultation with the JSC'. Although passed into law in 2017, the Amendment was declared invalid on a technicality in the 2020 case of *Gonese and Anor v Parliament of Zimbabwe and 4 Ors*<sup>57</sup>. The second proposed amendment from 2019<sup>58</sup> (that, according to media reports, was passed in the House of Assembly in the week of 19 April 2021) will allow the President, acting on the recommendation of the JSC to appoint sitting judges to vacancies in the higher courts, without subjecting them to the public interview procedure<sup>59</sup>.

Concerns have also been raised by ICJ and others around cases involving political opposition members and protestors, and by the Africa Judges and Jurists Forum around a memorandum from the Chief Justice directing that Judges seek approval or have their judgments seen by superiors before being handed down is unconstitutional<sup>60</sup>. Such concerns are reflected in the latest Mo Ibrahim Index of African Governance, where Zimbabwe scored 37.5 when it comes to rule of law and justice (declining from a high of 40.4 in 2018 and 40 at the start of the evaluation period)<sup>61</sup>.

The ICJ has been critical of the above encroachments or attempts to encroach on judicial independence, but its activities under the Programme really only focus on capacity building. But while

<sup>54</sup> LRF Interim Narrative Report (2019-2020), page 2.

<sup>55</sup> Knowledge of the law and procedure was high, according to the baseline survey - with 85% of respondents correctly answering questions on procedural and substantive aspects of the law. However, knowledge of the law and procedure does not necessarily mean that it is being correctly applied.

<sup>56</sup> Constitution of Zimbabwe Amendment (No.1) Act of 2017.

<sup>57</sup> <https://www.icj.org/zimbabwe-icj-welcomes-judgment-invalidating-the-enactment-of-the-constitutional-amendment-bill-no-1-of-2017/>. The amendment was set aside on the basis that the passing of the Bill by the Senate "was inconsistent with the provisions of s 328(5) of the Constitution, to the extent that the affirmative votes did not reach the minimum threshold of two-thirds of the membership of the House."

<sup>58</sup> Constitutional Amendment 2 of 2019.

<sup>59</sup> See Clause 13.

<sup>60</sup> <https://www.dailymaverick.co.za/article/2020-07-23-judicial-independence-under-threat-in-zimbabwe/>

<sup>61</sup> <https://iiag.online/data.html?loc=ZW&meas=ROLJUS&view=graph>

capacity development for the Judiciary is important, it is unlikely to contribute to greater independence – as was pointed out in the Strategic Assessment of the Zimbabwe NIP 2014-2020<sup>62</sup>. Instead, the United Nations (UN) propose various options for tackling judicial independence<sup>63</sup>, such as:

- Lobbying and advocacy for countries to comply with the UN Basic Principles on the Independence of the Judiciary<sup>64</sup> (which could be combined with lobbying for compliance with the African Commission on Human and Peoples' Rights' Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa as well as the Commonwealth Model Law on Judicial Independence).
- Reform of laws that weaken judicial independence.
- Standardising the process and tenure of appointment, training on leadership for Judges.
- Ensuring that the Courts are provided with sufficient budgets to operate without control (including ensuring salaries of judicial officers are sufficient to prevent bribery and corruption).

Apart from training on leadership, all of the above require significant levels of advocacy and lobbying as well as law reform, supported by political dialogue that might be considered under future programming but that cannot realistically be supported under the ICJ project in the time remaining.

### 2.2.3 Specific Objective 2

Specific Objective 2 aims to enhance efficiency, transparency, integrity, accountability of the justice delivery systems and constitutionality of the law reform process. The Programme has three results under this objective, as set out below.

#### **Result 2.1: Capacities of the MoJLPA and Parliament are reinforced in policy, research and coordination of the justice sector and implementation of the constitutional legislative alignment process.**

Despite the fact that Zimbabwe's current Constitution was passed in 2013, the process of ensuring all legislation in the country is aligned with the Constitution was initially slow<sup>65</sup>. To address this, the EU, Switzerland and Norway supported the Centre for Applied Legal Research (CALR) from February 2015 to March 2018 to establish an organisational structure to support the alignment process, consisting of a Project Steering Committee and a Project Technical Committee with objectives focused on MoJLPA (as the lead Ministry), Parliament and CSO engagement<sup>66</sup>. The project met with some success but reportedly faced challenges including delays in Cabinet approval and minimal ability to influence the Parliamentary processes. A decision then appears to have been made to separate out and support the three aspects of the alignment process via:

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<sup>62</sup> Page 47.

<sup>63</sup> <https://www.endvawnow.org/en/articles/1012-strategies-to-support-judicial-independence-.html>

<sup>64</sup>

<https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx#:~:text=The%20judiciary%20sh all%20decide%20matters,quarter%20or%20for%20any%20reason.>

<sup>65</sup> As confirmed by all of those consulted, including Government representatives.

<sup>66</sup> The project is not included in the ToR for the current evaluation and is mentioned only to provide context. Under it, numerous IMT meetings were held, and 13 bills were drafted with project support (only one of which relates directly to access to justice - the Traditional Leaders Bill). But only four laws were enacted - only one of which was directly supported by the project although some support was provided to Parliament regarding the Criminal Procedure and Evidence Act.

- Two further grants to the CALR to assist the MoJLPA to ensure that the Executive produced new law or revised law to bring it in line with the Constitution.
- A contribution agreement with UNDP to support Parliament to play its role in interrogating proposed legislation and consulting with the public (as required by the Constitution<sup>67</sup>) before passing it into law.
- A grant to a consortium of four CSOs led by the Southern African Parliament Support Trust (SAPST) to enhance participation of the public and civil society in the process of law-making<sup>68</sup>.

The first grant to **CALR** was a continuation of the initial project that started in 2015. It ran from April 2018 to June 2019 but with a much narrower focus on three ‘clusters’ of legislation: those related to **media and information; citizenship and movement of people; and security**. The second grant (which started in October 2019 and has been extended to 16 April 2021) supported CALR to continue the processes started under previous support, targeting a further 33 laws that required significant reform (out of a total of 63 such laws). This total has since been reduced to 18 ‘critical’ laws by the Project Steering Committee on 30 September 2020. The project has included support to the **Inter-Ministerial Taskforce on the Alignment of Laws with the Constitution (IMT)** meetings and coordination, capacity building for MoJLPA including on research and drafting of Bills, and stakeholder consultations between IMT and Parliament<sup>69</sup> and with CSOs (including the SASPT consortium).

The **UNDP Parliament Support Programme** builds on the previous Multi-Donor Support to Parliament and the Office of the Auditor-General Programme (supported by the EU but not included in the current evaluation) but focuses only on support to Parliament<sup>70</sup>. The programme is aligned with Parliament’s strategic plan and aims to support Parliament to play its legislative and oversight roles to ensure that constitutional provisions are operationalised. In support of the constitutional alignment process, the project seeks to:

- Institutionalise engagements, platforms and meetings between Parliament and the Executive;
- Build the capacity of committees to analyse bills; and
- Increase consultations with the public (including the youth, people with disabilities and other disadvantaged groups).

CSOs have also been invited to sit on the programme’s Board. Given that it only started in late 2019, progress has been seriously affected by COVID-19. In response, the programme has supported a movement towards **online Parliamentary and Committee meetings** (including through the provision of equipment to Clerks and Researchers to allow them to work from home) and through **virtual public meetings and radio call-in shows** that allow those without internet access to participate and have their voices heard. Capacity building has also been provided to Parliament on research skills, public speaking and public hearings. Support has also focused on **building the capacity of staff** (Clerks and Researchers) and to **institutionalising training** under the Zimbabwe Parliament Training Academy, including training of Academy trainers, should the Academy be formalised. A **Parliament Coordination Unit** has been set up by Parliament (with the encouragement of UNDP) that is now being used to

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<sup>67</sup> Section 141.

<sup>68</sup> SAPST as lead applicant, Women’s Coalition of Zimbabwe, National Association of Youth Organizations, and Veritas Zimbabwe as co-applicants. Support to civil society to CSOs to participate in the constitutional alignment process falls under Result 3.3 but is dealt with here to give a better picture of the 360 degree approach adopted under the EU Programme.

<sup>69</sup> For example, the IMT has an established arrangement with Parliament (through the project support) to facilitate liaison between the Attorney-General, Speaker and Clerk of Parliament where they meet routinely on status of the alignment process.

<sup>70</sup> The programme started on 29 November 2019 and runs until end 2022.

coordinate the support of other DPs as well and the coordinator is now viewed as a Parliamentary staff member (Director for Programmes within Parliament).

To ensure citizens are able to participate in the legislative alignment process (in keeping with both the requirements in the Constitution and the rights-based approach), the SAPST-led consortium's **'Enhancing Constructive Citizen Engagement of the State for Improved Public Policy-making and Constitutionalism'** project runs from 30 November 2019 to 30 November 2022 and aims to strengthen public participation (particularly women and youth) in the alignment process and in the implementation of the Constitution at national, provincial and local level. The project has been negatively impacted by COVID-19 restrictions when it comes to the 'constitutional hubs' (public gatherings) but implementers employ a range of methods to educate and raise awareness amongst the public (radio, television and social media) that have allowed activities to continue. Coordination with CALR is reported to include SAPST participation in meetings between Parliament's administration and DPs and in some of the 'write shops' undertaken with the IMT. Members of the consortium have also prepared draft laws, based on their consultations with the public, that have been shared with Parliamentary Committees responsible for public consultation. **LSZ** has also contributed to accelerated alignment process by developing Model Laws for approval by the IMT.

The biggest issue reflected in reports and during consultations is the fact that many laws remain to be fully aligned with the Constitution. Although the Constitution was adopted in 2013, the alignment process only began in earnest after the change in political leadership in 2017 and the inclusion of the process in the 2018 TSP. While the pace of progress since 2018 has reportedly improved, it has been impacted on since early 2020 by COVID-19 restrictions that not only impacted on activities but also shifted the focus of Government to the more immediate needs of the population. Tropical storms and cyclones during 2020 and 2021, coupled with a steadily declining economic situation, have also created diversions, with Members of Parliament shifting their focus to the urgent needs for humanitarian assistance.

