UNIVERSITY OF NAMIBIA

Submitted hereby my dissertation in partial fulfillment of the Bachelor of Laws degree (LLB)

Submitted by:

Name: **Donagene M. Hangula**

Student no. **200531719**

Date: **15 November 2010**

Supervisor: **Mr. SK Amoo**

Topic: In the new constitutional dispensation, how effective is the criminal justice with regard to the right to a fair trial?

Dedication

This is dedicated to all my friends and family and supervisor that helped me throughout my research and made this possible for me. Thank You

Table of contents

Abstract……………………………………………………………………………………………….3

Chapter 1 ……………………………………………………………………………………………………..4-7

Introduction

Chapter 2……8-13

Fair trial

Chapter 3……14-31

Trial within a reasonable time:

Conclusion…………………………………………………………………………………………………….32-33

Bibliography…………………………………………………………………………………………………..34-36

ABSTRACT

The reason for the existence of a criminal justice system is social control. The aim of the criminal justice agencies is to control crime, provide criminal justice and treatment of offenders, and hence, maintaining community safety.[1] *Imprisonment is contemporary society's form of control and punishment. It is imposed for retribution, so that the offender suffers as well as the victim. It is done for the sake of deterrence, in the hope to instill fear of punishment in the potential offenders. It is also done for rehabilitation, under the assumption that offenders will not repeat their crimes.*

The Constitution of Namibia is the supreme law of the country and it provides for criminal justice system agencies, namely the establishment of three branches of law with the Legislator as the law maker; the executive passes the law and the judiciary interprets such laws. The criminal justice system is there to maintain the rule of law and justice for all. Social control through the criminal justice system entails the maintenance of balance between the citizens and law enforcement agencies regarding individual freedom and public safety. If this balance is successful, social order is established and public tranquility is maintained.

However in the in the modern constitutional era, everything is measured up against the Constitution; there is much we want to achieve not just legally but socially as well. The Constitution provides for fundamental rights in Chapter 3 thereof. One of these rights is the right to a fair trial. The right to fair trial constitutes many aspects that need to be adhered to, before it can be said that, the right to a fair trial has been complied with to its full extent. It is true that fundamental rights in chapter 3 are idealistic; we would all like that it be the case, but experience has shown that in practice it is often not the case. ***Article 12*** *of the Constitution is very clear as to what must be complied with. The issue however is* ***sub-article (1) (b)****, which in my view is not very clear; states that a trial shall take place within a reasonable time, failing which the accused shall be released. What constitutes the right to a fair trial within a reasonable time?*

---

[1] Martins F. 2005. *Sociology of Law Study Guide*, Windhoek p 2

Chapter One

Introduction

After many years of South African colonial and later military occupation, Namibia, a former German colony (1884-1915), attained its political independence on 21 March 1990. After 23 years of colonialism; the Namibian Independence Constitution came into force on the eve of independence as the supreme law of the country and therefore the ultimate source of the country. All other laws in Namibia trace their legitimacy and source from the Constitution.[2] In many ways, the contents of the Namibian Constitution reflect the uniquely international character of the rule of law, and organizations and decisions in the process that led to independence in a far more significant way than in other any state in the world.[3] The Constitution has been hailed throughout the world as the most democratic in the history of Africa south of the Sahara.

As a people who had lived under draconian apartheid laws for decades, Namibians started their Republic with a commitment to the rule of law and a respect for fundamental rights that cover a wide range.[4] Apart from the strong checks and balances that define the relationships between the three branches of government,[5] the Constitution contains fundamental rights and liberties that cannot be changed by one or other branch without due procedure of constitutional amendment. The fundamental rights in the Constitution include the protection of liberty, respect for human dignity, equality and freedom from discrimination on the grounds of race,

---

[2] The Constitution of Namibia of 1990

[3] Diescho J. 1994. *The Namibian Constitution in Perspective*, p8

[4] See footnote 3 above, p9

[5] *Ex Parte Attorney- General, Namibia: In re the Constitutional Relationship between Attorney –General and Prosecutor-General 1995 (8) BCLR 1070*

gender, religion or ethnicity, the prohibition of arbitrary arrest and preventive detention, the right to a fair trial, the right to privacy and the right to marry and found a family. However I will only discuss a particular right in this paper; which is the right to a fair trial within a reasonable time, which is provided for in article 12(1)(b) of the Constitution of Namibia.

Article 12(1)(b) provides that a person accused of an offence shall have a right to be tried within a reasonable time, after which he shall be entitled to be released. The provision in question recognizes, on the one hand, that anyone who is suspected of committing a crime has to be brought before a court of law to be prosecuted convicted and if found guilty to be convicted accordingly. One the other hand, however, any person prosecuted of a crime and found not guilty has a right to be acquitted without unduly disrupting his or her family and social life. Whether prosecution leads to conviction or acquittal, it must be done without unreasonable delay. As an old legal maxim states 'justice delayed is justice denied'.

The Criminal Justice System of Namibia is like everything else yet again also measured against the Constitution, Article 12 of the Constitution is a fundamental right in Chapter 3. It is important to establish whether the provision is adhered to, to its full extent, especially in cases, where the trial is postponed time and again and the accused in the end actually serves a prison sentence and in some cases even found not guilty. The question that then comes to my mind is how fair the trial is?

The police sometimes just charge the accused to avoid unlawful arrest and the accused is waiting for trial that is as easily postponed. Situations like these make one think how the article should be interpreted? What is meant by reasonable time? What does trial constitute? Is a trial an opportunity to be charged and be able to complain if there was some kind of mistreatment, or bail? Is a trial where the accused can actually be tried and convicted in a reasonable time and either be acquitted or found guilty and serve his/her sentence; or is it to wait around for the actual trial and in the mean time actually serve a prison sentence without been convicted; especially when bail is not allowed or the accused cannot afford bail.

Knowing the Namibian history, one would understand why chapter 3 of the Namibian Constitution is so important that it should be upheld at all relevant times and a violation of these rights is simply unconstitutional. If there is a possibility that a fundamental right is violated, maybe not directly because on the face of it looks lawful, as if the correct procedures are followed but if you dig deeper you realize it's another whole situation. The question asked is how effective is the Namibian Criminal Justice System, with regard to Article 12 of the Namibian Constitution, special reference to sub-article (1) (b) thereof. Does the criminal justice system actually adhere to the right to a fair trial as the constitution drafters intended it be?

In Namibia the criminal justice system includes several major subsystems, composed of one or more public institutions and their staffs: police and other law enforcement agencies; trial and appellate courts; prosecution offices; custodial institutions and correctional services (prisons and juvenile rehabilitation centers).[6] Some jurisdictions also have a sentencing guidelines commission. Legislators and other elected officials, although generally lacking any direct role in individual cases, have a major impact on the formulation of criminal laws and criminal justice policy. The notion of a "system" suggests something highly rational—carefully planned, coordinated, and regulated.

