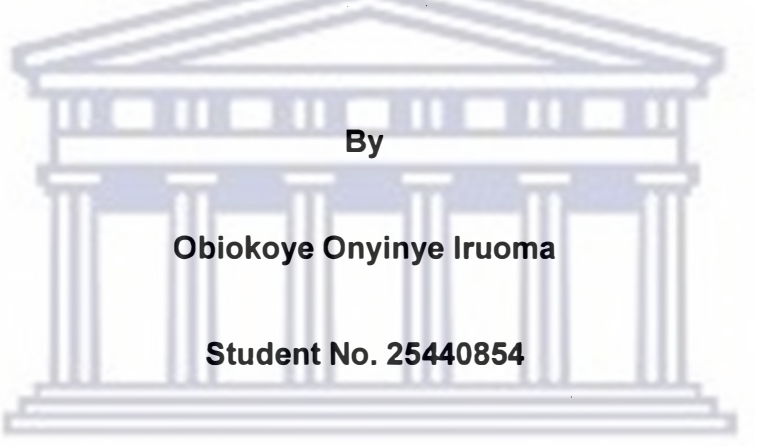
Eradicating delay in the administration of justice in African Courts: A comparative analysis of South African and Nigerian Courts

Submitted in partial fulfilment of the requirements of the LLM (Human Rights and Democratisation in Africa) of the University of Pretoria



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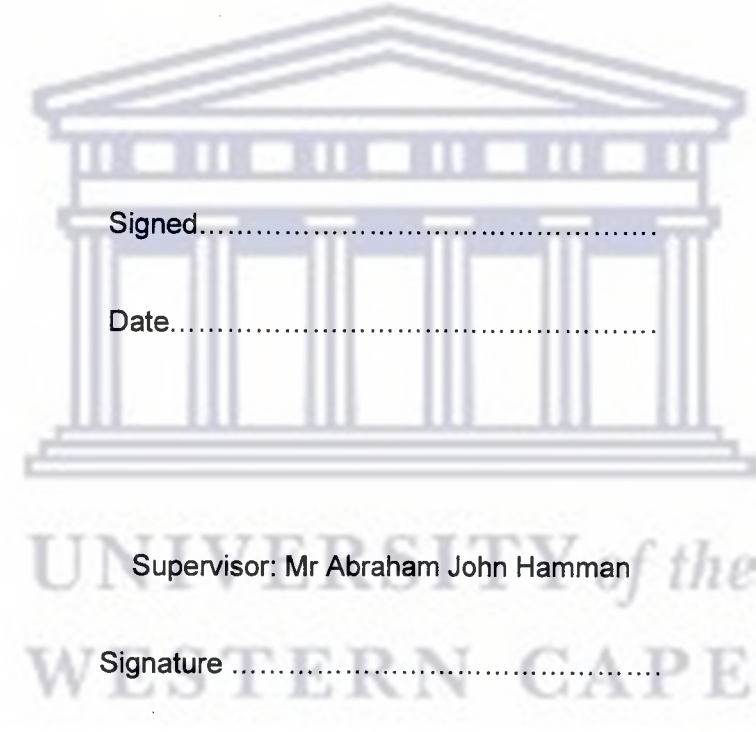
31 October 2005

DECLARATION

I, **Obiokoye Onyinye, Iruoma** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LL.M Degree in Human Rights and Democratisation in Africa.



Signed.....

Date.....

Supervisor: Mr Abraham John Hamman

Signature .....

Date.....

DEDICATION

This dissertation is dedicated to the Almighty God, who through His infinite mercy and grace has enabled me to come this far. Without His help, I don't know what I could have done. To God, be the glory in Jesus name, Amen.

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A most heartfelt gratitude for the assistance of various other people whose contribution were instrumental in various ways during my study: to my family, who across the distance did everything to ensure that the Nigerian materials for this dissertation came through to me, to the entire LLM class of 2005: for the unforgettable unique experience of a continental family; to Banjo Ayenakin, Ralph Nwoke and Othuke: for their help and insightful comments; Dr Elaosi Vhurumuku, Dr George Brink and Dr Bernard Bulawayo of the PET Project University of Western Cape: for their thoughtful guidance and immeasurable assistance and to Nnamdi Nwosu, for his comments and quiet wishes.

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God bless you all.

PREFACE

> The law's delay in many lands and throughout history has been the theme of tragedy and comedy. Hamlet summarised the seven burdens of man and put the law's delay fifth on his list. If the meter of his verse had permitted, he would perhaps have put it first. Dickens memorialised it in Bleak House, Chekhov, the Russian and Moliere, the Frenchman, have written tragedies on it. Gilbert Sulivan has satirized it in a song. Thus, it is no new problem for the profession, although we doubt that it has ever assumed the proportions, which now confront us. "Justice delayed is justice denied," and regardless of the antiquity of the problem and the difficulties it presents, the courts and the bar must do everything to solve it."
>
> **Judge Ulyses Schartwz of the Illionis Apellate Court**
> ***(Gray v Gray* (1955 (6) Ill. App. 2d, 571,128 N.E.2d 602)**

This quotation rings true of the focus of this study. The current state of affairs in many African countries with regard to delays in the administration of justice motivated the writing of this work. The increasing prolongation of the duration of court proceedings within many African countries is such that it is beginning to pose a problem to judiciaries of the courts concerned, as well as to the entire justice system. This problem creates such legal insecurity and social discontent that in recent times; many African countries are beginning to seek ways to put an end to it.

The purpose of this work is to examine the nature, extent and causes of delay in two selected African countries with a view to drawing a comparison, which will enable the authour, make recommendations on how delay can be eradicated. Thus, this study proceeds from the premise that a "reduction approach" to the problem of delay is not enough to tackle the situation. It is believed that the sooner African countries begin to adopt an "eradication approach", the more intensive the efforts to do something about the problem will be.

An "eradication approach" is especially necessary considering the grave consequences posed by delays on the entire administration of justice. As aptly put by Zeisel:

> Delay in the courts is unqualifiedly bad. It is bad because it deprives citizens of a basic public service, it is bad because the lapse of time frequently causes deterioration of evidence and makes it less likely that justice be done when the case is finally tried; it is bad because delay may cause severe hardship to some parties and may in general affect litigants differentially; and it is bad because it brings to the entire court system a loss of public confidence, respect and pride. It invites in brief the wisecrack made a few years ago in a magazine editorial, 'Okay, blind, but why so slow.'
>
> **H Zeisel, H Halven & B Bucholz *Delay in the Court* (1959)xxii.**

LIST OF ABBREVIATIONS

AARACHPR	Annual Activity Report of the African Commission on Human and Peoples' Rights
AFCHPR	African Commission on Human and Peoples' Rights
ALFWLR	All Federation Weekly Law Report.
CC	Constitutional Court
CFMS	Case Flow Management System
CRC	Convention on the Rights of the Child
DPP	Director of Public Prosecutions
DDPP	Deputy Director of Public Prosecutions
ECHR	European Court on Human Rights
GPAC	Global Programme against Corruption
HAD	High Court Ado-Ekiti
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
MAD	Magistrate Ado-Ekiti
NIALS	Nigerian institute of Advanced Legal Studies
NWLR	Nigerian Weekly Law Report
SA	South Africa
SALR	South African Law Report
SACR	South African Criminal Reports
SC	Supreme Court
SCNLR	Supreme Court of Nigeria Law Report
SERAC	Social and Economic Rights Action Centre
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNODOC	United Nations Office on Drugs and Crimes
US	United States

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CHAPTER ONE

INTRODUCTION

1.1. Background to the study

A well functioning judiciary is a central element of civil society.[1] It is the sole adjudicator over the political, social and economic spheres. Judiciaries in many African countries suffer from backlogs, delays and corruption. In countries such as Nigeria,[2] South Africa,[3] Ghana,[4] Tanzania,[5] and Uganda,[6] speedy resolution of disputes is becoming increasingly elusive.

Although many African countries have constitutional provisions against delay, and have identified congestion, excessive adjournments, local legal culture and corruption as some of the major causes of delay, nevertheless, the problem continues to be a feature in African Courts.[7]

In Nigeria, the average period to commence and complete litigation is six to ten years.[8] In some instances, the litigation period is even longer. For example, in the case of *Ariori v. Muraimo Elemo*[9] proceedings commenced in October 1960 and took 23 years to reach the Supreme Court of Nigeria.

In South Africa, despite many programs and projects in place to solve the problem, delay in the administration of justice is still a problem.[10] Appraising the extent of the problem, Penuell Maduna[11]

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1 N Tobi "Delay in the administration of justice" in C Nweze: *Essays in honour of honourable Justice Eugene Ubaezona* (1997) 21.

2 R Durojaiye & V Efeizomor "Pains of delayed justice in Nigeria" Daily *Independent Online*, Thursday, 20 November 2003< http://www.nigerianlawsite.citymaker.com/page/page/821488.htm> (accessed 6/9/2005).

3 Statement to Parliament by Dr Penuell Maduna, Minister of the Department of Justice and Constitutional Development, delivered 9 September 1999 where he alluded to tremendous delays in the High Courts in Port Elizabeth and in Cape Town.

4 US Department of State "2003 country reports of Ghana" Released by the Bureau of Democracy, Human Rights, and Labour February 25, 2004.

5 All Africa.com "Tanzanian Court releases Mozambican Boat" <http://allafrica.com/stories/200510130438.html> (accessed 5/9/2005).

6 B Odoki "Reducing delay in the administration of justice" (1994) 5 (1) *Criminal Law Forum* 57-58.

7 The Pan-African Forum on the Commonwealth (Latimer house) principles on the accountability of and the relationship between the three branches of government Nairobi, Kenya, 4-6 April 2005 communiqué <http://www.thecommonwealthorg/shared_asp_files/uploadedfiles/00DAF29C-F64E-4178-84E0-97DB24F42D05_NairobiForum-Final2.pdf>(accessed 15/10/2005).

8 M Abdullahi "The High Court of the Federal Capital Territory, Abuja, Civil Procedure Rules, 2004: Can the new rules lead to just, efficient and speedy dispensation of justice?" <http://www.gamji.com/article4000/NEWS4652.htm> (accessed 3/8/2005).

9 (1983) 1 SCNLR 1.

addressing the National Judges Symposium stated: "The public is perturbed by substantial backlogs in the criminal courts and in finalising prosecutions..."

Mindful of the increase of this problem, especially in view of the consequences it poses, this study perceives a need to eradicate delay in the administration of justice.[12] Thus, this study analyses the problem of delay in Nigerian and South African Courts with a view to ascertaining the nature, extent and causes of delay in the two countries, and suggests possible solutions to the problem. South Africa and Nigeria were chosen because they have similar judicial systems and experience delays in judicial proceedings.

1.2. Statement of the problem

The effectiveness of the law depends on the speed of the proceedings, which seek to uphold that law. Consequently, the recognition and protection of human rights by numerous international instruments and national constitutions would be meaningless if victims of violations are unable to access justice within a reasonable time. This study seeks to address the following questions:

a. What is delay in the administration of justice and why should it be eradicated?
b. What are the nature, extent and cause of delay in South African and Nigerian Courts?
c. What efforts have been undertaken to eradicate delay in judicial proceedings in South African and Nigerian Courts?
d. What practical solutions can be suggested to help eradicate delay?

1.3. Aims and objectives

Based on the assumption that speedy resolution of civil and criminal cases is an important social goal, inextricably linked to human rights, part of this study attempts to disprove the legal fallacy that, it is undesirable for courts to operate with speed. In this regard the objectives of this study are to:

a. examine the consequences of delay on human rights and the society in general.
b. determine whether there are any human rights provisions regulating delays in the administration of justice
c. examine the nature, extent and causes of delay in South African and Nigerian Courts.

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10 Discussed in Chapter 4.

11 Address at the banquet of the judicial officer's symposium by Dr Penuell Maduna, the Minister of Justice and Constitutional Development (2003) *120 South African Law Journal* (part 4) 669.

12 H Zeisel, H Halven & B Bucholz *Delay in the Court* (1959) XXII. Consequences is further discussed in Chapter 2.

d. proffer practical and appropriate solutions to the problem of delay in South African and Nigerian Courts.
e. assess the tenability of argument that "expeditious disposition of trial court cases is not impossible".

1.4. Significance of the study

This study adopts a human rights perspective in its consideration of the problem of delay in African Courts. Drawing from South African and Nigerian experiences, the study explores the contention that there can be no real judicial protection and enforcement of human rights without efficient functioning of the institutional framework under which these rights are to be asserted. A comparative analysis of the factors causing delay in South African and Nigerian judicial systems, and recommendations from the analysis can inform judicial reform and practice in the two countries.

1.5. Hypotheses

The study proceeds from the hypothesis that delay in judicial proceedings is a result of court congestion, prolonged adjournments and backlog of judicial proceedings; and a function of a variety substantive, procedural, institutional, cultural and colonially inherited factors. It is pre-supposed that the only way in which delay can be eradicatedd is where it is viewed as a human rights problem and through a holistic tackling of these factors as well.

1.6. Literature survey

Books by Hans Zeisel, [13] Thomas Church,[14] Martin John,[15] Michael Code[16]James Kakalik[17] and the Canadian Institute for the Administration of Justice[18] are the major sources on the subject of delay in the administration of justice. Although these works are instructive, they do not take into consideration the peculiarity of the African situation. Nigerian and South African works on the topic are by Niki

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13 H Zeisel (n 13 above).

14 T Church, A Carlson and L Tan *Justice delayed: The pace of litigation in urban trial courts* (1978) 1.

15 J Martin and E Prescott *Appellate court delay: Structural responses to the problems of volume and delay* (1981).

16 M Code *Trial within a reasonable time* (1990).

17 J Kakalik, M Selvin & N Pace *Averting gridlock*: *Strategies for reducing civil delay in the Los Angeles Superior Court* (1990) 8.

18 The Canadian Institute for Administration of Justice *Expeditious justice* (1979); *Cost of Justice* (1980).

Tobi,[19] Esther Steyn,[20] C van Rhee [21]and W de Vos.[22] These works have looked at the various dimensions of the causes of court delay, especially in criminal proceedings. This study approaches the concept of delay from a much more holistic viewpoint. It does not only tackle delay in both civil and criminal proceedings, but goes beyond the usual speedy trial approach by showing linkages between delay in the administration of justice and, the rights to judicial remedy, speedy and fair trial.

A number of articles have also discussed the issue delay in the administration of justice.[23] However, none of these articles gives the topic an in-depth treatment. As far as the author can ascertain, no attention has been given to the comparative study of delay in, and between the two countries under consideration.

1.7 Methodology

This research combines information obtained from library sources with data collected through administering 30 questionnaires and conducting 15 interviews of stakeholders in the judicial system. In South Africa, I5 interviews were conducted covering the bar, bench, police and the judiciary. Statistical data from South Africa's Court Nerve Centre in Pretoria, and the National Prosecution Authority was also used. For Nigeria, data was collected from published reports and 30 questionnaires administered in Anambra, Borno, Delta, Enugu, Ekiti, and Lagos States.[24]

1.8. Limitations of the study

This research is an overview of the nature, extent and causes of delay in civil and criminal proceedings in South African and Nigerian contexts. It is neither an in-depth analysis of the effects of delay in both proceedings, nor a historical account of the evolution of delay.

1.9. Overview of Chapters

Chapter one introduces the study.

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19 N Tobi (n 1 above) 135.

20 E Steyn "Undue delay in criminal cases: The Scottish and South African Courts response" in: J Burchell & A Erasmus *Criminal justice in a new society: Essays in honour of Solly Leeman* (2003) 139.

21 C Van Rhee *Essays on undue delay in civil litigation* (2004) 1.

22 W de Vos "Delay in South African civil procedure" in: *C Van Rhee The laws delay: essays on undue delay in civil litigation* (2004) 335.

23 See Bibliography for further details.

24 See Annexure A: Copies of letters of introduction and questionnaire

Chapter two answers the question: "what is delay in the administration of justice?" and why is it necessary that it be eradicated?

Chapter three examines international and regional provisions and standards regulating delay in the administration of justice, and their interpretation by various human rights bodies.

Chapter four identifies the problem of delay in the administration of justice in Nigerian and South African Courts, focusing on the legal frame work, causes; and efforts to eradicate delay.

Chapter five presents the conclusions and recommendations of the study.

CHAPTER 2

A FOUNDATIONAL ANALYSIS OF THE IMPACT OF DELAY ON THE ADMINISTRATION OF JUSTICE

2.1. Introduction

The concept delay in the administration of justice can be defined in a variety of ways. This chapter discusses the meaning of "delay in the administration of justice," with the aim of differentiating, clarifying and delimiting its meaning within the context of the study. Additionally, the consequences of delay on human rights will be evaluated.

2.2. Delay defined

Delay in the administration of justice is used in a general sense to refer to time spent before case disposition that is not necessary for case development and processing.[25] Buscaglia and Dakolias defined delay as time spent before case disposition that extends case development and processing beyond a reasonable point.[26]

However, for Shertreet, it is important to distinguished between the two meanings of the term in the context of court proceedings. According to Shertreet, court-system delay which refers to waiting time exacted of litigants who are ready and eager to go ahead when the court is not because other cases have priority should be distinguished from lawyer-caused delay which is delay created through lawyers or parties' unreadiness or unwillingness to proceed with a case. [27]

In criminal proceedings, delay in the administration of justice is referred to as an antonym to the right to trial within a reasonable time or expeditious justice. Niki Tobi defines it as an unnecessary prolongation of proceedings by the prosecution in bringing the accused to trial or by the court during trial, which has the legal consequence of not only affecting the liberty of the accused but also his right to fair trial.[28] According to Tobi's definition, the concept of delay begins to run as soon as the accused is arrested and lasts until judgement and sentencing.

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25 J Kakalik (n 18 above) 8.

26 E Buscagalia & M Dakolias *Judicial reform in Latin American Courts: The experience in Argentina and Ecuador* (1996) 3.

27 S Shertreet "The limits of expeditious justice" *in: Expeditious justice (n 19 above)* 3.

28 N, Tobi (n 1 above) 135.

In civil proceedings, delay is defined as prolongation of court proceedings involving a private wrong.[29] According to Van Rhee, delay in the administration of justice occurs in a situation where too much time elapses between the filing of an action and its ultimate decision by the court.[30] He argues that delay becomes problematic only when it is undue, as no lawsuit can be decided fairly without at least some minimum time between first presenting the case to a court and obtaining a final judgement.

In this study, delay in criminal or civil proceedings is understood to be unnecessary or undue prolongation of proceedings, assessed from the time an action is commenced through filing of a charge or issuing of a writ, until final judgement. Recognising that by the nature of litigation, some time must be allowed for the smooth running of the process, this study emphasises "undue" or "unnecessary" prolongation. Delay occurs whenever litigation is so unnecessarily protracted, that it affects the administration of justice.

2.3. Consequences of delay in the administration of justice

The consequences of delay on human rights and impact on society affect administration of justice in a variety of ways. First, delay leads to denial of justice. According to Edward Coke

> Every subject of this realm, ... may take his remedy by the course of the law and have justice and right for the injury done to him, freely without sale, fully without denial and speedily without delay... it must be Free, because nothing is so criminal as justice on sale; Full, because justice ought not limp; Speedy, because delay is indeed denial.[31]

Waiting for years to resolve a dispute blurs truth, weakens witness memory and makes the presentation of evidence difficult.[32] Lengthy delays prior to trial may cause physical evidence to be lost, tainted or destroyed. Moreover, a correlation exists between time and the accuracy of eyewitness testimony.[33]

In criminal cases, delay causes hardship to accused persons, particularly those in custody.[34] Delay is also a denial of justice because contrary to the notion of presumption of innocence, awaiting trial

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29 N Tobi (n 1 above) 135.

30 C van Rhee "The law's delay an introduction" in: C Van Rhee (n 22 above) 1.

31 E Coke *Institutes of the laws of England* (1642) 55-56.

32 M Bassiouni "Human Rights in the context of criminal justice: Identifying International procedural protections in national constitutions" (1993) 3 *Duke Journal Comtemproary & international law* 235, 285.

33 E Loftus *Eye witness testimony* (1979) 53. Loftus commenting on Prof. Ebbijnghaus renowned 1985 study. A Ebbinghaus *Memory: A contribution to experimental psychology* (1964) 18.

34 M Bassiouni (n 33 above) 285.

prisoners detained because they cannot afford bail or due to the seriousness of the offence, often spend more time in detention than the maximum sentence prescribed for that particular crime. Hence, an innocent person may end up serving punishment for an offence he never committed before the case is concluded. This erodes confidence in justice and presumption of innocence.

In addition, delays in judicial proceedings may cause litigants to suffer financially.[35] Quite often a litigant pursuing a judicial remedy spends more than the value of the remedy claimed. This increases the cost of litigation, and may cause litigants to abandon meritorious claims or to accept lesser, unjust settlements out of court.[36] Furthermore, the prospect of delay may encourage defendants to deny meritorious claims against them, hoping that the plaintiff will not pursue a lengthy and costly court action.[37]

Delays in legal proceedings may force people to resort to self-help means of resolving disputes.[38] When the position of the courts as the duly authorised arbitrators in society is diminished through undue delay, peace, social order and good governance are threatened. As UN Secretary General, Kofi Annan observed:

> The United Nations has learned that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime. We have seen that without a credible machinery to enforce the law and resolve disputes, people resorted to violence and illegal means... We have learned that the rule of law delayed is lasting peace denied, and that justice is a handmaiden of true peace. [39]

Thus, a total loss of faith in the public justice system's ability to resolve disputes would tend to prevail if nothing is done about delay in the administration of justice.

In criminal cases, delay increases the emotional strain on the accused. Despite the presumption of innocence, in reality the accused is viewed with suspicion until acquitted.[40] Delays also impose a lot of emotional strain on victims. For example, victims of rape who would rather get on with their lives are

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35 J Hugeessen "Are the courts cost efficient" in: *Cost of justice (n19 above)* 47.

36 J Kakalik (n 33 above) 1.

37 S Shertreet (n 28 above) 15.

38 H Chodosh, S Mayo, F Naguib, & A Sadek "Egyptian civil justice modernisation: A functional and systematic approach" (1996) *Michigan Journal of International law* 24.

39 Speech by Kofi Annan, the Secretary General of the United Nations.

40 B Farrell "The right to speedy trial before international criminal tribunals" (2003) 19 *South African Journal of human Rights* 99.

made to dwell on the incident during the period of the delay. Some victims of crime may even lose interest in the pursuit of justice.

4.6. Impact on human right

From a human rights perspective, delay erodes three key rights: the right of access to justice, the right to effective remedy and the right to fair hearing.

4.6.2. Access to justice

Legally defined, "access to justice" or "access to court" is the right to have a charge, allegation or civil dispute examined by a competent judicial authority.[41] The failure to address the problems of backlog and delay in many court systems could constitute denial of access to justice[42] especially since protracted litigation provides a strong disincentive for using the courts. Where legal and judicial outcomes are not just and equitable due to delays in the process, access to justice is definitely denied. Where litigants are weary or reluctant to approach the courts due to the length of time it will take them to obtain a remedy, the right of access to justice is threatened. Some litigants avoid the court if the remedy claimable would be ineffective because of delay.

2.4.2. Right to effective remedy

One of the reasons for the existence of judiciaries in many countries is to rectify the wrong done to a victim. [43] According to Aristotle:

> What the judge aims at doing is to make the parties equal by the remedy it imposes, whereby he takes from the aggressor any gain he may have secured. ...

Therefore, a remedy is only worth pursuing where the victim of a wrong/violation is sure it is going to be effective. Where remedies are incapable of redressing a harm alleged due to unnecessary delays in court proceedings, the right to effective remedy would be breached.

Often times, judgements obtained in the course of litigation become valueless or unenforceable due to delays. For example, a litigant who approaches the court for monetary or material remedy for damages done to his/her goods might not obtain an effective redress at the end of ten-year litigation

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41 B Stormorken & L Zwaak *Human rights terminology in international law: A thesaurus* (1988) 21.

42 H Chodosh (n 39 above) 24

43 D Shelton *Remedies in International Human rights law* (1999) 38.

because the value of the goods, which was being claimed at a fixed price, would have changed. In the case of urgent interim or interlocutory proceedings, delay deprives an applicant the urgent protection sought from the judicial system. Thus, interlocutory hearings and judgements serve no useful purpose where the wrong that needed to be averted has already occurred. In addition, the legal costs of a protracted process are burdensome on the litigant over the years.

The right to effective remedy entails that courts must use all objectively feasible and appropriate means to ensure the enjoyment of the right.[44] International human rights instruments cannot prescribe the procedural guarantees accorded parties in pending proceedings without protecting that which makes it possible for them to benefit from such guarantees

2.4.3 Right to fair hearing

Whether proceedings be criminal or civil, the broader concept of fair trial/hearing includes not only the obligation of independence and impartiality of the judiciary but also respect for expeditious proceedings.[45] When proceedings take unreasonably long to conclude, the right to fair hearing of the parties become eroded. Two interests are challenged by unreasonably delayed proceedings: 1) The very purpose of establishing the truth is undermined by a lengthy delay; 2) The expeditious completion of hearing is like finality, a value in itself. [46]In *Munoz Hermona v Peru*,[47] The United Nations Human Rights Committee (HRC) held that the concept of fair hearing necessarily entails that justice be rendered without undue delay and that the inability of the state party to explain the delay constituted an aggravation of the violation of the principle of fair hearing.[48]

4.7. Conclusion

This chapter analysed what constitutes delay and pointed out the importance and necessity for eradicating delay in African Courts. The concepts of access to justice, effective remedy and fair hearing were examined, and the impact of delay on certain human rights was enunciated. [49] Having

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44 N Jayawickrama *The judicial application of human rights law: National, regional and international jurisprudence* (2002) 481.

45 *Fei v Columbia* HRC, Communication No. 514/1992, HRC 1995 Report.

46 N Steytler *Constitutional Criminal procedure: A commentary on the Constitution of the Republic of South* Africa 1996, (1998) 274.

47 Communication no 203/86 paragraph 11.3.

48 *Muknto v Zambia* 768/97.