Support to the alignment process also faces challenges related to the lengthy process of researching, consulting, drafting and passing legislation. While some laws only require minor changes, some need to be significantly revised and reformulated. Issues such as legislation establishing an independent complaints mechanism for the security services<sup>71</sup> require completely new laws to be prepared. Projects under Result 2.1 have tried to speed up the alignment process and have achieved success in this regard, but the process itself cannot be changed without undermining the Constitution and rights-based approach, which is above and beyond project-based support. Nonetheless, progress is being made, which CALR and others attribute to the champion role played by the Attorney-General as chair of the IMT; the President's personal interest in the issue; and the role of the Project Steering Committee that is chaired by the Attorney-General and attended by the EU Ambassador.

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<sup>71</sup> Required by Section 210 of the Constitution.



**Result 2.2: Strengthened institutional capacities particularly internal systems and human resource management for key justice institutions - NPA, Zimbabwe Prisons and Correctional Services (ZPCS), Zimbabwe Republic Police (ZRP), MoJLPA and LAD<sup>72</sup>**

Result 2.2 was intended to be implemented under a **service contract and programme estimate** and was adversely affected by the cancellation of the service contract. Some explanation of the process leading up to the cancellation of the contract is thus required.

<b>Events leading up to the cancelled service contract</b>
<p>Capacity building support for Government institutions was to be via a programme estimate (budget EUR 1.5m), coordinated by MoJLPA with the assistance of Technical Advisors appointed under a service contract. Under the arrangement, the NAO was given the responsibility to approve ToR for non-key experts, reports, and the programme estimate before funds would be released<sup>73</sup>. The service contract, with a budget of approx. EUR 2.7m, was awarded to a consortium led by Quarein - a consultancy firm based in Belgium. It included two long-term international experts as well as a non-key expert (NKE) facility. Although some of those consulted found the process of selecting the firm unduly lengthy, it followed the standard procedure laid out in the Practical Guide for Procurement and Grants for European Union external actions. However, the process was delayed somewhat by the decision to first build the capacity of the NAO before finalising the appointment of the service providers under the contract. Many of those consulted questioned whether Quarein had the requisite experience and whether they should have been selected by the panel (which was made up of beneficiary institutions, with little experience in this regard, and selected prior to the appointment of the Technical Advisors for the NAO). While the experts selected to implement the contract were generally regarded as knowledgeable and experienced, neither had experience in Zimbabwe or much experience with EU rules and procedures.</p> <p>The objective of the contract and programme estimate were essentially to strengthen the capacity of key state institutions in rule of law and access to justice: MoJLPA, the NPA, the Zimbabwe Republic Police's Legal Services Directorate and Victim Friendly Unit, the Zimbabwe Prisons and Correctional Service, and the LAD. The contract and programme estimate thus covered <b>Result 2.2, Result 2.3</b> and <b>Result 3.1</b> (focused on the LAD and dealt with further under Specific Objective 3 below). The implementers of the service contract were also expected to convene and act as the secretariat to the <b>Programme Steering Committee</b>, which would be made up of all of the main institutions and beneficiaries falling under the Programme and which would have the responsibility for overall coordination.</p> <p>Implementation of the contract started in October 2018 with the arrival of the two key experts in Zimbabwe. Numerous short-term contracts were then entered into with a variety of NKEs during what Quarein refer to as 'Phase 1'. NKEs were primarily to undertake needs assessments of the beneficiary institutions, determine baselines, and to contribute to the development of the programme estimate. This process met with significant challenges. For example, finalising ToRs was delayed, partly because the two key experts were insufficiently familiar with the requirements for ToR, and</p>

<sup>72</sup> MoJLPA and the LAD were not included under this result in the Programme's logframe. MoJLPA were added by Quarein during the inception phase and support to the LAD is dealt with under Result 3.1 below.

<sup>73</sup> Some dispute as to the role of the NAO regarding approval of reports was reported. According to the MoJLPA, the NAO's role should only have been to determine whether the EU rules had been complied with, whereas the NAO were of the opinion that they had to confirm that the ToR had been complied with, which involved an assessment of the content of the reports.

partly because the NAO - which had to certify that ToRs complied with the requirements - had only recently been established. In some cases, the ToR were reportedly broadly framed, including various activities as well as contributing to the development of the programme estimate, which made it difficult for the NAO to confirm that the reports satisfied the ToR. Reports therefore took longer to be approved than was anticipated, NKEs were not paid, and Quarein was unable to pay NKEs out of their own funds because of the company's own financial difficulties. Eventually, the company became financially compromised and the contract was cancelled in March 2020 before the programme estimate was finalised. Although the MoJLPA was requested to propose an alternative solution for how support to the relevant beneficiary institutions might be provided, the proposal was delayed. In the interim, when faced with the urgency for a response created by the COVID-19 pandemic, a decision was taken to redirect the bulk of the funding for these activities (approx. EUR 4m) to the fight against COVID-19. As a result, few (if any) of the studies undertaken by the NKEs were finalised, none of the capacity development activities were implemented, and none of the equipment envisaged under the contract was procured.

Despite the cancellation of the service contract and failure to finalise the programme estimate, some support was provided to the LAD and NPA under other projects:

- Limited training of NPA prosecutors for the specialised **Anti-Corruption Court** in Harare was provided by ICJ (see Result 3.2 below). ICJ also shared publications with the NPA on international law, provided limited equipment (furniture and computers), and assisted the NPA to identify its needs related to a case management system. But the system itself was meant to be procured under the service contract and has not been provided.
- The LSZ provided limited training to the LAD and the NPA on the Bill of Rights to strengthen their trial and advocacy skills, case management and mainstreaming issues such as gender and disability in the execution of their mandates.

### **Result 2.3: Improved public corruption perception of justice institutions through enhanced internal accountability mechanisms and a robust anti-corruption campaign by the JSC, LSZ, Zimbabwe Republic Police, Zimbabwe Prisons and Correctional Services, and NPA**

Support under Result 2.3 was also included under the service contract with Quarein and the failure of the service contract thus meant that many of the envisaged activities did not take place. Instead, a more piecemeal approach has been followed, with only ICJ actively supporting anti-corruption under the Programme:

- ICJ assisted with setting up of the Special Court on Corruption in March 2018 (see Result 2.1).
- ZACC were supported for the launch of the anti-corruption awareness campaign (2018), roadshows to mark the United Nation's International Anti-Corruption Day (December 2019), and to produce a television programme, with around 20 episodes broadcast by the national broadcaster<sup>74</sup>. Support to the ZACC has pivoted though towards the development of a cellphone based whistleblowers application. Use of the application is limited though since it requires access to the internet<sup>75</sup>.
- ICJ is supporting the development of an electronic case management system for the ZACC, which is expected to be completed by March 2021, and has convened a consortium of five CSOs to

<sup>74</sup> According to calculations provided by ICJ in their PowerPoint presentation to the project's Steering Committee on 18 February 2021, viewership of these programmes is estimated to be slightly less than one million viewers per episode.

<sup>75</sup> 71 cases had been received by the ZACC using the application by February 2021.

establish an independent mechanism for tracking anti-corruption cases. As of February 2021, the online tracking tool was close to completion but was still being finalised.

- Support was provided to the JSC to deal with corruption cases and a perception survey of judicial corruption has been undertaken (as dealt with under Result 1.1 above).
- In response to COVID-19 restrictions, one online training course was provided to ZACC investigators and Commissioners on asset recovery and forfeiture by ICJ in August 2020.

Limited support to anti-corruption is also included under the SASPT project, which is supporting members of the public to file and follow-up complaints to the ZACC as part of measures aimed at enhancing accountability. By March 2021, only three people have been assisted this way (against a target of nine for the entire project). Their complaints are still under investigation and it is not possible to say yet whether such support leads to better resolution of complaints by ZACC.

### **Contribution to results for Specific Objective 2**

The outcomes in the logframe for Result 2.1 are the **percentage of resolutions** made during sector coordination meetings that are implemented, which is not specifically reported on, and an expectation that **all remaining pieces of legislation in 2016 would either be passed or aligned to the Constitution**. The latter is a lofty outcome: depending on which definition is used, there are potentially hundreds of pieces of legislation that need to be 'aligned' for this outcome to be achieved<sup>76</sup>. Seen together, the support provided by CALR, UNDP and SAPST provides a **'360-degree approach'** that has built capacity and contributed to a clear process for alignment of legislation between MoJLPA and Parliament, and which allows for significant public participation at both the Executive and Parliamentary levels (enhanced by public education and awareness raising). Despite the challenges it has faced, the programme has contributed to the passage of 20 of the 63 laws requiring significant reform, while key legislation related to access to justice is currently on track for adoption during 2021<sup>77</sup>.

The impact of the cancellation of the service contract has been significant when it comes to the expected results under Result 2.2 and 2.3. Numerous baseline studies and needs assessments were undertaken by Quarein before the contract failed that might contribute to results in future, but it is difficult to determine which (if any) of these assignments were completed. Although some support was provided under other projects to institutions falling under the service contract, their contribution to the results is limited. And while ICJ is tracking perceptions of judicial corruption (see Result 1.1), a **sector-wide baseline study** was not conducted against which to measure changes in public perceptions related to corruption in the overall sector. No data are available either against which to measure changes in the

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<sup>76</sup> There is some inconsistency as to how many laws need to be 'aligned' between the MoJLPA (which counts all laws, including those where alignment merely requires technical changes) and CALR (which counts only those that require significant levels of reform)

<sup>77</sup> In particular:

- Research has been completed for the Criminal Law (Codification and Reform) Act and legislative drafting is expected to commence in March 2021.
- Research related to the Administrative Justice Act is complete and a draft Bill has been produced that is being reviewed by the IMT before it is submitted to the Cabinet Committee on Legislation (CCL) for approval.
- Principles for the Judicial Laws Amendment Bill (to combine amendments to the High Court Act, Magistrates Court Act, Supreme Court Act, and Labour Act) were approved in 2019 and the draft legislation is currently undergoing internal review by the Attorney-General's Office.
- Research for the Child Justice Bill is complete and a draft Bill produced that is awaiting submission to the CCL for approval.
- The draft Zimbabwe Independent Complaints Commission Bill was submitted to Cabinet and approved on 18 November 2020. The Bill was gazetted by Parliament on 23 November 2020 and is currently before Parliament.
- The Prisons and Correctional Services Bill is expected to be submitted to Cabinet for approval in March 2021

number of corruption cases prosecuted (although anecdotal evidence suggests there has been no increase). Afrobarometer conduct surveys in Zimbabwe that include public perceptions of corruption amongst key roleplayers, but the most recent of these was conducted in 2018, the report does not download from the Afrobarometer website, and it would in any event be impossible to measure progress (or otherwise) since then<sup>78</sup>. Results of the Mo Ibrahim Index of International Governance are not encouraging though: according to the 2020 index, Zimbabwe scores 32.4% when it comes to absence of corruption in state institutions and 25.2% on absence of corruption in the public sector.

