

2.2. Problem Analysis

Short Problem Analysis: The Constitution of Malawi guarantees every person the right of access to justice which entitles him or her to: recognition before the law; access to any court of law or any other tribunal with jurisdiction for final settlement of legal issues; and effective remedies by a court of law or tribunal for acts violating his or her rights and freedoms.¹⁰ Since the adoption of the current Constitution in 1994, the legal provisions that guarantee inclusive access to justice have been supported by the development and operation of a wide range of state and non-state institutions involved in the delivery of justice. Despite the existence and operation of relevant legal standards and institutions, access to justice remains limited for the majority of Malawians, especially women, the poor and other social groups whose access to justice remains disproportionately limited. This is exemplified by data from the Chilungamo Programme-supported 2018 Justice and Democratic Accountability Survey which, among other things, showed that in the period between 2013 and 2018, only 5.9% of the respondents had directly experienced the judicial system and that only 6.6% and 9.7 % percent of the respondents had actually used the courts and the police respectively. The data also show that limitations in access to justice affect certain socio-demographic groups disproportionately as exemplified by data showing that in the period between 2013 and 2018, legal aid, in its widest sense, had been provided to 23 % of male respondents, compared to 16% of women and 20% and 9% of rural and urban residents, respectively. Similarly, while 64% of urban residents claimed to have had access to private lawyers in the case of rural residents the proportion fell to 23% among rural residents.

There is low demand for access to justice with the citizenry and this reflects one of the country's major challenges in relation to democratic governance, namely a defective political settlement where citizens are indifferent to engaging duty bearers with respect to flaws in accountability. In turn, the low demand by citizens is attributable to their limited knowledge of and capacity to relate with the justice system and to strong disincentives which deter demand. Disincentives include low number of functioning Magistrate Courts (there are 209 Magistrate Courts across the country of which 62 are not functional); use of paper based system, a huge cause for inefficiency in the management of cases; limited number of Judges and Magistrates, coupled with lack of transparency and accountability in the judiciary causes; delayed judgements.

Limited responsiveness from duty bearers in the justice sector is largely due to their low effectiveness, inadequate incentives to trigger the functioning of existing accountability mechanisms and insufficient inclusivity in their composition and operations. In addition, the status of Magistrate courts, Victim Support Units (VSUs) and Prison facilities deny duty bearers and people seeking justice, a dignified place to deliver and to access justice, respectively. The facilities need rehabilitation that takes into account the rights of the victims (women and children).

Identification of main stakeholders and corresponding institutional and/or organisational issues (mandates, potential roles, and capacities) to be covered by the Action:

The key institutions targeted by the Action include Ministry of Justice, Legal Aid Bureau, Malawi Police Services, Malawi Human Rights Commission, Malawi Prison Services, Office of the Ombudsman, and the Judiciary. Civil society organisations (CSOs), who play a key role in improving access to justice, will contribute to the Action's objectives through the provision of paralegal and mediation services to people in conflict with the law in police cells, prisons, and courts.

The **Ministry of Justice** (MoJ) is the lead policy holder on all legal matters and obligations under international treaties. MoJ is also the coordinating Ministry for the Democratic Governance Sector. The Ministry lacks technical capacities, which issue is compounded by a high level of staff turnover.

The **Judiciary** plays a crucial role in access to justice as it has jurisdiction over all issues of judicial nature, however, support is needed especially in subordinate courts which handle the majority of the cases.

¹⁰ Section 41.