49 A Alschuler "Mediation with a mugger: The shortage of adjudicative services and the need for a two tier trial system in civil cases" (1986) 99 *Harvard Law Review* 1808.

ascertained the meaning of delay and its impact on society and human rights, the next chapter will examine the regulation of delay in the context of international and regional instruments.

CHAPTER 3

INTERNATIONAL AND REGIONAL INSTRUMENTS GOVERNING DELAY IN THE ADMINISTRATION OF JUSTICE

3.1. Introduction

This chapter outlines the various ways in which the problem of delay has been regulated by international and regional instruments with specific emphasis to the human rights provisions governing this area of law. The standards set by these provisions coupled by the interpretations given to those standards by various international and regional bodies are explored.

3.2. International instruments

International instruments that protect litigants in civil and criminal proceedings include human rights and humanitarian treaties. Provisions under these treaties are often couched as "right to speedy trial," "trial within a reasonable time" and "undue delay." Discussions of these instruments follow.

3.2.1. International Covenant on Civil and Political Rights

Article 14 (3) (c) of the International Covenant on Civil and Political Rights provide for the "right to be tried without undue delay."[50] Linked with article 14(1) of ICCPR, which provides for the general fair hearing rights of litigants, article 14(3) (c) is a powerful tool for condemning delay in the administration of justice.

The precise meaning of the term "undue delay" is not set out in the ICCPR or in its *Travaux Preparatoires*,[51] however, the HRC has stated in General Comment No 13 that this guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered. According to the HRC, all stages must take place "without undue delay". To this end, a procedure must be available to ensure that a trial proceeds without undue delay both in first instance and on appeal.

The import of this comment is that in defining delay, the period to be taken into consideration begins to run from the moment a charge is drawn up to the final determination of the case whether on appeal or

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50 ICCPR art 14(3)(c)

51 M Bossuyt *Guide to the Travaux Preparatoires of the International Covenant on Civil and Political Rights* (1987) 297.

in the court of first instance.[52] Hence, in *Earl Pratt and Ivan Morgan v Jamaica*[53] the HRC held that article 14, paragraph 3 (c), and article 14, paragraph 5, are to be read together so that the right to review of conviction and sentence must be made available without undue delay. Although this case outlines the scope of the proceedings to which article 14 (3) (c) applies; it does not define what constitutes "undue delay in a proceeding."

A review of the jurisprudence of the HRC show that it has refrained from defining delay but prefers a case by case approach, taking into account the circumstances of each individual case.[54] This approach is based on a reasonableness standard taking into consideration factors such as: the seriousness of the offence[55], the complexity of the case[56], the authors contribution to the delay,[57] the length of time it takes a court to reach a final decision [58] and the inability of the state party to adduce exceptional reasons to justify delay.[59]

Thus, where the state fails to show that the delays were justified a violation will be found.[60] In *Clyde Neptune v Trinidad and Tobago*[61] the HRC held that in the absence of any explanation by the state party, a 29 month pre-trial delay and a seven years and five months delay from the time of trial to appeal was incompatible with article 14 paragraph 3 (c).

For a justification to be accepted, such a justification needs to be strong, the HRC does not accept considerations of administrative nature or explanations that the investigations in criminal cases are carried out by way of prolonged written proceedings.[62] Thus, in *Bernard Lubuto v Zambia*[63] whilst

52 *Earl Pratt and Ivan Morgan v Jamaica* Communication No. 225/1987:07/04/89 paragraph (para) 13.3 – 13.5.

53 As above.

54 *Girjadat Siewpersaud v Trinidad and Tobago* Communication No 938/2000 (2004).

55 *Francis et al. v. Trinidad and Tobago* Communication No 899/1999 (2002) para 5.4.

56 *Franz and Maria Deisl v Austria* Communication No 1060/2002:23/08/2004 para11.5-11.6

57 *Leon Rouse v Philippines* Communication No 1089/2002:05/08/2005 para 7.4.

58 *Bozize v. Central Africa Republic* Communication No 428/1990 (1994) para 2.1, 5.3

59 Antonio *Martínez Muñoz v Spain* Communication No 1006/2001:04/02/2004 para 7.1.

60 David Weissbrodt, *The Right to a fair trial, Articles 8, 10 and 11 of the Universal Declaration of Human Rights* (2001).

61 Communication No 523/1992: 01/08/96.

62 *Fillastre v Bolivia* Communication No 336/1988, U.N. Doc. CCPR/C/43/D/336/1988 (1991) (The Committee held: "the lack of adequate budgetary appropriations ... does not justify unreasonable delays in the adjudication of criminal cases. Nor does the fact that investigations into a criminal case are ... carried out by way of written proceedings, justify such delays. ... Considerations of evidence gathering do not justify such prolonged detention.

63 Communication No 390/1990: 17/11/95 para 7.3.

acknowledging the difficult economic situation of the state party, the HRC emphasized that the rights set forth in the Covenant constitute minimum standards, which all state parties have agreed to observe. It held that the period of eight years between the author's arrest in February 1980 and the final decision of the Supreme Court, dismissing his appeal in February 1988 constituted undue delay and is a violation of article 14 (3) (c) ICCPR.

With regard to delay in civil proceedings, the HRC has stated in paragraph 3 of General Comment 13, that article 14 applies not only to procedures for the determination of criminal charges against individuals but also to procedures to determine their rights and obligations in a suit at law.[64] In *Deisl v Austria*[65] the authors alleged violations of their rights under articles 14, paragraph 1, and 26 of the Covenant. Holding that the delay complained of was not unreasonable, the HRC reiterated that the concept of a "suit at law" in article 14, paragraph 1, of the Covenant is based on the nature of the right and obligations in question rather than on the status of the parties.[66] It notes that the proceedings concerning the author's request for an exemption from the zoning regulations, as well as the orders to demolish their buildings, relate to the determination of their rights and obligations in a suit at law. The Committee further held that the right to a fair hearing under article 14, paragraph 1 entails a number of requirements, including the condition that the procedure before the national tribunals must be conducted expeditiously. [67]

3.2.2. Other international instruments

A number of international instruments also contain fair trial provisions, which protect against delay in the administration of justice. Although not as significant as the ICCPR, these instruments demonstrate a widespread acceptance of the right to speedy trial.[68] These provisions include:

Article 40(2) (b) (iii) of the Convention on the Rights of the Child which states that every child accused of violating penal law has the right to have the matter determined without delay.

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64 See *Paul Peterer v Austria* Communication No 1015/2001 (2004) para10.7.

65 Communication No 1060/2002: 23/08/2004 para 3.1

66 As above para11.1

67 As above para 11.2.

68 B Farrell (n 41above) 102.

Article 71 of the Fourth Geneva Convention, concerned with the protection of civilians in times of war which states that accused persons who are prosecuted by the occupying power... shall be brought to trial as rapidly as possible.[69]

Article 54 Draft Declaration on the Right to a Fair Trial and a Remedy,[70]which is a synthesis of article 14 (3) (c) of the ICCPR, General Comment No 13 of the HRC and the decisions of the HRC.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which require that each case shall from the outset, be handled expeditiously, without any unnecessary delay.[71]

3.3. Regional Instruments

International human rights instruments are supplemented with regional human rights systems in Europe, America and Africa. Although these systems are limited to specific geographical areas, they are nonetheless highly developed, particularly in the case of Europe.[72]

3.3.1 European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention)[73]

Article 6 (1) of the Convention provides:

> In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

From this provision, delay is conceived as a situation where proceedings are not concluded within a reasonable time. Thus, where proceedings are prolonged unreasonably, the European Court of Human Rights (ECHR) would likely hold a violation of the provision. In Wemhoff v Germany[74] the ECHR held:

> The Court is of opinion that the precise aim of this provision in criminal matters is to ensure that accused persons do not have to lie under a charge for too long and that the charge is determined. There is therefore no doubt that the period to be taken into consideration in applying this provision lasts at least until acquittal or

69 Geneva Convention 75 U.N.T.S. 287 (1950) art 71.

70 UN Doc. E/CN.4/1991/66 (1991).

71 UN Doc. A/40/881(1995) rule 20.1.

72 B Farrell (n 41 above) 103.

73 213 U.N.T.S. 222.

74 (1968) 7 ECHR (ser. A) para 12.

> conviction, even if this decision is reached on appeal. There is furthermore no reason why the protection given to the persons concerned against the delays of the court should end at the first hearing in a trial: unwarranted adjournments or excessive delays on the part of trial courts are also to be feared[75]

In defining the concept of "a reasonable time" as used in the Convention, ECHR has held that the definition will depend on the circumstances of each particular case.[76] To determine whether length of proceedings are reasonable, the ECHR will take into consideration the complexity of the proceedings as well as the applicant's conduct and the conduct of the relevant authorities.[77]

Thus, the ECHR has held that delays occasioned by difficulties in the investigation and by the applicant's behaviour do not of themselves, justify the length of proceedings. Rather the ECHR has often held that the principal reason for the length of proceedings is to be found in the conduct of the case.[78]

In cases where the applicant has a significant stake in the case's outcome, the ECHR will hold state parties to a higher standard. For example in *Vallee v France*,[79] the applicant who was suffering from an incurable disease with a dramatically reduced life expectancy had a crucial stake in receiving compensation. In such cases the ECHR held that "exceptional diligence" is appropriate. This standard places an affirmative duty on domestic courts to do everything in their power to expedite proceedings.[80]

In this regard, contracting states are obliged to organise their legal system to allow their courts to comply with the requirements of trial within a reasonable time.[81] Nonetheless, the ECHR has held that a temporary backlog of business does not involve liability on the part of contracting parties provided they have taken reasonably prompt remedial action to deal with an exceptional situation.[82]

Thus, in civil proceedings, the fact that it is for the parties to take initiatives with regard to the progress of proceedings does not avail a state party from its obligations to ensure compliance with article 6

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75 *Eckle v Germany* (1982) 51 ECHR (ser. A) paras. 73.

76 *Buchholz v Germany* 42 (1981) ECHR (ser. A).

77 *Kovacs v Hungary* no. 67660/01ECHR 2004.

78 *Rimgeisen v Austria* (1971) 13 ECHR (ser. A).

79 (1994) 289 ECHR (ser. A) 11.

80 *Bock v Germany* (1989) 150 ECHR (ser.A) para 38.

81 *Di Mauro v Italy* ECHR (ser. A) (1999).

82 A.P v Italy ECHR (ser. A) (1999).

(1).[83] In *Scopelliti v Italy*[84] the ECHR held that although the nature of civil proceedings indicate that parties should dictate the pace of the proceedings, the judge responsible for the case should take all possible steps to ensure that the proceedings are conducted with the utmost speed and fairness.

In *Katte Klitsche de la Grange v. Italy*[85] the ECHR has held that the convention underlines the importance of administering justice without delays, which might jeopardise its effectiveness and credibility. [86]

3.3.2. Inter-American Declaration and Convention on Human Rights

There are two major instruments under the Inter-American system governing the promotion and protection of human rights: The American Declaration of the Rights and Duties of Man (Declaration) and the American Convention on Human Rights (the Convention). [87]

Article XXV of the Declaration provides that "every person has a right to be tried without undue delay or otherwise to be released."[88] Article 8 (1) of the Convention provides that "every person has a right to a hearing, with due guarantees and within a reasonable time, ...in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal or any other nature."

In *Desmond Mckenzie and Others v Jamaica*,[89]the Inter-American Commission on Human Rights (IACHR) also adopted the criteria set out by the ECHR regarding the determination of trial within a reasonable time. Consequently, in *Michael Edwards and others v Bahamas*, [90] the IACHR held that the failure of the state to try the accused persons without undue delay was a violation of article XXV of the Declaration.[91]

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83 *Morreira v Portugal* (1988) 143 ECHR (ser. A) para 46.

84 (1993) ECHR (ser. A) para 25.

85 (1994), Series A no. 293-B, p. 39, & 61.

86 *Muzenjak v Croatia* Application no. 73564/01 (7/7/2004).

87 Basic documents pertaining to human rights in the Inter-American system, 2004 General secretariat Organisation of American States 6.

88 Declaration article XXV.

89 Cases 12.023,12.107, 12.126,12.044,12.146 Report No 41/00.

90 Case 12.067, 12.068 and 12.086, Report No 48/01 para 218 – 224.

91 *Milton Fajardo et. al. v Nicaragua* Case 12.067, 12.068 and 12.086, Report No 48/01para 218 – 224.

With regard to civil proceedings, the IACHR held in the case of *Milton Fajardo et al. v Nicaragua*[92] that the obligation to ensure hearing within a reasonable time was established in order to avoid unnecessary delays that may lead to a deprivation or denial of justice. Thus, the IACHR held that one-year delay by the Supreme Court of Justice of Nicaragua to deliver a judgement in a labour dispute, which should according to the law have been delivered in 45 days, was unreasonable.

In Maya indigenous communities of Toledo district v Belize,[93] a *locus classicus* in relation to the protection of indigenous communities and their resources. The IACHR concluded that the State violated the right to judicial protection enshrined in Article XVIII of the Declaration to the detriment of the Maya people, by rendering judicial proceedings brought by them ineffective through unreasonable delay. In finding an 8-year delay to be contrary to the Declaration, the IACHR held that there is no question that the duty to conduct a proceeding expeditiously and swiftly is a duty of the organs entrusted with the administration of justice.

3.3.3. The African Charter on Human and Peoples' Rights

Article 7 (1) (d) of the African Charter on Human and Peoples Rights (Charter) provides that every individual shall have the right to be tried within a reasonable time by an impartial court or tribunal. This is reinforced by Paragraph 2 (c) of the African Commission's Resolution on Fair trial of 1992, which provides that persons arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within reasonable time or to be released.

The import of these provisions is that the African Charter only seeks to regulate delay in criminal proceedings. To deal with this seeming lacuna in the Charter, the African Commission on Human and Peoples' Rights (AFCHPR) has held that unwarranted delays in the administration of justice in civil proceedings would still constitute a violation of article 7 of the Charter. Hence, in Pagnoulle (on behalf of Mazou) v Cameroun,[94] the authour submitted petitions to the Supreme Court of Cameroun against the Ministry of Justice of Cameroun for his reinstatement as a magistrate, one of the issues before the AFCHR was whether a delay of 2 years by the Supreme Court was a violation of article 7 of the Charter. In holding that there was a violation, the AFCHR held:

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92 Case 11.381 Report No 100/01 October 11, 2000.

93 Case 12.053, Report No 40/04, 12 October 2004.

94 Communication 39/90, 2000, 10 Annual Activity Report of the African Commission on Human and Peoples Rights (AARACHPR), paragraph 17.

> Considering that the case under examination concerns the possibility of Mr. Mazou exercising his profession and that there are undoubtedly some people who depend on him for their survival, two years without any action in a case ... constitutes a violation ... of the Charter.

Furthermore, in *Mouvement, Burkinabe des Droits de l'homme et des peuples v Burkinafaso*, the authour complained of a 15 year delay by the Supreme Court of Burkinafaso in handing down a decision in the case. The AFCHPR reiterating it's holding in *Pagnoulle's case* held:

> Fifteen years without any action being taken on the case or any decision being made either on the fate of the concerned persons or on the relief sought, constitute a denial of justice and a violation of article 7 (1) (d) of the African Charter which proclaim the right to be tried within a reasonable time. [95]

With regard to delay in criminal proceedings, the only case that comes within the ambit of this study is *Constitutional Rights Project v Nigeria*.[96] Where the AFCHPR held:

> In a criminal case, especially one in which the accused is detained until trial, the trial must be held with all possible speed to minimise the negative effects on the life of a person who, after all, may be innocent.

The failure of the AFCHR to define what constitutes "a reasonable time" or otherwise establish criteria for determining a violation of article 7(1) (d) leaves much to be desired. Using terms such as "denial of justice" or "does not meet with the spirit and purport of article 7(1) (d)" only serves to create further ambiguity as to when a proceeding would have been said to be unduly prolonged to warrant a violation of the Charter.

3.3.4 Other regional instruments

One other regional instrument that protects against delays in the administration of justice in Africa is the African Children's Charter. No Communication has yet been brought before the AFCHPR with regard to section 7(1) (d). The relevant provision in the Children's Charter is article XVII (2) (c) (iv). It provides that state parties shall ensure that every child shall have any matter against him/her determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to appeal to a higher tribunal.

3.4 Conclusion

Attempts to regulate delay in the administration of justice have led to various international, regional and national provisions. However, the expressions "reasonable time" and "undue delay" used in

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95 Communication 204/97 14th AARACHPR para 16.

96 Communication 153/96, 13th AARACHPR para 19-20.

human rights instruments do not convey a precise legal meaning and there is no yardstick by which to assess the problem. Various judicial bodies seem to be content to deal with the situation on a case-by-case basis.

Unwillingness to prescribe a specific approach which state parties should adopt to eradicate delay within their systems is problematic. At best what emerge are guidelines as to when a delay would be a violation and who bears the responsibility of justifying such delays. It is suggested that in future decisions, clearer and definite standards should be adopted to enable potential litigants to understand the ambit of their rights, and to emulate bodies in the USA and Britain which have introduced standards to regulate the pace of proceedings in the courts.[97]

The work reported in the last two chapters informs discussions in the next chapter, which is a comparative analysis of delays in Nigeria and South Africa.

[97] M Code "The development of legislated "speedy trial" standards in the Unite States and Great Britain in: M Code (n17 above) 38.

CHAPTER 4

DELAY IN NIGERIAN AND SOUTH AFRICAN COURTS

4.1. Introduction

The problems of delay, and efforts to eradicate them in the administration of justice in South African and Nigerian Courts vary in terms of degree, nature, extent and causes. This chapter analyses the legal framework, nature, extent, causes of delay, and examines efforts to eradicate delay in South African and Nigerian Courts. The study considers general and specific aspects of delay in both civil and criminal proceedings. Finally, a comparative analysis, highlighting similarities and differences between the two countries shall be considered.

4.2. Delay in South African Courts

4.2.1. Legal framework

Section 35(3) (d) of the South African (SA) Constitution provides that every accused person has a right to fair hearing including the right to have his trial begin and concluded without unreasonable delay. At first blush, it would appear that delay in the administration of justice is protected only in the context of criminal proceedings. However, jurisprudence examined, show that courts are willing to hold that the right to speedy trial in civil proceedings are protected under the general provision for fair hearing.[98]

In *Exparte Minister of Safety and Security and others in Re: S v Walters*, [99] the SA Constitutional Court reacting to the indefinite adjournment of a case held:

> It is an established principle that the public interest is served by bringing litigation to a close with all due expedition...

In *Moeketsi v Attorney General Bophuthatswana*[100] it was held that the right to trial within a reasonable time was indissolubly associated with the canon of fair trial and that an inordinate long and unexplained delay negated the concept. The court further held that in assessing the reasonableness of delay courts should consider *interalia* the following factors: (1) the length of delay, (2) the reasons

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98 SA Constitution section 34.

99 2002 (7) BCLR 663 para 63E-G.

100 1996(1) SACR 675 (B).

for delay including delay (i) attributable to the parties;(ii) the complexity of the case (iii) institutional or systematic delay, (3) waiver of time periods by the accused (4) prejudice to the accused.[101]

For civil proceedings, the court will only hold unreasonableness of delay only in circumstances where there is clear abuse of the court process either on the part of the plaintiff or the defendant.[102] Factors considered when exercising discretion as to reasonableness of delay include: the length of delay, whether the delay is inexcusable, whether the aggrieved party or parties is seriously prejudiced by the delay.[103]

Where the parties are the primary agent of delay, SA Courts have held that they cannot rely on the right protected under section 35(3) (d).[104] On the other hand, where the state is responsible for the delay either because of the newness or importance of the issues raised or due to systematic delays, the courts are very reluctance to hold a violation.[105] This approach is problematic especially in the light of decisions of the HRC and other international human rights bodies.[106] The courts should recognise that by refusing to tolerate systematic delays and through judicial intervention, they may play an important role in ensuring that more resources are allocated to the administration of justice. Moreover, a country that entrenches the right to a speedy trial must live up to its standards.[107]

4.2.2. Nature and extent of delay

Since 1994, delay in the administration of justice has been considered a serious problem in SA justice system.[108] This problem has been identified as one of the consequences flowing from the transformation from apartheid controlled system to a democratic system.[109] Although the problem has

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101 Note the developments in *Sanderson v Attorney General* 1998 (1) SACR 227 (CC) and *Wild v Hoffert* 1998 (20 SACR I (CC).

102 *Molala v Minister of Law and order and another* (1993) (1) SA 673 (W).

103 Gopaul v Subbamah (2002) (6) SA 551 (D).

104 E Steyn (n 21above).

105 Sanderson (n 102 above) para 35; Wild (102 above) para 25 and Coetzee v Attorney General 1997 (8) BCLR 989(D).

106 *Fillastre v Bolivia* (n63 above).

107 N Steytler (n 47 above).

108 W Scharf and B Tshehla . 2003. "Stumbling at the first step? Lost opportunity in the transformation of the South African Justice System" *Acta Juridica* 2003(1) 161.

109 M Shaw "Reforming South Africa's criminal justice system" *Occasional paper no 8 - August 1996.*

improved over the years due to various efforts by the government and stake holders, the problem of delay still linger in SA Courts[110]

I. In criminal proceedings

As most of the criminal cases begin in the district (magistrate) courts, the cases that take the longest time to reach judgement are cases, which are so serious in nature that the regional courts or the high courts have to assume jurisdiction.[111] Furthermore, the complexity of a case, the nature of investigation required and the backlog or volume of outstanding cases within a definite court also play a role in determining the length of time to case disposition. Thus, although, reports tend to show progressive increase in the finalisation of cases, in many SA criminal courts, however, this has not substantially affected the length of time averagely spent in the disposition of the cases.[112]

According to Judge Moosa,[113] the average time to dispose of a case in SA criminal proceedings range from18 months to 4 years. Cases governed by the minimum sentencing legislation often last up to 5years. [114] To substantiate this fact, a report prepared by the Court Nerve Center Pretoria, stated that the average criminal case in the high court ranged between 150 days – 1781days (4 years 9 months) from the time it was first placed on the high court roll to the time sentencing was completed. This excludes time spent in the lower court. [115]

With regard to SA regional and districts courts, reports and interviews show that the average time in which cases are disposed is 3-30 months and 3 -12months respectively.[116] This is an average, as

110 The discussion centers on 3 major courts in the SA judicial system: District, regional and the high Courts. The district courts and the high courts have both civil and criminal jurisdictions while the regional courts have jurisdiction only in respect of serious crimes such as rape, murder, manslaughter etcetera.

111 Reports of the Court Nerve Center on "Criminal court performance in the lower courts during 2002 and 2003" and "An analysis of criminal court work in the high courts during 2002 and 2003" Department of Justice and Constitutional development Business Unit : Court services pg 1-35 and 1-24 respectively. See specifically T Leggett, A Louw, M Schönteich and M Sekhonyane "Criminal justice in review 2001 / 2002" No 88, November 2003 <http://www.issafrica.org/pubs/Monographs/No88/Contents.html> (accessed 10/10/05).

112 *M Schonteich* "Tough choices: Prioritising criminal justice policies" *Occasional paper no 56 - May 2002* <http://www.issafrica.org/PUBS/PAPERS/56/Paper56.html > (accessed 10/10/2005).

113 Interview Judge Essa Moosa High Court Judge Cape Town 14/10/2005.

114 Minimum sentencing is explained in detail later in this chapter.

115 Court Nerve Center Report (n 112 above). Note that this figure has improved. In the unpublished, Audit for Trials in the High court obtained from Advocate J Gerber (SC) Deputy Director of Public Prosecution (DDPP)(11/10/2005) the average case disposition time from the month of April to August is 554 (1 and half years) Annexure B.

116 Court Nerve Center Report (n 112above).

some cases in both courts get disposed in less than 3 months[117] while others take longer.[118] For example the case of *State v Vincent Thorne*[119] which came to the regional court sometime in 2003, took 7 years to disposition.[120]

The extent of the problem of delay in South African Courts is reflected in the ongoing application by the *Prison Care and Support Network v The Government of RSA*,[121] concerning overcrowding and the inhuman conditions existing in SA prisons. Relying on the 2003/2004 and the 2004/2005 reports of the Inspecting Judge Fagan on Prisons and Prisoners (IJP), the application reveal that 1424 prisoners have been awaiting trial for four years (or more) and more than half of the 3,284 children in jail are still awaiting trial.[122] This case also reveals the dire consequences of delays in the administration of justice. For example, the affidavit attached to the application sworn to by one of the prisoners on behalf of the other prisoners reveals the horrible situation in SA prisons.[123]

Furthermore, the briefing by the South African Human Rights Commission (SAHRC) to the Parliamentary Portfolio Committee on Correctional Services again reveal the inordinate long periods juveniles wait in courts before their cases are determined. The SAHRC gave examples of the case of a16 year old girl charged as an accomplice in a car hijacking who has been awaiting trial for almost 4 years, and the case of four boys charged with stealing a sheep who are still awaiting trial after three months.[124]

Another area where delays are prevalent is with regard to un-sentenced prisoners. The 2004/ 2005 Report by the IJP, show that 22,934 un-sentenced prisoners in the country wait for over 3 months before their cases are finalised. Out of the 22, 934 cases, 1424 remain in court for over 24 months for

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117 Chief Magistrate A Jooste Western Cape Magistrate Court (13/10/2005) and Magistrate Ivan Munnik Regional Court Magistrate for Mitchells Plain (11/102005).

118 Example Kenneth Klopper (7/10/2005) court manager Justice Center Cape Town revealed that he was still presiding over cases, which arose when he was magistrate despite the fact that he had resigned over 3 years ago.

119 Interview Magistrate Wilma van der Merwe Regional Court Magistrate Cape Town (13/10/2005).

120 Judgement was rendered the morning of interview with Magistrate Wilma Merwe (n 153 above).

121 Case No. 9188/05, Notice of Motion last heard in court 13 October 2005.

122 Paragraphs 25 – 39 of the founding affidavit deposed to by John Moorhouse attached to the Notice of Motion, Paragraph 7.3 – 11.3 2004/2005 IJP's Report.

123 Gangsterism, murder, rape with frequent transmission of HIV, assault, sodomy etcetera. Annexure C Affidavit of two prisoners describing experiences.

