



NATIONAL UNIVERSITY OF LESOTHO

The Importance of Monitoring and Evaluation Framework in the Implementation of
Speedy Court Trials Act, 2002 and Reduction of Criminal Cases Pendency: Case
Study of Maseru Magistrate Court

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A mini-dissertation submitted in partial fulfilment of the requirements of the degree of
Master of Laws (LL.M.) of the Faculty of Law of the National University of Lesotho

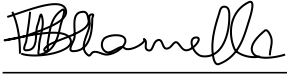
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July 2023

DECLARATION

I **BOITUMELO VIOLET MOTLAMELLE**, solemnly declare that this mini dissertation has not been submitted for a qualification in any other institution of higher learning, nor published in any journal, textbook or other media. The contents of this dissertation entirely reflect my own original research, save for where the work or contributions of others have been accordingly acknowledged.

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ABSTRACT

In order to achieve the highest level of protection of people's right to speedy criminal trials, the existence of a well-functioning compliance mechanism is a necessity. Based on this, the paper sought to interrogate the importance of an M&EF within the Maseru Magistrate Court as a compliance mechanism and a means towards the reduction of the high pendency of criminal cases, particularly murder cases within the court. To achieve its aims and objectives, the paper made use of a mixed method research approach where qualitative and quantitative research methods were used to achieve a clear description of the problem and provide an even meaningful interpretation and analysis of the data collected. The Criminal Registry book kept at the Maseru Magistrate Court Criminal section was used for the collection of the quantitative data while a questionnaire distributed to stakeholders in the criminal justice system was used to the collection of the quantitative data.

During the study, the paper discovered that there is indeed a problem of the high pendency of murder cases within the Maseru Magistrate Court and this is a conclusion that was based on the realization that 100% of the sample cases were still pending within the court. although the paper acknowledged that there may be a number of factors contributing to the high pendency, it attributed the problem largely to the lack of compliance within the criminal justice system to the provisions of the SCTA. It argued that the use of M&EF for the SCTA within the Maseru Magistrate Court can improve compliance to the strict timeframes prescribed by the law and subsequently help with the reduction of the high pendency of criminal cases.

Based on the interpretation and analysis of the data collected, the review of the papers by other scholars on this phenomena of high pendency of criminal cases despite the existence of the law making provision for speedy criminal trials as well as the consideration of the decisions by the High Court of Lesotho on issues relating to violation of speedy trial rights, the paper came to a conclusion that there is indeed a problem of the high pendency of murder cases within the Maseru Magistrate Court and that the high pendency is a direct result of the lack of the existence of a compliance mechanism for the SCTA. It therefore recommended the creation of an M&EF which is made up of a combination of the following approaches RBM&E, PBM&E and TBM&E as a compliance mechanism for the SCTA. The paper also

recommended the creation of specialized courts which will deal solely with the murder cases and within which the M&EF will be implemented.

LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
CJ	Chief Justice
DPP	Director of Public Prosecutions
ICCPR	International Convention on Civil and Political Rights
M&E	Monitoring and Evaluation
M&EF	Monitoring and Evaluation Framework
PE	Preparatory Examination
PI	Pending Investigations
PBM&E	Process-Based Monitoring and Evaluation
PMS	Performance Management System
RBM&E	Results-Based Monitoring and Evaluation
SCTA	Speedy Court Trials Act
SMART	Specific, Measurable, Achievable, Relevant and Time-bound Indicators
TBE	Theory-Based Evaluation
ToC	Theory of Change
USA	United States of America

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CHAPTER 1: INTRODUCTION

In this chapter, a brief background of the right to speedy criminal trials is discussed as one of the fair trial rights provided for under the Lesotho Constitution and other international instruments. The historical development of the right in Lesotho which necessitated the promulgation of the Speedy Court Trials Act 2002, (SCTA) as the law giving effect to the constitutional provisions by making out specific time frames within which trials should commence and be completed is also discussed.

The challenges faced by the judiciary, particularly the Maseru Magistrate Court with the implementation of the speedy trial rights as provided for in the SCTA in their disposition are discussed with the major focus of the paper being on the problem of backlog of cases. The relationship between the speedy trial rights and other constitutional rights is looked into and the significance of the paper interrogated based on this relationship.

Also in this chapter is the discussion of the scope and limitation of the study, the hypothesis that there is a relationship between the lack of monitoring and evaluation framework within the Maseru Magistrate court and the problem of the high pendency of murder cases which is a result of non-adherence to the provisions of the SCTA, a discussion of the research methodology as well as a chapter breakdown.

Section 12 of the Constitution of Lesotho provides for a right to a fair trial as a fundamental human right. The section provides that if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law¹.

Lesotho is also a signatory to international conventions on human rights which make provision, in particular, that those criminally charged be afforded trials that are commenced and concluded within a reasonable time and not be subjected to undue delays. An example of such is the African Charter on Human and Peoples' Rights

¹ Section 12(1) of the Constitution of Lesotho 1993

(ACHPR)² Article 7 (4) of which provides that every person who is criminally charged should be tried within a reasonable time. Article 14 (3) (c) of the International Convention on Civil and Political Rights (ICCPR)³ also provides that in the conduct of the hearing against anyone who has been criminally charge, the determination of their guilt or otherwise should be done without undue delays.

The unacceptable delay of conclusion of criminal trials is a practice whose condemnation can be traced as far back as the Magna Carta and from the above laws and treaties, we note the importance of conducting criminal trials expeditiously in order to safe guard peoples' rights to fair trials. However, given that neither the Constitution of Lesotho nor the African Charter or the ICCPR has prescribed the time frames that shall constitute 'reasonable time', to give effect to this provision of reasonable conclusion of criminal trials, the legislature in Lesotho Promulgated the Speedy Court Trials Act (SCTA)⁴ which prescribes time frames within which necessary procedures should be carried out in order to ensure that a fair criminal hearing is held within a reasonable time.

Even though the Constitution as operationalised by the SCTA has made provision for the speedy conclusion of criminal trials⁵, there seems to be an unending surge in pending criminal cases within the courts in Lesotho. To illustrate this surge, in 2019, the CJ dismissed over 3000 criminal cases which were alleged to have been pending in the courts for over 8 years. Of the 3000 cases that were dismissed, 2413 were from Maseru Magistrate court alone.⁶

The Chief Magistrate of Maseru cited a number of reasons the cases were never tried to finality but among the many reasons, incomplete investigations came out top of her list. A question that should come to one's mind when cases are dismissed 8 or more years post the date of first remand for want of prosecution is why such want of prosecution owing to lack of complete investigations was not identified and remedied earlier in order to comply with both domestic and international laws aimed at the

² The Charter was adopted by the eighteenth Assembly of the Heads of States and Government in June 1981 at Nairobi Kenya and Lesotho became a signatory on the 7th March 1984 and ratified on the 10th February 1992

³ The treaty was adopted by the United Nations General Assembly on the 16th December 1966 and came into force on the 23rd March 1967. Lesotho acceded to the treaty on the 9th September 1992

⁴ No. 9 of 2002

⁵ Section 5 (3) SCTA

⁶ <https://www.gov.ls/court-dismisses-pending-cases> accessed on the 31st March 2023

protection of people's right to speedy criminal trials and help curb the problem of backlog in the courts.

In early 2021, the Chief Justice of Lesotho issued out The Subordinate Courts Practice Direction (Streamlining the Processing of cases on Pre-Trial Remand Pending Further Investigation)⁷. The Directives are intended to operationalize provisions of the SCTA by ensuring that accused persons are tried within 60 days from the date of first remand. The directives are an initiative by the Chief Justice to help remedy the problem of backlog of pending cases, owing to incomplete investigations among other things.

The inefficacy of the Judiciary to efficiently administer justice in criminal cases within the reasonable time limits as prescribed by the supreme law, is evidently not a problem of lack of laws. Although there is an array of reasons, ranging from lack of resources, postponements and incomplete investigations to name a few, the paper will look into lack of proper monitoring and evaluation frameworks which are necessary in the implementation of laws and policies which are specifically time sensitive as one of the many problems that hinder the efficient delivery of judicial services, more particularly, in criminal cases and as a result also infringe on the people's right to fair trials.

Monitoring is simply defined as a continuous process by which stakeholders obtain regular feedback on progress towards achieving the set milestones and results and it often focuses on the processes, activities, inputs and outputs. Evaluation on the other hand refers to the periodic review of the results of a plan, which is typically carried out mid-term or at completion, towards its outcomes, development goals and impact⁸.

Monitoring and Evaluation framework essentially entails a set of planning, information gathering, synthesis, reflection and reporting processes involved during the implementation of projects and or policies. The importance of having a sound monitoring and evaluation framework is that, the intended outcome of a policy is gradually mapped to establish in time whether the activities designed to achieve a

⁷ No. 1 of 2021

⁸ [Monitoring and Evaluation for learning and performance improvement | Investment Learning Platform \(ILP\) | Food and Agriculture Organization of the United Nations \(fao.org\)](#) accessed 31st March 2023

certain end are effective or not⁹. In simple terms, Monitoring and Evaluation provides a systematic way of tracking implementation of the law prescribing time-frames for conclusion of criminal trials by tracking and assessing the turnaround time of the courts in determination of criminal cases from the date of first remand to the date of either a conviction or an acquittal in order to gauge compliance and identify implementation hindrances in time and provide as a result, timeous solutions.

The commencement and conclusion of criminal trials within a reasonable time is a fundamental human right in Lesotho. At the helm of judicial processes and procedures should be the protection of this fundamental human right through strict compliance with the provisions of the SCTA. This means that courts administering criminal justice should have in place management information systems that assess their daily activities and gauge their performance based on this general target of instigation and conclusion of trials within a reasonable time in furtherance and protection of the people's right to fair trials. Such systems are able to identify noncompliance on a case-by-case basis and offer support in court performance based on prospective concerns, indicators and set targets.

Given this direct link between compliance to provisions of the SCTA and the protection of the right to a fair hearing, the high pendency of criminal cases is suggestive of higher rates of violations of a right to a fair hearing as provided for in the Constitution.

The high pendency rate of criminal cases is a problem that should be solved through the formulation of a monitoring and evaluation framework that can effectively assess the implementation outcomes of the SCTA in order to protect and promote a right to a fair trial as a fundamental human right, improve the efficacy of judicial service delivery in the dispensation of criminal justice and enable better allocation of already shrinking judicial and national resources.

The delay in the finalisation of criminal matters preferred against individuals mean a continued limitation of their fundamental human rights, exacerbates the economic

⁹ [A handbook for development practitioners: ten steps to a results-based monitoring and evaluation system \(worldbank.org\)](https://www.worldbank.org) accessed 31st March 2023

burden on the government and also creates a bad name for Lesotho internationally.

