

CONSTITUTIONAL COURT STATISTICS FOR THE 2003 TERM

I INTRODUCTION

This note provides some descriptive statistics on the work of the Constitutional Court in the past year, organised in eight tables. A ninth table looks at the expected terms of the judges of the Court. The method of constructing each table is given in the text following the table. The objectives and methods of this annual set of statistics are more fully laid out in the 1995 edition and subsequent editions of this journal.¹

We cover only cases in which the Court produced a written judgment. This consequently excludes a relatively large number of applications that were considered in chambers and then dismissed on either substantive or procedural grounds, without a judgment being given. These applications have not been included because they do not contribute to the statistical analyses that follow and, indeed, would distort the patterns that emerge from the cases in which judgments were given. It should be noted that many of the cases that were decided in 2003 were received by the Court in 2001 and 2002 and are listed as cases from those years in the Court's database. In 2003:

- There were 36 such applications. Together with the applications in which judgments were given, this brings the Court's total caseload for the year to 61.
- Each of these 36 applications was dealt with by the Court as a whole with no individual judge being responsible.
- Among these 36 applications were 22 applications for leave to appeal, seven applications for direct access and one application for an order.
- While no exact analysis can be made of the length of time required by the Court to dispense with these applications, it is worth noting that they are typically dealt with rapidly, with the time from application to decision generally not exceeding one month.

We present the following statistics with caution and they should be read likewise. Statistics can often be misleading, especially when they describe only a small number of cases, as here. We do not examine the reasoning of judges, nor do we examine the facts which the cases presented. Thus,

¹ See 'Constitutional Court Statistics for the 1995 Term' (1996) 12 *SAJHR* 39; 'Constitutional Court Statistics for the 1996 Term' (1997) 13 *SAJHR* 208; 'Constitutional Court Statistics for the 1997 Term' (1998) 14 *SAJHR* 277; 'Constitutional Court Statistics for the 1998 Term' (1999) 15 *SAJHR* 256, read with (1999) 15 *SAJHR* 446; 'Constitutional Court Statistics for the 1999 Term' (2000) 16 *SAJHR* 364; 'Constitutional Court Statistics for the 2000 Term' (2001) 17 *SAJHR* 277; 'Constitutional Court Statistics For the 2001 Term' (2002) 18 *SAJHR* 463 and 'Constitutional Court Statistics for the 2002 Term' (2003) 19 *SAJHR* 506.

the data offered here should be taken as complementary rather than as conclusive, and should be interpreted with a high degree of care.

II SUMMARY

The 2003 term sees considerable unanimity in the Court's judgments, a characteristic of the Court's practice over the past several years. Of the 25 cases decided in 2003, 92 per cent were unanimous. There were two judgments that were not unanimous: Phillips and Thebus.² This represents an increase in unanimous judgments since 2002, and supports the general trend of increasing unanimity over recent years. In 2002, 85.3 per cent of the Court's judgments were unanimous. This figure represents the smallest percentage of unanimous judgments over the last three years. In 2001, 96 per cent of the Court's judgments were unanimous, while in 2000, the number of unanimous cases was 89,3 per cent.

The number of cases decided by the Court in 2003 demonstrates a slight deviation from the general trend of a steady increase in cases heard. In 2003 the Court delivered 25 judgments. The statistics for the previous years are as follows: in 2002 the Court delivered 34 judgments, in 2001 the Court delivered 25 judgments, in 2000, 28 judgments, in 1999, 19, in 1998, 21, in 1997, 20, in 1996, 27 and in 1995, the Court handed down 14 written judgments.

The Court ruled in favour of government in 46 per cent of the judgments. This shows a decrease from 2002, in which 67 per cent of the judgements were in favour of government. The 2003 figure is more consistent with the 2001 term, in which the Court ruled in favour of the government in 44 per cent of the cases. This was an increase from 2000, in which 31.6 per cent of the judgements were in favour of government. These figures are substantially lower than those of the years preceding 2000.³

As in 2002, in 2003 there were no cases dismissed for lack of jurisdiction. Eight per cent of the cases were referrals in terms of s 172(2)(a) of the 1996 Constitution and 48 per cent of the judgments involved direct appeals from the High Court in terms of s 167(6)(b). 32 per cent of the judgments involved applications for direct access to the Constitutional Court. These categories formed the bulk of the cases that the Court went on to hear. There was also one case that showed a recent jurisdictional basis, namely direct appeal from the Labour Appeals Court in terms of s 167(6)(b) of the 1996 Constitution read with Rule 18 of the Constitutional Court Rules.

