

**RIGHT OF AN ACCUSED TO A TRIAL WITHOUT UNREASONABLE DELAY IN
SOUTH AFRICA**

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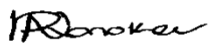
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ABSTRACT

The aggravating issue of unreasonable delays in the criminal justice system, has resulted in the severe violation of an accused person's right to a trial that begins and concludes without unreasonable delay. Section 35(3)(d) of the Constitution of the Republic of South Africa, 1996, provides that an accused person has the right to a fair trial, which ought to commence and conclude without unreasonable delay. However, due to the persistent challenges plaguing the criminal justice system, the judiciary has been unsuccessful in safeguarding the rights of an accused person.

The objective of the research is to investigate the causes and effects of unreasonable delays in criminal proceedings, and to establish in what manner the delays affect an accused person, a victim of a crime, witness to a crime, and their families. In addition, the study seeks to investigate the causes and effects of overcrowding in South African correctional facilities, because of unreasonable delays in criminal trials. The study investigates the laws which regulate unreasonable delays in criminal trials and further, investigates the remedies the law grants to an accused person in cases of unreasonable delays. The analysis explores existing solutions to the issue of unreasonable delays, and the reasons why they are unsuccessful in making a noticeable change in the criminal justice system.

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CHAPTER 1: BACKGROUND TO THE RESEARCH

1.1 Introduction

South Africa has launched various measures aimed at assisting in eliminating the issue of delays in criminal trials. However, despite these efforts, the issue of unreasonable delays in criminal trials in South Africa continues to exist.¹ Delay may be interpreted as the duration invested in a case prior to its conclusion.² The issue of unreasonable delays in criminal trials in South Africa is regarded as one that is severe in nature, dating as far back as 1994.³ It is presumed to be the result of the reconstruction of a system previously governed by the apartheid regime, to a constitutionally governed system.⁴

The Constitution of the Republic of South Africa, 1996,⁵ (hereinafter referred to as the Constitution) offers excellent protection of human rights, which extends to accused persons, including remand detainees, and arrested persons.⁶ Despite this protection, the South African criminal justice system, which includes the judiciary, appears to be failing those it ought to be protecting.⁷ This is due to the continuous increase in remand detainees, causing issues in the criminal justice system.⁸ The fundamental principles incorporated in the Constitution,⁹ embody legal equality, and ensure that all South Africans are safeguarded by the law, including those who are on criminal trials.¹⁰

¹ Obiokoye Onyinye Iruoma, 'Eradicating delay in the administration of justice in African Courts: A comparative analysis of South African and Nigerian Courts' (LLM dissertation, University of Pretoria 2005) 1.

² Iruoma, 'Eradicating delay in the administration of justice' 2.

³ Iruoma, 'Eradicating delay in the administration of justice' 22.

⁴ Iruoma, 'Eradicating delay in the administration of justice' 22.

⁵ Constitution of the Republic of South Africa, 1996.

⁶ Edwin Cameron, JJ Du Toit and Alexia Katsinginis, 'Justice postponed: what causes unreasonable delays in criminal trials' (*De Rebus*, 1 December 2020) <<https://www.derebus.org.za/justice-postponed-what-causes-unreasonable-delays-in-criminal-trials/>> accessed 07 July 2023.

⁷ Martin Schönteich, 'The ability of the criminal justice system to solve and prosecute crime' (*Institute for Security Studies*, 1 September 1999) <<https://issafrica.org/research/papers/assessing-the-crime-fighters-the-ability-of-the-criminal-justice-system-to-solve-and-prosecute-crime>> accessed 08 August 2023.

⁸ Martin Schönteich, 'The ability of the criminal justice system to solve and prosecute crime'.

⁹ Constitution of the Republic of South Africa Act.

¹⁰ L Wolf, 'Pre-and Post-Trial Equality in Criminal Justice in the Context of Separation of Powers' (2011) 14 (5) PER/PELJ 58-240, 58.

Section 35(3)(d) of the Constitution,¹¹ upholds the right to a fair trial.¹² The section provides that a trial ought to commence and conclude within an appropriate time limit.¹³ Section 35 of the Constitution,¹⁴ holds that the law ought to manage an accused person in a way that is right or reasonable, especially at the pre-trial phase. In addition, the section promotes the interests of an accused person.¹⁵

The right to a fair trial requires regard for rapid action, failure which results in the right being violated.¹⁶ Section 12(1)(a) of the Constitution,¹⁷ protects an accused person's right not to be remanded in custody unfairly or unnecessarily.¹⁸ When a trial is delayed, the right to liberty is unfairly withdrawn from an accused person.¹⁹ This occurs where no court has convicted them, therefore their section 12(1)(a) right is transgressed.²⁰

The period of pre-trial detention in South Africa truly presents a serious challenge.²¹ Jeremy Gordin and Ingrid Cloete,²² define the term remand detainee as an inmate awaiting to be processed in the system.²³ According to Gordin and Cloete,²⁴ the remand detention issue in South Africa stems from the system often depending on preventive detention, whilst alternative methods may be utilised to secure an accused person's court attendance.²⁵

¹¹ Constitution of the Republic of South Africa Act.

¹² Constitution of the Republic of South Africa Act.

¹³ Constitution of the Republic of South Africa Act.

¹⁴ Constitution of the Republic of South Africa Act.

¹⁵ Dane Ally, 'The need for clarity on whether 'Suspects' may rely on section 35 of the Constitution of the Republic of South Africa, 1996: a comparative law analysis' (2010) XLIII CILSA 239-259, 241.

¹⁶ Iruoma, 'Eradicating delay in the administration of justice' 10.

¹⁷ Constitution of the Republic of South Africa Act.

¹⁸ Constitution of the Republic of South Africa Act.

¹⁹ Constitution of the Republic of South Africa Act.

²⁰ Velile Makasana, 'The Onus of proof and Presumption of innocence in South African Bail Jurisprudence' (LLM thesis, Nelson Mandela Metropolitan University 2014) iii.

²¹ Makasana, 'The Onus of proof and Presumption of innocence in South African Bail Jurisprudence' iii.

²² Jeremy Gordin and Ingrid Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa' (2013) 80 (4) University of Cincinnati Law Review 1167-1177.

²³ Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa' 1168.

²⁴ Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa'.

²⁵ Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa' 1169.

Unreasonable delays in criminal proceedings create challenges such as the shortage of premises to accommodate remand detainees.²⁶ This contributes to overcrowding.²⁷ In addition, the prolonged detention of remand detainees prevents them from acquiring a livelihood.²⁸ Unreasonable delays adversely affect the confidence of the public in the judicial system.²⁹ Unreasonable delays in the finalisation of criminal trials may adversely impact on the right of an accused to be presumed innocent and not be punished without trial.³⁰

Research has revealed that the issue of the infringement of the right to a fair trial is universal. Kat Albrecht and others,³¹ identify this similar challenge in the United States of America, wherein an accused person enjoys the protection of the Sixth Amendment of the Constitution.³² They state that despite this protection, criminal proceedings in America, are frequently suspended in the judicial system for extended periods.³³ This delay results in the gradual resolution of the cases for both an accused person and a victim, who are adversely affected in such cases.³⁴

Palma Paciocco,³⁵ expresses the negative conduct of undue adjournments and the arrogance displayed in the Canadian judicial system in cases of unreasonable delays in criminal trials.³⁶ Paciocco,³⁷ accomplishes this by referring to the Canadian case of *R v Jordaan* wherein a new legal structure was established, with the objective of

²⁶ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa' (*Department of Correctional Services*, March 2014) <https://www.gov.za/sites/default/files/gcis_document/201607/white-paper-remand-detention-management-south-africa.pdf>accessed 08 August 2023.

²⁷ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'.

²⁸ Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa' 1168.

²⁹ Iruoma, 'Eradicating delay in the administration of justice' 8.

³⁰ Makasana, 'The Onus of proof and Presumption of innocence in South African Bail Jurisprudence' 10.

³¹ Kat Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court' (2022) 53 (4) *Loyola University Chicago law Journal* 747- 790.

³² Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court' 754.

³³ Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court' 754.

³⁴ Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court' 747.

³⁵ Palma Paciocco, 'Trial Delay Caused by Discrete System Wide Events: The Post-Jordan Era Meets the Age of COVID-19' *Osgoode Hall Law Journal* (2021) 57 (3) 835-867.

³⁶ Paciocco, 'Trial Delay Caused by Discrete System Wide Events: The Post-Jordan Era Meets the Age of COVID-19' 836.

³⁷ Paciocco, 'Trial Delay Caused by Discrete System Wide Events: The Post-Jordan Era Meets the Age of COVID-19'.

encouraging all key actors in the judicial system to uphold the requirements for a trial to begin and conclude without unreasonable delay.³⁸

The investigation will explore the available remedies offered by the South African courts in circumstances wherein there are undue adjournments. The study will further analyse the remedy of a permanent stay of prosecution in criminal trials.

Delano van der Linde,³⁹ defines the remedy of permanent stay of prosecution, as an order made on a case-by-case basis, in which the court grants due consideration to the various elements of the case, such as prejudice faced by an accused, systematic factors and the reason for the delays.⁴⁰ For instance, the court will investigate the underlying reason for the undue adjournments and the disadvantage they have caused to an accused's trial.⁴¹ The order of a permanent stay of prosecution is granted by a court to stop criminal proceedings from continuing against an accused person in cases of unreasonable delays. In *Rodrigues v The National Director of Public Prosecutions and Others*,⁴² the court states that a permanent stay of prosecution ought not to be readily granted, as this remedy is exceptional.⁴³

In cases where the remedy of permanent stay of prosecution cannot be granted, an accused person may rely on the alternative remedies offered under section 342A of the Criminal Procedure Act 51 of 1977(hereinafter the CPA).⁴⁴ The judiciary is empowered to hold an inquiry in regard to the causes of the undue adjournments and grant an accused person the best remedy in his or her circumstances.⁴⁵

South African courts have strived to reduce and perhaps eradicate unreasonable delays. However, this objective is yet to be realised. The study will investigate why the

³⁸ Paciocco, 'Trial Delay Caused by Discrete System Wide Events: The Post-Jordan Era Meets the Age of COVID-19' 836.

³⁹ Delano Cole van der Linde, 'Once, Twice, Three Times Delayed: Considering a Permanent Stay of Prosecution in Rodrigues v The National Director of Public Prosecutions' (2022) 25 PER/PELJ 1-25.

⁴⁰ Van der Linde, 'Once, Twice, Three Times Delayed: Considering a Permanent Stay of Prosecution in Rodrigues v The National Director of Public Prosecutions'1.

⁴¹ Van der Linde, 'Once, Twice, Three Times Delayed: Considering a Permanent Stay of Prosecution in Rodrigues v The National Director of Public Prosecutions'1.

⁴² *Rodrigues v The National Director of Public Prosecutions and Others* 2021 (2) SACR 333 (SCA) 51.

⁴³ *Rodrigues v The National Director of Public Prosecutions* 51.

⁴⁴ Criminal Procedure Act 51 of 1977.

⁴⁵ Criminal Procedure Act.

current, available solutions such as the section 342A remedies contained in the CPA,⁴⁶ are unsuccessful in making noticeable changes thus far. In addition, the exploration will investigate the appropriate steps to be taken, to achieve this objective in the future.

1.2 Point of departure

The study will investigate the causes as well as the effects of unreasonable delays in the South African criminal justice system. The probe will explore the critical issue of overcrowding amongst remand detainees, because of unreasonable delays in trials. The research will achieve this by analysing section 35(3)(d) and section 12(1)(a) of the Constitution.⁴⁷

Section 35(3)(d) provides a comprehension of an accused person's right to have their trial commence and conclude within a reasonable period.⁴⁸ The research will utilise section 35(3)(d) of the Constitution,⁴⁹ to investigate in what manner unreasonable delays affect and transgress an accused person's right to a fair trial.⁵⁰ Section 12(1)(a) of the Constitution,⁵¹ provides a profound insight into an accused person's constitutional right not to be detained unjustly and unlawfully.⁵² The focus will be on remand detainees. Section 12(1)(a) protects remand detainees who are unjustly enduring prolonged detention without valid grounds.⁵³ These inmates, forfeit their constitutional right to liberty. This right is fundamental and is afforded to all South Africans under section 12(1)(a) of the Constitution.⁵⁴

The research will utilise section 12(1)(a) to investigate the unfairness of a remand detainee's incarceration during trial delays.⁵⁵ In addition, the investigation will demonstrate how this conduct potentially destroys the lives of these individuals, most especially in cases where they are eventually acquitted.

⁴⁶ Criminal Procedure Act.

⁴⁷ Constitution of the Republic of South Africa Act.

⁴⁸ Constitution of the Republic of South Africa Act.

⁴⁹ Constitution of the Republic of South Africa Act.

⁵⁰ Constitution of the Republic of South Africa Act.

⁵¹ Constitution of the Republic of South Africa Act.

⁵² Constitution of the Republic of South Africa Act.

⁵³ Constitution of the Republic of South Africa Act.

⁵⁴ Constitution of the Republic of South Africa Act.

⁵⁵ Constitution of the Republic of South Africa Act.

The study will explore the remedy of permanent stay of prosecution, as well as section 342A of the CPA,⁵⁶ in the cases where the remedy of permanent stay of prosecution is unsuccessful. The research will investigate whether the remedies offered in section 342A of the CPA,⁵⁷ truly compensates for the suffering remand detainees endure, due to trial delays. The inquiry will investigate whether these remedies protect a remand detainee's right to a fair trial, or if further efforts are required to protect their interests.⁵⁸

The investigation will utilise the chosen legislation to raise awareness of how frequent these fundamental rights are disregarded in the South African criminal justice system. The examination will discuss the consequences of the infringement of an accused person's rights, the existing solutions to this issue, and why they are ineffective in bringing about a noticeable change.

1.3 Significance of study

The state of the criminal justice system in South Africa continues to exacerbate as a result of the continuous increase of remand detainees in the system.⁵⁹ The issue of unreasonable delays in criminal trials is one of the primary reasons for the prolonged detention of remand detainees.⁶⁰ This extended period of incarceration of remand detainees, results in additional challenges, such as the issue of overpopulation in South African correctional facilities.⁶¹ The scourge of overcrowding in South African correctional facilities creates inhumane circumstances for inmates, which adversely affects their well-being.⁶²

The South African judicial system offers an accused person who is affected by unreasonable delays, remedies such as, the permanent stay of prosecution remedy and the remedies contained in section 342A.⁶³ These remedies assist the judicial

⁵⁶ Criminal Procedure Act.

⁵⁷ Criminal Procedure Act.

⁵⁸ Criminal Procedure Act.

⁵⁹ Schönreich, 'The ability of the criminal justice system to solve and prosecute crime'.

⁶⁰ Arusha Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' (LLM dissertation, University of South Africa 2015) 7.

⁶¹ Murdoch Watney, 'Unreasonable delays in criminal trials and the remedy of a permanent stay of prosecution: Regsspraak' (2007) 2 SALJ 422-429,422.

⁶² Watney, 'Unreasonable delays in criminal trials and the remedy of a permanent stay of prosecution: Regsspraak' 422.

⁶³ Criminal Procedure Act.

system in managing unreasonable delays in trials. However, despite this provision, it is evident that, these remedies are ineffective in protecting the rights afforded to an accused person during unreasonable delays.

The research seeks to investigate in what manner the issue of unreasonable delays, adversely affects the rights of an accused person. The affected rights of an accused person are, the right to a fair trial, as provided for under section 35(3)(d) of the Constitution.⁶⁴ The right of an accused person not to be denied liberty without just cause according to section 12(1)(a) of the Constitution is also protected.⁶⁵

The various causes of unreasonable delays, affect an accused person by causing extreme suffering, particularly for those who are detained during trial. Clare Ballard,⁶⁶ states what she considers a challenge regarding unreasonable delays in criminal trials. She points out that, a remand detainee who is yet to be found guilty, experiences retribution designed for a convicted inmate.⁶⁷ She further adds that in the case of a remand detainee, the conditions are egregiously unsatisfactory in comparison to those of convicted inmates.⁶⁸

The exploration will seek to investigate the reason for which the current solutions to unreasonable delays in criminal trials are unsuccessful in producing a noticeable change in the South African criminal justice system. The study will seek to discover an effective approach to improve the criminal justice system in this regard. It is evident that failure to discover effective solutions to this issue will result in an accused person's rights and freedom continuously being compromised.⁶⁹

⁶⁴ Constitution of the Republic of South Africa Act.

⁶⁵ Constitution of the Republic of South Africa Act.

⁶⁶ Clare Ballard, 'Promoting Pre-Trial Justice in Africa' (*Civil Society Prison Reform initiative, Community Law Centre, University of Western Cape*, 21 October 2011) < <https://acjr.org/resource-centre/21-october-2011-ppja> - email-newsletter > accessed 08 August 2023.

⁶⁷ Ballard, 'Promoting Pre-Trial Justice in Africa'.

⁶⁸ Ballard, 'Promoting Pre-Trial Justice in Africa'.

⁶⁹ Londeka Zandile Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' (LLM dissertation, University of Kwazulu Natal 2017) 7'.

1.4 Research objectives

The objective of this study is to investigate unreasonable delays in the commencement and conclusion of criminal trials in South Africa. It will in addition seek to discover if there are solutions which may improve the South African judicial system in the future. The study will further, seek to discover why the existing solutions have not made noticeable changes thus far.

This shall be executed through:

Objective 1-Investigating the causes and effects of unreasonable delays in the South African criminal justice system. The focus of the effects will be on an accused person, a victim of a crime, witnesses to a crime, and their families.

Objective 2-To determine the laws regulating unreasonable delays.

Objective 3-Exploring the causes and effects of overcrowding in South African prisons with the focus being on remand detainees.

Objective 4-Investigating the legal remedies in cases of unreasonable delays. In addition, the research will investigate in which circumstances one may be granted the remedy of a permanent stay of prosecution in South Africa, which jurisdictions are authorised to grant this remedy, and what occurs in cases where it is denied.

1.5 Problem statement

Unreasonable delays in the South African criminal justice system appear to be ongoing and extremely severe. The probe will investigate in which manner these delays affect an accused person's rights to be liberated and to have a fair trial.⁷⁰

The right to have a trial begin and conclude without unreasonable delay is essential for an accused person and if such a right is not enforced it is merely theoretical and idealistic.⁷¹ Most unreasonable delays in trials are caused by an excessive number of cases being on the court roll which results in the serious cases not being speedily

⁷⁰ Constitution of the Republic of South Africa Act.

⁷¹ Mieke Relihan, 'Unreasonable postponement in criminal trials' (*Malan Lourens Viljoen Inc*, 1 June 2021) <[https:// mLVLAW.co.za/Resources/Unreasonable-postponement-in-criminal-trials.pdf](https://mLVLAW.co.za/Resources/Unreasonable-postponement-in-criminal-trials.pdf) >accessed 07 July 2023.

finalised.⁷² Authorities have also expressed the severity of this issue and are in the process of reviewing the criminal justice system to assist in determining the causes of the blockages in the system.⁷³ The public has been invited to share their ideas regarding which manner the issue may be resolved.⁷⁴

The investigation will explore permanent stay of prosecution and the remedies provided for in section 342A. These remedies do not appear to reduce the level of distress an accused person may endure, particularly in cases of remand detainees. The research will investigate the reason for this. The study will investigate the effects an accused person suffers because of these delays, most especially, in cases of overpopulation in South African correctional facilities. The investigation will explore why the existing solutions have not made a noticeable change in the judicial system thus far.

1.6 Research questions

The research will address the following questions:

- What causes unreasonable delays in the initial and final stages of criminal trials in South Africa?
- In what manner have unreasonable delays in the commencement and finalisation of criminal trials in South Africa affected an accused person, a victim to a crime, a witness to a crime, and their families?
- Which South African laws regulate the issue of unreasonable delays in South African criminal trials?
- Which remedies are offered to an accused person who experiences unreasonable delays in their respective trial?
- In which circumstances does the South African judiciary grant a permanent stay of prosecution in cases of unreasonable delays in criminal trials?

⁷² Nqaqakamba, 'Court postponements: who really suffers?'.
⁷³ Department of Justice And Constitutional Development, 'Have your say about the criminal justice system' (*Department of Justice and Constitutional Development*, August 2008) <
https://justice.gov.za/CJS_review/CJS_Review_background.pdf > accessed 07 July 2023.

⁷⁴ Department of Justice and Constitutional Development, 'Have your say about the criminal justice system'.

- In which manner does overcrowding in South African prisons affect remand detainees?
- What efforts or solutions have the South African judicial system previously made and sought to solve the issue of undue adjournments in South African trials?

1.7 Limitations

There are numerous challenges affecting the South African criminal justice system however, this inquiry will focus on unreasonable delays in criminal trials. The analysis will further explore overpopulation in South African correctional facilities.

In addition, the research will discuss the remedy of permanent stay of prosecution by analysing the circumstances that lead to its application by an accused person. It will investigate how the judiciary deals with such applications in South Africa. The study will explore the alternative remedies offered by the courts in cases where the remedy of permanent stay of prosecution cannot be granted. The probe will further explore what effects they have on an accused person's wellbeing and rights. The investigation will explore the existing solutions to this issue.