**2.2.4 Specific Objective 3**

Specific Objective 3 aims to enhance the capacity of all people, especially woman and vulnerable groups, to exercise their rights and access to justice. It includes the following three results:

**Result 3.1: Capacities of the LAD are reinforced and effective coordination and synergies with other legal aid providers is in place.**

As mentioned under Result 2.2, the LAD was added to the list of institutions to be supported under the service contract. Little support has thus been provided to the LAD, and none at all to the decentralisation of LAD to provincial and district levels required under the service contract. Instead, other than legal advice and assistance provided by civil society (see Result 3.3), the only support to legal aid in the formal system has been that provided by LSZ. Although not targeted as a provider of legal aid in the Action Document, LSZ has a grant under the Programme to improve access to justice<sup>79</sup> that ended in January 2021. The grant was intended to enhance the capacity of lawyers in constitutional and electoral litigation and support indigent women and men access justice through the provision of *pro-deo* legal services. Under the project, LSZ provided *pro deo* lawyers in 588 capital crime cases and conducted research into the provision of legal aid in the country. LSZ also convened an annual Bar-Bench Colloquia (where members of the Bar - including the Attorney-General - are able to meet with Judges to discuss issues of common concern). But these have stalled as a result of the EUD limiting conferences to locations close to where the majority of participants reside, which led to the abandonment of the colloquium scheduled for end 2020 in Victoria Falls. Although LSZ has provided limited training to LAD and the NPA other lawyers in government service, there has been no clear focus under any projects on justice sector reform (included in the Programme’s Overall Objective<sup>80</sup> and specifically included as an objective of the service contract and programme estimate).

<p><b>Coordination amongst criminal justice roleplayers</b></p> <p>The Programme’s Action Document makes numerous references to the ‘justice sector’. However, the Programme does not focus on coordination across the sector other than some support to the Bench-Bar colloquia convened by LSZ. Following the example of Uganda, where such a sector was first established<sup>81</sup>, Zimbabwe has established a Justice, Law and Order Sector (JLOS) made up of all key roleplayers in criminal justice (although</p>
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<sup>78</sup> The results of the survey are ostensibly on the following website but cannot be downloaded: <https://afrobarometer.org/data/zimbabwe-round-7-data>

<sup>79</sup> The Law Society is a statutory body, established under the Legal Practitioners Act [Chapter 27:07]. It is made up of all registered legal practitioners in Zimbabwe whether in private practice, in commerce or in civil service. The primary duties of the law society are to promote the study of the law, contribute, undertake or make recommendations on legal training, regulate the profession in respect of continuing training, discipline and trust accounts, and to generally control and manage the legal profession.

<sup>80</sup> Noting that the current evaluation does not consider ‘impact’ or the contribution of the Programme to the Overall Objective / impact level.

<sup>81</sup> <https://www.jlos.go.ug/>

there is some dispute as to whether the Judiciary have agreed to be part of JLOS)<sup>82</sup>. The efforts in this regard remain nascent, with some support under UNDP's governance programme and some attendance by partners under the EU Programme, but the approach is one that can significantly increase coordination across the sector. In some countries (such as Kenya), such a structure has been formalised by legislation, which also requires smaller committees to be established at lower levels. These bring together local heads of the police and prisons, senior prosecutors and magistrates, and CSO representatives to attempt to resolve problems at their level and to report to the national level. Similar approaches to coordination at lower levels have also been implemented in other countries in the region but are not yet being replicated in Zimbabwe, and no direct support to JLOS has been provided under the EU Programme.

It should be mentioned that there are preliminary movements towards revision of the existing legal aid regime that were not envisaged in the Action Document. Approaches to legal aid in other countries in the region (such as Zambia and Kenya) have broadened the definition of legal aid service providers to include trained and accredited members of CSOs, paralegals and others to whom cases can be referred for mediation. Such approaches dramatically enhance access to legal aid and justice and help to reduce the burden on the entire justice system. According to LAD, research has been conducted into legal aid systems and models in other countries and an internal write up has been produced, but changes can only begin to be made once the policy makers in Government agree<sup>83</sup>. The LAD is also included in the discourse on recognition of paralegals being championed by the LRF. LRF has also undertaken research, including consultations with representatives from other countries, and it is now in the process of developing a model law on legal aid to present to the MoJLPA for consideration<sup>84</sup>. JSC noted that there is interest within the Judiciary to explore the increased use of alternative dispute resolution, including court-annexed mediation, which is now included in its new strategic plan.

### **Result 3.2: Enhanced promotion, protection and enforcement of human rights and administrative justice in Zimbabwe through improved capacities of the Zimbabwe Human Rights Commission (ZHRC)**

The ZHRC was first established in 2009 and began operations in 2010. It is included in Chapter 12 of the Constitution and covered by the ZHRC Act<sup>85</sup>, and is mandated to protect the public from abuse of power and maladministration by state and public institutions and to uphold and promote human rights. It thus has dual roles as both a human rights commission and an Ombudsman. Following on from an EU supported Danish Institute for Human Rights project with the ZHRC, support under the Programme included a grant to GIZ to strengthen the capacity of the Commission. The project ran from April 2017 to September 2019, but while a second phase was anticipated, delays in the process of finalising it and technicalities related to which funding modality could be used eventually led to the second phase not being supported. But even though the second phase did not take place and progress was hampered by political unrest during the period of political transition, the support provided by GIZ was highly regarded by the Commission and progress was generally good.

<sup>82</sup> According to some of those consulted, the Judiciary does not participate because it would raise issues of independence. But the JSC reported that the main reason they have not participated relates to communication issues and that they have sent representatives to the last two JLOS meetings.

<sup>83</sup> The question as to whether there is Government commitment to revising legal aid legislation met with various replies. LAD indicated there is not yet political buy-in for revision, but LSZ and others reported Government have indicated that they are interested in revision, particularly when it comes to increased use of alternative dispute resolution and the possibility of court-annexed mediation.

<sup>84</sup> LRF is also pursuing advocacy for recognition of paralegals, but under a different project with GIZ and TRACE.

<sup>85</sup> [Chapter 10:30]

During the first year of the grant, GIZ focused on:

- Setting up internal systems and procedures (such as those for ICTs, complaints handling and investigations).
- Building capacity in complaints handling and investigation, monitoring and inspecting places of detention, education promotion and research.
- Supporting the establishment of thematic working groups<sup>86</sup>.
- Institutional support.

In the second year, support was provided to:

- The development of monitoring and evaluation (M&E) capacity.
- Team building for senior management.
- Strengthening stakeholder engagement with CSOs.
- Investigating complaints.
- Experience exchange visits to other human rights commissions<sup>87</sup>.
- Attendance at international and regional meetings.
- Outreach activities.
- An annual process for civil society to provide an assessment of the Commission's reports and recommendations.

Support under the grant also included the provision of project staff<sup>88</sup> to enhance the capacity of the Commission and towards running costs. However, as a result of changes in exchange rates, salaries for project staff came to exceed those of Commission staff, which led to some resentment within the ZHRC. The Commission also took a decision towards the end of the project that using staff provided by DPs could lead to questions about its independence and that no project staff would be appointed in future.

**Result 3.3: Strengthened networks and capacities of CSOs to provide legal services, education and awareness to vulnerable groups in particular survivors of gender-based violence and people in places of detention as well as participating in the constitutional legislative alignment process.**

**Note**

The support to CSOs to participate in the alignment of legislation with the Constitution is dealt with under Result 2.1 above. In this section, we focus only on the legal assistance and public education and awareness aspects of Result 3.3.

The main project under Result 3.3 is the '**Access to Justice**' project implemented by an LRF-led consortium with four other CSOs<sup>89</sup>. The project aims to provide legal aid and assistance to marginalised and vulnerable people in remote rural and peri-urban areas of Zimbabwe, and to enhance their capacity to assert their rights.

<sup>86</sup> The project supported four out of eight Thematic Working Groups - Civil and Political Rights, Capacity Building, International Agreements and Treaties, and Economic, Social and Cultural Rights.

<sup>87</sup> Tanzania, Kenya, Ghana, Nigeria and Egypt.

<sup>88</sup> An M&E Officer, ICT Officer, Public Relations Officer, Project Administrator, Driver and stipends for nine interns.

<sup>89</sup> The project started in July 2018 and was expected to end in December 2020 but has been extended to June 2021. The other CSOs in the project are Zimbabwe Women Lawyers Association, Zimbabwe Lawyers for Human Rights, Justice for Children and Women and Law in Southern Africa Research and Education Trust.

The need for access to justice has increased in Zimbabwe as a result of political violence and levels of human rights violations, while the declining economic situation has also made the need for free services provided by the consortium more pressing. Although the consortium partners have different levels of competence, capacity and outreach, progress towards the intended result has been made. The consortium has provided relatively high levels of advice and assistance (including for victims and survivors of SGBV) via their offices as well as during mobile legal aid clinics. To address the fact that people could not travel to their offices and mobile clinics could not be held as a result of COVID-19, the consortium has introduced a call centre to provide advice and assistance (although it is not yet toll-free). Help desks have also been established at various courts to provide free legal advice and assistance to unrepresented users of the courts, including in completing the necessary forms and documents required during litigation, but these have not been able to operate when courts were closed in 2020. Progress when it comes to finalising cases has suffered as a result of the closure of courts, and some clients have been unable to raise court fees or afford the high cost of transport given the economic impact of the pandemic.

CSOs under the consortium have provided fairly significant levels of public awareness and legal education, often provided by volunteer community paralegals. Paralegals are trained to raise awareness on various issues related to SGBV and family law and how to refer cases to relevant service providers, but are not trained as mediators (which would be very useful given the need for assistance, particularly during times of COVID-19 travel restrictions). Legal education and awareness raising activities have a particular focus on people with disabilities that is reported to have assisted them to claim and protect their rights. And to address the fact that outreach activities were forbidden under COVID-19 restrictions, the consortium increased its use of social media, radio, videoconference platforms and mobile messaging services to provide education and awareness. To reach those with no access to internet or electricity, printed publications have also been produced (including on COVID-19 and safety advice).

