

Technology: A Leading Edge for Reducing Pre-trial Detention in Africa. Lessons from Kenya.

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Objectives

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SCOPE OF PRETRIAL DETENTION

For this discourse, Pretrial detention occurs when a person charged with a crime or alleged to have committed an offence is deprived of his right to personal liberty pending the perfection of bail or determination of his guilt or innocence by a court of competent jurisdiction.

This would include any person who has been deprived of their liberty and is:

- i) undergoing investigation, they are being interrogated by the investigating agency and are yet to be charged;**
- ii) awaiting trial, the period after an investigation is completed and a decision taken to bring a court case;**
- iii) undergoing trial, while the trial is taking place but unable to perfect bail conditions, bail was denied, or bail was not sought because he/she lacks legal representation.**

Pretrial Detention trends and Data in Africa

Seven of the world's 20 countries with high pretrial detention rates are in Africa.

Gabon has the highest pretrial detention rate of 80%.

In contrast, Nigeria's numbers have continued to increase despite spirited efforts by the government and other stakeholders to reduce pretrial detention and overcrowding.

As of March 2017, the World Prison Brief (2017) report stated that 68 259 persons were awaiting trial at a 125% occupancy rate.

As of September 2022, 70% of inmates are awaiting trial at a 136.7% occupancy rate.

LEGAL FRAMEWORK ON THE USE OF PRETRIAL DETENTION

The Universal Declaration of Human Rights enshrines the rights of everyone charged with a criminal offence thus;

"Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defence". Article 11(1)

The International Covenant on Civil and Political rights was more specific;

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and by the procedure established by law." Article 9 (1)

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the Judgement." Article 9 (3)

These rights are also detailed in regional human rights instruments, including the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), the United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Section 36 of the 1999 Constitution of the Federal Republic of Nigeria reiterates the presumption of innocence, and the Court of Appeal has given credence to it in a plethora of Cases.

Drawbacks on the use of Pretrial Detention

- Overcrowding, compounded by a lack of basic facilities and poor sanitary conditions, is the bane of most detention and prison facilities in the continent. In Nigeria and several other countries, acts of torture, human rights violations and other inhumane or ill-treatment occur at various stages of pretrial detention, targeting specific vulnerable groups to obtain information about crimes or extracting confessions.
- Excessive time spent in pretrial detention can also contribute towards reoffending or recidivism. In many African systems, there is no separation on the type of class of offenders housed in a holding facility.
- Being in prison compromises the ability to prepare a defence, making it difficult to consult with one's lawyer, review the prosecution case and prepare for trial. This raises the risk of a miscarriage of justice.
- Even short periods in detention disrupt family and private life and the ability to work and earn a living, with potentially long-term consequences.
- People in custody are at greater risk of pressure from police or prosecutors to confess or accept plea deals in exchange for release on bail or for dropping more severe charges. This, in turn, raises the risk of wrongful convictions.

Why the overuse of pretrial detention

Some reasons for the overuse of pretrial detention;

- Restrictive Laws that promote Pretrial Detention
- Procedural Factors
- Police and Prosecutorial Influence
- Corruption
- Lack Of Coordination Between Criminal Justice Agencies
- Prolonged Judicial Process due to lack of automation
- Inadequate Legal Representation And Assistance
- Police And Prosecutorial Influence
- Failure to Innovate

Of the nine reasons listed above, the last six can be managed better by digitising the criminal justice process.

Technology, a leading edge for reducing pretrial detention in Africa

Technology in this part of the discourse refers to the use of software and hardware to provide, aid and support the administration of criminal justice from the entry point to the exit point. It offers criminal justice actors the opportunity to improve their overall efficiency and to revolutionise the way, ease, speed and time with which criminal justice administration is carried out.

Outside of pretrial services, the legal sector has experienced a shift in how practice is done through the digitisation of legal resources for lawyers, judges and other stakeholders. Internet access allows practitioners to swiftly access case laws, statutes, and legal materials from across the globe. In addition, legal empowerment is enhanced through legal content posted on social media.

Case Management Technology

The Police

Case management technology offers a robust system to digitally transform the processes of tracking, investigation, monitoring, and collating data within the police force to allow for a more efficient and productive workflow. Cases of missing files or forgetting suspects in detention leading to prolonged use of awaiting trial will be bygone. With case management technology, the police can track suspects that have exceeded the constitutional holding time. The system can harmonise all the information pertinent to a suspect or a case and offer all the necessary tools for a proper follow-up.

By going digital, the police force can convert all paper forms needed — from arrest to release— into digital forms that can be accessed on any digital device, ensuring that everything is properly documented and transparent.