The research will not be investigating or analysing every aspect of the issue of unreasonable delays in the South African criminal justice system. It will not cover or address the spheres of convicted inmates, arrested but not formally charged detainees, wrongful arrests, lawfulness and unlawfulness of detention, child and juvenile offenders, and the issue of bail. The research will not focus on discovering new solutions but rather on comprehending the reason the current solutions are ineffective. The inquiry will refer to limited foreign legal jurisdictions where applicable.

1.8 Proposed research methodology

The research will utilise the desktop approach which will consist of the collection of data from both primary and secondary sources namely case law, books, journal articles, legislation. In addition, the exploration will utilise available legal sources, which will also be utilised in assisting to address the research questions identified in the dissertation. Limited internet sources will be referred to.

1.9 Literature review

Generally, prior to identifying a solution to an issue, one would have to establish its root causes. On other occasions, to comprehend the severity of an issue, one would have to acquire of its nature and its consequences. Previous research conducted on unreasonable delays in criminal trials has investigated the causes of these delays in criminal trials. This was executed with the anticipation of acquiring knowledge and identifying resolutions. Several reasons may cause delays in criminal proceedings. One such reason is an adjournment for further investigations.⁷⁵ Unreasonable delays occasionally occur in the course when the state is granted several adjournments, during the proceedings.⁷⁶ These postponements may extend over a period of several months and even years to the detriment of an accused person.⁷⁷

In South African criminal trials, issues of power failures, family emergencies by lawyers, and illnesses of the parties directly involved in the case including magistrates, and judges are said to also contribute to unreasonable delays.⁷⁸ Chucks Okpaluba,⁷⁹ in his investigation demonstrates the adverse role judges play in unreasonable delays in criminal trials. He refers to the Namibian jurisdiction.⁸⁰

Okpaluba,⁸¹ points out unreasonable delays, which are caused by judges in the Namibian judicial system. He contends that there are three judgments from Namibia which appear to present an impression that the judiciary generally overlooks the issue of suspended judgments in their courts.⁸² He adds that this was done despite the issue being conspicuous to them.⁸³ Okpaluba,⁸⁴ states that unlike in the South African case

⁷⁵ Ngaqakamba, 'Court postponements: who really suffers?'.
⁷⁶ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' 7.

⁷⁷ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' 7.
⁷⁸ Ngaqakamba, 'Court postponements: who really suffers?'.
⁷⁹ Chucks Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S' (2013) 38 (2) TRW 106-127.

⁸⁰ Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S' 118.
⁸¹ Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S'.

⁸² Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S' 117.
⁸³ Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S' 117.

⁸⁴ Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S'.

of *New Clicks SA v Minister of Health and Another*, the South African Supreme Court displayed indignation regarding the practice of protracted conclusions of criminal trials.⁸⁵ However, he adds that the Namibian Judiciary did not share the same sentiments.⁸⁶

In some instances, adjournments may also be initiated by judges.⁸⁷ An indisposed or unprepared judge may decide to postpone a trial.⁸⁸ Holning Lau,⁸⁹ reveals that, from time to time judges contribute to delays.⁹⁰ This is done by them on occasion alleviating public counteraction against the judicial system and its judgments.⁹¹

Lau,⁹² identifies their strategic judicial conduct in a tripartite classification of deliberate adjournment actions, such as suspending judgments, deferring the acknowledgment of rights, and hesitation of the awarding of remedies for unreasonable delays.⁹³ Lau,⁹⁴ further asserts that judges may occasionally amend their conduct owing to the fact that the courts may be disciplined by political representatives as well as society itself.⁹⁵

Probing into the American jurisdiction, Albrecht and others,⁹⁶ found that delays stem from prosecutors, and not judges and that the judicial system has been subject to the authority of the prosecution over a period of time.⁹⁷ Ballard,⁹⁸ shows that the whole section of the judicial system, to a certain extent, contributes to unreasonable delays.⁹⁹

⁸⁵ Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public Reflections on Myaka v S' 119.

⁸⁶ Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public Reflections on Myaka v S' 119.

⁸⁷ Edward Laws, 'Addressing case delays caused by multiple adjournments' (*Applied Knowledge Services*, 14 June 2016) < <https://assets.publishing.services.gov.uk/media/57a983e5274a0f6c000006/HDQ1374.pdf> > accessed 31 October 2023.

⁸⁸ Laws, 'Addressing case delays caused by multiple adjournments'.

⁸⁹ Holning Lau, 'Comparative Perspectives on Strategic Remedial Delays' (2016) 91 (30) *TULANE LAW REVIEW* 1- 65.

⁹⁰ Lau, 'Comparative Perspectives on Strategic Remedial Delays' 2.

⁹¹ Lau, 'Comparative Perspectives on Strategic Remedial Delays' 2.

⁹² Lau, 'Comparative Perspectives on Strategic Remedial Delays'.

⁹³ Lau, 'Comparative Perspectives on Strategic Remedial Delays' 8.

⁹⁴ Lau, 'Comparative Perspectives on Strategic Remedial Delays'.

⁹⁵ Lau, 'Comparative Perspectives on Strategic Remedial Delays' 11.

⁹⁶ Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court'.

⁹⁷ Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court' 753.

⁹⁸ Clare Ballard, 'Lessons from the past: Remand detention and pre-trial services' (*South African Crime Quarterly*, June 2013) < <http://dx.doi.org/10.17159/2413-3108/2013/voi44a816> > accessed 31 October 2023.

⁹⁹ Ballard, 'Lessons from the past: Remand detention and pre-trial services'.

Schönteich,¹⁰⁰ states that, in the preceding years, the National Prosecuting Authority (NPA)'s dedicated unit attained positive outcomes, nevertheless, the agency's function at the inferior courts appears to be noticeably inconsistent.¹⁰¹ Schönteich,¹⁰² argues that the NPA has been negatively affected by ineffective management.¹⁰³ He argues that political interference in the NPA has compromised a once reputable organisation, creating one characterised by lack of robust cultural practices and diminished employee satisfaction.¹⁰⁴

L Wolf,¹⁰⁵ demonstrates that the interference of senior officials in indictments results in unfair processes in the early stages of the trial, affecting the function of the NPA.¹⁰⁶ Edward Laws,¹⁰⁷ points out that prosecutors may frequently cause delays in criminal trials, where they are unwilling to disclose certain amounts of information to the defence, resulting in the defence requesting for an adjournment.¹⁰⁸

On other occasions, there is a significant shortage of prosecutors, resulting in each prosecutor actively pursuing numerous cases simultaneously.¹⁰⁹ However, the courts attribute delays in the finalisation of criminal trials to the high crime rate and shortage of staff.¹¹⁰ On other occasions, it has been observed that an excessive number of individuals are being arrested with undue haste.¹¹¹ This results in a significant number of cases that do not belong in the criminal courts, being brought to these courts for processing, causing a blockage in the system.¹¹² An additional contributing factor is said to be the incompetence of the police officials to properly investigate cases.¹¹³

¹⁰⁰ Martin Schönteich, 'A story of trials and tribulations: The National Prosecuting Authority, 1988-2014' (*South African Crime Quarterly*, December 2014) < <http://dx.doi.org/10.4314/sacq.v50i1.1> > accessed 31 October 2023.

¹⁰¹ Schönteich, 'A story of trials and tribulations: The National Prosecuting Authority, 1988-2014'.

¹⁰² Schönteich, 'A story of trials and tribulations: The National Prosecuting Authority, 1988-2014'.

¹⁰³ Schönteich, 'A story of trials and tribulations: The National Prosecuting Authority, 1988-2014'.

¹⁰⁴ Schönteich, 'A story of trials and tribulations: The National Prosecuting Authority, 1988-2014'.

¹⁰⁵ Wolf, 'Pre-Trial Equality in Criminal Justice in the Context of Separation of powers'.

¹⁰⁶ Wolf, 'Pre-Trial Equality in Criminal Justice in the Context of Separation of powers' 5.

¹⁰⁷ Laws, 'Addressing case delays caused by multiple adjournments'.

¹⁰⁸ Laws, 'Addressing case delays caused by multiple adjournments'.

¹⁰⁹ Laws, 'Addressing case delays caused by multiple adjournments'.

¹¹⁰ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' 1.

¹¹¹ Ngaqakamba, 'Court postponements: who really suffers?'.

¹¹² Ngaqakamba, 'Court postponements: who really suffers?'.

¹¹³ *Zanner v Director of Public Prosecutions*, Johannesburg 2006 (11) BCLR 1327 (SCA) 15.

Schönteich¹¹⁴ finds that cases that were not properly investigated cause delays in criminal trials.¹¹⁵ Schönteich,¹¹⁶ contends that the significance of the South African police services and the prosecuting authority, despite being separate institutions, are greatly reliant on each other to combat crime.¹¹⁷ This means that police officials are obligated to conduct thorough investigations in order to enable successful prosecutions.¹¹⁸

There are instances where South African police officials are responsible for the adjournments which result in delays, posing a significant threat to a person's rights, such as the rights in section 35 of the Constitution.¹¹⁹ Police officials have been seen as the cause of delays due to unnecessary arrests, decreasing the pace of the judicial process and rendering it ineffective.¹²⁰

Gordin and Cloete,¹²¹ aver that the primary reason for unreasonable delays in criminal trials is that police officials impulsively make numerous arrests without good reason.¹²² They claim that among other factors, unattainable legal documents are the consequence of an inefficient police force and judicial administration.¹²³

However, Jean Redpath,¹²⁴ argues that the blockage and the delays in the system are not caused by constant arrests by police officials.¹²⁵ She further maintains that, it is rather the duration of a remand detainee's incarceration prior to the commencement of their trial.¹²⁶ Nicola de Reuiter and Kathleen Hardy,¹²⁷ indicate that inferior

¹¹⁴ Schönteich, 'The ability of the criminal justice system to solve and prosecute crime'.

¹¹⁵ Schönteich, 'The ability of the criminal justice system to solve and prosecute crime'.

¹¹⁶ Schönteich, 'The ability of the criminal justice system to solve and prosecute crime'.

¹¹⁷ Schönteich, 'The ability of the criminal justice system to solve and prosecute crime'.

¹¹⁸ Schönteich, 'The ability of the criminal justice system to solve and prosecute crime'.

¹¹⁹ Ally, 'The need for clarity on whether 'Suspects' may rely on section 35 of the constitution of the Republic of South Africa, 1996: a comparative law analysis' 240.

¹²⁰ Lukas Muntingh, 'Ten years after the Jali Commission: Assessing the state of South Africa's prisons' (*South African Crime Quarterly*, December 2016) <<http://dx.doi.org/10.17159/2413-3108/2016/vOn58a1380> > accessed 31 October 2023.

¹²¹ Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa'.

¹²² Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa' 1172.

¹²³ Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa' 1172.

¹²⁴ Jean Redpath, 'Unsustainable and unjust: Criminal Justice policy and remand detention since 1994' (*South African Crime Quarterly*, June 2014) < <http://dx.doi.org/10.4314/sacq.v48i1.3> > accessed 31 October 2023.

¹²⁵ Redpath, 'Unsustainable and unjust: Criminal Justice policy and remand detention since 1994'.

¹²⁶ Redpath, 'Unsustainable and unjust: Criminal Justice policy and remand detention since 1994'.

¹²⁷ Nicola de Reuiter and Kathleen Hardy, 'Study on the use of bail in South Africa' (*APCOP Research paper*, 23 May 2018) < 023-apcof-research-study-on-the-use-of-bail-in-South-

investigations, and incomplete dockets, are factors that contribute to the delays.¹²⁸ Catherine S Namakula,¹²⁹ posits that the unavailability of court records in South Africa such as a record of evidence given by a witness at a trial or a document produced before a court, is the cause of delays in trials.¹³⁰

She contends that in South Africa, police officials are expected to submit case files to court, three days prior to the commencement of a trial and that regardless of that stipulated time, delays are frequent.¹³¹ Further, that the underlying reason for this delay is lack of transportation of files to court, but the judicial system asserts that the issue lies with the police officials' inability to commit to the stipulated time, leading to unreasonable delays in trials.¹³² The inability to manage essential court documents is considered to be another cause of unreasonable delays as the unavailability of legal documents decreases the efficiency of the judicial system, adversely affecting citizens.¹³³ In the event that official papers are unattainable, a trial is halted, causing delay in its conclusion.¹³⁴

Nevertheless, Laws,¹³⁵ identifies the absence of parties to a case such as witnesses, lawyers, prosecutors, court interpreters, presiding officers, and an accused person as an additional cause of adjournments and delays in criminal trials.¹³⁶ A case cannot proceed if an accused person is absent, leading to delays.¹³⁷ Witnesses may cause delays and the case of *Thenga v S*,¹³⁸ serves as an example. In this case, due to the witness's failure to remain in court attendance, the witness was convicted of contempt of court after 29 postponements.¹³⁹

128 Africa-nicola-de-ruiter-and-kathleen-hardy-.pdf> accessed 31 October.
De Reuiter and Hardy, 'Study on the use of bail in South Africa'.

129 Catherine S Namakula, 'The court record and the right to a fair trial: Botswana and Uganda' (2016) 16 (1) AHRLJ 175-203.

130 Namakula, 'The court record and the right to a fair trial: Botswana and Uganda' 195.

131 Namakula, 'The court record and the right to a fair trial: Botswana and Uganda' 195.

132 Namakula, 'The court record and the right to a fair trial: Botswana and Uganda' 196.

133 Ntombizandile Victoria Mafu, 'The management of court records in Magistrate Court: A case of Middledrift Magistrate Court, Eastern Cape' (LLM thesis, University of Fort Hare 2014) 2.

134 Mafu, 'The management of court records in Magistrate Court: A case of Middledrift Magistrate Court, Eastern Cape' 3.

135 Laws, 'Addressing case delays caused by multiple adjournments'.

136 Laws, 'Addressing case delays caused by multiple adjournments'.

137 Iruoma, 'Eradicating delay in the administration of justice' 29.

138 *Thenga v S* 2012 (2) SACR 628 (NCK) 21.

139 *Thenga v S* 21.

Jamil Mujuzi,¹⁴⁰ depicts the significance of witnesses giving evidence including those living abroad.¹⁴¹ He further points out section 2(1) of the International Co-operation in Criminal Matters Act,¹⁴² in considering a witness's attendance being attained without unreasonable delay.¹⁴³ Unreasonable delays in trials appear to be complex. The cause of unreasonable delay is broad and in certain instances unrelated to one another and there may not be an established solution or strategy to solve it.

Whilst investigating the causes of unreasonable delays in criminal proceedings, certain research focuses on the severity of this issue by examining its effects. Undue adjournments in criminal trials affect an accused person and a victim of a crime, causing stress and anger, whilst witnesses to a crime may experience fading memory adversely affecting the case.¹⁴⁴ Ballard,¹⁴⁵ argues that accused persons affected by these delays are subjected to various disadvantages such as, being dispossessed of their properties, being estranged from their families, losing their livelihood and even falling ill.¹⁴⁶

In *Sanderson v Attorney General*,¹⁴⁷ the applicant alleged he suffered social prejudice.¹⁴⁸ This was harm that had fallen upon him, substantial embarrassment, pain, and suffering caused by the disgrace and humiliation caused by the type of allegations brought against him.¹⁴⁹ He further argued that in addition, his wife's business was harmed.¹⁵⁰

In the recent case of a sportsperson Senzo Meyiwa, A witness Zandile Khumalo penned a letter to the president demanding that Meyiwa's trial be prioritised.¹⁵¹

¹⁴⁰ Jamil Ddamulira Mujuzi, 'The South African International Co-operation in Criminal Matters Act and the issue of evidence' (2015) De Jure 351-387.

¹⁴¹ Mujuzi, 'The South African International Co-operation in Criminal Matters Act and the issue of evidence' 358.

¹⁴² South African International Co-operation in Criminal Matters Act 75 of 1996.

¹⁴³ Mujuzi, 'The South African International Co-operation in Criminal Matters Act and the issue of evidence' 359.

¹⁴⁴ Iruoma, 'Eradicating delay in the administration of justice' 8.

¹⁴⁵ Ballard, 'Research Report on Remand Detention in South Africa: an Overview of the Current Law and Proposals for Reform'.

¹⁴⁶ Ballard, 'Research Report on Remand Detention in South Africa: an Overview of the Current Law and Proposals for Reform'.

¹⁴⁷ *Sanderson v Attorney-General, Eastern Cape* 1997 (12) BCLR 1675 (ZACC) 9.

¹⁴⁸ *Sanderson v Attorney-General, Eastern Cape* 9.

¹⁴⁹ *Sanderson v Attorney-General, Eastern Cape* 9.

¹⁵⁰ *Sanderson v Attorney-General, Eastern Cape* 9.

¹⁵¹ Mduduzi Nonyane, 'Singer Zandi Khumalo pens open letter to President Ramaphosa to speed up Meyiwa trial' (City Press, 06 July 2023).

Khumalo stated that this request was for families to find closure as the case had dragged on for eight years.¹⁵² The delays have also been seen as secondary victimisation because persons affected by a crime should never suffer the consequences of a defective judicial system that ought to protect them.¹⁵³

The case of *S v Bhuda*,¹⁵⁴ shows that the right to a fair trial infuses confidence in the judiciary,¹⁵⁵ and that the adverse effects of unreasonable delays do not only affect an accused person who is on trial.¹⁵⁶ The right of an accused person not to have his trial unduly delayed is contained in section 35 of the Constitution,¹⁵⁷ that protects the rights of those who are apprehended, imprisoned, and indicted in South Africa.¹⁵⁸ Accused persons, arrested persons as well as pre-trial detainees are protected by section 35(3)(d) of the Constitution,¹⁵⁹ that states that the aforementioned group of people have a right to a fair trial.¹⁶⁰

Unreasonable delays in criminal proceedings infringe upon an accused person's right to a fair trial.¹⁶¹ In accordance with section 12(1)(a) of the Constitution,¹⁶² an accused person ought not to be unfairly detained without a legal reason in cases of unreasonable delays in criminal trials.¹⁶³

Section 12(1)(a) provides for the right of an accused person to liberation as well as safety.¹⁶⁴ This right is violated in cases of unreasonable delays, where a remand detainee is held in custody for prolonged periods during their trial. Therefore, implementing practical approaches to this issue is extremely crucial. Society not only

152 <<https://www.news24.com/citypress/news/singer-zandi-khumalo-pens-open-letter-to-president-ramaphosa-to-speed-up-the-meyiwa-trial-20230706> <accessed 20 September 2025. Nonyane, 'Singer Zandi Khumalo pens open letter to President Ramaphosa to speed up Meyiwa trial'.

153 Mildred Bekink, 'The protection of child victims and witnesses in a post-constitutional criminal justice system with specific reference to the role of an intermediary: A comprehensive study' (LLD thesis, University of South Africa 2016) 2.

154 *S v Bhuda* 2006 (96) (ZAGPHC) 3.

155 *S v Bhuda* 3.

156 Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court' 753.

157 Constitution of the Republic of South Africa Act.

158 Constitution of the Republic of South Africa Act.

159 Constitution of the Republic of South Africa Act.

160 Constitution of the Republic of South Africa Act.

161 Constitution of the Republic of South Africa Act.

162 Constitution of the Republic of South Africa Act.

163 Constitution of the Republic of South Africa Act.

164 Constitution of the Republic of South Africa Act.

suffers as a result of these delays but gradually loses confidence in the judicial system.¹⁶⁵

South Africa has an unrivalled correctional population in the whole of Africa.¹⁶⁶ With each succeeding day, a remand detainee remains unfairly incarcerated, and the pressure on the state to rationalise his or her continued incarceration increases.¹⁶⁷

Overcrowding is the most noticeable and problematic consequence of unreasonable delays. The lengthy detention of remand detainees has resulted in overpopulation in South African correctional institutions. Edwin Cameron,¹⁶⁸ posits that South African prisons are no longer places for rehabilitation and restoration of offenders but rather overpopulated penal institutions.¹⁶⁹

The judicial system is of the view that overpopulation in South African prisons is caused by the awaiting-trial population and not the sentenced population.¹⁷⁰ Cameron,¹⁷¹ contends that overpopulation is the result of a distressful apartheid era which caused severe damage to the nation at large.¹⁷² He states that another factor is the belief that minimum sentencing laws are effective and this diverts the country from identifying optimal remedies.¹⁷³

In the year 2012 the former minister of the Department of Correctional Services (DCS), Mr Sbu Ndebele revealed that witnesses who were absent from proceedings, and court documents that were missing were the underlying reasons in the increase of uncompleted work in cases.¹⁷⁴ This contributes to overcrowding which affects the well-being of inmates and creates issues such as lack of cleanliness, as a result of the shortage of toilets.¹⁷⁵

¹⁶⁵ Namakula, 'The court record and the right to a fair trial: Botswana and Uganda' 196.

¹⁶⁶ Ballard, 'Promoting Pre-Trial Justice in Africa'.

¹⁶⁷ Ballard, 'Promoting Pre-Trial Justice in Africa'.

¹⁶⁸ Edwin Cameron, 'The Crisis of Criminal Justice in South Africa' (2020) 137(1) SALJ 32-71.

¹⁶⁹ Cameron, 'The Crisis of Criminal Justice in South Africa' 32.

¹⁷⁰ Vuyelwa Christa Molomo-Ndlovu, 'Effectiveness of the Criminal Justice System Strategies in Curbing Over Crowding in the Department of Correctional Services' (LLD thesis, University of South Africa 2022) 31.

¹⁷¹ Cameron, 'The Crisis of Criminal Justice in South Africa'.