Although a certain amount of rationality does exist, much of the functioning of criminal justice agencies of Namibia and even other jurisdictions is unplanned, poorly coordinated, and unregulated. No jurisdiction has ever reexamined and reformed all (or even any substantial part) of its system of criminal justice.[7] Furthermore, each of these actors has substantial unregulated discretion in making particular decisions (e.g., the victim's decision to report a crime; police and prosecutorial discretion whether and how to apply the criminal law; judicial

---

[6] See footnote 1 above, p26

[7] See footnote 6 above

discretion in the setting of bail and the imposition of sentence; and prison discipline and even continuous postponement of trial dates).[8] However it is important to note that this paper deals with the effectiveness of the criminal justice system with regard to Article 12 (1)(b) of the Constitution.

[8] See footnote 1 above, p27

Chapter Two

Fair Trial

Introduction

The issue of alleged violation of rights of individuals who are detained for a long time before trial has become phenomenal and has raised global concern. This chapter will deal with fair trial in particular; what constitutes a fair trial and several other aspects related to it. Emphasis will be on article 12(1)(b) of the Constitution of Namibia and also reference will be made to relevant international law instruments.

Every person has the right to a fair trial both in civil and in criminal cases, and the effective protection of all human rights very much depends on the practical availability, at all times, of access to competent, independent and impartial courts of law which can, and will, administer justice fairly. Added to this the professions of prosecutors and lawyers, each of whom, in his or her own field of competence, is instrumental in making the right to a fair trial a reality.

The whole of Chapter three of the Constitution, Articles 5-25, is devoted to the protection of fundamental human rights and freedoms and has been described as expressing 'values and ideals which are consonant with the most enlightened view of a democratic society existing under law'. [9] Chapter 3 should be read in the light of the liberal democratic values expressed in the preamble of the Constitution since the preamble has been described as 'an important internal aid to the construction of provisions of the constitution, particularly where those articles are ambiguous, but it is not restricted to articles which are ambiguous'.[10] The basic

---

[9] Naldi GJ. 1995. *Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights*, p28; see also *S v Minnies & Another* 1994 (3) SA 364 (Nm), 384; *Mwandinghi v Minister of Defence, Namibia* 1991 (1) SA 851 (Nm), 857-8.

[10] *Kauesa v Minister of Home Affairs* (Case No. A125/94, unreported) p67, 106-7.

rights are largely, but not exclusively, derived from the Universal Declaration of Human Rights 1948. Thus the Supreme Court of Namibia has proclaimed that these rights and freedoms 'are framed in a broad and ample style and are international in character'.[11] In their interpretation therefore they call for the application of international human rights norms.

Article 12 provides for the right to a fair trial and various guarantees specified therein. Sub article 1(a) thereof provides that in the determination of their rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent competent court or tribunal. Its prime aim is 'the protection of the individual interest in fundamental justice and is mainly designed to protect the principle of legal certainty and the interests of the accused.[12] Whether a hearing is fair must primarily be assessed on *ad hoc* basis and in the light of all the circumstances of the case, it is important to note that prejudice to the accused's ability to mount an adequate defense through, e.g., prolonged delays, would undermine the right to a fair hearing.[13]

Systematic shortcomings in the Namibian Criminal Justice System

It is said that besides the constitutional provisions and international norms, limiting the power of criminal justice institutions and officials in their efforts to manage criminality in Namibia; there are other systematic shortcomings which need to be considered, and addressed with the seriousness they deserve. The systematic shortcomings include resources; both human and financial, expertise in the criminal investigation and prosecution, and also regarding the state officials there is not sufficient financial resources available for them to do their work successfully.[14] Also shortages of human resources such as the number of police offices, state

---

[11] See footnote 9 above, p28

[12] *In re Mlambo* 1992 (4) SA 144 (ZS), p149

[13] See *Mlambo* case

[14] Bukurura SH. 2003. Prison Overcrowding in Namibia: The Problem and Suggested Solutions, in *Act Criminologica* 16 (1), p108

prosecutors and magistrates have been recognized and acknowledged by authorities as part of systematic shortcomings since independence.[15]

Between 1990 and 1998 for example the Ministry of justice's parliamentary report indicated the situation in courts had deteriorated to the extent that magistrates could no longer cope with the workload. Many people who were charged with offences did not in a way get a fair trial because of inordinate delays in trial. Cases were postponed even up to ten times. Further, many of these cases were withdrawn after numerous postponements because witnesses could no longer be traced or they have lost interest. This report indicated that civil servants in the criminal justice system is not just understaffed but very much over worked and hence the undue delay of justice in some if not most accused awaiting trial. It is however important to note that this was according to the report some number of years ago.

However having to look at recent cases one would conclude that the situation in the criminal justice system has not changed much since then. In what is commonly referred to in Namibia as the Caprivi Treason Trial, the accused were arrested in August 1999 and charged with some 275 counts among others of high treason, murder, sedition, public violence and attempted murder following an armed attack launched in the Caprivi Region of Namibia.[16] Bail applications have been denied by the Courts because of the nature of the offences. In this case concerns have also been raised about the duration of the trial.

Review of the applicable international human rights treaties and Conventions

International law instruments also deal with the right to a fair trial and according to Naldi[17] it should be observed that the European Court of Human Rights and the International Convention

---

[15] See footnote 14 above, p108

[16] Amoo SK. 2010. The jurisprudence of the rights to trial within a reasonable time, in *Namibian Journal, vol2-issue 2*, p4

[17] See footnote 9 above, p68

on the Civil and Political Rights (ICCPR) appear to diverge on one important point. For the European system, it has been suggested that the time period runs from the moment of arrest to the trial at first instance;[18] while for the ICCPR the relevant period runs until the exhaustion of any appeals procedures. The latter interpretation appears to be preferable, the interpretation that the time period runs only when a formal charge is put and a plea recorded since the State could thereby provide with a loophole enabling it lawfully to institutionalize delay.[19]

It must be noted also that the notion of fair trial, transcends the provisions of State Law, since under Chapter 21 of the Constitution (Article 144), "Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia". Moreover, the provisions of the International Human Rights Treaties and Conventions, do not only provide for the safeguarding of individual rights and freedoms, but also for the mechanisms for redress and appropriate remedies that are available to a victim of human rights violations. State parties to such covenants are bound to these international instruments and therefore any alleged violations of individual rights are governed not only by the State Law of a particular jurisdiction, but also by International Law.

