

PRACTICAL STEPS AND BEST PRACTICES IN ACHIEVING SPEEDY TRIALS IN CRIMINAL JUSTICE SYSTEMS:AN EXPERIENCE FROM UGANDA

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Background:

- Speedy trials (ST) is or should be a matter of concern in any criminal prosecution
- Not easy to define and will depend on many variables
- A trial completed in the most expeditious manner in any given circumstances
- ST must protect all parties to the prosecution as well as the public
- In sub Saharan Africa it is a constitutional guarantee and jealously guarded. Still remains a visible problem

Scope of the paper

- A discussion of the legal and policy framework within which criminal trials are conducted
- Innovations by Courts and other justice actors to curb delay in trials
- Uganda is the focus but with a limited comparative study with other legal regimes and jurisdictions
- Possible solutions to improve the criminal trial process without compromising quality of prosecutions and respect for human rights for the victim and offender

Methodology

- Desk review
- Experiences of the author: previously as defence counsel, public defender then JO
- Informant interviews with purposefully selected justice actors

Background: International human rights frame work

- Article 10 UDHR: a fair and public hearing by an independent impartial trial
- Article 9(3) ICCPR: suspect to be placed before a court for trial within a reasonable time or release. As a minimum, trial shall be carried out without delay
- Article 6(1) Convention for the Protection of Human Rights & Fundamental Freedoms
- Article 40(2) Convention on the Rights of the Child (CRC): presence of parent or legal guardian

International instruments cont...

All ratifying States must:

- respect, promote protect, and fulfil
- Prevent violations
- Provide an enabling environment for enjoyment of the right
- Make tangible provision in certain circumstances
- State and duty bearers to refrain from violations or to interfere with enjoyment of the right

Background: cont....

- Special attention for vulnerable and marginalized offenders and circumstances underpinning their special circumstances including discrimination
- Women,
- Children
- Physically and mentally impaired
- Indigent

Scope of the right

International human rights law

- Definition is not readily available and cannot be uniform
- General comment No/ 27: A hearing can only be fair if conducted expeditiously
- Deprivation of liberty should not last longer than is necessary in the circumstances of a given case
- What is reasonable depends on the circumstances: complexity, conduct of the accused, manner of handling by the judicial and other authorities
- More dexterity is required when bail is denied
- Time frame should include final judgment on appeal

Scope of the right: cont

- ▶ **African Commission**
- ▶ Principles and Guidelines on the right to a fair trial and Legal Assistance 2003
- ▶ One receives a trial with produces a final judgment and sentence without undue delay
- ▶ Complexity of the case, conduct of parties, conduct of other relevant authorities, remand during trial, interests of all persons in the proceedings
- ▶ **Kanyamunyu V UG:** all stages in a trial must take place in a speedy manner
- ▶ **Kuku V UG:** The hearing should commence in good time, proceed at a reasonable pace and be completed within a reasonable period.

Purpose/safeguards of SP

- Speedy trials are a matter of public interest.
- Accused is protected against oppressive pre trial incarceration
- Loss of livelihood, consortium with family etc.
- Protection from the anxiety and concern accompanying public accusation
- Limit the possibility of fading memories of the victims and witnesses, their disappearance or loss of interest
- All above in general impair the offender's ability to build a strong defence
- Prolonged trials may have direct implications on forfeitures and reparations

Uganda

- Dualistic approach to ratification
- Article 126: Justice shall not be delayed
- Article 28: One facing a criminal charge is entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law
- Fits into the wider provisions of due process that is a corner stone for both civil and criminal trials
- Article 44(c) fair hearing is a non derogable right

Uganda cont..

- Constitution: Time frame between arrest and first appearance in Court is 24hrs
- No other principle or subsidiary legislation
- Courts have interpreted the constitutional provisions in an attempt to define the scope of the right
- Reparation trial)are available if violated
- (including discontinuance of the

Comparative jurisdictions for SP

- Bill of Rights of Ghana, Kenya, South Africa and Nigeria
- Section 36(1) Nigeria: A person charged with a criminal offence is entitled to a fair hearing in public within a reasonable time by a court of Tribunal,

Impediments to the right

- The pre trial processes are out of reach of Courts and in control of other justice actors
- Remand until committal to the High Court
- Trial within a trial
- *Voire dire* proceedings
- Bail
- Trial of the mentally and physically impaired

Impediments to the right: cont....