¹⁷² Cameron, 'The Crisis of Criminal Justice in South Africa' 137.

¹⁷³ Cameron, 'The Crisis of Criminal Justice in South Africa' 137.

¹⁷⁴ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' 128.

¹⁷⁵ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect

Murdoch Watney's study,¹⁷⁶ avers the effects of unreasonable delays in trials which she claims are the underlying reason for the rapidly increasing remand population, which results in deplorable living conditions for remand detainees.¹⁷⁷

Judge Hannes Fegan's 2002 report confirms Watney's finding. The report described these conditions as appalling, giving examples of over 60 offenders sharing a toilet, blocked sewage pipes causing a malodorous environment, and a shortage of beds amongst others.¹⁷⁸

Prison divisions that accommodate remand detainees are infamous for sexual assault and violence which is a consequence of first-time offenders being accommodated with repeat offenders, frequently resulting in the contraction of the human immunodeficiency virus (HIV).¹⁷⁹ Chesne Albertus,¹⁸⁰ depicts an additional issue of overpopulation in South African prisons. In these cases, a remand detainee's health is at risk in temporary places of detention.¹⁸¹ Albertus,¹⁸² reveals how a remand detainee who had fallen ill whilst in custody had to challenge the DCS in the case of *Dundley Lee v Minister of Correctional Services*.¹⁸³

The case of *Lee v Minister of Correctional services*,¹⁸⁴ is an example of how offenders are kept in appalling conditions and consequently fall ill as a result.¹⁸⁵ Mr Lee raised concern regarding the conditions in which he was detained.¹⁸⁶ These conditions failed to comply with the standards consistent with human dignity, resulting in him

or accused person during criminal proceedings' 111.

¹⁷⁶ Watney, 'Unreasonable delays in criminal trials and the remedy of a permanent stay of prosecution: Regsspraak'.

¹⁷⁷ Watney, 'Unreasonable delays in criminal trials and the remedy of a permanent stay of prosecution: Regsspraak' 422.

¹⁷⁸ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' 111.

¹⁷⁹ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' 120.

¹⁸⁰ Chesne Albertus, 'Dundley Lee v Minister of Correctional Services: A roadmap to some weak links in the South African Custodial Chain' (2015) 32 (1) Journal of Third World Studies 161-180.

¹⁸¹ Albertus, 'Dundley Lee v Minister of Correctional Services: A roadmap to some weak links in the South African Custodial Chain' 161.

¹⁸² Albertus, 'Dundley Lee v Minister of Correctional Services: A roadmap to some weak links in the South African Custodial Chain'.

¹⁸³ Albertus, 'Dundley Lee v Minister of Correctional Services: A roadmap to some weak links in the South African Custodial Chain' 161.

¹⁸⁴ *Lee v Minister of Correctional Services* 2013 (2) BCLR 129 (CC) 2.

¹⁸⁵ *Lee v Minister of Correctional Services* 2.

¹⁸⁶ *Lee v Minister of Correctional Services* 2.

contracting tuberculosis(TB) while detained in prison.¹⁸⁷ Mr Lee's request was for the department to take responsibility for his health in which his request was successful.¹⁸⁸

The United States of America similar to South Africa, suffers from the consequence of overpopulation. Krishan Jayanth K and Kumar, C.Raj,¹⁸⁹ state that, criminal law scholars contend that American correctional facilities are overcrowded and that remand detainees experience an excessive delay in their trial commencement.¹⁹⁰ Will Doobie, Jacob Goldin, and Crystal S Yang,¹⁹¹ claim that the annual figure of remand detainees across the globe each year is above 11 000 000 with the United States of America possessing the maximal number of remand detainees calculated at around 500 000 daily.¹⁹² It is manifest that for a remand detainee who is yet to be convicted, dwelling in these conditions for months and in certain cases years, is a grave injustice to society.

Despite the issue of unreasonable delays, the law provides an accused person with the remedies that address this issue. An accused person may apply for the remedy of permanent stay of prosecution. This may be achieved in cases where the section 35(3)(d) of the constitution,¹⁹³ right is transgressed, and in circumstances not provided for in section 342A of the CPA.¹⁹⁴

The requirements for this remedy are that, there ought to have been a grave injustice in a trial of an accused person and or extraordinary or special conditions.¹⁹⁵ This remedy is seldom granted in cases of unreasonable delays as it is an exceptional

¹⁸⁷ *Lee v Minister of Correctional Services* 2.

¹⁸⁸ Albertus, 'Dundley Lee v Minister of Correctional Services: A roadmap to some weak links in the South African Custodial Chain' 161.

¹⁸⁹ Krishnan, Jayanth K and Kumar, C. Raj, 'Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective' (2011) 42 (155) Georgetown Journal of International Law 747-784.

¹⁹⁰ Krishnan and Kumar, 'Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective'.747.

¹⁹¹ Will Dobbie, Jacob Goldin, and Crystal S Yang, 'The Effect of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges' (2018) 108 (2) American Economic Review 201-240.

¹⁹² Dobbie, Goldin, and Yang, 'The Effect of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges' 201.

¹⁹³ Constitution of the Republic of South Africa Act.

¹⁹⁴ *Naidoo v S* 2012 (2) SACR 126 (WCC) 18.

¹⁹⁵ Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 48.

remedy, only granted where the delays are egregious and have resulted in irreparable trial prejudice.¹⁹⁶

In *Zambodla v Director of Public Prosecutions Grahamstown*,¹⁹⁷ the seriousness of the offence was taken into consideration and the court held that this remedy interferes with society's interest to receive justice.¹⁹⁸ A similar strategy was utilised by the court in *Bothma v Els and Others*,¹⁹⁹ where the nature of the offence was taken into consideration.²⁰⁰

In *Broome v Director of Public Prosecutions, Western Cape*,²⁰¹ the seriousness of the offence was taken into account, the court held that the loss of audit records presented grave harm to the accused person's rights in the trial.²⁰² The remedy of permanent stay of prosecution was granted.²⁰³ There are cases where the accused person has caused unreasonable delays in criminal proceedings. In *S v Dalindyebo*,²⁰⁴ the court found that there was no trial delay, violating the rights of the accused person, as the cause of the delay was largely due to the appellant's disruptive conduct.²⁰⁵

In *Ramabele v the State; Msimango v the State*,²⁰⁶ the court highlighted that the delay that resulted from the accused person's conduct did not preclude him from challenging the fairness of the trial.²⁰⁷

In *Zuma v Democratic Alliance and Others*,²⁰⁸ the court struggled to comprehend the underlying reasons why the remedy was granted to Mr Zuma initially.²⁰⁹ The court in *S v Zuma and another*,²¹⁰ found that the decision to grant the remedy was erroneous

¹⁹⁶ *Rodrigues v The National Director of Public Prosecutions and Others* 51.

¹⁹⁷ *Zambodla v Director of Public Prosecutions, Grahamstown* 2019 (10) (ZAECHGHC) 40.

¹⁹⁸ *Zambodla v Director of Public Prosecutions, Grahamstown* 40.

¹⁹⁹ *Bothma v Els and Others* 2010 (1) SACR 184 (CC) 2.

²⁰⁰ *Bothma v Els* 2.

²⁰¹ *Broome v Director of Public Prosecutions, Western Cape and Others, Wiggins v W/NMDE Streeklanddros, Cape Town and Others* 2008 (1) SACR 178 (C) 5.

²⁰² *Broome v Director of Public Prosecutions, Western Cape* 5.

²⁰³ *Broome v Director of Public Prosecutions, Western Cape* 5.

²⁰⁴ *S v Dalindyebo* 2016 (1) SACR 329 (SCA).

²⁰⁵ *S v Dalindyebo* 21.

²⁰⁶ *Ramabele v The State; Msimango v The State* 2020 (2) SACR 604 (CC).

²⁰⁷ *Ramabele v The State; Msimango v The State* 65.

²⁰⁸ *Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another* 2018 (1) SACR 123 (SCA).

²⁰⁹ *Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance and Another* 94.

²¹⁰ *S v Zuma and Another and a related matter* 2020 (2) BCLR 153 (KZD).

and revived the prosecution resulting in Mr Zuma's defence utilising the Stalingrad strategy.²¹¹

The research will discuss this strategy in detail as one of the recognised adverse effects of the court's refusal to grant the remedy of a permanent stay of prosecution. In cases where the courts have not granted an accused person a stay of prosecution, a court grants an accused person the remedies under section 342A.²¹² The purpose of these remedies is to give consolation during unreasonable delays.²¹³

In *S v Ndibe*,²¹⁴ the court utilised the remedies provided for in section 342A in lieu of the requested permanent stay of prosecution remedy.²¹⁵ The court found that, no inquiry was conducted when the matter was terminated.²¹⁶ The case of *S v Ndibe*,²¹⁷ shows how the law requires the judiciary to exhaust the remedies in section 342A prior to granting the accused person the extreme remedy of a stay of prosecution. The investigations conducted on this issue regarding the remedies offered to an accused person, reveal that it is very rare for a court to award an accused person the remedy of stay of prosecution. This is despite of an accused person being incarcerated for extended periods during criminal trials. The rationale for the court's refusal is generally cogent and protects the interests of society.

A court may take into consideration, the seriousness of a crime committed and ensure that an accused person takes responsibility for his or her actions. However, until alternative and effective solutions are found to this issue, an accused person and parties who have a direct interest in a case will continue to suffer, due to the flaws in the judicial system.

South Africa has made efforts in the past to eradicate or reduce delay.²¹⁸ This was executed by putting in place certain strategies such as the Justice Vision 2000, a policy set up to assist in the transformation of the administration of justice.²¹⁹ This policy

²¹¹ *S v Zuma and Another and a related matter* 1.

²¹² Criminal Procedure Act.

²¹³ Criminal Procedure Act.

²¹⁴ *S v Ndibe* 2012 245 (ZAWCHC).

²¹⁵ *S v Ndibe* 10.

²¹⁶ *S v Ndibe* 10.

²¹⁷ *S v Ndibe*.

²¹⁸ Iruoma, 'Eradicating delay in the administration of justice' 31.

²¹⁹ Iruoma, 'Eradicating delay in the administration of justice' 31.

established specific courts, such as small claims courts, equality courts, and others.²²⁰
In addition, new methods of settling matters without going to trial such as diversion programs were introduced.²²¹

1.10 Chapter overview

This research will be presented in five chapters.

Chapter 2 Legislative framework on unreasonable delays in criminal proceedings.

Chapter 3 Overcrowding in correctional facilities arising from unreasonable delays in trials.

Chapter 4 Permanent stay of prosecution as a remedy to unreasonable delay in trials.

Chapter 5 Conclusion and Recommendations.

²²⁰ Iruoma, 'Eradicating delay in the administration of justice' 31.

²²¹ Iruoma, 'Eradicating delay in the administration of justice' 32.

CHAPTER 2: THE CAUSES AND EFFECTS OF UNREASONABLE DELAYS IN THE SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM

2.1 Introduction

Emma Kaplan,²²² argues that a fruitful and well organised legal structure lays the foundation for the operation of a state.²²³ The law enforcement structure is separated into a tripartite composition, consisting of the agencies involved in preventing crime.²²⁴ These are namely, the police services and other law enforcement establishments, the judicial system, which consists of judges, magistrates, legal representatives, and the correctional services which consist of correctional officers, probation officers, and parole officers.²²⁵

Resembling Kaplan's view,²²⁶ Babajide Ilo and Adekunbi Imosemi,²²⁷ advocate for the significance of a streamlined legal structure in the general public.²²⁸ It is submitted that, the significance of a well-functioning judicial system increases the confidence of the public in the judicial system. This structure achieves this through serving all South Africans in a just and fair manner and further promotes and safeguards an accused person's rights during criminal trials. This quality and practice in the judicial system is significant as it encourages the public to freely approach the courts with the confidence that justice will be served.

The right to a speedy trial is one of the strong characteristics of the overall right to a fair trial, which gave rise to the creation of the adage 'justice delayed is justice denied'.²²⁹ This is the necessity for fairness to be speedy.²³⁰ It is submitted that, the

²²² Emma Kaplan, 'Mediation and The Criminal Justice System: A Growing Need for a Viable Alternative to Court Litigation' (LLM dissertation, University of Cape Town 2022).

²²³ Kaplan, 'Mediation and The Criminal Justice System: A Growing Need for a Viable Alternative to Court Litigation'. 10

²²⁴ Babajide Olatoye Ilo and Adekunbi Folashade Imosemi, 'Prospect and Challenge of Criminal Procedure in Nigeria: A Review' (2022) 8 (2) A Review. Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang 279-312, 281.

²²⁵ Babajide Olatoye Ilo and Adekunbi Folashade Imosemi, 'Prospect and Challenge of Criminal Procedure in Nigeria: A Review' (2022) 8 (2) A Review. 281.

²²⁶ Kaplan, 'Mediation and The Criminal Justice System: A Growing Need for a Viable Alternative to Court Litigation'.

²²⁷ Ilo and Imosemi, 'Prospect and Challenge of Criminal Procedure in Nigeria: A Review'.

²²⁸ Ilo and Imosemi, 'Prospect and Challenge of Criminal Procedure in Nigeria: A Review' 281.

²²⁹ Godfrey Kaweesa, 'Case Backlog and the right to due process: The Uganda judiciary' (LLM thesis, University of Makerere 2012) 1.

²³⁰ Iva Vukušić, 'Later Rather Than Sooner: Time and Its Effects on the Karadžić and Mladić Trials' (2022) 22 International Criminal Law Review 189-208, 191.

requirement for an accused person's trial to commence and to conclude without unreasonable delay attracts results, is also based on the consequences of the trial being delayed. The consequences arising therefrom are typically the unjust sufferings and losses an accused person often experiences during the lengthy process, which could have otherwise been avoided if a verdict was reached sooner. Nevertheless, this is not the reality in the South African criminal justice system.

Kameshwhri Moonsamy,²³¹ argues that the South African criminal justice system has come to be ineffectual on account of among others, corruption and dereliction of duty.²³² Alexandra A. Akoto,²³³ claims such issues are determined to be the cause of extreme difficulties in legal proceedings.²³⁴ These matters prevent the public access to a fair trial at all phases of the proceedings.²³⁵ The setbacks result in the transgression of an accused person's right to a fair trial. Undue delays in legal proceedings may be caused by numerous individuals who are involved in legal proceedings. These are an accused person themselves, legal representatives, witnesses, and courts who on occasion contribute to the delays.

This chapter will examine how various individuals involved in legal proceedings may hinder the smooth running of criminal proceedings.

2.2 The causes of unreasonable delays in criminal trials

Section 35(3)(d) of the Constitution of the Republic of South Africa, 1996²³⁶ (hereinafter referred to as the Constitution), states that all accused persons possess the right to a fair trial and that the process ought to take place within an appropriate time frame.²³⁷ In *S v Steward*,²³⁸ the court describes the issue of wanton delay to finalise the trial as profoundly disturbing.²³⁹ It is submitted that, unreasonable delays

²³¹ Kameshwhri Moonsamy, 'Analysis on the Administration and Governance of the South African Case Docket' (LLM dissertation, University of Cape Town 2018).

²³² Moonsamy, 'Analysis on the Administration and Governance of the South African Case Docket' vii.

²³³ Alexandra A. Akoto, 'Access to justice at Kumasi Central Prison' (LLM thesis, Kwame Nkrumah University of Science and Technology, Kumasi 2019).

²³⁴ Akoto, 'Access to justice at Kumasi Central Prison' 10.

²³⁵ Akoto, 'Access to justice at Kumasi Central Prison' 10.

²³⁶ Constitution of the Republic of South Africa, 1996.

²³⁷ Constitution of the Republic of South Africa Act.

²³⁸ *S v Steward* 2017 (1) SACR 156 (NCK).

²³⁹ *S v Steward* 3.

in criminal proceedings produce detrimental effects on an accused person. It violates their constitutional right to a fair trial, and their right to liberty while they await their trial. Regardless of the detrimental effects delays in criminal trials create, there are laws that have been enacted to regulate them, as well as individuals who are occasionally responsible for the adjournments. The court in *Lethoko v Minister of Defence*,²⁴⁰ demonstrates that delays tend to be caused by various individuals involved in the case.²⁴¹

The following paragraphs will discuss the various individuals who contribute towards unreasonable delays in the criminal justice system.

2.2.1 Police officials

The role police officials perform in criminal investigations is of paramount importance in determining the guilt or acquittal of an accused person. The reason is that; it is through this evidence that an accused person's fate is determined by the courts. Therefore, police officials are bestowed with the crucial responsibility to conduct comprehensive investigations as people's lives are at stake.

Police officials are typically placed under enormous pressure by the public and the judicial system to perform their obligations with diligence. Detectives of the South African Police Services (SAPS) are subverted, brought into disrepute by the public, frequently enveloped in dispute, categorised as unproductive, incompetent, and unlettered.²⁴² In certain instances, police officials fall short of the expectations of communities as well as the judicial system in their investigations. This results in lack of evidence, where an accused is acquitted or police officials have not concluded their investigations on time, occasionally leading to unreasonable delays.

It is worth noting that in certain instances, delays in police investigations are caused by operational challenges and accumulation of cases in laboratories.²⁴³ Extended

²⁴⁰ *Lethoko v Minister of Defence* 2021 (2) SACR 661 (FB).

²⁴¹ *Lethoko v Minister of Defence* 3.

²⁴² Mokoena RJ, Motseki MM, and Dube NC, 'Evaluating The Role of Criminal Investigators During Bail Application' (2020) 12(1) International Journal of Social Sciences and Humanity Studies' 161-174, 161.

²⁴³ Mercilene Tanyaradzwa Machisa, and others, 'Circumstances, policing, and attrition of multiple compared to single perpetrator rape cases, within the South African criminal justice system' (2023) 12 (11) Machisa et al.Crime Science 1-12, 9.

delays hinder investigation leads, highlighting the importance of well organised policies and an extensive way to manage and ward off excess in forensic laboratories.²⁴⁴

Police officials have been accused of hindrances, where dockets vanish due to supposed dishonesty in the criminal justice system.²⁴⁵ It is argued that corruption is ordinarily identified in the police department during trials, where police officials will be paid to make evidence disappear. Such activities in the criminal justice system reveal how frequently victims have had to witness their perpetrators being acquitted because of avarice and depravity. Police officials are appointed to serve and protect the very communities they are failing. Yvonne Juwaki,²⁴⁶ identifies a comparable issue in the Zimbabwean criminal justice system. Juwaki,²⁴⁷ posits that police officials can extend the production of a docket, affecting a speedy legal process, because defective dockets or no dockets hinder the state from instituting proceedings.²⁴⁸

2.2.2 Legal representatives

Maria Hawilo and others,²⁴⁹ contend that legal actors such as prosecutors and defence lawyers who are absent during legal proceedings contribute to adjournments.²⁵⁰ The case of *Van Heerden & another v NDPP & others*,²⁵¹ gives an example of how the state causes delays. In this case, the state requested an adjournment for three months, as an inquiry had not yet been finalised.²⁵² A further example was seen in the

²⁴⁴ JH Smith and JS Horne, 'Why Down – managing Backlog Forensic DNA Case Entries Matters' (2024) 8 JFSR 001- 008, 001.

²⁴⁵ Khomotjo Lekgau, Witness Maluleke, and Cornelis Roelofse, 'Analysis of Misconduct and Crime by police Officers Investigated by the Independent Police Investigate Directorate' (2021) 56(1) JOPA 1-22, 5.

²⁴⁶ Yvonne Kudzai Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe' (LLM thesis, International Institute of Social Studies 2012).

²⁴⁷ Yvonne Kudzai Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe'.

²⁴⁸ Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe' 20.

²⁴⁹ Maria Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' (2022) 112 (2) Journal of Criminal Law and Criminology 171-212.

²⁵⁰ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 195.

²⁵¹ *Van Heerden and another v National Director of Public Prosecutions and others* 2017 (2) SACR 696 (SCA).

²⁵² *Van Heerden and another V National Director of Public Prosecutions and others* 9.

case of *Wynne-Jones and another*,²⁵³ whereby the applicants requested that their matter be struck off the roll,²⁵⁴ because it took 5-years for the trial to conclude and the state was responsible for the delays.²⁵⁵

Section D(1) of the Code of Conduct for members of the National Prosecuting Authority (NPA),²⁵⁶ provides that prosecutors are expected to execute their obligations swiftly, consistently and in a befitting manner.²⁵⁷ This was confirmed in *Wild and another v Hoffert*,²⁵⁸ where the court stated that, in all legal proceedings and at all times, the state had the obligation to guarantee that accused persons do not experience unreasonable delays in matters which they are tried for.²⁵⁹ Akoto,²⁶⁰ identifies defence lawyers as contributors to unreasonable delays in trials, especially in cases where an accused person lacks legal representation in court.²⁶¹ The conduct of legal practitioners is regulated by the Code of Conduct for All Legal Practitioners,²⁶² to enable them to perform their duties effectively and in accordance with the law. Section 60.1 of the Code of Conduct for all Legal Practitioners,²⁶³ provides that a legal practitioner is obliged to conduct themselves in a manner that seeks to encourage success in proceedings and ought not to misuse the court process or permit such conduct in proceedings.²⁶⁴

²⁵³ *Wynne-Jones and Another V S In re: S v Wynne-Jones and Another* 2012 (2) ALL SA 311 (ZAGPJHC).