Almost every, if not all international instruments provide for the right to a fair trial. International law instruments that will be discussed dealing with a right to fair trial for the purposes of this paper are the International Human Rights Treaties and Conventions which include among others: The International Bill of Human Rights; the African Charter on Human and Peoples' Rights (hereafter the Charter). The International Bill of Human Rights consists of the Universal Declaration of Human Rights (1948), the International Covenant on Economic,

---

[18] *Wemhoff v Germany* Ser A. Vol 7 (1968); *Neumeister v Austeria* Ser A. Vol (1968)

[19] See the *Mlambo case* p149

Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols.

The concept fair trial forms part of an extensive body of applicable International Human Rights Treaties and Conventions as well as the Jurisprudence of National States.[20] It is important to reiterate, that as a general application of the basic principles of the law of treaties, in international law the parties to these international treaties are States (Namibia) and the United Nations (UN) and therefore such international standards and norms become binding on a State such as Namibia, either through the constitutional technique of legislative incorporation or automatic incorporation of the two.[21]

Furthermore against this background, the specific provisions of International Human Rights Treaties and Conventions that apply are in summary, the following:

a) The International Covenant of Civil and Political Rights (ICCPR)

The ICCPR states in Article 9(3) that:

Anyone arrested on a criminal charge shall be brought promptly before a judge or a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

And it states in Article 2 that the ICCPR also requires State Parties:

'to make reparation to individuals whose Covenant rights have been violated and victims of violations of rights suffering from long periods of detention, such as the case of the accused, are entitled to compensation.'

The African Charter on Human and People's Rights under Article 7 (d) states that:

---

[20] Henk Mudge 'The Caprivi Trial'<http://www.nshr.org.na/index.php?module=News&func=display&sid=1138> [accessed on 07/07/2010]

[21] See Leary V. 1982. *International Labour Conventions and National Law*; read in conjunction with Article 144 of the Constitution of the Republic of Namibia; see also Amoo (2010) p5

‘every individual has the right to be tried within a reasonable time by an impartial court or tribunal.’

The African Commission on Human and People’s Rights as well as the African Court on Human and People’s Rights has jurisdiction to enforce the application of Article 7 (d). Having briefly introduced the provisions and applicability of International Human Rights Conventions and Protocols and their potential relevance to Namibia it is important to discuss whether these principles are actually applied as it is supposed to be. In the next chapter, trial within a reasonable time will be discussed as it is part of a fair trial guaranteed under article 12 of the Constitution.

Chapter Three

Trial within a reasonable time

Introduction

Trial within a reasonable time is a fundamental part of a fair trial, the whole purpose of a fair trial is that the accused is tried and convicted within a reasonable time. This chapter will deal with the right to be tried within a reasonable time, what constitutes a reasonable time with reference to both domestic and international court judgments.

References to the right to trial within a reasonable time appear to exist as early as the twelfth century.[22] This right was guaranteed by the Magna Carta, according to early interpretations,[23] and has since been part of English common law. The right is considered to be, of the basic rights afforded to an accused to ensure that he or she receives a fair trial. Preservation of this right limits infringement on personal freedom caused by pre-trial and trial detention.[24] Because an accused is presumed to be innocent, accused awaiting a trial are generally presumed to be eligible for pre-trial release. However, the severity of the offense charged or the background of the accused may result in continued custody throughout the pre-trial and trial phase. The right to trial within a reasonable time serves to prevent unreasonably lengthy periods of detention prior to the conclusion of the accused's trial.

The right to be tried within a reasonable time is not just for the accused to be tried as soon as possible to prevent the accused to live too long under the threat of criminal prosecution, but it is also crucial because undue delays may cause the loss of evidence or the fading of memories

---

[22] See *Klopfer v North Carolina* 1967 286 US 213 at 224

[23] Farrell B. 2003. 'The Right to a speedy trial before international criminal Tribunals' in *South African Journal for Human Rights*, vol.19 prt.1, p99

[24] Bassiouni M. 1993. 'Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions in *Duke J Comp & Int. L*, (3), 235 at p285

of the witnesses.[25] Furthermore a lengthy delay prior to trial increases the possibility that physical evidence will become lost, tainted or destroyed; and it is concluded that a correlation exists between the passage of time and the accuracy of eyewitnesses and other testimonial evidence.[26] Although this may be prejudicial to either prosecution or defence in a criminal trial does not really matter, but what matters is that the rule of law and justice for all prevails at all times. And lastly the right to be tried within a reasonable time seeks to minimize the emotional strain on the accused caused by pending criminal proceedings, in accordance with the right to dignity.

As said before, the right to a fair trial in Article 12 according to the Constitution has a lot of requirements but I will be zooming in on Article 12(1)(b) concentrating on trial within a reasonable time. What is actually meant by trial within a reasonable time, and failing in which the accused shall be released was discussed on several occasions by courts. The High Court had the chance to consider the scope of the term 'reasonable time' in *S v Amujekela*.[27] The accused had been convicted for contempt of court and sentenced to three months' imprisonment. At the time the accused had been in custody for four months awaiting charges to be lodged against him by the Prosecutor-General that were not forthcoming. The Court found that it was unacceptable to allow a person to be deprived of liberty for months at a time at the whim of the Prosecutor-General and was therefore contrary to Article 12(1)(b). The additional question arises as to what is meant by 'released' in this context. In *S v Acheson* Mahomed AJ stated that an 'accused person cannot be kept in detention pending his trial as a form of anticipatory

---

[25] See footnote 24 above, p285

[26] See Ebbinghaus A. 1954. *Memory: A Contribution to Experimental Psychology*; see also Loftus E. 1979. *Eyewitness Testimony*. Loftus, commenting on Ebbinghaus' renowned 1885 study, states that it is now a well established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one.

[27] 1991 (2) SACR 411 (Nm)

punishment.[28] In the Acheson case the accused had been in custody for more than seven months.

Comparative standards and remedies

Namibia is a young country in terms of independence and has a lot to learn hence there is not much jurisprudence in Namibian law regarding trial within a reasonable time; therefore it is important to engage in comparative study for purposes of better and broader understanding. Foreign judicial decisions and international law have a persuasive force and where it is uncertain or unclear what the interpretation must be these foreign decisions and international law can be very helpful. With that in mind I will just briefly consider few countries in this regard, South Africa, Zimbabwe, Canada, England and the United States of America, notwithstanding international law.