To address the high rate of pre-trial detainees, the LRF consortium conducted numerous prison visits, with advice and assistance provided to hundreds of pre-trial detainees. Some public interest litigation has also been undertaken under the project, particularly around service delivery issues such as access to water (a critical resource during the COVID-19 pandemic). Progress with the cases themselves was limited, but the pressure brought to bear on the relevant municipalities as a result of the litigation did spur at least some of them into increasing access and improved service delivery. The project also supported the creation of a case management system to allow LRF to better track progress made by consortium partners.

Additional access to legal aid outside of the formal legal aid system has been provided by legal aid clinics at four universities under the ICJ project, which has assisted to establish or revitalise these and to develop clear organisational structures and processes. The clinics are run by law students and provide a range of services (primarily in civil matters) ranging from simple advice and writing letters, to litigation, documenting the problems of communities, and providing legal literacy. Although not all clinics progressed at the same speed, progress was being made that was unfortunately impacted on by COVID-19. The response of the clinics to the restrictions created has been impressive though: those at the University of Zimbabwe, the Midlands State University and the Great Zimbabwe (Hebert Chitepo Law School) were able to resume operations once ICJ provided the PPEs to enable the schools operate safely. The Great Zimbabwe University Legal Aid Clinic has also been offering legal advice through the University's local radio station<sup>90</sup>.

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<sup>90</sup> ICJ PowerPoint presentation to the project's Steering Committee on 18 February 2021.

### Contribution to results under Specific Objective 3

The failure of the service contract meant that virtually no assistance was provided to LAD. Although some legal aid in the formal system has been provided by LSZ, it is limited to lawyers providing *pro deo* assistance in capital cases and the contribution to access to legal aid and justice under Result 3.1 is limited. Some support is provided by programme implementers to the revision of legal aid legislation, but, overall, the contribution of the support to LAD and the contribution of LAD and LSZ towards the intended results for Result 3.1 are currently minimal. Support to the ZHRC did reportedly help to increase the Commission's capacity to perform its constitutional mandate and contributed to the intended Result 3.2, but the degree to which this might have led to better results was impacted on by the fact that the project ended after only two years.

In the relative absence of support to formal legal aid service providers (LAD and LSZ), the support to legal aid and assistance by LRF and ICJ via CSOs and university legal aid clinics has been particularly important and a definite contribution to Result 3.1 and the outcomes for Specific Objective 3 has been made. The consortium has responded well to COVID-19 restrictions and continues to provide legal assistance and advice, public education and awareness. But whether or not the activities and outputs are achieving the intended results is hard to determine. Although the project partners try to follow up to see whether the advice and assistance offered leads to better outcomes for those assisted, many of those provided with assistance do not report back and it is difficult and time consuming for partners to try to determine the outcomes of cases from court records. It is also not clear how many of the pre-trial detainees assisted were able to secure their release on bail or warning though as this is not tracked. It is also noted that the strategy and action plan to reduce prison overcrowding envisaged in the Action Document has yet to be developed and is not included under any of the projects falling under the Programme.

#### 2.2.5 Challenges: implementation modalities and management arrangements

Challenges facing individual projects or activities, as well as the general challenges related to COVID-19 and the cancellation of the service contract, are addressed in the preceding sections and are not repeated here. Instead, we focus in this section on the question in the Inception report related to challenges created by the choice of implementation modalities and management arrangements.

Although questions were raised by some of those consulted, **the choice of a service contract is justified in the context**. It is a tried and tested modality that has met with success in many other countries and programmes and is in any event one of the few modalities available under the EU project approach, especially in contexts where neither budget nor sector-budget support are available<sup>91</sup>. However, there would appear to have been insufficient attention paid to the length of time the standard EU process requires, the process was delayed while the Technical Advisors to the NAO were prioritised, the selection panel does not appear to have been sufficiently thorough in choosing which company to appoint, and the roles and functions of the NAO and MoJLPA do not appear to have been sufficiently clearly defined. Attempts to resolve the issues between the NAO and MoJLPA were unsuccessful and the contract was cancelled, which had significant impact on the management, coordination and implementation of the Programme.

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<sup>91</sup> In addition to perceptions around levels of corruption and weak public finance management, the Government at the time had no prior experience in managing EU budget support. And while there is some movement by Government to adopt a sectoral approach, the attempts in this regard are only just starting and there is as yet no sectoral policy or plan.



**Contribution / delegation agreements** with GIZ and UNDP are justified, a preferred EU modality (at least withing EU Headquarters), and no problems have been noted in that regard. The choice of direct management grants to CSOs and others also makes sense if coordination and monitoring was to be provided by the Technical Advisors and Programme Steering Committee. But the failure of the service contract has meant that the responsibility for monitoring, oversight and coordination has shifted to the EUD. The EUD has limited capacity to monitor implementation and financial management, and monitoring is restricted to one or two grants per annum rather than under a comprehensive M&E strategy and approach designed to monitor outcomes and results. Although each grant includes requirements for audits, audits at best take place annually and are often too late to identify emerging problems. Although no financial management issues have been reported, there is potential for double-dipping when CSOs and institutions are provided with funding for similar activities by multiple donors. Some of the CSOs in consortia are possibly less experienced than others when it comes to financial management, which often leads to misuse of funds (even if unintentionally). Although these are assumptions at this point, there would seem to be a need for better oversight in this regard.

**2.2.6 Contributions to Government priorities, SDGs, gender equality and re-engagement**

In addition to the analysis of the degree to which projects have contributed to the anticipated results for each Specific Objective above, in this section we consider the extent to which the activities, outputs and expected objectives and results have contributed or can be expected to contribute to SDGs 5 and 16 and gender equality, the results of the NIP, the EU and Zimbabwe re-engagement agenda, and to the national development priorities of the Government of Zimbabwe. In relation to gender equality, the following specific question was included in the Inception Report:

**Evaluation question: Gender**

- To what extent has gender been addressed and mainstreamed during implementation?

The Programme is aligned with the NIP and Government's development priorities and any outcomes of the Programme will contribute to the objectives and results set out in these. Although the focus on rule of law and access to justice was relatively marginal under the ZIMASSET, it increased significantly under the TSP, which also specifically included alignment of legislation with the Constitution as a priority for the first time, and similar priorities are reflected in the NDS 1. EU Programme results are thus likely to contribute to the priorities of Government whenever such results are obtained.

Gender has been mainstreamed to some extent through the focus on SGBV by the LRF consortium. Most projects have also attempted to ensure gender parity in training provided, ICJ have developed tools to assist university law clinics to prioritise gender, and reports provided indicate a relatively high level of compliance with the approach. But support to **gender equality, gender mainstreaming, SGBV and SDG 5** was diminished as a result of the cancellation of the service contract.

**Tackling SGBV – experiences from the Region**

Although some support under the programme estimate might likely have targeted increased access to justice for survivors of SGBV, the only support provided to them once the programme estimate failed to materialize was that provided by LRF. While the support of CSOs like LRF is critical for

survivors of SGBV, lessons learned in other countries in the Region suggest that ensuring access to justice for survivors of GBV requires a far more concerted and coordinated approach. For example, programmes supporting survivors of SGBV focus on:

- Training for all criminal justice actors on victims' rights and how to protect them and avoid revictimising survivors.
- Specialised courts and services.
- Enforcement of bail conditions to protect survivors from perpetrators.
- Support to safe houses and shelters to ensure survivors are not forced to remain in the same home as the perpetrators.
- Support to human rights commissions to monitor respect for the rights of victims and survivors.

Although it is not possible to address these issues under the current Programme, they do provide some ideas for what future programming might include.

The cancellation of the service contract has had wide reaching consequences for the Programme, including limiting the overall coordination that the Programme Steering Committee was mean to provide<sup>92</sup>, creating a level of frustration and disappointment within Government, and limiting **opportunities for re-engagement**. Although some opportunities for engagement have been created (allowing for meetings between the EU and the Minister of Justice and participation in committees and meetings related to the legislative alignment process), doors for policy dialogue and advocacy for substantial reform of the justice sector have yet to be fully opened. And while support was provided to the Judiciary, Executive and Parliament that has helped to build capacity and strengthen institutions, the contribution to **SDG 16** is marginal.

## 2.3 Efficiency

The following questions were included in the evaluation matrix in the Inception Report:

### Evaluation questions: Efficiency

- How efficiently has the programme been implemented generally?
- How proportional are the results obtained (qualitative and quantitative) to the inputs/resources devoted to the programme?
- How robust and effective have accountability mechanisms (mitigation strategies and risk management measures) put in place been?

There have been no significant delays in the release of funds on the part of the EUD. But the slow pace of contracting the service contract, the complicated arrangement of having MoJLPA (assisted by Quarein) as the manager of support to Government beneficiaries while the NAO was responsible for approval of ToR and reports introduced significant levels of inefficiency that impacted on the overall programme. The development of clear baselines by Technical Advisors under the contract, which might

<sup>92</sup> The reasons why the PSC was never fully constituted remain unclear. According to MoJLPA programme managers, the main reason was that they (and the Technical Advisors) were told by the NAO that funds could only be released for venues and other support to the PSC once the programme estimate was finalised. This was disputed by the NAO, who pointed to the fact that the costs of the meetings etc. to support the PSC were included under the service contract and were not available because of the financial difficulties Quarein were experiencing.

have contributed to greater efficiency, was also not completed as a result. Although attempts were made by the EUD to mitigate the impact of disputes between MoJLPA and the NAO and to find a solution to the lack of support to Government beneficiaries when the contract was cancelled, these proved unsuccessful and the funds that might have been used to build capacity of institutions were diverted to COVID-19 responses.

A significant level of **risk management** would also have fallen to both the Technical Advisors and Programme Steering Committee that was negatively impacted on. Instead, risk management has largely fallen to individual project managers and little was reported to have been done to mitigate risks by the Delegation (other than attempting to resolve issues between MoJLPA, the NAO and Quarein). Although disputed by some of the Government representatives consulted, the risk related to limited political will for reform in the Action Document was reported by those outside of Government to have arisen, particularly when it comes to the passage of certain legislation such as that required to establish an independent complaints mechanism for complaints against the security sector<sup>93</sup>. This is being addressed by those responsible for projects related to alignment of legislation and, while the legislation is yet to be passed, progress is noted<sup>94</sup>.

