

*Effective Mechanisms for
Management of Pre-Trial Detention
in Sub-Saharan Africa: The Case of
Rwanda*

Dr. Denis BIKESHA, PhD.

University of Rwanda

School of Law

Introduction

- Pre-Trial Detention: the period of detention ordered by a judicial authority pending trial.
- Mostly this period is identified by hardships;
- Is this pre-trial detention legal? Yes, as long as it is not arbitrary (arrest/detention);
- It has a lot of negative repercussions:
 - Being away from the family;
 - Infringes the right of presumption of innocence- press and social media broadcasts.
 - Mental and psychological aspects.

The Principle of Habeas Corpus

- It is a long time principle;
- In the UK, it was part of the known as *Magna Carta Libertarum* that was signed and issued by King John on 15 June 1215.
- *Habeas corpus* is related to *interdicto de homine libero exhibendo*- the guarantee a free person deprived from liberty has in order to approach the judicial power so that the lawfulness of his or her arrest and detention be determined.
- African have discussed this subject before, in 2004, at Lilongwe, Malawi, participants of the conference on legal aid in criminal justice advised Governments to introduce some measures in prisons that may be helpful in this regards.

Measures advised

- Magistrates/judges were advised to screen the remand caseload on regular basis;
- The aim is to make sure that people are remanded lawfully;
- their cases are being expedited; and
- that the criminal suspects are held appropriately (the appropriate standards are international).

Adherence of countries

- Countries have to adhere to such measures especially in Sub-Saharan Africa where the situation of detention facilities are alarming.
- Countries that do not adhere should be challenged at regional level;
- Regional Courts such as the African Court on Human and People's Rights receives complaints from individuals from African States;
- The condition is that these individuals have to have exhausted their local remedies lest the cases will be inadmissible...Rwanda withdrew its declaration on this point.

Effective Mechanisms (genocide criminal suspects)

- Short background of the genocide against the Tutsi;
 - a. the use of weapons of low technology (machetes, clubs and rifle wielding groups,...);
 - b. the mass involvement of Hutu in the killings (close to million people involved);
 - c. social and cultural similarities of the perpetrators and the victims;
 - d. the speed at which it happened (only took 100 days i.e., from April 7th to around July 15th, 1, 050, 000 people were slaughtered).

Home-grown Solutions in the aftermath of the genocide against the Tutsi

- The first deal was to negotiate with United Nations so that an International Criminal Tribunal, established on 08th Nov. 1994.
- In 1996, a law governing prosecution of genocide crimes was enacted and genocide cases started to be tried in the ordinary court system of Rwanda .
- The ordinary courts were too slow to complete the backlog, over 120,000 cases were pending.
- An alternative was needed; Gacaca Courts were established in 2001.

Gacaca Courts



Gacaca Courts...

- The temporal jurisdiction considered for the genocide perpetrated against the Tutsi is between 1st October, 1990 and 31st December, 1994.
- Property related cases did not attract punishment but resitution;
- During the time these courts started working, the numbers of criminal suspects hiked; the story with ICRC, Kigali;
- There had to be changes towards lowering the number of pre-trial detainees;
- In 2005, the President instructed responsible organs to provisionally release the young, older, the sick,...
- Hearings had to begin with those whose sentences were threatening to be crossed in pre-trial dention;

Effective Mechanisms for the Management of Pre-trial Detention for Ordinary Crimes

- Plea bargaining;
 - Article 26-27 of the Rwanda Code of Criminal Procedure (2019);
 - Instructions of the Prosecutor General (July 2022);
 - Collaboration with Pepperdine University, California, USA;
 - The plea bargaining campaign in 5 District: Gasabo, Musanze, Nyarugenge, Gicumbi and Muhanga.

Fine without Trial

- It is possible when an offence may be punishable by a fine;
- A prosecutor may ask the suspect to choose between being brought before the court or paying a fine without trial;
- This process derogates the common idea that "everybody gets their day in court";
- In this process, it a fine that will be paid by the criminal suspect whereas in plea bargaining even prison custody may be part of the negotiated penalty.

Bail

- A bail may be paid for a criminal suspect to be provisionally released (Criminal Procedure Code, art.81).
- The bails has to be approved by either an investigator, a prosecutor or a judge depending on circumstances aligned to the commission of the crime and the criminal suspect.
- Also, a criminal suspect may be provisionally released on bail only or with additional conditions in company with payment of the bail.

Alternative Dispute Resolution (ADR)

- Recently, the Government of Rwanda approved two important policies: Alternative Dispute Resolution Policy and Criminal Justice Policy;
- ADR policy suggests *Abunzi* Committees to handle some criminal matters;
- *Abunzi* Committees came as solution to the backlog that was in Rwanda courts and according to the reports published by the Rwandan Judiciary, the committees help a lot .
- In the fiscal year 2015-2016, *Abunzi* Committees received 47, 966 and out of these, 44,679 were successfully handled;

Mediation

- It has recently been given a particular attention;
- Has not yet picked: there is still the mentality of going to court- an idea that is supported by a good number of advocates- want to make more money;
- Mediation may work most in criminal matters such as adultery- The prosecution of adultery is initiated only upon complaint of the offended spouse;
- The provision adds that the offended spouse may at any stage of the procedure request that the proceedings be terminated when he/she retracts and withdraws the complaint;

Promotion and implementation of the principle of *Habeas Corpus*

- In Rwanda, detention of criminal suspects can be done by investigators for a maximum of five days and the same period is given to prosecutors ;
- Wrong deed done by judges may be reported by inspectors and be punished. This is the same story with prosecutors;
- Administrative work of the High Council of the Judiciary and high Council of the Prosecution;
- Administrative sanctions may include dismissal;
- administrative approach, it does not stop criminal justice steps to unfold so that the wrong acts may lead to penalties although the matter of compensation is still at a very low level.

Crime prevention and technology

- At some point it becomes inevitable for competent authorities to detain a criminal suspect as a last resort;
- There should be crime prevention campaigns to reduce the number of crimes subsequently reducing the number of criminal acts;
- A suspect may be monitored through technology.
- With high level technology, it may not be necessary to keep criminal suspects behind the bars.
- The Rwandan law of Criminal procedure has a provision on using technology to monitor a criminal suspect;
- The example of COVID-19.



THE END



LOADING...

Thank you



Dr. Denis Bikesha, PhD.

E-mail: d.bikesha@ur.ac.rw

Tel. +250 788306009