In *S v Heidenrich*[29] a Namibian case, there was an eight months' delay before the applicant was ultimately charged with attempted murder and unlawful use of firearms. After several postponements the accused invoked the right to a speedy trial under article 12(1)(b).[30] The judge in this case examined the provisions of article 12(1)(b) and decisions of Canada, England, the United States of America and Zimbabwe, and concluded that there was no breach of the right to a speedy trial. The court further stated that it is not a breach of the right to a fair trial but rather balancing the fundamental right of the accused to be tried within a reasonable time against the public interest in the attainment of justice; taking account of the factors such as the reason for delays. The court was of the opinion that delays arising from a further postponement would not have infringed the rights of the accused as set in article 12(1)(b). A delay of eight months in bringing the accused to trial on a serious charge such as attempted murder is not in

---

[28] 1991 (2) SA 805 (Nm), 822

[29] (Nm HC), 1996 2 BCLR 197: 1998 (nr) 229

[30] Obadina D. 1997. The Right to a Speedy Trial in Namibia and South Africa in *Journal of African Law*, vol.41 no.3, p229

itself presumptively prejudicial and as the accused did not seek to show that he suffered any serious prejudice or would suffer any if a further postponement were to be granted and as be had not previously complained of delay.

For a trial within a reasonable time to be legally enforced, there is a need to establish substantive grounds in law of what constitutes 'reasonable time'. The determination of what constitutes 'reasonable time' has been considered in judicial decisions in different jurisdictions such as the Supreme Court of the United States and Canada and the Superior Courts in Namibia and South Africa and here I specifically would like to refer to the case of *S v Heidenrich*. One of the most celebrated cases is that of *R v Askov 1990 2 S.C.R 1199*; *1991 49 CRR 1* that served in the Supreme Court of Canada. In this particular Canadian case, four factors were determined by the Supreme Court for determining 'reasonable time', namely: (1) the length of the delay, (2) the explanation for the delay,[31] (3) the waiver and (4) prejudice to the accused.

The Supreme Court of Canada held that the first factor is the triggering mechanism or threshold determination for determining trial within reasonable time and that if that delay appears prima facie excessive, the Court must then determine the three remaining factors to determine whether the accused have been deprived of their fundamental rights and freedoms. What is reasonable is left to the Courts to decide in the circumstances of individual cases. There are also guidelines however. The Supreme Court of Canada has said that, for less serious cases tried in Provincial Courts, a time period of 8-10 months from arrest to trial is a reasonable time. For more serious cases where there is a preliminary hearing and trial in the Superior Court, an additional 6-8 months is reasonable. The Courts have been careful to point out however that those delays beyond these guidelines do not, on their own, give rise to a violation of section 11(b).[32] Each case must be looked at on its own facts, having regard to the length of the delay, whether any time periods have been waived and prejudice to the accused.[33]

---

[32] Canadian Charter Rights and Freedoms

The Courts have also stressed that there is a societal interest in having serious charges heard on their merits. In short, deciding whether the delay is unreasonable in a given case is a delicate exercise. In *R v Godin,* 2009 SCC 26, the Supreme Court of Canada reinstated a stay of proceedings where a charge of sexual assault had taken 30 months to get to trial and where the Crown had failed to provide an adequate explanation for the delay. The Court disagreed with the decision of the Ontario Court of Appeal that the accused had waived part of the delay by not being available for a date proposed for a preliminary hearing.

Furthermore in *R. v MacDougall* 1998 3 S.C.R. 45 similar issue were discussed as above whether the right to be tried within a reasonable time under section 11(*b*) of the Canadian Charter of Rights and Freedoms includes the right to be sentenced within a reasonable time, and the proper characterization of delay related to judicial illness under section 11(*b*). As in *MacDougall*, the sentencing delay that occurred in this case was primarily due to the prolonged illness of the trial judge. The judge further concluded that in his opinion and other reason given in this particular case section 11(*b*), the right to be tried within a reasonable time extends to sentencing. But held that, in the *MacDougall case*, the delay that occurred was not unreasonable and would allow the appeal and remit the case to the trial court for sentencing.

A further influential application of the actual standards emanates from the Supreme Court of the United States. The case was that of *Barker v Wingo 1972 407 U.S. 514*. In that case Barker, who was charged with murder, was brought to trial five years after the murder was committed. The US Supreme Court ruled that a flexible approach should be taken to cases involving delay and that the multiple purposes or aims of the Sixth Amendment must be appreciated. Supreme Court Judge J. Powell, noted that there were various individual interests which the Sixth

---

[33] Rouben Allen 'Trial within a reasonable time' <http://allanrouben.com/blog/2009/07/trial-within-a-reasonable-time/> [accessed on 08/07/2010]

Amendment was designed to protect, namely, the determination of whether a delay has been 'unreasonable' and if the right to a 'speedy trial' has been infringed, depended on:
(i) The length of the delay; (ii) The reason for the delay; (iii) The accused assertion of right, and (iv) Prejudice to the accused.

In Europe, article 5(3) of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 affords a right to trial within a reasonable time to persons detained until trial. Article 6(1) of the same Convention provides for a right to judgment within a reasonable time and applies to persons released before trial. Similar provisions exist in articles 7(5) and 8(1) of the American Convention on Human Rights.[34] The reasonable time referred to in article 6(1) begins to run as soon as a person is charged. This may occur on a date prior to the case coming before the trial court, such as the date of arrest or the date when the person concerned was officially notified that he would be prosecuted. The period lasts until acquittal or conviction, even it this decision is reached on appeal.

According to Jacobs,[35] the object of the provision is to protect persons from living for too long under the threat of criminal proceedings. This is in accordance with the notion of an accused is presumed to be innocent until proven guilty. In the *Eckle case*[36] the European courts of Human Rights confirmed that reasonableness of the length of the proceedings would depend on the circumstances and in particular on the complexity of the case, the conduct of the applicants and the conduct of the judicial authorities.

In South Africa the right to a fair trial or the right to be tried within a reasonable was also dealty with by the courts. In the case of *Wild and Another v Hoffert NO and Others*[37] an appeal to the

---

[34]Donen M. 1985. 'In search of Rights to a Fair Trial' in *South African Law Journal*, vol.102 prt.3, p310

[35]Jacobs F. 1975. *The European Convention on Human Rights,* 1975

[36] Eckle v Federal Republic of Germany in *Human Rights LJ,* 1982 (3) 303

[37] 1997 (7) BCLR 974 (N)

constitutional court of South Africa; the appeal was directed at part of a judgment and order in the Natal High Court that refused the appellants constitutional relief.[38] It raised essentially the same two issues dealt with in the case of *Sanderson*[39], namely, alleged infringement of the constitutional right to be tried within a reasonable time of having been charged (imprecisely but conveniently called the right to a speedy trial), and a consequential claim that prosecution on such charge be permanently stayed. As in *Sanderson,* the applicable constitutional provisions are those of the interim Constitution.[40]

The appeal was dismissed and the court held that the bench-mark set by the constitutional demand for a reasonably speedy trial does not propose anything revolutionary nor advocate standards of perfection. More importantly, it is not concerned with theory but with practical justice and concluding that a permanent stay of prosecution was not appropriate relief to be granted to the appellants. The court also indicated that permanent stay of prosecution can be granted where it can be proved that the accused was prejudiced and his fundamental right to a speedy trial was violated. The court also stated that all these considerations will be on individual cases and the courts will have the jurisdiction.[41]

According to Donen [42] the discretion of judicial officers, if properly exercised, should produce a trial within a reasonable time. Where the discretion is judicially exercised, the accused, if convicted, has no remedy against conviction when the trial has taken an unreasonable period of

---

[38] The judgment, per Booysen J, McCall J concurring, is reported as *Wild and Another v Hoffert NO and Others* 1997 (7) BCLR 974 (N).