Examples of such limitations and their effects include and are not limited to:

- Freedom of movement and right to personal liberty¹⁰. For those admitted on bail and those in confinement. When one is admitted on bail, some bail conditions often limit movement of individuals. For those imprisoned, their freedom of movement is completely taken away from them. The limitation to this right also borders on the right to livelihood of those accused as those incarcerated cannot go to work to provide for their families.
- Another fundamental element to a right to trial is the presumption of innocence until proven guilty¹¹. Prolonged criminal cases end up blurring lines of demarcation for the presumption of innocence and conviction for those held in custody for unreasonably long periods end up giving a general impression that they are serving imprisonment sentences instead of merely just awaiting trial while in custody.
- To victims of crime, justice delayed is justice denied and as a result of the delay in finalisation of the criminal cases in which they have interest, they may end up resorting to self-help especially in instances where accused persons are admitted to bail. When there is no movement at all in trials of those criminally charged but are admitted to bail, the admission to bail is likely to seem like an acquittal to victims.
- It is important for Lesotho to be seen internationally as compliant with its obligations of ensuring that it works towards the improvement of the enjoyment of fundamental human rights and freedoms in the country. The high rate of pending criminal cases which are not discharged in terms of Lesotho's international obligations gives it a bad name to other member states.
- The other impact of Pre-Trial delays is the costly administrative burden it creates on the judiciary as well as the accused persons. The resources of that are already stretch that could be used to support other development projects are diverted to the administration of long overdue criminal cases. On the part of the accused persons the costs of paying retaining legal representation for

¹⁰ Sections 6 and 7 respectively of the Constitution of Lesotho

¹¹ Section 12(2)(a) of the Constitution of Lesotho

cases that do not continue has a long-term effect of impoverishment. This is indicative of violations of economic, social and cultural rights.¹²

Considering that the high pendency of criminal cases violates other fundamental human rights as herein above articulated, the problem was characterized as very significant and a solution for its prompt resolution may come a long way in the improvement of the challenges herein-above articulated.

The SCTA as the law promulgated to give effect to the constitutional provisions for speedy conclusion of criminal trials needs to be complemented by some compliance mechanism. The paper purpose of this study has been to look into the use of M&EF as that compliance mechanism and how it can be used to ensure that criminal trials commence within the time frames stipulated in the SCTA.

The courts in Lesotho have the jurisdiction to hear and determine criminal cases depending on the gravity of their nature. While the paper acknowledged that the challenge of pending criminal cases applies across all courts, on account of time constraints, the paper only considered criminal cases filed within the Maseru Magistrate Court as it is the court that was easily accessible to the researcher. The paper also narrowed down the nature of the criminal cases dealt with to those remanded as murder and filed in the month of December only for the years 2019, 2020 and 2021.

The decision to have the cases dismissed was undertaken by the CJ in 2019, the study resolved to monitor the pendency rate from post the date of dismissal in an attempt to determine if the dismissals brought the necessary change or not. The months of December were chosen solely because it is generally believed that during the festive season crime rate peaks and as such, those months would give a relatively higher number of filed cases for better sampling. Although there was an outbreak of Covid-19 in the year 2020 which may have affected the turnaround time for commencement of some criminal cases, the study notes that the minutes of the presiding magistrates on the files would reflect reason for pendency so as to distinguish trial ready cases from those that are still under investigations or being delayed by other reasons.

¹²

Still owing to limited time, even the interviews, in the form of questionnaires was given to only 30 respondents to make the computation of data more manageable. The 30 respondents were chosen based on their availability and willingness to participate in the study. The respondents were the magistrates, the prosecutors, the lawyers from private practice as well as the support staff within the criminal section of the Maseru magistrate court.

The study was undertaken for a period of seven calendar months commencing in January 2023 subject to the approval of the Supervisor and calendar of events of the National University of Lesotho.

The key concepts and legal theories that came into play throughout the paper are right to a fair trial, determination of unreasonable delay and the use of monitoring and evaluation as an implementation tracking tool that can bring about an improvement in the efficacy of the courts in ensuring that criminal trials are conducted within reasonable time-frames and without undue delays. The paper examined the following research questions:

- Is there really a problem of high pendency of murder cases in the Maseru Magistrate Court?
- Is there a direct relationship between the high pendency rate of criminal cases in Maseru Magistrate Court and the lack of availability of a monitoring and evaluation system of the implementation of the provisions of the SCTA?
- Would an M&EF work within the judiciary in Lesotho and what the processes and procedures that would most likely make it work as a long-term solution to the problem of high pendency of criminal cases?

The paper hypothesized that the procedures and practices aimed at assessing the day-to-day activity of the courts and judicial activity together with the procedures and processes aimed at assessing performance of court systems have a direct and interdependent correlation with the pendency rate of criminal cases and further that where there exists a proper monitoring and evaluation violations of the SCTA can be spotted earlier and thus remedied before creating a huge backlog.

In order to test the hypothesis, the study made use of both the qualitative and quantitative methods of research through the use of both primary and secondary data. To ascertain the exact number of cases filed with the criminal registry of the Maseru magistrate court, the paper referred to the criminal cases register and the number of filed cases was used to create a base for sampling and also help with the classification of the cases into murder. This part of the methodology is purely empirical.

The qualitative method of the study came to the fore when a determination was made, through a thorough study of the records of proceedings of sampling cases in an attempt to ascertain whether such cases were compliant with the time frames prescribed by the SCTA or not and in the case that that they were not how such reasons were placed under the already pre-determined general grouping of answers as either related to incomplete investigations, reasons related to the prosecution, the defence and their witnesses or whether institutional like the unavailability of resources (electricity, stationary or unavailability of presiding officers).

The paper also made use of research questionnaires to collect qualitative data from the stakeholders in the criminal sector where their experiences while handling murder cases were considered to draw a relationship between the high pendency of criminal cases and the lack of an M&EF as a compliance mechanism per the research hypothesis. The aim of the questionnaire has been to ascertain reasons why some of the cases were pending and what the stakeholders in the criminal justice thought would be the best solution to the problem of high pendency of criminal cases. This qualitative aspect of the research was undertaken for the attainment of an in-depth understanding of the quantitative aspects as well as the interpretation and analysis of the findings of the study.

The paper consists of four chapters with the first being an introduction to the development of the speedy trial rights in Lesotho and the problem of the backlog of the murder cases within the Maseru Magistrate Court which is created by the lack of adherence to provisions of the SCTA as the law intended to operationalize the constitutional provision of the right. The hypotheses are that there is a direct relationship between the high pendency rate of the criminal cases and the lack of proper monitoring and evaluation frame work within the courts as the guardians of the SCTA.

The second chapter is a thorough discussion of the theoretical overview of the SCTA as the law-making provision for the speedy trial rights in Lesotho, a discussion of the challenges faced by both Lesotho and other countries, South Africa, USA and Jamaica which faced similar challenges when it comes to the implementation of time frames said to constitute speedy trials as well as the review of the solutions that were suggested by the courts in Lesotho and other scholars to the problem of the high pendency of criminal cases.

To interrogate the depth of this problem of backlog of cases within the magistrate court of Maseru, and to really test the hypothesis that there is a relationship between the high pendency of criminal cases and the lack of monitoring and evaluation framework, the third chapter is an interrogation of the relationship between the high pendency of criminal cases within the Maseru Magistrate court and the lack of a monitoring and evaluation frame work as illustrated by the primary and secondary data presented, analysed and interpreted. The last chapter is on the general conclusion and recommendations of the research paper.

CHAPTER 2: SPEEDY TRIAL RIGHTS IN LESOTHO—A DISCUSSION OF THE THEORETICAL OVERVIEW AND IMPLEMENTATION CHALLENGES

In this chapter, the theoretical overview of the concepts underpinning the speedy trial rights is discussed through the interrogation of some of the scholarly articles by scholars from other jurisdictions as well as the decisions of the courts of Lesotho in matters relating to violations of the SCTA. The findings of others scholars from other jurisdictions are firstly discussed as their findings have been used to arrive at some of the land mark decisions in Lesotho. This is done to build a foundational understanding of some of the legal principles, theories and tests used in the determination of SCTA violations by the High Court of Lesotho. The development of the law that makes provision for the time frames constituting speedy trial is looked into together with its inherent challenges related to implementation by both the courts and other stakeholders in criminal dispensation.

The SCTA is premised on two major theoretical concepts being the concept of fairness of trials and that of speedy criminal trials. The former conception of these theories can be traced to as far back as the development of the rules of natural justice which prescribed for the equal treatment of all persons before the law. Of the two principles of natural justice being the *nemo iudex in causa sua* and *audi alteram partem* rule, the latter principle is the one that bears more reference to the two theories that the paper proposes are most influential in the implementation of the SCTA.

The *audi alteram partem* rule is the rule that every person should be given a hearing before their matter can be decided on. The purpose of the rule is to prohibit condemnation before hearing and also to ensure that such a hearing is conducted fairly without any bias. According to Shon Hopwood in his article titled ‘The Not So Speedy Trial Act¹³’, the SCTA is a law that should balance the rights of criminal defendants, the public's significant interest in timely justice and the reduction of judicial administration.

The governing concept of the SCTA is the concept of speedy trial which provides for reasonableness and undue delay. Given that there are no precise time frames

¹³ Shon Hopwood, ‘The Not So Speedy Trials Act,’ (2014) 3 Washington Law Review 708.

universally acceptable as the standard for reasonableness of undue delay of criminal trials, the concept has been defined in many of the scholarly articles in conjunction with problems related to case backlogs, caseloads of different courts in different jurisdictions and administration related delays.

The study of the American SCTA by Shon Hopwood¹⁴ also showed a trend of a steady increase in the pendency of the criminal cases despite the existence of the SCTA and other legal reform strategies which followed it. He noted that in America the spirit of the SCTA is greatly undermined by the unwillingness of the actors in the criminal system to comply to its provisions. A common occurrence is the defence attorney's move for postponements which move is usually welcomed by the overburdened prosecutors and judicial officers. The result of such postponements being the very ill that the law has been promulgated to cure.

Diana Harrison, in her thesis titled "The Right to Speedy Trial: A comparative Analysis of the administration of criminal justice in Jamaica, England and the United States of America"¹⁵ made a similar finding that in the realisation of the speedy trial rights in Jamaica, England and USA the biggest hindrance has been large backlog of criminal cases which are brought about by a number of factors including but not limited to local legal cultures, postponements by lawyers and administrative issues related to stakeholder facilities involved in the criminal justice sector.

Harrison¹⁶ discovered that in Jamaica, criminal trials were not conducted within a reasonable time and that resulted in undue delays. The due delays then resulted in large backlogs of criminal cases in the courts which creates a vicious circle of lack of respect for speedy trial rights. She has attributed some of the delays to the old legal practices that are an absolute waste of time given the socio-economic and technological changes happening in both Jamaica and globally. An example of such a practice being the holding of an enquiry equivalent to Lesotho's preparatory examination.