124 C McClain-Nhlapo "Briefing by the SAHRC to the Parliament Portfolio Committee on Correctional Services" <http://www.pmg.org.za/docs/2004/appndices/040907cohen.htm> (accessed 12/10/20005).

the courts to decide on the sentence to be served.[125] Reports has it that many of these un-sentenced prisoners are really not before any court as their cases have been struck of the roll of lower courts and are unable to get onto the roll of the high courts due to congestions in the system. [126]

II. In civil proceedings

Mass migration of people into urban areas, coupled with increased confidence in the courts by previously disadvantaged groups in post-apartheid SA has led to the increase in commercial transactions and disputes in SA civil courts. The inability of the courts to accommodate the increase in civil cases led to backlogs and delays in proceedings.[127] The average length of time for disposition in civil matters ranges between 18 months and 3 years. [128]

The volume of cases that suffer delay in SA civil proceedings is low since a majority of the cases get settled either before they get to court or while in court.[129] The few instances of delay in civil proceedings are reflected in the case of *Christas Sanford v Patricia Haley* where divorce proceedings were delayed for 15 years.[130] Another case in point is the case of *Randell v Multilateral Motor Vehicle Accident Fund*[131] in which the costs of the protracted litigation amounted to more than the R 3 million compensation sought by the plaintiff.

4.2.3. Causes of delay

The general causes of delays in SA courts has been identified as:

Transformation

The transformation from apartheid to a democratic state led to a lot of changes in the SA judicial system.[132] Some of these changes occasioned circumstances, which the new SA was not appropriately equipped to contain. For example, the amalgamation of the former 11 departments of

125 2004/2005 Report of IJP (n 123 above) Annexure D.

126 Interview W Tarantaal, Prosecutor National Prosecution Authority (28/9/2005).

127 Interview Advocate H. Mohammed, Head Department of Justice, Cape Provincial Division 13/10/2005.

128 E Moosa (n 114 above); for the magistrate courts not more than 6 months.

129 Interview Schalk Meyer President Association of University Legal Aid Institutions 29/9/2005.

130 Unreported high court decision case no 97/1989 decided on 11December 2003.

131 16/06/1993 case no. 14027/83, 1994 (4) SALR 24.

132 Interviews H Mohammed, A Jooste (n 128 and 118 above).

justice and courts in the old separated SA into one unit,[133] the introduction of a Bill of Rights,[134] and the incorporation of previously disadvantaged groups into the justice system and[135] increased knowledge of rights led to increased cases filed in court. The new system, riddled with problems such as: resource constraints, dilapidated infrastructures, ideological divisions,[136] lack of adequately trained personnel, coupled with poor planning and management, could no longer cope nor contain the effects of the changes in the system.[137] This failure in the administration of justice led to the escalation of delays and consequent backlogs in courts.[138]

Congestion and backlogs

This is one of the major causes of delay within the SA justice system. Statistics has it that between the years 2002-2003 that there was a backlog of over 200,000 cases in the country's criminal courts.[139] Between April 1999 and July 2001, the country's regional courts finalised an average of 3,010 cases a month, but had an average of 43,500 cases per month outstanding on the court's roll.[140] The existence of these backlogs tend to clog up the court's roll such that it takes a long time to get a case into the court's roll. Parties often have to wait for months to get a trial date.[141]

Constitutional constraints

Some commentators have attributed the existence of so many rights in favour of the accused as one of the causes of delay.[142] The accused's right to silence, right to an interpreter (where interpreters are difficult to find), right to adequate time and facilities to prepare for defence, right to legal

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133 Interview A Jooste and E Moosa (n118 and 114 above).

134 Interview Wilma van der Merwe (n 120 above).

135 Interiews A Jooste and E Moosa (n 118 and 114 above).

136 Interview H Mohammed (n 128).

137 Interview A Jooste and E Moosa (n 118 and 114 above).

138 *M Lue-Dugmore* "South Africa: An examination of institutional models and mechanisms responsible for: the administration of justice and policing, the promotion of accountability and oversight; and a review of transformation strategies and initiatives developed in relation to the administration of justice and safety and security." Paper by the Committee on the Administration of Justice, Northern Ireland and the Institute of Criminology University of Cape Town.

139 T*Leggett* (n 112 above).

140 *M Schonteich* (n 113 above).

141 D Davis "The Criminal justice system: How much transformation has taken place during the first decade of constitutional democracy?" <http://www.csvr.org.za/confpaps/davis.htm> (accessed 10/10/2005) see also Annexure E graph showing the pattern of outstanding cases in SA lower courts until 2002.

142 Interview Wilma van der Merwe (n120 above)

representation, has been cited as causes of delays.[143] The exercise of the accused of these rights often leads to delay in investigation and in the smooth running of the process of the court. It has been argued that this overindulgence of the accused with rights failed to balance the protection of the interest of the accused and the interest of victims of crimes in seeing that justice is done.[144]

Resources

The existence of inadequate magistrates, judges, courtrooms, court facilities, interpreters, court personnel, and legal-aid workers to represent accused persons as well as financial resources are huge causes of delays in SA courts.[145]

Systematic Causes

Some of the systematic causes of delay within the system have been identified in terms of missing dockets or charge sheets with respect to criminal cases, bureaucracy among the various court departments, outdated procedural laws (for, example the current Criminal Procedure Act was enacted in 1977).[146]

Local legal culture

According to Church:

> The pace of civil and criminal litigation is based less on formal aspects of court structure, procedures, and caseload than is commonly believed. Rather on ... attitudes, concerns, and practices of all members of a local legal community. This web of related factors is termed local legal culture.[147]

Lack of commitment by all the stakeholders to ensure the smooth, efficient and speedy resolution of cases is a crucial cause of delay in SA Courts.[148] Although there are efforts towards ensuring commitment, some stakeholders have not bought into the principle of speedy resolution of cases.[149]

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143 Interview Wilma Merwe and H Mohammed (n 120 and 128 above).

144 As above.

145 Interview A Jooste and J Gerber (n118 , 116 and above)

146 Interview Mr Cobus Esterhuizen Executive Director Cape Town Justice Center 26/9/2005.

147 T Church (n 15 above).

148 Interview Mr. Taswell Papier, Former Chairman, Cape Law Society, Partner Sonnerberg Hoffman Galombik 11/10/2005; and J.C. Gerber DDPP (n 116).

149 Mr William Kerfoot, Executive Director Legal Resource Center (LRC) and Mr Lloyd Padayachi Legal practitioner LRC 11/11/2005.

The culture of delay is still prevalent among the police, prosecutors and legal practitioners. This culture is illustrated by the incidence of double booking by some legal practitioners, and prosecutors, which leads to postponements.[150] Absenteeism, poor attitudes to service delivery and laziness also lead to delays. [151]

Unnecessary/easy Adjournments

The most pronounced cause of delay in SA courts is adjournments. Judges or magistrates often grant unnecessary adjournments to parties out of fear of being accused of not affording parties their constitutional right to fair trial.[152] Incessant adjournments especially have often led witnesses to refuse to appear after tiring of coming to court only to meet with adjournments. In the year 2000, the prosecution had to withdraw a lot of cases due to failure to get witnesses to testify[153]

Court recess system

Productivity in the High Court is dependent on the optimal utilisation of the hours available, per calendar day, per court, on the one hand, and, on the other, the number of such calendar days available, per court, to dispose of the business of the courts. Given the present crisis in the courts system, the recess system dating back to the colonial times which allows the courts to go on vacation four times per year is a luxury which the country cannot afford. Commentators argue that a well nigh complete shut-down of fourteen weeks of the year, in each of the well-equipped and staffed high courts across the country, is not only a waste of public resources but has led to a lot of delays in the system. [154]

Uncoordinated government programmes

The fact that the government has too many programmes geared towards eradicating delays has been identified as a problem. The criticisms against these efforts are that, they are uncoordinated. Such un-coordination prevent an in depth application of the solutions to the problem. The scenario-painted by this problem is likened to the adage "too many cooks spoil the broth".

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150 W Tarantaal (n 130 above)

151 William Kerfoot and Mr Lloyd Padayachi (n 150 above).

152 *M Schonteich* (n 113above).

153 Interview Taswell Papier and William Kerfoot (n 149and 150above).

154 F Kahn (SC) & T Heunis *A review of the administrative recess system in the high court* (2003) 16.

Appeals

Although the appeal decision is liable to a statutory time limit, the rules of court often allow parties to seek for extension of time within which to appeal and that causes delay in the appellate process. Also a lot of cases get delayed because of the long time it takes to obtain record of proceedings in the court's registry.

I. Causes specific to criminal proceedings

Structure and organisation of criminal justice system

The present structure and organisation of the criminal justice system is in the authour's view one of the major causes of delay. The process by which arrests and charges are made before proceeding to investigation is very problematic. This procedure not only clog up court rolls especially in the lower courts but also increase the number of people in the prisons. The inordinate delay in the investigation of cases while these cases sit in the court roll does not help matters.[155]Thus, by the time a case is ready to proceed to the regional or high courts where they would ultimately be tried, the case would have spent close to 2 years or more on the roll of the lower court. The recent case of Schabir Shaik is a good illustration. Shaik was arrested and charged in the SA lower courts in 2001, brought to trial in the high court in October 2004 and his case was decided in May 2005. The case which is presently on appeal before the Supreme Court of Appeal[156] is 4 years old and is not nearing completion as proceedings before the appellate court might take a while.[157] The question is: "why arrest a potentially harmless person and bring him to court when the system is not ready to try the person?"

Accused related delays

Non-appearance of the accused in court often leads to adjournments. The failure of some accused persons to answer to their names in prison because they want to evade trial also causes delay. Cases involving multiple accused persons are also problematic, because trial cannot go on where one of the accused persons is absent.[158]

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155 2003/2004 Report of the IJPS.

156 Wikepedia Encyclopedia "Scabir Shaik trial" <http://en.wikipedia.org/wiki/Schabir_Shaik_Trial> (accessed 22/10/05).

157 The case of Zuma, the former Vice President of SA is another example, see "Zuma: Vavi slams delay tactics" <http://www.news24.com/News24/South_Africa/Zuma/0,2-7-1840_1814398,00.html> (accessed 18/10/2005).

158 J Gerber and W Tarantaal (n 119 and 130 above).

Transportation of prisoners to courts

The late arrival or failure of correctional services to transport prisoners to courts also leads to delays.[159]

Court and case management

The method in which matters are set down for hearing in the lower courts has been criticised as one of the causes of delay. Unlike what is obtainable in the high courts where cases are tried continuously for a certain period of time until completion, the cases in the lower courts are often staggered. This mode of organisation leads to less finalisation of cases as many cases are competing to be heard over a period of time [160]

Minimum sentencing

The Minimum Sentencing Legislation Act 105 of 1997 not only prescribes minimum sentences in cases of serious offences but also bestow jurisdiction on the high court with regard to some cases that require minimum sentencing. This legislation has been heavily criticised by interviewees, authors and the Inspecting Judge of Prisons.[161] The problem with the legislation lies in the fact that it has led to a situation where there are many un-sentenced prisoners waiting to get on the roll of an already clogged up high court roll. What is even more problematic is that when these cases get on the roll and dates are set down for hearing, the judges, instead of addressing their mind to the issue of sentencing often go the whole hog of conducting trial again before finally settling down to sentencing.[162]

II. Causes specific to civil proceedings

Adversary nature of litigation process

The process of leaving the conduct of litigation almost entirely in the hands of the lawyers resulting in no judicial control to ensure that they comply with time limits lead to delays.[163] Although the judge presiding at the trial must see to it that the lawyers respect the rules of the game, lawyers are in

159 Minutes of the meeting attended by the authour of the provincial stakeholders meeting held on 7/10/2005, Annexure F

160 As above.

161 Annexure G, letter to President RSA calling against the renewal of the minimum sentencing legislation.

162 Advocate Tarantaal and Taswell Papier (n130 and 152 above).

163 W de Vos(n 23 above) 337.

control of their cases, and they decide how many witnesses to call and mode of the questioning of witnesses. As Judges are often reluctant to intervene in this process, the result is that the system lends itself to abuse by lawyers.[164] Thus, the lawyer of one of the parties can therefore prolong a case by taking procedural points to wear his opponent down. This manner of conducting cases often causes unnecessary delay and leads to excessive costs. In *Randell's case*, [165] the court held that the fundamental cause of the delay and high cost in the matter was the failure of the lawyers to comply properly with the rule requiring pre-trial conference between parties such that the conduct of the plaintiff in calling 41witnesses and the excessive time wasted in the conduct of the proceedings would have been curtailed.[166]

4.2.4. Efforts to eradicate or reduce delay

Some of the major efforts in place to eradicate or at best reduce the problem include:

Justice Vision 2000

This is a strategic plan launched in October 1997 to transform the administration and administering of justice and state legal affairs in South Africa. The progressive implementation of this vision has led to the introduction of projects such as: 1) integrated court management project aimed at introducing a semi-automated court and case management system in a number of courts where case backlogs are unacceptably high.[167] 2) Establishment of specialised court such as the special commercial crime courts, priority courts, small claims court, community courts, equality courts, sexual offences courts etc.[168] 3) Introduction of the cluster system of court management. [169]

164 As above 338.

165 Randell (n 132 above).

166 See H Erasmus "Much ado about not so much-or the excess of the adversarial process" (1996) 7 *Stellenboch Law Review* 1(114-119.)

167 M Schoneteich "Making the courts work: A review of the IJS Court Center in Port Elizabeth" <http://www.issafrica.org/Pubs/Monographs/No75/Content.HTML> (accessed 12/10/2005).

168 A Altbeker "Justice through specialisation? The case of the specialised commercial crimes court" (2003) No 76 <http://www.issafrica.org/Pubs/Monographs/No76/Content.html> (accessed 12/10/2005).

169 Interview A Jooste (n 114 above)

Utilisation of methods of disposing cases without going to trial

Diversions and decriminalisation programmes were introduced in criminal cases to divert and decriminalise less serious offences, which can comfortably be dealt with through other means.[170] The use of plea-bargaining allows parties in criminal cases to negotiate lesser penal consequences where the accused is willing to plead guilty.[171] In civil proceedings, increased used of alternative dispute resolution mechanisms such as arbitration has been encouraged. .[172]

Introduction of case flow management system (CFMS) and guidelines

This is the most recent approach by all the stakeholders in the judicial process to ensure the smooth administration of justice. The introduction of case flow management into all facets of the court process has helped and has been seen by most court officials as a viable solution to delays in the administration of justice. For example, two magistrates interviewed attested to the fact that when they utilised the CFMS guidelines, they witnessed a triple increase in the finalisation of cases in their courts. The recent publication and distribution of a "Practical Guide" handbook on CFMS has tremendously helped to ensure efficient disposition of cases.[173]

Procedural Efforts

Statutorily amendments within existing civil and criminal procedural laws have empowered judges to assume more active and supervisory roles in relation to proceedings.[174] In criminal proceedings especially, judges have been empowered to investigate delays.

Adoption of Speedy disposition of case policies

The adoption of internal standards and time limits by different stakeholders has helped to increase consciousness of the need to finalise cases speedily.[175] The judge president's recent habit of

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170 C Barrows "The justice system ten years on" (2004) 3 *Service Delivery Review* 1.

171 Institute of Security Studies "How are the police, courts, and prisons performing?" <http://www.iss.org.za/CJM/Justice.html> (accessed 10/10/2005).

172 Interview Lloyd Padayachi (n 150).

173 Interview Ivan Munnik (n 118 above) and Advocate Mohammed (n 131 above).

174 Introduction of section 342A of the Criminal Procedure Act and Rule 37 of the High Court Rules, applicable to all high courts except Cape Town High Court.

175 Minutes of the provincial meeting (n 160 above).

publishing the list of courts with the most reserved judgements has helped the courts to monitor excessive delays in rendering judgements. The measure also serves as deterrence for judges.[176]

The introduction of nag clerks who constantly remind all parties to prepare for the next court appearance ensure that nothing hinders the smooth running of the cases.[177]

Project *'Re aga boswa'*

Project *'Re aga boswa'* ("we are building a legacy") is part of the overall Criminal Justice Strengthening Programme (CJSP).[178] The CJSP is an initiative aimed at supporting and strengthening the capacities of the Department of Justice and Constitutional Development's role in making the criminal justice system swift, effective, accessible and efficient. A significant innovation introduced by this project is the appointment of court managers and other functionaries. This enables judicial staff to focus on core functions.[179]

4.3. Delay in the administration of justice in Nigerian Courts

4.3.1. Legal framework

Section 36 (1) of the 1999 Constitution of Nigeria provides that every person is entitled to in the determination of his civil rights and obligations to a fair hearing within a reasonable time. ...[180]

Nigerian Courts have dealt with the expression "within a reasonable time" in the light of the peculiar facts of each case *vis a vis* the constitutional provision. In *Najiofor and ors v Ukomu and ors,* [181] the Supreme Court of Nigeria held that a reasonable time within the context of section 33(1) of the 1979 Constitution can only be determined in the light of the circumstances and peculiarities of each case. Therefore, it is impossible to lay down a fixed rule as to what "reasonable time" is in the trial of every case.

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176 Interview Taswell Papier (n 149 above).

177 Interview Wilma van Merwe (n 120 above).

178 S Jiyane "Court managers and challenges facing the courts" (2002) 1 *Security Delivery Review* (3) 1.

179 As above.

180 Nigerian Constitution 1999 section 36(4).

181 1985 2 NWLR (pt 9) 686.

The paucity of judicial decisions prescribing the criteria for determining the question of reasonable time in Nigerian Courts is however remedied by the non-hesitation by the courts in condemning delay. In *Agiende Ayambi v The State*[182] the court held that inordinate delay in the prosecution of a criminal case constituted an infraction of the accused's constitutional right to fair hearing. In his judgement, Olajide Olatawura J.C.A. held:

> "The trial which lasted over two years could not be said to have been conducted within a reasonable time. Besides, the accused was said to be 70 years old when the trial started. His age and confinement ought to have been taken into account when the various applications for adjournment were granted.... we had cause in the past to point out the inordinate delay in the prosecution of cases. We will continue to do this until the position improves".

In *Fanz Holdings Limited v Mrs. Patricia Lamotte*, *Justice* Mohammed Uwais, now the Chief Justice of Nigeria, noted that delaying tactics by legal practitioners must in no uncertain terms be deprecated and courts should not approve such unbecoming behaviours."[183]

4.3.2 Nature and extent of delay

Delay in the administration of justice in Nigerian Courts is an endemic problem which has terrible impacts on access to justice and the quality of justice. [184] In a recent survey by the United Nations Office on Drugs and Crimes (UNODOC) in collaboration with the Global Programme against Corruption and the Nigerian Institute of Advanced Legal Studies, delay was rated by the public, judges and legal practitioners as the worst problem plaguing the country's civil and criminal proceedings.[185] On a range of 0-60%, delays have been averagely rated by court users, judges and legal practitioners as constituting 42-48% of the court's problems.[186] The survey stated that delays occur in every stage of proceedings in Nigerian Courts especially during: institution of proceedings, commencement of trial, trial proper and transmission of court proceedings to appellate courts and judgement.[187] Cases that get delayed most are criminal, contract, land and property cases.[188] The average time for case

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182 Decided in 1985.

183 1990 NWLR (12) 105.

184 R Durojaiye (n 15 above).

185 United Nations Office on Drugs and Crimes "Assessment of justice system integrity and capacity in three Nigerian States: Technical research report May 2004.

186 UNODOC Report (n 187 above) (UNODOC) Annexure H.

187 UNODOC (n 187 above).

188 UNODOC (n 187 above).

disposition in Nigerian Courts range between 6 - 10years.[189] With regard to appeals, it takes a minimum of two years for the Supreme Court to hear an appeal from the court of appeal.[190] This period excludes the time of preparation of record of appeal.

I. In criminal proceedings

The extent of delays in criminal proceedings is such that accused persons especially awaiting trial prisoners have little or no hope of being acquitted or convicted of charges against them within a reasonable time. Many accused persons spend nothing less than 6 – 8 years without being brought to trial talkless of being convicted or acquitted. The result is that many accused persons often spend double the amount of time in prison or answering to a charge than they would have spent if they were immediately upon charged, convicted and sentenced to the maximum sentence applicable to crimes committed.[191] A recent report on the plight of awaiting trial prisoners show that majority of awaiting trial prisoners spend an average of 20 – 47 months before the case proceeds to trial.[192]

Notwithstanding the fact that magistrate courts in Nigeria are courts of summary jurisdiction, however majority of criminal cases before them last over four years. The ongoing cases of *Police v* Olaitan,[193] and *Police v Adewale Ogunsakin and Madam Kosenatu*[194] are already over four years without nearing completion.[195]

The situation in the high courts is even worse. In the case of *State v Adebayo*[196], the accused was arrested and charged for armed robbery in 1994. He was only discharged and acquitted 11 years later early this year. Furthermore, in 1999, the Lagos State government arraigned Major Hamza Al-Mustapha, Chief Security Officer to the late Head of State, General Sani Abacha, and four others for

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189 O Oko "The problems and challenges of lawyering in developing societies" 2004 35 *Rutgers Law Journal 15.*

190 N Tobi (n 1 above).

191 L Ogumdele, Chairman Nigerian Bar Association Ekiti State and Chuka Obele, Partner and Legal Practitioner Obele-Chuka and Co Enugu State.

192 UNODOC (n 1897above).

193 MAD/357c/2002.

194 ADRT/162/2002.

195 Information obtained from Mr J Apuabi, Chief Magistrate Ekiti State Magistrate Court.

196 Suit No: HAD/13c/2000 (unreported). Obtained from Honourable Justice C Akintayo, High Court Judge, Ekiti State, Nigeria.

allegedly attempting to assassinate *The Guardian* publisher, Mr. Alex Ibru. Five years later, the case is still far from being concluded.[197]

II. In civil proceedings

Unlike, the situation in SA, civil proceedings in Nigeria is often characterised with lots of delays. Notorious among cases that take the longest times is mostly land and property cases, which often suffer incredible delay.[198] The recognition of the severe extent of delays in civil cases is reflected in the ongoing case of *Titilayo Plastic Industries Limited v Omega Bank Plc and others* where the judge held:

> "I will be very strict in granting adjournment, cases dragging on for too long is not good for our system. Some people believe that if a case is taken to court, it dies there."[199]

Other examples of delay in Nigerian Courts include:

The case of *Dabo v Abdullahi*,[200] filed in the Kaduna State High Court in 1990, for a declaration of title, an injunction and ₦ 10, 000 general damages for trespass to land. The case was decided by the high courts 9 years later in 1999, in the Court of Appeal a year later and finally in the Supreme Court five years later on 12 February 2005, totalling fifteen years of time spent in court.

The case of *Shell Petroleum Dev. Co. v Uzo & 3 Ors*[201] instituted in the high court in 1972, decided by the high court in 1985 and finally determined by the Court of Appeal in 1995, 22 years after the date the case was filed.

The case of *Elf Nigeria limited v Operesilo & Anor*[202] filed in 1967, decided by the high court in 1987, Court of Appeal in 1990, and finally by the Supreme Court in 1994, 29 years later.

The ongoing case of *Echetabu v Ministry of Information* in the Federal High Court, Lagos, instituted around 1993. The parties were still going back and forth on procedure for tendering documentary evidence when the plaintiff who was an old man passed away last year.[203]

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197 Durojaiye(n 2 above).

198 One of my colleague Opeoluwa Ogundokun, informed me of a land case filed by her father before 976 which is still in the trial stage 31 years later.

199 "Court warns lawyers against delay" AllAfrica.com newspaper <http://allafrica.com/stories /200509290397.html>

200 2005 ALFWLR pt 255 pg 1039.

201 194 (9) NWLR pt 366 pg51

202 1994 (6) NWLR pt 350 pg258.

In recent times the most celebrated instances of where delay has led to a lot of substantial injustice is in election petition cases. Notwithstanding the fact that election petition cases by their very nature, should be disposed of expeditiously so that winners of the election would assume their deserved political positions, election petition cases often last in court until the next election date. The recent election petition cases by Peter Obi of the All Progressive Alliance against Dr. Chris Ngige of the Peoples Democratic Party (P.D.P) and the presidential election petition of Muhammadu Buhari of the All Nigerian Progressive Party against the President of Nigeria, both instituted immediately after the 2003 elections were only decided in 2005. The former is on appeal in the country's appellate court.[204]

4.3.3 Causes of delay

Corruption

Nigeria is a country with a long history of corruption, which have permeated every nook, and cranny of the nation.[205] Corruption is so manifestly entrenched and institutionalised that the judiciary, the police and the entire justice system is wallowing under the trenches of corruption. Next to delays, corruption has been rated the second greatest obstacle that impedes the efficient administration of justice in Nigeria.[206]

To start with, corrupt practices in the appointment of judges; magistrates and court officials have led to the increase of poorly qualified judges, magistrates and court officials. Appointment to the bench is often because of whom you know, or how much money you can bribe your way through rather than on merit. Thus, the Nigeria justice system is full of people who hardly qualify to be in the position, which they operate.[207]

Secondly corruption in the court registry is a big impediment in not only accessing justice but also in timeliness of court proceedings. Court registry officials often times are unwilling to perform their duties except when bribed. Infact some officials will outrightly demand payments for things, which should

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203 Information from Opeoluwa Ogundokun counsel handling the matter.

204 Divorce cases often suffer the same fate. Questionnaire Egbuna Obata Director-General International Centre for Nigerian Law.

205 N Ribadu "Problem associated with the enforcement of economic crimes" paper presented at the Nigerian Bar Association Annual Conference Abuja 23-27 August 2004.

