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Delays in Finalising Criminal Trials

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Abstract:

The research critically examined the impact of delays in concluding criminal cases in Zimbabwe. The research focused on the causes behind delays in finalising criminal matters, the impact such delays have on the administration of justice and on the litigants involved in the criminal trials. This research also sought to explore strategies that can be employed by various stakeholders within the justice delivery system in an effort to reduce these delays. The research took the form of a descriptive survey with both qualitative and quantitative methods of research being used. The population under study comprised of the police, court officials and court users. Tables were used for data analysis to illustrate variables and the severity of the effects of these delays. The major findings of this study among others were that delays have a negative effect on both the accused and the complainant for particularly financially and psychologically. Financially, as the accused is burdened with legal costs and the complainant also suffers financially as such person is required to attend court yet with little help from the State in terms of witness fees. The study also revealed that the delays infringe on the accused right to liberty as the accused is detained in custody for an unreasonable period of time. The study also found out at time poor investigative techniques employed by the police also aid in the delay in finalising criminal trials. that the delays have a negative effect on the administration of criminal justice at the court especially as few magistrates are faced within many criminal matters which they have difficulty disposing. Hence, the study recommended that there is need for the government to consider increasing the number of magistrates stationed at the court to allow for more cases to be disposed of. Furthermore, police investigators need to be trained and well equipped to investigate matters efficiently and thorough. Police should also engage the community in fighting crime and create policies regarding the charging suspects to ease burden on court. In respect of emotional stress suffered by complainants it is recommended that counselling services be available for them to receive the necessary attention to overcome their experiences.

Keywords: Delays, remand, justice delivery, complainants, accused

1. Introduction

The criminal courts of any country play a pivotal role in ensuring the proper effective deliverance of justice. The same courts are also tasked with ensuring that the rights of those that appear before the presiding officer are protected and guaranteed. However, many a time we may find that, due to the many players that are involved in the deliverance of justice, there are bound to be the abuse of rights of the litigants involved in criminal trials. This abuse may come in the form of delays in either finalising a criminal trial or kick starting the trial. The abuse may also emanate from a poor justice delivery system that does not adequately protect the rights of litigants. The researchers observed that, at Mt Darwin Magistrates court, the rights of accused persons and complainants were being abused and violated by the justice delivery system in the form of delays in finalising cases referred to courts for prosecution. It is common cause that delays in finalising criminal trials infringe on an individual's right to liberty and the right to a free and fair trial within a reasonable time. Furthermore, as the old adage goes, 'justice delayed is justice denied.' In other words, delays does not provide the adequate closure to a case nor do they provide the necessary redress for the wrong done. At time delays may be caused by challenges relating to shortage of financial resources and human capacity. These financial limitations are not only akin to Zimbabwe but are indeed occurring the world over. These financial limitations have significantly reduced the ability of the judiciary to deliver justice. The negative effects of this situation are not limited to, but include the failure by the courts to promptly hear cases and deliver judgements. (Judicial Service Commission, 2012)

The Constitution of Zimbabwe Amendment No 20 provides for certain fundamental principles, in particular sections 69 (1-2) and 70 (1) (a) which provide that,

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 - Every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court.
 - In the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law.
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 - (1) Any person accused of an offence has the following rights—
 - to be presumed innocent until proved guilty;

However, this fundamental principle appears to give no timeframe for the completion of the fair hearing thereby leaving the criminal justice delivery system at the mercy of judges and players within the criminal justice delivery system.

Just recently, reports were awash the media in Zimbabwe and in particular the Herald (23/03/13) about a certain High Court judge who has not handed sentence to a convicted murderer who has been languishing in jail on remand for the past ten years. The said judge is still a sitting judge of the High court and no attention is being paid to the man whose constitutional right to a speedy and fair trial are being trampled on mercilessly by the conduct or misconduct of the judge whose duty among others is to see that justice is seen to be done with due regard to human rights and the rule of law. The effect of this particular delay has had untold suffering on the accused's family as his children could not go to school. The report also indicated that one of the sons of the accused committed suicide as a result of frustration over his failure to secure a birth certificate in the absence of his father. Without the identity document, the now deceased was denied a chance to see the accused until his unfortunate death.

1.1. Statement of Problem

There have been numerous delays in finalising criminal trials in Zimbabwe. These delays often have a negative effect on complainants, accused persons and general administration of justice. This study sought to investigate the reasons behind such delays and expose the effects such delays have on complainants, accused persons and general administration of justice at Mt. Darwin Provincial Magistrate Court. Failure to address such a situation may be detrimental to the parties involved, the administration of justice and the general public perception of the justice delivery system in Zimbabwe.