²⁵⁴ *Wynne-Jones and Another V S In re: S v Wynne-Jones and Another* 56.

²⁵⁵ *Wynne-Jones and Another V S In re: S v Wynne-Jones and Another* 167.

²⁵⁶ Department of Justice and Constitutional Development, 'Code of conduct for members of the National Prosecuting Authority under section 22(6) of the National Prosecuting Act, 1998' (Department of Justice And Constitutional Development, December 2010) <<https://www.npa.gov.za/sites/default/files/documents/codes%20Conduct%20published%2029%202010.pdf>> accessed 25 August 2024.

²⁵⁷ Department of Justice and Constitutional Development, 'Code of conduct for members of the National Prosecuting Authority under section 22(6) of the National Prosecuting Act, 1998'.

²⁵⁸ *Wild and another v Hoffert NO and others* 1998 (6) BCLR 656 (ZACC).

²⁵⁹ *Wild and another v Hoffert NO and others* 11.

²⁶⁰ Akoto, Access to justice at Kumasi Central Prison'.

²⁶¹ Akoto, Access to justice at Kumasi Central Prison' ix.

²⁶² Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities' (Legal Practice Council, March 2019) <<https://www.studocu.com/en-za/document/university-of-south-africa/business-entities-law-301/code-of-conduct-for-all-legal-practioners-candidate-legal-practioners-and-juristic-entitiesgg42337effective-29/51969657>> accessed 25 August 2024.

²⁶³ Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities'.

²⁶⁴ Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities'.

Section 60.2 of the Code of Conduct for All Legal Practitioners,²⁶⁵ provides that a legal practitioner ought not to unfairly prolong proceedings before a court, and finally, section 60.3 of the Code of Conduct for All Legal Practitioners,²⁶⁶ states that a legal practitioner is obligated to implement suitable actions to ensure that they arrive at the court they are to appear at.²⁶⁷ There are cases in which delays in proceedings occur, where a remand detainee lacks legal representation or is unable to afford one and this issue compels the proceedings to reach a standstill until one is appointed for a remand detainee.

Section 73(2c) of the Criminal Procedure Act 51 of 1977 (hereinafter the CPA),²⁶⁸ provides for cases where an accused person is unsuccessful in obtaining a lawyer of their preference, that a court may order one to be appointed at the expense of the state under, the Legal Aid South Africa Act.²⁶⁹

The right to be represented in a court of law is crucial to an accused person's trial, as without such representation, justice may be compromised. When an accused person is without legal representation, proceedings may be required to be halted as the court contemplates an action to assist an accused person.

These adjournments cause delays in an accused person's trial, further prolonging the matter. Section 22(1)(a),(l),(ii),and (iii) of the Legal Aid South Africa Act No 39 of 2014 (hereinafter the Legal Aid South Africa Act),²⁷⁰ states that a court amid criminal proceedings is empowered to order that an accused person be provided with a lawyer at the expense of the state, considering an accused person's personal circumstance, the seriousness of the charge and whether legal representation is obtainable for an accused person.²⁷¹

²⁶⁵ Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities'.

²⁶⁶ Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities'.

²⁶⁷ Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities'.

²⁶⁸ Criminal Procedure Act 51 of 1977.

²⁶⁹ Criminal Procedure Act.

²⁷⁰ Legal Aid South Africa Act No 39 of 2014.

²⁷¹ Legal Aid South Africa Act.

Muhammand Waqar, Ashan Iqbal and Syed Shair Abbas Kazmi,²⁷² aver that lawyers tend to delay proceedings particularly in cases where the category of the offence committed is significant.²⁷³ Hawilo and others,²⁷⁴ state that in some cases, lawyers are insufficiently prepared for proceedings and this at times enraged judges.²⁷⁵ The author argues that legal representatives who appear in court unprepared ordinarily require additional time to prepare, which consequently leads to them requesting for the court to adjourn the matter.

2.2.3 Judges

Judges may also contribute to delays in criminal trials. Peter Mulwa,²⁷⁶ demonstrates that the recruitment and movement of judges leads to an increase in pending matters and adjournments, which is due to the fact that the movement and hand-over procedures of legal proceedings tend to lead to unreasonable delays.²⁷⁷ The consequence of the accumulation of uncompleted work results in a substantial collection of neglected cases impeding the capacity of the judiciary to try or decide a matter within an appropriate time frame.²⁷⁸

Hawilo and others,²⁷⁹ contend that judicial officers are not always responsible for delays, however, cases do exist where judges contribute to adjournments, such as in cases of regular breaks, where judges delay judgments.²⁸⁰

²⁷² Muhammand Waqar, Ahsan Iqbal, and Syed Shair Abbas Kazmi, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study' (2022) 6 (3) PLHR 289-297.

²⁷³ Waqar, Iqbal, and Kazmi, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study' 292.

²⁷⁴ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System'.

²⁷⁵ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 196.

²⁷⁶ Peter Mutua Mulwa, 'The Effects of Magistrates' Transfer on the Administration of Justice in Kenya: A Case Study of Courts in Nairobi City Country' (MPA dissertation, University of Nairobi 2020).

²⁷⁷ Mulwa, 'The Effects of Magistrates' Transfer on the Administration of Justice in Kenya: A Case Study of Courts in Nairobi City Country' V.

²⁷⁸ Mulwa, 'The Effects of Magistrates' Transfer on the Administration of Justice in Kenya: A Case Study of Courts in Nairobi City Country' 10.

²⁷⁹ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System'.

²⁸⁰ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 198.

The Code of Judicial Conduct,²⁸¹ regulates how judicial officers ought to perform their duties, in order to serve the public effectively. Article 5, Note 5 (iii) of the Judicial Code of Conduct,²⁸² provides that a judge has an obligation to refuse participation in a conduct which is prejudicial to the smooth running and swift process of legal proceedings.²⁸³

Article 10 (1), (c), (d), (e), and (g) further states that a judge must conclude a trial seamlessly and swiftly and give verdicts or any ruling in legal proceedings expeditiously. Further, in the absence of unreasonable delays, refuse to participate in prejudicial conduct, and perform all their obligations in a correct, orderly and swift manner.²⁸⁴

Moonsamy,²⁸⁵ argues that judges are granted the authority to make decisions based on their own individual assessments, to refuse unreasonable delays, as it is significant for judges to intervene and prevent any occurrence which may lead to unreasonable delays and the prevention of access to justice.²⁸⁶

Moonsamy's view is confirmed in the CPA.²⁸⁷ Section 168 gives presiding officers the authority to postpone a trial to any future date on the terms which to the court are reasonable, and in line with all other provisions in the CPA.²⁸⁸ Further, which are related to the issue of unreasonable delays.²⁸⁹

Despite these abilities, the issue of delays in trials is nonetheless severe in the South African criminal justice system, as judges in various circumstances are nevertheless compelled to grant postponements, and at times for the benefit of a case.

²⁸¹ Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994' (*Department of Justice And Constitutional Development*, October 2012) < [https : // www.justice.gov.za/legislation/notices/2012/2012/018-gg35802-nor-865-judicial-conduct.pdf](https://www.justice.gov.za/legislation/notices/2012/2012/018-gg35802-nor-865-judicial-conduct.pdf)> accessed 24 August 2024.

²⁸² Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994'.

²⁸³ Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994'.

²⁸⁴ Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994'.

²⁸⁵ Moonsamy, 'Analysis on the Administration and Governance of the South African Case Docket'.

²⁸⁶ Moonsamy, 'Analysis on the Administration and Governance of the South African Case Docket' 6.

²⁸⁷ Criminal Procedure Act.

²⁸⁸ Criminal Procedure Act.

²⁸⁹ Criminal Procedure Act.

In *S v Steward*,²⁹⁰ the court held that several of the undue adjournments in the case were unfair and contributed to the mishandling of legal proceedings through the utilisation of undue adjournments strategies. This indicated that the judge ought to have exercised greater authority on the trial with a firmer, but fair hand.²⁹¹

This observation in regard to the aforementioned case, is confirmed in Article 9, Note 9 (i),²⁹² that stipulates that despite judicial officers being obliged to give litigants due process, they ought to always retain an authoritative grasp on the process.²⁹³ Hawilo and others,²⁹⁴ hold the view that this category of conduct manifests negligence and it disregards the very individuals whose future the judges hold in their control.²⁹⁵

2.2.4 Witnesses

Lucy Nthepa Mphaphuli and Petro Botha,²⁹⁶ describe the position of a witness in the strive against crime as one that is crucial.²⁹⁷ This is because witnesses provide essential evidence during proceedings, in the absence of which it is burdensome for prosecutors to obtain triumphant prosecutions.²⁹⁸

Waqar, Iqbal and Kazmi,²⁹⁹ have ascertained that witnesses at times cause undue adjournments as a result of their unavailability in criminal trials.³⁰⁰ In the case of *S v Mokoena*,³⁰¹ the trial was unreasonably delayed by the attendance of a witness, whom despite the court considering a warrant of arrest to secure the witness's attendance,

²⁹⁰ *S v Steward*.

²⁹¹ *S v Steward* 6.

²⁹² Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994'.

²⁹³ Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994'.

²⁹⁴ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System'.

²⁹⁵ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 199.

²⁹⁶ Lucy Nthepa Mphaphuli and Petro Botha, 'Experiences and Coping Strategies of Protected Witnesses in South Africa: A Social Work Perspective' (2021) 34 (2) *Acta Criminologica: African Journal of Criminology & Victimology* 143-162.

²⁹⁷ Mphaphuli and Botha, 'Experiences and Coping Strategies of Protected Witnesses in South Africa: A Social Work Perspective' 143.

²⁹⁸ Mphaphuli and Botha, 'Experiences and Coping Strategies of Protected Witnesses in South Africa: A Social Work Perspective' 143.

²⁹⁹ Waqar, Iqbal, and Kazmi, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study'.

³⁰⁰ Waqar, Iqbal, and Kazmi, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study' 292.

³⁰¹ *S v Mokoena* 2019 (2) SACR 355 (SCA).

the accused person opposed this suggestion and the witness nonetheless did not avail themselves.³⁰² The magistrate described this conduct as an unreasonable delay.³⁰³

The case of *Golding & Others v S*,³⁰⁴ demonstrates that witnesses may occasionally cause adjournments by being absent from proceedings, or in instances where a witness has testified, and the state's witnesses are unprepared to testify.³⁰⁵ Juwaki,³⁰⁶ confirms this finding by referring to the Zimbabwean criminal justice system. Juwaki,³⁰⁷ maintains that witnesses have been identified to be the source of delays in criminal trials.³⁰⁸ This occurs where the state may be prepared to conduct legal proceedings, and the investigations are complete, but a witness may not be prepared to appear, or is unavailable on a set day for the proceedings.³⁰⁹

The significance of a witness's testimony is additionally evident in legal provisions, where the judiciary is granted the authority to compel witnesses to testify in cases, or to provide the necessary evidence which may assist in a case.

Section 179 (1) (a) of the CPA,³¹⁰ states that an accused person or the state may oblige any individual to attend and testify in proceedings.³¹¹ Section 186 states that a court may subpoena such an individual to testify in court if a court is of the view that such evidence may aid the case.³¹²

Section 187 provides that an individual is expected to remain in attendance at the proceedings.³¹³ Section 188 (1) states that if any individual has been subpoenaed to

³⁰² *S v Mokoena* 4.

³⁰³ *S v Mokoena* 4.

³⁰⁴ *Golding and Others v S* 2022 20 (ZAKZDHC).

³⁰⁵ *Golding and Others v S* 1.

³⁰⁶ Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe'.

³⁰⁷ Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe'.

³⁰⁸ Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe' 23.

³⁰⁹ Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe' 23.

³¹⁰ Criminal Procedure Act.

³¹¹ Criminal Procedure Act.

³¹² Criminal Procedure Act.

³¹³ Criminal Procedure Act.

give evidence in court and remain in attendance, yet fails to do so, they are guilty of an offence and are liable to punishment.³¹⁴

Section 35 of the Superior Courts Act No 10 of 2013,³¹⁵ provides that a witness who has been subpoenaed to appear in court and provide any document or thing and fails to do so without a reasonable justification, will be arrested and detained to secure attendance or the production of any document or thing.³¹⁶

Section 51 of the Magistrates' Court Act 32 of 1944,³¹⁷ further regulates the attendance of a witness who has been subpoenaed to appear and provide evidence, and who fails to do so without a lawful reason.³¹⁸ Such a witness will be apprehend in order to give evidence and to be otherwise dealt with according to the law.³¹⁹ A court may further order costs of any adjournments or postponements by such a witness.³²⁰

2.2.5 An accused person

Akoto,³²¹ avers that the constant incarceration of accused persons, is a reason for significant concern in the judicial system.³²² However, the author duly notes that, despite an accused person being detained while awaiting trial, an accused person himself or herself may delay their own trial.

Hawilo and others,³²³ assert that an accused person may utilise prolongation to overcome or hinder proceedings.³²⁴ My judgment based on Akoto,³²⁵ Hawilo and others',³²⁶ views, is that one may consider that an accused person who has been released from custody while awaiting trial, and whose life is not severely affected by

³¹⁴ Criminal Procedure Act.

³¹⁵ Superiors Court Act No 10 of 2013.

³¹⁶ Superiors Court Act.

³¹⁷ Magistrates 'Court Act No 32 of 1944.

³¹⁸ Magistrates 'Court Act.

³¹⁹ Magistrates 'Court Act.

³²⁰ Magistrates 'Court Act.

³²¹ Akoto, 'Access to justice at Kumasi Central Prison'.

³²² Akoto, 'Access to justice at Kumasi Central Prison' 3.

³²³ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System'.

³²⁴ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 184.

³²⁵ Akoto, 'Access to justice at Kumasi Central Prison'.

³²⁶ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System'.

the arrest may not be as distressed by unreasonable delays, as the one who has been detained.

An accused person who is not incarcerated, may continue living their lives as a free man or woman despite the charges against them, and occasionally even mistreating the legal process through delay tactics. An accused may achieve this by constantly terminating the mandate with his or her legal practitioners.

In other cases, an accused may raise numerous unnecessary urgent requests to a court,³²⁷ in order to prolong a case and to evade prosecution. Such an accused may prolong a case with the expectation that subsequently, key witnesses may be unable to clearly recall the past occurrence, or even perish, weakening the case against them.

However, in the case of an accused person who is detained, the loss of liberty and the abuse and violence in South African correctional centres, may exert pressure on them to stand trial promptly with the desire of being acquitted of the offence.

2.3 The effects of unreasonable delays in the criminal justice system

Considering the preceding discussion, it is evident that the issue of unreasonable delays in criminal trials has adversely affected numerous individuals who are involved in legal proceedings. The following paragraphs will examine how unreasonable delays adversely affect these individuals.

2.3.1 *An accused person*

Lengthy criminal trials cause a menace to the rights of an accused person, particularly in cases where an accused person is incarcerated for the duration of the trial.³²⁸ This places a sense of compulsion on the judicial system to institute legal proceedings

³²⁷ Helen Acton, 'A legal response to Stalingrad tactics that avoid accountability' (*The Mail & Guardian*, August 2022) <<https://mg.co.za/thought-leader/opinion/2022-08-11-a-legal-response-to-stalingrad-tactics-that-avoid-accountability/>> accessed 28 August 2024.

³²⁸ Vukušić, 'Later Rather Than Sooner: Time and Its Effects on the Karadžić and Mladić Trials' 191.

expeditiously.³²⁹ Accused individuals' circumstances differ from those who have been declared guilty due to the fact that they are yet to be found guilty by a court of law.³³⁰

Based on the principle of an accused person is innocent until proven guilty,³³¹ an accused person may be incarcerated for years only for a court to later acquit them.³³² It is contended that the criminal justice system clearly violates the rights of an accused indicted for an offence but not convicted for prolonged periods. It is during this period of incarceration, waiting for their innocence to be proved, that an accused person unfairly experiences the intolerable conditions in prisons.

Section 12(1),(a),(b),and (c) of the Constitution,³³³ provides that every individual has the privilege to liberation and security, which consists of the right not to have their liberation withdrawn unfairly or without valid grounds.³³⁴ To further not be incarcerated without a fair trial, and to not be subjected to any form of brutality from any source, private or public.³³⁵

It is submitted that, according to section 12(1) (a), (b), and (c), when a remand detainee is incarcerated for extended periods without a guilty verdict, their right to liberation is unfairly violated through this incarceration, and in addition their right to security of person is further infringed due to the perilous conditions which South African inmates are compelled to endure while detained.

Section 21(1) of the Constitution,³³⁶ supports and confirms that a remand detainee has the right to freedom of movement which ought to be protected continuously.³³⁷ Ontano,³³⁸ shows that in circumstances of delays, an accused person may endure the

³²⁹ Vukušić, 'Later Rather Than Sooner: Time and Its Effects on the Karadžić and Mladić Trials' 191.

³³⁰ Akoto, Access to justice at Kumasi Central Prison' 3.

³³¹ Akoto, Access to justice at Kumasi Central Prison' 3.

³³² Akoto, Access to justice at Kumasi Central Prison' 10.

³³³ Constitution of the Republic of South Africa Act.

³³⁴ Constitution of the Republic of South Africa Act.

³³⁵ Constitution of the Republic of South Africa Act.

³³⁶ Constitution of the Republic of South Africa Act.

³³⁷ Constitution of the Republic of South Africa Act.

³³⁸ Kayla Lasswell Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases' (2020) 18 (1) Ave Maria Law Review 110-135.

probability of a tyrannical detention at pre-trial phase, distress, public accusation and the possibility of being unable to defend themselves in proceedings.³³⁹

Hawilo and others,³⁴⁰ also argue that in cases of delays, the accused's career opportunities, kinship, parenting, domicile, psychological well-being, and healthcare may be adversely affected.³⁴¹ Ontano,³⁴² further adds that hindrances subject an accused person to significant pressure and deep concern, giving substance to the legal maxim, "justice delayed is justice denied".³⁴³

Waqar, Iqbal and Kazmi,³⁴⁴ contend that such unreasonable delays lead to an unfair trial for an accused person.³⁴⁵ In cases where an accused person is guiltless, they are threatened with great loss, in several instances, resulting from a prosecutor's negligent or malicious intent.³⁴⁶

Hari Sumiarto,³⁴⁷ confirms this by stating that wrongdoing ought to be penalised subsequent to a successful prosecution process.³⁴⁸ It is the author's opinion that an accused person who experiences unreasonable delays endures a grave injustice under the authority of the judicial system, and considering the seriousness of the consequences of these delays, this issue ought to be viewed as a matter of urgency.

³³⁹ Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases' 110.
³⁴⁰ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 197.
³⁴¹ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 197.
³⁴² Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases'.
³⁴³ Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases' 110.
³⁴⁴ Waqar, Iqbal, and Kazmi, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study'.
³⁴⁵ Waqar, Iqbal, and Kazmi, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study' 289.
³⁴⁶ Danielle M. Rang, 'The Waiting Game: How Pre-Indictment Delay Threatens Due Process And Fair Trials' (2021) 66 (1) S.D.L.Rev 143 – 181, 143.
³⁴⁷ Hari Sumiarto, 'The Impact of Prosecution Plans on Disparities of Criminal Prosecution by The Public Prosecutor' (2024) 2 ICLESS 270-286.
³⁴⁸ Sumiarto, 'The Impact of Prosecution Plans on Disparities of Criminal Prosecution by The Public Prosecutor' 277.

2.3.2 Witnesses

Within the criminal justice system, eyewitness evidence may be crucial to an inquiry, nevertheless, the standard of such evidence is affected by memory impairment which is said to decline swiftly over a period of time.³⁴⁹

Delay decreases the correctness of witness memory.³⁵⁰ Overtime, a witness's credibility may be questioned with ease by the opposition, as time erodes the recollection of events.³⁵¹ It is noteworthy to mention that in instances of lengthy or recurring interruptions in criminal proceedings, some witnesses may concentrate on other spheres of their lives whilst waiting for the trial to commence or resume. It is during these delays that past events may begin to diminish, being superseded by recent memories.

In cases where a witness no longer appears to be self-assured of certain facts when testifying against an accused person, this may weaken the witness's evidence against an accused person. In addition, this may permit the defence to challenge the reliability of such evidence.

Chantal Chevroulet and others's investigation,³⁵² posits that despite these delays having the potential to unfairly cause harm to a case, it appears that this is an issue that has proved arduous to overcome. Their study demonstrates that, it is essential for police officials to examine evidence expeditiously subsequent to an offence.³⁵³ This is beneficial when a witness's recollection is at a greater level of accuracy, and it is unable to be affected by the exposure of present occurrences which supersedes the event in question.³⁵⁴

³⁴⁹ Chantal Chevroulet and others, 'The impact of recall timing on the preservation of eyewitness memory' (2022) 29 (3) *Psychiatry, Psychology and Law* 471- 486, 471.

³⁵⁰ Mirko Bagaric, 'An Argument for abolishing Delay as a Mitigating Factor in sentencing' (2019) 40 (3) *Adelaide Law Review* 725 – 753, 751.

³⁵¹ Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases' 111.

³⁵² Chevroulet and others, 'The impact of recall timing on the preservation of eyewitness memory'.
³⁵³ Chevroulet and others, 'The impact of recall timing on the preservation of eyewitness memory' 471.

³⁵⁴ Chevroulet, and others, 'The impact of recall timing on the preservation of eyewitness memory' 471.