206 UNODOC (n 187 above). Annexure I

207 Questionaire, Uyi Omonuwa , Senior Advocate of Nigeria (SAN).

ordinarily be free of charge without which they would not budge at all. Litigants who want their cases to proceed speedily have no option but to engage in bribery to get their cases moving.[208]

On the part of the police, Nigerian police have the responsibility of investigating crimes and prosecuting in the lower courts of Nigeria. However, due to corruption, the police would often not engage in any meaningful investigation until the complainant or victim who is interested in the vindication of the wrong done to them bribe's them. Likewise, some of the delays in the magistrate courts are as a result of failure of the accused persons to comply with the corrupt demands of the police officers. In such circumstances, the police will always have one excuse or the other to postpone the case and delay trial until the accused is forced to comply.[209]

The same scenario painted above also repeats itself with high court cases, which are handled from the office of the Director of Public Prosecution (DPP). The system of holding charge, which requires, the office of the DPP to proffer advice as to whether a prima-facie case has been made out against an accused without which the accused will be discharged is also permeated with corruption. Legal advice often takes ages to get to the magistrate courts due to failure of the parties to bribe the DPP or some of his officials.[210]

Corruption among the judges and magistrates is another cause of delays. Judges are sometimes in cohort with parties and their legal practitioners after receiving substantial amount of bribes. Judges and magistrates who receive these bribes either grant frivolous adjournment or often withhold judgements or use any other tactics to frustrate the other party in the case.[211]

Congestion and backlogs

The paucity of courts and judicial personnel in Nigeria do not measure up to the teaming population of Nigeria.[212] When compared to this huge population, Nigeria has only about 43,953 Lawyers called to Bar, 707 High Court and Sharia Court Judges, 47 Federal High Court Justices, 46 Court of Appeal Justices and 15 Justices of the Supreme Court of Nigeria.[213] It is clear that even if only one-quarter of

208 UNODOC (n 187 above).

209 UNODOC (n 187) above. I once handled a case in which the police officer in charge urged me to co-operate with him, failure of which, he will continue to delay the case until I comply.

210 Questionaire Banjo Ayenakin, A.o Akanle (SAN) Ado-Ekiti, Ekiti State.

211 UNODOC (n 187 above).

212 Presently Nigeria has over 132 million people.

213 N Ribadu (n 206 above).

the population engages in litigation, this handful of people cannot possibly meet up with the teaming cases before the courts. The existence of this state of affairs has led to long court lists especially within courts in Lagos State.[214]

Resources

To a large extent, the quality of judicial infrastructure and consequently the expediency with which cases can be handled in court is dependent on how much a state is willing to spend on the courts. Many Nigerian Courts lack basic infrastructure. Unlike in SA where almost every office is equipped with computers, Nigerian Courts are equipped with few computers. Many things are still conducted manually. The greatest complaint of judges interviewed is the lack of good libraries from which they could obtain materials to write judgements.

.Record of proceedings

Most magistrates and judges in Nigeria take down evidence in longhand and for long hours.[215] This certainly slows down trial as lawyers and witnesses have to speak very slowly in-order to meet the pace of the judges writing. Because of the tedium involved, magistrates or judges get tired and at times ill. He/she needs a break and that is another cause of delay. Statistics has it that quite a number of adjournments is because of the absence or inability of judges to sit.[216]

Judicial and non judicial personnel

Judicial personnel are the judges and magistrates while non-judicial personnel are the staff of the judiciary. The lack of industry, indifference and lack of commitment in the performance of the duties by judicial and non-judicial personnel is a cause of delay. Some judicial personnel particularly of the magistrate cadre sit late and rise early. Although the official time of the court is 9 am, some magistrates and judges sit one or two hours later. Some of them only sit to adjourn all the cases in their court list.[217]

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214 Lagos State alone has over twenty million people.

215 N Tobi (n 1 above).

216 As above.

217 N Tobi (n 1 above)

Another cause of delay is lack of adequate legal knowledge by judicial officials. Counsel may raise an elementary point of law, which necessitate a ruling. Because the court is not equally knowledgeable, it adjourns the matter for a ruling, instead of giving a bench ruling.[218]

Delay mechanisms erected by law

These include delays as a result of colonially inherited laws which are out dated. One of the sources of Nigerian law is the received English law and Common law. The rules and procedures in these sources of law utilised in Nigerian Courts are often no longer used in the United Kingdom. These rules are still cited in courts and utilised to clog up and stall proceedings. For example, the English common law rule established in the case of *Smith v Selwyn* provides that where a case is before both civil and criminal courts, the case before the civil court would have to be stalled until the criminal case is conclude. This procedure although abolished in many common law countries including England is still applicable in Nigeria.[219]

Institutional management

Many Courts in Nigeria are poorly managed. Due to the absence of an adequately organised system of court and case management, where the Chief judge or magistrate is absent, cases are not assigned. Infact things are stalled pending the return of the judicial administrative head. Reassignment or reshuffling of judges often cause cases that are at trial stage to start *denovo.*

Strikes

The failures of the government to pay salaries as and when due culminate into strikes. For example in the years 2002 and 2003, the entire Anambra State judiciary went on strike for over six months due to reasons related to remuneration and infrastructure. These strikes often stall proceedings and cause delays.

Appeals, Local legal culture, Prison Authorities, Adjournments[220]Adversarial mode of adjudication and Constitutional Constraint [221]

These causes are same with position in SA.

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218 As above.

219 Quetsionaires Familoni Adeniyi Director Civil litigation Ekiti State , Magistrate Nonye Ene , Enugu State Judiciary.

220 Questionaire Paulinus Obichukwu, Legal Practitioner.

221 N Ribadu (n 203 above).

I. Causes specific to criminal proceedings

Holden Charge and delays from the office of the DPP

This is almost similar with what is obtainable in SA district courts with respect to serious offences. The difference is that in Nigeria, where an accused person is first arrested, he is formally charged before the magistrate court. However, since the magistrate does not have jurisdiction over capital offences, the accused person continues to be remanded in prison custody pending the advice of the DPP as to whether the accused has a case to answer (prima-facie case is made out). An accused who has no case to answer based on the advice of the DPP is discharged and acquitted. However, where the accused has a case to answer, such an accused is remanded until the DPP prefers a charge/information to the high court.[222]

This procedure leads to many delays in the system. Sometimes an accused has to wait for years pending the release of the DPP's advice while continuously brought to court. This is time wasting and clogs the roll of the court. When the advice is finally presented, the DPP's office often delays in preferring an information against such accused. Procedural rules, which require the obtaining of the judges consent in order to prefer a charge or information further complicates issues.[223]

II. Causes specific to civil proceedings

Interlocutory applications/appeals

The use of interlocutory applications/appeals to stall proceedings in the lower courts has become one of the rampant causes of delay. Many cases in the high courts are adjourned *sinedie*[224] because of the penchant of counsels to file interlocutory appeals/applications. The case of *Amadi v. NNPC*[225] a 13-year delay was occasioned by interlocutory appeals alone.

4.3.4. Efforts to eradicate or reduce delay

Since Nigeria is a federal country, Most of the efforts to eradicate delays in courts are state oriented. Some of the efforts in place include:

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222 R Doroajaiye & V Efeizomor (n 2 above).

223 N Tobi (n 1above) 150.

224 Indefinitely.

225 (2001) 10 NWLR (674) 76.

Adoption of new high court rules and practice directions

Many states in Nigeria have reviewed their old procedural laws, rules and practice directions to make for a much speedier efficient disposition of justice. The most popular and earliest law and rule reforms are those carried out in 2004 by the governments of Lagos State and the Federal Capital Territory (FCT) Abuja.[226] The success of reforms in these two states influenced similar reforms in other states. Some of the legal reforms introduced in Nigeria are:

- Introduction of Front-loading (parties to reveal their entire case before trial).[227]
- Pre-Trial Conferences.[228]
- Need for a pre-trial judge as different from the trial Judge.[229]
- Effect of non-compliance with rules under the Lagos Model shall nullify proceedings and does not render the proceedings or process merely irregular.[230]
- Amendments of pleadings *ad infinitum* have been removed and have now been limited to only two opportunities. [231]
- Adjournments at the request of a party have been limited to not more than two times during trial and costs have been imposed to take care of other judge-approved adjournments[232]
- Absence of oral examination-in-chief, which has been replaced by the witness's statement as filed.[233]
- Expunging rules which allowed courts to have recourse to English Rules.[234]
- Introduction of written Addresses.[235]
- Requirement for Pre-action Counselling Certificate.[236]

226 M Abdullahi (n 9 above).

227 Order 3 rule 2 (1) High Court Rules of Lagos State (Lagos).

228 Order 25 Lagos.

229 As above.

230 *Jabita v. Onikoyi* <http://www.gamji.com/article4000/NEWS4652.htm> (accessed 15/8/2005).

231 Order 24 Rule 1 and Order 39 Rule 1 Lagos.

232 Order 30 Lagos.

233 Order 32 rule 3 Lagos.

234 Section 2 of the High Court Rules Lagos.

235 Order 36 Abuja and order 31 Lagos.

236 Order 4, Rule 17 Abuja.

- Requirements for court to promote alternative dispute resolution and out of court settlements.[237]

Introduction of a multi door courthouse

With the increased requirement for courts to encourage alternative dispute resolution (ADR) and settlements, the government of Lagos State and FCT has ahead of other states introduced the concept of a new multi door courthouse (MDC) system. This refers to a court-connected or court-annexed ADR program. The 'multi-door' concept originally developed in 1976 by Professor Frank Sander constitute a courthouse where there will be several dispute resolution 'doors' and that each case will be diagnosed and referred to an appropriate 'door' or mechanism best suited to its resolution. Thus, within the court premises several doors where litigation, mediation, conciliation and arbitration are done are found. At the end of pre-trial conferences parties are appropriately referred to the door that would best meet their needs.[238]

UNODC project on strengthening judicial integrity and capacity

The UNODC project on strengthening judicial integrity and capacity in Nigeria is not a self-standing exercise but part of a larger international judicial reform initiative, guided by an International Judicial Group on Strengthening Judicial Integrity, formed in April 2000 by the Chief Justices of Uganda, Tanzania, South Africa, Nigeria, Bangladesh, India, Nepal and Sri Lanka, Egypt and the Philippines.[239]

UNODC in collaboration with the government helps in judicial reform initiatives, both at the federal and state levels. Some of the reforms made possible by the UNODOC project include:

- Construction/rehabilitation of high and magistrate courts.
- Periodic conferences seminars, symposia for judges and court staff on need for effectual dispensation of justice.
- Introduction of information technology and communication equipments in some courts.
- Improved co-ordination amongst criminal justice institutions.
- Assisting the national government organisation set up to fight corruption.

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237 Order 25 (1) (2) (c) Lagos, section 259 Practice Direction Abuja.

238 K Aina "ADR and the relationship with court process" <http://www.nigerianbar.com/paper7.htm> (accessed 15/8/2005).

239 Langseth, P "Strengthening judicial integrity and capacity in Nigeria, a progress report Panel on Judicial Integrity 11th IACC, South Korea," May 2003 UNODC.

- Introduction and training of judges to embrace case flow management as well assisting in the appointment of administrative judges who would focus only on court administration.

4.4 Comparative analysis

It is clear from the above, that there are various points of convergence and divergence with regards to delay in South African and Nigerian Courts. The points of convergence revealed by this study include:

- Delay is both a problem in both countries although to different degrees.
- Constitutional and judicial recognition of the need to prevent and protect against delay in the administration of justice.
- Causes such as resource constraints, court congestion and backlogs, prisoner transportation, clogging of lower courts by filing of all cases in lower courts, local legal culture, adjournments, appellate causes, constitutional constraints, adversarial mode of adjudication etcetera are common to both countries.
- Both countries have exacted efforts whether by the government or by other means to reduce the problem of delay. Similar efforts adopted include: adoption of case flow management techniques, provision of more infrastructures and equipment to the courts, encouragement of alternative dispute resolution.

The point of divergence in both countries as revealed by the case study include:

- Existence of a more developed legal framework in line with international standards[240] in SA than obtainable in Nigeria.
- Delay is more of a problem in SA's criminal justice system than in its civil system. In Nigeria delay is a huge problem affecting both civil and criminal proceedings.
- The extent of delay is much more pronounced in Nigerian than in SA. The maximum length of proceedings gathered from the study in the case of South Africa is 15 years while in Nigeria we see cases, which are 31 years old.
- Historical factors play a role in delay in SA, where as this is not the case in Nigeria.
- Causes such as corruption, strikes, holden charges, interlocutory applications, method of recording proceedings etc do not feature in SA. On the other hand, causes such as minimum sentencing, uncoordinated government programmes do not feature in Nigeria.
- The efforts in SA to reduce the problem are more diverse than that obtainable in Nigeria. Programs such as decriminalisation and diversion programmes, introduction of court managers

240 With the exception of comments made above.

and nag clerks, existence of specialised courts etcetera are absent in Nigeria's efforts to combat delay. On the other hand, the extensive efforts to revise laws and rules of procedure coupled with the MDC approach to dispute resolution is absent in SA.

4.5. Conclusion

From the comparative analysis, it is decipherable that there are similarities and differences in both countries approach to the problem. Thus, there are definitely areas from which each can draw from the others experience. In this regard, the next chapter will briefly summarise what has been said in this study with a view to recommending possible solutions and strategies, which could be adopted by both countries to eradicate delay.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1. Introduction

The question of delay in the administration of justice is far from theoretical preoccupation.[241] The problem affects the running of the judiciary in many practical ways and has a tremendous impact on society in general and on litigants in particular. As we write, people are nursing wrongs done to them and do not want to approach the court because of their experiences with the judicial system. Cases are being unnecessarily adjourned and witnesses are recounting their painful court experiences. In this chapter, a summary of the conclusions drawn from the entire study is presented; and general and specific recommendations for effective eradication of delay in South Africa and Nigeria are proffered.

5.2. Summary and conclusion

This study has made a case for the need to eradicate delay in the administration of justice in African countries, especially South Africa and Nigeria. The study defines delay as elapsed time beyond that necessary to prepare and conclude a case. Since timeliness in the justice sector involves human elements who cannot be automated to operate with desired speed, emphasis was placed on "undue" or "unnecessary" prolongation of proceedings.

This study established the urgency of the need to eradicate delay in African Courts. Delay in the administration of justice has many undesirable ramifications. As the Texas Supreme Court noted, "delay haunts the administration of justice. It postpones the rectification of a wrong and the vindication of the justly accused." [242] Delay often results in the acquittal of the guilty and frustration of the innocent.[243] The financial burden on litigants when court action stretches over long a period is particularly harsh on individuals with low and fixed incomes. The prohibitive costs of lengthy litigation often deny some persons their right to a day in court.[244] In this regard, the impact of delay on human rights such as access to justice, effective remedy and fair hearing can not be under-estimated. The

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241 D Barry and S Keefe "Justice denied: delay in criminal cases" 1998 49 *Northern Ireland Legal Quarterly* (4) 385-403.

242 *Southern Pacific Transportation Company v Stoot* (1975) 530 S.W.2d 930,931.

243 G Gall "Efficient court management" in: Expeditious justice (n34 above).

244 As above.

culmination of these consequences has also led to loss of faith in the legal system and disrespect for the system of justice.[245]

This work analysed the various international and regional instruments regulating delay, with a view to establish a background for the assessment of the legal framework, nature and extent of delay in South Africa and Nigeria. The international instruments and interpretations failed to prescribe standards that state parties must adhere to, but they enunciated the period under which the length of delay in courts should be measured, and clearly stated that it is the courts and not the lawyers or litigants, who should control the pace of litigation. Holding that the international provisions against delay constitute minimum standards, which all states parties have agreed to observe, human rights bodies have held that speedy trial provisions place a duty on contracting states to organise their legal system to comply with the requirements of trial within a reasonable time.[246]

The study revealed that despite compliance of the legal frameworks in South Africa and Nigeria with international and regional standards, there are shortcomings in practice. In South Africa, delays are most prevalent in criminal proceedings. Many awaiting-trial prisoners spend close to 4 years without being brought to trial.[247] There are fears that some innocent persons held for long periods before acquittal come out of prison physically battered, emotionally bruised or even infected with diseases.[248] In Nigeria, the situation is even worse as significant delay is prevalent in both civil and criminal proceedings. The average time for case disposition is in the order of 6 – 10 years.[249]

5.3. General recommendations

In spite of all the efforts to reduce delay, especially in SA, the problem persists. However, documents perused during this study show that it is not impossible to eradicate delay in the administration of justice. All the respondents who participated in the 30 questionnaires and 15 interviews conducted unanimously agreed that with the necessary commitment and political will, delay in the administration of justice could be eradicated. This is consistent with earlier findings by Thomas Church et al who conducted extensive research on court delays in America and concluded that:

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245 Z Motala "Judicial accountability and court performance standards: Managing court delay." Howard University School of Law.

246 *Salesi v Italy* (1993) Series A no. 257-E, p. 60, & 24).

247 2004/2005 Report of the IJP and briefing of the SAHRC (n126 and 128 above).

248 2004/2005 Report IJP.

249 G. Ali "Panacea to Delays in judicial proceedings, in: Essays in honour of Justice Nurudeen Adekola 88 (2002) 15.

> Trial court delay is not inevitable. The crucial element in accelerating the pace of litigation in a court is concern on the part of judges with the problem of court delay and a firm commitment to do something about it. Changes in case processing speed will necessarily require changes in the attitudes and practices of all members of a legal community. Such changes are by no means impossible to effect, but they seldom come easily.[250]

In the light of the above, the following recommendations if effectively and efficiently utilised with due commitment from all stakeholders and political will on the part of the executive and legislators would go a long way in eliminating delay in African Courts in general, and South African and Nigerian Courts particularly.

5.3.1. Adopting a culture of joint responsibility

The best way towards elimination of delay involves assumption of joint responsibility by all stakeholders. There is need for parties to see litigation as a means to resolve conflict peacefully. Lawyers, prosecutors, and court personnel who benefit from unduly protracted proceedings need to change. Stakeholders in the judicial process should appreciate that as ministers in the temple of justice, it is their joint responsibility to realise the main aim and goal of courts, which is to ensure that justice is done. It is therefore recommended that stakeholders organise their work in such a way that cases can be tried justly and expeditiously. Obstruction and deliberate attempts to slow down the pace of justice should be minimised, discouraged and sanctioned.

5.3.2. Case flow management and continuous practices

As held by human right bodies, it is recommended that governments honour their obligation to ensure that their judicial systems are organised to achieve the right to trial within a reasonable time. Consequently, courts should fully utilise case flow management principles. Case flow management is defined as the management of the continuum of processes and resources necessary to move a case from filing to disposition. Case flow management operates from the realisation that increased resources (including more judges and personnel), while helpful to ameliorating the problem of court delay, are unlikely to be provided given the competition for scarce resources.[251] It prescribes that a court concerned about change in the pace of litigation should institute an organised process of discipline for all parties.[252] Rather than allowing lawyers to set the pace of litigation, it is a call for courts especially the judges to play a more active role in the management of cases before them.[253]

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250 T Church (n 15 above), J Martin (n 16 above) and E Buscagalia and Maria Dakolias (n 27 above).

251 P Sallman "The impact of case flow management on the judicial system"1995 18 *Union of New South Wales Law Journal* 195.

252. J Kakalik (n 18 above) xi-xii.

Case flow management should be utilised together with the principle of continuous practice. This principle ensures that courts are consistently and continuously firm with deadlines set for the hearing of a case. Continuous practices should operate to create an expectation on the part of all concerned that a trial will begin on the first date scheduled.[254]

Although, South Africa and Nigeria has begun to implement case flow management principles, the principle of continuous practice is yet to be adopted. It is recommended that the efficiency of the management systems already implemented should be improved through consistent and continuous application.

5.3.3. Calendaring systems

Linked to case flow management and continuous practice is the utilisation of a good calendaring system. In individual calendaring, cases are assigned to each judge who has a calendar of cases, which he or she is responsible for, from filing through trial. Master calendaring operates where the court has one master calendar of cases for all the judges combined. Different judges are assigned if they are needed for different stages of the case and no one judge has responsibility for the case as a whole.[255] Studies have shown that that courts, which use the individual calendar systems, operate faster than courts, which operate a master system.[256] It has also been proved that individual calendaring system works better with case flow management.[257] It is recommended that states adopt the most suitable system, with due consideration for timeliness and efficiency.

5.3.4. Performance standards

In order to determine whether the courts are functioning as expected and within pre-established guidelines, standards (in particular legislative numerical standards) should be developed.[258] Numerical standards refer to time limits prescribed by legislations,[259] court rules[260] and associations[261] regulating

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253 L Sipes, A Carlson, T Tan, A Aikman & R Page "Managing to reduce delay" (1990) 25.

254 T Church (n 15 above) 69.

255 J Kakalik (n 18 above) 72-75.

256 J Kakalik (n 18 above) 83, T Church (n 15 above) 72-75.

257 J Trotter & C Cooper "State trial Court Delay: Efforts at reform" (1982) 31 *American University Law Review* 213, 220 –221.

258 E Buscagalia (n 27 above).

259 See for example US Federal Speedy Trial Act 1974.

the period within which courts or judges should conduct proceedings before them. When combined with the preceding recommendations, the knowledge of time standards and fear of breaching provisions of the law would encourage judges and lawyers to take more responsibility for proceedings.

Linked to this recommendation is the need to develop a statistical information system. Keeping good statistics would enable those responsible for court administration to keep track of trends in the volume of cases, the length of the proceedings and waiting time. This facilitates planning and efficient running of the court[262]

5.3.5. Legal remedies against delays

The need to establish internal remedies for victims of delays in the administration of justice might also serve to deter actions that lead to delay. For example, where delays are as a result of the actions of a lawyer, remedies should be created to ensure the party wronged could proceed against the lawyer for damages. Where the court causes delay, a victim can proceed against the state for failing to organise their judicial system. The state can therefore appropriately discipline the judge or court official involved. Finally where delays are attributable to the litigants themselves, then they are liable to pay fines to the court or to the aggrieved party for not complying with time limits.[263]

5.3.6. Technology in courts

Courts should be appropriately equipped with sufficient technology to enable them to function efficiently. It is recommended that courts should at a minimum be provided with computers, recording systems and stenographers to facilitate efficiency and record-keeping.

5.3.7. Improved Procedures

There is need for more simplified procedures to eradicate delays. In South Africa, some interviewees were of the view that the introduction of specialised courts such as the small claims courts did not fundamentally reduce delays in the system due to the complex rules and bureaucracy that quickly developed within the courts. The existence of such rules defeats the purpose of establishing the courts

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260 Kansas Judicial Branch Rules adopted by the Supreme Court Rules Relating to District Courts <http://www.kscourts.org/ctruls/disctrls.htm> (accessed 15/10/2005).

261 See for example, American Bar Association (ABA) Standards with regard to civil and criminal proceedings1986 Supp. 1 & 2.

262 Expeditious justice (n 19 above).

263 For other examples of remedies see A Uzelac "Accelerating civil proceedings in Croatia: A history of attempts to improve the efficiency of civil litigation in: C van Rhee (n 22 above).

as cases continue to be delayed despite more courts. It is suggested that law and rule reforms should be engaged to review or create laws and rules that are better oriented to save time.

5.3.8. Disposition without trial

A civil or criminal dispute does not necessarily need to undergo trial before it can be resolved. Judicial systems that suffer from backlogs and congestion should explore non-trial ways of settling disputes such as diversion and decriminalisation mechanisms; plea-bargaining, or alternative dispute resolution. In criminal proceedings, it is trite that the interest of justice is not that an accused is prosecuted, but that a person who has wronged the state is accordingly punished. Thus where an accused is willing to admit a wrong, there is no need to proceed through the courts.

5.3.9. Political sensitivity and sensitisation

Article 25 of the African Charter on Human and People's Rights, obliges all state parties to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood. It is recommended that the incidence of increased crime and wrongdoings be reduced through concerted government efforts to make people aware of human rights and the need to respect them. A society, which is rights-based in all ramifications, will have reduced wrongdoings.

5.3.10. Regional Effort

Procedural delay is a problem that should be tackled at the national and regional (African) levels. It is suggested that Africa as a region should aim at solving the problem by either setting targets and adopting guidelines for individual states, or establishing institutions to conduct a comprehensive enquiry on the reasons for delay as well as analyse the merits of different potential remedies.

5.3.11 Other Recommendations

Other recommendations include;

1. Police should speed up investigations. In Nigeria, The DPP should also take steps to ensure that legal advice in capital offences are brought to the court promptly.
2. Courts should give liberal interpretations to the constitutional provision on speedy hearing with a view to achieving quick dispensation of justice.

3. Courts should sit on time and take little or no recess in the course of the days hearing. Magistrates and judges should only rise in very compelling circumstances, such as is ill health.
4. Parties in litigation should fully brief their counsel and pay the professional fees, to avoid applications of adjournments by counsel for the undisclosed reason of non-payment of fees.
5. Prison authorities should deliver pre-trial detainees to court at the appointed days punctually.
6. Appeal procedures should be less complicated to facilitate speedy dispensation of justice.

5.4. Recommendations peculiar to South Africa

In addition to the above recommendations, the South African government should ensure co-ordination of existing strategies. There is need for the government to either focus on a strategy that could yield best results and ensure its nation-wide implementation, or harmonise all the efforts into one effort capable of practical implementation.

In addition, the minimum sentencing legislation, which has been decried as causing delays and congestion in prisons, should either be abolished or revised.

5.5. Recommendations peculiar for Nigeria.

Nigerian government should:

5.5.1. Combat Corruption

Nigeria has been recently rated the sixth most corrupt nation in the world.[264] This is a tremendous improvement on its record over the years. However, more effort needs to be made to reduce corruption.[265] Drastic measures should be adopted to sanitise Nigeria's judicial system, and stringent measures should be taken against corrupt officials within the judicial system.

5.5.2. Specialised courts

It is recommended that specialised courts be established in Nigeria. Such courts could go a long way to relieve the load of the regular courts. The population of Nigeria is three times that of South Africa, therefore specialised courts would have a significant impact if established in Nigeria.

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264 "TI: Nigeria, 6th Most Corrupt" Thisday newspaper18 October 2005 <Countryhttp://www.thisdayonline .com/nview .php?id=31226> (accessed 18/10/05)

265 Nigeria used to be rated the most corrupt country in the world.

5.5.3. Diversion and decriminalisation

The alarming number of awaiting trial prisoners in Nigerian prisons necessitates that Nigeria should explore other means of handling criminal matters. South Africa's experiments and experiences with decriminalisation and diversion could provide useful insights.

5.5.4 Judgments and interlocutory applications and appeals

Magistrates and Judges in Nigeria should be advised to write simple and un-complicated rulings with a view to delivering them in court the same day. The habit of adjourning for days and weeks should be discouraged.