² See the list of cases in III below.

³ See 'Constitutional Court Statistics for the 1996 Term' (1997) 13 SAJHR 208; 'Constitutional Court Statistics for the 1997 Term' (1998) 14 SAJHR 277; 'Constitutional Court Statistics for the 1998 Term' (1999) 15 SAJHR 256, read with (1999) 15 SAJHR 446 and 'Constitutional Court Statistics for the 1999 Term' (2000) 16 SAJHR 364. It should be noted, however, that the figures for 2000, 2001, 2002 and 2003 are lower than for previous years because it was decided to omit judgments that deal only with procedural issues from Tables 5 and 6. Had these been included, they would have been counted as 'for government' if the status quo ante had prevailed.

The average length of time between the hearing and the decision date (the date on which reasons are given) decreased considerably in 2003 to 81 days. This figure supports the trend of previous years, showing a steady decrease in the number of days taken: in 2001 it was 68.5 days, in 1999 it was 58 days, in 1998, 89 days, in 1997, 120 days, in 1996, 146 days, and in 1995, 119 days. The 2002 term and the 2000 term showed an increase in the length of time between hearing and decision date. In 2002, the average was 101 days, and in 2000, the average was 80,3 days.

III LIST OF 2003 CASES

Together with the abbreviations used in these tables, the cases decided with written judgments in 2003 are listed in chronological order based on the day the judgment was delivered. There are 25 cases covered in the 2003 statistics.

- (Phi) Phillips and another v Director of Public Prosecutions and others
CCT 20/02; 2003 (3) SA 345 (CC); 2003 (4) BCLR 357 (CC)
- (Sat) Satchwell v President of the Republic of South Africa and another
CCT 48/02; 2003 (4) SA 266 (CC); 2004 (1) BCLR 1 (CC)
- (Jb) J and B v Director General, Department of Home Affairs and others
CCT 46/02; 2003 (5) SA 621 (CC); 2003 (5) BCLR 463 (CC)
- (Npp) National Director of Public Prosecutions v Mohamed NO and others
CCT 44/02; 2003 (4) SA 1 (CC); 2003 (5) BCLR 476 (CC)
- (Sw1) Swartbooi and others v Brink and another
CCT 27/02; 2003 (5) BCLR 497 (CC)
- (Sw2) Swartbooi and others v Brink and another
CCT 27/02; 2003 (5) BCLR 502 (CC)
- (Wall) Wallach v High Court of South Africa and others
CCT 2/03; 2003 (5) SA 273 (CC)
- (Xin) Xinwa and others v Volkswagen of South Africa (Pty) Ltd
CCT 3/03; 2003 (4) SA 390 (CC); 2003 (6) BCLR 575 (CC)
- (Ing) Ingledew v Financial Services Board
CCT 6/02; 2003 (4) SA 584 (CC); 2003 (8) BCLR 825 (CC)
- (Sho) Shongwe v S
CCT 45/02; 2003 (5) SA 276 (CC); 2003 (8) BCLR 858 (CC);
2003 (2) SACR 103 (CC)
- (Eis) Minister of Home Affairs v Eisenberg and Associates in re: Eisenberg and Associates v Minister of Home Affairs and others
CCT 15/03; 2003 (5) SA 281 (CC); 2003 (8) BCLR 838 (CC)
- (Fou) Fourie and another v Minister of Home Affairs and another
CCT 25/03; 2003 (5) SA 301 (CC); 2003 (10) BCLR 1092 (CC)