However police officials assert that this is frequently not practical as a result of resource deficiency.³⁵⁵ Delays in the judicial system are significantly concerning, as they may result in the abasement of a witness's evidence.³⁵⁶ Witnesses, in comparison with victims may be apprehensive of the possibility of an accused person, being released from custody, leading to witnesses refusing to proceed with legal proceedings.³⁵⁷

2.3.3 Families

It is common cause that, families may not play an active role in criminal trials, however they do play a vital role in supporting an accused person, a victim of the crime, and witnesses to the crime.

Delays in criminal trials, adversely affect family members, particularly in cases where they may be awaiting forensic DNA results to ascertain human remains, and when such critical issues are suspended in the criminal justice system, the families may suffer severe distress.³⁵⁸

In addition, the issue of delays in criminal trials, result in family members generally being consumed by apprehension as they prepare for a set trial date in support of their relative. This at times results in them frittering the day away, waiting for the trial to commence or resume, or to endure repeated adjournment.³⁵⁹

It is submitted that delays may also cause severe distress to family members, especially in cases of a victim and an accused person's families during the testimonies. These constant delays compel the families to re-experience this distress for months and in certain cases, years.

Generally, families carry a similar burden to a victim and an accused person, and this is to see justice served. The family of an accused person may desire for criminal

³⁵⁵ Chevroulet and others, 'The impact of recall timing on the preservation of eyewitness memory' 471.

³⁵⁶ Chevroulet and others, 'The impact of recall timing on the preservation of eyewitness memory' 472.

³⁵⁷ Mokoena, Motseki, and Dube, 'Evaluating The Role of Criminal Investigators During Bail Application' 162.

³⁵⁸ Smith and Horne, Why Down – managing Backlog Forensic DNA Case Entries Matters' 003.

³⁵⁹ Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System' 185.

proceedings to be conducted speedily in the expectation that their relative may be found innocent of any wrongdoing and to be fully exonerated.

In contrast, the family of a victim, may carry the emotional burden of a victim for the wrong committed against them and may desire for speedy proceedings in the expectation that, their relative's assailant may be convicted speedily in order for the recovery process to commence.

Victims' testimonies are vital in ensuring a successful prosecution, this is due to the fact that victims may be witnesses in the same offence. Patrick Bashizi Bashinge Murhula and Aden Dejene Tolla,³⁶⁰ confirm this view in their analysis by stating that a victim's statement is crucial for legal proceedings and in the absence of a victim's assistance, neither police officials nor the courts would have the ability to operate.³⁶¹

The trauma caused by assailants on their victims, exerts pressure on several victims to swiftly report their attacks, precisely in cases of rape where victims assert an aggressor utilised dangerous instruments.³⁶² These instruments consist of knives, daggers, and hammers to coerce victims to surrender to the assault. The assailants frequently intimidate them with death, should they expose them or speak about their ordeal to others.³⁶³ Victims of sexual assault assert they feel protected when their assailants are in custody due to the apprehension of falling victim to the same assailant.³⁶⁴

Ontano,³⁶⁵ avers that victims frequently endure significant trauma from adjournments in the judicial system that was designed to protect them, as each adjournment continuously victimises them.³⁶⁶

³⁶⁰ Patrick Bashizi Bashinge Murhula and Aden Dejene Tolla, 'The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence from South Africa' (2021) 10 (1) IJCJ&SD 99-110.

³⁶¹ Murhula and Tolla, 'The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence from South Africa' 105.

³⁶² Siyabulela Eric Mgozeli and Sinegugu Evidence Duma, "They all laughed and asked me if I enjoyed having sex with those guys": Exploring men's lived experiences when reporting rape to police in South Africa' (2020) 15 (8) PLoS ONE 1-31, 6.

³⁶³ Mgozeli and Duma, "They all laughed and asked me if I enjoyed having sex with those guys": Exploring men's lived experiences when reporting rape to police in South Africa' 7.

³⁶⁴ Mgozeli and Duma, "They all laughed and asked me if I enjoyed having sex with those guys": Exploring men's lived experiences when reporting rape to police in South Africa' 6.

³⁶⁵ Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases'.

³⁶⁶ Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases' 112.

During these delays, prosecutors are responsible for resolving the matter while victims are not expected to take any active role in the proceedings.³⁶⁷ Levine,³⁶⁸ further adds that victims tend to express displeasure by the judicial system in addition to what they have endured at the hands of their assailants. This is due to being compelled to endure repeated, and painful cross-examination as a result of these delays .³⁶⁹

Unreasonable delays may also contribute to a victim feeling aggravated,³⁷⁰ and perhaps considering withdrawing from proceedings. Ontano and Levine's studies demonstrates the manner in which a victim suffers in consequence of the defective criminal justice system during unreasonable delays.

However, the current reality of unreasonable delays in criminal trials only prolongs judgment and justice for both families, resulting in the reactivation of past pain, with every trial that resumes after an adjournment.

2.4 Conclusion

The issue of unreasonable delays causes unimaginable suffering in criminal proceedings. The inquiry has found that there are various individuals who cause delays in the criminal justice system, such as police officials, legal representatives, Judges, witnesses, and an accused person. The probe has further found that these delays affect an accused person, a victim of the crime, witnesses to the crime and their families.

It is submitted that delays in criminal trials unfairly affect the rights of an accused person, particularly in cases where an accused person is incarcerated. This occurs due to, an accused person suffering severe hardships for months and on occasion years while awaiting trial.

³⁶⁷ Kay L. Levine, 'Victims' Rights in the Diversion Landscape' (2021) 74 SMUL. REV 501- 526, 510.

³⁶⁸ Levine, 'Victims' Rights in the Diversion Landscape'.

³⁶⁹ Levine, 'Victims' Rights in the Diversion Landscape' 511.

³⁷⁰ Niwamanya Timothy Henry, 'A Critical Analysis on the Impact of Case Backlog on the Right to Fair and Speedy Trial in Uganda' (LLB Research proposal, Kampala International University 2019) 1.

Victims of crime suffer severe distress due to delays in criminal trials. They are compelled to re-experience this pain on numerous occasions during trials, which may protract for several years.

Witnesses may also suffer because of the delays in the trial. Their testimony is extremely crucial in a successful prosecution. However, Mirko Bagaric,³⁷¹ states that due to the issue of delays in the criminal justice system, with the passage of time, witnesses may recall less and less of the events in question, placing crucial evidence in jeopardy.³⁷²

Family members of an accused person, a victim of the crime, in certain cases, witnesses to the crime, and communities attend a criminal trial to support an accused person and a victim. However, research has revealed that, unreasonable delays do at times frustrate these individuals as they have to endure the distressing evidence, for extended periods preventing them from recovering and receiving closure.

Laws have been created to assist in preventing unreasonable delays in trials. These include the Constitution,³⁷³ the CPA,³⁷⁴ and various code of conducts regulating the conduct and responsibilities of the key players in the criminal justice system.

In the next chapter, the research will discuss one of the effects of unreasonable delays in the criminal justice system, namely that of overcrowding in South African prisons.

³⁷¹ Bagaric, 'An Argument for abolishing Delay as a Mitigating Factor in sentencing'.

³⁷² Bagaric, 'An Argument for abolishing Delay as a Mitigating Factor in sentencing' 751.

³⁷³ Constitution of the Republic of South Africa Act.

³⁷⁴ Criminal Procedure Act.

CHAPTER 3: OVERCROWDING IN SOUTH AFRICAN PRISONS IN RELATION TO REMAND DETAINEES

3.1 Introduction

Chapter 2 focused on the individuals who cause unreasonable delays, and the effects unreasonable delays have on specific individuals in the criminal justice system. Chapter 3 will focus on overpopulation in South African prisons as one of the effects of unreasonable delays in the South African criminal justice system in relation to remand detainees. This chapter will discuss the effects of overcrowding on remand detainees in South African correctional facilities, in regard to poor prison conditions, the ineffective rehabilitation of inmates, and the laws regulating remand detainees. The chapter will focus on remand detainees because, these are the inmates who are affected by unreasonable delays while awaiting trial.

3.2 Overcrowding in South African prisons

Paul Swanepoel and Stephen Petè,³⁷⁵ argue that South African correctional facilities have been experiencing overcrowding which dates back to as far as 1905 and which still persists.³⁷⁶ Stephen Allister Petè,³⁷⁷ reveals that overpopulation may be traced back to when incarceration was initiated as a method of retribution in South Africa by the colonial government.³⁷⁸ Swanepoel and Petè,³⁷⁹ claim that the then authorities sought ways to eradicate the issue of overcrowding in South African prisons, by establishing racial discrimination by isolating European inmates from other races.³⁸⁰ The purpose of this decision was to bestow European inmates with preferential treatment, due to their 'white blood'.³⁸¹ This decision would bring about the approval

³⁷⁵ Paul Swanepoel and Stephen Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison' (2012) 25 (2) *Fundamina* 169-198.

³⁷⁶ Swanepoel and Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison'. 180.

³⁷⁷ Stephen Allister Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)' (2015) 21(1) *Funamina* 102-118.

³⁷⁸ Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)' 105.

³⁷⁹ Swanepoel and Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison'.

³⁸⁰ Swanepoel and Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison' 180.

³⁸¹ Swanepoel and Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison' 183.

of the infamous apartheid system half a century later in South Africa.³⁸² Petè,³⁸³ defines overcrowding as an affliction that confuses any attempts to guarantee incarceration in dignified conditions, in South African correctional facilities.³⁸⁴ One can say, to a certain degree, that the apartheid system contributed to prison overpopulation, due to ill-famous pass laws that had many incarcerated.³⁸⁵

The establishment of apartheid adversely affected the criminal justice system as it was utilised by the then government to wage against anyone opposing the practice, resulting in society losing confidence in its protection.³⁸⁶

The current correctional system has been described as intolerable and detrimental to an inmate, particularly in cases where they are yet to have their day in court. This is due to a remand detainee enduring prolonged periods of detention in conditions which are in violation of their right to dignity or are considered to be inhumane.

Clare Ballard,³⁸⁷ demonstrated that in comparison to the world's most overcrowded prisons, South Africa was rather low at 133 *per cent* occupancy level.³⁸⁸ This percentage only reflected the occupancy rate at national-wide scale.³⁸⁹

Ballard refers to the Judicial Inspectorate report for 2010-2011, and reveals that it was disclosed that the provinces with the highest occupancy rate, possess the country's most overpopulated facilities.³⁹⁰ This means that there is an extremely significant distinction between the individual correctional facilities, with several of them being very overpopulated and others operating below the approved capacity.³⁹¹

³⁸² Swanepoel and Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison' 181.

³⁸³ Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)'.

³⁸⁴ Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)' 103.

³⁸⁵ Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)' 105.

³⁸⁶ Florence Chukwudi, 'Challenges of Reforms in the Nigerian Prison System: Lessons from U.S.A and South Africa' (2012) 4 *Journal of Social Science and Public Policy* 35-46, 41.

³⁸⁷ Clare Ballard, 'Prisons, the Law, and Overcrowding' (2019) 4 *New South African Review* 256-269.

³⁸⁸ Ballard, 'Prisons, the Law, and Overcrowding' 260.

³⁸⁹ Ballard, 'Prisons, the Law, and Overcrowding' 260.

³⁹⁰ Ballard, 'Prisons, the Law, and Overcrowding' 261.

³⁹¹ Ballard, 'Prisons, the Law, and Overcrowding' 260.

Refiloe Legodi and Mishack Dube,³⁹² refer to the Department of Correctional Services (DCS) Annual Report for 2021-2022, which states that South African correctional facilities were 31 *per cent* overcrowded.³⁹³

Legodi and Dube,³⁹⁴ show that the Rooigrond Correctional facility in the North West, which was designed to accommodate 1038 inmates, occupied 1170 inmates, and was overcrowded by 22 *per cent*.³⁹⁵ They further state that, based on the findings by the Judicial Inspectorate for Correctional Services in 2019, the correctional facilities in the Western Cape were found to be overcrowded by 20.94 *per cent*.³⁹⁶

They add that the correctional facilities in the Eastern Cape province, which were designed to accommodate 13 294 inmates, were found to be accommodating 19 422 inmates, making the percentage for overcrowding, 46 *per cent*.³⁹⁷

In addition, in the Gauteng province, the prisons were designed to accommodate 24 877 inmates, but the province's prisons were found to be accommodating 36 397, making the facilities 46.31 *per cent* overcrowded.³⁹⁸

Legodi and Dube,³⁹⁹ further contend that the prisons in KwaZulu Natal were designed to accommodate 20 281 inmates, however, were found to be accommodating 23 970 inmates.⁴⁰⁰ Making the average of overpopulation in the provinces 'correctional facilities 18.19 *per cent* which was the lowest.⁴⁰¹

³⁹² Refiloe Legodi and Mishack Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' (2023) 12 (489) Soc. Sci 1-19.

³⁹³ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' 2.

³⁹⁴ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials'.

³⁹⁵ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' 2.

³⁹⁶ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' 3.

³⁹⁷ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' 3.

³⁹⁸ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' 3.

³⁹⁹ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials'.

⁴⁰⁰ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' 3.

⁴⁰¹ Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' 3.

According to the Judicial Inspectorate report for 2023-2024, as at March 31 2024, the total inmate population at South African prisons was reported to be 156 600.⁴⁰² This number comprised of 59 574 remand detainees and 97 026 sentenced offenders.⁴⁰³ The official bed capacity across all correctional facilities in this year was reported to be 105 474 bed spaces available for inmates.⁴⁰⁴ This finding showed that there was a shortage of 51 126 beds during this year, resulting in 48 *per cent* overcrowding.⁴⁰⁵

The following section will investigate the effects of overpopulation in South African prison, the well-being of inmates, with the focus being on remand detainees, while they await trial, and the laws that protect these individuals.

3.2.1 *The effects of overcrowding on remand detainees*

Overcrowding in South African correctional facilities affects the well-being of inmates in several and extremely adverse ways. This frequently brings about severe suffering to vulnerable inmates, particularly in the case of remand detainees. This is due to them often being targeted as they are yet to be convicted.⁴⁰⁶ The following paragraphs will explore how overcrowding affects remand detainees whilst they await trial.

3.2.1.1 Poor prison conditions

Michael Khwela,⁴⁰⁷ argues that the significant and accelerated growth of incarceration, has South African correctional institutions filled to their capacity, with a distressing overcrowding that results in poor conditions for the correctional population.⁴⁰⁸

⁴⁰² Department of Correctional Services, 'Judicial Inspectorate for Correctional Services Annual Report 2023-2024' (*Department of Correctional Services*, March 2024) <
<https://share.google/IG2yTvPGxydYOA6oh>> accessed 06 October 2025.

⁴⁰³ Department of Correctional Services, 'Judicial Inspectorate for Correctional Services Annual Report 2023-2024'.

⁴⁰⁴ Department of Correctional Services, 'Judicial Inspectorate for Correctional Services Annual Report 2023-2024'.

⁴⁰⁵ Department of Correctional Services, 'Judicial Inspectorate for Correctional Services Annual Report 2023-2024'.

⁴⁰⁶ Luke Lee Skywalker, 'Politics of the Number: An Account of Predominant South African Gang Influences' (Mphil dissertation, University of Cape Town 2024) 40.

⁴⁰⁷ Michael N. Khwela, 'A need to Re-integrate Prisons to the Community: A Case of Polokwane Medium B Prison, South Africa' 1 (2) *Athens Journal of Sciences* 145–156.

⁴⁰⁸ Khwela, 'A need to Re-integrate Prisons to the Community: A Case of Polokwane Medium B Prison, South Africa' 145.

Janické du Preez, Francois Steyn and Karen Booyens,⁴⁰⁹ authenticate this finding by stating that South African inmates accommodated in extremely overpopulated institutions, possess 1.2 square metres in which they devote most of their day, as well as night.⁴¹⁰

Nieuwoudt and Bantjes,⁴¹¹ found that a large number of inmates spend around twenty-three hours in a day, confined in small cells.⁴¹² These facilities are so overpopulated that three to four inmates occupy a solitary unit.⁴¹³

On other occasions, a communal cell which was originally created to accommodate forty inmates is overcrowded with double the original number of inmates it was designed to accommodate.⁴¹⁴ In such cases, remand detainees are compelled to sleep on the floor in the first year.⁴¹⁵

In addition, inmates encounter a significant issue with insanitary conditions which contribute to the rapid distribution of diseases.⁴¹⁶ The issue in certain prisons, is not only a shortage of beds but a shortage of restroom facilities too.⁴¹⁷

Overcrowding has in addition, created an issue with the correctional facilities' food supply in which a number of inmates express concern over consuming inedible food.⁴¹⁸ Thembinkosi Maseko,⁴¹⁹ states that the Constitution of the Republic of South

⁴⁰⁹ Janicke du Preez, Francois Steyn and Karen Booyens, 'Risk Factors and Circumstances Surrounding Suicide in Correctional Centres in Gauteng, South Africa' (2015) 2 Acta Criminology: Southern African Journal of Criminology 125-143.

⁴¹⁰ Du Preez, Steyn and Booyens, 'Risk Factors and Circumstances Surrounding Suicides in Correctional Centres in Gauteng, South Africa' 129.

⁴¹¹ Pieter Nieuwoudt and Jason Bantjes, 'Health professionals talk about the challenges of suicide prevention in two correctional centres in South Africa' (2019) 49 (1) South Africa Journal of Psychology 70-82.

⁴¹² Nieuwoudt and Bantjes, 'Health professionals talk about the challenges of suicide prevention in two correctional centres in South Africa' 73.

⁴¹³ Alexandra Ashmont, 'Raped by the System: A Comparison of Prison Rape in the United States And South Africa' (2014) 26 (1) Pace Int'LL.Rev 53-87,69.

⁴¹⁴ Ashmont, 'Raped by the System: A Comparison of Prison Rape in the United States And South Africa' 69.

⁴¹⁵ Ashmont, 'Raped by the System: A Comparison of Prison Rape in the United States and South Africa' 69.

⁴¹⁶ Du Preez, Steyn and Booyens, 'Risk Factors and Circumstances Surrounding Suicides in Correctional Centres in Gauteng, South Africa' 129.

⁴¹⁷ Nieuwoudt and Bantjes, 'Health professionals talk about the challenges of suicide prevention in two correctional centres in South Africa' 73.

⁴¹⁸ Nieuwoudt and Bantjes, 'Health professionals talk about the challenges of suicide prevention in two correctional centres in South Africa' 73.

⁴¹⁹ Thembinkosi W Maseko, 'Inmates' Right to Adequate Nutrition in South Africa: is the Enforcement of this Right Constitution?' (2016) 31 (1) Southern African Public Law 178-188.

Africa, 1996, (hereinafter referred to as the Constitution),⁴²⁰ protects a prisoner's right to sufficient food in section 35 (2) (c) and this rights ought to be safeguarded by the state at its cost .⁴²¹

Diverse investigations have demonstrated that lack of resources in South African prisons may be one of the contributors to the significant violent activities in these facilities. This is owing to the fact that where there are limited resources, inmates are compelled to engage in confrontation to receive essential requirements such as food and beds or even the opportunity to maintain daily hygiene.

This quotidian strive to have their essential requirements provided for, may result in violent altercations between inmates. Inmates who are in a higher position of power may exploit co-prisoners to ensure that their requirements are met.

It has also been reported that inmates suffer from diseases such as tuberculosis (TB) and human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS). These infections are prevalent in correctional facilities, with HIV being spread through sexual violence of inmates,⁴²² and TB spreading rapidly due to overpopulation and unhygienic conditions in correctional institutions.⁴²³

3.2.1.2 The ineffective rehabilitation of inmates in prisons

Miselo and Mutereko,⁴²⁴ state that overcrowding in correctional facilities, produces a great hurdle in detention management as well as the evolution of rehabilitation projects for offenders.⁴²⁵

⁴²⁰ Constitution of the Republic of South Africa, 1996.

⁴²¹ Maseko, 'Inmates' Right to Adequate Nutrition in South Africa: is the Enforcement of this Right Constitution?' 179.

⁴²² Ashmont, 'Raped by the System: A Comparison of Prison Rape in the United States and South Africa' 77.

⁴²³ Emily Nagisa Keehn and Ariane Nevin, 'Transforming Punishment to Stem Tuberculosis and HIV in South African Prisons' (2018) 20(1) Health and Human Rights Journal 213-224, 215.

⁴²⁴ A Miselo and S Mutereko, 'Factors Affecting Post-Secondary Correctional Education in South Africa: A Case of Brandvlei Correctional Centre in Cape Town' (2019) 27 (3) Administration Publica 70-89.

⁴²⁵ Miselo and Mutereko, 'Factors Affecting Post-Secondary Correctional Education in South Africa: A Case of Brandvlei Correctional Centre in Cape Town' 81.

Patrick Murhula and Shanta Singh,⁴²⁶ point out that the rehabilitation process is part of various correctional institutions' projects.⁴²⁷ It is fundamentally a method of assisting and permitting prisoners to disconnect themselves from the circumstances which swayed them to initially commit an offence.⁴²⁸

Murhula and Singh,⁴²⁹ argue that the rehabilitation process, proposes that prisoners must be ingrained with an appreciation of accountability for their offences in order to depart from similar conduct.⁴³⁰ In the author's view however, Miselo, Mutereko, Murhula and Singh's investigations, reveal another significant challenge facing the prison system, which is to effectively rehabilitate offenders.