[39] *Sanderson v Attorney-General, Eastern Cape* 1997 (12) BCLR 1675 (CC). Indeed, because of the similarity, set down of this appeal was held back pending judgment in *Sanderson*

[40] The Constitution of the Republic of South Africa Act 200 of 1993, insofar as here relevant, came into operation on 27 April 1994 and remained in force until it was replaced on 4 February 1997 by the (final) Constitution of the Republic of South Africa, 1996, the equivalent of section 25(3)(a) is 35(3)(d) of the final Constitution.

[41] See *Wild and Another v Hoffert NO and Others* case

[42] See footnote 34 above, p319

time. Sentence may, however, be mitigated. Furthermore, Donen states that the accused's key weapon is his right to a verdict, which is based on plea. Where the presiding officer injudiciously impedes this right, it should be made possible for review proceedings, based on gross irregularity, to be commenced before conviction. All the evidence after such an irregularity is obviously tainted and allowing the trial to continue defeats the very purpose of such a right.

If the long period of detention and the related circumstances amount to a violation of the rights and freedoms of the victim or applicant by the State, and if the answer is in the affirmative, then appropriate remedies exist in both international and state law. In criminal law jurisprudence there are two schools of thought on the appropriate remedy to be ordered in the case of violation of the right to fair trial; whether an order for a stay of prosecution (and order to abort the trial) or an order for a speedy trial. In the *R v Askov* case the Court granted a stay of proceedings.

In S *v Heidenrich* , Judge Hannah stated[43] that once the main of the sub-article 12(1) (b) of the Constitution of Namibia, which provides that the accused shall be released in the event of the violation of right, has been identified as being not only to minimize the possibility of lengthy pre-trial incarceration and to curtail restrictions placed on an accused who is on bail but also to reduce the inconvenience, social stigma and other pressures which he is likely to suffer and to advance the prospect of fair hearing, then it seems to me that 'release' must mean release from further prosecution for the offence with which he is charged. It is only by giving the term this wider meaning that the full purpose of the sub-article is met. Release from custody or from onerous conditions of bail meets part of the sub-article.

Heinz Dresselhaus and Others v S; Camm v S and Others (CC 12/2005) [2009] NAHC 68, in this cases the right to be tried within a reasonable time was discussed in terms of Article 12 (1)(a)

[43] at page 235 A-C.

and (b) of the Namibian Constitution . The Court finding periods during which police investigations were taking place and the Prosecutor General was considering whether to prosecute applicant do not count in the application of reasonable time contemplated in Article 12 (1)(a) and (b) of the Constitution. The Court considered factors that ought to be taken into account in determining whether there has been a failure of trial within a reasonable time. The most important factor was said to be a significant prejudice suffered by accused and any such prejudice must be irreparable trial-related prejudice. The court found that prejudice suffered by accused in this particular case was not the kind of prejudice that would justify the remedy of a permanent stay of prosecution, and besides, no extraordinary circumstances exist to justify that remedy.

The Court held that only the period of a trial before an independent, impartial and competent Court or Tribunal ought to be taken into account in the application of reasonable time frame under Article 12 (1) (a) and (b) of the Namibian Constitution. And it was further held, that the remedy of permanent stay of prosecution being a radical and far-reaching remedy ought to be seldom granted and for compelling reasons and that particularly applicant must establish what he or she has suffered irreparable trial-related prejudice or must prove that extraordinary circumstances exist to justify grant of the remedy.[44] However in the latest Namibian case that specifically dealt with the issue of article 12 (1)(b), trial within a reasonable time, *Magaret Malama-Kean v The Magistrate of the District of Oshikati and the Prosecutor-General SC SA 04/2002,* the court made it clear as to what is meant by trial within a reasonable time and other relevant aspects in connection with trial within a reasonable time, failing which the accused shall be released.

The Magaret Malama-Kean case is of great importance for the Namibian jurisprudence regarding the article 12 (1) (b). I will briefly outline the case in the following paragraphs. The

[44] See also *Pieter Johan Myburg v The State* Case No.: SA 21/2001 (Unreported) at p 52.

facts were as follows: The Appellant was arrested on 27 June 2000. She first appeared in court on 29 June 2000. The matter was then remanded until 30 June 2000 for a bail application.
On 30 June 2000, the prosecutor informed the court that the State was unable to proceed with the bail application as the docket *is voluniane*. It was then agreed that the matter should be postponed to 4 July 2000 for the bail application.

On 4 July 2000 the prosecutor informed the court that a bail application was opposed on the basis that, *inter alia*, the investigation would take a long time. Thereupon, the Appellant's legal representative accepted that the case had to be remanded for a bail application to be held. On 9 August 2000 the bail application was called. The court was informed that the State would not have an objection against bail, and that it was agreed.

Thereafter, the matter was postponed on various occasions, the reasons given for the postponement can be summarized as follows: the Investigation is incomplete (this reason was given on various occasions); the docket was not brought to the court proceedings, hence it was not known how far investigations were regarding the case and therefore another postponement was granted. On some occasion the case was adjourned, due to an application made on behalf of the appellant; as well as waiting for Prosecutor-General's decision whether to withdraw or continue with the case.

The court after carefully considering the decisions in *S v Heidenreich,* other cases mentioned in the paper dealing with the same issue and Malama-Kean, have reached the conclusion that all of them were wrongly decided in part in regard to the correct interpretation of the words 'shall be released' in article 12(1)(b). The court held that 'released' in article 12(1)(b) read with article 12(1)(d) means released from the trial as envisaged in 12(1)(a). The Court *a quo* in Malama-Kean came to its conclusion on the three possible forms of the order, without first concluding that the words 'shall be released' were intended in the first place to mean – released from the trial as envisaged in 12(1)(a). AJA O'Linn, the trial judge further reasoned that, that an interpretation of that kind will also extend the remedy contemplated by article 12(1)(a) to

accused persons who are not in detention, who would not have had a remedy under article 12(1)(b) if the term ‘released’ in 12(1)(b) is restricted to release from detention.