1.2. Research Objectives

- To investigate reasons for delays in court case finalisation at Mt. Darwin Court.
- To determine the effects of delays on accused persons, complainants and administration of justice
- To explore strategies that can be used by stakeholders involved in the administration of justice to minimise such delays hence improving justice delivery.

1.3. Research Questions

- What are the reasons for the delays in court case finalisation?
- What are the effects of these delays on accused person's, complainants and the administration of justice?
- What strategies can be employed stakeholders within the justice delivery system to minimise such delay and improve the deliverance of justice

2. Literature Review

2.1. Conceptual Framework

2.1.1. Global Overview

The problem of delays in finalising court cases is not a cause for concern only in Zimbabwe but a global issue. In the United States of America, researches have been done and laws enacted in a bid to curb the problems associated with delays for example, the promulgation of the Speedy Trial Act (World Bank 1999).

In the United Kingdom, The Criminal Justice Minister, Mr. Damien Green was reported in The Telegraph newspaper of the 19th of February 2013 describing delays in case finalisation as 'Shocking and unforgivable' and adding that court delays cause more crime. The Minister also highlighted that 'just 44% of trials in magistrates courts went ahead as planned leaving victims cross, annoyed and less likely to come forward in the future. Removing the delay, said the minister, will increase the ability to deliver justice as victims will feel better about it and witnesses will be more likely to give evidence. Furthermore, according to Javed Khan, Chief Executive of Victim Support, "Delays in court seriously undermine the confidence of victims and witnesses. They prolong victims' distress and make them less likely to report crime in future.'

In the Herald of 10/01/2012, JSC Press Statement: A test for Zimbabwe's judiciary and legal profession, the JSC observed that some judges were taking up to six years to deliver reserved judgements. Furthermore, the Minister of Justice, Legal and Parliamentary Affairs, Mr. Chinamasa also commented on this issue when he said on April 4, 2012,

'...I receive complaints almost daily from members of the public about the shortcomings of the justice delivery system...they complain about inordinate delays in finalising court matters. They complain of delays in handing down judgements....'

As noted above, the Zimbabwean Herald (23/03/13) reported a matter in which a High Court Judge who had not handed down sentence to a convicted murderer who had been languishing in jail on remand for the past ten years. However, it is worth noting that such misconduct is prohibited by the Judicial Service Commission Code of Ethics Regulations for Judges. The Code provides that, '...reserved judgments must be delivered within three months.'

It is important to remember that the courts themselves along with other stake holders play a pivotal role in the effective deliverance of justice. There are various aspects that define 'justice' to have been served legitimately and expediently starting from investigation of the matter and the handling of evidence (including witnesses). Most importantly when dealing with criminal trials one must always recall that the liberty of an individual is at stake. Hence, if an accused does not satisfy bail, such accused is deprived of his/her liberty for a crime for which the State is yet to prove and secure a conviction. As such, this deprivation should be as brief as possible. Furthermore, to instil confidence in the administration of justice, it is important to society that the process of criminal justice be swift and that it be perceived as swift, both by prospective wrongdoers and their victims (Trotter and Copper 1982).

According to the latest World Justice Rule of Law Index by the World Justice Project, which provides reliable information on rule of law practices by world governments, Zimbabwe's criminal justice system was evaluated on 7 elements. These elements included effective investigations, timely and effective adjudication, effective correctional system, no discrimination, no corruption, no improper government influence and no due process of law. This research was carried out in Harare, Bulawayo and Chitungwiza. According to the above research, Zimbabwe was rated on effective criminal investigations, timely and effective adjudication. On rating on the criminal justice system, Zimbabwe was ranked 11th in the Sub-Saharan Region 7th among low-income countries. However, the report still indicated that severe violations of due process of law and the rights of the accused prevail.

2.2. Theoretical Framework

2.1.2. Victims Theory

Theoretical perspective of a victim according to Christie (1986) in Victimology is a helpful starting point in exploring 'what we know' about the identity and attributes of victims. Christie (1986) perceptively identified six attributes that, at the level of social policy, are most likely to result in the conferring of complete, legitimate and unambiguous victim status on someone who has had a crime committed against them. Paraphrasing Christie, these attributes include:

- The victim is weak in relation to the offender – the 'ideal victim' is likely to be either female, sick, very old or very young (or a combination of these).
- The victim is, if not acting virtuously, then at least going about their legitimate, ordinary everyday business.
- The victim is unrelated to and does not know the 'stranger' who has committed the offence (which also implies that the offender is a person rather than a corporation; and that the offence is a single 'one-off' incident).
- The offender has the right combination of power, influence or sympathy to successfully elicit victim status without threatening (and thus risking opposition from) strong countervailing vested interests.