Parties and their counsel should be discouraged from filing frivolous interlocutory appeals or applications. Stringent penalties should be imposed. Another alternative with regard to appeals is to make rules or law, prohibiting appeals until the final disposition of the case on merit in the lower court. Interlocutory issues should be joined together with any appeal on merit.

5.6. Conclusion

By going through all the issues dealt with from chapters 2 to 5, the study achieved its aims and objectives and successfully proved its hypothesis. Thus, we can safely conclude by restating that delay in judicial proceedings is a result of court congestion, prolonged adjournments and backlog of judicial proceedings. It is also a function of a variety of substantive, procedural, institutional, cultural and colonially inherited factors. The only way in which delay can be eradicated is through holistically tackling all these factors.

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Van der Merwe, Wilma, Regional Court Magistrate Cape Town

Munnik, Ivan, Regional Court Magistrate, Mitchelsplain

Advocate Mohammed, H. Western Cape Provincial Head, Department of Justice and Constitutional Development

Adovocate Klopper Kenneth Court manager Justice Cape Town Center (former magistrate)

Advocate Esterhuizen, Cobus, Executive Director Cape Town Justice Center

Advocate Gerber, J.C. (SC) Deputy Director of Public Prosecution

Advocate Tarantaal, W, Senior Prosecutor, Office of the Director of Public Prosecution

Mr Taswell Papier Chairman Cape Law Society, Partner Sonnenberg Hoffman Galombik

Mr Meyer, Schalk, Director Center for Community Law and development Potchefstroom, Chairman University Legal Aid Institution of South Africa

Mr Kerfoot, William, Director Legal Resources Center, Cape Town

Mr Padayachi, Lloyd, Legal Practitioner Legal resource Center.

Mr Vrislaar, Western Cape Provincial Head South African Police Services (SAPS).

Advocate Sheehaam, Samaai Director, University of Western Cape Legal Aid Office, Belville.

Questionaires

Honourable Justice Akintayo,C.I judge of the High Court Ekiti State, Nigeria

Chief Magistrate Apuabi, J.A , Ado- Ekiti , Ekiti State Nigeria

Eke, Nonye, Magistrate Enugu State Judiciary Nigeria

Barrister Omonuwa, O.A ,Senior Advocate of Nigeria (SAN)

Barrister Akanle, A.O ,Senior Advocate of Nigeria (SAN)

Barrister Obata, Egbuna Director-General International Centre for Nigerian Law Lagos Ikoyi. Nigeria.

Barrister Adeniyi, Familoni, Director of Civil litigation, Ministry of Justice, ado-Ekiti, Ekiti State

Barrister Olabanjo, Ayenakin, Executive Co-ordinator, African Center for Human Development

Barrister Ogundele, L. O, Chairman Nigerian Bar Association Ekiti State Nigeria

Barrister Falana, Femi, Chairman West African Bar Asssociation

Barrister Uwadoka, Emmanuel, Legal practitioner Lagos, Nigeria

Barrister Nwoke, Ralph Legal practitioner, Lagos Nigeria

Barrister Igbokwe, Mike Legal practitioner, Lagos , Nigeria

Barrister Iheanacho, Princewill, Legal practitioner, Lagos, Nigeria

Barrister Ogundokun, Opeoluwa Legal practitioner Lagos Nigeria

Barrister Othuke, O. Legal practitioner, Lagos, Nigeria

Barrister Omotoso, Bamidele, Legal practtioner Ekiti State Nigeria

Barrister Okeke, Obinna, Legal practitioner, United Kingdom

Barrister Nri-Ezedi, Emeka, Legal practitioner, Onitsha, Anambra State Nigeria

Barrister Ekwerekwu, Michael, Legal practitioner , Onitsha, Anambra State Nigeria

Barrister Umeadi, J, Legal practitioner, Onitsha Anambra State

Barrister Obele-Chuka, Chuka, Legal practitioner, Onitsha, Anambra State, Nigeria

Barrister Anah, I. M. Legal practitioner Onitsha, Anambra State, Nigeria

Honurable Obichukwu, Paulinus Legal Practitioner, Onitsha , Anambra State Nigeria

Barrister. Onoiribholo, I.O Legal practitioner, Enugu, Enugu State

Barrister Mbanefo, Legal practitioner, Enugu, Enugu State, State Nigeria

Miss Obiokoye, Nneka, Final year Law student University of Nigeria Nsukka, Enugu State Nigeria

Miss Okpara, Nkemjika, Final year Law student University of Nigeria Nsukka, Enugu State

Mwenifumbo, Anganile, Head of litigation Banda, Banda & Company, Blantyre legal practitioner Malawi

ANNEXURE A

COMMUNITY
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Private Bag X17 Bellville 7535 RSA
Tel: (+27 21) 959-2950/1
Fax: (+27 21) 959- 2411
Web: communitylawcentre.org.za

LETTER OF INTRODUCTION

To whom it may concern,

This is to attest that Miss Onyinye Obiokoye Iruoma is my student. She is currently undertaking an LLM (master's degree) program with the University of Pretoria and University of Western Cape South Africa respectively.

I am also aware that she is writing a dissertation on the topic: Eradicating delay in the administration of justice in African Courts (a comparative analysis of Nigerian and South African Courts) in furtherance of which she proposes to send out questionnaires and conduct interviews.

It would be appreciated if you can be of assistance to her in that regard.

Dated this 07...day of September 2005

.....
Signed
Professor Steytler
Coordinator Community Law Center University of Western Cape
South Africa.

::

University of the Western Cape

Department of Criminal Justice And Procedure
Faculty of Law

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Fax: +27 (0) 21 959 2493

TO WHOM IT MAY CONCERN

19 SEPTEMBER 2005

OBIOKOYE ONYINYE IRUOMA
Student No: 2567508

I hereby confirm that Ms OBIOKOYE ONYINYE IRUOMA is currently enrolled for the module Constitutional Law and Criminal Justice, which form part of the LLM Degree of Human Rights and Democratisation in Africa.

Her research topic is: Eradicating delay in the administration of justice in African Courts. It would be appreciated if you can be of assistance in this regard.

Your assistance herein is appreciated. Should you need any further information, please contact Mr Hamman at Tel. 959 3376.

Yours sincerely

A J Hamman
Lecturer
Faculty of Law

QUESTIONAIRE PREPARED BY OBIOKOYE ONYINYE IN FURTHERANCE TO AN LLM PROGRAMME AT THE UNIVERSITY OF PRETORIA AND UNIVERSITY OF WESTERN CAPE RESPECTIVELY. DATED THIS 16 DAY OF SEPTEMBER 2005 AT THE UNIVERSITY OF WESTERN CAPE, CAPE TOWN, SOUTH AFRICA

Topic: Eradicating delay in the administration of justice in African Courts: A comparative analysis of Nigerian and South African courts.

Goal: to ascertain the nature, extent and causes of delay in Nigerian and South African Courts as well as the existing efforts undertaken by both countries towards eradicating or at least minimizing the problem. To this end answers required should be based not only on the personal or practice experiences of interviewees but also on any factual or statistical evidence available to the interviewee.

Caveat: This is purely an academic research, thus unsubstantiated statements will add little or no value to the purpose of the research.

QUESTIONS

1. Why is their delay in South African/Nigerian Courts?
2. What are the causes of delay in the administration of justice in South African/Nigerian Courts?
3. Do you think it is possible to eradicate delay in the administration of justice in South African/Nigerian Courts?
4. What are the consequences or results of delay in the administration of justice in South African/Nigerian Courts?
5. Give examples of factual cases where delay has occurred in South African/Nigerian Courts.
6. What are the efforts in place to help minimize or eradicated delay in the administration of justice in South Africa/Nigeria?
7. What is your opinion in respect of those efforts i.e. do you think these efforts have been successful.

8. What possible suggestions can you proffer to help reduce the problem of delay in South African Courts?

NAME:

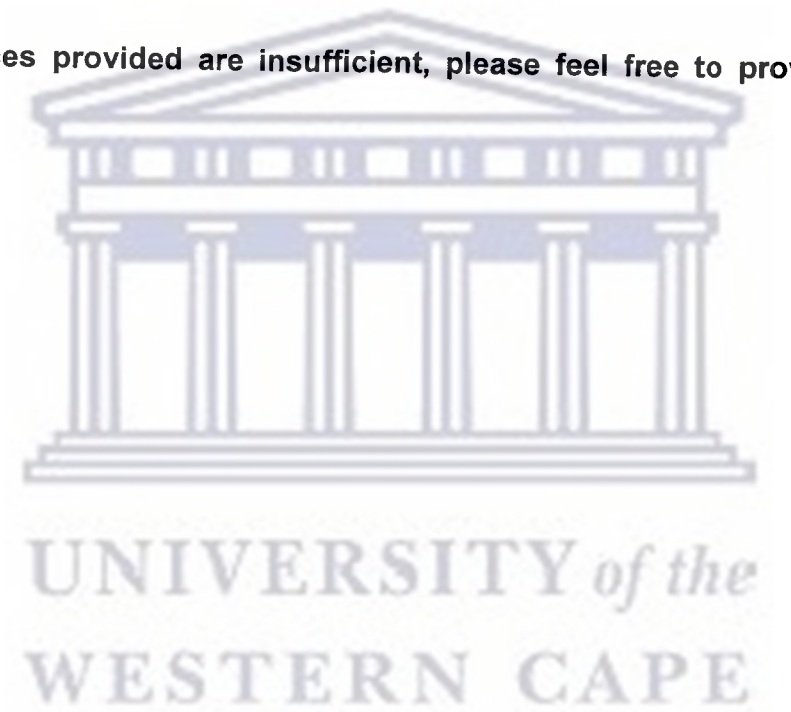
ADDRESS:

OCCUPATION:

POSITION HELD:

ANSWERS

NOTE: If the spaces provided are insufficient, please feel free to provide your own spaces.



ANNEXURE B

AUDIT OF TRIALS IN HIGH COURT

DIVISION	NUMBER COURT DAYS	TOTAL HOURS	Ave Hours	No. Finalised	% of the TOTAL finalised	Crime to 1st DC appearance	1st appearance to receipt by DPP	% referred back for further investigation	Receipt by DPP to indictment	1st DC appearance to 1st HC appearance	Indictment to 1st HC appearance	% Cases postponed	Crime to HC trial	1st DC appearance to trial	1st HC appearance to start of trial	Trial to verdict	Crime to sentence	1st DC appearance to sentence	Receipt by DPP to sentence	1st HC appearance to sentence	Trial to sentence	Conviction to sentence	Amount of cases sent for month
[illegible]																							
Apr-05	21	80:30	02:53	7	7%	78	117	86%	189	340	54	57%	544	468	127	0	544	487	360	127	0	0	
May-05	23	79:05	03:18	5	4%	38	263	100%	276	598	59	44%	674	637	39	1	675	638	375	40	1	0	7
Jun-05	28	87:30	03:21	10	7%	134	171	100%	524	752	58	75%	1067	934	151	1	1068	934	763	182	1	0	5
Jul-05	4	32:15	03:42	3	6%	411	248	100%	470	754	98	67%	1240	829	75	3	1243	832	587	78	3	0	8
Aug-05	28	101:30	03:37	5	3%	2	170	80%	303	523	50	40%	574	571	48	33	607	805	434	81	93	0	3
TOTAL	108	353:50	03:20	30	6%																		5
AVERAGE	21	70:46	03:20	28	5%	109	182	93%	348	581	54	57%	797	698	107	7	803	695	513	114	7	0	28
[illegible]																							
Apr-05	29	124:50	04:18	8	9%	70	123	89%	126	394	146	83%	505	435	41	56	829	559	438	164	124	28	
May-05	37	154:40	04:10	10	7%	168	103	70%	100	379	178	100%	623	455	73	18	679	511	408	132	59	30	8
Jun-05	29	111:30	03:50	10	7%	617	181	50%	90	427	178	100%	1110	493	68	40	1167	850	389	123	57	16	10
Jul-05	21	78:06	03:43	7	15%	75	92	71%	110	407	204	71%	436	421	14	72	565	610	418	103	89	18	10
Aug-05	15	144:00	04:06	8	6%	64	137	73%	133	459	188	69%	503	409	30	30	581	527	391	68	38	8	7
TOTAL	161	813:06	04:03	44	8%																		9
AVERAGE	30	122:57	04:03	44	7%	218	126	70%	111	414	178	91%	678	462	48	48	748	632	407	118	70	22	44
[illegible]																							
Apr-05	96	308:46	03:16	8	3%	494	323	75%	198	721	189	38%	1245	751	30	87	1374	881	567	180	129	42	
May-05	101	323:15	03:12	8	4%	12	218	83%	95	621	308	50%	846	534	13	25	884	672	455	51	38	13	8
Jun-05	60	167:25	02:47	6	6%	12	177	88%	148	877	355	38%	743	731	64	108	806	854	677	177	123	15	6
Jul-05	36	36:40	01:24	0	0%	0	0		0	0	0		0	0	0	0	0	0	0	0	0	0	0
Aug-05	136	409:41	02:48	0	5%	5	109	75%	103	551	278	50%	810	805	54	69	709	704	595	153	99	30	0
TOTAL	428	1245:48	02:54	30	5%																		8
AVERAGE	86	249:06	02:54	30	5%	143	230	80%	143	866	293	43%	850	707	41	78	955	812	582	146	105	27	30
[illegible]																							
Apr-05	22	68:40	03:01	5	63%	1781	74	80%	80	243	109	84%	2130	349	107	54	2184	403	320	161	54	0	
May-05	64	196:50	03:16	8	50%	598	158	100%	137	424	129	33%	1074	475	51	83	1141	542	384	118	67	4	5
Jun-05	46	126:00	03:07	12	75%	12	143	53%	71	337	123	27%	366	343	6	34	304	372	229	25	20	4	6
Jul-05	8	28:00	03:41	3	75%	9	195	100%	97	388	96	33%	419	410	23	53	472	483	268	76	53	0	15
Aug-05	78	72:50	03:38	12	4%	45	89	50%	38	372	230	58%	495	490	77	29	531	488	337	113	93	14	3
TOTAL	150	490:50	03:16	36																			12
AVERAGE	30	98:10	03:18	41	53%	323	128	83%	71	352	153	41%	723	393	47	35	784	440	313	68	41	8	41
[illegible]																							
Apr-05	33	97:50	04:15	3	38%	32	57	100%	87	281	127	67%	392	359	78	71	483	451	384	170	82	21	
May-05	34	117:15	03:15	8	50%	72	117	50%	48	363	137	33%	541	470	107	13	570	498	381	135	23	15	3
Jun-05	36	141:15	04:02	4	25%	3	328	80%	72	507	196	50%	657	565	68	9	698	664	336	87	9	1	6
Jul-05	28	101:05	03:36	1	25%	0	0	29400%	0	2	1	29400%	2	2	0	0	2	2	2	0	0	0	4
Aug-05	80	253:10	03:09	11		74	190	84%	95	415	131	27%	452	427	12	10	473	449	250	34	22	12	1
TOTAL	202	14:35	03:31	25																			11
AVERAGE	40	142:07	03:31	25	38%	32	172	84%	80	421	170	30%	503	470	48	19	535	502	331	62	32	13	25
[illegible]																							
Apr-05	46	184:30	03:39	8	9%	1125	88	75%	70	257	119	63%	1478	353	86	80	1548	421	354	164	80	8	
May-05	86	314:05	03:18	12	9%	336	138	75%	93	394	163	33%	808	472	79	38	858	520	382	127	48	9	8
Jun-05	75	288:15	03:39	14	12%	10	189	93%	71	402	161	33%	431	421	19	20	454	445	255	43	23	3	12
Jul-05	36	130:36	03:37	4	8%	9	151	100%	87	426	151	25%	452	443	17	62	513	504	353	78	61	8	19
Aug-05	100	326:00	03:15	23	14%	35	142	57%	66	393	142	43%	474	439	68	16	503	488	326	75	29	13	4
TOTAL	352	1201:25	03:24	63	11%																		23
AVERAGE	70	240:17	03:24	68	12%	178	150	84%	70	388	161	29%	613	435	65	27	549	471	322	86	37	8	65
[illegible]																							
Apr-05	33	134:30	04:04	4	4%	5	180	100%	285	645	201	0%	650	645	0	55	748	740	560	95	95	0	
May-05	48	186:15	03:52	8	4%	7	476	17%	30	641	135	17%	691	685	44	5	686	690	214	49	5	0	4
Jun-05	41	152:00	03:42	5	4%	10	141	100%	134	475	200	20%	524	514	39	4	533	623	352	48	10	5	6
Jul-05	14	68:00	04:15	1	2%	2	306	0%	39	806	521	100%	875	873	7	64	1040	1030	732	172	165	101	5
Aug-05	53	200:35	03:47	7	4%	161	97	71%	183	448	188	14%	833	471	25	15	648	486	309	40	15	0	1
TOTAL	181	741:20	03:52	23	4%																		7
AVERAGE	36	148:16	03:52	23	4%	64	225	85%	138	566	193	17%	838	584	28	26	869	818	390	60	32	8	23
[illegible]																							
Apr-05	11	41:10	03:44	1	1%	2	126	100%	12	267	130	100%	433	431	184	94	877	525	400	258	94	0	
May-05	18	51:35	07:13	3	2%	8	237	100%	8	327	92	33%	391	383	56	33	426	417	100	88	30	0	1
Jun-05	34	124:25	03:39	7	5%	253	166	100%	44	321	122	29%	815	382	41	5	824	371	218	50	9	4	3
Jul-05	7	08:15	03:07	1	2%	3	184	100%	38	289	89	100%	407	404	115	24	431	428	284	139	24	0	7
Aug-05	37	128:05	03:24	9	6%	285	143	73%	20	281	98	11%	546	281	0	41	507	301	158	41	41	0	1
TOTAL	100	340:30	03:24	21	4%																		9
AVERAGE	20	69:54	03:29	21	4%	208	161	90%	27	282	106	20%	536	327	38	29	586	368	197	68	21	1	21
[illegible]																							
Apr-05	39	143:36	03:40	7		90	126	0%	78	364	162	43%	544	454	80	1	545	454	329	91	1	0	
May-05	96	332:15	03:27	12		138	253	14%	80	500	287	38%	802	684	84	15	818	600	420	80	16	1	7
Jun-05	89	319:39	03:35	15		68	148	21%	135	603	319	28%	730	582	56	16	747	679	630	78	17	2	14
Jul-05			#DIV/0!	4		2	1	0%	3	8	4	0%	14	12	3	2	16	13	12	5	2	0	17
Aug-05	82	346:10	04:13	17		130	192	19%	119	495	184	41%	735	587	100	6	741	603	412	109	6	0	4
TOTAL	306	1141:39	03:43	56																			17
AVERAGE	77	285:24	03:43	59	10%	115	180	17%	111	543	253	37%	748	833	88	18	786	651	472	108	19	1	69
[illegible]																							
Apr-05	48	109:40	03:32	6		79	17	33%	73	291	142	33%	383	304	72	18	401	322	304	90	18	0	
May-05	103	352:20	03:25	12		87	145	17%	94	373	134	42%	482	395	22	57	539	452	308	78	57	0	9
Jun-05	104	357:10	03:22	15		180	102	20%	120	301	79	30%	529	349	48	13	543	382	251	82	13	0	12
Jul-05			#DIV/0!			0	0	0%	0	0	0	0%	0	0	0	0	0	0	0	0	0	0	10
Aug-05	118	361:30	03:03	22		77	65	0%	29	147	53	30%	305	209	62	59	345	268	203	122	59	0	0
TOTAL	375	1240:40	03:18	57																			22
AVERAGE	94	310:10	03:18	53	9%	99	82	13%	86	241	91	36%	393	294	52	43	436	337	255	95	43	0	59
[illegible]																							
Apr-05	47	313:15	03:38	13	16%	64	88	18%	74	293	151	38%	450	374	88	10	468	304	316	90	18	0	
May-05	155	694:35	03:26	24	18%	113	109	15%	77	488	211	39%	642	530	43	38	679	568	368	80	37	1	18
Jun-05	155	876:49	03:28	34	22%	124	126	44%	126	452	180	51%	630	505	64	14	648	521	398	69	15	1	28
Jul-05	4	00:00	#DIV/0!	1	8%	2	1	0%	3	8	4	0%	14	12	3	2	16	13	12	5	2	0	27
Aug-05	244	707:40	03:22	39	25%	214	257	10%	147	641	238	78%	1020	806	186	65	1085	871	615	230	65	0	4
TOTAL	581	2382:19	03:29	112	20%																		38
AVERAGE	136	476:27	03:29	112	20%	107	131	15%	80	382	172	37%	570	463	71	30	601	444	363	102	31	1	112
[illegible]																							
Apr-05	182	584:10	03:15	21	22%	81	172	87%	124	800	203	52%	850	589	89	60	720	859	487	159	70	10	
May-05	191	629:05	03:17	25	18%	102	172	58%	147	509	151	46%	637	584	75	18	728	625	454	116	41	22	21
Jun-05	112	375:15	03:21	19	14%	54	263	56%	245	738	247	50%	870	816	80	25	924	870	607	114	56	29	24
Jul-05	43	137:25	03:11	6	13%	373	79	83%	162	374	143	33%	811	438	63	76	918	545	466	170	107	32	18
Aug-05	134	577:40	03:08	26	15%	130	183	44%	140	522	199	64%	777	647	124	64	866	730	556	216	92	8	6
TOTAL	712	2313:35	03:14	97	17%																		25
AVERAGE	142	462:43	03:14	93	16%	106	187	58%	159	548	204	55%	745	637	66	50	813	705	516	155	68	16	94
[illegible]																							
Apr-05	63	205:55	03:16	10	11%	6	164	40%	166	450	181	70%	525	519	69	42	579	574	470	124	55	12	
May-05	82	330:30	03:35	18	14%	91	122	63%	141	465	202	74%	651	571	108	78	748	693	536	193	87	9	10
Jun-05	94	337:15	03:48	10	7%	30	115	50%	92	374	168	60%	424	394	20	92	516	486	372	113	92	1	19
Jul-05	49	158:45	03:15	13	27%	38	148	85%	106	487	233	54%	837	598	111	56	718	879	531	192	81	26	10
Aug-05	88	252:01	02:51	14	9%	11	157	54%	137	557	203	46%	615	604	47	15	632	621	464	64	16	1	13
TOTAL	386	1305:26	03:22	66	12%																		13
AVERAGE	77	261:05	03:22	65	11%	42	130	80%	130	471	212	63%	600	548	78	57	657	616	495	144	68	10	65
[illegible]																							
Apr-05	13	33:20	02:33	2	2%	18	54	50%	129	219	37	50%	236	219	0	1	247	230	170	11	11	10	
May-05	35	118:00	03:27	9	7%	11	100	0%	40	208	67	89%	299	288	80	19	319	309	208	101	21	1	2
Jun-05	13	48:30	03:43	7	5%	201	83	14%	32	209	94	57%	486	285	78	2	498	287	204	78	2	0	9
Jul-05	17	67:16	03:22	2	4%	2	56	50%	112	203	36	50%	424	422	220	10	434	432	377	230	10	0	7
Aug-05	34	145:05	04:16	5	3%	10	91	0%	51	193	49	140%	318	307	114	3	321	311	220	118	3	0	2
TOTAL	112	402:10	03:35	25	4%																		5
AVERAGE	22	80:26	03:35	25	4%	64	86	12%	53	208	66	76%	360	298	90	9	370	307	220	101	11	1	25
[illegible]																							
Apr-05	165	562:55	03:24	10	11%	310	160	44%	39	343	124	78%	792	402	139	81	877	567	387	224	84	4	
May-05	197	711:45	03:36	17	13%	268	124	41%	42	276	110	71%	673	415	140	47	717	479	358	204	84	17	9
Jun-05	105	348:05	03:08	13	10%	88	183	31%	49	328	96	85%	548	480	134	56	655	560	386	243	109	52	17
Jul-05	62	179:25	02:49	7	15%	13	73	43%	29	299	139	66%	422	410	174	199	659	646	573	411	237	37	13
Aug-05	494	834:05	03:20	14	9%	117	192	21%	158	475	128	59%	739	522	147	60	818	703	511	227	81	21	7
TOTAL	723	2429:15	03:21	61	11%																		14
AVERAGE	145	485:51	03:21	60	11%	167	155	35%	56	338	115	60%	849	483	144	75	750	583	428	245	101	28	60
[illegible]																							
Apr-05	746	2549:50	03:25	84	100%	205	136	67%	137	403	140	50%	603	479	76	57	751	548	410	143	87	10	
May-05	1035	3579:50	03:27	136	100%	104	155	57%	85	446	155	54%	818	514	68	29	857	553	358	107	39	10	94
Jun-05	788	2711:59	03:26	136	100%	139	160	82%	141	470	169	55%	677	538	68	33	722	583	472	113	45	12	137
Jul-05	278	871:40	03:04	48	100%	84	128	53%	105	369	141	59%	525	441	73	50	596	511	392	143	71	20	132
Aug-05	1493	3624:22	03:10	159	100%	94	150	52%	129	458	166	57%	623	529	73	39	670	570	418	119	47	7	46
TOTAL	3842	13132:41	03:21																				157
AVERAGE	768	2467:32	03:23	572	100%	125	154	60%	119	429	154	57%	625	500	71	42	679	554	400	125	54	12	568

ANNEXURE C: AFFIDAVIT AND LETTER OF PRISONERS

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

In the matter between:

PRISON CARE AND SUPPORT NETWORK **First Applicant**
(Under the auspices of the Catholic Church)

WJ **Second Applicant**

and

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA **Respondent**

AFFIDAVIT

I the undersigned **Wynand Jordaan** do hereby make oath and say:-

1. I am an adult male born on 25 September 1968 in Cape Town, presently of Helderstroom Prison in the Overberg Cape. The facts herein contained are within my own knowledge unless otherwise indicated.

2. I am the Second Applicant in this matter. I am bringing this application in my own capacity and in the public interest.

3. I grew up in Parow and attended Tygerberg High School.

4. I matriculated in 1987 and attended military service. I then worked at the Santam Bank for a year before starting as a property developer. I began

my own property development business in 1993, and also operated a restaurant business between 1999 and 2001.

5. In 1995, I pleaded guilty to charges of cheque fraud in the amount of R1.2 million.

6. I was sentenced to 5 years imprisonment. I appealed against the sentence, but the appeal was unsuccessful.

7. The Magistrate sentenced me to 12 months without parole and my expectations were that I would only face 12 months imprisonment.