Notwithstanding various pointers to the contrary the judge in his opinion noted[45] that, that construction appears to be the most logical solution to the dilemma caused by the vague language of article12(1)(b) and appears to be the interpretation which best reflects the probable intention of the authors of the Namibian Constitution. It is also in line with a broad, liberal and purposive approach.[46]

The decisive consideration for the aforesaid construction the judge further said however, is that the principle that those criminal courts, which are “competent” courts with the necessary jurisdiction, should have in their armoury of sanctions, the power and the responsibility in an appropriate case of unreasonable delay, to order a permanent stay of prosecution as at least one of its discretionary powers. This is in accordance with principles and procedures in most of the advanced criminal justice systems in democratic countries. It must be assumed that the framers of the Namibian Constitution also had this objective in mind.

It was further held that the following forms of release from the trial will all be legitimate forms meeting the peremptory requirement[47]:

(i) A release from the trial prior to a plea on the merits, which does not have the effect of a permanent stay of the prosecution and is broadly tantamount to a withdrawal of the charges by the State before the accused had pleaded.

This form of release from the trial will encompass:

(a) Unconditional release from detention if the accused is still in detention when the order is made for his/her release;

---

[45] Page 25-26 of the judgment

[46] See also the case of *S v Acheson*

[47] Page 27-29 of the judgment

(b) Release from the conditions of bail if the accused had already been released on bail prior to making the order;

(c) Release from any obligation to stand trial on a specified charge on a specified date and time if the accused had previously been summoned or warned to stand trial on a specified, charge, date and time.

(ii) An acquittal after plea on the merits;

(iii) A permanent stay of prosecution, either before or subsequent to a plea on the merits.

Finally, which form the order of 'release from the trial' will take, will depend not only on the degree of prejudice caused by the failure of the trial to take place within a reasonable time, but also by the jurisdiction of the Court considering the issue and making the order. It is necessary to note that the remedy of a permanent stay of prosecution will only be granted if the applicant has proved that the trial has not taken place within a reasonable time and that there is irreparable trial prejudice as a result or other exceptional circumstances justifying such a remedy. O'Linn AJA further cautioned that the Courts making an order under 12(1)(b) must not merely state that the accused 'shall be released', but use one of the forms of order, so that whoever is concerned is clear about the form of released. It also important to note that from what transpired it was cleared that the delay and postponement of the trial was mostly caused by the State. According to AJA O'Linn, the question of reasonableness was said that a delay of 16 months will in most cases, constitute an "unreasonable delay" provided the State is responsible for it.

Trial within a reasonable time before International Criminal Tribunals and the International Criminal Court

Trial within a reasonable time is not just a domestic concern but it is also a global concern. There are international tribunals and the international court that has also dealt with the right to be tried within a reasonable time. The right to a speedy trial as said on several occasions before is considered one of the fundamental rights of a person accused of the criminal offence. This right is enshrined in the constitutions and laws of many nations and is also found in numerous international instruments as discussed previously. It is therefore of no surprise that the right to

a speedy trial or trial within a reasonable time has been guaranteed before the major international criminal tribunals such as the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The two intentional tribunals will be discussed in the following paragraphs. While international criminal tribunals are relatively recent creations, at least more recent than the fundamental right to a fair trial which includes a trial within a reasonable time the creators of these international tribunals, found it almost imminent to also promote the right to a fair trial.[48]

International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) and the right to a trial within a reasonable time

The statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are, not surprisingly, very similar. Both contain identical language concerning the right to trial within a reasonable time. The right is contained in the article dealing with commencement and conduct of trial proceedings. The statutes require that the trial chambers of each tribunal 'shall ensure that a trial is fair and expeditious'.[49] Rather than as a right of the accused, this provision is phrased as a duty of the court. According to the statutes of the international tribunals, the accused shall be entitled to the following minimum guarantees, in full equality,[50] one of which is right to be tried without undue delay[51]. This is the primary guarantee to trial within a reasonable time.

It is further important to note that although both the statutes guarantee a right to a fair trial within a reasonable time it does define (like most of the legal instruments as we have discovered so far) what constitutes undue delay. However both have adopted rules of

---

[48] See footnote 23 above, p98

[49] Statute of International Criminal Tribunal for the Former Yugoslavia of 1993, article20(1); Statutes of International Criminal Tribunal for Rwanda of 1994, article 19(1)

[50] ICTY Statute, article 21(4); ICTR Statute, article 20(4)

[51] ICTY Statute, article 21(4)(c); ICTR Statute, article 20(4)(c)

procedure and evidence and many contain specific deadlines by which a trial must commence or conclude.[52] It is however also true that while the rules do facilitate timely trials using deadlines for the filing of motions and other preliminary matters, they do not contain specific deadlines for the actual trial.[53]

The ICTY has used the right to a speedy trial as a justification for procedural streamlining within the tribunal. On number of occasions, the Appeal Chamber has appointed a pre-appeal judge to handle pre-appeal motions and conduct status conferences.[54] The primary purpose of this practice has been that 'it is in the interest of justice and of a more expeditious and effectively managed appeal to appoint a judge to be responsible on behalf of the Appeals Chamber for matters arising prior to the commencement of the hearing of the appeal; these orders reiterate the importance of the right to a speedy trial, stating that not only the trial, but also appeals by accused must be conducted without undue delay.

Also when circumstances demand, the tribunal has approved of alternative procedures to ensure the right to be tried within a reasonable time is protected. When confronted with the absence of a judge, for example, the trial chamber has allowed examination of witnesses to continue by deposition.[55] This unusual move was seen as warranted given the potential delay that would otherwise occur. According to the trial chamber, the unavailability of one of the members of the trial chamber must not prejudice the right of the accused to be tried without undue delay, as stated in article 21(4)(c) of the Statute of the International Tribunal. Therefore even in exceptional circumstances the interests of justice demanded that full respect be given to the right to a speedy trial.

---

[52] See Footnote 23 above, p105

[53] See Rules of Procedure and Evidence (ICTY rules, rule 72); ICTR Rules of Procedure and Evidence (ICTR rules, rule 72)

[54] See for example *Prosecutor v Blaskic* case no. IT 95-14

[55] *Prosecutor v Kordic* case no. IT 95-14/2

The trial chamber's decision in *Prosecutor v Kovacevic*[56] indicated that the right to fair trial within a reasonable time often supersedes other considerations. The following is what happened in this case after the initial indictment had been confirmed, the suspect had been taken into custody, and the matter had been assigned to a trial chamber. The prosecutor moved to amend the indictment. The prosecution request, although allowed under the Statute, came at a very late time in the proceedings. In addition, the request was substantial, increasing the indictment from one to fifteen counts. The prosecution argued that there had been no undue delay and that in case of any delay that had occurred was justified given the circumstances of the case. Obviously the defense refuted these arguments.