From the attributes stated above, it can be deduced that the victim is the weaker party who is taken advantage of by the stronger party, the accused. It is also important to note that these attributes are more inclined to crimes of a violent nature against a person. This knowledge thus gives an insight into what a victim is and what happens to the victim at the time the offence is committed upon him or her. From the study of the victim come the effects that crime has on the victim especially at times when delays in administering justice occur coupled with what we already know about the victim in relation to the offender as enunciated by Christie *ibid*. Furthermore, the impact of a crime has a crucial bearing on the way the victim interprets and responds to it. Even where they do not result in physical injury, however, violent offences are frequently traumatic for victims, and sometimes extremely traumatic in terms of their emotional and or psychological impact.

However, one of the few studies to have been carried out on victims of 'ordinary violence' by Shapland et al., (1985) in the United States of America found that over half of the sample of 216 victims who were interviewed at up to four different stages of the legal process (in some cases up to two or three years after the original offence), reported some kind of persistent emotional effects. One possible explanation for these inconsistent findings is that the legal process itself could remind victims of the effects of the offence and its impact upon them. Taking, for example, an accused person on remand for close to two years, the accused person may be trying to forget but when the trial finally starts, the effects come back as fresh as they were when the allegations were read to him the first time he appeared in court. Furthermore, according to Trotter and Cooper (1982) long trial delays have a deleterious effect upon the availability and the memories of the witnesses for both sides. This in turn affects the administration of justice as trials prolong due to witnesses not being able to provide sufficient evidence.

To overcome the above Trotter and Cooper (1982), encouraged the need to come up with alternative dispute resolutions to criminal prosecution. This according to Trotter and Cooper may include changes in police charging practices, prosecutorial screening. These measures may go a long way in minimising delays and may also have less of a negative effect on witnesses or the accused person.

2.1.3. Labelling Theory

The Labelling theory of criminology by Becker (1963) helps in understanding the effects especially for someone who has not been convicted. He asserts that, 'Social groups create deviance by making rules whose infraction constitutes deviance and by applying those rules to particular people and labelling them as outsiders.' From this point of view, deviance is not the quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. The deviant behaviour is

behaviour that people so label.' (Becker, 1963). Socially, labels are received differently by different people and this research seeks to find out such implications through the effects of delays in court case finalisation on different individuals especially where the accused end up being acquitted.

Labelling Theory is the theory that the formal and informal application of stigmatizing and deviant "labels" or tags applied to an individual by society will not deter, but rather instigate future deviant or criminal acts. This is evidenced by the way accused persons are so-called and also the way they are distinguished from the rest of the population by way of dressing that is derogatory to say the least. This type of dressing for example creates a tag that identifies them as the scum of the earth and they live with it for the rest of their lives. This theory is therefore relevant to this research in that for the period the accused will be awaiting trial and is in or out of custody, he carries a tag that affects him psychologically, socially and emotionally. This tag shall be carried by the accused for the period he is on remand to the time of his conviction or acquittal. Hence, the sooner an innocent defendant is freed of the stigma of being an accused, the sooner he can resume his normal life in the community.

2.1.4. Punishment

Punishment involves the deprivation of certain normally recognized rights, or other measures considered unpleasant. It is consequence of an offence and it is applied against the author of the offence. The main aim of punishment is to try to make sure that everyone obeys the law. Whilst it is the law to punish offenders, it must also be law to protect the rights of the offenders and complainants with regard to the time taken to reach that appropriate judgement thereby reducing the effects of delays on the offender and complainant. The offender must not be unduly punished by having him on remand for a long period before his case is heard.

The delays at trying cases at court, and particularly at Mt Darwin magistrate court constitute pre-trial punishment to the offender and a sense of injustice on the victim's side. The earlier the offender is tried and the right form of punishment meted on the accused, the greater the reduction of effects of delays on court case finalisation on both parties. It can be argued that an accused person, whose case has not been heard in a competent court of law as required by the law, is subjected to such features of punishment prematurely.