- Delays and superciliously expedited trials in specialized Courts e.g. International Crimes Divisions the Court Martial
- Disclosure, special measures, interim application, out reach missions
- Cost implications
- Three panel Judges
- Summary executions

Impediments Cont...

- Inadequate funding to the Judiciary
- Changing social and economic dynamics lead to increased crime
- Political interference
- Legal technicalities
- Delay by litigants
- Inadequate funding and staffing for ODPP and police

Consequences

- ▶ Human rights violations
- ▶ Fair decisions for either the victim or accused are undermined
- ▶ Loss of memory
- ▶ Loss of interest and migration
- ▶ Impairs ability to prepare defence
- ▶ Loss of public confidence
- ▶ Congestion in places of detention
- ▶ Physical and sexual abuse in places of detention
- ▶ Loss of livelihood family live etc

Interventions and Innovations by Courts

- DPP has singular constitutional powers to discontinue criminal prosecutions
- Checking DPP's powers to discontinue proceedings
- Section 4(2)(a) Judicature Amendment Act
- The right to grant bail: as a discretionary right or for mandatory bail
- **The Constitutional(Bail Guidelines of Courts of Judicature) Practice Directions 2022 (under challenge in the Constitutional Court)**
 - Ensure compliance with the constitution
 - Promote uniformity and consistency in terms
 - Balance the rights of applicants and the public
 - Strip Magistrates of their powers to grant statutory bail

Innovations General: Uganda

- Case Backlog committee headed by DCJ
- Seeks solutions to the case back log challenge
- Escalating back log problem in all courts
- Paradigm shift from case backlog to case load management
- Innovations: changes in attitude/mindset, work methods,
- Reduce incentives for backlog growth
- Access and counter the gap between filing and disposal
- ECCMIS, small claims, mediation, criminal law innovations

Nigeria Innovations

- ▶ Electronic Performance Management System (PMS)
- ▶ Technology as a judicial aid to evaluate activities within well defined time lines for both management and staff
- ▶ Used to monitor and track assignment of cases and identify gaps and resolve gaps for timely trial and scheduling of court dates
- ▶ Judges are tracked on the way they discharge and fast track cases

Children:

Children Act

- All matters of children to be given priority and handled expeditiously
- After plea, a trial shall last three months or 12 months or be dismissed
- Remand for capital offences not to exceed 6 months
- Only 7 functional remand homes and one detention centre
- Long distances to court from remand homes
- Proactive courts hold sessions inside the homes: Zero back log

The Chain linked approach

- Emphasis on inter agency cooperation
- 2001 Justice & Law Order Sector (JLOS) the Key justice actors under a secretariat
- District Coordinating Committees (Chief Magistrate)
- Regional Coordinating Committees (High Court circuits)
- Review and monitoring at secretariat
- Replaced by the Governance & Security Program with similar objectives and membership with Judiciary as a leading institution

Plea Bargain Procedure

- 2014 pilot
- A hybrid of the PG initiated by the accused person
- An accused who appreciates their culpability offers a PG
- Drop one or more charges, reduce a charge, recommend a suitable sentence

Plea Bargain Procedure

- ▶ **Regulated by The Judicature (Plea Bargain) Rules 2016**
- ▶ Offer a predictable, uniform, consistent and timely resolution of criminal matters
- ▶ Enable the accused and prosecution reach a timely resolution of prosecutions
- ▶ The accused and prosecution in consultation with the victim can agree on an appropriate punishment
- ▶ Facilitate reduction in case backlog and prison congestion
- ▶ Provide quick relief from anxiety of criminal prosecution
- ▶ Accused persons can own up to their criminal responsibility
- ▶ Involve the victim in the adjudication process.

Plea Bargain Procedure: Requirements

- Full disclosure by prosecution
- Victim participation is a must
- Minimal judicial intervention save to guide, accept or reject sentence
- If accepted, the PB is reduced into an agreement that the Court must endorse

Plea Bargain Procedure cont....

- Must be made voluntarily and with full knowledge of the facts and consequences of the PG
- Appreciate that right to full trial is being waived
- The agreement must not run contrary to public interest
- Once accepted the process runs akin to PG proceedings
- If it fails, or the JO rejects the sentence, the trial resumes before a new JO.