Harrison then made a recommendation for reform strategies that will address the gaps in the law that promoted delays instead of detecting and preventing them. Over and

¹⁴ Hopwood (n 12)

¹⁵ Available at <https://discovery.ucl.ac.uk/id/eprint/10104305/1/10045854.pdf> Accessed 31st May 2023

¹⁶ *ibid*

above the fact that Jamaica included in its bifurcation of courts what is termed a Gun Court, which is a specialised court that was created to deal only with gun related offence in order to expedite the disposition of those high-rate cases, she recommended the issuance of guidelines or rules and regulations to be applied in an instance where the delay in a case is occasioned by incomplete investigations, administrative issues of the courts or postponements by lawyers.

The dismissal of these cases was an attempt by the Chief Justice to help relief the magistrate court of the burden of high pendency of criminal cases created largely by the none compliance of prosecution and other stakeholders with the provisions of the SCTA particularly in murder cases.

The Chief Justice of Lesotho in 2021 then, through the powers conferred on him by the Subordinate Courts Order¹⁷, issued The Subordinate Courts Practice Direction (Streamlining the Processing of cases on Pre-Trial Remand Pending Further Investigation)¹⁸. The directives are intended to operationalize the provisions of the SCTA by prescribing that the accused persons be tried within 60 days from the date of first remand. This was the Chief Justice's attempt to remedy the problem of the backlog of cases created by incomplete investigations.

The American SCTA is such that violation of the act is only triggered by the delays that are non-excusable such as the general congestion of the courts' calendar, lack of diligent preparation or the unavailability of witnesses. The SCTA of Lesotho in the like manner under its section 9(4) just like the American STA provides that:

“No postponement under subsection 2 shall be granted because of general congestion of the court's calendar, double booking by counsel, lack of diligent preparation or failure to obtain a witness on the part of the prosecution.”

The American position regarding the acceptable forms of Pre-Trial delay is the same as that of Lesotho as is seen through the provisions of section 9 of the SCTA which excludes the listed periods of delays from those constituting undue delay. It is also for the accused person to raise with the court that there is a violation of their fair trial

¹⁷ Section 81 of the Subordinate Courts Order, 1988

¹⁸ No. 1 of 2021

rights and seek the relevant relief as would be seen in the discussed decisions of the courts of Lesotho in subsequent paragraphs.

Hopwood¹⁹ acknowledges that most of the delays are occasioned by an abuse of the permissible or excusable forms of delays such as the ends of justice provision which applies where a postponement is granted in order to balance the interests of all parties involved in the criminal case without necessarily concentrating solely on the defendant, the general public's interest or costs of administration on the part of the judiciary.

Hopwood²⁰ proposes that in order to turn pre-trial delays into an anomaly as opposed to a growing norm, the legal academy should help solve the problem by actually calling attention to it. He also proposes that prosecutors as one of the players in the criminal justice system should act as guardians of the interests of both the state and the general public in speedy conclusion of criminal trials by limiting the number of postponements they request or agree to, argue for the evaluation of any postponement requests by defence attorneys and ask the courts to place it on record whenever they conclude that postponements they grant are for ends of justice purposes.

Just like in the case of Jamaica and England, the USA as well as Lesotho has accepted that in order to ascertain allegations of violations of the speedy trial rights, the accused person is the one who has to approach the courts to seek relief for such violations and the courts in the determination of such claims must pay homage to the balancing test which essentially looks into the length of the delay, the reasons for the delay, the assertion of the right to speedy trial by the accused person and the prejudice, actual and not hypothetical, that the accused stand to suffer if the trial is not conducted speedily. While Pumza Nomnganga in her thesis titled "The right to a speedy trial for crime victims in South Africa"²¹ has noted that there are a number of measures in place that seeks to protect the right of the accused persons to speedy criminal trials, which measures ensure that their other rights are protected as well, the identified interests of others involved in the criminal justice system, being the victims

¹⁹ Hopwood (n 15)

²⁰ *ibid*

²¹ Pumza Nomnganga, 'The Right to a Speedy Trial for Crime Victims in South Africa' 2022 Walter Sisulu university. Available at

https://vital.seals.ac.za/vital/access/manager/Repository/vital:49307?site_name=GlobalView&view=nu;.&f0=sm_subject%3A%E2%80%9DSpeedy+Trial%E2%80%9D&sort=null Accessed 31 May 2023

of crimes are not afforded the same protection contrary to the rules of natural justice which advocate for the equal treatment of all persons before the courts of law.

Nomnganga²² basically took issue with the balancing test that the courts of law in a number of jurisdictions globally have accepted particularly the requirement that the violations of speedy trial rights may only be brought before court for appropriate relief by only the accused persons. She noted that the downside to this approach is that where the accused is content with the delay and does not approach the courts for an order to speed up the proceedings against them, the victims are left without any relief as the judicial systems in place in South Africa have not catered for the automatic correction of cases that stand in violation of speedy trial rights for which, although the accused persons do not suffer any prejudice, the victims do and are therefore indirectly subjected to another form of victimisation, this time around by the very system that was created to protect them.

From this brief history of how some of the laws regulating speedy criminal trials came to be and the challenges that persists despite their existence, it becomes apparently clear that there is a greater need for an even more effective solution that will ensure compliance with the provisions of the laws already in place. In his speech at the opening of the High Court of Lesotho in February 2023²³ the Chief Justice highlighted that the judiciary has already undertaken to give effect to a performance management system that is intended to help with the expeditious disposition of cases with each judicial officer given the target of judgments he or she should deliver on a quarterly basis. He noted that while this has helped to a certain degree in the reduction of pending cases, the judiciary still has a long way to go in its attempts to mitigate the high pendency of criminal cases, insinuating that the problem of delayed justice dispensation still persists despite the currently employed efforts.

The problem of unduly delayed criminal proceedings is not a problem peculiar to Lesotho, nor is it a new phenomenon. The United States of America has faced similar struggles the result of which has been its promulgation of the Speedy Trial Act of 1974. Despite the Act mandating that delays in criminal cases should not exceed a hundred days, the surge in unduly delayed trials did not seem to decrease. A problem

²² *ibid*

²³ <https://jud.gov.ls/official-opening-of-the-high-court-1st-february-2023/> Accessed 8th May 2023.

that is currently being faced by Lesotho despite the existence of laws that provide for speedy criminal trials.

Lesotho's Attempts at the Resolution of Criminal Pre-Trial Delays and the Challenges

While this paper completely agrees with the criticisms advanced by Hopwood²⁴ against the American STA and the solutions he proposes to solve such and would for all intents and purposes make the same for Lesotho's SCTA, the paper is alive to the Judiciary of Lesotho's attempts to adhere to some of the solutions that Hopwood has proposed. Even the SCTA itself has provisions which cater for some of the solutions that are proposed by Hopwood. For instance, Hopwood proposes that the reasons for the grant of postponements should clearly be placed on record and the SCTA in the like manner provides that:

“Any period of delay resulting from a postponement granted by a judicial officer on his own motion or at the request of the accused or his counsel or the prosecutor shall be excludable under this subsection and the reasons for postponement be stated in writing”²⁵

Perhaps another instance of where the courts in Lesotho could be seen to have been acting in line with the solutions suggested by Hopwood of ensuring that prosecutors and the judicial officers act as the guardians of the SCTA is the holding of the High Court of Lesotho in the case of *Rex v Tlali Kamoli and Others*²⁶ cited with approval in *Khaketla v Director of Public Prosecutions*²⁷ that it is important for the judicial officers in the exercise of their discretion in the grant of postponements not to allow the prosecution a *laissez-faire* leverage in their application for postponements. This in effect means that a duty is placed on the part of the prosecution to convince the judicial officers of the existence of permissible reasons for delay and for the latter to scrutinize such reasons.

In *Khetsi v Director of Public Prosecutions*,²⁸ the High Court had to determine whether given that the summary of a main point of departure between the parties was

²⁴ Hopwood (n 20)

²⁵ Section 9(2) SCTA

²⁶ CRI/T/0001/2018

²⁷ [2022] LSHC 40

²⁸ [2017] LSHC 35

whether the admitted unpreparedness of the Crown to set the matter for hearing due to incomplete investigations legally justified violation of the Plaintiff's fair trial rights and thus warranted dismissal of the indictment for want of prosecution as provided for under section 6 and 12 of the SCTA.

The court in order to come to a conclusion it did, applied the four-pronged ad hoc balancing test which has been formulated in the South African decision of *Sanderson v Attorney General, Eastern Cape*²⁹ by considering the length of the pre-trial delay, reasons for such delays, the defendant's assertion of their speedy trial right and lastly the prejudice that the defendant is likely to suffer where the indictment is not dismissed. It considered that the Plaintiff's burden has been met with proof that the prescribed period has lapsed, that there were no good causes advanced by the prosecution to excuse the lack of trial within prescribed periods and also that the delay has not been occasioned by him and as such did order for dismissal of the indictment. A similar decision to that of the *Khetsi* was arrived at in the *Khaketla* matter where the High Court of Lesotho, despite the gravity of the economic charges levelled against *Khaketla* ordered that the criminal prosecution against the latter be permanently stayed.

Contrary to the decisions of *Khetsi* and *Khaketla* is the decision of the High Court in *Chaka v the Learned Magistrate*³⁰ in which case the High Court of Lesotho decided that even though there was a nine months delay before the case could be heard, taking into consideration the gravity of the offence with which *Chaka* was charged and its impact on the livelihoods of victims, the prosecution against him was not stayed and the case in the Magistrate court continued as scheduled.

In arriving at the decision as it did in the *Chaka* case, the reasoning of the court shed light on challenges that are faced by the courts when it comes to effectively adhering to the remedies put forward by the many sources of the fair trial rights of accused persons particularly the right to a speedy trial. One of the challenges is accurately, briefly and clearly described by the court in *Wild and another v Hoffert NO and others*³¹ as that the remedy is far reaching and dramatic because it flies in the face of

²⁹ 1998 (2) SA 38 (CC)

³⁰ [2020] LSHC 34

³¹ 1998 (3) SA 695

the society's interest to see people who are alleged to have committed serious crimes being prosecuted for their misdeeds.

The lack of the willingness to adhere to provisions of the remedies provided for by the SCTA especially where such remedy is the permanent stay of prosecution, the judiciary is left with no other available remedy to help in the balancing of the interests of all parties to the speedy conclusion of criminal trials. The quandary here is that where it is found that there is an unreasonable delay which amount to a violation of the provisions of the SCTA and the appropriate remedy is stay of prosecution of the charges against the accused or their dismissal and yet on the other hand, given the gravity of the charges against the accused the remedy appropriate would not protect the interests of the society to see justice prevail over perpetrators of crime, the judicial officers end up electing to not strictly comply with the provisions of the SCTA and this lack of incentive on the part of the judiciary to follow the provisions of the SCTA has continued to create large backlogs of criminal cases within the magistrate courts.