It is submitted that, attempting to rehabilitate offenders in an environment characterised by crime, violence, and lack of resources may prove to be difficult to execute for the DCS.

There are certain offenders who do not become ensnared in the cycle of crime when incarcerated and prefer to resist the allurements and the threats of partaking in illegal conduct in prisons. However, for many, breaking the cycle of crime in prisons, appears to be unattainable.

Zelege Worku,⁴³¹ identifies the motivation underlying the necessity to rehabilitate offenders. Worku,⁴³² avers that the urgent requirement for the rehabilitation of offenders is controlled by certain elements.⁴³³ These are the growing population of

⁴²⁶ Patrick Bashizi Bashige Murhula and Shanta B. Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature' (2019) 12(1) AJCJS 21-43.

⁴²⁷ Murhula and Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature' 22.

⁴²⁸ Murhula and Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature' 22.

⁴²⁹ Murhula and Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature'.

⁴³⁰ Murhula and Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature' 23.

⁴³¹ Zelege Worku, 'The Strategic Benefits of Rehabilitation of the Prison Population of the City of Tswane' (2020) 36 (6) The Journal of Applied Business Research 259-268.

⁴³² Worku, 'The Strategic Benefits of Rehabilitation of the Prison Population of the City of Tswane'.

⁴³³ Worku, 'The Strategic Benefits of Rehabilitation of the Prison Population of the City of Tswane' 259.

juvenile offenders, the acute dearth of correctional facilities, and the inability to reduce extreme deprivation and unemployment.⁴³⁴

High levels of unemployment and poor service delivery in certain communities have resulted in South African youths engaging in criminal activities. This has made this objective exceedingly challenging.

The state offers offenders the opportunity to study whilst incarcerated and this right is safeguarded under section 29(1) of the Constitution.⁴³⁵ Section 29(1)(a) provides that everyone has the right to basic education, including adult basic education, and section 29(1)(b) provides that everyone has the right to further education, which the state, through reasonable measures, must make progressively available and accessible.⁴³⁶ This right is afforded to everyone including offenders.⁴³⁷ The state utilises such opportunities to reduce the probability of recidivism, once the offender is reintegrated back into society.⁴³⁸

Despite these efforts, offenders express dissatisfaction due to overcrowding, stating that the cells are congested with high noise levels which affect a student's concentration.⁴³⁹ These issues make the objective to study extremely challenging.⁴⁴⁰

The high crime rate in South African correctional institutions, leaves certain ex-offenders not rehabilitated upon release.⁴⁴¹ This makes it difficult for them to re-integrate into society, increasing the probability of recidivism.⁴⁴²

From the author's standpoint, despite pre-trial detainees being incarcerated for extended periods, they remain an unfortunate group whose rights are most affected

⁴³⁴ Worku, 'The Strategic Benefits of Rehabilitation of the Prison Population of the City of Tswane' 259.

⁴³⁵ Constitution of the Republic of South Africa Act.

⁴³⁶ Constitution of the Republic of South Africa Act.

⁴³⁷ Constitution of the Republic of South Africa Act.

⁴³⁸ Miselo and Mutereko, 'Factors Affecting Post-Secondary Correctional Education in South Africa: A Case of Brandvlei Correctional Centre in Cape Town' 71.

⁴³⁹ Miselo and Mutereko, 'Factors Affecting Post-Secondary Correctional Education in South Africa: A Case of Brandvlei Correctional Centre in Cape Town' 82.

⁴⁴⁰ Miselo and Mutereko, 'Factors Affecting Post-Secondary Correctional Education in South Africa: A Case of Brandvlei Correctional Centre in Cape Town' 82.

⁴⁴¹ Khwela, 'A need to Re-integrate Prisons to the Community: A Case of Polokwane Medium B Prison, South Africa' 145.

⁴⁴² Khwela, 'A need to Re-integrate Prisons to the Community: A Case of Polokwane Medium B Prison, South Africa' 145.

during delays. This is due to the scarcity of resources and overpopulation in correctional facilities.

The DCS focuses its rehabilitation projects solely on offenders who are incarcerated in excess of a 2 years period.⁴⁴³ This results in the exclusion of pre-trial detainees from these opportunities.⁴⁴⁴

3.3 The laws protecting remand detainees in South African prisons

The DCS has endeavoured to safeguard the rights of offenders, including the rights of remand detainees. Section 2(b) of the Correctional Services Act No 111 of 1998 (hereinafter referred to as the Correctional Services Act),⁴⁴⁵ states that offenders ought to be accommodated in safe correctional institutions with the DCS protecting their right to human dignity.⁴⁴⁶ This is despite the horrific violence remand detainees are compelled to endure whilst incarcerated.⁴⁴⁷

Section 4(2)(a) obligates the DCS to make visible efforts to protect the safety, security, and good order of all offenders during the period in which they are incarcerated.⁴⁴⁸ However, in my view, these laws are a long way from being implemented, as offenders continue to endure severe physical abuse and violence.

Prisons are characterised by the majority as contaminated environments, as a result of overpopulation. One may say South African offenders' right to human dignity is violated with the continual passage of time during their incarceration. Section 35(2)(e) of the Constitution,⁴⁴⁹ provides for and protects every offender's right to prison conditions which align with human dignity.⁴⁵⁰ In addition section 24(a) provides that every individual, including offenders, has the right to reside in conditions which do not put their health and well-being in danger.⁴⁵¹

⁴⁴³ Murhula and Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature' 27.

⁴⁴⁴ Murhula and Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature' 27.

⁴⁴⁵ Correctional Services Act No 111 of 1998.

⁴⁴⁶ Correctional Services Act.

⁴⁴⁷ Luke Lee Skywalker, 'Politics of the Number: An Account of Predominant South African Gang Influences' 27.

⁴⁴⁸ Correctional Services Act.

⁴⁴⁹ Constitution of the Republic of South Africa Act.

⁴⁵⁰ Constitution of the Republic of South Africa Act.

⁴⁵¹ Constitution of the Republic of South Africa Act.

It is submitted that, research has revealed that correctional facilities are unsanitary and are the root cause of offenders falling ill whilst incarcerated. Provisions have been designed to safeguard the rights of remand detainees in correctional institutions.

The DCS, White Paper on Remand Detention Management in South Africa,⁴⁵² states that the rights of awaiting trial inmates are contained in multiple international and domestic instruments, standards, treaties and regulations.⁴⁵³ However, the investigation will focus solely on the laws contained in the Correctional Services Act,⁴⁵⁴ and on The White Paper on Remand Detention Management in South Africa,⁴⁵⁵ which regulate remand detainees.

The White Paper on Remand Detention Management,⁴⁵⁶ provides that remand detainees ought to be dealt with as guiltless, as they are yet to be convicted of any misconduct.⁴⁵⁷ The DCS has to ensure that they are provided for with sufficient food, potable drinking water, clothing, bedding, adequate medical care and ought to be kept separate from sentenced offenders.⁴⁵⁸

The DCS, further has a duty to accommodate remand detainees in cells which are well ventilated and have even lighting, restroom facilities, floor space, and to foster wellness for offenders.⁴⁵⁹ It is the author's opinion however, that despite these requirements being formalised, remand detainees are still unprotected in the prison system.

These remand detainees continue to spend months and years awaiting trial, dwelling as sentenced offenders, and frequently enduring a shortage of food and beds as a

⁴⁵² Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa' (*Department of Correctional Services*, March 2014) <https://www.gov.za/sites/default/files/gcis_document/201607/white-paper-remand-detention-management-south-africa.pdf >accessed 08 August 2023.

⁴⁵³ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'.

⁴⁵⁴ Correctional Services Act.

⁴⁵⁵ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'.

⁴⁵⁶ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'.

⁴⁵⁷ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'.

⁴⁵⁸ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'.

⁴⁵⁹ Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'.

result of overcrowding in South African prisons. Further, many offenders fall ill because of the unhygienic state of correctional facilities.

3.4 Conclusion

The issue of overpopulation in South African prisons is one that is not only severe but historic.⁴⁶⁰ Overcrowding in South African correctional facilities is said to have been plaguing these facilities since their inception.⁴⁶¹ This was due to certain unjust laws during the apartheid regime, such as the pass law which led to the incarceration of many.⁴⁶²

It is submitted that at the present time, prisons are filled to capacity. This produces additional challenges, with remand detainees increasing the number of offenders in these facilities. This tends to cause unnecessary suffering, particularly in the case of remand detainees who are yet to be convicted and may even be acquitted.

As a result of the delays in criminal trials, remand detainees endure devastating conditions in correctional facilities, which transgress an offender's right to dignity. Based on the preceding discussion, one may note that overcrowding creates the issue of an intolerable prison environment, characterised by lack of resources and the rapid spread of diseases. Despite the DCS's attempts to rehabilitate offenders, this has proved to be a difficult task due to the current conditions in prisons.

The investigation has established that the state has certain obligations towards remand detainees, which are presently not effectively executed. Despite all the existing legal provisions and policies governing the South African correctional facilities, offenders' rights are still infringed upon. The next chapter will discuss the remedies offered to an accused person as a result of the unreasonable delays in the criminal justice system.

⁴⁶⁰ Swanepoel and Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison' 180.

⁴⁶¹ Stephen Allister Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)' 105.

⁴⁶² Stephen Allister Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)' 105.

CHAPTER 4: REMEDIES OFFERED TO THE ACCUSED PERSON AS A RESULT OF THE UNREASONABLE DELAYS IN CRIMINAL TRIALS

4.1 Introduction

As the rate of crime increases in society, police officials are compelled to make swift arrests to combat crime. This burdens the judicial system as many accused persons wait for prolonged periods to be processed in the system. These unnecessary extensions of criminal trials are caused by unreasonable delays in the criminal justice system.

Unreasonable delays have been caused by manifold of people involved in the case, and for numerous reasons, resulting in severe case backlog in the judicial system. In cases where these delays have protracted inessentially, for months or even years, the judiciary is bestowed with the authority to grant an accused person a remedy for the harm suffered.

This chapter will explore the remedy of permanent stay of prosecution. Where an accused person approaches a court to request that his or her matter be terminated due to the unreasonable delays that an accused person has experienced in their respective case.

Moreover, this chapter will discuss what a court considers when such an application is brought before it. Research has revealed that the remedy of permanent stay of prosecution is rarely awarded to an accused person, occasionally, irrespective of the delays an accused person may have suffered.

However, the law has provided alternative remedies to an accused person, which are contained in section 342A of the Criminal Procedure Act 51 of 1977 (hereinafter the CPA).⁴⁶³ This chapter will explore the remedy of permanent stay of prosecution and the remedies provided for in section 342A. The chapter will further discuss in which cases the judiciary awards these remedies to an accused person in cases of unreasonable delays in criminal trials.

It has become apparent that certain delays are caused by an accused person who utilises various strategies to delay prosecution and to thwart the judicial system. The

⁴⁶³ Criminal Procedure Act 51 of 1977.

chapter will explore the Stalingrad tactics utilised by an accused person for this objective and what effects it has on the judicial system.

4.2 Permanent stay of prosecution remedy

The remedy of permanent stay of prosecution is a common law remedy which is claimed to be extreme in nature and is awarded in cases where there is evidence of unreasonable delays.⁴⁶⁴ The application of this remedy dates as far back as the 1990's.⁴⁶⁵ Investigations have identified two foreign cases, which encouraged the South African courts to adopt this remedy.⁴⁶⁶ These cases were identified as the English case of *R v Hakim*,⁴⁶⁷ which caused an explosion in English case law regarding the issue of unreasonable delays in criminal trials.⁴⁶⁸

The court in *R v Hakim*,⁴⁶⁹ found that due to the deteriorating health of the accused person, it would have been inhumane to continue with the prosecution.⁴⁷⁰ The case of *Jango v District Court of New South Wales and Ors*,⁴⁷¹ was identified as the second case which followed shortly after the judgment of the court in *R v Hakim*.⁴⁷² It was at this juncture that South Africa and many other jurisdictions adopted this remedy to protect their judicial systems from abuse.⁴⁷³

4.2.1 Circumstances in which the remedy of permanent stay of prosecution is granted

The application of permanent stay of prosecution is brought before a court, in cases wherein there have been unreasonable delays, and an accused person seeks to have

⁴⁶⁴ Londeka Zandile Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' (LLM dissertation, University of Kwazulu Natal 2017) 45'.

⁴⁶⁵ Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 47.

⁴⁶⁶ Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 47.

⁴⁶⁷ *R v Hakim* (1989) 41 A Crim R.

⁴⁶⁸ Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 47.

⁴⁶⁹ *R v Hakim*.

⁴⁷⁰ Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 47.

⁴⁷¹ *Jango v District Court of New South Wales and Ors* (168 C.L.R 23) 1989.

⁴⁷² *R v Hakim*.

⁴⁷³ Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 47.

their matter struck off the roll to remedy the situation. However, studies have revealed that it is in very rare circumstances that the remedy succeeds.

In most cases, the judiciary has applied the alternative remedies provided for in section 342A of the CPA.⁴⁷⁴ In *Van Heerden & Another v NDPP & others*,⁴⁷⁵ the court found that the remedy of stay of prosecution is an exceptional remedy.⁴⁷⁶

The court in the case of *Lethoko v The Minister of Defence*,⁴⁷⁷ found that prior to granting an accused person the remedy of permanent stay of prosecution, a test for unreasonable delays and order of stay of prosecution must first be represented *in casu*.⁴⁷⁸ This is done by first dealing with the law in section 342A and investigating the events which led to the delays.⁴⁷⁹ Carefully observing the arguments of the parties, which are then applied to both the facts and the law.⁴⁸⁰

The court carefully observed the seriousness of the charges against the accused person, and found that the accused person had a seasoned legal representative.⁴⁸¹ The court therefore found no evidence of trial prejudice.⁴⁸² The court in *Maryke van der Walt v Director of Public Prosecutions*,⁴⁸³ found that a stay of prosecution is granted in the circumstances of each individual case.⁴⁸⁴ This view was supported in the case of *Van Heerden and another v National Director of Public Prosecutions and Others*.⁴⁸⁵

The court in *Wild-And-Another v Hoffert*,⁴⁸⁶ found that this remedy cannot be granted in the absence of trial related prejudice or extraordinary circumstances.⁴⁸⁷ The court in *Van Veen v Director of Public prosecutions, Western Cape and others*,⁴⁸⁸ identified

⁴⁷⁴ Criminal Procedure Act.

⁴⁷⁵ *Van Heerden and another v National Director of Public Prosecutions and others* 2017 (2) SACR 696 (SCA).

⁴⁷⁶ *Van Heerden and another v National Director of Public Prosecutions and others* 69.

⁴⁷⁷ *Lethoko v Minister of Defence* 2021 (2) SACR 661 (FB).

⁴⁷⁸ *Lethoko v Minister of Defence* 6.

⁴⁷⁹ *Lethoko v Minister of Defence* 6.

⁴⁸⁰ *Lethoko v Minister of Defence* 6.

⁴⁸¹ *Lethoko v Minister of Defence* 32.

⁴⁸² *Lethoko v Minister of Defence* 32.

⁴⁸³ *Maryke van der Walt v Director of Public Prosecutions* 2022 (1) SACR 320 (ECG).

⁴⁸⁴ *Maryke van der Walt v Director of Public Prosecutions*.

⁴⁸⁵ *Van Heerden and another v National Director of Public Prosecutions and others* 70.

⁴⁸⁶ *Wild and another v Hoffert NO and others* 1998 (6) BCLR 656 (ZACC).

⁴⁸⁷ *Wild and another v Hoffert NO and others* 26.

⁴⁸⁸ *Van Veen v Director of Public Prosecutions, Western Cape and Others* 2023 (2) SACR 370 (WCC) 17.

(a) trial-related, (b) liberty-related, and (c) security or social-related as the three types of delay-related prejudice considered by the courts in these cases.⁴⁸⁹

4.2.2 Jurisdictions that may grant the remedy of permanent stay of prosecution

Research has found that not all South African courts are authorised to grant an accused person the remedy of permanent stay of prosecution. In the case of *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another*,⁴⁹⁰ the court sought to determine which jurisdiction may grant a permanent stay of prosecution.

In this case, the applicant approached the court to review and set aside a judgment delivered by the regional division of Gauteng at the Specialised Commercial Crimes' court.⁴⁹¹ The regional court ruled that it had no jurisdiction to grant the order of permanent stay of prosecution,⁴⁹² and failed to provide reasons to the accused person.⁴⁹³

The court held that the question of whether a regional magistrate was authorised to grant this remedy, has been under consideration in multiple courts, and has led to various conclusions.⁴⁹⁴ The court considered the *Sanderson* case,⁴⁹⁵ which stated that a remedy of permanent stay of prosecution required a high standard prior to granting the remedy.⁴⁹⁶

The court further took into consideration the view of the court in *S v Naidoo*,⁴⁹⁷ which dealt with the issue of the jurisdiction of a magistrate court, when awarding this remedy. The court found that magistrates do not generally have the advantage to judicially review administrative or constitutional action, or make declaratory orders.⁴⁹⁸

⁴⁸⁹ Van Veen v Director of Public Prosecutions, Western Cape and Others .

⁴⁹⁰ *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another* 2023 604 (ZAGPJHC).

⁴⁹¹ *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another* 1.

⁴⁹² *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another* 1.

⁴⁹³ *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another* 3.

⁴⁹⁴ *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another* 15.

⁴⁹⁵ *Sanderson v Attorney-General, Eastern Cape* 1997 (12) BCLR 1675 (ZACC).

⁴⁹⁶ *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another* 18.

⁴⁹⁷ *Naidoo v S* 2012 (2) SACR 126 (WCC).

⁴⁹⁸ *Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another* 20.

Based on these considerations, the court found that magistrates 'courts had no authority to grant this type of remedy.⁴⁹⁹ In the following paragraph, the research will explore the alternative remedies a court may grant to an accused person in cases where the application of permanent stay of prosecution cannot be granted.

4.3 Section 342A of the Criminal Procedure Act remedies in the unreasonable delays in criminal trials

Section 342A (1) provides that in cases of unreasonable delays, a court in which the matter is being tried, shall make an inquiry into an unjust adjournment, hindering a case from progressing.⁵⁰⁰ The inquiry will be made if it is in the court's view that the adjournment would be unjust and result in considerable harm to the case, an accused person, his or her legal representative, the prosecution, or any witness.⁵⁰¹

Section (2) guides the judiciary regarding which circumstances a court ought to examine, prior to arriving at a conclusion that the delays were unreasonable.⁵⁰² These circumstances are, (a) how long the adjournment was; (b) what were the reasons given for the adjournments; (c) whether there is an individual who is responsible for the adjournments; (d) how did the adjournments impact an accused person's situation or the situation of the witnesses; (e) the nature and seriousness of the charges; (f) whether the adjournments may have caused harm to the state or defence, including whether the quality of evidence was compromised, whether any witness may have died, disappeared or may no longer be available to take part in the proceedings, whether the adjournment may have made gathering evidence difficult, or whether evidence was lost, and considering the costs; (g) how the adjournments may have affected the administration of justice; (h) what would the negative effects be on the interests of society or victims should the matter be halted or terminated; (i), and finally whether there is any other opinion the court is required to take into consideration regarding the matter.⁵⁰³

⁴⁹⁹ Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another 37.

⁵⁰⁰ Criminal Procedure Act.

⁵⁰¹ Criminal Procedure Act.

⁵⁰² Criminal Procedure Act.

⁵⁰³ Criminal Procedure Act.

Section (3) states that in the case where the court finds that the delays in the trial were unjust, it is in the court's power to give any order it deems fit to prevent further delays and harm to the case from arising.⁵⁰⁴

The court may (a) refuse further adjournment; (b) or permit a postponement with attached conditions; (c) in the case where the accused person had not yet plead to the charge, the matter may be terminated and not be continued or instituted without the written instruction of the attorney-general; (d) in the case where the accused has pleaded to the charge, and either the prosecution or the defence is incapable or refuses to proceed with matter, the case may proceed and be terminated as if it has been closed.⁵⁰⁵

Cases exist where the judiciary has applied the section 342A remedies to redress the issue of unreasonable delays in criminal trials, such as in the case of *Director of Public Prosecutions v Tsupa and Others*.⁵⁰⁶ In this case the respondents were absolved from any wrongdoing in which the court ordered the section 342A (3) (d) read with section 342A (4) (a) remedy that the case would proceed as if the applicant's case was closed.⁵⁰⁷

This occurred subsequent to a failure in calling additional witnesses.⁵⁰⁸ The applicants resolved to oppose the order by appealing against it, and stating that the order unfairly favoured the accused.⁵⁰⁹ The applicants further stated that the remedy was erroneously applied by the court as the court had not investigated prior to closing the matter.⁵¹⁰

In response to the appeal, the court referred to the case of *S v Hysteen*,⁵¹¹ and found that section 342A (3), did not require a formal legal proceeding, or a formal verdict prior to adjourning a matter.⁵¹² In *S v Golding*,⁵¹³ an application was brought before the court in terms of section 342A of the CPA.⁵¹⁴

⁵⁰⁴ Criminal Procedure Act

⁵⁰⁵ Criminal Procedure Act

⁵⁰⁶ *Director of Public Prosecutions v Tsupa and Others* 2021 80 (ZAFSHC).

⁵⁰⁷ *Director of Public Prosecutions v Tsupa and Others* 2.