**Delays were experienced with the support to the ZHRC**, where funds were initially channelled via GIZ Headquarters in Germany but where restrictions on international transfers into Zimbabwe meant that intermediary banks delayed the release of funds, although a solution was eventually found. Some of those consulted raised issues related to the decision by the EUD to limit conferences and workshops to areas where the majority of participants ordinarily work that have led to frustration amongst Judges and others who would prefer to hold such gatherings outside of the main cities so that they are not distracted by work-related issues. The decision is fully justified though given the declining economic crisis, compounded by natural disasters such as cyclones and COVID-19, and the increasing levels of poverty and hunger amongst the population that made expensive conferences for limited numbers of participants difficult to justify. Some delays were also reported for projects waiting for confirmation that no-cost extensions would be granted, but that is understandable given how many projects needed to be extended and the lengthy EU processes required for extensions to be finalised.

The major ongoing issue though from an efficiency perspective is that the COVID-19 pandemic and changes to the exchange rates are leading to **underspending of the budgets for trainings, meetings, workshops and public hearings** for various partners (including Parliament, CALR, ICJ/JSC and LRF). Although this is being addressed by no-cost extensions for projects, the pandemic continues and many of the revised approaches to address the risks it creates (such as online public hearings and increased use of social media for public education) are considerably cheaper than what was originally intended. There is thus a danger that significant levels of underspending may result. LRF also pointed to the fact that the requirement in their grant for **co-funding and prefunding** of activities hampers the ability of most members of the consortium to implement activities as planned, which in turns creates the potential that not all funding will be absorbed. Given the uncertainty related to the **absorption capacity** of ongoing projects in the face of an ongoing pandemic, it is difficult to determine how much funding can be

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<sup>93</sup> Required by Part 1 of Chapter 11 of the Constitution.

<sup>94</sup> According to CALR, the Zimbabwe Independent Complaints Commission Bill was submitted to Cabinet and approved on 18 November 2020 and Gazetted by Parliament on 23 November 2020. The Bill was before Parliament at the time of writing of this report.

expected to remain available once the various projects come to an end (although the picture should become clearer after April 2021, with only four projects projected to continue beyond that date)<sup>95</sup>.

The ToR for the evaluation also require the evaluators to consider the proportionality of results to the level of inputs. As pointed out in the Inception Report, such a measure requires a value for money assessment that is beyond the scope of the current evaluation. Given that questions are raised in this report around the fact that project implementers have tended to focus more on activities and outputs than results, and that the contribution to the overall objectives of the programme appears to be quite limited in some cases, the evident concern with the EUD that led to the question in the ToR is legitimate and a recommendation in this regard is included in Chapter 3 below.

## 2.4 Sustainability

The following question was included in the evaluation matrix in the Inception Report:

<p><b>Evaluation questions: Sustainability</b></p> <ul style="list-style-type: none"><li>• How sustainable are the benefits of the Programme / can they be expected to be when the Programme comes to an end?</li></ul>
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Although it is difficult to determine sustainability at mid-term evaluation stage, some evidence of actual and potential **sustainability of benefits** was found. Even though the process has been slow, the alignment of legislation with the Constitution has enormous potential for sustainability of benefits (and impact, although that criterion is not included in the evaluation) long after the Programme comes to an end. The sustainability of benefits of the Programme might also be enhanced if laws that promote access to justice, administrative justice, survivors of SGBV, pre-trial diversion and the Independent Complaints Commission are prioritised and aligned during the remainder of the Programme. But the opportunities for increasing capacity within most of the intended beneficiary institutions, and increasing ownership with Government, were missed when the service contract and programme estimate component of the Programme failed

The Programme has achieved some sustainability of benefits when it comes to **capacity building** for individual members of the Judiciary (including Traditional Courts) and for key roleplayers (such as MoJLPA) when it comes to research and legal drafting. Training on electoral litigation and the creation of a database of electoral litigation lawyers, handbook and checklist for litigation has the potential to lead to sustainability of benefits when it comes to litigation around future elections. Individual capacity is important of course, but consensus is growing amongst DPs that **institutional strengthening** through the development of rules, guidelines, manuals, procedures etc. is more likely to lead to sustainability of benefits when coupled with individual capacity building efforts - particularly when it comes to public institutions where staff turnover levels are usually high. And the Programme has already contributed to some level of institution building through the development and/or implementation of strategic and capacity development plans for Parliament and the JSC that should continue to provide benefits after the Programme comes to an end. GIZ's support to ZHRC also focused specifically on increasing institutional capacity through the development of the M&E system and other processes and procedures. Training materials and programmes will also remain useful long after the Programme has ended and

<sup>95</sup> See Annex 1.

there are encouraging signs that **training programmes and materials might become institutionalised** if plans within the JSC to create a Judicial Training Institute<sup>96</sup> and within Parliament to create a Parliamentary Training Academy materialise. The UNDP support to Parliament has also focused on building the capacity of the institution through support to Clerks and other support staff, which helps to increase sustainability of benefits even when new Members of Parliament are elected. It is also encouraging that the **Parliamentary Programmes Coordinator** position within Parliament, created with the encouragement by UNDP, has been formalised as a full-time position. And while not specifically included in the Programme's Action Document, the development of the human rights training curriculum for universities, support to moot courts and publications by ICJ has the potential to lead to better lawyers and sustainability of benefits way into the future.

On the other hand, support to the procurement and installation of **case management systems** for the NPA, ZHRC and LAD and the integrated case management system for the entire justice chain actors that might have led to long term benefits were to be included under the programme estimate that was never finalised. And support to salaries of project staff for the ZHRC undermined sustainability to some extent when their salaries came to be higher than those for state funded staff, which reportedly contributed to a decision within ZHRC to no longer accept staff funded by DPs.

**Public education and awareness** campaigns can be expected to lead to sustainability of benefits for many years, as can **advocacy and lobbying** by CSOs to long-lasting changes to law and policy. But CSOs are generally never sustainable without ongoing financial support. While CSOs have instituted some mechanisms to raise funds, the communities they serve are usually not in a position to fund them and the legal aid and assistance services they provide are meant to support those who cannot afford to pay for such services. That is not to say CSOs should not be supported - they most certainly should - but measures to ensure CSOs become self-sustaining are rarely successful<sup>97</sup>.

When it comes to **anti-corruption** efforts, interventions such as the development of the whistle-blower application, training of ZACC investigators, Commissioners, magistrates, Clerks and NPA and the establishment of the first specialised Anti-Corruption Court in Zimbabwe can be expected to contribute to sustainability in the longer term, but continued support will be required for some time before they become truly sustainable. However, sustainability is challenged by corruption within the criminal justice system and lengthy trial processes for those accused of corruption that have meant few cases have been finalised.

Finally, the COVID-19 pandemic has led to **innovations or fast-tracking of approaches** that might have taken years to get off the ground: for example:

- The introduction of virtual courts.
- Toll free lines for CSOs.
- Online and radio consultation between MPs and citizens that enhance stakeholder consultations and allow far more people, across the country, to participate compared to traditional approaches like public hearings and town halls.

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<sup>96</sup> Included in the new JSC strategic plan.

<sup>97</sup> The only example of self-sustaining national CSOs that the evaluators are aware of are a few in Bangladesh that have used micro-lending, banking, cellphone service provision and other cash generating activities to reduce their dependence on DP support. But even then, they continue to rely on donor funding for key activities.

Researchers for Judges have also been introduced that will allow Judges to produce well researched judgements that invoke international human rights standards and best practices from other jurisdictions. These innovative approaches are providing evidence for how such innovations might be scaled up once the pandemic is under control, provided the will to support, use and sustain them remains.

## 2.5 Coherence, added value and complementarity

The following questions were included in the evaluation matrix in the Inception Report:

### Evaluation questions: Coherence, added value and complementarity

- How internally coherent is the Programme?
- How much synergy was there with other governance programmes/projects in the sector?
- To what extent did the programme complement / align with / overlap with support provided by others, particularly member states?

The Programme, as designed, included significant levels of **internal coherence**. It focused on all of the main state justice institutions as well as CSOs providing increased access to justice. Internal coherence was (and remains) particularly good when it comes to alignment of legislation with the Constitution - including as it does support to the Executive, Parliament and public participation - but is diluted somewhat by the broader focus on all legislation rather than on legislation specifically related to rule of law, access to justice and justice sector reform. Coordination has also been enhanced between MoJLPA and other ministries, as well as between the Executive and Parliament, as a result of support to alignment of legislation with the Constitution. But while there is some level of consultation created by the inclusion of the three main project implementers focused on the issue (UNDP, SAPST and CALR) through the various structures created for the process, there is **no formal coordination** between them and opportunities for greater consultation, cooperation and collaboration have not been created.

Internal coherence is also strengthened by the inclusion of projects that cross over and (potentially) create linkages between the various Specific Objectives. For example:

- The ICJ project includes support to the JSC/Judiciary under Specific Objective 1 but also to the NPA and LAD under Specific Objective 2 and to legal aid clinics at universities under Specific Objective 3.
- Support to Parliament and MoJLPA and the IMT for the alignment of legislation is included under Specific Objective 2, with support to civil society and public participation in the process included under Specific Objective 3.
- Legal aid was intended to be addressed within the formal legal aid system under Specific Objective 2 as well as by enhancing the provision of legal aid and assistance by CSOs under Specific Objective 3.

But as with most of the evaluation criteria, the cancellation of the service contract and non-implementation of the programme estimate significantly undermined internal coherence within the Programme. Not only was key support to state institutions not provided, the main body responsible for overall coordination - the Programme Steering Committee - was never constituted. Instead, overall coordination is left to the EUD, which has limited capacity and no structures, meetings or consultative workshops have been put in place to allow implementing partners to meet, share experiences, learn from each other or to identify possible joint activities.

There is a level of internal coherence between the Programme with **other EU support** to access to justice under the European Development Fund and other instruments and initiatives. For example:

- The EU funded Spotlight Initiative<sup>98</sup>, focused on all forms of violence against women and girls and which also targets the legislative framework and institutional strengthening, and which provides an entry point on dialogue at high level on GBV and women's rights.
- Grants awarded under European Instrument for Democracy and Human Rights, which currently includes grants to CSOs to strengthen human rights and contribute to the rule of law with a specific focus on the ZHRC during 2020<sup>99</sup>.
- A grant to a consortium led by Voluntary Service Overseas under the 11<sup>th</sup> European Development Fund CSO budget line to empower civil society to promote the rights of people in contact and conflict with the legal justice system (including pre-trial detainees).