Where violations of the SCTA are concerned, the law is such that it is for the person aggrieved to raise such violations with the court and seek the remedy provided for as relief. As is seen in the Khetsi³² matter cited herein-above, even in instances where it is clear that the Crown has failed to prosecute the case against the accused within the SCTA prescribed time frames, the redress available is the dismissal of such charges against him but in order to enjoy same, he needs to approach the court on a notice of motion and pray for such dismissal.

The application for the stay of unduly delayed prosecution of criminal cases is in itself a case on its own which needs to follow the rules of the court in which it is filed before it can be heard. This is so given the balancing act that the law in Lesotho has set as the standard for the determination of the alleged violations. Per the case of Khetsi, the court has to weigh both the conduct of the prosecution and the accused against the length of the delay, the justification by the state of the delay, the assertion of the accused of his right to a speedy trial and lastly the prejudice suffered by the accused as a result of the delay³³.

The apparent down side to this balancing act as prescribed by the law before enforcement of the remedy of dismissal prescribed by the SCTA is that unless the

³² [2017] LSHC 35 at paragraph 25.

³³[2017] LSHC 35 at paragraph 25 .

matter is brought before court by way of a formal application, the case whose prosecution is unduly delayed will remain pending before the courts. Even in an instance where a formal application is lodged, the criminal matter in respect of which it is filed will remain pending until the final determination of the SCTA violation application. Simply put, for the 53 pending cases for the months of December 2019, 2020 and 2021, in order to have those cases dismissed for violating the provisions of the SCTA, it means that the court will have to entertain 53 more cases. Given the reality of justice dispensation and other challenges faced by the judiciary in Lesotho, it is highly unlikely that all 53 applications will be heard within the prescribed periods and disposed of speedily to prevent them from adding to the backlog. Inevitably, some of them will drag on as civil litigation and this means that even the criminal case will remain pending.

According to Shon Hopwood³⁴, the SCTA where strictly adhered to, is the law that can balance the interests of both the accused persons and the general public in the speedy conclusion of criminal trials. However, given the prescribed procedures to be followed where the violation of the SCTA is concerned particularly the third requirement of the balancing act being the assertion of the right by the accused person, it would seem that the general public's interest is not afforded the same protection. A live example is what happens in Lesotho where murder cases are concerned.

First, upon remand on a holding charge of murder, the court will warn the accused of their rights among which is the right to bail. Considering that murder trials areailable at the High Court, accused persons with no resources to instruct an attorney for purposes of bail application usually just stay in custody for a period of 60 days after which period they apply to the magistrate court to be released in terms of section 4 of the SCTA³⁵. After their release, their cases are usually remanded for years with reason cited being simply that they are pending investigations. Unless such matters are permanently stayed, through an application made by an accused and granted, in the case of murder, by the High court of Lesotho, a backlog is then created by the very system in place.

³⁴ Hopwood(n 24)

³⁵ Section 4 of the SCTA provides that an accused person should not be remanded into custody for a period longer than 60 days. Even in an instance where the person has not applied for bail, the court is obligated to release such a person from confinement especially in an instance where their matter has not even be set for hearing.

The performance management system (PMS) that the Chief Justice of Lesotho has prescribed for the Judicial officers as an attempt to mitigate the backlog of cases also has a lot of cons that still need to be complimented in order to achieve the intended results. For instance, the officers are to report on a quarterly basis on the delivery of the judgments for all the cases that proceeded before them to ensure among other things that for completed cases judgments are handed down within a period of 3 months. The system itself gauges the performance of individuals based on the number of cases that were allocated to each one of them. But it is not every case that is allocated. This implies that the reporting is not inclusive of all cases and does not therefore address the issue of cases within the magistracy that are pending.

The conclusion that not all cases are readily allocated is premised on the finding that for murder cases that are remanded on a holding charge basis at the magistrate level, such cases are not allocated to a specific magistrate to deal with because the court with jurisdiction to entertain such cases is the High Court. Also, within the High Court, unless an indictment for murder in respect of the remanded cases is filed with the High Court, no allocation is done within the High Court and will only be done once investigations are completed. This means that in the reporting within the PMS designed, 100% performance may be attained despite the high pendency that may be created by the not allocated murder cases whose investigations are not completed and the direction in respect of them unknown.

It seems that the problems that are faced by the judiciary as the institution at the helm of the criminal justice dispensation do not emanate from the lack of availability of adequate laws but rather a problem of lack of attainment of the objectives of each law intended to make provision for speedy criminal trials. As is demonstrated in the subsequent paragraphs, the implementation challenges of the provisions of the SCTA which have continued to defeat the very purpose for which the law has been promulgated may be substantially remedied by the creation of a monitoring and evaluation frame work that will specifically deal with the SCTA and the roles played by all stakeholders within the criminal justice system such as the police, the prosecutors and the judicial officers.

In the following chapter of the paper, an in-depth definition of Monitoring and Evaluation is discussed together with its different approached. The data collected is also presented, interpreted and analysed in light with the given definition of what constitutes M&EF.

CHAPTER 3: DATA PRESENTATION, ANALYSIS AND INTERPRETATION

Introduction

Under this chapter, the definition and approaches to M&EF are discussed as well the strengths and weaknesses embodied in each approach. The data that has been collected during the study is then presented, analysed and interpreted. The data presentation takes two phases with the first being the presentation, analysis and interpretation of the data that has been collected using the preparatory examination record book and as well as the record of proceedings for murder cases that is kept at the criminal registry of the Maseru Magistrate court. The intention of this phase of the data collection has been to merely test the existence of the problem of high pendency of murder cases on active remand roll within the Maseru Magistrate Court. This phase of the data presentation has its own analysis and interpretation.

The second phase of the data presentation is of the data that has been collected through the interviews conducted through a questionnaire that was given to a total of 30 stakeholders in criminal dispensation. The purpose of this has been to really test the truthfulness of the hypothesis that is to determine from the participants whether there is a compliance mechanism for the SCTA, whether the lack of this compliance mechanism can be attributed to the high pendency of murder cases and lastly tests the acceptability of having a monitoring and evaluation frame work as a long-term solution to the problem of the high pendency of the murder cases on remand in the Maseru Magistrate court. This phase of the data presentation will also have its own analysis and interpretation.

At the end of this Chapter, a conclusion on the existence of the problem of high pendency of criminal cases as well as the relationship between the high pendency of criminal cases within the magistrate court will be made based on the analysis and interpretation of the different data used.

DEFINITION OF MONITORING AND EVALUATION FRAME-WORK AND ITS IMPORTANCE

In order to fully grapple with how the creation of a monitoring and evaluation framework for the judiciary can act as a catalytic solution to the problems faced by the stakeholders in criminal dispensation when it comes to the implementation and adherence to the provisions of the SCTA, it is important to look closely and thoroughly into the definitions on monitoring and evaluation as well as the importance of each process and the framework.

Monitoring is simply defined as the continuous assessment of a program in relation to the agreed implementation schedule.³⁶ This means that monitoring is a tool that is used to constantly gauge whether the processes involved in the implementation of a specific program actually help with the attainment of the set program goals and outcomes. In the context of the SCTA as the law whose implementation is of importance to this paper, monitoring would actually refer to the assessment of individual murder cases filed with the magistrate court to determine whether their handling by the court and other relevant stakeholders in the criminal justice system comply with the specific provisions of the SCTA to achieve the goal of speedily conducting criminal cases.

Given that the SCTA is a right guaranteeing type of legislation, its monitoring basically entails the measurement of the extent of the fulfilment or violation of the rights provided for under its specific sections. This it does through the evaluation of an integrated set of indicators covering the material aspects of the rights in question. It looks into the right's duty bearers' commitment to fulfilling their duties, their compliance with the provisions of the law and the progress towards the fulfilment of the rights in question.³⁷

Per the discussion by Harrison³⁸, one of the causes of the large backlog of cases in the Jamaican courts is brought about by the local legal cultures within the courts and other administrative challenges. This means that a solution to address the challenges

³⁶

https://scholar.googleusercontent.com/scholar?g=cache:a5DOQXhUOkYJ:scholar.google.com/+importance+of+monitoring+and+evaluation&hl=en&as_sdt=0,5 accessed 11th May 2023

³⁷ Joachim Theis. Rights-based Monitoring and Evaluation. Save the Children. April 2023 also available at https://scholar.googleusercontent.com/scholar?q=cache:XPHEy6MxTaoJ:scholar.google.com/+monitoring+and+evaluation+of+judicial+services&hl=en&as_sdt=0,5 accessed 11th May 2023

³⁸ <https://discovery.ucl.ac.uk/id/eprint/10104305/1/10045854.pdf> Accessed 5th July 2023

related to these must, to a greater extent, be such that it encompasses methods and processes that will seek to remedy the root causes of the problem of backlog of cases. Fair trial rights in themselves, requires the scrutiny of the attitudes of the key players in the criminal dispensation towards the elimination of bias and promotion of impartiality of the courts and the best way to do this, it would seem, is to have a consistent monitoring mechanism for each murder case filed with the Maseru magistrate court.

The process of monitoring requires the existence of a data collection tool as well as the personnel that shall be directly responsible for the data collection. Within the Maseru magistrate court, there is already personnel responsible for the registration of cases that come before court as well as the maintenance of the records of proceedings for such cases. Already, there is a register book that is kept with basic cases information indicated such as the case number, date of remand, names of the accused person, the charge preferred against such accused and the magistrate to whom the matter has been allocated. This record books, can easily be modified to include other aspects such as the status of the cases within the SCTA specified time frames to make it easier to map and tract each case's progress and compliance to the provisions of the governing law.

Evaluation on the other hand is simply defined as the process of determining the worth or significance of a development activity, policy or program in order to determine the relevance of the objectives, the efficacy of the resources used and the sustainability of the results.³⁹ This means that unlike monitoring which is a continuous activity of assessment, evaluation is a periodic evaluation of monitoring outcomes to check compliance to the overall set goals over specified period.

This process basically entails the consideration of all the data collected to determine whether the set targets were met and to pick up on the reasons for the failure, where there is such, to achieve the intended results. According to Hopwood, some of the reasons for the high violations of the provisions of the SCTA is the abuse by stakeholders in the criminal justice dispensation of the permissible forms of delays as provided for by the courts. To have come to this conclusion, there is a consideration of the individual cases to determine the reasons for their delay that took place and the overall results of the consideration of all the cases involved in the study to establish a

³⁹ <https://ieg.worldbankgroup.org/what-monitoring-and-evaluation> accessed 11th May 2023

trend or trends, either by the courts, the defence or the prosecution that contributes to the delay of criminal cases and ultimately the creation of the large backlog of cases.

There is already within the Judiciary in Lesotho some form of evaluation of the activities of the courts that is done by the Chief Justice. Evidence of such is his finding that there is a problem of the high pendency of criminal cases remanded while investigations are pending and a subsequent solution of the issuance of the Practice Directives of 2021. This means that, where such evaluation happens within the context of a monitoring and evaluation framework, the periods as well as the methods used for such evaluation can better be established to optimise the intended outcome of reduction of large backlogs owing to a number of reasons which all shall be considered in relation to the set targets as well as the theoretical underpinnings of the SCTA.