8. On 29 May 1997, I began to serve my sentence at Pollsmoor Medium B. Approximately 2-3 months later, I requested and obtained a transfer to Worcester Prison.

9. In February 1998, I was been transported back from court to prison when the warder left me alone at a restaurant in Sanlam Shopping Centre. I took advantage of his absence to escape.

10. On 26 December 2003, I was rearrested near Port Elizabeth.

11. I was initially taken to Humansdorp Police Station, then transferred to Bellville Police Station on 31 December 2003 and held there.

12. On 6 January 2004, I was transferred from Bellville to Goodwood Prison and placed in the Maximum Security section.

13. In about June or July 2004, I was sentenced to an additional 12 months for having escaped.

14. I was also informed by the Parole Board that the old provisions of the Criminal Procedure Act did not apply to me anymore and that I would have to serve 80% of my sentence in detention.

15. At the end of June 2005, the Minister of Correctional Services granted a 20 months amnesty to those prisoners that had committed non-violent crimes. I was also granted an extra 2 months of amnesty because I had handed in prohibited weapons in prison. I have already served, in total, approximately 30 months of my sentence and I expect that I will be released on parole in around March or April 2006.

Goodwood Prison

16. At Goodwood Prison, I was placed in a communal cell. The cells can accommodate up to 20 prisoners and had 20 beds. However, the cell was constantly overcrowded, with between 24 to 28 prisoners there on any given day. In the worst cases, there were 30 prisoners in the cell.

17. Gang members dominated the cell, and there were approximately equal numbers of gang members from the 26s and 28s.

18. Gang members controlled the set up of the cell and bed allocations were entirely dictated by them. Those without beds slept on the floor or had to

share beds. The gang members shifted the non-gang members around as they saw fit.

19. I think I spent at least 40% of my time sleeping on the floor.

20. I suffer from asthma and I had requested a single cell but was told that it was not possible. Most of the other inmates were heavy smokers, therefore forcing me to passive smoke.

21. We were given 1½ hours of exercise each day. This consisted of either walking in the courtyard or playing pool.

22. I was not given any training or educational opportunities. There were no work opportunities.

23. Approximately once every second or third week, I was allowed to visit the prison library. However, we were not allowed reading materials from outside of the prison.

24. There was a television in the cell and it cost R90 per month. I usually paid for the television and there was a general agreement that as I paid for the television, I would be able to choose the channels from time to time and watch the rugby.

25. During my imprisonment at Goodwood, I was often approached by gang members from both 26s and 28s to join them. I was repeatedly asked to

perform tasks for the gangs. When I refused to work with the 26s and 28s, I was repeatedly threatened by gang members.

26. Generally, I had more confrontations and harassment from the 28s.

27. The 28s were powerful and even the warders would often threaten inmates with the suggestion that if they should step out of line they would be placed in cells with the 28 gang to be raped.

Dispute with inmates

28. In the beginning of August 2004, I got into a fight with the other inmates about TV channels. I wanted to watch the rugby as South Africa was playing a Tri-nations game. The gang members switched the TV to soccer and when I said that I wanted to watch rugby and reminded them that I paid for the television, they ignored me. When I tried to switch the TV back to rugby, some of the 28s grabbed, hit me and threatened me.

29. The next morning, I went to the Unit Manager Mr Zeelie and complained. I told him about the threats and told him that I was nervous and wanted to get out of the communal cell. I asked for a single cell and said that I did not want to be in the communal cell with the gang members and their smoking.

30. Mr Zeelie told me that it was impossible to put me in a single cell. Instead, he took me back to the cell and called everyone in the cell to listen. He told the other inmates about my request to move and my

complaints. The 28s began to again threaten me, even in front of Mr Zeelie. The 28s called me a "Vuilgat!".

31. One night in the next week, I observed another member of 28s putting two knives under his bed. I was very frightened and the next day, when everyone left the cell for exercise, I took the knives from under his bed and handed them to Mr Zeelie. I again requested to be moved and told him that I was worried about being attacked. But Mr Zeelie ignored my request and told me to go back to my cell.

32. Over the next 4-5 days, I was constantly nervous and felt that there was a heightened sense of tension in the cell. I made a few more complaints to various warders but no action was taken and I was not transferred out of the cell.

The Attack

33. On Thursday 28 August 2004, I went to the toilet early in the morning at about 2.30 AM.

34. While I was sitting on the toilet, I noticed that a member of the 28s came into the toilet briefly and then left. He was a gang member who had previously threatened me and I had already made complaints to the warders about him.

35. Shortly afterwards, a group of 28s came into the toilet. Before I had the time to stand up from the toilet, a wet towel was wrapped around my head and I was pulled off the toilet with my pants still around my knees.

36. I could not see or breathe properly because of the towel, and I fell onto the floor. I was then repeatedly kicked and beaten on the toilet floor. I could not defend myself and I tried desperately to breath through the towel.

37. I then felt something being pushed into my rectum. I was in extreme pain and struggled to breath.

38. During the attack, I lost consciousness.

39. I was found the next morning on the floor of the toilet. I was in extreme pain all over my body.

40. I was taken to the District Surgeon but then transferred to the rape centre in Karl Bremmer Hospital about 12hours later.

41. I suffered multiple bruises on my jaw, arm, leg; extensive scratches on my back, chest and buttocks; and an abrasive wound on my nose. I also suffered from bruising around my anus, scratch marks and inflammation around that area, and I was swollen around my rectum.

42. I was treated for these injuries and returned to Goodwood Prison at about midnight that night.

Return to Goodwood Prison

43. When I returned to Goodwood Prison, I was placed in another section of the prison but again in a communal cell - again with gang members.

44. After two weeks, the warders told me that I was to be transferred back to a communal cell in the old section where I was attacked. I refused and said that I could not return to where I was raped. Instead, I was transferred to the hospital section of the prison.

45. I was given anti-AIDS medication while I was in the hospital section.

46. I stayed in the hospital section until January 2005, and then I was transferred back to Section G10-B but in a single cell.

Treatment and Counselling

47. Since the attack, I have had 3 HIV/AIDS tests and I have tested negative. The last test was in December 2004.

48 I have not received any psychological counselling or assistance. I have repeatedly requested counselling and spoke to social workers, sisters and sectional members of the prison. My girlfriend also raised the issue with the warders. A social worker at Goodwood stated that she would make an appointment for a psychologist for me, but nothing happened.

Investigation and Reporting

49. The attack was reported to the local Goodwood Police Station. The police took a statement from me when I was being treated at the Karl Bremmer Hospital and a case was opened. However, the matter was later dropped and I was told that there were no eye-witnesses and therefore there is no case.

50. I wrote to the Pro Bono Chairman of the Cape Bar in November 2004 asking for help. A copy of the letter is annexed and marked "**WJ1**".

51. The officers at Goodwood Prison did not take a statement from me until approximately 5 or 6 months after the attack. Again, no one was found to be responsible for the attack because there were no eye-witnesses.

Transfer to Helderstroom Prison

52. At approximately the end of June and beginning of July 2005, my civil claim for damages against the Department of Correctional Services for injuries arising out of the attack in Goodwood Prison was submitted.

53. At about the same time, I noticed an increased hostility in the warders. They became much colder towards me and their manner was abrupt. Shortly after, I was transferred from Goodwood Prison to Helderstroom Prison. I did not request the transfer and I was told by Mr Adams, the head of the prison, that the transfer was for "safety reasons".

54. When I arrived at Helderstroom Prison, from comments that were made to me, I realized that everyone – inmates and warders – were aware of my history as a rape victim and of the court case.

55. I am currently in a single cell at Helderstroom Prison in the maximum security section. I have almost no contact with other people.

56. I can only shower 3 times a week and I get 1 hour of exercise per day. There is no television in the cell; no training or education opportunities and I am not given work opportunities. I am not allowed any books or other materials from outside.

57. For 23 hours of the day I have no activities whatsoever.

58. I have been feeling unwell and have been suffering from severe headaches. I requested to see a counsellor and doctor when I was first transferred to Helderstroom Prison, but have not received any medical attention yet. It has been approximately two months since I first asked to see a doctor.

59. I have read the Notice of Motion and the Affidavit of the First Applicant and ask that the Honourable Court grant the relief sought therein.

60. I submit that the matter is one of urgency both in respect of my situation and that of prisoners in general, particularly in respect of my right to medical treatment; psychological treatment and counselling as a victim

of sexual violence; as well as to conditions of detention which are consistent with human dignity.

61. I submit that for reasons of privacy and my obvious fear of reprisals by prison gangsters that my identity should not be disclosed in any way.

Wynand Jordaan

I certify that on this 12th day of September 2005, in my presence at CAPE TOWN the deponent signed this declaration and declared that he:

a) knew and understood the contents hereof;

b) has no objection to taking this oath;

c) considered this oath to be binding on his conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".

HOOF: KORREKTIEWE DIENSTE
HELDERSTROOM MAKSIMUM
PRIVAATSAK/PRIVATE BAG X051
2005 -09- 12
CALEDON 7230
HELDERSTROOM MAXIMUM
HEAD: CORRECTIONAL SERVICES

COMMISSIONER OF OATHS

WJ1 538

A AND Chairman: Wynand Jordaan
97529604
Hosp. Dep.
To who it may Concern: Goodwood Prison.
26.11.2004

Dear Sir

I am a prisoner in Goodwood Prison and was assaulted and Sodomised by inmates that is Gang Related. I make a S.A.P. case. But thus far I had no response from prison authorities.
It happened on the 28.8.2004. Until now I received anti HIV-treatment.
Mentally and Physically I am out of line I am very depressed and feel I can do a lot of damage to myself.

I want to take legal action but don't know how and also don't have the finances. I want to see the Min. of Correctional Services

Can you please Help me with advice or legal Rep.

Yours Sincerely
[signature]

ANNEXURE D: EXTRACT2004/2005 REPORT OF THE INSPECTING JUDGE OF PRISON

Gideon Morris
083 286 7428
ANNEXURE C

Annual Report for the period 1 April 2004 to 31 March 2005

Submitted to Mr Thabo Mbeki,
President of the Republic of South Africa

Mr Ngconde Balfour, Minister of Correctional Services

and

Ms Cheryl Gillwald, Deputy Minister of Correctional Services

by

The Inspecting Judge of Prisons
Judge Johannes Fagan

in compliance with section 90 (4) of the
Correctional Services Act 111 of 1998.

JUDICIAL INSPECTORATE OF PRISONS
PRIVATE BAG X9177
CAPE TOWN
8000
TEL: (021) 421-1012/3/4/5
FAX: (021) 418-1069
WEB SITE: http://judicialinsp.pwv.gov.za

9th Floor
1 Thibault Square
c/o Long and Hans
Strijdom Streets
CAPE TOWN

REGIONAL OFFICE: GAUTENG
PRIVATE BAG X153
CENTURION
0046
TEL: (012) 663-7521
FAX: (012) 663-7510

265 West Lane
Momentum Tuinhof
Karee (West Block)
CENTURION

RELEASES	2003	2004
Type of Release		
Medical	117	76
Bail pending appeal	345	311
Deportation/repatriation	1 827	2 543
Detainees	2 873	2 888
Warrant of Liberation	4 617	4 952
Awaiting-trial transferred to SAPS	5 917	1 221
Parole Board prisoners	11 304	10 211
Fine paid	12 423	15 391
Parole Non-Board prisoners	13 148	10 834
Sentenced prisoners on sentence expiry date	18 980	20 607
Awaiting-trial bail paid	44 174	64 029
Awaiting-trial to court not returned from court	199 058	225 373
Total	**314 783**	**358 436**

7.3 Awaiting-trial prisoners

52 326 (28%) of our total of 187 446 prisoners are awaiting the commencement or finalisation of their trials in court. They are held all over the country at prisons nearest the court where their cases are to be heard. Awaiting-trial prisoners are not involved in any rehabilitation programmes. They do not receive any training or schooling, seldom have access to any recreational activities. They are held awaiting trial for periods ranging from days to 4 years and more.

Unsentenced Cases Longer than 3 months in Custody : 2005/01

	DURATION IN MONTHS							
PROVINCES	>3 - 6	>6 - 9	>9 - 12	>12 - 15	>15 - 18	>18 - 24	> 24	Total
Eastern Cape	1029	475	274	163	99	115	77	2232
Free State	554	227	177	119	58	39	64	1238
Gauteng	3481	1786	1212	828	513	616	647	9083
Kwazulu/Natal	1746	1159	401	322	193	220	220	4261
Limpopo	259	63	43	29	30	36	37	497
Mpumalanga	553	211	150	75	52	50	21	1112
North West	356	179	117	90	55	56	50	903
Northern Cape	179	48	23	14	5	3	8	280
Western Cape	1281	581	364	280	226	296	300	3328
Totals	9 438	4 729	2 761	1 920	1 231	1 431	1 424	22 934

The Inspectorate contends that there are at least 30 000 too many awaiting-trial prisoners in our prisons.

7.4 Sentenced prisoners

135 120 of our total of 187 446 prisoners are serving sentences ranging from a few days to life imprisonment. 2 359 are in prison because they are too poor to pay their fines. Below is a table showing the age and sentence categories as at 31 January 2005.

	AGES			
SENTENCE GROUPS	< 20 Years	20 - 25	> 25 Years	All Ages
0 – 6 Months	952	2000	2722	5674
>6 - 12 Months	892	1982	2536	5410
>12 - <24 Months	906	2007	2849	5762
2 – 3 Years	2246	6522	9041	17809
>3 - 5 Years	1594	5886	9248	16728
>5 - 7 Years	635	3864	7635	12134
>7 - 10 Years	694	5647	14890	21231
>10 - 15 Years	512	5723	16903	23138
>15 - 20 Years	166	2346	8080	10592
>20 Years	112	1605	7480	9197
Habitual Criminal	0	8	1491	1499
Life Sentence	44	1141	4560	5745
Periodic	2	2	7	11
Day Parole	0	1	20	21
Reformatory	10	6	21	37
Ordered by Court as Dangerous	0	5	29	34
Death Sentence*	0	1	96	97
Mental Instability	0	0	1	1
Totals	8765	38746	87609	135120

*Prisoners awaiting conversion of sentences following the abolition of the death sentence

The Inspectorate contends that there are at least 35 000 too many sentenced prisoners in our prisons.

7.5 Women

There are 4 143 women in our prisons (as at 31 January 2005). That represents 2.2% of the total prison population which reflects most favourably on our women when compared to Canada's 9%, Australia's 7%, USA's 6.9% and England and Wales' 6%.

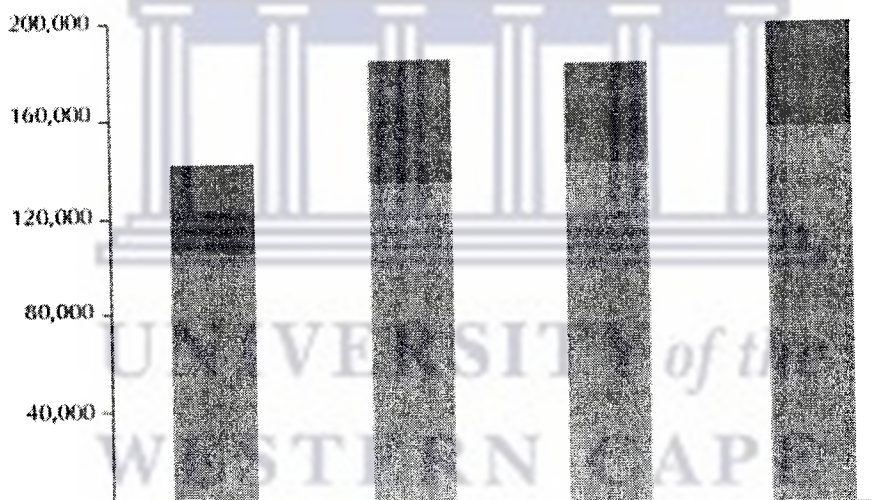
The 4 143 is represented by 1 098 awaiting-trial and 3 045 sentenced prisoners. 84% of the women are mothers of whom 55% have all but lost contact with their children. (There are 318 infants under 5 years in prison with their mothers).

ANNEXURE E

GRAPH SHOWING THE PATTERN OF OUTSTANDING CASES IN SA LOWER COURTS UNTIL 2002

At the end of 2002, 199,732 lower court cases were outstanding or had not been finalised (Figure 14). The increase in the backlog of outstanding cases is worrying as the backlog is high, given that the number of outstanding cases at the end of 2002 was equal to almost half of all cases prosecuted during that year.

Figure 14: Number of lower court cases outstanding at the end of the year, 1999 - 2002



	1999	2000	2001	2002
Regional Court	37,570	50,427	40,422	44,471
District Court	104,929	133,826	141,216	155,261
Total	142,499	184,253	181,638	199,732

Source: NPA Court Management Unit

ANNEXURE F: MINUTES OF PROVINCIAL MEETING

AGENDA
PROVINCIAL STAKEHOLDER MEETING
07 OCTOBER 2005 AT 09H30
VENUE : NPA BUILDING, 115 BUITENGRACHT STR, 4TH FLOOR

1. **WELCOME**
2. **ATTENDANCE REGISTER & APOLOGIES**
3. **MINUTES OF PREVIOUS MEETING**
4. **MATTERS ARISING FROM THE MINUTES**
5. **AGENDA**
   - 5.1 COURT PERFORMANCE
   - 5.2 AWAITING TRIAL PRISONERS
     - Children in custody
     - Report back – Case Review Teams
   - 5.4 SAPS/PRIORITY CRIMES
   - 5.5 JUDICIAL INSPECTORATE OF PRISONS
   - 5.6 CAPE BAR COUNCIL
   - 5.7 DEPARTMENT OF JUSTICE
   - 5.8 DEPARTMENT OF HEALTH
   - 5.9 SOCIAL SERVICES
   - 5.10 LAW SOCIETY
   - 5.11 JUSTICE CENTRES
   - 5.12 BUSINESS AGAINST CRIME
   - 5.13 CASE FLOW MANAGEMENT
   - 5.14 COMMUNITY COURTS
   - 5.15 PRIORITY COURT
   - 5.16 SPECIAL COMMERCIAL CRIME COURT

   SHORT BREAK

   - 5.17 NPS WCAPE PERFORMANCE EVALUATION
   - 5.18 IMPLEMENTATION – JOB EVALUATION
   - 5.19 CORPORATE SERVICES MATTERS
   - 5.20 REPORT : PROJECT PHAKAMA
   - 5.21 PLEA BARGAINING
   - 5.22 AFU REFERRALS
   - 5.23 POCA PILOT TARGETS
   - 5.24 PLEA BARGAINING TARGETS
   - 5.25 MINIMUM SENTENCES
   - 5.26 SEXUAL OFFENCES AND COMMUNITY AFFAIRS/MAINTENANCE
   - 5.27 SKILLS DEVELOPMENT
   - 5.28 GENERAL
6. **NEXT MEETING**
7. **ADJOURNMENT**

MINUTES OF THE PROVINCIAL STAKEHOLDER MEETING HELD ON FRIDAY, 02 SEPTEMBER 2005

ATTENDANCE REGISTER

NAME	DEPARTMENT/ORGANISATION
R J de Kock	Director of Public Prosecutions
P van der Merwe	Deputy Director of Public Prosecutions
J C Gerber	Deputy Director of Public Prosecutions
Judge Fagan	Judicial Inspectorate of Prisons
A T Fritz	Judicial Inspectorate of Prisons
H Mohamed	Department of Justice
C Esterhuizen	Legal Aid Board
J Roman	Cape Law Society
J E le Grange	Department of Correctional Services
C Quickfall	Social Services & Poverty Alleviation
A Rabie	Business Against Crime
N Paulse	Area Boland Detectives
Capt K A Rix	SAPS Area Detectives
Capt J Wolmarans	SAPS Area Detectives
Supt Asperino	SAPS Area SCape
Snr Supt Vrieslam	Detective Service
A Smith	Chief Public Prosecutor, Cape Town
M Greenwood	Senior Public Prosecutor, Cape Town
D Fitshen	Senior Public Prosecutor, Cape Town
M J Groenewald	Senior Public Prosecutor, Wynberg
L Louther	Chief Prosecutor, Mitchell's Plain
L Zantsi	Senior Public Prosecutor, Athlone
V Mhlanga	Senior Public Prosecutor, Khayelitsha
B Walters	Chief Public Prosecutor, George
D M Redelinghuys	Senior Public Prosecutor, George
E Cross	Chief Prosecutor, Bellville
K Botes	Senior Public Prosecutor, Kuilsrivier
C Mostert	Senior Public Prosecutor, Worcester
J E Williams	Senior Public Prosecutor, Paarl
B Pithey	Senior State Advocate

APOLOGIES

N Snitcher	Law Society
Adv Uijs	Cape Bar Council
Director Mollo	SAPS
Mr Jones	Maintenance Officer

Notes of Provincial Stakeholders meeting on 7 October 2005 by Onyinye Obiokoye , Chaired by the Director of Public Prosecution: Mr De Kock

Discussion:

1. **Efficiency and effectiveness of the justice system:** The need for improvement was apparent from the reports of the various stakeholders. Delays still occur in the administration of justice and the prosecution and investigation of crimes still suffer from huge bottlenecks.
2. **Case flow Management and Court Management:** both the stakeholders and the courts hold regular meetings at least once a month to discuss the problems of the judicial system with a view to help reduce the problem of delay in the finalisation of cases before the courts. The Judge President chairs the one by the courts.
3. **Formal Case flow guide Document:** a formal case flow guide document has been approved and published as well as circulated to the various stakeholders to enable them ensure the efficiency and effectiveness in their managements of their roles in ensuring prompt finalisation of cases.
4. **Western Cape has been ranked 1 to 10 in concluding prosecutions at the national level.**
5. **Children:** There are terrible delays in finalising cases relating to children; sometime it takes up to 9 months to bring a child to trial.
6. **DNA tests, Inquests and other tests**: Complaints by prosecutors that this often takes months before results are released to be used in courts. This was blamed on the inefficiency of the police special services and systems put in place by the government to conduct such tests.

On a comment that the courts should be made to understand the problems of the prosecution in acquiring evidence especially in regard to test results, the Chairman reminded the meeting that systemic delays are the responsibility of the state. The systemic excuses made by the prosecution are because the state does not organise their affairs. It is time that something is done about this, to instil public confidence in the courts and the entire judicial system. The newspaper reports on delays and backlogs do not augur well with the efficient running of the system.

More causes of delay:

1. Some magistrates have refused to sit after hours or during weekends to attend to confessions and bails.
2. Secondly, magistrates in the meeting complained that most times accused are not brought promptly to court or not even brought at all, this trial do not go on. An incident, in which a magistrate complained that trials did not go on for a whole week due to failure of the correctional services to bring accused persons for the reason that the tire of the police vehicle, was spoilt. This is one of the reasons, why accused persons sometimes sit for 2 and half years without trial.
3. Dockets are not collected promptly to ensure investigation., therefore nothing will be done at the next appearance
4. In Mitchells Plain there is a huge backlog of dockets. Suggestions to appoint a retired magistrate to read the dockets and dispose of the unnecessary ones.
5. Lack of commitment, especially on the part of the police

Efforts:

1. Diversion and Decriminalisation programs to reduce the number of awaiting trial criminals, reduce backlogs and combat delay.
2. Commitment: All stakeholders are advised to show commitment to ensure the eradication of delays in the administration of justice.
3. Assumptions that cases should be postponed should be removed. Courts should be strict on cases. Unnecessary excuses should be done away with.
4. Existence of mobile courts
5. Establishment of specialised courts: commercial crime courts, priority courts, community courts. Note that the policies with regard to the community courts are being reviewed. (problems: impermanence of magistrates.

ANNEXURE G: LETTER TO PRESIDENT RSA

JM31...511

LRC

LEGAL RESOURCES CENTRE

NPO No. 023-004 PBO No. 930002175

5th Floor Greenmarket Place • 54 Shortmarket Street • Cape Town 8001 • South Africa

PO Box 5227 • Cape Town 8000 • South Africa • Tel: (021) 481 3000 • Fax: 423 0935 • E -mail: william@lrc.org.za • Docex 64

Your Ref:
Our Ref: WK/nd

21 April 2005

President Thabo Mbeki
PER FAX: 012-3238246

Dear President Mbeki,

OVERCROWDING IN PRISONS

1. We act for Mr Wynand Jordaan, a sentenced prisoner at present detained at Goodwood Prison. We have instructions to institute proceedings against the Government on behalf of our client and in the public interest on behalf of all prisoners in South Africa, aimed at addressing the vexed question of overcrowded conditions in our prisons. A draft copy of the notice of motion, founding the application we will be launching shortly is attached, from which you can glean the exact nature of the relief our client will seek.

2. We also respectfully draw your attention to the views of the Inspecting Judge of Prisons, as published in the latest edition of "The Advocate". A copy of the entire article, entitled "Our Bursting Prisons" is attached for ease of reference.

3. As we understand the current position in regard to minimum sentencing legislation, it will fall away on 30 April 2005 unless extended by you, with the concurrence of Parliament. Whilst Parliament has already given its concurrence, you have not as yet extended the minimum sentence legislation beyond 30 April 2005.

4. Our client respectfully associates himself with all of the reasoning set forth by the Honourable Mr Justice Fagan under the heading "Minimum sentence legislation should not be extended" and, in particular, directs your attention to the indubitable fact that the recent increase in the number of prisoners due to minimum sentence legislation has made our prisons intolerably overcrowded. This amounts to the most flagrant violation of the human rights of prisoners, as detailed in paragraph 1 of the attached draft notice of motion, as well as being in breach of the requirement of Act 111 of 1998 (the Correctional Services Act) and the applicable Regulations.

5. In these circumstances, and having regard to the latest available statistical information as detailed in "Our Bursting Prisons", we have been instructed to call

upon you not to extend the minimum sentence legislation until such time as the application foreshadowed by the attached draft notice of motion has been finally determined by the Courts.

