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Klaaren, Jonathan

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STATISTICS

CONSTITUTIONAL COURT STATISTICS FOR THE 1997 TERM

INTRODUCTION

This section provides some descriptive statistics on the work of the Constitutional Court in the past year, organized in eight tables. This information should suplement the more substantive analyses presented in the other pages of this issue of the *SAJHR*. The method of constructing each table is given in the text following the table. These 1997 statistics are primarily drawn from data on the website maintained by the Faculty of Law of the University of the Witwatersrand at http://www.law.wits.ac.za. This section covers only cases in which a full written judgment of the Court is produced. Thus, matters disposed of without hearing or by judgment by a single judge – which would be important from the point of view of examining issues such as the control of the Court over its docket – are not included. The objectives and methods of this section are more fully laid out in the 1995 edition of this section.[1]

We present these statistics with caution and they should be read likewise. Statistics can often mislead. Furthermore, these statistics describe a small number of cases. Finally, in this section we do not examine the reasoning of judges nor do we examine the facts which the cases present. Thus, the data offered here should be taken as complementary rather than as conclusive and should be interpreted with a high degree of care.

As a whole and as between its members, the Constitutional Court in its 1997 Term exhibited a substantially lower degree of cohesiveness than it did the previous term. Of the decided cases in 1997, including the two provincial certification judgments, 63.2 per cent were unanimous (compared with the 1996 figure of 81.5 per cent) and a further 15.7 per cent had concurrences but no dissent (compared with last year's 14.8 per cent). In 1995, the comparable figures were 57.1 per cent and 21.4 per cent. In 1996, only one case (3.7 per cent) showed any dissent, *Du Plessis v De Klerk,* a change from the previous year, 1995, where there were three (21.4 per cent). The 1997 figures reveal dissent in four cases (21.1 per cent). Combined with the three cases where concurring judgments were issued, there was debate in seven cases or 36.8 per cent of the decided cases. This indicates that last year's strongly unanimous performance was exceptional. The registration of dissent or significantly differing reason-

1 See 'Constitutional Court Statistics for the 1995 Term' (1996) 12 *SAJHR* 39; see also 'Constitutional Court Statistics for the 1996 Term' (1997) 13 *SAJHR* 208.

ing in over one-third of the cases counters the perception held in some quarters that the Constitutional Court is void of debate.

The range of agreement rates between judges has also broadened considerably. Amongst the regularly sitting judges, the agreement rates – for full judgment agreement between any two judges – ranged from a low figure of 40 per cent between Didcott J and each of Ackermann J, Mokgoro J and O'Regan J to a high figure of 100 per cent between Chaskalson P and each of Ackermann J and Langa DP. See Table 4. In sum, while broadly cohesive, this Court is characterised by significant internal dialogue.

The Court's docket has shrunk since the previous term, as the total number of cases decided reduced from twenty-seven to nineteen. Criminal cases made up only 31.5 per cent of the total cases decided, indicating a slight increase compared to the previous term (29.6 per cent), but maintaining a substantial decline from 64.3 per cent in the 1995 term. The Court ruled against the prevailing government position in 36.8 per cent of its cases, as compared to last year's 33.3 per cent, and the previous term's 64.3 per cent.

This year's jurisdictional tables still largely concerned cases arising under the interim Constitution (68.4 per cent). The Court dismissed 15,4% of these cases, finding no jurisdiction. The Court granted jurisdiction on the basis of direct access in 21.1% of the cases it heard this year under both constitutions. Perhaps due to the fewer number of cases, the time litigants spent waiting for their cases to be decided as compared with last year decreased from 146.2 days to 120 days.

List of 1997 Cases

Together with the abbreviations used in these tables, the cases decided with written judgments in 1997 are listed here in chronological order of the day the judgment was delivered. Including the two provincial certification cases, there are 19 cases covered by the 1997 statistics.