An M&E framework is therefore a comprehensive plan that is drawn which highlights the background of a program or policy to be implemented, its aims and objectives and sets out the activities to be undertaken to achieve the set goals, time frames for conclusion of such activities as well as the compliance mechanisms that shall be employed to monitor the progress of the program. This plan also stipulates the data collection tools to be used, the plans for data analysis and reporting which are to be used in the overall evaluation of the program or policy implementation success.

The Importance of a Monitoring and Evaluation Framework particularly in the context of laws such as the SCTA is that the framework gives an evidence-based identification of the hindrances encountered during the implementation of the SCTA. Given that there are many stakeholders in the criminal justice dispensation, a monitoring and evaluation framework that has made provision for the guidance of each stakeholder and has set specific targets and standards can easily identify the cause of a hindrance on time. At present, due to the lack of an integrated M&E framework, the problem of the high pendency of the criminal cases appears to be largely the judiciary's baby to nurse even though the causes of delay are not a direct result of its sole actions or omissions.

The other importance of having an M&E framework is that given that monitoring is a continuous process of assessment of day-to-day activities done in light of the set targets and goals, an accurate picture of the compliance levels of all stakeholders can be determined and this will give to the decision makers an opportunity to make

adjustments and changes to some of the activities, policies and procedures which are not effective before they can yield adverse results. Currently, what the lack of monitoring of the cases shows is that, even though the Chief Justice has come up with the Directives on cases that are on remand pending investigations, there is no clear record of the effectiveness of these new directives and policy considerations and changes can only be made based on the PMS reports by the presiding officers, which PMS the paper has safely concluded is not all stakeholder inclusive.

The documentation of the use of the inputs, process as well as the outputs provides a clear point of reference which can be used in the allocation of resources to better improve the implementation of the law and bring about the desired results. The evidence from the data collected can also be used on a national level to address the budget concerns for the different stakeholders in the criminal justice dispensation which can go a long way in the better allocation of the already limited financial resources. Currently due to a comprehensive track record of the inputs and their yielded results, those working on the budget for different stakeholders do not have any evidence that may influence their budget allocation.

3.1 PREPARATORY EXAMINATION BOOK AND RECORD OF PROCEEDINGS DATA

In the collection of the data used for sampling in this case, the periods that were used were randomly selected and were for the periods of December 2019, December 2020 and December 2021. The cases were identified using the Preparatory Examination record book kept at the Maseru magistrate court criminal registry which record book is used to allocate Preparatory Examination Numbers (PE No.) to all matters that are filed with the court on a holding charge of murder. The PE record book indicates the year in which the case is filed, the case number allocated to the case (CR No), the PE No of each individual case, the full names of the accused persons as well as the name of the magistrate who was allocated the case to remand on the preferred holding charge.

Once the data from the PE record book for the specified months was collected, the record of proceedings for each case was looked into to determine:

- a) Whether the holding charge was confirmed or changed and accused accordingly informed of same within 90 or 120 days in terms of Section 3(2) and (3) of the SCTA.
- b) In the event that the answer to (a) above is in the negative, what the reasons for the non-compliance were recorded as.
- c) What percentage of the overall cases sampled with complied with the SCTA.

The status of each individual case was then tracked for four months from the date of their filing to determine their status. This means that, for a case that was filed in December of 2019, the record was looked into to track what happened from December 2019 to April 2020 and for the ones filed in December of 2020, those cases were tracked for up to April of the following year, and so on. To keep this part of the data collection purely quantitative, the status of the cases were pre-determined to either as falling under:

- (a) Remanded to next date pending investigations.
- (b) Holding charge changed to culpable homicide and matter set down for hearing in magistrate court
- (c) Matter moved to high court on an indictment of murder

(d) Matter dismissed

The findings of the exercise are summarily illustrated in the tables and charts below.

Year	Active Remand (PI)	commenced or transferred	Completed or dismissed
2019	13	0	0
2020	23	0	0
2021	17	0	0
Total	53	0	0

Figure 1.

Per figure 1 above, in 2019, there were a total of 13 murder cases filed for the month of December, 23 for the month of December 2020 and 17 for the month of December 2021. A total of 53 cases was therefore look into to determine the status of those cases 120 days after their day of first remand and per the record for all of them, none of the cases were either commenced within the magistrate court as culpable homicide, or transferred to the high court to be tried as murder, completed by either the high court or the Magistrate court or dismissed for whatever reason by either court.

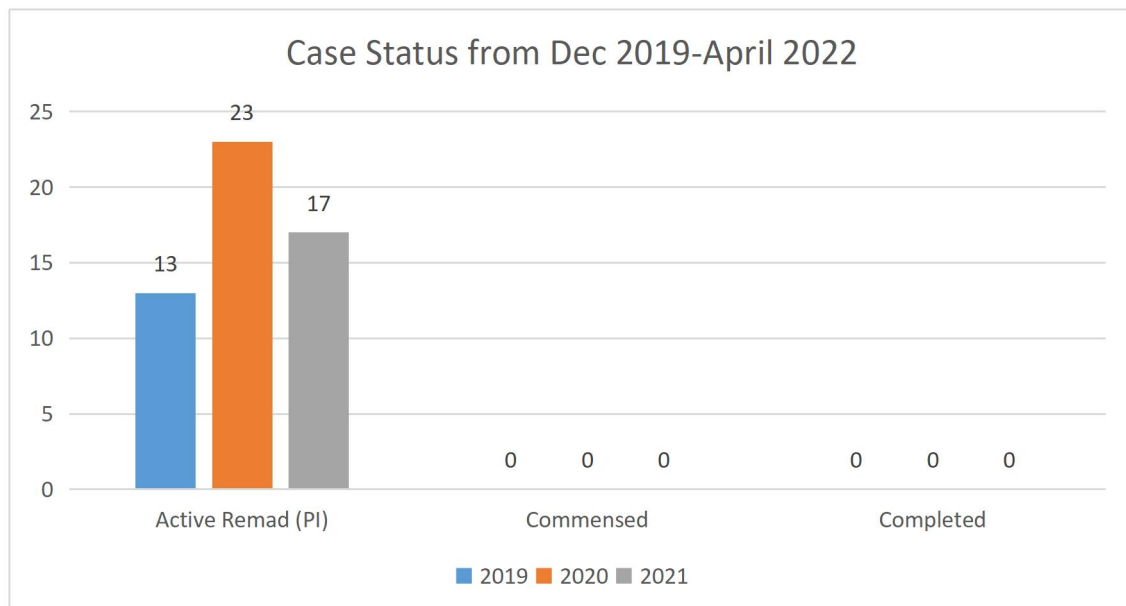


Figure 2.

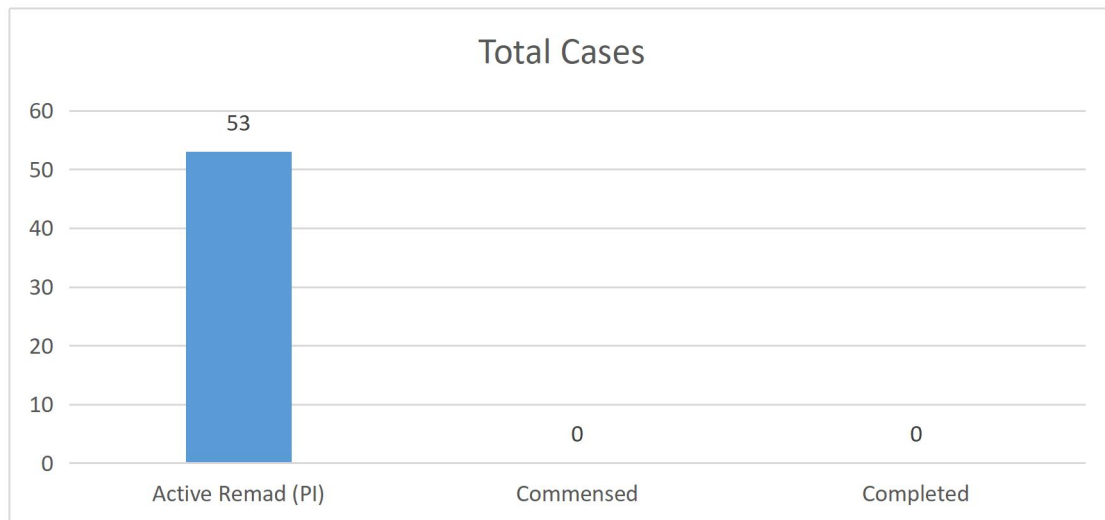


Figure 3

Figures 2 and 3 above are an illustration of the 53 cases as considered from the period of their first remand to 120 days after. They show that 100% of the cases were not commenced, 100% of them not completed and also that 100% of them per the minute recorded by the Magistrate remanding the matters, still under investigations. All of them are kept on the roll of active remands as the accused are to keep coming to court for remands until such investigations are completed and matters ready for hearing.

In the interpretation of this data an inference was made that there is a pattern or trend that this murder cases of remand within the magistrate court follow. That is, despite the clear provisions of the law-making provision for commencement and conclusion of criminal cases within the specified time frames, all the cases that were used for sampling remain on remand with a similar reason recorded as that they are still pending investigations.

The fact that randomly selected cases behave in a similar manner is suggestive of a possibility of almost all of the cases within the courts following a similar trend that has, no doubt created a problem of a backlog of cases of a similar nature. The fact that 100% of the cases sampled with were, during the period of study, found to be pending investigations and therefore in limbo in the magistrate court pointed to an inevitable conclusion that there is indeed a problem of the high pendency rate of murder cases within the Maseru Magistrate court. It is indeed highly unlikely, given the behaviour of the samples, to come to a contrary conclusion.

4.2 QUESTIONNAIRES DATA PRESENTATION

In the collection of the herein presented data, a questionnaire was used. The purpose of the questionnaire was to gather from those who actively participate in the dispensation of murder cases whether the laws that are put in place to provide for speedy criminal trials are sufficient, whether in their experience those time frames are adhered to by the relevant stakeholders and whether they attributed the high pendency of those criminal cases despite the legal provisions to the lack of compliance mechanism in place.

While the data presented in 4.1 above was mainly aimed at proving that there is indeed a problem of high pendency of murder cases in the Maseru magistrate court, the purpose of the data herein has been to help prove the hypothesis of this paper being that the delay in the prosecution to finality of murder cases is brought about by the lack of monitoring and evaluation framework as a compliance mechanism for the SCTA and like laws.