2.1.5. Empirical Literature

Jason Payne, (1998) in his research on Criminal Delays in Australia discovered that, a delay is assumed to be generated when a trial fails to proceed with the effects of consuming valuable criminal justice resources including court administration, judicial, prosecutorial and defence resources, time and cost implications on victims and witnesses. The research identified two commonly used concepts of delays in criminal trial system. According to the Bureau of Crime Statistics and Research of Australia, delay refers to the average time between initiation and finalisation, the longer it takes to finalise, the more it is said to have been delayed. Secondly, its delay commonly described by legal practitioners to explain the time taken for a criminal matter to be resolved over and above the time necessary to resolve it. The bureau suggested that every case has a duration within which a resolution of a fair trial can and should be found, excess of which is a delay.

Payne (1998) in his study further identified causes of delays as being systematic. The study indicated that this arises when criminal matters cannot be resolved expeditiously because the criminal justice system cannot provide the means through which speedy resolution can be facilitated. In order for a criminal matter to proceed through each transition, the matter must be ready to proceed, and the court must have the capacity to facilitate it. Not every matter can be heard as early or as expeditiously as it may be prepared, and delay is inevitably generated by a system that is unable to hear a matter earlier, due to its existing caseload.

Chief Judge Rezones (2001) of the Victorian County Court noted several reasons criminal trials are increasing in length. These included that criminal matters appearing before the court are increasing in complexity, criminal investigation is becoming more complex for the average case and greater standards of evidence are being required by juries. Furthermore, there has been a 'proliferation of procedural and evidentiary rules' that consumes substantial court time and the quality of legal representation for both the Crown and defence has declined, as too have the number of judges experienced in trial procedures.

The second but equally important form of delay in the criminal justice system as noted in Payne's research is that which is attributable to the actions, or inaction, of the parties to the trial process. Here delay results from factors not within the control of the criminal justice system, but is imposed upon criminal matters from the parties to that system. Karpin (1990) described three categories of this type of delay. Firstly there are unavoidable delay resulting from factors outside the control of criminal justice practitioners, typically imposed upon the system by defendants and witnesses. Secondly, there is necessary delay caused by the incompetence or ignorance of the criminal justice practitioners and their failure to adhere to good practice in case management. Finally, there are deliberate delays resulting from the engineering or exploitation of the criminal trial process by practitioners to generate excess duration.

Commenting on adjournments as likely causes of delays in case finalisation, Weinberg (2001) clearly states that:

[T]he right to a fair trial is, as the High Court has repeatedly emphasised, the 'touchstone' or 'fundamental prescript' of our system of criminal justice. The need to minimize delay and to ensure that trials are conducted efficiently, and within proper cost constraints, must always be subsidiary to that fundamental prescript.

These adjournments are a protection afforded to the parties of the criminal trial process but the question is what proportion of adjournments granted on the day of listing (remand date) might otherwise been avoided. The need for a fair trial was highlighted by Weinberg (2001) when he argued that, '...it is not the purpose of the criminal law to punish at all costs. It is of fundamental importance that accused persons against whom there is insufficient evidence should be acquitted.'

Callinan, R. (2002) added this much to our body of knowledge on delays and their effects on accused and complainants in her study on Court Delays in New South Wales (NSW), Issues and Developments where she started by giving a classic definition of court delay by Brebner and Foster (1994) as,

‘the amount of time between the commencement and the conclusion of court proceedings which exceeds the time necessarily spent in the preparation of a case for trial, the conduct of its hearing and the determination of its final outcome.’

Callinan (2002) identified problems associated with delays in court case finalisation in both criminal and civil cases to include situation where an accused is remanded in custody. Delay lengthens the time an accused is remanded. This negatively affects both the accused and the resources of the prison system. She also noted that delay in the completion of criminal cases may cause stress and anxiety to the victims of crime and the accused, and to the family and friends of both parties.

Furthermore, Callinan observed that delay increased the cost of civil and criminal cases, causing financial hardship to parties and the court system. Apart from the cost of legal representation, parties may suffer other financial hardships, for example, a plaintiff in a personal injury case may require money for treatment; rebuilding his or life may be acutely affected by delays. Some litigants may abandon claims due to the prospect of lengthy delays, a case where complainants or victims become frustrated by delays leading to withdrawal of cases against accused.

Evidence may be lost; witnesses may forget evidence, die or may be unable to be contacted due to delays. A party may deliberately cause a delay or adjournment of proceedings that are detrimental to their interests. This may reinforce the power of the financially stronger party that can better withstand the financial consequences of delay. Lastly, but most importantly, the study by Callinan established that delays undermine public confidence in the court system.

In another study carried out in Europe by Dr Pim Albers (2005) of the European Commission for the Efficiency of Justice (CEPEJ) entitled Management of Judiciary Time, it acknowledged that delays persist in courts the world over and was indeed a cause for concern especially with regards to the effects they have on the victims and the accused alike.