- (The) Thebus and another v S
CCT 36/02; 2003 (6) SA 505 (CC); 2003 (10) BCLR 1100 (CC)
- (Om) Ex Parte Omar
CCT 32/03; 2003 (10) BCLR 1087 (CC)
- (Hde) Head of Department, Department of Education, Limpopo Province v Settlers Agricultural High School and others
CCT 36/03; 2003 (11) BCLR 1212 (CC)
- (Phe) Phenithi v Minister of Education and others
CCT 35/03; 2003 (11) BCLR 1217 (CC)
- (Gca) Gcali v MEC for Housing and Local Government in the Eastern Cape and others
CCT 29/03; 2003 (11) BCLR 1203 (CC)
- (Alx) Alexkor Ltd v Richtersveld Community and others
CCT 19/03; 2003 (12) BCLR 1301 (CC)
- (Dre) De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and others
CCT 5/03; 2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC)
- (Wcw) Western Cape Workers Association v Halgang Properties CC
CCT 44/03; 2004 (3) BCLR 237 (CC)
- (Wal2) Wallach v Registrar of Deeds (Pretoria) and others; Wallach v Spilg and others
CCT 33/03; CCT 45/03; 2004 (3) BCLR 229 (CC)
- (Merc) Mercer v S
CCT 43/03; 2004 (2) SA 598 (CC); 2004 (2) BCLR 109 (CC)
- (Mpb) Municipality of Plettenburg Bay v Van Dyk & Co Inc
CCT 42/03; 2004 (2) BCLR 109 (CC)
- (Vdw) Van der Westhuizen v S
CCT 60/03; 2004 (2) BCLR 117 (CC)
- (Sha) Shaik v Minister of Justice and Constitutional Development and others
CCT 34/03; 2004 (3) SA 599 (CC)

**TABLE 1: VOTING PATTERNS IN JUDGMENTS
DELIVERED – 2003**

Case	Judge											
	Ch	La	Ac	Go	Md	Mo	Ms	Ng	OR	Sa	Ya	Kr
Phi	c	c	-	c	D	c	-	C	c	C	L	c
Sat	c	c	c	c	c	-	c	-	L	-	c	-
Jb	c	c	c	L	c	c	c	-	c	-	c	-
Npp	c	c	L	c	c	c	c	c	c	-	c	-
Sw 1	c	c	-	c	-	c	c	c	c	-	L	c
Sw 2	c	c	c	c	c	c	c	c	c	-	L	-
Wal 1	ct	ct	ct	ct	ct	ct	ct	ct	ct	-	ct	-
Xin	ct	ct	ct	ct	ct	ct	ct	ct	ct	-	ct	-
Ing	c	c	c	c	c	c	c	L	-	-	c	-
Sho	ct	ct	-	ct	ct	ct	ct	ct	ct	-	ct	-
Eis	L	c	-	c	c	-	c	c	c	-	c	-
Fou	c	c	-	c	c	c	L	c	c	-	c	-
The	c	c	c	L	c	c	L	C	L	-	C	-
Om	ct	ct	ct	ct	ct	ct	ct	ct	ct	ct	ct	-
Hde	ct	ct	ct	ct	ct	ct	ct	ct	ct	ct	ct	-
Phe	ct	ct	ct	ct	ct	ct	ct	-	ct	ct	ct	-
Gca	ct	ct	ct	ct	ct	ct	ct	-	ct	ct	ct	-
Aix	ct	ct	ct	ct	ct	ct	-	ct	ct	ct	ct	-
Drc	c	L	-	c	c	c	c	c	c	-	c	-
Wcw	ct	ct	ct	-	ct	ct	ct	ct	ct	ct	ct	-
Wal 2	ct	ct	ct	-	ct	ct	ct	ct	ct	ct	ct	-
Merc	ct	ct	ct	-	ct	ct	ct	ct	ct	ct	ct	-
Mpb	ct	ct	ct	-	ct	ct	ct	ct	ct	ct	ct	-
Vdw	ct	ct	ct	-	ct	ct	ct	ct	ct	ct	ct	-
Sha	c	c	L	-	c	c	c	-	c	c	c	-

- 'L' indicates the leading judgment, containing the decision of the Court on the principal issue. The leading judgment will often but not always contain the order of the Court. Where several issues in different judgments are of significance, two or more judgments may be termed leading. Reasonable minds may well differ on this identification.
- 'C' indicates a separate concurrence with reasons with the order of the Court.
- 'c' indicates a concurring vote without reasons.
- 'ct' indicates a concurring vote in a unanimous Court judgment not attributed to any judge.
- 'D' indicates a separate dissent with reasons with the order of the Court. A vote to dispose of the case in any manner other than that adopted by the Court in its order is taken as a dissent. Thus, judgments expressing both concurrence and dissent are classified as dissents
- '-' indicates where a judge did not participate in the deciding of the case.