Plea Bargain Procedure cont.....Success

- Pre trial bureaucracy and trial delays are avoided
- Any one ready to plead is immediately processed through the system
- It is a short and certain exercise
- Currently offered in all High Courts and being piloted in Magistrates courts
- Reduced back log aged 3+ from 24% in 2017 to 17% in 2019
- FY 2021/22 **2,144** cases disposed of in 15 court sessions a rate of 98% of registered cases

Plea Bargain Procedure cont.....Set backs

- Illiteracy
- Trading the right to innocence and a trial because of prolonged remand periods
- PB camps are held within prison premises which may compromise free bargaining
- Case backlog clearance interests against victim interests
- Funding constrains on victim participation
- Mistakes and ignorance of Jos leading to appeals
- The public is yet to understand the process (retributive v restorative justice)
- Child offenders are still excluded

Other innovations

- Self autonomy through the **Administration of Judiciary Act 2021** led to more Jos and criminal sessions
- Case clearance teams and circuit Judges hold criminal sessions
- Day to day hearing of criminal trials: 100% disposal rate
- Committals done soon after arrest
- The State brief Scheme is now better funded and more seriously regulated
- Members of the Bar and other participating CSOs with improved ethics and professionalism offer defence
- The Legal Aid Bill: Legal Aid by the State and related matters

Children & Other vulnerable offenders

- Child offenders are given priority
- Trials are moved into remand homes
- Bail for children is often respected
- Sentencing for capital offenders in the High Court
- Child friendly procedures e.g. use of video link technology
- Judicial attire and court decorum and setting
- Trials in camera or in chambers when necessary

Sexual & Gender based violence

- Defilement by far the most common offence
- Specialized trials for SGBV 4 year project to dispose of SGBV related cases in selected districts
- Returned 88% clearance rate
- Special training for Jos under the National Association of Women Judges-Uganda –interdisciplinary approach to trials is encouraged
- Gender responsive adjudication to SGBV crimes and respect for rights of women and girls being the most likely victims
- **Specialized courts are projected**

Innovations in the ODPP

- ▶ Case review and management by weed out sessions to eliminate poor cases
- ▶ *Nolle prosequere* more readily applied for deserving cases
- ▶ Routine training especially with regard to trials involving, white collar crime, international crimes, vulnerable victims and accused persons
- ▶ Use of anatomical dolls and other victim friendly apparatus
- ▶ Prosecutors are still out numbered by Jos leading to fatigue and reduced quality
- ▶ Funding constraints

Innovations at the private Bar

- LAP: Pro bono scheme of the Uganda Law Society
- Pro bono day-1500 lawyers at hand to give legal advise
- Provide defence to the plea bargain scheme
- Pro bono app where legal aid is offered
- Duty Counsel at police and court rooms in 7 districts
- No sanctions for not participating but awards are used to encourage and recognize
- By next year pro bono at the Bar will be compulsory

Innovations by CSO

- Prison visits, sensitization, train offenders in self representation, limited defence
- FHRI offered a para legal scheme and tracer services for missing or misplaced police files
- Legal Aid Clinic of LDC: pro bono education for Bar course students,
- Student practice program: Juveniles in conflict with the law, pro bono defence by students, reconciliation for petty offenders and diversion program for juveniles at police stations

Innovations by police

- ▶ Deliberate effort to increase detective numbers
- ▶ Improved networking with other justice actors
- ▶ Result oriented work plans: appraisal is against number of cases properly investigated
- ▶ Allow for a prosecution led investigation by working closely with ODPP
- ▶ Case prioritization: fully investigate a few cases
- ▶ Elaborate curriculum for investigators, SOC officers in areas of gender & white collar crime
- ▶ Funding acquired to bolster scientific led investigations
- ▶ Mini laboratories to aid the central Lab in forensic analysis
- ▶ Department of Women Affairs & GBV Dept : CFP Unit is a full department.
- ▶ Diversion for juveniles and petty offenders and Guidelines updated

Recommendations and the Way Forward

- The right which has important status in most Bills of Right must be respected and promoted
- States are mandated to provide improved funding to judiciaries and other justice actors as a first step to promote and protect the right
- More efficient and well funded courts and justice actors stationed nearer to the people will translate into expeditious trials
- Innovation by Courts and other justice actors are noted and encouraged
- General consensus on time limits to conclude investigations, pre trial and trial procedures are imperative
- Legislative reform and positive policy can formalize innovations
- Specialized courts and tribunals need to be set up but properly regulated with constitutional safeguards
- Continuous training for Jos and other justice actors and judicial activism is encouraged