Given the time constraints under which the study was undertaken, the questionnaires were given to the direct participants in the murder cases being the magistrates, the prosecutors, the defence lawyers as well as the staff at the criminal registry of the court. The respondents are not the only stakeholders; however, they were chosen based on the fact that their responsibilities in the disposition of murder cases are the most representative. The prosecutors represent both the police as investigators and the victims of crime. The defence lawyers represent the general attitude of the legal practitioners and the accused persons they find themselves having to represent in murder cases, the magistrates represent the judiciary and the support staff may as well present the general public with interest in the speedy completion of murder cases within the courts.

Given the time constraints within which the study was undertaken, only 30 questionnaires were issued out and respondents indiscriminately chosen based on their apparent general population. Of the 30, 5 were magistrates, 5 support staff, 10 prosecutors and 10 defence lawyers. It should be noted that the participants were not all from Maseru. Although the study is of the problem as is faced by the Maseru magistrate court, the paper is alive to the fact that the problem applies to all courts with criminal jurisdiction within Lesotho.

The respondents had to answer the following questions:

- State which stakeholder they were
- How many murder cases they handled in the past 12 months
- How many of those cases were closed or completed.
- Whether those closed were closed within the prescribed periods.
- What the reason for delay was for those not closed
- Whether they were aware of the speedy trial rights
- Whether they felt the time frames were sufficient
- Whether the stakeholders adhered to the time frames
- Whether they were aware of any compliance mechanisms in place for the SCTA
- Whether they felt there was a link between delay and lack on compliance mechanism
- Whether they felt having an M&EF would help reduce delays
- What other solutions to problems of delay would they recommend.

A summary of some of the most relevant answers to the questions related to testing the hypothesis directly are presented in the charts and tables below:

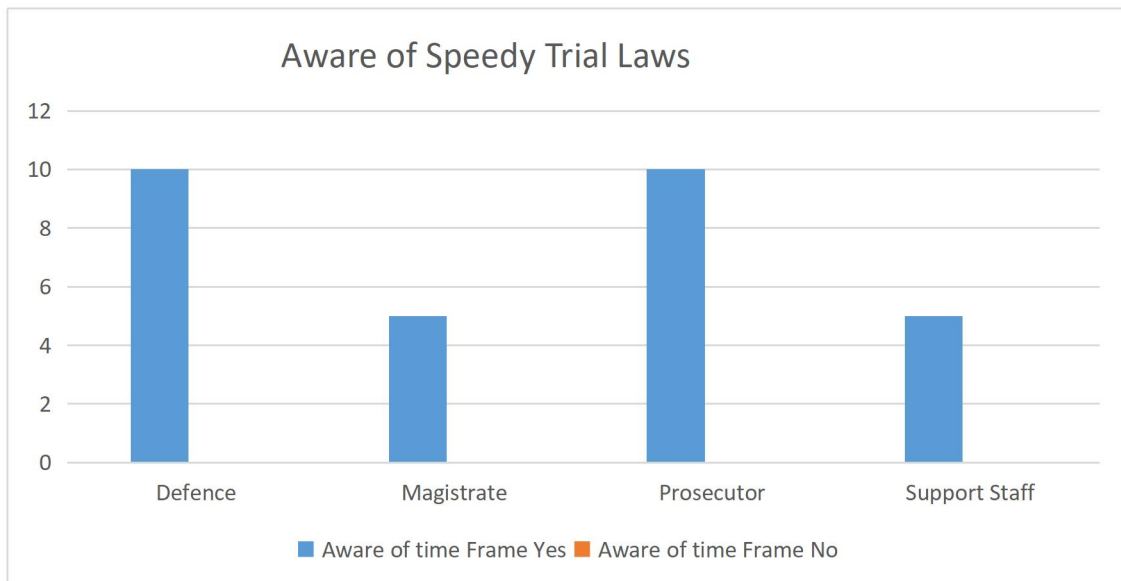


Figure 5.

The above chart is a reflection of the Respondents' answers to the question of whether they were aware of the laws on the right to speedy trial being the Constitutional provisions as operationalized by both the SCTA and the Practice directive. 100% of the Respondents answered that they were aware of such rights and the laws making provision for them.

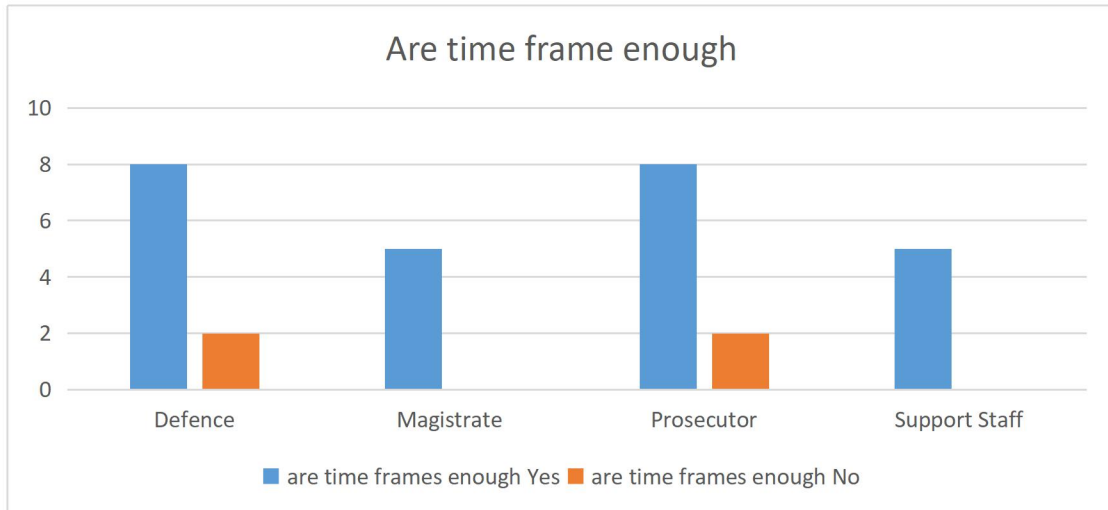


Figure 6

To the question of whether the time frames prescribed by the law are enough to protect the right they guaranteed, only 4 out of the 30 responded in the negative and that constitutes a minority of about 13.3 % of the total sample population. This means that the majority of the stakeholders were of the opinion that the time frames were sufficient to constitute ‘speedy’ in the context of speedy trial rights.

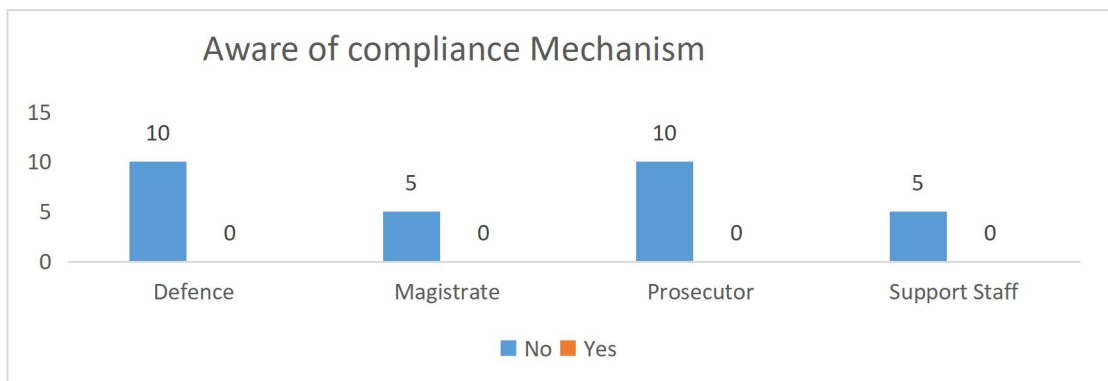


Figure 7

To the question of whether they were aware of any compliance mechanisms to help enforce in the strictest sense the provisions of the SCTA, 100% of the participants responded in the negative. This means that they were not aware of a system or body in place that was tasked with ensuring that the stakeholders in the criminal dispensation adhere to the time frames prescribed in the law in order to ensure that criminal trials are speedy.

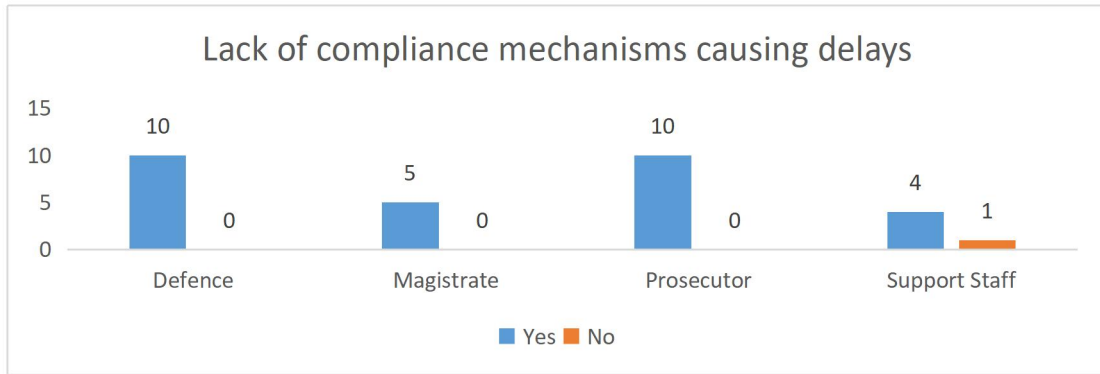


Figure 8

Of the 30 Respondents, only 1 of them answered in the negative that the lack of a compliance mechanism for the SCTA has contributed to the delay in the commencement of murder cases and the resultant high pendency of criminal cases. That means that about 96.6% of the sample population was of the opinion that indeed the lack of a compliance mechanism was contributing to the high delay rates of murder cases.

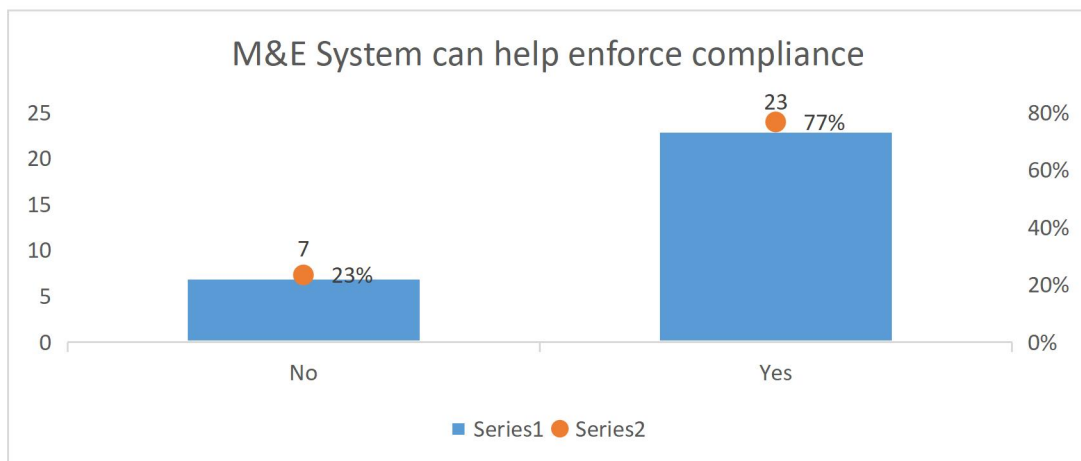


Figure 9

23 out of the 30 respondents formed an opinion that the development of a monitoring and evaluation frame work within the judiciary can provide a solution to the lack of adherence to the time frames prescribed in the law. While 7 out of the 30 were of the opinion that the existence of a monitoring and evaluation frame work is not the appropriate solution to the problem of the high pendency rate of murder cases in the Maseru Magistrate court. For this question, 77%, a large majority showed that M&EF can be an acceptable solution to the problem of high pendency of murder cases in the long term.