The study of Langbroek and Fabri (2003) on timeframes, as cited in this study by Dr Pim Albers, (2005) CEPEJ invited two experts to conduct a study on factors that determine reasonable time and to identify factors that are related to delays in judicial proceedings. The reasonable time requirement concerns the guarantee of anybody going to court that a final decision in a case will be given within a reasonable time. The idea is that citizens are entitled to legal certainty. However, the researchers concluded that in practice the Court is not providing any certainty because the concept of what constitutes a reasonable time, depends on external boundaries of applicability of the ‘reasonable time’ clause and on case-related criteria concerning the reasonableness of the actual time that passed during proceedings. According to Trotter and Cooper, in 1978, the results of a national public opinion survey indicated that thirty-six percent of the American public believed that excessive time elapsed between arrest and trial, and thirty-nine percent believed that the costs of litigation were excessive

Regarding the external boundaries they noted that reasonable time is dependent on the various areas of law (criminal, civil and administrative law) and that national systems are required to deliver judicial decisions according to the norms that are derived from the Court of Human Rights.

In their search for determining factors that may reduce the length of proceedings, that is, delays in court proceedings, the researchers concluded that there should be judicial commitment, leadership and adequate accountability mechanisms. For example, a court precedent that promotes strongly activities that are oriented at reducing length of proceedings. Furthermore, involvement of the different actors in the system (a successful reduction of the length of proceedings is related to the involvement of other actors: such as the court staff and the lawyers). The study also showed that it is important that cases progression be supervised by the court systematically. (A case management system approach is, according to the researchers, the active management by the court of the case progress from filing to disposition). This involves a case management approach and a policy against unjustifiable continuances, like a firm trial date and a ‘backup judge’ system for trials; an individual assignment system and education and training of court officials (Mahoney 1988, Steelman 2000).

3. Research Methodology

3.1. Research Design and Justification

This research was carried out in Mt Darwin, covering the criminal jurisdiction of the Mt. Darwin Provincial Magistrate Court and surrounding policing areas. The research makes use of a descriptive survey research design. The descriptive survey was found to be ideal for this research in that it is a research that involves the factual or empirical investigation of a particular contemporary situation or circumstance within its real life context using multiple sources of evidence. The population in this study is stratified into five strata, that is, accused persons (13), complainants(6), police officers(4), public prosecutors (4) and the magistrates(2). A sample was thus drawn from a population of seven (7) cases pending finalisation at Mt Darwin Magistrate Court. The study employed the use of interviews and focus group discussions as research instruments for data collection.

4. Data Presentation, Analysis and Discussion

4.1. Response Rate

Sample	Gender		Total
	Male	Female	
Accused persons	13	-	13
Complainants	5	1	6
Magistrate	1	-	1
Public Prosecutor	1	-	1
Police	4	-	4
General public	15	9	24
Total	39	10	49

Table 1: Total number of respondents {N=49}

Source: Raw data

A total of 49 respondents representing the total target population were verbally interviewed in this research, 39 being male and 10 being female respondents. There were 13 accused persons and 6 complainants, of the 6 with only one being a woman. The variance in the number of accused persons to complainants was as a result of the murder cases that have the 'State' as the complainant and that there are two offences that have three and four accused persons respectively who committed an offence to only one complainant or victim. Only one (1) magistrate and one (1) public prosecutor were interviewed both of whom were male. From the police a sample of 4 police officers in charge of crime were interviewed all of whom were male respondents. These figures added up to forty-nine (49) the number of people who were interviewed including those who took part in focus study groups included on the general public column of Table 4.1 above.

Interviews planned	Interviews held	Response rate
25	25	100%

Table 2: Interview response rate

Source: Raw data from research

{n=24}

Sample	Gender		Total
	Male	Female	
General public(family and friends of accused and complainant)	15	9	24

Table 3: Focus group discussions (FGDs)

Three group discussions were done on three different dates whereupon 15 males and 9 females participated giving a total number of participants of 24. These were carried out at Mt Darwin Magistrate Court on members of the public who would have come to listen to court proceedings or those called by the court to testify on certain matters in court.

4.2. Responses from Accused Persons

Accused	Offence committed	Number of times at court	Time since 1 st court appearance
A	Murder	26	14 months
B	Murder	18	9 months
C,D,E	Murder	12	13 months
F,G,H,I,J	Unlawful entry and theft	7	13 months
K	Unlawful entry and theft	5	12 months
L	Mines and Minerals Act	4	9 months
M	Theft of trust property	3	16 months

Table 4: Number of times accused has attended court as at end of February 2013

Source: Clerk of Court, Mt Darwin Magistrate court

The table above shows the number of times accused persons A-M have been summoned to attend court, the length of time since their initial appearance at court until end of February 2013. It also shows the offences the accused persons are being charged.