A Judicial Case management system typically has the following:

- electronic filing and electronic service of court documents
- electronic case search
- electronic diary
- electronic case tracking system
- electronic payment and receipting
- electronic signature and electronic stamping
- exchange of electronic documents, including pleadings and statements
- use of technology in case registration and digital recording of proceedings for expeditious resolution of cases

Verification and Identity Management Technologies

There are often reports of police profiling and police brutality, leading to increased pretrial detention. When making an arrest, the need to know 'exactly who a person is vital. Using ID verification technologies, police officers can match the information provided by the suspect at the point of arrest with the information in a different database— say, a national database — that can serve as a source of truth. For example, in Nigeria, officers can match a person's face or information with the National Identification Number or Bank Verification Number.

Automation of Court Hearings

Efficiency is enhanced by reducing paperwork and potential loss of physical court documents that may delay justice delivery. During COVID-19, several countries worldwide had to go for virtual court sessions, with Kenya leading the pack in Africa. With Virtual Court Sessions where appropriate, defendants' time and resources used in travelling to access justice would be saved. It also saves time for police officers, who can give their evidence virtually and have time to attend to other official duties. In addition, the prisons get the convenience of not transporting prisoners to courts. Virtual courts also reduce the costs of transferring and protecting vulnerable witnesses, thus reducing the cost of access to justice.

Electronic Monitoring of Cases

Technology can track pretrial detention and court cases to see if they are in sync with the timeline provided by local laws. In 2021, Gavel, a non-profit organisation, launched Justice clock. This web-based platform serves as a central database. It provides an easy-to-use information-sharing feature amongst stakeholders to reduce the high percentage of awaiting trial persons and introduce/manage non-custodial sentencing measures. Justice Clock was able to help track legal advice and charge sheets, and the quick issuance of same.

E-legal Aid

One of the reasons for increased pretrial detention is the absence of legal aid. Unlike the days where practitioners have to go to prison to interview inmates, people now use social media to cry or call for help. Hope Behind Bars Africa has a network of over 100 lawyers in 7 out of Nigeria's 36 states. It is also connected to the Legal Aid Council which has lawyers in the 36 states. A number of awaiting trial persons helped by the organisations were referred via social media. Once a complaint is received, the team at Hope Behind Bars Africa assess the case and, if it falls within their purview, connects the person seeking redress with a nearby lawyer.

Correctional Database System

Digitizing the prison system will help monitor the progress of pending cases and the movement of suspects between the courts and prison. It would also help tracking those who are awaiting trial for the longest time.

Factors that Hinder Broad Adoption Technology in the Criminal Justice Process

- i. Although video conferencing is a substitute for physical court appearances, assessing non-verbal cues, such as the defendants' emotions and eye movements, to gauge credibility is limited compared to a physical court appearance. Additionally, virtual court appearances do not allow for the proper detection of signs of torture and ill-treatment of accused persons. Virtual courts may also potentially skew the criminal justice system against persons deprived of freedom as they may feel intimidated and lack confidence when they cannot physically appear before a judge.
- ii. Affordable and secure internet connectivity is another potential challenge that tends to be compounded by limited electricity connectivity. In cases where defendants do not have a strong internet connection, their ability to fully defend themselves virtually may be compromised.
- iii. The ability of judicial officers, police or pretrial detainees to effectively use digital technology is also a challenge.

v. There are also potential threats from cyber-attacks that may jeopardise digital technology in courts and compromise the integrity of court proceedings.

v. The high cost or access to technology is another factor. A high amount of capital needs to be invested in implementing digitalisation.

vi. All technological devices require electricity to work effectively. Many countries in Africa and especially Nigeria battles with inadequate, erratic power supplies. These situations make maximising the potential of technology herculean. Unachievable. While alternative sources of power, such as inverters, generators, solar panels etc., could be recommended, this adds a substantial financial burden to the already expensive cost of using technology.

RECOMMENDATIONS

In Nigeria, the judiciary affirmed its commitment to developing a remote justice system while considering the legal challenge to the constitutionality of virtual hearings in *Attorney General of Lagos State v. Attorney General of the Federation & Anor*.

There is also the need for capacity-building training of justice administrators on global technological trends. Police, judicial officers, everyone needs to be trained. Notably, the judiciary will now have to keenly address the broader scope of data protection, security of systems used, digital literacy and other issues as it continues to welcome technological advancements within the justice system.

Furthermore, to fully realise a functional criminal justice system built on technology, the government stakeholders must welcome the collaboration of other stakeholders such as the Nigerian Bar Association, NGOs working on Access to Justice issues, litigants, public prosecutors and the public to realise a fair, transparent and effective justice system.