6. We respectfully draw it to your attention that according to s.7(2) of the Constitution you, as Head of State, are obliged to respect, protect, promote and fulfil the rights set out in the Bill of Rights. All of the rights relied on in paragraph 1 of the attached draft notice of motion are, in fact, in the Bill of Rights. In this regard we respectfully refer you to ss. 10, 11, 12(1)(c)(d) and (e), 12(2)(b), 14, 17(1), 27(3), 28(1)(g) (for children), 35(2)(e), all read with ss. 7(2) and 8(1) of the Constitution.

7. You will, of course, appreciate that you are not obliged to simply "rubber stamp" the approach adopted by Parliament. Our client's view is that Parliament has erred grievously and has not properly taken into account the facts, circumstances and reasoning so eloquently propounded by Judge Fagan. It has also neglected its obligations under s.7(2) of the Constitution insofar as the human rights of prisoners are concerned.

8. Our client contends that if you do not comply with the demand set out in paragraph 5 above, you will be acting in breach of your constitutional obligations to uphold the Bill of Rights.

9. Kindly confirm by return that you will not extend the minimum sentencing legislation until final determination of the relief set out in the draft notice of motion, which will be issued as soon as possible.

If you are not prepared to comply with our client's demands, and if we do not hear from you by noon on Friday, 22 April 2005, you will be added as a Respondent in the intended application and an interim interdict will be sought against you as a matter of extreme urgency to restrain you from extending the minimum sentencing legislation *pendente lite*. A copy of this letter will be placed before the Court adjudicating the matter.

Yours faithfully,
LEGAL RESOURCES CENTRE
PER:

WILLIAM KERFOOT

Our bursting prisons

JJ Fagan, Inspecting Judge of Prisons

Less crime is what we all want. We also want our clients properly treated should they land up in prison. Unfortunately, our prisons are grossly overcrowded. With space for 113 825, we have 186 546 prisoners crammed in, ie 73 000 above capacity.[1] It leads to awful conditions in numerous of our 241 prisons. Human rights' deprivations are commonplace under such crowded conditions, and instead of rehabilitation centres, the overcrowding turns our prisons into crime-promoting institutions.

The overcrowding is due to our huge prison population. Four out of every 1 000 South Africans are in prison. We are one of the worst countries in the world – and the worst in Africa – in our use of incarceration.[2]

Fewer prisoners essential

Our immediate aim must be to reduce our prison population to about 120 000. That will still place us at almost double the world average but will bring considerable relief.

During the period 1995 to 2000, the increase in our prison population was caused mainly by the explosion in the number of awaiting-trial prisoners from 24 265 in January 1995 to 63 964 in April 2000. Since April 2000, the number of awaiting-trial prisoners has decreased due to the concerted efforts of, *inter alia*, the police, the prosecutors, the magistrates, the judges, the heads of prisons and NICRO with its diversion programmes.

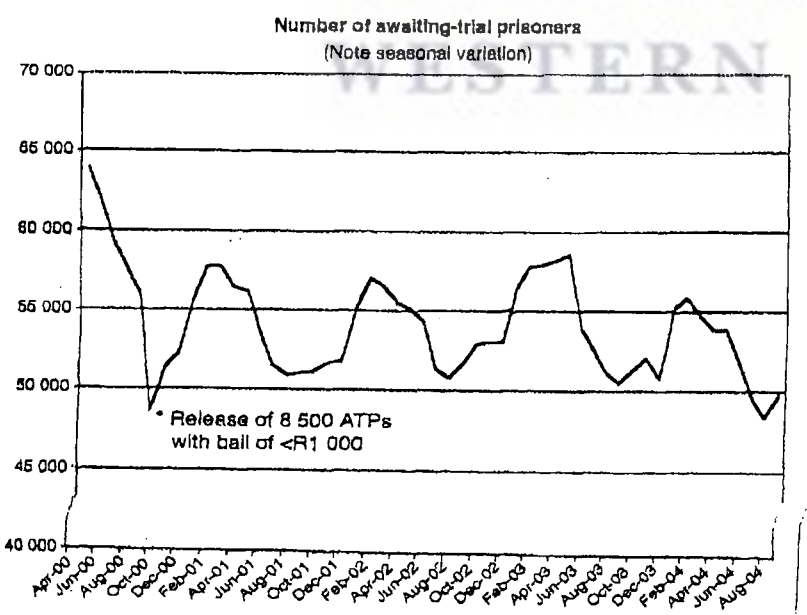
The steady decline in the number of awaiting-trial prisoners to the latest figure of 49 438 in September 2004 is most welcome. It must now continue down to the target figure of 20 000 such prisoners.

The praiseworthy efforts to reduce the number of awaiting-trial prisoners are, however, nullified by the increase in the sentenced prisoner population.

The growth in the number of sentenced prisoners is being fuelled by a dramatic increase in the length of prison terms. The primary cause is the minimum sentence legislation.

Minimum sentences

In 1997, Parliament feared that crime was getting out of hand and, in the belief that long sentences would act as a deterrent (and possibly also placate the public after the abolition of the death sentence), passed the minimum sentence legislation (Criminal Law Amendment Act 105 of 1997). Minimum sentences of 5, 7, 10, 15, 20, 25 years and life were introduced for a variety of offences including categories of theft, corruption, drug dealing, assault, rape and murder. It obliged a judge and magistrate to impose not less than the prescribed minimum sentence unless substantial and compelling circumstances justified a lesser sentence. Bail was also made more difficult to obtain by s 4(*f*) of the Criminal Procedure Second Amendment Act 85 of 1997.



Judge Hannes Fagan is a former Judge President of the Cape High Court.

As the minimum sentence legislation was regarded as an emergency measure, it ceased to have effect two years after its commencement on 1 May 1998 unless extended by the President with the concurrence of Parliament. It has since been extended to 30 April 2005.

The effect of the minimum sentence legislation has been to increase greatly the number of prisoners serving long and life sentences. It has resulted in a major shift in the length of prison terms as indicated in the diagrams below.

Sentences of 7 years and less showed little change from 1997 (67 535) to 2004 (67 483), while sentences of more than 7 years increased rapidly from 1997 (29 376) to 2004 (67 081).

Life sentences increased from 638 in 1997 to 5 511 on 30 September 2004.

Prison populations have changed substantially. In April 1998, immediately before the implementation of the minimum sentence legislation, only 18 644 (19%) of the sentenced prisoners were serving a term of longer than 10 years. This has since increased to 49 094 (36%).

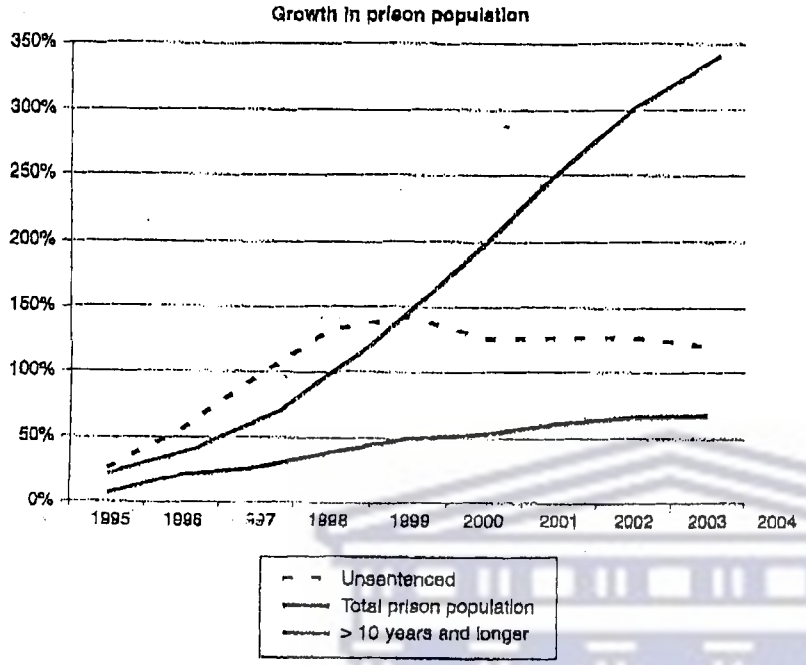
Previous release policies

Release after serving one-third of sentence

The Correctional Services Act 8 of 1959 provided that a prisoner could be placed on parole after serving half his sentence, less credits earned.[3] The general rule was that prisoners could be released on parole after serving one third of their sentences.[4] That would be done by the Commissioner of Correctional Services on recommendation of a parole board.

Ten years for life prisoners

Prisoners serving life sentences could be considered for parole after serving ten years.[5] A parole board would report to the National Advisory Council who would make a recommendation to the Minister whether to place the prisoner on parole.[6] In about



mane conditions that mass releases will be required periodically.

Minimum sentence legislation should not be extended

The minimum sentence legislation should *not* be extended beyond 30 April 2005 for the following reasons:

- The legislation was brought in as a temporary measure because of the perception that crime was getting out of control and the belief that the remedy lay in harsh sentencing. The latest figures produced by SAPS indicate a considerable reduction in crime and there is accordingly no justification for extending the legislation.
- The increase in the number of prisoners due to the minimum sentence legislation has made our prisons terribly overcrowded and worse by the day. In numerous prisons the conditions of detention are truly awful and in clear breach of our Constitution and the requirements of Act 111 of 1998 and the Regulations.
- The harsh sentences display a vengeful, uncaring and unforgiving attitude completely contrary to our famed national trait of understanding and forgiveness.
- There is no evidence that the increase in the length of sentences has had a deterrent effect on would-be offenders. It is the certainty of detection and punishment, not the severity of the punishment, that is the real deterrent.[8]
- While the long sentences are not achieving the aim of reducing crime, they are, on the contrary, causing more crime. The overcrowding precludes proper rehabilitation and turns prisons instead into places where criminality is nurtured.
- The long sentences also make reintegration back into the community more difficult as contact with families tends to be lost.
- Our huge prison population turns us into one of the very worst countries in the world in the use of incarceration for offenders.
- Prescribing minimum sentences has the effect of generalising punishment instead of individualising it as is proper.
- The effect of minimum sentences is to undermine the discretion of the courts and to create the perception that judges and magistrates lack the ability to arrive at appropriate sentences on their own. They are precluded from suspending any part of such sentence.
- The legislation is creating inordinate delays in the completion of cases, including lengthy periods between conviction in regional courts and sentence in high courts when cases are remitted for sentence.
- It is preferable for the same court to conduct the trial and impose the sentence as it is already conversant with the facts concerning the offence which might affect sentence.
- The cost of imprisoning more and more young men (60% of our prisoners are men under the age of 30) is tremendous. Such monies can surely be better spent to uplift communities and prevent crime.

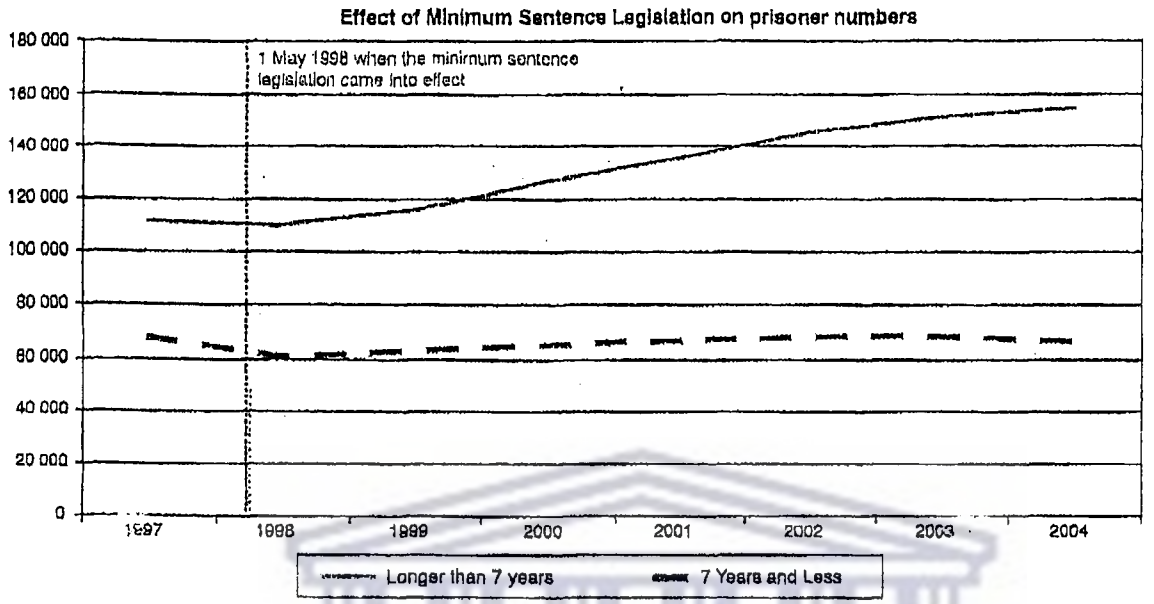
Amend Correctional Services Act 111 of 1998

The Act should be amended by:

- deleting the provision for the serving of half the sentence before consideration for parole (preferably leaving it to the Department of Correctional Services to regulate, as before);
- deleting the 25-year period before consideration for parole of those serving life imprisonment (preferably leaving it to the National Council for Correctional Services to regulate as before);
- deleting the requirement that a court should consider parole for life prisoners and restoring the National Council for Correctional Services as the appropriate body to do so; and
- deleting the four-fifths requirement for those sentenced in terms of the minimum sentence legislation.

Endnotes

1 Figures as at 30 September 2004 from the Department of Correctional Services (DCS).
2 There are 186 546 prisoners in a total population of 46,59 million (mid-2004 estimates Stats SA/SAIRR), International Centre for Prison Studies, World Prison Brief – Highest Prison Population Rates – September 2003.
3 Section 65(4)*(a)*.
4 D van Zyl Smit *SA Prison Law and Practice* (1992) at 362.
5 Van Zyl Smit (*Idem*) at 379.
6 Section 65(5).
7 The Minister appoints the National Council which consists of two judges, a regional magistrate, a director of public prosecutions, two members of DCS, a member of SAPS, a member of the Department of Welfare, two persons with special knowledge of the correctional system and four or more representatives of the public.
8 'While punishment does have a deterrent effect, it is the certainty of punishment rather than the severity of the sentence that is likely to have the greatest deterrent impact. There is certainly no evidence, empirical or even anecdotal, to suggest that increasing sentences from, say, six to eleven years for rape or robbery deters rapists or robbers generally, or even discourages them individually from committing a crime that otherwise they would not have risked.' Dirk van Zyl Smit 'Swimming against the tide' in Dixon & Van der Spuy (eds) *Justice gained? Crime and Crime Control in South Africa's Transition* UCT Press (2004) at 248.



1996/97 the policy changed, and life prisoners, although they could still be released after 15 years, were generally considered for parole only after serving 20 years.

The Correctional Services Act 111 of 1998

The Correctional Services Act 111 of 1998 (the Act) was passed by Parliament in November 1998 but its date of commencement still had to be proclaimed (s 138 of the Act).

On 19 February 1999, ss 1, 83-95, 97, 103-130, 134-136 and 138 were put into operation. Sections 83 and 84 established the National Council for Correctional Services.[7] Sections 85 to 94 established the Judicial Inspectorate. Sections 103-112 dealt with Private Venture Prisons. Sections 113 to 129 dealt with offences.

Not retrospective

Section 136 provides that the release of prisoners already serving sentences shall not be affected by the Act and would be dealt with in terms of the Correctional Services Act 8 of 1959:the former policy and guidelines applied (ie half minus credits down to one-third).

Prisoners already serving life sentences are to be considered for parole after 20 years.

On 1 July 1999, s 5 came into operation and on 25 February 2000 s 3 came into operation. In 2001 the Act was amended. On 31 July 2004 ss 2, 4, 6-49, 96-102 and 131-133 came into operation. They set out in detail the manner in which prisoners should be held and treated. Further detail is contained in Regulations also promulgated on 31 July 2004.

New release provisions

On 1 October 2004 the remaining sections of the Act, ie ss 50-82, came into operation. They deal with Community Corrections (ss 50-72), Release from Prison, Placement under Correctional Supervision, Day Parole and Parole (ss 73-82).

A prisoner will have to serve *half* of his sentence before consideration for parole (s 73(6)*(a)*). A life prisoner will have to serve 25 years and may then be granted parole by *the court* on the recommendation of the Correctional Supervision and Parole Board (ss 73(6)*(b)*(iv), 75(1)*(c)*, 78(1)).

A prisoner sentenced in terms of the minimum sentence legislation will have to serve *four-fifths* of his sentence or 25 years before consideration for parole (s 73(6)*(b)*(v)).

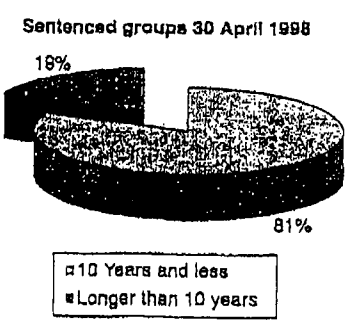
Accordingly, the earliest that parole can be considered has moved from one-third to one-half, and for many prisoners, to four-fifths of their sentences. For those serving life, it has gone up from 10 to 20 and now 25 years plus the substitution of the court for the National Council for Correctional Services.

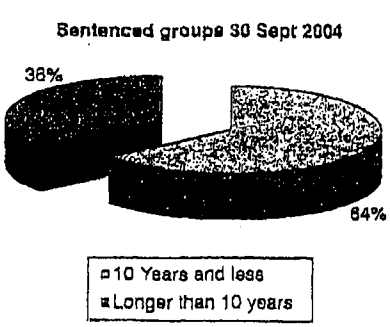
An impossible state of overcrowding

Implementation of the new release provisions will lead to an even more intolerable overcrowding situation. Increases in the serving of sentences from a third to a half as well as to four-fifths, and from 10 to 20 to 25 years for life imprisonment plus reference to a court (the court which imposed the sentence?) will inevitably lead to very many more prisoners in our already overcrowded prisons.

Long sentences

The numbers continue to rise. The latest available figures (30 September 2004) show 5 511 prisoners serving life sentences compared to 4 460 twelve months earlier plus 43 583 serving longer than 10 years compared to 40 056 in September 2003. Our sentenced-prisoner population has increased by 28 801 prisoners since April 2000 despite about 7 000 being released on parole in September 2003. The growth rate of more than 7 000 per year will inevitably lead to such inhu-

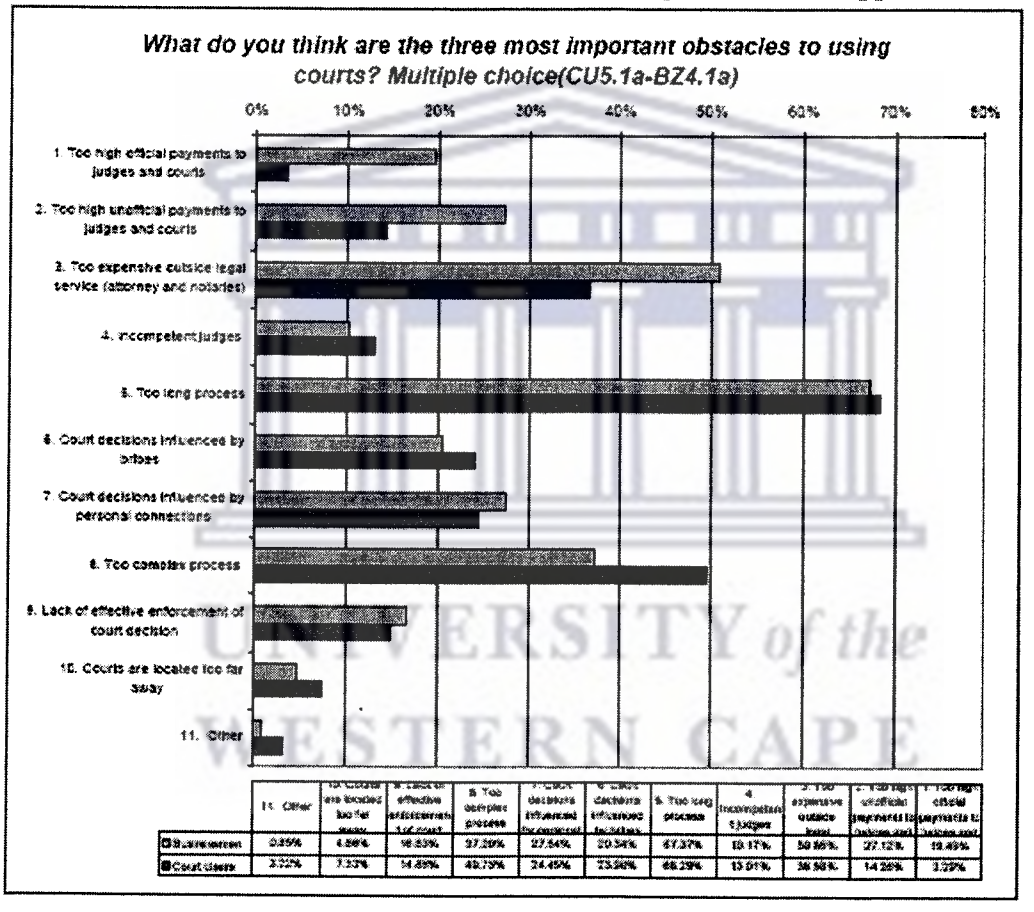




Annexure H: EXTRACT FROM UNODOC REPORT

C. MAIN PROBLEMS ACCORDING TO INTERTVIEWEES

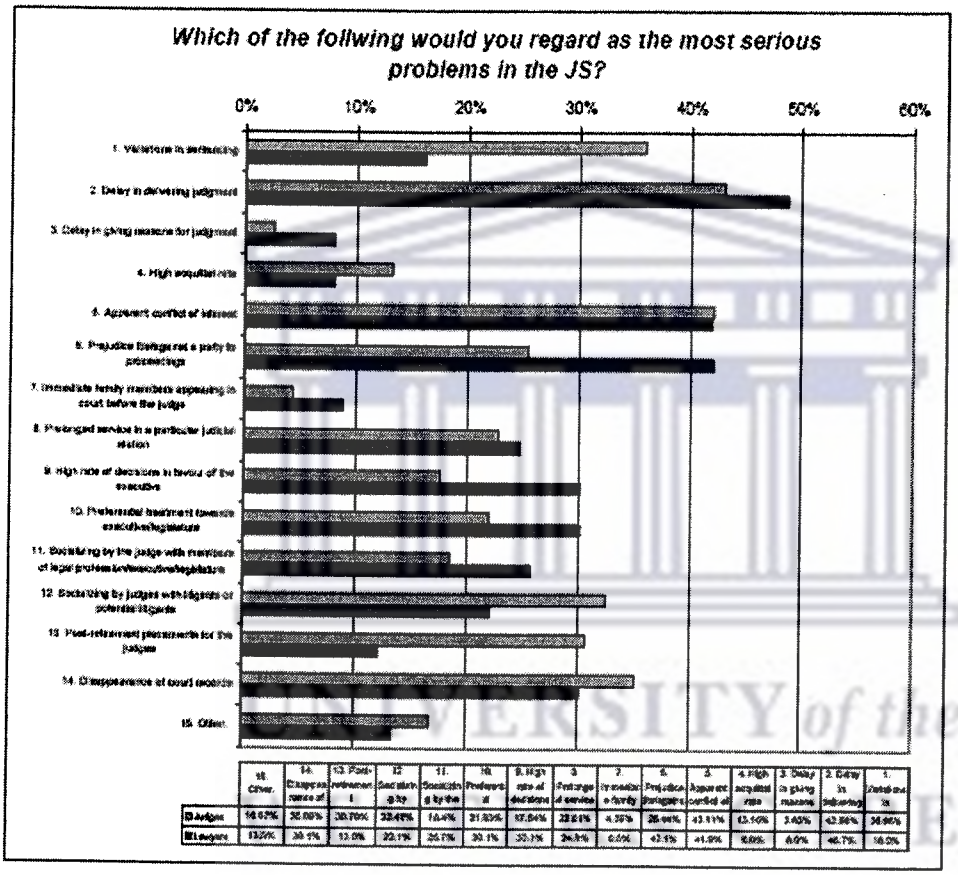
When asked what, in their view, were the most important obstacles to using the courts, Court Users and Business People stressed in particular the length of the process, the financial means required in order to cover lawyer fees, and complexity of the process as the biggest obstacles.



Judges and lawyers confirmed this assessment to some degree, when identifying *delays in the delivery of judgment* as the most serious problems facing the justice system (43%). However, when considering together the ratings of *apparent conflicts of interest* (42%), the *socializing with litigants or potential litigants* (33%) as well as with *other members of the legal profession, the executive or legislature* (26%), the *preferential treatment of the executive and legislative branch*

(21%), and *the prejudice against a party* (42%), the judges seem to rate these various forms of the same phenomenon, that is the abuse of functions, as the most serious problem of the justice system. Other shortcomings, which are often related to corruption, and that were mentioned by many of the respondents included the *disappearance of court records*. 35% and *variation in sentencing* (38%).

Lawyers considered timeliness even a bigger issue than judges did.. 48% of the respondents felt that *delays in delivering the judgement* (48%) was the most serious problem facing the system, followed *apparent conflict of interest* (42%), and *prejudice against a party*. (42%).



ANNEXURE I: EXTRACT FROM UNODOC REPORT

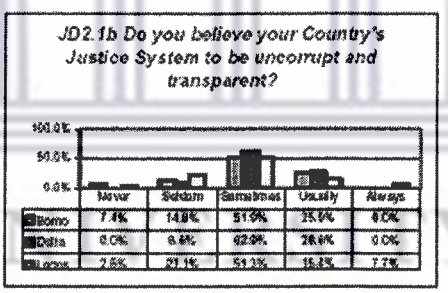
Extract from UNODOC Report illustrating how corruption affects the timely disposition of cases.

F. CORRUPTION

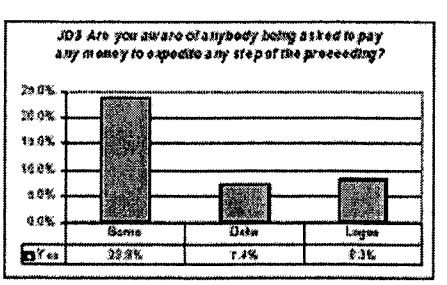
All categories of respondents were asked a comprehensive set of questions, exploring both their perceptions and experiences of corruption within the justice system.