Varying responses were received from this group of interviewees from the questions put across to them. The majority, however, shared the feeling that delays in finalising their matters was impacting negatively on them and their immediate families. The majority of these accused indicated that it becomes difficult for them to make plans for the future since one would not know what the next

remand date will have in store for them. They also cited that they now live in constant fear of the unknown opting that if the matters could be expeditiously tried and then they get to know their fate. It was also noted that all the accused persons in this sample are subsistence farmers who rely solely on small scale farming. As such, they indicated that they were now failing to fend for their families and also that they have to get money for transport each time they are summoned to attend court, thereby eating into their family's meagre income. This situation conforms with the study by Callinan (2002) where it was indicated that delays cause financial hardships to parties. For accused, the cost of legal representations tends to increase with the lapse of time. Of the 12 accused interviewed, only accused L seemed not worried about the length of time he has spent on remand. He indicated that in a way, the delay is affording him time to raise money for his family in case he is slapped with a mandatory sentence upon conviction.

The expectations of each of the accused persons interviewed was that on initial appearance in court, he will be tried and get his verdict on that day. They indicated that they were failing to understand why they have to be coming to court only to be told to come again on the next court day supplied. This is supported by the study by Langbroek and Fabri (2003) *ibid* on timeframes as cited in Dr Pim Albers who noted that the courts do not provide certainty as to what constitutes reasonable time and reasonableness on the commencement of trial is largely dependent on the case. Furthermore, the accused interviewed noted the prolonged period on remand has a negative connotation in the society they lived as they are labelled social deviants. This is in line with the labelling theory propounded by (Becker, 1963).

4.3. Responses from Complainants

This group of interviewees consisted of six subjects. The respondents highlighted that the delays had a negative impact in terms of finance. On the issue of costs, some of the respondents indicated that they lived in as far away places as Mukumbura and Rushinga which was expensive in terms of bus fare and food when attending court. Payne J (2007) acknowledged the problem of cost in Australia when he stated that delays have the effect of consuming valuable criminal justice resources, time and cost implications on victims and witnesses. When further asked about the existence of witness expenses funds that they are supposed to get, they all indicated that they have never been lucky to receive that money on all the occasions that they had attended court. The respondents cited the reasons for the continued postponement of their cases to time constraints as given by the court upon dismissal. They suggested that if time was a constraint, then there must be additions to the number of magistrates or at least the introduction of circuit courts at Rushinga and Mukumbura.

When asked regarding the delays, seeing that the matters have been on the roll for more than six months, they indicated that their perception of the court as a means of delivering justice had diminished, Payne (1998) *ibid*. They felt let down especially in light of the fact that they see the accused on a daily basis as the suspects/accused persons will be out of custody.

Regarding the effects the delays have one respondent stated that she had suffered emotionally as she has to coexist with the accused who stole her property when he is supposed to be in jail. She shared the same sentiments with the rest of the respondents who advocated for an increase in the number of magistrates and the availability of witness expenses to cover transport costs. This was alluded to by Maguire (1991:387) when he indicated that victims suffer psychological, depression, fear and social relationships with family may be affected.

The issue of additional of manpower to reduce delays was also observed in the study carried out by Brebner and Foster (1994) in New South Wales where it was noted that some delays were as a result of shortage of magistrates to deal with the increasing caseloads. That study by Brebner and Foster recommended that stakeholders such as the police, the community and the justice system must also work together to reduce crime in a bid to reduce the caseloads in courts.

4.4. Responses from the Court

In an interview with the magistrate, he indicated that a delay in court case finalisation is when a matter has not been completed within the stipulated administrative timeframes given for each type of offence referred for court. He indicated that six months was too long a period to spend on a case where all the parties were available. He however, indicated that the issues of court case finalisation are yet to be legislated upon. He emphasised the fact that the Criminal Procedure and Evidence Act, Chapter 9.07 only makes reference to matters being finalised 'within a reasonable time' giving no specific timeframe.

Commenting on the matters pending finalisation at his court, the magistrate indicated that he had no jurisdiction on murder cases and on the other matters; he blamed his predecessor who has since been dismissed for failing to refer complete records for scrutiny and review as the case may be. Some of the matters had been partly heard by the dismissed magistrate and he was only coming in and had to have the matters set for trial again as the law requires. He went on to indicate that in some cases, the parties may not have been forthcoming and that made it difficult to deal with the matter. The Magistrate also indicated that at times the State would not be in a position to commence or continue trial due to the unavailability of witnesses leading to matters been adjourned.