The judges covered in this table are: Chaskalson CJ (Ch), Langa DCJ (La), Ackermann J (Ac), Goldstone J (Go), Madala J (Md), Mokgoro J (Mo), Moseneke (Ms), Ngcobo J (Ng), O'Regan J (OR), Sachs J (Sa), Yacoob J (Ya), and Kriegler J (Kr).

TABLE 2: ACTIONS OF INDIVIDUAL JUDGES – 2003

	L judgment	C judgment	c Vote	D judgment	d Vote	Total
Ch	1	0	11	0	0	12
La	1	0	11	0	0	12
Ac	2	0	5	0	0	7
Go	2	0	9	0	0	11
Md	0	0	9	1	0	10
Mo	0	0	10	0	0	10
Ms	2	0	9	0	0	11
Ng	1	2	6	0	0	9
OR	2	0	9	0	0	11
Sa	0	1	1	0	0	2
Ya	3	1	8	0	0	12
Kr	0	0	2	0	0	2

This table is calculated on the same basis as Table 1, and omits the cases where judgments were given by 'The Court'.

TABLE 3: UNANIMITY PERCENTAGE – 2003

	Unanimous	With Concurrence (Without dissent)	With dissent	Total
Cases	23 92%	1 4%	1 4%	25 100%

In this table, 'unanimous' means that all judges concurred in both the judgment of the Court and the order. 'With concurrences (without dissent)' means that at least one judge wrote separately but concurred in the order of the Court and that no judge dissented. 'With dissent' means that at least one judge would have made a different order.

**TABLE 4: VOTING ALIGNMENTS:
JUDGES OF THE COURT -- 2003**

	Ch	La	Ac	Go	Md	Mo	Ms	Ng	OR	Sa	Ya	Kr
Ch	- 25/25 100%	19/19 100%	19/19 100%	19/19 100%	23/24 96%	23/23 100%	23/23 100%	20/20 100%	24/24 100%	12/12 100%	25/25 100%	2/2 100%
La	25/25 100%	- 19/19 100%	19/19 100%	19/19 100%	23/24 96%	23/23 100%	23/23 100%	20/20 100%	24/24 100%	12/12 100%	25/25 100%	2/2 100%
Ac	19/19 100%	19/19 100%	- 13/13 100%	19/19 100%	19/19 100%	18/18 100%	18/18 100%	14/14 100%	18/18 100%	11/11 100%	19/19 100%	-
Go	19/19 100%	19/19 100%	13/13 100%	- 16/17 94%	17/17 100%	17/17 100%	15/15 100%	18/18 100%	6/6 100%	19/19 100%	2/2 100%	2/2 100%
Md	23/24 96%	23/24 96%	19/19 100%	16/17 94%	- 21/22 95%	22/22 100%	18/19 95%	22/23 96%	12/12 100%	23/24 96%	0/1 0%	
Mo	23/23 100%	23/23 100%	18/18 100%	17/17 100%	21/22 95%	- 21/21 100%	19/19 100%	22/22 100%	12/12 100%	23/23 100%	2/2 100%	2/2 100%
Ms	23/23 100%	23/23 100%	18/18 100%	17/17 100%	22/22 100%	21/21 100%	- 18/18 100%	22/22 100%	10/10 100%	23/23 100%	1/1 100%	1/1 100%
Ng	20/20 100%	20/20 100%	14/14 100%	15/15 100%	18/19 95%	19/19 100%	18/18 100%	- 19/19 100%	9/9 100%	20/20 100%	2/2 100%	2/2 100%
OR	24/24 100%	24/24 100%	18/18 100%	18/18 100%	22/23 96%	22/22 100%	22/22 100%	19/19 100%	- 12/12 100%	24/24 100%	2/2 100%	2/2 100%
Sa	12/12 100%	12/12 100%	11/11 100%	6/6 100%	12/12 100%	12/12 100%	10/10 100%	9/9 100%	12/12 100%	- 12/12 100%	1/1 100%	1/1 100%
Ya	25/25 100%	25/25 100%	19/19 100%	19/19 100%	23/24 96%	23/23 100%	23/23 100%	20/20 100%	24/24 100%	12/12 100%	-	2/2 100%
Kr	2/2 100%	2/2 100%	- 2/2 100%	0/1 0%	2/2 100%	1/1 100%	2/2 100%	2/2 100%	2/2 100%	1/1 100%	2/2 100%	-