The main **Member States** supporting access to justice and rule of law in Zimbabwe are:

- **The Netherlands** provides some support to SGBV and litigation related to alignment of legislation but has very limited funds available. EU support clearly adds value to this support.
- **Sweden** provides core funding to LRF that EU funding adds value to by providing funds to specific project activities that would not be possible with Swedish funding alone. There is also a level of complementarity with other support provided by Sweden: Sweden funds Transparency International Zimbabwe which the EU complements with support to the ZACC. Some level of added value is also created between EU support to SGBV under the Programme with that provided by Sweden to SGBV, harmful practices and sexual and reproductive health rights.
- Zimbabwe is not a partner country for **Germany**, but some German development assistance for access to justice is channeled through GIZ. Most of this is used to support CSOs providing access to justice and legal aid and public education and awareness. None of these, other than LRF, are included under the EU Programme. And funding to LRF targets different areas to those covered with EU funds. The EU support thus adds value to that provided by Germany. GIZ also provides some support to anti-corruption (although not the ZACC) and continue to support the ZHRC under different programming<sup>100</sup>.

The main **other DPs** supporting access to justice and rule of law are as follows:

- In addition to their project with Parliament, **UNDP** (together with various other UN agencies<sup>101</sup>) are also implementing a fairly large governance programme that focuses on capacity building of the state to enhance compliance with the rule of law. Support under this programme has been provided to JSC to digitise the Courts and to building the capacity of MoJLPA (including the Lega Aid Division and Constitution Department), the Police, Correctional Services, NPA and JSC. This was reported to complement the support provided by the EU, particularly since the EU support to MoJLPA. LAD, Law Society and other beneficiaries was compromised by the cancellation of the service contract,

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<sup>98</sup> The Spotlight Initiative is a global partnership to eliminate all forms of violence against women and girls in Zimbabwe. The programme is funded by the EU and implemented by and being implemented by UNDP, UN Women, UNFPA, UNESCO, UNICEF and the ILO. It provides an integrated package of interventions across six pillars: 1) legislative and policy frameworks; 2) institutional strengthening; 3) prevention and social norms; 4) delivery of quality essential services; 5) data availability and capacities and 6) supporting the women's movement.

<sup>99</sup> A list of current grants is attached as Annex 7.

<sup>100</sup> Various other DPs support the Commission, such as UNDP, TRACE, the International Organisation for Migration and the Raoul Wallenberg Institute. All of these complemented the support provided under the EU Programme but are not considered here in any detail given that the EU support to ZHRC ended in 2019.

<sup>101</sup> UN Women, UNICEF, UNESCO and UNFPA.

but there is the potential for overlap during the final year of the UNDP programme (which runs until the end of 2021) that should be carefully assessed and monitored by both UNDP and the EU.

- Some support is provided by **UNICEF** to victim friendly Magistrates and High Courts, diversion programmes for children in conflict with the law (partly to address rates of pre-trial detainees), virtual child friendly courts, police training, revision of legal aid legislation, and alignment of laws with child rights in the Constitution that EU support complements. Training for Magistrates on SGBV has also been provided by UN Women under the Spotlight Initiative.
- The United Kingdom's **Foreign, Commonwealth and Development Office (FCDO)** is implementing a large Transparency, Accountability, Responsiveness and Citizen Engagement (TRACE) programme. TRACE aims to empower citizens to hold the Zimbabwean state to account for its use of resources and its respect for human rights and democratic principles and includes significant levels of support to CSOs, including those falling under the EU Programme, as well as to the JSC's case management system. It was reported to complement EU support to civil society and JSC and overlaps are not evident. There is potential for overlap in two areas though: TRACE has supported both LSZ and LRF to work towards revised legal aid legislation, although the EU has not specifically targeted that as yet. And TRACE also fund the LRF to provide capacity development to Traditional Courts, although LRF reported that they ensure that funds from the EU and TRACE are kept and accounted for separately and no issues of double-funding have occurred<sup>102</sup>. But it was noted by the evaluators that that both FCDO and TRACE staff had limited knowledge of the EU programme, which could lead to duplication in future. FCDO also focus on SGBV under their Stopping Abuse and Female Exploitation Programme that complements the (limited) support to GBV under the EU Programme as implemented.
- The **United States Agency for International Development** provides some support to the constitutional alignment of laws, policies, and procedures, which includes support to two SAPST projects: one on transparency and accountability in public finance management and one on support strengthen the capacity of Parliament. Although the latter is reported to have different objectives to their EU funded project, and SAPST reported that funding is kept separate, but there is the potential for overlap that a value for money analysis (as recommended in Chapter 3 below) might explore.

**Donor coordination** in the area of access to justice and rule of law is reportedly good and takes place through various channel: primarily the 'Fishmongers' Group (made up of the EU Ambassador and Ambassadors of EU Member States as well as political heads of like-minded donors) and the Human Rights and Good Governance Group (made up of senior members of all DPs supporting governance<sup>103</sup>). Some coordination in specific areas is also being provided under the Spotlight Initiative and (which is reported to be increasing), the Team Europe Initiative, and Working Better Together made up of European DPs, Switzerland and the United Kingdom.

There are also indications that Government is willing to take on more of a role in coordinating donor support. The **Development Cooperation Policy and Procedures Manual** promotes coordination and division of labour for DPs while the NDS 1 (2021-2025) includes a focus on the development of sectors. As part of a pilot initiative involving four sectors, an Access to Justice Working Group is being established, chaired by MoJLPA with membership drawn from JSC, LSZ and CSOs such as LRF. Such efforts should be encouraged and supported, although DPs also need to be able to meet independently of Government (as is recognised in NDS 1).

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<sup>102</sup> TRACE staff did point to an incident where two DPs funded the same CSO to bring public interest litigation, but the CSO was not one supported under the EU Programme.

<sup>103</sup> Including the EU, Member States, United States, Switzerland, Australia and Canada.



### 3 LESSONS LEARNED

A key lesson learned at mid-term review stage is that the somewhat scatter-gun approach to access to justice, where support was anticipated to all key justice institutions and organisations in both the formal and informal justice systems is likely to dilute support and reduce the prospect for meaningful change or reform. But while a more specific focus on one particular issue is recommended below, the approach followed at design needs to be seen in context. The Programme was designed at a time when the EU had not supported governance under a programme for many years, when concerns still remained about the then Government's commitments to reform, and when levels of distrust existed between Government and the EU. Although not specifically mentioned in the Action Document, it was clear that a motivating factor behind the support was to see where doors might be opened that would allow for greater engagement and political dialogue around deeper democratic, governance, justice and human rights reform. The cancellation of the service contract reduced opportunities for dialogue of course, but some opportunities for engagement have in fact been created - at least partly as a result of the Programme and the structures and meetings it has supported.

When it comes to the **Judiciary and judicial reform**, although capacity building is important, capacity building for the JSC and training of Judges and Magistrates are, alone, unlikely to make significant inroads into making the Judiciary more efficient, transparent and accountable, much less to contribute to significant Judicial reform. Support to the independence of the Judiciary and justice reform is also difficult to achieve under a capacity building project or programme, especially when the Judiciary itself is reported to be less inclined to exert its independence. As with much of the support under the programme, support to the JSC and Judiciary has also been predominantly activity based, with the focus for Judges at least on attendance at conferences and discussion fora, rather than on the anticipated outcomes. Attempts to ensure that the Judiciary is better able to deal with election related disputes in an independent and impartial manner were also called into question by interviewees following the 2018 elections. At the same time, it is recognised that justice reform takes time and although projects are not yet leading to significant outcomes and results, the work is continuing, relationships are being built, and some progress is indeed being made. Although challenges remain, the EU needs to be recognised for the support it has provided and encouraged to continue to support the achievement of the ultimate goal of equal access to justice and respect for human rights and the rule of law that the current Programme has begun.

An important lesson when it comes to **enhancing access to justice**, especially for the poor, is that support to Traditional Courts and CSOs is essential. Traditional Courts are the part of the Judiciary to which the majority of the population turn when seeking to access civil justice (and for the civil aspects of criminal offences). But bringing about change within these Courts requires a long-term commitment given challenges women often face when it comes to access to justice under the customary law. Support to CSOs is also likely to increase access to justice and legal aid and assistance. Support to the provision of services by CSOs is also less likely to face obstacles since it helps to complement and fill gaps in services provided by Government and does not necessarily require reform of the Judiciary, justice sector or system. But advocacy for reform of the sector, especially for more 'controversial' issues such as addressing high levels of political detainees or tackling corruption in the justice system, while it should be considered for future programming, can be expected to meet with more resistance than simply providing access to legal advice, assistance and aid.

### **Addressing high rates of pre-trial detainees – experiences from the Region**

Based on lessons learned elsewhere in Africa, the current approach to pre-trial detainees can lead to an immediate decongestion of prisons, but the results are not likely to be sustained. High rates of pre-trial detention are a symptom of wider problems in the criminal justice system and need to be addressed holistically if prison overcrowding and high rates of pre-trial detainees are to be addressed. While prison visits by Magistrates to deal with cases that have fallen off the system or where people have been detained for long periods of time can lead to a reduction in pre-trial detainees, prison overcrowding is a complex issue requiring a range of strategies and approaches to address. Examples include:

- Revision of the rules / guidelines related to bail and sentencing.
- Increased use of diversion of minor cases out of the system.
- Greater use of alternative sentencing options such as community service.
- Development of an efficient and effective parole system.
- Changes to laws that criminalise or include prison sentences for minor offences (such as possession of marijuana).
- Restrictions on detention of political opponents and protestors.

A valuable lesson when it comes to **alignment of legislation with the Constitution** is that a '360 degree' approach, where members of the Executive and Parliament are both supported to play their roles and where the public and CSOs are able to participate in the process (including drafting model laws for Government to consider or even adopt) is more likely to lead to success. Many of those consulted understandably expressed frustration with the slow rate of progress, but signs of progress with most key legislative revisions are noted. However, until the legislation is actually passed and implemented, it is too soon to say yet with any level of certainty whether and to what degree the process has improved or speeded up. Spurred on by the need to respond to the COVID-19 pandemic, valuable lessons on how to reach out to the population are being learned though, that could lead to even greater public participation in the development of legislation in future.