The magistrate was quick to point out that there was need for addition of manpower to speed up the process of clearing backlog. To reduce the delays/backlog, the court indicated that it had resorted to working extra hours and at times during lunch hour. The magistrate indicated that he had instructed police to bring witnesses in petty cases for a speedy trial.

However, past researches in the USA have shown that manpower increase does not reduce backlogs or delays. The USA scenario suggested that there was need to provide incentives to the court so as to gain the commitment of the court. In this previous research from the USA, the issue of delays were legislated upon yet the breach of the law on delays does not help to reduce the delays but rather leads to the dismissal of the charges on the accused after the lapse of 6 months on the roll. It is thus ineffective in reducing delays as there is no prescribed penalty on the magistrate for the delay and no remedy to the complainant for the justice denied.

4.5. Responses from the Police

The police officers interviewed all shared the notion that delays were caused by the unavailability of witnesses and at times wilful default of accused. However, they argued that the defaults by the accused could easily be dealt with by keeping them in custody till the case is finalised if the accused exhibited tendencies of defaulting. However, the same did not apply to defaulting witnesses. The police indicated that defaulting witness could be charged for failure to attend court, but are not normally incarcerated as such witnesses may be tempted to withdraw the matter just so that they may not be bothered again. At time, the police indicated, would a defeat the ends of justice as the matter is brought to closure prematurely due to frustration by the complainant or witnesses.

To a lesser extent, the police blame the courts for frustrating their own efforts to speed up the finalisation of court cases by constantly remanding cases at times in collaboration with the lawyers leading to witnesses being frustrated and may not be forthcoming to court. This observation was discussed in the Canadian research supra and also noted by the current United Kingdom Minister of criminal justice, Mr. Green when he commented as follows "If they've got up the courage to give evidence once, and the case is delayed, it's more difficult to get them back again, particularly if it's the second or third time." He went on and concluded that "removing the delay will increase the ability to deliver justice. Victims will feel better about it and witnesses will be more likely to give evidence." In the Canadian scenario, the lawyers are cited as the ones at times responsible for the delay for such reasons as wanting to earn more from accused on appearance fees which burdens and frustrates the witnesses. This sentiment was also shared by Zimbabwean police officers interviewed in Mt Darwin.

On being asked what the police officers could do to reduce the delays, the police suggested that the court must increase the number of magistrates and also courtrooms since there is only one courtroom at Mt Darwin court. The police officers also suggested that circuit courts at their respective stations be operational to reduce pressure on the main court at Mt Darwin and also to reduce the risk of witnesses and accused from absconding due to financial constraints of travelling to court.

4.6. Focus Group Discussions

Three focus group discussions (FGD) were carried out at Mt Darwin court with the witnesses and members of the public. Each group consisted of eight (8) respondents. From the three FGDs conducted, the general consensus was that the court process was slow. Most of the people at court that formed part of the FDGs were relatives of either the accused or the complainant who would accompany their relatives to court on every court day. The majority of them revealed that they had been coming to court for more than three times since the start of the case. It was noted however that most of those who came on numerous occasions were not well informed of the court process such that they would come to court even when the trial date has not been set. Mt Darwin is a rural community that relies on farming and when they have to spend time at court, it has an effect on their crop as well.

5. Summary, Conclusions and Recommendations

5.1. Summary of Major Findings

The research was aimed at identifying the effects of delays in court case finalisation on the accused persons and the complainants. In investigating these effects at the Mt Darwin Magistrate court, the researcher arrived at the following findings:

- Delays have a socio-economic impact on the accused and the complainant as the suspect has to live with the label as an accused (Maguire, 1991). Economically, the accused is burdened with legal costs as lawyers charge for every appearance in court representing the accused. The complainant also suffers economically in that he or she has to attend court usually at her or his expense and socially by being identified with the act perpetrated on her especially in sexual cases.
- Mt. Darwin is a rural community that relies on small scale subsistence farming, such that when long periods are spent by complainants, accused person, witnesses or relatives at the courts, this has a negative impact on their yield.
- There is no law to regulate the administration of justice in terms of the time a trial is meant to be concluded. The law that an accused in custody cannot be detained for more than 14 days is not adequate and to a greater extent useless as it allows the accused to be arraigned before the court on every fourteenth day only to be told to come back after 14 more days for further remand. This can go on up to a year or more or until the matter is tried or further remand refused by the court.
- The police indicated that as police, they are burdened by these delays since most accused persons end up evading justice and the police are required to re-arrest them. There is also a need to train investigating officer to make their investigations quicker and efficiently in a manner that doesn't prolong a trial.
- The research also found out that Mt Darwin Magistrate court is a large station that deals with up to twenty (20) criminal matters per day yet there are only two magistrates. The research therefore found out that such a workload contributes towards the delays in finalizing cases.