In this table, the second number represents the total number of cases in which two judges have sat together. The first number represents the number of cases in which two judges have either fully agreed in a judgment of the other, co-written a judgment, or fully agreed in a judgment of another judge. If a judge writes that s/he is concurring but only overall or with certain reservations or with any restatement of the other judge's views, this is not classified as full agreement. Thus, judgments that are in substance very similar may well be counted as not agreeing for the purposes of this table. No acting judges were involved in any of the recorded judgements of 2003.

TABLE 5: SUBJECT MATTER OF CASES DECIDED -- 2003

	Rights	Other	Total
Civil	Sat, Jb, Npp (3)	Sw2, Eis, Alx, Wcw (4)	7
Criminal	Phi, The, Dre (3)	Mer (1)	4
Intra-Governmental			
Total	6 54.5%	5 45.5%	11 100%

In this table cases are classified as 'criminal' when a person is subject to the criminal or penal laws. 'Intra-governmental' cases are those cases litigated between two or more organs of government or, as in certification proceedings, ex parte on behalf of one organ. Other cases are civil.

Cases are classified as rights-based if the majority judgment on the principal issue turns on a fundamental right. Judgments dealing with procedural issues (for example, refusal for direct access) are excluded except where the Court went on to address the merits of the case. The cases excluded on this basis are: Sw1, Wall, Xin, Ing, Sho, Fou, Om, Hde, Phe, Gca, Wal2, Mpb, Vdw, Sha.

TABLE 6: GOVERNMENT SUCCESS RATE – 2003

	For government	Against government
Civil	Npp, Eis	Abx, Sat, Jb, Sw2
Criminal	The, Dre, Merc,	Phi, Alx
Intra-Governmental		
Total	6 46%	7 54%

Cases are classified as 'for government' if a central, provincial or local government or an agency or a person in an official capacity prevails on the principal issue. A case is always counted as for the government if the status quo ante prevails. If the central government opposes another organ of government, the case is classified as for the government if the central government prevails. If a Chapter 9 institution opposes the government the case will be classified as against government if the Chapter 9 institution prevails. If agencies or organs of equivalent tiers of government are opposed to each other, the case is counted neither for nor against the government. Judgments dealing with procedural issues and judgments between private parties are left out of this table. These include Sw1, Wla1, Xin, Ing, Sho, Fou, On, Hde, Phe, Gca, Wca, Wla2, Mpb, Waw, Sha.

TABLE 7: JURISDICTIONAL BASIS OF CASES DECIDED-2003

BASIS OF JURISDICTION					
Direct Appeal from the LAC ito s167(6)(b) read with Rule 18 of the CC of the rules.	Direct access ito s167(6)(a) of the 1996 Constitution	Applications and referrals of orders of invalidity in terms of s172(2)(d) and s172(2)(a) of the 1996 Constitution respectively.	Appeals against orders of invalidity ito s172(2)(d) of the 1996 Constitution.	Direct Appeals from the High Court ito s167(6)(b) of the 1996 Constitution	Direct Appeals from the SCA ito s167(6)(b) of the 1996 Constitution
Wcw.	Sat, Wall, Sho, Om, Phe, Gca, Wal2, Vdw.	Phi, Jb.	Npp.	Sw1, Sw2, Xin, Ing, Eis, Fou, Hde, Dre, Mer, Mpb, Sha.	The, Aix.

This table examines the basis of jurisdiction after decision by the Court, rather than the jurisdiction invoked to place the case on the Court roll.