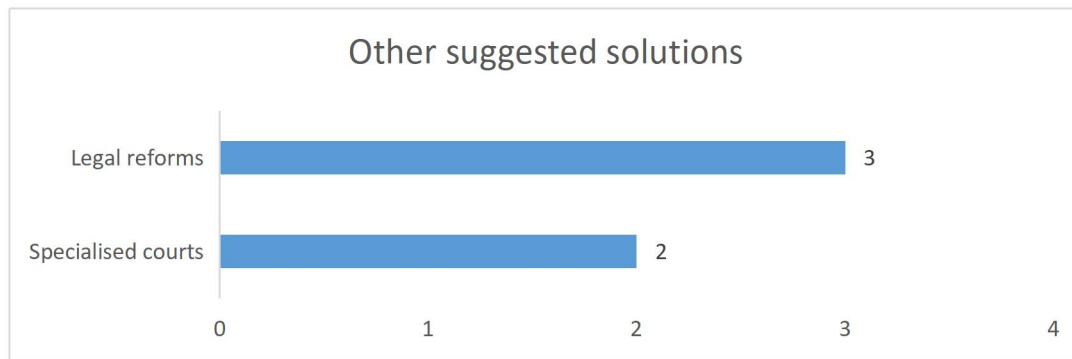


Figure 10

For the Respondents who did not feel that M&EF is an appropriate solution to the problem of the high pendency of criminal cases, recommendations of law reforms were made where some suggested that the jurisdiction of the magistrate court should be widened to include entertaining murder cases and not just culpable homicide⁴⁰, some suggested that the list of permissible forms of delays as covered under section 9 of the SCTA should be amended to exclude some delays and others recommended that a specialised court be created which shall deal solely with the disposition of murder cases.

4.3 CONCLUSION ON THE EXISTENCE OF THE HIGH PENDENCY RATE AND LACK OF A MONITORING AND EVALUATION FRAME WORK

In chapter 2, the challenges that are faced by the judiciary when it comes to the strict adherence to provisions of the SCTA in order to bring about the desired reduction in the number of criminal cases that remain pending as a result were discussed. Important to reiterate at this juncture is that despite the many solutions that were implemented to mitigate this problem, it persists and this is so despite the existence of the laws and those other mechanism of compliance.

Although the problem of the pendency of the criminal cases within the Maseru magistrate court is not a challenge that can be labelled the sole responsibility of the judiciary, it would seem as though it is that way given the solutions that the judiciary has employed in order to reduce the rate at which criminal matter remain pending in the courts despite the existence of the law.

⁴⁰ In terms of section 40 of the Penal Code Act No.6 of 2010, murder is the intentional killing of a human being whereas culpable homicide on the one hand is defined under 41 of the same Act as the negligent killing of a human being.

To give more flash to this point, when the judiciary decided on a PMS for the presiding officers, the plans within the system around the reporting methods, periods and analysis applies only to the judiciary even though in principle, the problem of the backlog of cases results from the inaction of almost all the players in the criminal justice dispensation from the police to the prosecutors and accused persons and their lawyers all the way to the helm, being the judiciary.

So, regard being had to this, the PMS that the judiciary has resolved to use, although a good point to start at, is not all inclusive to encompass all the stakeholders even those within the judiciary themselves. Considering that each stakeholder has a role to play, which if not performed as expected affects the work of the other stakeholder, whatever efforts that are undertaken must be all inclusive, with each role of each individual stakeholder institution well defined. For the PMS in the context of the judiciary to be effective as a means towards the reduction of the backlog of cases, the PMS must exist within a comprehensive M&E framework so that the communication of the goals, targets and plans can apply across all stakeholders.

The other importance of an effective M&E framework is its ability to measure the relationship between the inputs and the outputs. The forms of inputs that go into the implementation of the SCTA is the financial and human resources. An M&E framework with its data collection tools would be able to track the number of cases that fail to continue due to lack of either financial or human resources and for administrative decision makers within the judiciary solutions to such challenges may be speedily resolved through proper planning and resource allocation.

During a thorough interrogation of the 53 identified cases that were filed within the said period, the paper made a discovery that the challenges that bring about the pendency of criminal cases result from different sources. Some are a direct indication of the inefficacy of the SCTA itself, like the attitude of the presiding officers to the overreaching remedy of permanent stay of prosecutions against accused persons which they feel prejudices the interests of others, the lack of speedy completion of investigations which is a challenge by the police, the tendency of the prosecution to bring before court matters that are not ready for hearing and to abuse their power and authority as a state office by always moving for postponements of cases as well as the financial and administrative challenges within the judiciary which hinder the progress of ready matters such as the unavailability of electricity due to non-payment of the

LEC, lack of resources such as stationery, sufficient personnel and general lack of accountability.

In 2019, the Chief Justice dismissed over 2,000 cases for want of prosecution and this resulted in the reduction of the backlog by the same number. The paper contents that the cases were dismissed so many years after they were pending due to a lack of clear set standards for dismissal which has resulted in the said backlog. Had there been a monitoring program within the judiciary, the SCTA none compliant cases would have been earlier identified and dismissed before they could pile up and create the said backlog.

The considerations for the determination of the SCTA violations are already known and have already been applied in a number of court decisions. The same elements of the ad hoc balancing act can be used to formulate an integrated set of indicators for covering the material aspect which we say make for permissible or non-permissible periods of delay. The system may further be designed to flag the cases whose delay is not permissible and create what is known to legal practitioners as the ‘dismissal roll’. Then at the agreed upon times for reporting, the institution responsible will have such cases dismissed before they create the backlogs.

CHAPTER 4: CONCLUSIONS AND RECOMMENDATIONS

This is a chapter on the general conclusions that are based on the paper's findings following its interrogation of the hypothesis and attempt to answer the research questions. The conclusions are generally based on the findings of the study undertaken at the Maseru Magistrate court and the theoretical discussions of the concepts around the SCTA in Lesotho and other jurisdictions such as the Republic of South Africa, the United States of America and Jamaica.

It is also under this chapter that general recommendations are made for the promotion of better protection of speedy trial rights, the improvement of the efficiency of the Magistrate Court of Maseru and institutional reforms within the multiple stakeholders of the criminal justice system such as the police, defence lawyers and the prosecution through the use of a combination of a number of approaches to both the processes of monitoring and evaluation. The likelihood of the success of the recommended approaches is looked into as well as the already existing judicial practices and processes that may or may not generally help advance the spirit of the legal theory underpinning the SCTA through the reduction of the large backlog of case.

4.1 CONCLUSION

Access to speedy criminal trials is a constitutionally protected right violation of which impairs other constitutional guarantees such as the right to freedom of movement and personal liberty and the presumption of innocence. The problem that prompted the study is the high pendency of criminal cases within the courts in Lesotho which, even if considered at face value, suggests that there is an equally high rate of violation of other human rights related to the right to speedy criminal trials.

The paper then hypothesized that the procedures and processes employed by the courts in Lesotho which are aimed at the assessment of their day-to-day activities as well as those intended for the management of the performance of the courts and other stakeholders within the criminal justice have a direct and interdependent correlation

with the high pendency of criminal cases within the courts particularly the Maseru Magistrate Court.

In the test for the truthfulness or other wise of the hypothesis, it was established through the discussed literature under Chapter 2 from other scholars in other jurisdictions that the challenge of a high pendency of criminal cases despite the existence of the laws prescribing reasonable period timeframes was a direct result of the lack of adherence to the law and that in order to remedy that, a mechanism for testing compliance was a necessity.

It was also established under chapter 3 through the data collected from the questionnaires that the majority of stakeholders in the criminal justice system held the view that the high pendency of criminal cases, particularly murder cases in the Maseru magistrate court was a direct result of the lack of monitoring and evaluation of the stakeholders, making the hypothesis that there is a direct correlation between the high pendency and lack of M&EF true.

4.2 RECOMMENDATIONS

The legal provisions from the Constitution to the SCTA and the Practice Direction sufficiently and adequately provide clear terms constituting reasonable periods for the conclusions of criminal trials in order to protect the rights of the accused persons and the interests of the victims of crime and general public in speedy disposition of criminal trials. The remedies provided for in the law, if strictly adhered to are also sufficient to give effect to the intended goal of the law. The paper suggests therefore that at this point, there is no need for amendments to the SCTA and other complimentary pieces of legislation.

Since Monitoring and evaluation is widely used across different sectors of government and non-governmental entities to achieve different goals and objectives, depending on the purpose and nature of a program, project or policy for which an M&E frame work is designed and use, different approaches to M&E are used. Different approaches have different guiding principles and methods which make it of paramount importance to decide on the appropriate approach or a combination of approaches which shall best serve the project, program or policy in issue⁴¹.

⁴¹ https://scholar.google.com/scholar_url?url=http://www.fosonline.org/wordpress/wp-content/uploads/2010/06/Stem-et-al.2005MEinConservation-

Considering SCTA implementation problems that are faced by the stakeholders in the criminal justice system, the paper recommends a combination of three approaches to M&E. The purpose of the combination of approaches is to help with the achievement of the set SCTA time frames, collection of data for the interrogation into the relevance and efficiency of the provisions of the SCTA as well as that of the processes involved in the SCTA implementation.

The three approaches are the Results-Based Monitoring and Evaluation (RBM&E), Theory-Based Evaluation (TBE) and Process Monitoring and Evaluation (PM&E) and they are each discussed in detail in the subsequent paragraphs of this paper.