5.2. Conclusions from Major Findings

The study found out that delay in court case finalisation was a combination of different factors at Mt Darwin Court. On the police perspective, the failure to locate and bring witnesses when required at court may drag a matter for a longer period. When witnesses cannot be located, the research discovered, the court normally removes the accused person from remand and this further delays the justice delivery process as the police will be required to track the accused and the witnesses so they may be summoned and subpoena for court respectively.

The research found out that the effects that delays in court case finalisation have varying effects on the accused persons. A large number of them felt that delays were affecting them in a negative way especially the fear of the unknown; not knowing what the future has in store for them. They indicated that this hindered their planning activities in life. They were of the opinion that their fate be made known in time. A small number however, indicated that the delays were favourable to them as they afforded them time to build their defence and at times interfere with the complainants in a bid to have the matters withdrawn at court. From these findings, among others, it can be concluded that delays have a negative effect on the accused both socially and economically. Socially, the accused is made to live with the label as a bad person, a social misfit and economically, delays cost money especially on represented accused persons. The research also discovered that a delay is viewed differently by accused persons depending on whether he or she is in custody or out of custody. For the accused in custody, it was concluded that the torture and pain was increased as the conditions in prisons, especially Mt Darwin prison was inhuman due to congestion. Psychologically, incarceration of the accused meant that suspects constantly thought of their families, crops and livestock and that mentally affects them and thus would want the matter to be dealt with expeditiously.

On complainants or victims, the research found out that the need for a reward of compensation from the accused especially in property cases and justice delivery was the major reason why these parties wanted a speedy trial. The majority indicated that a delay may render any compensation useless by its mere delay. The delays were also cited as causing disharmony in the relations between the parties to the offence which on a single occasion led to a fatality when the accused ended up killing the complainant. The research also came to the conclusion that delays affect complainant socially, economically and psychologically through the trauma associated with the commission of the offence upon them.

The study also concluded that Mt Darwin court was understaffed in terms of the number of magistrates against the number of cases that the court handles per day. An addition in the number of magistrates would reduce the backlog and also cater for the daily workload at a faster rate. The court indicated that it had liaised with the prosecution so that matters that are petty or have at most two witnesses are dealt with on initial appearance and a fast track trial done and the matter finalized

This question was paused on the court whereupon the study found out that, administratively, a matter is deemed delayed when it has exceeded six months on the roll. However, there are shorter periods depending on the nature of the offence but the bottom line being that there is no law to that end, only for administrative purposes. All is left to the discretion and expediency of the court with the accused and the complainant left out to adhere and obey.

5.3. Recommendations

This research recommends that we need to adequately address the flaws within our administration of justice systems. There is a need to come up with alternative dispute resolution mechanisms or changes in the manner in which police charge suspects. For instance, caseloads can be reduced by reducing crime and conflict achieved by engaging the police and the community thus reducing reliance on courts for conflict resolution especially on petty cases that can be completed by admission of guilt fines at police stations.

There is a need to have vigorous prosecutorial screening of matters before they are sent to court. There is also need to adequately equip police officer with requisite investigating skills that enable them to thoroughly and efficiently investigate a matter prior to preparing the necessary documentation for court. There is also the need to increase the number of magistrates at Mt Darwin magistrate court to at least three magistrates so that case finalisation can be done expeditiously through the use of circuit courts at Rushinga police camp.

It is also recommended that for the convenience of the witnesses, they should only be called when the court is absolutely sure that its workload for the day is manageable and that witness expenses are available at court always. This reduces instances where witnesses get frustrated and opt not to come for court in future. Tied in with the above, it is recommended that witness expenses be made available at all times to avoid situations where cases will be withdrawn by witnesses for lack of funds to travel to court.

In respect of the emotional stress that the victims suffer as a result of crime, it is recommended that there be counselling services for these victims the same way the prisons do to the convicts when they rehabilitate them. These services ought not to be concentrated in urban areas but also in rural service centres for the convenience of the rural folks.

5.4. Further Research

This study recommends that further research be conducted on larger centres in order to establish the extent of the delays in court case finalisation and their effects on a more educated and financially stable group of people like Harare and Bulawayo magistrate courts.

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