TABLE 8: TIME FROM HEARING TO DECISION* – 2003

	Hearing Date	Decision Date	Days to Written Order
Phi	29 August 2002	11 March 2003	194
Sat	11 March 2003	17 March 2003	6
Jb	27 February 2003	28 March 2003	29
Npp	25 February 2003	3 April 2003	37
Sw1	12 November 2002	3 April 2003	142
Sw2	26 February 2003	3 April 2003	36
Ing	18 February 2003	13 May 2003	84
Sho	30 May 2003	30 May 2003	0
Eis	20 May 2003	27 June 2003	38
The	20 February 2003	28 August 2003	189
Aix	5 September 2003	14 October 2003	39
Dre	14 May 2003	15 October 2003	154
Sha	11 November 2003	2 December 2003	21

Mean Time Hearing to Decision: 81 days.⁴

* Decision refers either to the day on which full judgment was made or reasons were given for an earlier order.

Where the hearing takes place over several days, the last day of the first continuous period of hearing is used for calculation. In some instances, cases were not heard in a full court session (Wall, Xin, Fou, Om, Hde, Phe, Gca, Wcw, Wal2, Merc, Mpb, Vdw). These cases have not been included in this table.

⁴ The mean time from hearing to decision was mistakenly put as 108 in the 2002 statistics. The correct mean time is 101 days.

**TABLE 9: PROSPECTIVE TERMS OF THE
CONSTITUTIONALCOURT JUDGES**

Name	Date of birth	Age at 31/12/2003 (in years and months)	Date of beginning of term office	Cut-off date of term of office*	Years until cut-off date (from 31/12/2003)
Chaskalson	24/11/1931	72yrs 1mth	07/1994	11/2006 (75)	2yrs 11mths
Kriegler	29/11/1932	71yrs 1mth	10/1994	11/2002 (70)	0mths ⁵
Ackermann	14/01/1934	69yrs 11mths	08/1994	01/2004 (70)	0yrs 1mth
Sachs	30/01/1935	68yrs 11mths	10/1994	09/2009 (FT15)	5yrs 9mths
Madala	13/07/1937	66yrs 5mths	08/1994	07/2009 (FT15)	5yrs 7mths
Goldstone	26/10/1938	65yrs 2mths	08/1994	07/2006 (FT12)	2yrs 7mths
Langa	25/03/1939	64yrs 9 mths	10/1994	09/2009 (FT15)	5yrs 9mths
Yacoob	03/03/1948	55yrs9mths	02/1998	01/2013 (FT15)	9yrs 1mth
Mokgoro	19/10/1950	53yrs 2mths	10/1994	09/2009 (FT15)	5yrs 9mths
Ngcobo	01/03/1953	50yrs9mths	08/1999	07/2011 (FT12)	7yrs 7mths
O'Regan	17/09/1957	46yrs 3mths	10/1994	09/2009 (FT15)	5yrs 9mths
Mosseneke	20/12/1947	56yrs	11/2002	01/2017 (FT15)	13yrs 1mth

*(75) indicates that the judge will turn 75 before his/her maximum 15 years of active service have been completed.

(70) indicates that the judge will turn 70 before his/ her maximum 12 years of office have been completed, but after more than 15 years of active service.

(FT12) indicates that the judge will be able to complete a full 12 year term before his/her 70th birthday, and will at the same time have performed a full 15 years of active service.

(FT15) indicates that the judge will be able to complete a full 15 years of active service term before his/her 75th birthday.

In terms of ss 4 of the Judges' Remuneration and Conditions of Employment Act 47 of 2001 Constitutional Court Judges' terms have been extended to 15 years in situations where their 12 year term has expired or they have reached the age of 70 before they have completed 15 years of active service as a judge, provided that they do not reach the age of 75 before this point. This table identifies the prospective terms of office of the Constitutional Court Judges as at 31 December 2003. Acting Judges are not included in this table.

JONATHAN KLAAREN

Professor of Law, University of the Witwatersrand

NIKKI STEIN

BULELWA RUDO MADEKUROZWA

CAROLINA NOMPHUMELELO XULU

Students of Law, University of the Witwatersrand

⁵ The official cut-off date for Kriegler's term of office was November, 2002, however he participated in three of the 2003 judgments. This is because these cases were heard in 2002, and judgments delivered in 2003. They therefore commenced before Kriegler retired from the Constitutional Court, but are included in the 2003 statistics because this was when the judgment was handed down.