Finally, as noted in various places in the report, concerns have been raised by those consulted around the **selection of modalities** used in the Programme<sup>104</sup>. These concerns are valid and recommendations are provided in Chapter 5 for how to possibly avoid some of the challenges in future programming. But the failure of the service contract is more closely linked to the financial capacity and durability of the selected service provider rather than the selected modalities and an interesting thought experiment could be undertaken to see what the Programme might have been able to achieve, and what outcomes would have been attained, if the contract had not failed. The main lessons to learn from this process are:

- The need to ensure that the selection panel for any future service contract is familiar with the roles and functions the successful bidder will need to play and the skills and experience the team will require;
- To ensure that future service contracts require a team member with previous experience of the EU's financial rules and procedures;
- That the selected company has the necessary backstopping capacity to support their team on the ground; and fundamentally

<sup>104</sup> These can be summarised as those related to the use of an indirect management and a programme estimate for support to Government, whether or not a service contract was appropriate, the use of individual direct management grants, and the fact that the cancellation of the service contract led not only to a reduction in support to Government but also to diminished overall coordination and an increased burden on the EUD.

- To ensure that the company is sufficiently financially sound to ensure they do not run into any financial difficulties during implementation.

## 4 CONCLUSIONS

### Relevance

The Programme is adjudged to have been relevant at design stage. It was closely aligned with all relevant Government and EU policies and priorities, was based on consultation with Government institutions and others, and reflected the needs identified by beneficiaries during the identification and formulation missions. It also included a focus on SDGs 5 and 16, was mindful of the gender analysis conducted during identification and formulation and, although not explicitly stated in the Action Document, was intended to contribute to the EU / Government re-engagement process. Importantly, the Programme sought to ensure that all legislation is aligned with the Constitution - a key component of the role. But, while it is understandable when seen from the perspective of the Programme seeking to open door for political dialogue around reform more broadly as part of the re-engagement process, its relevance is diluted to some extent by the inclusion of all roleplayers in access to justice at design stage rather than focusing on a particular access to justice issue such as access to legal aid or criminal justice reform.

The Programme remained relevant over time when compared to the key Zimbabwe development policies, but the cancellation of the service contract significantly altered the balance of the Programme during implementation between the supply and demand sides of justice, lowered compliance with SDG 16, and reduced the focus on gender mainstreaming and SDG 5. Opportunities for coordination and joint activities across the projects and between Government and civil society were also greatly reduced. Recognising that it is difficult to address independence of the Judiciary via a programme - particularly when the Judiciary itself does not seek to guard its own independence - there was not apparent attempt to put political or financial pressure on Government to ensure Judicial independence. On the other hand, the inclusion of support to Parliament and public participation in law-making processes during implementation increased compliance with the human rights-based approach while the deterioration of the economic situation, exacerbated by COVID-19, also made justice services provided by Traditional Courts and CSOs even more relevant over time.

### Effectiveness

Progress has been made when it comes to support to the Judiciary under Specific Objective 1 and most of the anticipated activities targeting the formal courts and the Traditional Courts have been undertaken or were on track prior to the COVID-19 outbreak. And while many of those consulted raised concerns about the slow progress with alignment of legislation with the Constitution, progress in this regard is noted and there are signs that key legislation related to access to justice will be passed soon.

Projects implemented by grantees have been able to deliver activities and outputs, which can be expected to contribute to the national development priorities of the Government of Zimbabwe, but the degree to which expected objectives and results are being achieved was seriously impacted on by the cancellation of the service contract and the failure to finalise the programme estimate which meant that most activities aimed at Government justice institutions have not taken place. The anticipated contributions to SDG 5 and 16 have also been negatively impacted on by the cancellation of the service contract and, while some opportunities for re-engagement are reported, the failure to constitute the Programme Steering Committee seriously diminished opportunities for engagement and policy dialogue. Government's commitment to justice sector reform is also muted, with some indications that Judicial independence is diminishing under the current Chief Justice and Government. Although it was reported that the Traditional Courts are showing greater respect for the rights of women and adherence to the

principles of national justice, the fact that the manual on gender and human rights was only completed and approved after nearly four years of the LRF project is a source of some concern for the evaluators and indicates a slow pace for reform at this level. The degree to which the overall objectives and results have been or are likely to be achieved by the end of the Programme is thus questionable.

While it would be unfair to be too critical of the level to which activities are contributing to expected outcomes and results during a global pandemic, the COVID-19 pandemic has obviously had a major impact on all programming during 2020 and measuring whether or not outcomes are being achieved is challenging in that most reports and interviewees focus primarily on activities and outputs. The EUD has tried to address this, at least when it comes to reports from implementing partners, but outcomes still remain hard to find at times.

### **Efficiency**

The project has generally been implemented efficiently when it comes to release of funds and no major delays were noted other than those created for GIZ related to international banks delaying transfers of funds into Zimbabwe. However, no solutions were found as to how to use funds dedicated to the service contract and programme estimate once the service contract failed and these were diverted to COVID-19 responses. The EUD was not able to successfully manage the risk that the service contract would fail and its failure shifted responsibility for risk management to the EU.

To address delays in implementing activities as a result of COVID-19, no-cost extensions have been granted to five projects / grants that were due to expire in 2020. But a risk remains that projects will not spend all available funds given that the pandemic is ongoing and many of the innovations introduced in response to it are cheaper than what was originally planned.

### **Sustainability**

There is the potential for sustainability of benefits related to alignment of legislation with the Constitution - even though the process is slow, the CALR project will continue until the end of April 2021 and two of the projects (UNDP and SASPT) have only recently started and run to the end of 2022, by which time progress can reasonably be expected to have been made. Some level of sustainability of benefits is also being created by capacity development for individuals and there has been some focus on development of policies and strategies (notably in the ZHRC) and support to development or implementation of strategic plans (such as with the JSC and Parliament) that can also be expected to contribute to sustainability of benefits. Public education and awareness also leads to sustainability of benefits if the Programme were to come to an end since those reached by education and awareness campaigns will retain knowledge and understanding long after activities have ended. However, as with so many of the evaluation criteria, sustainability when it comes to those Government institutions to be supported under the programme estimate has been completely undermined by the failure of the service contract and the inability to finalise or implement the programme estimate.

### **Coherence, added value and complementarity**

The Programme included a high degree of internal coherence at design stage. It targeted all of the main roleplayers when it comes to access to justice and included projects that cross over and (potentially) create linkages between the various Specific Objectives. And there is also coherence between the Programme and other EU support to Zimbabwe. However, while internal coherence increased when it comes to alignment of legislation with the Constitution with the addition of the SASPT and UNDP projects, it was negatively impacted on by the failure of the service contract and programme estimate, when the balance between the supply and demand sides of justice markedly shifted and when the main

body responsible for ensuring coherence and cooperation between projects and beneficiaries - the PSC - was not constituted.

The Programme adds value to the support being provided by Member States and there is a good degree of synergy and complementarity with other donor-funded programmes, including those of Member States, although some concerns of potential overlap were raised during consultations when it comes to UNDP's access to justice programme and the FCDO's TRACE programme that should be investigated.

### **Gender**

The results of the gender analysis conducted during identification and formulation were included in programming, particularly when it comes to Traditional Courts, SGBV and gender mainstreaming in institutions. But while some support to survivors of SGBV remains in the project implemented by LRF, support to SGBV and gender mainstreaming was included under the service contract and has been undermined as a result of failure of the contract. Some increase in compliance with rights related to gender was reported in Traditional Courts, but the gender and human rights manual for Traditional Courts envisaged in the Action Document was only approved by the Council of Chiefs in March 2021 and no training on it (other than to members of the Council) has yet been provided.

### **Main conclusion**

The main conclusion arising from the evaluation is that, while most of the activities falling outside the service contract have been implemented or would most probably have been on track if COVID-19 had not occurred, the entire programme has suffered as a result of the failure of the service contract and failure to finalise the programme estimate. Many of the remaining projects are very activity based and it is difficult to determine the degree to which they are contributing to the intended outcomes - which outcomes would probably have been more likely to be achieved if the service contract had not failed. COVID-19 has of course meant that many activities have been delayed but the response by project implementers has generally been good. A concern remains though that, even with no-cost extensions, a real possibility exists that funds will not be expended as envisaged.

## **5 RECOMMENDATIONS**

Based on the conclusions in Chapter 4 and specific issues raised in the body of the report, the following recommendations are made<sup>105</sup>:

### **5.1 Recommendations for the current Programme**

The following recommendations are made for the current Programme, ranked according to priority:

#### **For the EUD**

1. Although many of the projects have ended or will end in early 2021, some will continue to run mid 2021 and beyond. It is recommended that the EUD convene a meeting or workshop with the implementers of all ongoing projects - as a matter of urgency - for implementers to share experiences and lessons learned, present their current and ongoing activities, and explore and

<sup>105</sup> **Note.** Except where relevant from a Programme perspective, specific recommendations for each project are not included. The current mid-term evaluation is an evaluation of the overall programme rather than individual projects falling under it, many of the projects have ended or will end soon (and will thus not be able to implement recommendations made to them), and recommendations for individual projects are best made by the evaluators of those projects where funding for such evaluations are included in the relevant grants.

identify any options for joint activities and greater coordination with others supporting similar issues (such as alignment of legislation). To the extent possible, CSOs implementing projects with EU funding under other programmes or funding instruments and others (such as UNICEF) that are focused on legislative alignment should also be invited to attend to see whether linkages can be created with activities they are implementing.

2. The EUD should engage with implementing partners to ensure funds will be expended, even where no-cost extensions have already been granted. Where there is a reasonable prospect that funds will remain unspent by the end of the extension based on current activities, new activities (based on lessons learned and prioritising joint programmes, analysis and activities with other implementers / beneficiaries) should be sought out.
3. To prevent potential overlaps and duplication of effort, the EUD should meet with UNDP to undertake a thorough assessment of the degree to which both are supporting similar beneficiaries for similar purposes under their respective programming.
4. LRF have faced challenges in accessing some areas to monitor courts. Noting that the evaluators were unable to secure a meeting with the Council of Chiefs, it is recommended that the EUD specifically raise this issue with the Council of Chiefs to ensure that LRF staff members' right to freedom of movement under the Constitution, and the rights of users of the Courts, are respected.
5. The mid-term evaluation was not required to assess the impact of the Programme (and measuring impact at this stage would be premature) but questions were raised by some of those consulted as to how much impact can be expected. Impact assessments can be difficult, but there are at least some aspects of the Programme where counterfactuals exist that would allow for an impact assessment to be undertaken. For example, it would be possible to measure at least the following in an impact assessment:
  - a. The degree to which customary courts supported under the Programme better comply with human rights and gender equality compared to those in areas not targeted.
  - b. The quality of judgments by magistrates that have received training compared to those that have not.
  - c. The extent to which litigants in cases where help desks exist are able to comply with the court processes and requirements compared to those where no help desks are available.
  - d. The extent to which mobile legal aid clinics have supported survivors of SGBV to assert their rights and claim remedies.
  - e. The extent to which community paralegal volunteers promote access to justice for marginalised and vulnerable groups such as women and persons with disabilities.
6. There is some concern around value for money. Although beyond the scope of the current evaluation, a value for money evaluation should be considered.