After reciting the background an applicable rules, the chamber turned to the rights of the accused. It was noted that the prosecutor accepted the accused's right to a fair, but also stated that the right to fair trial could not be severed from the right to a speedy trial. The trial chamber refused the prosecution's request. In doing so, it reasoned that if the prosecution request were granted, it would result in substitution of a new indictment for the original. This would, in turn put the defence in a disadvantage that could only be redressed by allowing substantial additional time for preparation. Given the complexity of the issues, the chamber accepted the defence's view that this might require an additional seven mouths of preparation, consequently pushing back the trial date a considerable amount of time. The trial chamber concluded that such a turn of events would deprive the accused of his right to an expeditious trial.

The Kovacevic decision represents assertive protection of the right to a speedy trial by the trial chamber of ICTY. However, perhaps the most significant decision regarding the right to a speedy trial was *Prosecutor v Kvocka.*[57] In this case, the appeals chamber's decision considered

---

[56] Case no. IT 97-24

[57] Case no. IT 98-30/1

an interlocutory appeal from a trial chamber's decision to deny the applicants' request to suspend proceedings. The appellate chamber's decision was highly relying on the duty of the tribunal to ensure speedy trials.

International Criminal Court (ICC) and the right to a trial within a reasonable time

Lastly the International Criminal Court (ICC) was created by the Rome Statute on 17 July 1998 in Rome when the statute was adopted and entered into force on 1 July 2002. Article 67 of Rome Statute lists minimum guarantees to which the accused is entitled. Among these is the right to be tried without undue delay. The very first case tried in the ICC after the commencement of the international court was the *Lubanga case*[58], on 17 March 2006, an arrest warrant for Lubanga was publicly announced and unsealed by ICC Pre-Trial Chamber I. Due to the cooperation of DRC authorities, the French government and MONUC, Lubanga was transferred to The Hague on the same day.[59]

The crimes for which Lubanga was charged with are listed as war crimes under Articles 8(2)(b)(xxvi) or 8(2)(e)(vii) of the Rome Statute of the ICC.[60] The Prosecutor of the ICC had charged Thomas Lubanga Dyilo with the war crime of enlisting children under the age of fifteen, conscripting children under the age of fifteen; and using children under the age of fifteen to participate actively in hostilities. On 20 March 2006, Lubanga first appeared in Court before ICC Pre-Trial Chamber I. A three-week confirmation of charges hearing was held in November 2006 in the Lubanga case.[61] Four victims participated in the proceedings and were allowed to present their views and concerns. On 29 January 2007, ICC Pre-Trial Chamber I confirmed the charges

---

[58] *Prosecutor v. Thomas Lubanga Dyilo* Case no. ICC-01/04-01/06

[59] Lorraine Smith, Lubanga's Case <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4c782edd-143a-4172-aa10-29989dd2512b> [accessed on 23 October 2010]

[60] See footnote 59 above

[61] Lorraine Smith, Lubanga's Case <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4c782edd-143a-4172-aa10-29989dd2512b> [accessed on 23 October 2010]

against Thomas Lubanga Dyilo, sending the case against him to trial.

On 16 June 2008, the Court announced a stay of the proceedings in the Lubanga case because the Prosecution was unable to make available potentially exculpatory materials.[62] The Chamber scheduled a hearing on 24 June 2008 in order to consider the release of the accused. On 2 July 2008, Trial Chamber I issued an order granting unconditional release to Thomas Lubanga Dyilo. The Prosecution appealed the order and such appeal was given suspensive effect meaning that the accused shall not leave detention until the Appeals Chamber has resolved the issue.

On 3 September 2008, ICC Trial Chamber decided to maintain the stay of the proceedings in the Lubanga case. The Judges in their decision stated, "The proposals outlined in the application demonstrably fail to meet the prerequisites set out hitherto by the Chamber to enable it to lift the stay of proceedings, and they infringe fundamental aspects of the accused's right to a fair trial".[63] Thomas Lubanga Dyilo will however remain in custody until a final decision is taken by the ICC Appeals Chamber on the appeal of the order granting unconditional release of him.

On 26 January 2009, the ICC opened its first trial in the case against Congolese warlord Thomas Lubanga Dyilo. Lubanga was the first person charged in the Democratic Republic of Congo (DRC) situation as well as the Court's first detainee. The Lubanga case has been extensively delayed due to reasons discussed above. Hence the Chamber's inability to review the confidential material led to a stay of proceedings. However, due to other concessions by information providers allowing the Chamber unrestricted access to the documents, the judges have determined that the basis for the stay 'has fallen away'.

[62] See *Prosecutor v Thomas Lubanga Dyilo* Case no. ICC-01/04-01/06

[63] See *Lubanga case* above

On 8 July 2010 ICC Trial Chamber I however again ordered to stay the proceedings in the case The *Prosecutor v Thomas Lubanga Dyilo*, considering that the fair trial of the accused was no longer possible due to non-implementation of the Chamber's orders by the Prosecution. The Chamber had ordered the Office of the Prosecutor to confidentially disclose to the Defence the identity of intermediary 143. On 15 July 2010, ICC Trial Chamber I ordered the release of Thomas Lubanga. ICC judges argued that an accused cannot be held in preventative custody on a speculative basis, namely that at some stage in the future the proceedings may be resurrected. However, the order will not be implemented with immediate effect. The Prosecution was granted 5 days to file an appeal against this decision. If it appeals, and if a request is made to suspend its effect, Thomas Lubanga will have to remain in detention until the Appeals Chamber makes a final decision.[64]

Finally, looking at the Lubanga case, although the case did not extensively concentrate on the right of the accused to be tried without undue delay or article 67 of the Rome Statutes it is clear from the reasoning of the trial judges that on numerous occasions during the trial they have considered the accused's right to a fair trial and within a reasonable time and that must be considered at all relevant times. It must also be noted that the development of procedural international criminal law is an ongoing process and it is good to see that the right to fair trial is reasonably fundamental also in the international community.

[64]Romana St. Matthew – Daniel, IBA welcomes Trial Chamber's decision to lift stay of proceedings in the Lubanga case <www.ibanet.org> [accessed on 23 October 2010]

Conclusion

Based on the legal provisions contained in key International Human Rights Conventions Treaties and Protocols, to which Namibia as a constitutional democracy has subscribed, Namibia is obligated to not only the Constitution or relevant legislation but also international conventions and instruments, which also make provision for fair trial within a reasonable and failing which the accused shall be released. Furthermore it is important to note foreign decisions although not binding have persuasive force and whenever it is unclear or there is uncertainty regarding the position of law it's only logical to consult such decision, to see how those judges dealt with the similar issue.

