

Defence lawyers slammed for backlogs

By Tania Broughton

Senior judges have strongly criticised criminal defence lawyers for contributing to clogged the court rolls by deliberately delaying trials and taking advantage of the weakness in the criminal justice system. And they urged magistrates and other judges to "crack the whip", note who the culprits were and bring them into line.

The censure of the lawyers was a recurring theme at a case-flow management seminar held in Durban on Friday and was pinpoint as the main obstacle to unclogging the system by KwaZulu-Natal Judge President Vuka Tshabalala, Durban Judge Achmat Jappie, Cape Judge Siraj Desai and others.

The seminar was hosted by the Provincial Integrated Justice Forum, a body chaired by Jappie, and representatives of the judiciary, the prosecution service, the Department of Justice, police and correctional services, whose aim is to manage courts effectively to alleviate backlogs and use alternative sentencing options to ease prison overcrowding.

A pilot project implemented at the Durban magistrate's court two years ago has already reduced backlogs, significantly bringing down the number of district court cases enrolled for six months or longer from 771 in August 2004 to 303 in March.

But, according to the speakers, this was in no part because of the criminal lawyers in private practice who, they said, had so declined to come to the party. In fact, it was noted, there were no representatives of the KwaZulu-Natal law Society on the forum.

Tshabalala said that while "case clogging" was exacerbated by the many role players, he singled out defence lawyers, saying that cases were often adjourned because the lawyers were not prepared "and it is difficult to control this".

He often received correspondence from defence attorneys and advocates complaining about matters being set down for trial to quickly on the high court rolls.

He said one of the reasons for them "dragging their feet" was their clients' inability to pay them.

Jappie said anything that reduced court roll backlogs should be embraced because it was to everyone's advantage.

"Our difficulty is with those who represent the accused. This is going to be our biggest hindrance. We need to change mindsets.

"Very often they do not see it to be in their interests for the trial to go on; They have other commitments and its take up too much time in court.

"I hope that presiding officers will take the reins and whip those who appear before them into shape to get the trial going and over.

Desai echoed this view, saying court discipline, imposed by magistrates and judges were the only answer.

"We often forget that there are victims sitting in court, seeing the cases being postponed for no good or apparent reason.

"The answer is to make note of who is permanently sick or trying to avoid trial and to record the reason for each adjournment.

"We know who these people are...it is the same criminal lawyers who come in time and time again."

He said there was a tendency in big matters, especially those involving fraud, and where the accused was out on bail, to "drag the case out"

He told delegates about his own experience when, as advocate, he was briefed by an attorney to represent an accused in a fraud case, who had suggested they attempt to "postpone the case until the witness die" on each occasion when the matter was set down for trial, either the accused was ill or the attorney was ill.

"The attorney then phoned me and said next time it was my turn to be ill. He said that later, when he become a judge, this same attorney had tried the same tricks, claiming to be unavailable on every date suggested for the hearing.

"I eventually suggested that we hear the matter at 8am one day. "I say this illustrates the point that discipline is essential and that responsibility rests solely on the shoulders of the presiding officer."

Desai, who is also the chairman of the National council of the correctional services, also urged magistrate and judges to be "more realistic with sentencing".

"There is a sense of unreality in our sentencing today some who commit innocuous offences are in jail, while serious offenders are walking the streets.

The end result of this is there will be political interference and attempts to restrict the discretion of magistrates and judges. The only way to obviate this is to regulate ourselves."

Delegates heard that in 10 years from 1995 to 2005 there had been a drastic increase in the prison population.

The number of prisoners sentenced to life imprisonment had increased from 433 to 5924 and the total number of sentenced prisoners had increase from 87 000 to 135 000 despite 65 000 prisoners being released on special remission during this period.

Desai said amnesties, while unpopular, were effective and needed to be viewed "dispassionately and scientifically."

"There are often knee-jerk reactions to these ...but there are a great number of people in prisons who have been forgotten. And our parole system is one of the most advanced in the world.

Blame system, not us, says lawyers' body

KwaZulu-Natal Law Society President Raj Badal hit back at critics of attorneys yesterday, saying the system, not those who defend the accused, was at fault.

"We are actually at the forefront of pushing for the finalisation of criminal cases. We work closely with the magistrate and judges in magistrate's court and high court committees where these problems are discussed and ironed out" he said.

It is not fair to make us the whipping boys. The blame for the problems in the criminal justice system cannot be laid at our door. Criminal lawyers are just as concerned about the backlogs."

Badal said the backlogs had a variety of causes. I don't believe we have enough courts, magistrates or judge. The police are overloaded, which result in bad investigations, and the prosecutors are also overloaded."

He said that if the Law Society received complaints regarding the conduct of attorneys, these were always investigated.

"Just last week we disciplined an attorney who was reportedly always late for court. We bring them to heel. We can either reprimand them or fine them up to R10 000. And an attorney can be struck off for lying of court."

Badal agreed that there were "rotten eggs", as in any profession, but criminal attorneys provided a valuable service in extremely difficult circumstances. He said attorneys and advocates were this month again giving their services free in an attempt to clear appeals against convictions and sentences of people already sitting in jail.