(Fr) *Fraser v Children's Court, Pretoria North and others*
CCT 31/96; 1997 (2) SA 261 (CC); 1997 (2) BCLR 153

(Ct) *S v Coetzee and others*
CCT50/95; 1997 (3) SA 527 (CC); 1997 (4) BCLR 437

(Mot) *Motsepe v Commissioner of Inland Revenue*
CCT 35/96; 1997 (2) SA 898 (CC), 1997 (6) BCLR 692

(Pr) *Prinsloo v Van der Linde and others*
CCT 4/96; 1997 (3) SA 1012 (CC); 1997 (6) BCLR 759

(Hg) *President of the Republic of South Africa v Hugo*
CCT 11/96; 1997 (4) SA 1 (CC); 1997 (6) BCLR 708

(Nt) *Minister of Justice v Ntuli*
CCT 17/95 and 15/97; 1997 (3) SA 772 (CC); 1997 (6) BCLR 677

(Fs) *Fose v Minister of Safety and Security*
CCT 14/96; 1997 (3) SA 786

(WC1) *Ex parte Speaker of the Western Cape Provincial Legislature: In re Certification of the Constitution of the Western Cape, 1997*
CCT 6/96; 1997 (4) SA 795 (CC); 1997 (9) BCLR 1167

(Pn) *S v Pennington and another*
CCT 14/97; 1997 (4) SA 1076 (CC); 1997 (10) BCLR 1413

(Pb) *Parbhoo v Getz and another*
CCT 16/97; 1997 (4) SA 1095 (CC); 1997 (10) BCLR 1337

(Lw) *S v Lawrence; S v Negal; S v Solberg*
CCT 38/96; 39/96; 40/96; 1997 (4) SA 1176 (CC); 1997 (10) BCLR 1348

(Hk) *Harksen v Lane NO* and others
CCT 9/97; 1998 (1) SA 300 (CC); 1997 (11) BCLR 1489

(Hkp) *Hekpoort Environmental Preservation Society v Minister of Land Affairs and others*
CCT 21/97; 1998 (1) SA 349 (CC); 1997 (11) BCLR 1537

(Nts) *S v Ntsele*
CCT 25/97; 1997 (11) BCLR 1543

(WC2) *Ex parte Speaker of the Western Cape Provincial Legislature: In re Certification of the amended text of the Constitution of the Western Cape, 1997*
CCT 29/97; 1998 (1) SA 655 (CC); 1997 (1) BCLR 1

(LO) *Larbi-Odam v MEC for Education (North-West Province)*
CCT 2/97; 1998 (1) SA 745 (CC); 1997 (12) BCLR 1655

(Soo) *Soobramoney v Minister of Health (Kwa-Zulu Natal)*
CCT 32/97; 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696

(Snd) *Sanderson v Attorney-General, Eastern Cape*
CCT 10/97; 1998 (2) SA 38 (CC); 1997 (12) BCLR 1675

(EZ) *East-Zulu Motors v Empangeni/Ngwelezane Transitional Local Council*
CCT 44/96; 1998 (2) SA 61 (CC); 1998 (1) BCLR 1

TABLE 1: VOTING PATTERNS IN CASES DECIDED – 1997

Judge	Ch	La	Ac	Di	Go	Kr	Md	Mo	OR	Sa	Mh	Ke
Case												
Fr	c	c	c	c	–	c	c	c	c	c	L	–
Ct	c	L	C	C	–	c	D	D	D	C	C	D
Mot	c	c	L	c	c	c	c	c	c	c	–	–
Pr	c	c	L	C	c	c	c	c	L	L	c	–
Hg	c	c	c	D	L	D	c	C	C	c	c	–
Nt	L	c	c	c	–	c	c	c	c	–	-	–
Fs	c	c	L	C	–	C	c	c	C	c	c	–
WC1	c	c	c	–	c	c	c	c	c	c	–	–
Pn	L	c	c	–	c	–	c	c	c	c	–	–
Pb	c	c	L	–	c	c	c	c	c	c	–	–
Lw	L	c	c	–	d	c	d	c	D	L	–	–
Hk	c	c	c	–	L	c	d	d	D	D	–	–
Hkp	c	c	L	–	c	c	c	c	c	c	–	–
Nts	c	c	c	–	c	L	c	c	c	c	–	–
WC2	c	c	c	c	c	c	c	c	c	c	–	–
LO	c	c	c	c	c	c	c	L	c	c	–	–
Soo	L	c	c	c	c	c	C	c	c	C	–	–
Snd	c	c	c	–	c	L	c	c	c	c	–	–
EZ	c	c	c	–	c	c	C	c	L	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.[2] Reasonable minds can well differ on this identification.

'C' indicates a separate concurrence with reasons with the order of the Court.

'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, for example Madala J's judgment in *Du Plessis v De Klerk*.