4.2.1 RESULTS-BASED MONITORING AND EVALUATION APPROACH

Results-based monitoring and evaluation is monitoring and evaluation that is focused on the attainment of defined and demonstrable results. It does this through a management approach that ensures that the processes involved in the implementation of a project, program or policy contribute to the achievement of the clearly stated outcomes⁴². The main objective of RBM&E is to track the changes from the baseline condition to the desired results through frequent analysis and comparison of the indicators over time.⁴³

This approach works where there is already an established baseline data upon which a conclusion that there is a problem to be addressed is premised. For example, the data that has been looked into in this data is 53 murder cases within the Maseru Magistrate Court, all of which are pending and subsequently contributing to the pendency rate of the criminal cases within the said court. The 53 cases in the context of RBM&E constitutes baseline data. From this baseline, specific targets are set aimed at the achievement of the overall goal. In *casu*, the overall goal is to reduce the high pendency of the criminal cases within the Maseru Magistrate Court through strict adherence to the specific provisions of the SCTA. A target of reducing the pendency rate of the 53 pending cases may be set at 56.6% during a period of 60 days and relevant processes and activities, such as allocation of presiding officers to specially sit in a session to consider such cases and implementation of a dismissal roll may be used. The frequency of the monitoring may be set to a weekly basis with expected result of 2 case reduction out of the baseline weekly. Once the activities and processes

[ReviewTrendsApproaches.pdf&hl=en&sa=X&ei=9WFfZjzYO6nZsQLh8KKoAQ&scisig=AGIGAw9I6MtczGRUpSfecpgHyEjq&oi=scholar](#) Accessed 15th May 2023

⁴² https://ilo.org/wcms5/groups/public/---ed_emp/documents/publication/wcms_546505.pdf Accessed 15th May 2023

⁴³ <https://web.undp.org/evaluation/documents/handook/me-handbook.pdf> Accessed 15th December 2023

aimed at the attainment of the set targets are decided on, the inputs can then be determined in line with the activities, the set targets and the expected results. This is summarised in figure 4 below:

Baseline Data	Targets	Activities	Inputs	Outputs	Impact
53 pending cases from which the problem is determinable	-Reduction by 56.6% -Minimum of 2 cases per week -Weekly Progress Monitoring	-Criminal cases special hearing sessions. -Dismissal Roll -Data Collection and quality Checks.	-Human Resources. -Training Sessions -Budgeting	-56.6% reduction to the baseline data. -Improved adherence to the SCTA.	-Overall reduction of the pending murder cases. -Overall enjoyment of the Constitutionally protected speedy trial rights and other rights.

Figure 4.

Given that the targets and outcomes of the SCTA are specific, measurable and time-bound, this RBM&E approach is the relevant approach necessary for timely identification of implementation shortcomings which make it difficult to reach the set targets. The frequency of the monitoring will give to decision makers an opportunity to map the weekly outputs from the activities undertaken against the set targets and time frames and make relevant changes where necessary to improve outcomes. The approach will also improve the efficiency, effectiveness and accountability of all stakeholders in matters related to adherence to the SCTA and the reduction of the high pendency rate of the criminal cases within the Maseru Magistrate Court.

Even though there are a number of benefits to the use of the RBM&E approach, the fact that this approach concentrates largely on the results means that this approach needs to be complemented by another approach which will look at the processes that are involved in the implementation of the SCTA. This approach to the monitoring processes answers the questions related to how the implementation processes contribute to the achievement of the set target and therefore help with the

identification of better alternatives or areas of improvement where implementation activities are concerned. This approach is known as the Process-Based Monitoring Approach (PBM&E) and it is discussed in detail below.

4.2.2 PROCESS-BASED MONITORING AND EVALUATION APPROACH

Process-based monitoring and evaluation is an approach to monitoring and evaluation that concentrates on how the project, program or policy is implemented. It looks into the procedures that were taken and the decisions that are made towards the achievement of the set targets. During the process monitoring, a record of the ideas, concerns, administrative structures as well as resources is made.⁴⁴ Process monitoring is commonly used in production of goods related activities where the processes involved in the manufacturing of goods are monitored to determine their effectiveness in the resultant product quality. The type of monitoring is now even used in services such as the administration of criminal justice, to monitor the processes that are involved from when a case is first registered with the court for first remand to when it is eventually set down for hearing, heard and decided in an attempt to observe the contribution and effectiveness of such processes in the achievement of the set targets. For result -based approach that was discussed in 4.1 above, it was suggested that the court may decide on the special criminal cases hearing session as one of the means towards the attainment of the desired goal of reducing the pendency rate of cases identified by at least 56.6% within a period of 60 days. This means that the criminal session as a process or activity towards the desired end will be looked into closely to record aspects to it, such as the necessary human and financial resources, management and administrative structures that are set up as well as the other stakeholder contributions that are involved, in order to establish the relationship between such processes and activities of implementation and the achieved results against the set targets.⁴⁵

Unlike the results-based approach, whose main concern is the achievement of the set targets, the process based approach to monitoring concentrates on concerns surrounding implementation in an attempt to optimise such process for better results. This gives to managers and decision makers a timely opportunity to change the processes that are not likely to contribute much towards the set targets for a better outcome. For instance, the Chief Justice decided on a PMS as one of the measures

⁴⁴ <https://files.enc.ed.gov/fulltext/EJ683998.pdf> > Accessed 17th May 2023

⁴⁵ <https://www.usf.edu/cbcs/mhlp/tac/documents/florida-main/cjmhsa-tac-presentations/boothroyd-process-outcome-evaluation.pdf> > Accessed 17th May 2023

necessary for the mitigation of the problem of the high pendency of criminal cases in the courts. The process of monitoring the PMS will help determine its effectiveness or otherwise in the reduction of the backlog of cases and the documentation of the monitoring findings will give to the CJ an opportunity to make changes to the PMS to make it more effective or discard it all together and come up with other processes where the evidence suggests that system is completely unhelpful.

This also goes towards the data collection tools and processes that the criminal section of the magistrate court is already using. It was stated that in the collection of the data for the undertaken study, the PE record book as well as the records of proceedings for individual cases were used. The efficiency of the PE record book (which is manual) as well as the records of proceedings under this approach will be looked into as well as the administrative structures of the magistrate court, the budgetary concerns and all things involved in the efforts to reduce high pendency will be placed under monitoring to help with better resource allocation and complimentary support. Possible solutions to some of the processes involved such as the digitization of the filing systems may be implemented to answer to delays around the process of having to manually locate the records of proceedings for matters that are due for hearing.

Perhaps the other example of where process monitoring may come in handy is its consideration of the existing management structures of the courts. Where murder cases are concerned, the jurisdictional limitations of the magistrate court may also be considered in order to determine how, as an administrative structure within the judiciary, it contributes towards the desired result of reducing the high pendency of the criminal cases within the magistrate courts or all courts with the jurisdiction to entertain criminal matters.

Where problems are identified and solutions are suggested, such solutions in most cases are based on general theories and assumptions that if something were to happen, or if some principles were to be applied in a certain manner, then the problem identified maybe solved. The paper in the like manner, has identified that there is a high pendency of murder cases within the Maseru magistrate court and has suggested the root cause of such high pendency rate to be the non-compliance to the SCTA that is made worse by the unavailability of a monitoring and evaluation frame work.

Given that the solutions suggested are based on certain specific assumptions which influenced the target setting, the activities as well as the expected outcomes, it is of importance to have in place an evaluation approach to the two suggested monitoring

approaches which approach shall test the truthfulness or otherwise of the theories, principles or assumptions that influence the overall intervention or approaches to the problem. This approach to evaluation forms the last of the three approaches that the paper recommends to solve the problem of the high pendency of murder cases in the Maseru Magistrate Court and it is called the Theory-Based Evaluation approach.

4.2.3 THEORY-BASED EVALUATION APPROACH

Theory-based evaluation is the holistic assessment of an intervention to establish the relationship between the results that were achieved and the theories or principles that informed the intervention. This kind of approach to evaluation is based on a theory of change (ToC)⁴⁶ and its relationship to the outcomes of the project, program or policy. The evaluation model makes use of both the qualitative and quantitative results and evaluates them based on the context and causal link between the inputs and the resultant outputs. This approach is made up of the logical model (which is a depiction of the relationship between the inputs and the outputs or activities and results), assumptions, contextual considerations and empirical evidence.⁴⁷

This model of evaluation work by considering among other things the willingness of the stakeholders involved in the implementation of the intervention, the socio-economic and political factors of the population within which the interventions are to be implemented, the effectiveness of the relevant and supporting legislation and the consideration of the contribution of the measures to the observed results. This it does by considering both the qualitative and the quantitative results achieved.

This means that at the end of the period that has been decided on to have achieved the set targets and goals, in the evaluation of the given results in order to determine the success or otherwise of the intervention measures taken, the evaluator will not only look at the numbers but also the reasons that are likely to have contributed to the results achieved.

Considering that in doing so, contextual factors such as the attitude of the stakeholders, are taken into account, concerns of the judicial officers to the remedies of violations of speedy trial rights as provided for under the SCTA which they feel favours only the interest of the accused to the detriment of the victims of crime and

⁴⁶ A theory of change is a logical relationship between the identified problem, the intervention measures employed to solved the said problem and the change that is expected to come out of the intervention.

⁴⁷ <https://www.canada.ca/en/treasury-board-secretariat/services/audit-evaluation/evaluation-government-canada/theory-based-approaches-evaluation-concepts-practices.html> Accessed 15th May 2023

interest of the general public to see justice prevail over suspects will be better taken into account.

Other factors such as the incomplete investigations, the unavailability of witnesses due to their socio-economic circumstances, the political climate surrounding some of these criminal cases as well as the administrative hindrances at government level, all of which play a role in the delivery of speedy criminal justice are better magnified under this approach and the evidence-based nature of the undertaken monitoring will ensure that tailor-made solutions are designed and implemented.

Even the efficacy and relevance of the SCTA provisions as the law whose adherence will be informing the monitoring and evaluation activities will be determined in line with its purpose of ensuring speedy criminal trials and subsequently reducing the backlog of cases. This determination of the relevance and efficacy of the law which will be based on both empirical and qualitative evidence will go a long way into making relevant amendments to the law as well as in the promulgation of new laws to fill in the gaps as, where and when they are identified.

An important aspect to the application of this approach to evaluation is that it pays attention to the circumstances within which an intervention is implemented. The consideration of the contextual factors makes it important to draw a distinction between hindrances that occur from those directly involved with the implementation and those that are from outside or incidental⁴⁸. An example could be the interdependence of the judiciary on other arms of government for concerns such as the financing and the promulgation of the relevant laws which may help in the successful outcome of the intervention.

Given that most time context influences outcome, the documentation of the findings of the theory based approach regarding the contextual circumstances of an intervention may help those other arms of government to understand the SCTA implementation challenges on performance of the judiciary and therefore make appropriate changes at a national level which may make all three arms of government work together to ensure the enjoyment of fair trial rights and other rights and

⁴⁸ The contextual approach pays attention to the link between the stakeholders and their different social circumstances influenced by the economic standing, cultural and environmental influences. The success or otherwise of an intervention to some degree is also dependent on these considerations. <https://courses.lumenlearning.com/adolescent/chapter/contextual-approach/#:~:text=The%20contextual%20approach%20considered%20the,and%20environmental%20influences%20on%20development>. Accessed 17th May 2023

subsequently result in the ultimate reduction of the high pendency of the criminal cases owing to non-compliance with the law for speedy trials.

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