1. Judges

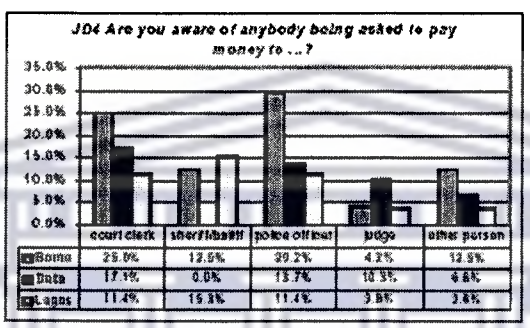
Judges were very critical in their assessment of the levels of corruption within the courts, with the majority in all the three States agreeing that the country's justice system was only sometimes transparent and uncorrupted (s*eeJD2.1b*).



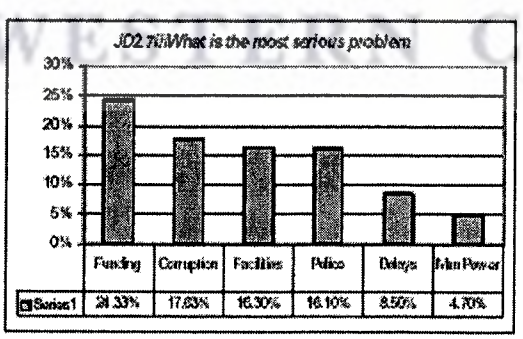
When asked whether they were aware of anybody being asked to pay a bribe in order to expedite any step of the proceeding, in Borno State, more than 20% answered affirmatively, while in Lagos and Delta, only about 8% admitted to have such knowledge (s*eeJD3*).



Further, Judges were asked to specify with regard to which professional categories, they were aware of concrete cases of bribery. According to the Judges in Borno State, corruption involved mostly police officers, followed by court clerks and enforcement officers. A similar situation could be observed in Lagos, with enforcement officers, police and court clerks being perceived as most likely to extort bribes. In Delta State, a slightly different picture emerged, with the court clerks being perceived as the most likely to receive bribes, followed by police and then by the Judges.

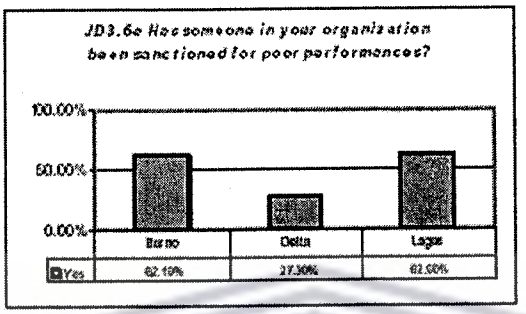


The real magnitude of the problem within the overall context of the administration of justice, emerged when comparing it with other obstacles hampering the delivery of justice. Over all, corruption was perceived as a highly serious problem to the country's justice system, second only to the lack of sufficient funding (*seeJD2.7*).

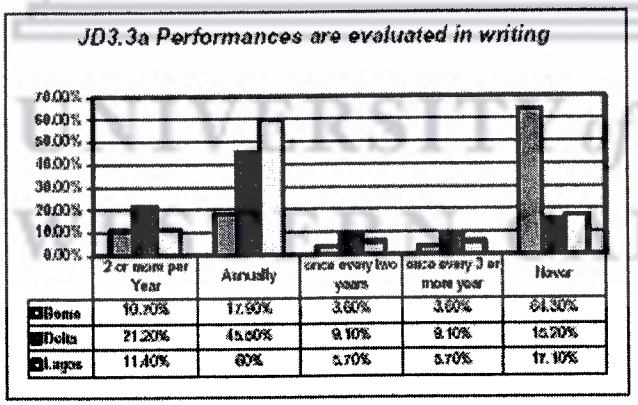


The survey explored the efficiency and effectiveness of integrity safeguards, in particular the nature, scope and frequency of disciplinary control. When asked whether they were aware of any case of a court staff or a judge having been subject to sanctions for poor performance or unprofessional conduct, it turned out that, while in Lagos and Borno State more than 60% of

the respondents replied affirmatively, in Delta less than 30% had knowledge of any case of disciplinary action.



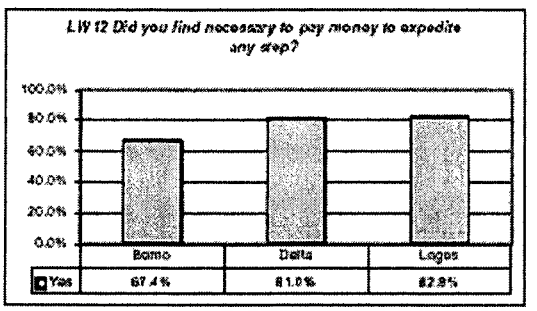
The survey further explored the frequency with which the performance of Judges is formally evaluated. It seems that, while in Lagos and Delta State roughly 70% of the respondents claimed to be evaluated annually, in Borno more than 60% of the Judges so far had never been evaluated in writing.



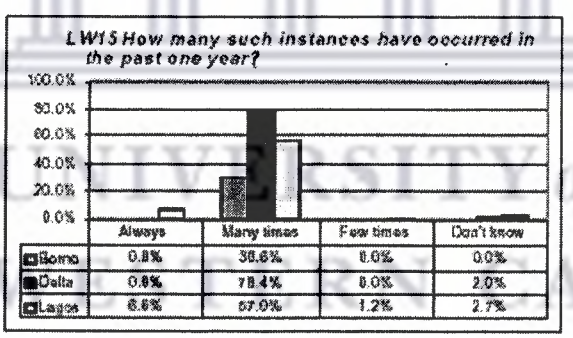
2. Lawyers

When lawyers' perceptions and experiences concerning corruption were explored, it turned out that the absolute majority of the respondents had found it necessary in the past to pay a bribe in order to expedite the handling of a procedural step. Both in Lagos and Delta, more

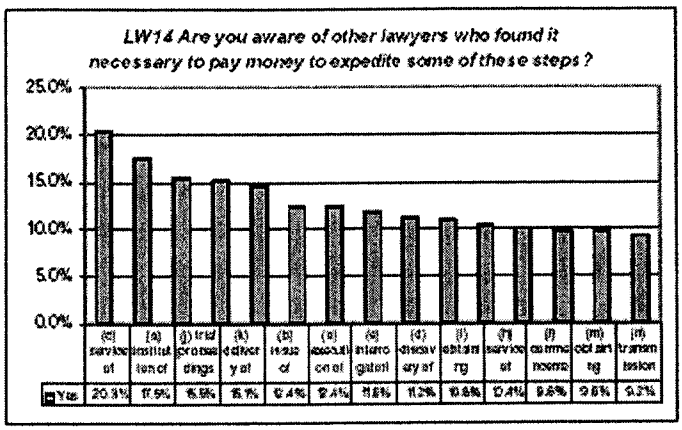
than 80% of the Lawyers claimed to have had to pay bribes for expediting court procedures, while in Borno 67% had such an experience (see *LW12, LW14 and LW15*).



Out of the 65% of the respondents who had claimed to have paid a bribe during the last 2 years, Delta emerged as the one State where lawyers had been by far most likely to have use bribery in order to speed-up the court process, with 78% indicating that they had done so "many times",



The study tried further to assess the nature and scope of bribery in the courts by asking lawyers specifically which procedural steps they typically felt inclined to expedited by means of bribery. It appears that the steps most likely to be accelerated by speed-money are: the 'servicing of summons on defendant', the 'institution of proceedings', and the "trial proceedings', the delivery of judgment.



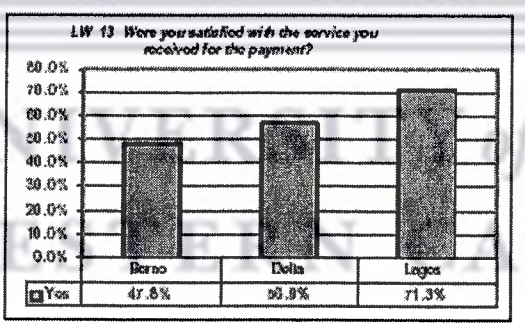
LW11 Percentage of respondents answering "Yes"when asked, whether they had ever been asked to pay money in order to expedite any of the procedural steps.			
	Borno	Delta	Lagos
(a) institution of proceedings	10.0%	20.6%	24.2%
(b) issue of summons on defendant	6.7%	19.1%	16.3%
(c) service of summons on defendant	13.3%	33.8%	28.8%
(d) discovery of documents	6.7%	20.6%	12.6%
(e) interrogatories	6.7%	16.2%	8.4%
(f) implementation of bail order	13.3%	27.9%	20.0%
(g) issue of summons on witness	10.0%	20.6%	10.7%
(h) service of summons on witness	6.7%	27.9%	11.6%
(i) commencement of trial	10.0%	23.5%	11.2%
(j) trial proceedings	6.7%	22.1%	19.5%
(k) delivery of judgment	6.7%	17.6%	11.2%
(l) obtaining copy of judgment	20.0%	32.4%	18.1%
(m) obtaining certified copy of proceedings	10.0%	33.8%	14.9%
(n) transmission of court record to appeal court	10.0%	36.8%	12.6%
(o) execution of judgment	13.3%	26.5%	15.8%

Lawyers were also asked to specify to whom they would usually pay bribes. It resulted that, in Lagos and Delta, most of the Lawyers claimed to have bribed court clerks, while in Borno the number-one recipients were those who enforce the judgments of the court. A 30-45% of the respondents in all three States also had paid to the Police. Still a significant number of the

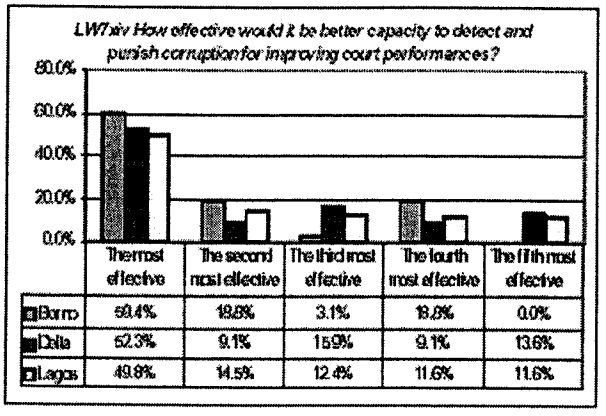
respondents claimed to have paid bribes to the Judges. In Borno, more than 30% made this claim, followed by Lagos with 23% and Delta with 17%.

LW12 Have you, or anyone on your behalf, found it necessary to pay any money to one of the following professional categories in the justice sector?				
	Borno	Delta	Lagos	TOT
(a) court clerk	48.7%	72.7%	67.1%	70.6%
(b) enforcement officer	27.2%	56.5%	40.3%	46.3%
(c) police officer	32.6%	44.0%	44.2%	43.1%
(d) judge	11.5%	16.7%	22.9%	20.0%
(e) another lawyer	4.6%	12.7%	4.8%	5.9%
(f) other person	6.9%	20.4%	9.0%	10.2%
No	32.60%	19.00%	17.20%	19%
Yes	67.4%	81.0%	82.8%	81.0%

Nevertheless, lawyers were mostly with the services they had received in return for the payment (s*ee LW13*).

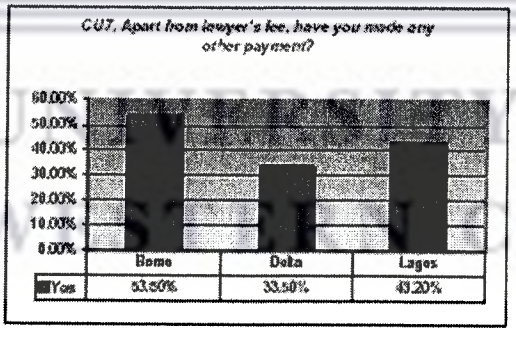


In conclusion, lawyers were asked to rate the effectiveness of enhancing the court's capacity to detect and punish corruption, out of a number of measures to improve the justice system. More that 50% in each of the three States ranked combating corruption as the most important effective measure to improve the courts' performance *(See LW 7).*

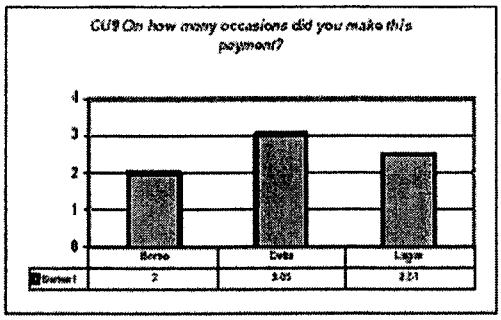


3. Court Users

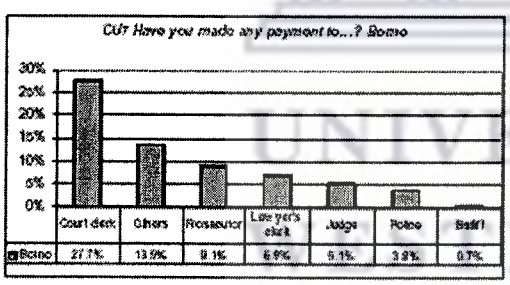
Court Users' experiences of corruption differed significantly across the three States. When asked whether they had made "unofficial payments" in relation to the case, they were currently attending, the responses differed significantly from State to State. In Borno, more than 53% indicated that they had made such payments, followed by Lagos with 43% and Delta with 33% (s*eeCU7*).

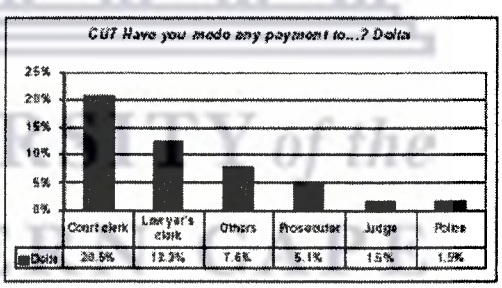


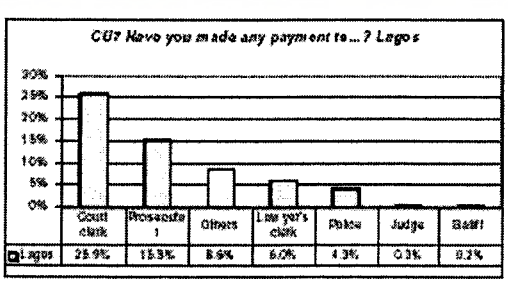
However, when asked about the frequency of such payments, those who actually had experienced corruption in Delta, had done so more often than their peers in the other two States (s*ee CU9*).



Court users were also asked to whom they had made such "unofficial payments". They largely confirmed the experiences of lawyers, who had claimed to have made payments mostly to court clerks. However, there were variations in the responses regarding corruption among other professionals. In Lagos and Borno, between 10-15% of the respondents had made payments to the police prosecutors, while in Delta State, 12% indicated to have paid to the lawyers' clerks. Very seldom, according to court users, they indicated to have paid bribes to a Judge (s*eeCU7).*





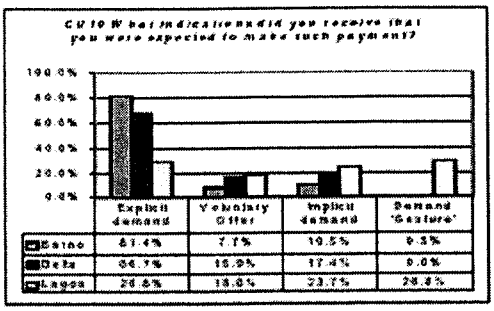


The reasons for such payments differed among the three States. It resulted that respondents mostly had paid for the "servicing of the court process" and "bail". In Delta, 51% of the

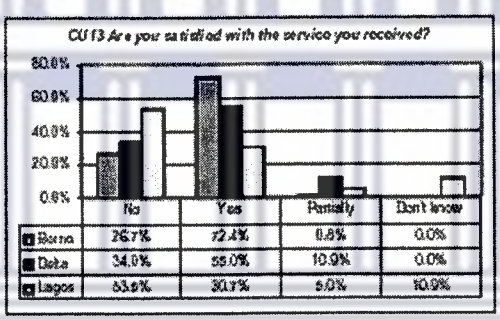
respondents had bribed in order to speed up the servicing of the court process, followed by 45% in Lagos and 12% in Borno. Both, in Borno and Lagos states, many respondents indicated that they had to pay for "bail", 21% and 25% respectively, while in Delta, this seemed much less common. "Speeding up the procedure" was given as the major reason for unofficial payments by about 12% of the respondents in Delta and Lagos. In Lagos also, 17% of the respondents admitted to have paid for a "favorable judgment", while in Delta, only 8.4%, and in Borno only 3.3% had paid bribes for this purpose. (s*eeCU8*).

CU8 If yes, what service did you receive for such payment?			
Service	**Borno**	**Delta**	**Lagos**
Procure	0.0%	0.0%	4.3%
Serve court processes	45.3%	51.1%	10.9%
Bail	25.3%	3.8%	19.6%
Nothing	11.0%	9.2%	18.5%
Accelerate the procedure	4.9%	12.2%	10.9%
Favourable judgment	3.3%	8.4%	16.3%
Other	0.0%	5.3%	0.0%
Witness summons	0.0%	1.5%	0.0%
Don't know	0.8%	0.0%	8.7%
C of O	2.0%	0.8%	1.1%
Typing work	0.0%	3.1%	0.0%
Enforcement judgement	2.0%	1.5%	0.0%
Adjournment	0.0%	0.8%	4.3%
Defence	2.9%	2.3%	0.0%
To transfer case	1.2%	0.0%	0.0%
Prosecute	1.2%	0.0%	1.1%

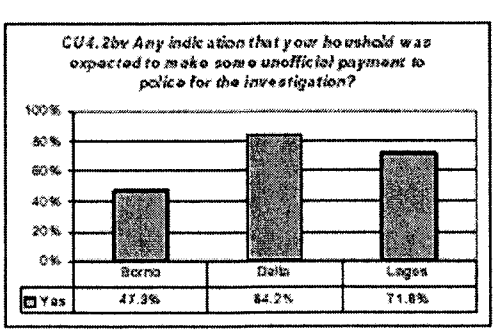
In order to further explore the extent and location of corruption in the courts, the survey tried to establish, how and who usually initiated the process of bribery. In most cases, it was found that the request for an unofficial payment was explicit, and was initiated by the public official. In Borno State, for instance, 81% of the respondents were explicitly asked for a bribe, while in Delta, and in Lagos the requests were more subtle, with 50% of the respondents having been asked for a bribe, either through gesture or an implicit demand, such as delays, the unjustified refusal of bail, or a general reluctance to carry out a requested service (s*eeCU10*).



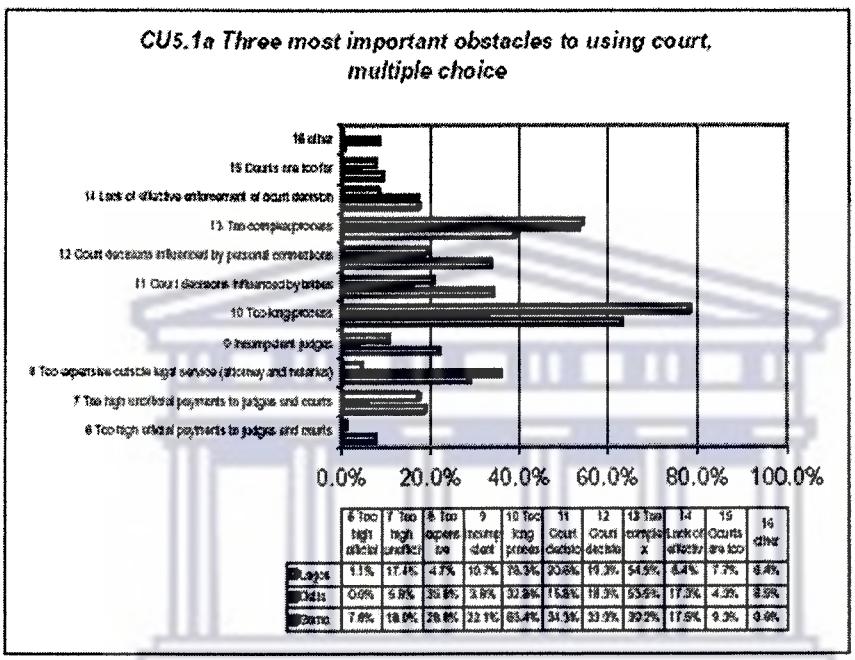
The court users were also asked to what degree they had been satisfied with the services provided in return for the bribe. Court Users in Borno seemed to be more satisfied, followed by those in Delta, and, to a lesser extent, in Lagos (*seeCU13*).



Court users were further asked whether they had received any indication that they were expected to pay a bribe in order for the Police to initiate investigations. An average of 70% of the respondents across the three states claimed to have received indications that they needed to bribe the Police, with the police in Delta State being rated as the most corrupt, followed by the one in Lagos and then Borno.



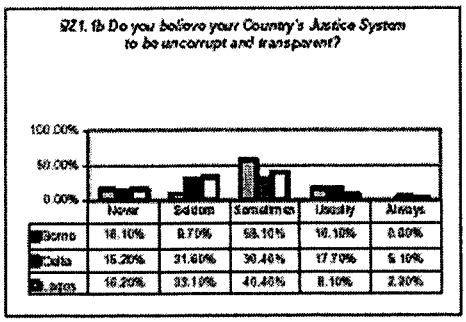
However, regardless of the high prevalence of corruption in the justice system, court users did not believe that corruption was the most predominant obstacle to justice delivery. The complexity and length of the justice delivery process were rates as even bigger problems (see *CU5.1a*).



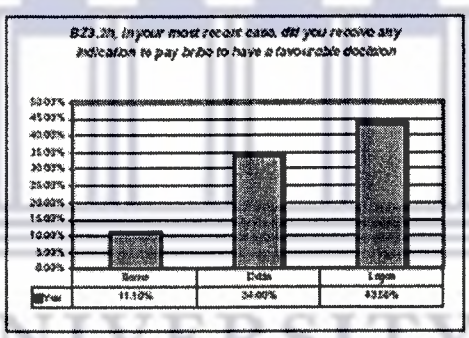
	6 Too high official	7 Too high unoffici	8 Too expens ive	9 Incomp etent	10 Too long proces	11 Court decisio	12 Court decisio	13 Too complex	14 Lack of effectiv	15 Courts are too	16 other
Lagos	11.1%	17.4%	4.7%	10.7%	76.3%	20.6%	19.3%	54.5%	6.4%	7.7%	6.4%
Delta	0.0%	5.8%	35.8%	3.8%	32.8%	15.8%	18.3%	55.5%	17.3%	4.3%	8.5%
Borno	7.6%	18.0%	26.8%	22.1%	65.4%	34.3%	33.9%	39.2%	17.5%	9.3%	9.6%

4. Business People

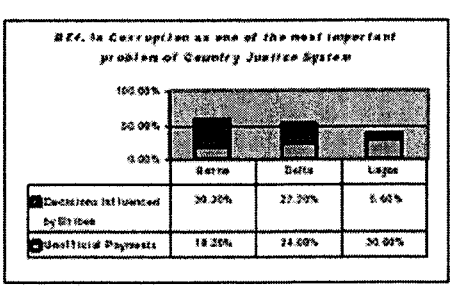
The perceptions of business people regarding the level of transparency and accountability of the courts were more pessimistic than those of court users. Only 10-20% believed that the courts were 'always' or 'usually' transparent, while 50% of respondents in Lagos, 45% in Delta, and 25% in Borno believed the justice system "never" or "seldom" to be transparent and incorruptible (s*eeBZ1.1b*).

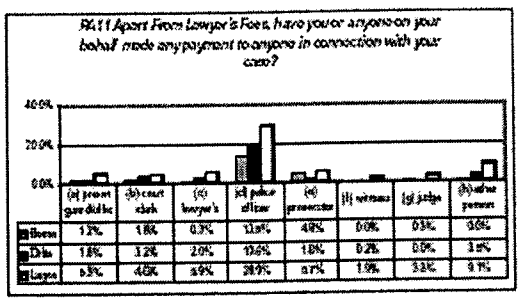


When business people were asked about their concrete experiences with corruption in the courts, it turned out that the 43,5% of respondents in Lagos had received and indication to pay a bribe in order to get a favorable decision, followed by 34% of those in Delta, and 11% of those in Borno (s*eeBZ3.2h*).

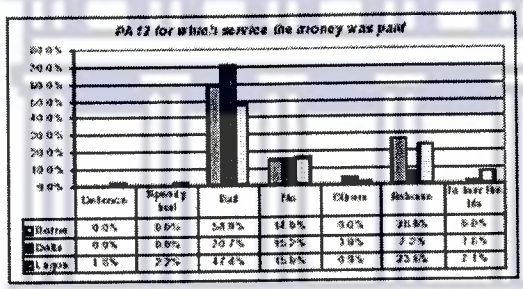


Regardless of the above, only 35% of the respondents in Lagos rated corruption in the courts as one of the most important obstacles to access to justice, while in Borno and Delta State, the percentages were higher with 58% and 50% respectively (s*eeBZ4.1a*).

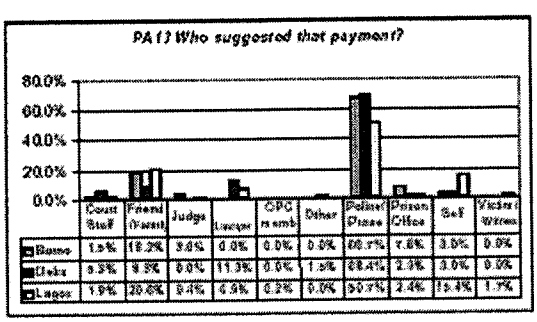




In the majority of the cases, bribes were paid in order to achieve, facilitate or speed-up the granting of bail, or to be released. However, about 15% also claimed that they did not even know for what they had paid the bribe (see *PA12*).



Prisoners awaiting trial were also asked to indicate who had suggested to make an unofficial payment. Apparently, in the absolute majority of the cases, it had been a police prosecutor, but also family members or friends suggested that it was necessary to make such an unofficial payment (see *PA13*).



However, in only very few cases, the recipient of the bribe did actually deliver the promised service (see *PA16 and PA17*). 77