'c' indicates a concurring vote without reasons.

'd' indicates a dissenting vote without reasons.

'–' indicates that the Judge or Acting Judge did not participate in deciding the case.

The two Western Cape provincial constitution certification judgments do not fit easily into these tables. The two judgments were each unanimous and no author was identified. For purposes of these tables, each of the participating judges (Didcott J did not participate in the first certification judgment) is given a 'c'.

2 See 'Constitutional Court Statistics for the 1995 Term' op cit note 1 at 41 for examples and further explanation.

The judges covered in these tables are Chaskalson P (Ch), Langa DP (La), Ackermann J (Ac), Didcott J (Di), Goldstone J (Go), Kriegler J (Kr), Madala J (Md), Mokgoro J (Mo), O'Regan J (OR), Sachs J (Sa), Mahomed DP (Mh), and Kentridge AJ (Ke).

TABLE 2: ACTIONS OF INDIVIDUAL JUDGES – 1997

	LdJ	Concur	C vote	Diss	D vote	Total
Ch	4	–	15	–	–	19
La	1	–	18	–	–	19
Ac	5	1	13	–	–	19
Di	–	3	6	1	–	10
Go	2	–	12	–	1	15
Kr	2	1	14	1	–	18
Md	–	2	14	1	2	19
Mo	1	1	15	1	1	19
OR	2	2	12	3	–	19
Sa	2	2	13	1	–	18
Mh	1	1	3	–	–	5
Ke	–	–	–	–	1	1

This table is calculated on the same basis as the preceding one.

TABLE 3: UNANIMITY PERCENTAGE – 1997

	Unanimous	With Concurrences (Without Dissent)	With Dissent	Total
A: Cases (Cert)	12(63.2%)	3(15.7%)	4(21.1%)	19(100%)
B: Cases (No Cert)	10(58.8%)	3(17.6%)	4(23.5%)	17(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 1997

	Ch	La	Go	Ac	Mo	Md	OR	Sa	Kr	Di
Ch	-	19/19	14/15	19/19	15/19	16/19	14/19	15/18	16/18	8/10
		100%	93.3%	100%	78.9%	84.2%	73.6%	83.3%	88.8%	80%
La	19/19	–	13/15	17/19	15/19	16/19	14.19	15/18	15/18	7/10
	100%		86.6%	89.4%	78.9%	84.2%	73.6%	83.3%	83.3%	70%
Go	14/15	13/15	–	14/15	11/15	13/15	13/15	12/15	12/14	5/7
	93.3%	86.6%		93.3%	73.3%	86.6%	86.6%	80%	85.7%	71.4%
Ac	19/19	17/19	14/15	–	14/19	15/19	14/19	14/18	15/18	4/10
	100%	89.4%	93.3%		73.6%	78.9%	73.6%	77.7%	83.3%	40%
Mo	15/19	15/19	11/15	14/19	–	16/19	14/19	16/18	12/18	4/10
	78.9%	78.9%	73.3%	73.6%		84.2%	73.6%	88.8%	66.6%	40%
Md	16/19	16/19	13/15	15/19	16/19	–	16/19	15/18	12/18	6/10
	84.2%	84.2%	86.6%	78.9%	84.2%		84.2%	83.3%	66.6%	60%
OR	14/19	14/19	13/15	14/19	14/19	16/19	–	13/18	12/18	4/10
	73.6%	73.6%	86.6%	73.6%	73.6%	84.2%		72.2%	66.6%	40%
Sa	15/18	15/18	12/15	14/18	16/18	15/18	13/18	–	11/17	4/9
	83.3%	83.3%	80%	77.7%	88.8%	83.3%	72.2%		64.7%	44.4%
Kr	16/18	15/18	12/14	15/18	12/18	12/18	12/18	11/17	–	7/10
	88.8%	83.3%	85.7%	83.3%	66.6%	66.6%	66.6%	64.7%		70%
Di	8/10	7/10	5/7	4/10	4/10	6/10	4/10	4/9	7/10	–
	80%	70%	71.4%	40%	40%	60%	40%	44.4%	70%	
Mh	5/5	4/5	2/2	4/5	4/5	4/5	2/5	4/5	3/5	2/5
	100%	80%	100%	80%	80%	80%	40%	80%	60%	40%
Ke	0/1	0/1	0/0	0/1	0/1	0/1	0/1	0/1	0/1	0/1

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 the 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 she 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.[3] Thus, judgments which are philosophically very similar may well be counted as not agreeing for the purposes of this table.