#### **For Government of Zimbabwe<sup>106</sup>**

7. Government (and particularly MoJLPA, the Inter-ministerial Task Force and Parliament) should continue to prioritise the alignment of key legislation with the Constitution, particularly those laws where significant revisions are required, or where new legislation needs to be developed.
8. To enhance the independence of the Judiciary, Government should seriously consider adopting the approach put forward in the UN Basic Principles on the Independence of the Judiciary, the African Commission on Human and Peoples' Rights' Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, as well as the Commonwealth Model Law on Judicial Independence.

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<sup>106</sup> 'Government' includes all three branches of Government - the Executive / MoJLPA, Parliament and the Judiciary.

9. Government should continue to build the capacity of the Justice, Law and Order Sector (JLOS) to enhance cooperation and coordination between key criminal justice roleplayers as part of a movement to a joined-up approach to criminal justice as well as a means to increase the efficiency of the criminal justice system.
10. MoJLPA should consider adopting a policy or strategy to reduce the levels of pre-trial detainees based on research into strategies developed in other countries in the region, including legislative reform, alternative sentencing options, guidelines for bail and sentencing, development of an effective parole system, and greater use of diversion / alternative dispute resolution approaches in minor criminal offences.
11. LAD and MoJLPA should continue the process to develop a new legal aid regime for Zimbabwe, with the support of LRF and based on the approaches being developed in other countries where the approach has been broadened by law and/or policy to include a range of legal aid service providers such as CSOs, paralegals, faith-based organisations and others.
12. The Judiciary should continue to explore the increased use of alternative dispute resolution, including court-annexed mediation and the diversion of minor criminal cases to enhance access to justice, reduce backlogs, and increase the efficiency of the entire justice system.
13. JSC should immediately share the results of its follow up survey of those who have received training with ICJ to ensure that ICJ are able to track the impact that such training is achieving.

#### **For programme implementers**

14. Recognising that decisions on which legislation should be prioritised is the sole preserve of Government, and to enhance the potential impact of the overall Programme, those responsible for support to the alignment of legislation with the Constitution should, together with MoJLPA, the Inter-ministerial Task Force and Parliament, identify which legislation is still required to be finalised that will have a direct bearing on access to justice and rule of law and consider the possibility of developing a joint strategy to ensure that such legislation is put in place as soon as possible to increase internal coherence within the programme.
15. Project implementers of ongoing projects, such as the ICJ, LRF and LSZ, should be required to develop a more scientific approach to measuring what those trained are able to do with training provided and what difference it has made in achieving results (such as increasing efficiency and effectiveness of the justice system or the outcome of cases where legal aid or assistance has been provided). Studies for what works (and what does not) in relation to access to justice for vulnerable and marginalised groups should also be considered.
16. For those projects that will end soon, project implementers should immediately consider how best any of their activities and outputs - such as training materials and programmes - might best be sustained. For example, training materials could be handed over to relevant training institutions in Zimbabwe and consideration could be given to establishing a knowledge management platform where all knowledge products (training materials, publications, guides, manuals etc.) can be housed - funds permitting. It is assumed that reports prepared by non-key experts under the service contract contain significant amounts of relevant and important information. Provided the rights of the experts are respected and they have been paid for the work undertaken, these reports should also be considered for inclusion on the platform.
17. To address the ongoing pandemic and possible future shocks, as well as to increase efficiency and outreach, all projects that have included training should immediately focus on ensuring that the materials they have produced are adapted to allow for online learning where relevant. Noting that not all traditional leaders have access to electricity or the internet, other options for conducting training for Traditional Courts should also be explored.

## 5.2 Recommendations for future programming

Noting firstly that much may change between March 2021 and the actual formulation of a future phase, the following recommendations are based on lessons learned and how these might be addressed in future programming rather than a detailed list of what such future programming should cover. Noting too that budget support is not foreseeable (nor currently foreseen by the EU<sup>107</sup>), and that the prospect of sector budget support is also not foreseeable<sup>108</sup>, it is assumed in the recommendations below that the EU project modality is the only option available. One final note needs to be made: although the allocation of responsibilities between the MoJLPA and the NAO met challenges, the new EU funding instrument under which Zimbabwe will fall - the Neighbourhood, Development and International Cooperation Instrument (NDICI) - brings together various previous instruments, including the EDF, under one umbrella instrument. Although the NAO has not been retained under the NDICI, it is expected that the Ministry of Finance will continue to have a role to play in relation to funding for Government institutions, including those to be channelled via the MoJLPA under future programming.

The following recommendations are made for those responsible for future programming to consider.

1. Corruption in the justice sector was widely reported as one of the major challenges to reform. It should be clearly prioritised in future programming.
2. Access to justice, especially for those living in poverty and vulnerable and marginalised groups, can be expected to remain a key issue for many years. But a future programme might achieve for measurable results if it were more focused on those issues that are less likely to meet with resistance while at the same time including sufficient flexibility to allow for the programme to adapt to any opportunities for more comprehensive judicial reform that open up. For example:
  - a. A criminal justice reform programme targeting both state and non-state actors and enhanced linkages between the two, with a specific focus alternative sentencing, increased use of restorative justice (diversion, mediation, compensation and restitution, access to justice for vulnerable groups (such as survivors of SGBV and people with disabilities) victims' rights, and joined up activities to contribute to the development of a coordinated criminal justice sector / JLOS.
  - b. A legal aid programme, particularly focused on linkages between state and non-state providers of legal aid and assistance.
3. Despite the fact that progress is now being made with alignment of legislation with the Constitution, the capacity within the MoJLPA in this regard has been built, laws are being aligned, and any future support would face increasingly diminishing returns as more and more legislation is aligned - hopefully by the end of the current programme. Support to this process is thus not recommended beyond the current programme. Instead, future programming needs to move beyond alignment of legislation to actual implementation of key legislation and include a level of sequencing - for example, the programme might focus on reform of legal aid legislation (if not already completed) in the early stages, and then on implementation of the legislation in the remaining years.

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<sup>107</sup> <https://www.devex.com/news/eu-ambassador-says-renewing-budget-support-to-zimbabwe-impossible-98010>

<sup>108</sup> Despite the movement to a sectoral approach by government, there is no sector policy or plan and JLOS is not yet fully functional.



4. If support is to be provided to Parliament is considered beyond alignment of legislation, it should be part of a separate parliamentary reform programme or included under an accountability and transparency programme with other key accountability institutions (such as ZHRC and ZACC).
5. The process of designing future support should start as early as possible, and some time before the current Programme comes to an end. Should a service contract modality be chosen, the process of the preparation of the tender dossier should be included as part of the formulation mission so that the tender may be launched as soon as the Financing Agreement is signed.
6. Given the difficulties encountered with channelling funds via the MoJLPA and NAO with the programme estimate modality, and the general difficulties in finalising programme estimates, future programming should consider options for providing support to national institutions other than a programme estimate. For example, providing a fund for activities for beneficiary institutions in a service contract, a delegation agreement with a Member State or pillar-assessed entity, twinning arrangements with training / capacity building institutions, or a combination of these and other modalities - but still including relevant Government institutions in the Programme Steering Committee to ensure a level of Government oversight and ownership.
7. Should a programme estimate or other modality be chosen that creates a level of joint management between the MoJLPA and the Ministry of Finance and Economic Development, the roles and functions of each Ministry should be agreed and clearly defined during formulation and, ideally, reduced to writing in the form of a memorandum of understanding and agreement.
8. To maintain the focus on the demand and supply side of justice and related reforms, and on increasing access to justice and legal aid, support to civil society should be included. The approach under the current programme, where consortia of CSOs are encouraged, should in all likelihood continue - but only after thorough consultations with CSOs to identify the advantages and disadvantages and consideration of how challenges that such an approach creates can best be addressed. However, if grants are the preferred modality for support to CSOs, the rules relating to co-financing and pre-funding of activities should be carefully explained to CSOs by the EUD to ensure they are aware that they can request that the need for co-financing can be waived if CSOs are able to justify why full financing is required. Programming should also include support to CSOs for lobbying and advocacy activities in relation to justice sector reform.
9. The ZHRC should be included in future programming if not already supported by EU funding elsewhere. To ensure coherence within the programme, support to the ZHRC should be focused on rights in the criminal justice system for victims - particularly but not only survivors of GBV - accused persons, pre-trial detainees (including a specific focus on political detainees), children in contact and conflict with the law and other vulnerable groups.
10. Should a service contract be one of the preferred modalities:
  - a. The ToR for the service provider should clearly require significant experience in Zimbabwe along with the requirements for relevant experience in thematic areas of the Programme.
  - b. A higher level of due diligence should be instituted to ensure the selected company has the requisite financial capacity, resources, and backstopping provided - with a requirement that at least one member of the backstopping team should have significant experience with EU funding rules and regulations.
  - c. The contract should include both an M&E Officer and a Finance Manager - either on a full- or part-time basis, depending on the needs and available budget - to ensure that finances are properly managed and monitored and that a common M&E framework and reporting tools are developed and implemented.
11. Baseline surveys and needs assessments should be conducted as soon as possible during future programming, with the logframe updated to include accurate baselines and targets and capacity

development plans developed for any capacity development to be provided. In addition, situational and political economy analysis for the justice sector should be an ongoing exercise.

## **ANNEXES (SEPARATE VOLUME)**

**Annex 1. Overview of projects**

**Annex 2. Terms of Reference**

**Annex 3. Methodology**

**Annex 4. Evaluation Matrix**

**Annex 5. List of persons interviewed**

**Annex 6. Documents consulted**

**Annex 7. List of current EIDHR grants**

**Annex 8. Map of Zimbabwe**

**Annex 9. Experts' CV**

**Annex 10. Answers to the Evaluation Questions, judgement criteria and indicators**