⁵⁰⁸ *Director of Public Prosecutions v Tsupa and Others* 2.

⁵⁰⁹ *Director of Public Prosecutions v Tsupa and Others* 2.

⁵¹⁰ *Director of Public Prosecutions v Tsupa and Others* 2.

⁵¹¹ *S v Hysteen* 2004 (2) SACR 478 (C).

⁵¹² *Director of Public Prosecutions v Tsupa and Others* 22.

⁵¹³ *Golding and Others v S* 2022 20 (ZAKZDHC).

⁵¹⁴ Criminal Procedure Act.

The application stated that, the delays the applicants suffered, were caused solely by the state.⁵¹⁵ As a result, their section 35(3)(d) right was transgressed.⁵¹⁶ The accused requested that the state subpoena witnesses ahead of time, to prevent further delays in the trial.⁵¹⁷

The state opposed the application, stating that the case was a complex one, which consisted of more than one charge with multiple accused persons.⁵¹⁸ The court had to take into consideration the circumstances provided for in section 342A to establish if the delays were indeed unreasonable, and found that they were not.⁵¹⁹

Therefore, the case of *Director of Public Prosecutions v Tsupa and Others*, and the case of *Golding and Others v S*, are a portion of the cases which demonstrate how the courts' attempt to resolve unreasonable delays. In addition, these cases demonstrate how the courts apply section 342A to the facts of the case.

Although unreasonable delays in criminal trials cause great distress for an accused person, there are cases where an accused person has vowed to abuse the criminal justice system to evade prosecution. This is ordinarily achieved by using the Stalingrad tactics discussed below.

4.4 Stalingrad tactics in the court system

Stalingrad tactics is described as a contemptuous manifestation of lawfare, strategic objectives utilised by government officials to evade taking responsibility for their failures in their official duties.⁵²⁰ These officials utilise this strategy by persistently raising unjustified urgent requests to a court to compel compliance, raising increasing false defences, introducing unfounded opposing claims among other exasperating conduct.⁵²¹

Therefore, Stalingrad tactics, is ordinarily motivated by cases where one or several litigants would prefer a case to be processed speedily, while the other seeks to delay

⁵¹⁵ *Golding and Others v S* 1.

⁵¹⁶ *Golding and Others v S* 1.

⁵¹⁷ *Golding and Others v S* 6.

⁵¹⁸ *Golding and Others v S* 8.

⁵¹⁹ *Golding and Others v S* 15.

⁵²⁰ Helen Acton, 'A legal response to Stalingrad tactics that avoid accountability' (The Mail & Guardian, August 2022) <<https://mg.co.za/thought-leader/opinion/2022-08-11-a-legal-response-to-stalingrad-tactics-that-avoid-accountability/>> accessed 28 August 2024.

⁵²¹ Acton, 'A legal response to Stalingrad tactics that avoid accountability'.

it to the greatest extent possible.⁵²² The Stalingrad tactics has been observed to be utilised in cases of extradition, where individuals with significant influence have utilised this strategy to cause endless delays to evade criminal accountability.⁵²³

Alternatively, it has been observed to have been utilised, by the former South African president Jacob Zuma by means of the institution of private prosecution.⁵²⁴ The court found this practice to be an abuse of criminal trials.⁵²⁵ What has been identified to assist one to succeed in utilising this strategy, is the funds to maintain the unreasonable delays during the trial.⁵²⁶

Consequently, where the state will bear the cost, it is even more favourable to utilise this strategy.⁵²⁷ A more cost-effective version of this strategy has been identified as the 'Stalingrad lite'.⁵²⁸ This is where due to one's financial resources being depleted they fail to make the required payments, and request the court for a postponement to find alternative legal representation, or to find funding to proceed with the trial.⁵²⁹

It is evident that, the Stalingrad tactics, is viewed as a strategy which erodes the findings and power of the judiciary.⁵³⁰ Despite the judicial system being abused by prominent figures to evade prosecution, the judiciary has established remedies to terminate this issue. These remedies include punitive costs orders, or the issuing of a penalty.⁵³¹ The courts have taken these measures to protect criminal cases from abuse,⁵³² and possibly terminate the Stalingrad defence strategy.⁵³³

⁵²² Aton Katz, 'The long arc of justice and the Stalingrad Strategy' (Cape Jewish Chronicle, October 2020) < <https://cjc.org.za/2020/10/01/the-long-arc-of-justice-and-the-stalingrad-strategy/>> accessed 28 August 2024.

⁵²³ Acton, 'A legal response to Stalingrad tactics that avoid accountability'.

⁵²⁴ Katz, 'The long arc of justice and the Stalingrad Strategy'.

⁵²⁵ Katz, 'The long arc of justice and the Stalingrad Strategy'.

⁵²⁶ Judges Matter, 'Using Stalingrad Tactics to Delay Justice' (*Judges Matter*, June 2018) < <https://www.judgesmatter.co.za/opinion/using-stalingrad-tactics-to-delay-justice/>> accessed 28 August 2024.

⁵²⁷ Judges Matter, 'Using Stalingrad Tactics to Delay Justice'.

⁵²⁸ Judges Matter, 'Using Stalingrad Tactics to Delay Justice'.

⁵²⁹ Judges Matter, 'Using Stalingrad Tactics to Delay Justice'.

⁵³⁰ Acton, 'A legal response to Stalingrad tactics that avoid accountability'.

⁵³¹ Theunis Roux, 'The Constitutional Court's 2018 Term: Lawfare or Window on the Struggle for Democratic Social Transformation?' (2020) 10 Constitutional Court Review 1-42, 17.

⁵³² Roux, 'The Constitutional Court's 2018 Term: Lawfare or Window on the Struggle for Democratic Social Transformation?' 18.

⁵³³ Tumo Charles Moloka, 'Biowatch Shield, Costs Liability for Abuse of Process and Crossfire Litigation' (2020) OBITER 186-198, 198.

4.5 Conclusion

The unjust postponements in criminal trials violate an accused person's right to a fair trial. Under such circumstances, the judiciary provides various remedies with the expectation of remedying the unjust situation.

Therefore, there are various remedies the law offers to an accused person who finds themselves under these circumstances. These are the remedies contained in section 342A of the CPA,⁵³⁴ and the permanent stay of prosecution remedy.

However, the study has revealed that most accused persons who experience unreasonable delays in criminal trials, apply for the remedy of stay of prosecution which according to the judiciary is not readily granted. This is owing to the fact that, there has to be significant consideration prior to staying an accused person's prosecution.

This results in this application, frequently being unsuccessful. Research has further revealed that the study of this remedy appears to be severely restricted which may be due to the minimal probability of it succeeding in cases of unreasonable delays.

However, in cases where this remedy fails, the judiciary offers an accused person the remedies in section 342A of the CPA,⁵³⁵ which are utilised as an alternative remedy for an accused person. Furthermore, the investigation has found that, there are cases where an accused person is a prominent figure, and utilises legal strategies to evade responsibility in cases where he or she has breached his or her official duties.

This category of accused persons ordinarily resorts to what is called the Stalingrad tactics to abuse the legal process. This approach, is utilised to cause constant delays in the trial, in order to decrease the pace or halt proceedings. This conduct has been described as one which diminishes the court's jurisdiction, as well as the public's trust in the judicial system. In addition, this practice makes the judiciary appear lacking in power to society.

Despite the abuse of the judicial system by certain individuals, courts have further endeavoured to correct this issue. The judiciary has established remedies which are

⁵³⁴ Criminal Procedure Act.

⁵³⁵ Criminal Procedure Act.

created to compel these unethical individuals to suffer the consequences of utilising these tactical manoeuvres, and to eradicate the utilisation of the Stalingrad tactics.

The next chapter will conclude the research and further provide recommendations on the issue of unreasonable delays in South African criminal trials.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter will conclude the research, by discussing its findings, based on the research questions and objectives. The chapter will make recommendations for legislative reforms.

5.2 Findings to the research questions

The analysis found that unreasonable delays in criminal proceedings were primarily caused by various individuals directly involved in such proceedings. These unreasonable delays detrimentally affect accused persons, victims, witnesses, and their families.

In addition, the study found that overcrowding in correctional facilities may be caused by remand detainees, because of unreasonable delays in criminal trials. Overpopulation in prisons adversely affects the management and rehabilitation of offenders.

However, the effective rehabilitation of offenders is the primary objective of the establishment of South African prisons. The research found that laws and remedies exist that regulate the issue of unreasonable delays in the criminal justice system, and in addition they protect the rights of remand detainees.

Nevertheless, it is evident that courts' endeavouring to create a seamless legal process, is presenting significant challenges to attain. These laws and remedies may be viewed as existing solutions to this issue. As a result, the study sought to investigate why the existing laws are ineffective in bringing about a significant change in the criminal justice system. Could the issue be that these laws are not effectively executed in the criminal justice system? ⁵³⁶

5.3 Recommendations

Based on the findings of the research, the following recommendations are made:

⁵³⁶ Arusha Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' (LLM dissertation, University of South Africa 2015) 154.

5.3.1 Amendment of the current code of conducts regulating legal officials

Where judges, defence lawyers, prosecutors or an accused person are responsible for unreasonable delays in criminal trials, the judiciary ought to effectively utilise the inherent power bestowed upon them to deny the maximum extent possible of postponements in criminal trials.⁵³⁷ The courts ought to deal with such practice with resolute control and avoid leniency.⁵³⁸ The judiciary ought to further consider imposing a suitable penalty on legal practitioners who are found to be guilty of this conduct or have acted negligently in these cases.⁵³⁹

It is recommended that in cases where judicial officers, and legal representatives are found to be responsible for unreasonable delays, the judiciary ought to include consequences to the current code of conducts regulating these officials.⁵⁴⁰

In the case of an accused person unreasonably delaying proceedings, the judiciary may create provisions for the severe consequences of such practice in the Criminal Procedure Act.⁵⁴¹ These provisions may be similar to those which regulate witnesses' court attendance and cooperation in a case.

5.3.2 Amendments of the legislation regulating unreasonable delays in criminal trials

In respect to the laws regulating unreasonable delays in criminal trials, the judiciary ought to stringently implement the existing laws on the individuals involved in the case. This will assist in ensuring compliance. Further, with victims of crime ordinarily experiencing a feeling of dissatisfaction in the criminal justice system during unreasonable delays, the judiciary may consider strategies to protect the rights of these individuals. This is due to the fact that victims suffer in the same measure as an accused person, during postponements.

⁵³⁷ Edwin Cameron, JJ Du Toit and Alexia Katsinginis, 'Completing the puzzle – Is there a solution to the delay in criminal trials?' (*De Rebus*, 1 December 2020) <<https://www.derebus.org.za/completing-the-puzzle-is-there-a-solution-to-the-delays-in-criminal-trials/>> accessed 27 January 2025.

⁵³⁸ Edwin, Du Toit and Katsinginis, 'Completing the puzzle – Is there a solution to the delay in criminal trials?'.

⁵³⁹ Edwin, Du Toit and Katsinginis, 'Completing the puzzle – Is there a solution to the delay in criminal trials?'.

⁵⁴⁰ Edwin, Du Toit and Katsinginis, 'Completing the puzzle – Is there a solution to the delay in criminal trials?'.

⁵⁴¹ Criminal Procedure Act 51 of 1977.

It is recommended that the judiciary consider including a specific legal provision protecting the rights of victims in South Africa during unreasonable delays. This provision ought to be to an equal degree as the protection of section 35(3)(d) of the rights of an accused person. This step may assist in the prevention of victims enduring repeated, distressing, and occasionally mortifying cross-examinations due to unreasonable delays. This protection may further encourage numerous victims to report offences with the assurance that justice will be swift.

5.3.3 Revising the strict approach of the application of the remedy of permanent stay of Prosecution

In relation to the remedies provided for by the judiciary, in instances of unreasonable delays in criminal trials, the judiciary may reconsider its rigid approach when awarding the remedy of permanent stay of prosecution. The judiciary may consider granting the remedy more particularly in lesser offences, where an accused person has been incarcerated for numerous years whilst awaiting trial, as a way to remedy the situation. The judiciary may take into consideration the duration of time the accused person has been incarcerated, whilst still being presumed innocent.

It is recommended that magistrate courts be granted restricted authority to grant the remedy of permanent stay of prosecution. This may assist the courts in clearing the backlog of awaiting cases which are ordinarily abundant in the lower courts.⁵⁴²

5.3.4 Police officials adopting the approach of making fewer arrests

In respect to the issue of overcrowding in South African correctional facilities, police officials may consider arresting and charging an individual when their investigations are complete.⁵⁴³ This will assist in reducing the number of postponements during legal proceedings, as a result of further investigations.⁵⁴⁴ Consequently reducing the number of remand detainees being admitted into the correctional system.

⁵⁴² Londeka Zandile Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' (LLM dissertation, University of Kwazulu Natal 2017) 68.

⁵⁴³ Londeka Zandile Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 71.

⁵⁴⁴ Londeka Zandile Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' 71.

It is recommended that the judiciary reconsider incarcerating an accused person subsequent to being indicted, in cases where an accused person has committed a lesser crime. This may be in offences, such as theft, where the accused person is a first time offender, and where an accused person is not a flight risk. In such cases, the judiciary may find alternative methods to ensure that such an accused person attends their trial.⁵⁴⁵

Further, this may assist in eradicating the issue of overpopulation in South African prisons. It is further recommended that The Department of Correctional Services(DSC) consider transferring certain offenders from overcrowded facilities to facilities which are operating under capacity. This may assist in reducing the large number of inmates and to further assist correctional officials better manage South African correctional facilities and to improve security within the institutions.

5.3.5 Creating and Publishing of adjournment policies/rules which prevent unreasonable delays in criminal trials

Finally, in regard to cases of unreasonable delays in criminal trials, the courts may consider creating stringent policies which will assist to reduce the number of postponements in each case. It is recommended that the judiciary consider publishing an adjournment policy, to assist in restricting the number of adjournments in a case.⁵⁴⁶ The judiciary may attain this by having a definite number of adjournments in a case and a clear length of each adjournment.⁵⁴⁷

5.4 Conclusion

The primary aim of this investigation was to highlight the issue of unreasonable delays in criminal proceedings in South Africa. The research achieved this by investigating the root causes of unreasonable delays in criminal proceedings and how they may be eradicated. The underlying motivation of this investigation was to find effective solutions to protect the rights of the individuals affected by these delays, particularly in the case of an accused person. The study found that laws exist which regulate

⁵⁴⁵ Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' 160.

⁵⁴⁶ Edward Laws, 'Addressing case delays caused by multiple adjournments' (*Applied Knowledge Services*, 14 June 2016) < <https://assets.publishing.services.gov.uk/media/57a983e5274a0f6c000006/HDQ1374.pdf> > accessed 31 October 2023.

⁵⁴⁷ Laws, 'Addressing case delays caused by multiple adjournments'.

unreasonable delays in criminal trials, however, the challenge may lie in the execution of these laws by the judicial officers.

BIBLIOGRAPHY

Journals

Albertus, 'Dundley Lee v Minister of Correctional Services: A roadmap to some weak links in the South African Custodial Chain'

Albertus C, 'Dundley Lee v Minister of Correctional Services: A roadmap to some weak links in the South African Custodial Chain' (2015) 32 Journal of Third World Studies

Albrecht and others, 'Justice Delayed: The Complex System of Delays in Criminal Court'

Albrecht K, and others, 'Justice Delayed: The Complex System of Delays in Criminal Court' (2022) 53 Loyola University Chicago law Journal

Ally, 'The need for clarity on whether 'Suspects' may rely on section 35 Of the Constitution of the Republic of South Africa, 1996: a comparative law analysis'

Ally D, 'The need for clarity on whether 'Suspect' may rely on section 35 of the Constitution of the Republic of South Africa, 1996: a comparative law analysis' (2010) XLIII CILSA

Ashmont 'Raped by the System: A Comparison of Prison Rape in the United States and South Africa'

Ashmont A 'Raped by the System: A Comparison of Prison Rape in the United States and South Africa' (2014) 26 Pace Int'LL.Rev

Bagaric, 'An Argument for abolishing Delay as a Mitigating Factor in sentencing'

Bagaric M, 'An Argument for abolishing Delay as a Mitigating Factor in sentencing' (2019) 40 Adelaide Law Review

Ballard 'Prisons, the Law, and Overcrowding'

Ballard C 'Prisons, the Law, and Overcrowding' (2019) 4 New South African Review

Cameron, 'The Crisis of Criminal Justice in South Africa'

Cameron E, 'The Crisis of Criminal Justice in South Africa' (2020) 137 SACJ

Chevroulet and others, 'The impact of recall timing on the preservation of eyewitness memory'

Chevroulet C and others, 'The impact of recall timing on the preservation of eyewitness memory' (2022) 29 Psychiatry, Psychology and Law

Chukwudi, 'Challenges of Reforms in the Nigerian Prison System: Lessons from U.S.A and South Africa'

Chukwudi F, 'Challenges of Reforms in the Nigerian Prison System: Lessons from U.S.A and South Africa' (2012) 4 Journal of Social Science and Public Policy

Dobbie, Goldin, and Yang, 'The Effect of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges'

Dobbie W, Goldin J, and Yang C.S, 'The Effect of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges' (2018) 108 American Economic Review

Du Preez, Steyn and Booyens 'Risk Factors and Circumstances Surrounding Suicides in Correctional Centres in Gauteng, South Africa'

Du Preez J, Steyn F and Booyens K 'Risk Factors and Circumstances Surrounding Suicides in Correctional Centres in Gauteng, South Africa' (2015) 2 Acta Criminology: Southern African Journal of Criminology

Gordin and Cloete, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa'

Gordin J and Cloete I, 'Imprisoned Before Being Found Guilty: Remand Detainees in South Africa' (2013) 80 University of Cincinnati Law Review.

Hawilo and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook Country Court System'

Hawilo M and others, 'How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook Country Court System' (2022) 112 (2) journal of Criminal Law and Criminology'

Ito and Imosemi, 'Prospect and Challenge of Criminal Procedure in Nigeria: A Review'

Ito B.O and Imosemi A.F, 'Prospect and Challenge of Criminal Procedure in Nigeria: A Review' (2022) 8 A Review. Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang

Keehn and Nevin, 'Transforming Punishment to Stem Tuberculosis and HIV in South African Prisons'

Keehn E N and Nevin A, 'Transforming Punishment to Stem Tuberculosis and HIV in South African Prisons' (2017) 20 Health and Human Rights Journal

Khwela, 'A need to Re-integrate Prisons to the Community: A Case of Polokwane Medium B Prison, South Africa'

Khwela M N, 'A need to Re-integrate Prisons to the Community: A Case of Polokwane Medium B Prison, South Africa' (2014) 1 Athens Journal of Sciences

Krishan and Kumar, 'Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective'

Krishan J.K and Kumar R.C, 'Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective' (2011) 42 Georgetown Journal of International law

Lau, 'Comparative Perspectives on Strategic Remedial Delays'

Lau H, 'Comparative Perspectives on Strategic Remedial Delays' (2016) 91 TULANE LAW REVIEW

Legodi and Dube, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials'

Legodi R and Dube M, 'Community Reintegration of Offenders at an Overcrowded Rural Facility: Work Experience of Correctional Officials' (2023) 12 (489) Soc. Sci

Lekgau, Maluleke, and Roelofse, 'Analysis of Misconduct and Crime by police Officers Investigated by the Independent Police Investigate Directorate'

Lekgau K, Maluleke W, and Roelofse C, 'Analysis of Misconduct and Crime by police Officers Investigated by the Independent Police Investigate Directorate' (2021) 56 JOPA

Levine, 'Victims' Rights in the Diversion Landscape'

Levine K L, 'Victims' Rights in the Diversion Landscape' (2021) 74 SMUL.REV

Machisa and others, 'Circumstances, policing, and attrition of multiple compared to single perpetrator rape cases, within the South African criminal justice system'

Machisa M T, and others, 'Circumstances, policing, and attrition of multiple compared to single perpetrator rape cases, within the South African criminal justice system' (2023) 12 Machisa et al.Crime Science

Maseko, 'Inmates' Right to Adequate Nutrition in South Africa: is the Enforcement of this Right Constitutional?'