3 See ibid for further discussion of the method of determining agreement.

TABLE 5: SUBJECT MATTER OF CASES DECIDED – 1997

	Rights	Other	Total
Civil[4]	7	4	11 (58%)
Criminal[5]	5	1	6 (31.5%)
Intra-Governmental[6]	-	2	2 (10.5%)
Total	12 (63.2%)	7	19 (36.8%) (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 between two organs of government or, as in the certification judgments, ex parte on behalf of one organ. Other cases are 'civil'.

Cases are classified as rights cases if the majority judgment in the principal issue turns on a fundamental right.

In 1995 and 1996, this table and the following were combined into one.

TABLE 6: GOVERNMENT SUCCESS RATE – 1997

	Gov	v Gov
Civil	8[7]	3[8]
Criminal	3[9]	3[10]
Intra-Governmental	1[11]	1[12]
Total	12 (63.2%)	7 (36.8%)

Cases are classified as for the 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 also 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 agencies or organs of equivalent tiers of government are opposed, the case is counted neither for nor against the government. Due to its relatively formalistic definition, this statistic should be used with particular caution.

4 Fr, Mot, Pr, Fs, Pb, Hk, Hkp, LO, Soo, Snd, and EZ.
5 Ct, Hg, Nt, Pn, Lw, and Nts.
6 WC1 and WC2.
7 Mot, Pr, Fs, Hk, Hkp, Soo, Snd, and EZ.
8 Fr, Pb, and LO.
9 Hg, Pn, and Lw.
10 Ct, Nt, and Nts.
11 WC2.
12 WC1.

TABLE 7: JURISDICTIONAL BASIS OF CASES DECIDED – 1997

Interim Constitution	
Section 100(2)	2 (15.4%)
Snd, Nt	
Section 102(1)	4 (30.8%)
Fr, Ct, Pr, Hk	
Section 102(11)	2 (15.4%)
Fs, Lw	
Section 102(12)	2 (15.4%)
LO, EZ	
Section 98(2)(b)	1 (7.7%)
Hg	
Dismissed	2 (15.4%)
Mot, Hkp	
Sub-Total for Interim Constitution	13 (100%) (68.4 % of 1997 docket)
Final Constitution	
Section 167(4)(f)	2 (33.3%)
WC1, WC2	
Section 172(2)(b)	2 (33.3%)
Pb, Nts	
Section 173 (read with s 167(6))	2 (33.3%)
Pn, Soo	
Sub-Total for Final Constitution	6 (100%) (31.6 % of 1997 docket)
Total	19 (100%)

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

TABLE 8: TIME FROM HEARING TO DECISION – 1997

Cases Decided (Hearing date)	(Decision date)	Days To Decision
Fr (12 Sept 1996)	(5 Feb 1997)	146
Ct (19 March 1996)	(6 March 1997)	352
Mot (4 March 1997)	(27 March 1997)	23
Pr (7 November 1996)	(18 April 1997)	162
Hg (12 November 1996)	(18 April 1997)	157
Nt (22 May 1997)	(5 June 1997)	14
Fs (10 September 1996)	(5 June 1997)	268

Cases Decided (Hearing date)	(Decision date)	Days To Decision
WC1 (15 May 1997)	(2 September 1997)	110
Pn (21 August 1997)	(18 September 1997)	28
Lw (6 May 1997)	(6 October 1997)	153
Hk (26 August 1997)	(7 October 1997)	42
WC2 (18 November 1997)	(18 November 1997)	1
LO (27 May 1997)	(26 November 1997)	173
Soo (11 November 1997)	(27 November 1997)	16
Snd (2 September 1997)	(2 December 1997)	91
EZ (20 May 1997)	(4 December 1997)	198
Mean Time Hearing to Decision:		120 days.

Where hearing a matter takes place over several days, the last day of the first continuous period of hearing is used for calculation. In some instances, judgments were written for cases that were not given an oral hearing.[13] No time calculation is made for such cases.

LYNN TAYLOR
Student of Law, University of Witwatersrand
JONATHAN KLAAREN
Senior Lecturer in Law, University of Witwatersrand

13 Pb was decided on 18 September 1997; Hkp on 8 October 1997; and Nts on 14 October 1997.