The courts, it seems, are very reluctant to apply article 12(1)(b), especially to order a stay of prosecution, which in my opinion can be understood because the main aim of the criminal justice system is to strike a balance not only between the government and the people but also between individuals. I say with reference to the victim in a criminal matter. When a crime is committed many parties are involved, the one causing the harm, the one against whom the crime is committed (victim) and the state. The victim as much as the accused also have rights which the state is obligated to protect. Hence for that purpose, the state must arrest and put the accused on trial for justice to prevail but that as said numerous times before must be done fairly and within a reasonable time.

Within a reasonable time according to the case law discussed above, is still not very clear because there are no specific criteria as to what constitute reasonableness. It mostly depends on the seriousness of the matter and the kind of delay, which boils down to the fact that, within reasonable time relies heavily on the discretion of the court. The other aspect of article 12 (1)(b) which states, failure of trial within a reasonable time will result in the accused be released was clearly explained in the other jurisdictions, the international conventions and also in the *Malama-Kean* case. Consequently with regard to the interpretation of release I do not

think there is uncertainty or ambiguity regarding that requirement.

As indicated by Henk Mudge,[65] that if the long period of detention and the related circumstances amount to a violation of the rights and freedoms of the victim/applicant by the State, and if the answer is in the affirmative, then appropriate remedies exist in both international and state law. And such remedies will include reparation / compensation under International Law, permanent stay of prosecution subject to conditions, release, and public apology to the accused.

Fair trial, constituting a trial within a reasonable time is fundamental to the International community and is considered at all relevant times. Although there is no clear set of rules or criteria the courts follow regarding, the guidelines used with respect to what is meant with reasonable time it is clear that it depends on the merits of each case. Furthermore, where release is concerned although article 12(1)(b) does not explain what is meant with release it was held in the *Malama-Kean case* that release is meant to be a release from trial. In other words permanent stay of prosecution, but it was held that this kind of remedy is not easily granted, there must be gross violations of the right to be tried within a reasonable time and the state must be at fault in this regard. Lastly the court must have the jurisdiction to grant such an order.

---

[65] Henk Mudge 'The Caprivi Trial'<http://www.nshr.org.na/index.php?module=News&func=display&sid=1138> [accessed on 07/07/2010]

Bibliography

Books

Diescho J. 1994. 1955-*The Namibian constitution in perspective*

Ebbinghaus A. 1954. *Memory: A Contribution to Experimental Psychology*

Fallon R. 2004. *The dynamic constitution: an introduction to American constitutional law*

Jacobs F. 1975. *The European Convention on Human Rights*

Loftus E.1979. *Eyewitness Testimony*

Leary V. 1982. *International Labour Conventions and National Law*

Martins F. 2005. *Sociology of Law Study Guide*

Naldi GI. 1995. *Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights*

Cases

Barker v Wingo 1972 407 U.S 517

Heinz Dresselhaus and others v S; Camm v S and others (CC 12/2005) [2009] NAHC 68

Kauesa v Minister of Home Affairs (Case No. A125/94, unreported)

Klopfer v North Carolina (1967) 286 US 213

In re Mlambo 1992 (4) SA 144 (ZS)

Magaret Malama-Kean v The Magistrate of the District of Oshikati and the Prosecutor-General 04/2002 SA SC

Mwandinghi v Minister of Defence, Namibia 1991 (1) SA 851 (Nm),

Myburg v The State Case No.: SA 21/2001 (Unreported)

Neumeister v Austeria 1968 Ser A. Vol 7

Prosecutor v Blaskic Case no. IT 95-14

Prosecutor v Kordic Case no. IT 95-14/2

Prosecutor v Kovacevic Case o. 97-27

Prosecutor v Kvocka Case no. IT98-30/1

Prosecutor v. Thomas Lubanga Dyilo Case no. ICC-01/04-01/06

R v Askov 1990 2 S.C.R 11199

R v Godin, 2009 SCC 26

R v MacDaugall 1998 3 S.C.R 45

Sanderson v Attorney-General, Eastern Cape 1997 (12) BCLR 1675 (CC).

S v Acheson 1991 (2) SA 805 (Nm), 822

S v Amujekela 1991 (2) SACR 411 (Nm)

S v Heindenrich (Nm HC), (1996) 2 BCLR 197: (1998) nr 229

S v Minnies & Another 1994 (3) SA 364 (Nm),

Wemhoff v Germany 1968 Ser A. Vol 7

Wild and Another v Hoffert NO and Others 1997 (7) BCLR 974 (N).

Journals

Amoo SK. 2010. 'The jurisprudence of the rights to trial within a reasonable time' in *Namibian Journal*, vol2-issue 2

Bassiouni M. 1993. 'Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in *National Constitutions in Duke J Comp & Int. L*, (3) 235

Bukurura S. 2003. 'Prison Overcrowding in Namibia: The Problem and Suggested Solutions', in *Acta Criminologica* 16 (1)

Donen M. 1985. 'In search of Rights to a Fair Trial' in *South African Law Journal*, vol.102 prt.3

Eckle v Federal Republic of Germany in *Human Rights LJ* 1982 (3) 303

Farrell B. 2003. 'The Right to a speedy trial before international criminal Tribunals' in *South*

African Journal for Human Rights, vol.19 prt.1

Obadina D. 1997., The Right to a Speedy Trial in Namibia and South Africa in *Journal of African Law,* vol.41 no.3, p229

Statutes/Conventions/International Instruments

Canadian Charter Rights and Freedoms

The African Charter on Human and People's' Rights

The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 1950

The Constitution of Namibia of 1990

The International Convention on the Civil and Political Rights (ICCPR)

Statute of International Criminal Tribunal for the Former Yugoslavia of 1993

Statutes of International Criminal Tribunal for Rwanda of 1994

Website/Internet

Henk Mudge 'The Caprivi Trial' <http://www.nshr.org.na/index.php?module=News&func=display&sid=1138> [accessed on 07/07/2010]

Romana St. Matthew – Daniel, IBA welcomes Trial Chamber's decision to lift stay of proceedings in the Lubanga case <www.ibanet.org> [accessed on 23 October 2010]

Lorraine Smith**,** Lubanga's Case <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=4c782edd-143a-4172-aa10-29989dd2512b> [accessed on 23 October 2010]

Rouben Allen 'Trial within a reasonable time' <http://allanrouben.com/blog/2009/07/trial-within-a-reasonable-time/> [accessed on 08/07/2010]