Maseko TW, 'Inmates' Right to Adequate Nutrition in South Africa: is the Enforcement of this Right Constitutional?' (2016) 31 Southern African Public Law

Mgolozeli and Duma, "They all laughed and asked me if I enjoyed having sex with those guys"

Mgolozeli S E and Duma S E, "They all laughed and asked me if I enjoyed having sex with those guys": Exploring men's lived experiences when reporting rape to police in South Africa' (2020) 15 PLoS ONE

Miselo and Mutereko, 'Factors Affecting Post-Secondary Correctional Education in South Africa: A Case of Brandvlei Correctional Centre in Cape Town'

Miselo A and Mutereko S, 'Factors Affecting Post-Secondary Correctional Education in South Africa: A Case of Brandvlei Correctional Centre in Cape Town' (2019) 27 Administration Publica

Mokoena, Motseki, and Dube, 'Evaluating The Role of Criminal Investigators During Bail Application'

Mokoena RJ, Motseki MM, and Dube NC, 'Evaluating The Role of Criminal Investigators During Bail Application' (2020) 12 International Journal of Social Sciences and Humanity Studies

Moloka, 'Biowatch Shield, Costs Liability for Abuse of Process and Crossfire Litigation'

Moloka TC, 'Biowatch Shield, Costs Liability for Abuse of Process and Crossfire Litigation' (2020) OBITER

Mphaphuli and Botha, 'Experiences and Coping Strategies of Protected Witnesses in South Africa: A Social Work Perspective'

Mphaphuli L N and Botha P, 'Experiences and Coping Strategies of Protected Witnesses in South Africa: A Social Work Perspective' (2021) 34 Acta Criminological: African Journal of Criminology & Victimology

Mujuzi, 'The South African International Co-operation in Criminal Matters Act and the issue of evidence'

Mujuzi J.D, 'The South African International Co-operation in Criminal Matters Act and the issue of evidence' (2015) De Jure

Murhula and Tolla, 'The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence from South Africa'

Murhula P B B and Tolla A D, 'The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence from South Africa' (2021) 10 IJCJ & SD

Murhula and Singh, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature'

Murhula P B B and Singh S B, 'A Critical Analysis on Offenders Rehabilitation Approach in South Africa: A Review of the Literature' (2019) 12 (1) AJCJS

Namakula, 'The court record and the right to a fair trial: Botswana and Uganda'

Namakula C, 'The court record and the right to a fair trial: Botswana and Uganda' (2016) 16 AHRLJ

Nieuwoudt and Bantjes 'Health professionals talk about the challenges of suicide prevention in two correctional centres in South Africa'

Nieuwoudt P and Bantjes J 'Health professionals talk about the challenges of Suicide prevention in two correctional centres in South Africa' (2019) 49 South African Journal of Psychology

Okpaluba, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S'

Okpaluba C, 'Delay in delivering judgment or a case of "washing" judicial "dirty linen in public" Reflections on Myaka v S' (2013) 38 TRW

Ontano, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases'

Ontano K L, 'Victimising the Victim Again: Weaponising Continuances in Criminal Cases' (2020) 18 Ave Maria Law Review

Paciocco, 'Trial Delay Caused by Discrete System Wide Events: The Post-Jordan Era Meets the Age of COVID-19'

Paciocco P, 'Trial Delay Caused by Discrete System Wide Events: The Post-Jordan Era Meets the Age of COVID-19' (2021) 57 Osgoode Hall Law Journal

Petè, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)'

Petè S A, 'Like a Bad Penny: The Problem of Chronic Overcrowding in the Prisons of Colonial Natal: 1845 to 1910 (Part 1)' (2015) 21 Funamina

Rang, 'The Waiting Game: How Pre indictment Delay Threatens Due Process and Fair Trials'

Rang D M, 'The Waiting Game: How Pre indictment Delay Threatens Due Process and Fair Trials' (2021) 66 S.D.L.Rev

Roux, 'The Constitutional Court's 2018 Term: Lawfare or Window on the Struggle for Democratic Social Transformation?'

Roux T, 'The Constitutional Court's 2018 Term: Lawfare or Window on the Struggle for Democratic Social Transformation?' (2020) 10 Constitutional Court Review

Smith and Horne, 'Why Down – managing Backlog Forensic DNA Case Entries Matters'

Smith JH and Horne JS, 'Why Down – managing Backlog Forensic DNA Case Entries Matters' (2024) JFSR

Sumiarto, 'The Impact of Prosecution Plans on Disparities of Criminal Prosecution by The Public Prosecutor'

Sumiarto H, 'The Impact of Prosecution Plans on Disparities of Criminal Prosecution by The Public Prosecutor' (2024) 2 ICLESS

Swanepoel and Petè, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison'

Swanepoel P and Petè S, 'The Development of Racially Defined Punishment in Colonial Natal: The Early History of Durban's Point Prison' (2012) 25 Fundamina

Van der Linde, 'Once, Twice, Three Times Delayed: Considering a Permanent Stay of Prosecution in Rodrigues v The National Director of Public Prosecutions'

Van der Linde D.C, 'Once, Twice, Three Times Delayed: Considering a Permanent Stay of Prosecution in Rodrigues v The National Director of Public Prosecutions' (2022) 25 PELJ

Vukušić, 'Later Rather Than Sooner: Time and Its Effects on the Karadžić and Mladić Trials'

Vukušić I, 'Later Rather Than Sooner: Time and Its Effects on the Karadžić and Mladić Trials' (2022) 22 International Criminal Law Review

Waqar, Iqbal, and Kazmi, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study'

Waqar M, Iqbal A, and Kazmi S S A, 'Criminal Justice System and its Impacts on Criminal Trial Law, Practice and Procedure in Pakistan: An Analytical Study' (2022) 6 (3) PLHR

Watney, 'Unreasonable delays in criminal trials and the remedy of a permanent stay of prosecution: Regsspraak'

Watney M, 'Unreasonable delays in criminal trials and the remedy of a permanent stay of prosecution: Regsspraak' (2007) 2 SALJ

Wolf, 'Pre-and Post –Trial Equality in Criminal Justice in the Context of Separation of Powers'

Wolf L, 'Pre-and Post –Trial Equality in Criminal Justice in the Context of Separation of Powers' (2011) 14 PER/PELJ

Worku, 'The Strategic Benefits of Rehabilitation of the Prison Population of the City of Tswane'

Worku Z, 'The Strategic Benefits of Rehabilitation of the Prison Population of the City of Tswane' (2020) 36 The Journal of Applied Business Research

Internet Sources

Acton, 'A legal response to Stalingrad tactics that avoid accountability'

Acton H, 'A legal response to Stalingrad tactics that avoid accountability' (*The Mail & Guardian*, August 2022) <<https://mg.co.za/thought-leader/opinion/2022-08-11-a-legal-response-to-stalingrad-tactics-that-avoid-accountability/>>
accessed 28 August 2024

Ballard 'Promoting Pre-Trial Justice in Africa'

Ballard C 'Promoting Pre-Trial Justice in Africa' (Civil Society Prison Reform, Community Law Centre, University of Cape Town, 21 October 2011) < <https://acjr.org.za/resource-centre/21-october-2011-ppja-email-newsletter>> accessed 08 August 2023

Ballard, 'Lessons from the past: Remand detention and pre-trial services'

Ballard C, 'Lessons from the past: Remand detention and pre-trial services' (South African Crime Quarterly, June 2013) < <http://dx.doi.org/10.17159/2413-3108/2013/voi44a816>> accessed 31 October 2023

Ballard, 'Research Report on Remand Detention in South Africa: an Overview of the Current Law and Proposals of Reform'

Ballard C, 'Research Report on Remand Detention in South Africa: an Overview of the Current Law and Proposals of Reform' (Community/Law Centre, 2011) < <https://acjr.org.za/resource-centre/South%20Ballard.pdf> > accessed 08 August 2023

Cameron, Du Toit and Katsiginis, 'Justice postponed: what causes unreasonable delays in criminal trials?'

Cameron E, Du Toit JJ and Katsiginis A, 'Justice postponed: what causes unreasonable delays in criminal trials' (De Rebus, December 2020) <<https://www.derebus.org.za/justice-postponed-what-causes-unreasonable-delays-in-criminal-trial/>> accessed 07 July 2023

Cameron, Du Toit and Katsiginis, 'Completing the puzzle – Is there a solution to the delay in criminal trials?'

Cameron E, Du Toit JJ and Katsiginis A, 'Completing the puzzle – Is there a solution to the delay in criminal trials?' (*De Rebus*, 1 December 2020) <<https://www.derebus.org.za/completing-the-puzzle-is-there-a-solution-to-the-delays-in-criminal-trials/>> accessed 27 January 2025

Department of Correctional Services, 'White Paper on Remand Detention Management in South Africa'

'White Paper on Remand Detention Management in South Africa' (Department of Correctional Services, March 2014)

<https://www.gov.za/sites/default/files/gcis_document/201607/white-paper-remand-detention-management-south-africa.pdf> accessed 08 August 2023

Department of Correctional Services, 'Judicial Inspectorate for Correctional Services Annual Report 2023-2024'

Department of Correctional Services, 'Judicial Inspectorate for Correctional Services Annual Report 2023-2024' (*Department of Correctional Services*, March 2024) < <https://share.google/IG2yTvPGxydYOA6oh>> accessed 06 October 2025

Department of Justice and Constitutional development 'Have your say about the criminal justice system'

Department of Justice And Constitutional Development, 'Have your say about the criminal justice system' (Department of Justice And Constitutional Development, August 2008) https://justice.gov.za/CJSreview/CJS_Review_background.pdf > accessed 07 July 2023

Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994'

Department of Justice and Constitutional Development, 'Code of Judicial Conduct Adopted in Terms of Section 12 of the Judicial Service Commission Act No 9 of 1994' (Department of Justice And Constitutional Development, October 2012) < <https://www.justice.gov.za/legislation/notices/2012/2012/018-gg35802-nor-865-judicial-conduct.pdf>> accessed 24 August 2024

Department of Justice and Constitutional Development, 'Code of conduct for members of the National Prosecuting Authority under section 22(6) of the National Prosecuting Act, 1998'

Department of Justice and Constitutional Development, 'Code of conduct for members of the National Prosecuting Authority under section 22(6) of the National Prosecuting Act, 1998' (Department of Justice And Constitutional Development, December 2010) <<https://www.npa.gov.za/sites/default/files/documents/code%20Conduct%20published%2029%202010.pdf>> accessed 25 August 2024

De Reuter and Hardy, 'Study on the use of bail in South Africa'

De Reuter N and Hardy K, 'Study on the use of bail in South Africa' (APCOP Research paper, 23 May 2018) <023-apcof-research-study-on-the-use-of-bail-in-South-Africa-nicola-de-reuter-and-kathleen-hardy-pdf > accessed 31 October 2023

Judges Matter, 'Using Stalingrad Tactics to Delay Justice'

Judges Matter, 'Using Stalingrad Tactics to Delay Justice' (Judges Matter, June 2018)< <https://www.judgesmatter.co.za/opinion/using-Stalingrad-tactics-to-delay-justice/>> accessed 28 August 2024

Katz, 'The long arc of justice and the Stalingrad Strategy'

Katz A, 'The long arc of justice and the Stalingrad Strategy'(Cape Jewish Chronicle, October 2020) < <https://cjc.org.za/2020/10/01/the-long-arc-of-justice-and-the-stalingrad-strategy/>>accessed 28 August 2024

Laws, 'Addressing case delays caused by multiple adjournments'

Laws E, 'Addressing case delays caused by multiple adjournments' (Applied Knowledge Services, 14 June 2016) <<https://assets.publishing.service.gov.uk/media/57a9c983e5274a0f6c000006/HDq1374.pdf>>accessed 31 October 2023

Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities'

Legal Practice Council, 'Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Practitioners and Juristic Entities' (Legal Practice Council, March 2019) < <https://www.studocu.com/en-za/document/university-of-south-africa/business-entities-law-301/code-of-conduct-for-all-legal-practitioners-candidate-legal-practitioners-and-juristic-entitiesgg42337effective-29/51969657>> accessed 25 August 2024

Muntingh, 'Ten years after the Jali Commission: Assessing the state of South Africa's prisons'

Muntingh L, 'Ten years after the Jali Commission: Assessing the state of South Africa's prisons' (South African Crime Quarterly, December 2016) <http://dx.doi.org/10.17159/2413-3108/2016/vOn58a1380> < accessed 31 October 2023

Ngaqakama, 'Court postponements: who really suffers?'

Ngaqakama S, 'Court postponements: who really suffers?' (News24, 01 July 2019) < <https://news24.com/news24/court-postponements-who-really-suffers-20190701>> accessed 08 August 2023

Mduduzi Nonyane, 'Singer Zandi Khumalo pens open letter to President Ramaphosa to speed up Meyiwa trial'

Mduduzi Nonyane, 'Singer Zandi Khumalo pens open letter to President Ramaphosa to speed up Meyiwa trial' (City Press, 06 July 2023) <<https://www.news24.com/citypress/news/singer-zandi-khumalo-pens-open-letter-to-president-ramaphosa-to-speed-up-the-meyiwa-trial-20230706>> accessed 20 September 2025

Redpath, 'Unsustainable and unjust: Criminal Justice policy and Remand detention since 1994'

Redpath J, 'Unsustainable and unjust: Criminal Justice policy and remand detention since 1994' (South African Crime Quarterly, June 2014) < <http://dx.doi.org/10.4314/sacq.v48i1.3> >accessed 31October 2023

Relihan, 'Unreasonable postponement in criminal trials'

Relihan M, 'Unreasonable postponement in criminal trials' (Malan Lourens Viljoen Inc, 1 June 2021) < [https:// mLVAW.co.za/Resources/Unreasonable- postponements-in-criminal-trials.pdf](https://mLVAW.co.za/Resources/Unreasonable-postponements-in-criminal-trials.pdf) > accessed 07 July 2023

Schönteich, 'The ability of the criminal justice system to solve and prosecute crime'

Schönteich M, 'The ability of the criminal justice system to solve And Prosecute crime' (Institute for Security Studies, September 1999) <<https://issafica.org/research/papers/assessing-the-crime-fighters-the-ability-of-the-criminal-justice-system-to-solve-and-prosecute-crime> >accessed 08 August 2023

Schönteich, 'A story of trials and tribulations: The National Prosecuting Authority, 1988-2014'

Schönteich M, 'A story of trials and tribulations: The National Prosecuting Authority, 1988-2014' (South African Crime Quarterly, December 2014)< <http://dx.doi.org/10.4314/sacq.v50i1.1>>accessed 31 October 2023

Theses and dissertations

Akoto, 'Access to justice at Kumasi Central Prison'

Akoto A A, 'Access to justice at Kumasi Central Prison' (LLM thesis, Kwame Nkrumah University of Science and Technology, Kumasi 2019)

Bekink, 'The protection of child victims and witnesses in a post- constitutional criminal justice system with specific reference to the role of an intermediary: A comprehensive study'

Bekink M, 'The protection of child victims and witnesses in a post- constitutional criminal justice system with specific reference to the role of an intermediary: A comprehensive study' (LLD thesis, University of South Africa 2016)

Gopaul, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings'

Gopaul A, 'The impact and constitutionality of delayed trials on the rights of a suspect or accused person during criminal proceedings' (LLM dissertation, University of South Africa 2015)

Henry, 'A Critical Analysis on the Impact of Case Backlog on the Right to Fair and Speedy Trial in Uganda'

Henry N T, 'A Critical Analysis on the Impact of Case Backlog on the Right to Fair and Speedy Trial in Uganda' (LLB Research proposal, Kampala International University 2019)

Iruoma, 'Eradicating delay in the administration of justice in Africa Court: A comparative analysis of South Africa and Nigerian Court'

Iruoma O.O, 'Eradicating delay in the administration of justice in African Courts: A comparative analysis of South African and Nigerian Courts' (LLM dissertation, University of Pretoria 2005)

Juwaki, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe'

Juwaki Y K, 'Towards Trial of the Forgotten: An Enquiry into the Constitutional Right to a Speedy Trial for Remand Prisoners in Zimbabwe' (LLM thesis, International Institute of Social Studies 2012)

Kaplan, 'Mediation and The Criminal Justice System: A Growing Need for a Viable Alternative to Court Litigation'

Kaplan E, 'Mediation and The Criminal Justice System: A Growing Need for a Viable Alternative to Court Litigation' (LLM dissertation, University of Cape Town 2022)

Kaweesa, 'Case Backlog and the right to due process: the Uganda judiciary'

Kaweesa G, 'Case Backlog and the right to due process: the Uganda judiciary' (LLM thesis, University of Makerere 2012)

Mafu, 'The management of court records in Magistrate Court: A case of Middle drift Magistrate Court, Eastern Cape'

Mafu N.V, 'The management of court records in Magistrate Court: A case of Middle drift Magistrate Court, Eastern Cape' (LLM thesis, University of Fort Hare 2014)

Makasana, 'The Onus of proof and Presumption of innocence in South African Bail Jurisprudence'

Makasana V, 'The Onus of proof and Presumption of innocence in South African Bail Jurisprudence' (LLM thesis, Nelson Mandela Metropolitan University 2014)

Moonsamy, 'Analysis on the Administration and Governance of the South African Case Docket'

Moonsamy K, 'Analysis on the Administration and Governance of the South African Case Docket' (LLM dissertation, University of Cape Town 2018)

Mulwa, 'The Effects of Magistrates' Transfer on the Administration of Justice in Kenya: A Case Study of Courts in Nairobi City Country'

Mulwa P M, 'The Effects of Magistrates' Transfer on the Administration of Justice in Kenya: A Case Study of Courts in Nairobi City Country' (MPA dissertation, University of Nairobi 2020)

Ngalo, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Criminal Procedure Act and a Permanent Stay of Prosecution'

Ngalo L. Z, 'The Right To a Fair Trial: An Analysis of s 342(A), s 168 of The Criminal Procedure Act and a Permanent Stay of Prosecution' (LLM dissertation, University of Kwazulu Natal 2017)

Skywalker 'Politics of the Number: An Account of Predominant South African Prison Gang Influences'

Skywalker L L, 'Politics of the Number: An Account of Predominant South African Prison Gang Influences' (MPhil dissertation, University of Cape Town 2014)

Cases

Bothma v Els and Others

Bothma v Els and Others 2010 (1) SACR 184 (WCC)

Broome v Director of Public Prosecutions, Western Cape and Others, Wiggins v W/NMDE Streeklanddros, Cape Town and Others

Broome v Director of Public Prosecutions, Western Cape and Others, Wiggins V W/NMDE Streeklanddros, Cape Town and Others 2008 (1) SACR 178 (C)

Director of Public Prosecutions v Tsupa and Others

Director of Public Prosecutions v Tsupa and Others 2021 80 (ZAFSHC)

Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another

Garry Michael Taylor v The Regional Court Magistrate – Mr Nemavhidi & Another 2023 604 (ZAGPJHC)

Golding and Others

Golding and Others v S 2022 20 (ZAKZDHC)

Jango v District Court of New South Wales and Ors

Jango v District Court of New South Wales and Ors (168 C.L.R 23) 1989

Lee v Minister of Correctional Services

Lee v Minister of Correctional Services 2013 (2) BCLR 129 (CC)

Lethoko v Minister of Defence

Lethoko v Minister of Defence 2021 (2) SACR 661 (FB)

Maryke van der Walt v Director of Public Prosecutions

Maryke van der Walt v Director of Public Prosecutions 2021 (1) SACR 320 (ECG)

Naidoo v S

Naidoo v S 2012 (2) SACR 126 (WCC)

Ramabele v The State; Msimango v The State

Ramabele v The State; Msimango v The State 2020 (2) SACR 604 (CC)

Rodrigues v The National Director of Public Prosecutions and Others

Rodrigues v The National Director of Public Prosecutions and Others 2021 (2) SACR 333 (SCA)

R v Hakim.

R v Hakim (1989) 41 A Crim R.

Sanderson v Attorney-General, Eastern Cape

Sanderson v Attorney-General, Eastern Cape 1997 (12) BCLR 1675 (ZACC)

S v Bhuda

S v Bhuda 2006 (96) (ZAGPHC)

S v Dalindyebo

S v Dalindyebo 2016 (1) SACR 329 (SCA)

S v Hysteen

S v Hysteen 2004 (2) SACR 478 (C)

S v Mokoena

S v Mokoena 2019 (2) SACR 355 (SCA)

S v Ndibe

S v Ndibe 2012 245 (ZAWCHC)

S v Steward

S v Steward 2017 (1) SACR 156 (NCK)

S v Zuma and Another and a related matter

S v Zuma and Another and a related matter 2020 (2) BCLR 153 (KZD)

Thenga v S

Thenga v S 2012 (2) SACR 628 (NCK)

Van Heerden and another v National Director of Public Prosecutions and others

Van Heerden and another v National Director of Public Prosecutions and others
(2017) (2) SACR 696 (SCA)

Van Veen v Director of Public Prosecutions, Western Cape and Others

Van Veen v Director of Public Prosecutions, Western Cape and Others 2023
(2) SACR 370 (WCC)

Wild and another v Hoffert NO and others

Wild and another v Hoffert NO and others 1998 (6) BCLR 656 (ZACC)

Wynne-Jones and Another v S In re: S v Wynne-Jones and Another

Wynne-Jones and Another v S In re: S v Wynne-Jones and Another 2012 (2)
ALL SA 311 (ZAGPJHC)

Zambodla v Director of Public Prosecutions, Grahamstown

Zambodla v Director of Public Prosecutions, Grahamstown 2019 10
(ZAECHC)

Zanner v Director of Public Prosecutions, Johannesburg

Zanner v Director of Public Prosecutions, Johannesburg 2006 (11) BCLR 1327
(SCA)

Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance And Another

Zuma v Democratic Alliance and Others; Acting National Director of Public Prosecutions and Another v Democratic Alliance And Another 2018 (1) SACR 123 (SCA)

Legislation

Constitution of the Republic of South Africa Act

Constitution of the Republic of South Africa, 1996

Correctional Services Act

Correctional Services Act 111 of 1998.

Criminal Procedure Act

Criminal Procedure Act 51 of 1977

Magistrates 'Court Act

Magistrates 'Court Act No 32 of 1944

Superior Court Act

Superior Court Act No 10 of 2013

South African International Co-operation in Criminal Matters Act

South African International Co-operation in Criminal Matters Act 75 of 1996