

MAKING THE NUMBERS COUNT: A CALL FOR CONCERTED STRATEGIC INTERVENTIONS IN CRIMINAL JUSTICE

ISSUES PAPER

1.0 OVERVIEW

One of the most fundamental freedoms protected by the Constitution is personal liberty. This right may only be derogated in accordance with the law set out in Article 23 of the Constitution¹. The Constitution also protects an accused person's right to a 'fair, speedy and public hearing'. This includes the presumption of innocence until guilt is proved². It sets out robust enforcement mechanisms for the enforcement of individual rights. Laws like the Criminal Procedure Code Act, Trial on Indictments Act³, Magistrates' Courts Act⁴ and Evidence Act⁵ all provide the basis for the criminal court process. Article 23 (6) of the Constitution provides the time limits for detention of person accused of crime. For cases triable by the High court and subordinate courts, the entire period of detention until commencement of trial is **60** days. For cases triable only by the High court, the time spent in custody before the case is committed to the High Court for trial is limited to **180** days. The import of these provisions is that any detention beyond that period is illegal but also that time spent in in custody after a case is committed but in advance of trial is not subject to any legal limits.

Internationally, the right to liberty is one of the most important and inalienable of human rights upon which others are based. Article 9 of the Universal Declaration of Human Rights⁶ states that 'no one shall be subjected to arbitrary arrest, detention or exile.'⁷ The Declaration also includes an effective remedy by a competent national tribunal⁸ and the right to be presumed innocent until proven guilty.⁹ The ICCPR¹⁰ which Uganda ratified with no reservations provides the most relevant international legal basis to pre-trial detention. It affirms the right to liberty and states that "no one shall be subjected to arbitrary arrest or detention".¹¹

¹ The Constitution of the Republic of Uganda 1995,

² Article 28 (1)

³ Cap 23 Laws of Uganda

⁴ Cap 16 Laws of Uganda

⁵ Cap 6 Laws of Uganda

⁶ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 27 August 2014]

⁷ Article 9

⁸ Article 10

⁹ Article 11 (1)

¹⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 27 August 2014]

¹¹ Article 9 (1)

The Convention on the Rights of the Child¹² protects the rights of children charged with crime. It provides that the arrest and incarceration of children should be used as measure of last resort and for the shortest appropriate period time.¹³ All the above provisions reinforce the consensus echoed in Ugandan laws against illegal detention and the importance of the right to a fair and timely trial.

The Justice, Law and Order Sector (JLOS) was created to deal with the constraints in the justice delivery chain¹⁴. The sector has over the years prioritised and placed focus on land, family, civil and criminal justice reform. Under criminal justice, efforts have been directed at enhancing institutional response to crime by engaging in crime prevention, legislative reform, case backlog reduction programmes, human resource development, and increasing the geographical spread of key institutions with specific attention to conflict areas. The sector also took specific steps to address prisoner welfare, promote prisoner rehabilitation and community re-integration among the many reforms. The JLOS Third Strategic Investment Plan **2012/13-2016/17** (hereinafter referred to as SIPIII) remains committed to ensuring that all Ugandans have access to justice services in terms of cost, distance, time and quality. SIPIII seeks to shift focus to the sub-national implementation levels encompassing both demand and supply sides of justice. The sector has also committed resources towards addressing operational level systemic constraints to JLOS service delivery in all spheres of justice civil, criminal and administrative and stimulating discussion, knowledge and application of human rights in JLOS reforms. This is in a bid to address improvement, effectiveness and efficiency in service delivery to all Ugandans.

2.0 THE CHALLENGE

Backlog generally refers to those cases which have been in the system for longer than 2 years; the benchmark set by the sector under the Case Back log Strategy¹⁵. Over the years, the Chain Linked concept has existed to promote liaison among all the agencies and stakeholders in the justice system through the 3Cs of coordination, communication and collaboration. Under this idea, all agencies involved in administration of justice, that is the Judiciary, the Police, the Prisons department, the probation/welfare department, the Local Council Courts, and the public all interact with the goal of improving delivery of justice services. There are performance standards in place to ensure that all actors play their role

¹² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 27 August 2014]

¹³ Article 88 echoed in Section 93 of the Children's Act of Uganda. Also stated in the Rules for the Protection of Juveniles Deprived of their Liberty (1990)

¹⁴ Challenges identified were; chronic systemic constraints that delayed and hampered access to justice and service delivery, effective planning and budgeting, antiquated methods and tools of investigations and prosecution; the high cost of justice due to corrupt practices and limited proximity to the justice delivery agencies by end users; case backlogs and high prison populations; inefficiencies and lack of effective procedural guidelines and performance standard in justice delivery institutions as well as significant gender-based discrimination. Can be found at <http://www.jlos.go.ug/page.php?p=about>

¹⁵ JLOS Case Backlog Reduction Strategy 2008-2011

within a given time frame¹⁶. This and all other efforts like constructions, recruitment, trainings, have not effectively stemmed the huge case back log in the criminal justice system. Some of the factors contributing to this are;

- a) Slow speed of investigation of cases by the police due to capacity issues,
- b) Delays in prosecution of cases due to poor investigations, police causing arrests before completion of investigations, absence of key witnesses, corruption, missing court/police files, few judicial officers, unnecessary adjournments, political interference etc. leading to long remand and appeal¹⁷ periods,
- c) Issues concerning accused persons of unsound mind due to lack of clarity in the process execution of minister's orders,
- d) Lack of key performance targets and proper ratios for judicial officers
- e) Limited access to justice by juveniles leading to overflow of remand homes,
- f) General misunderstanding of the National Community Service Program (NCSP) by the public making it unpopular as an alternative means of imprisonment and affording rehabilitation,
- g) Few judicial officers and Magisterial areas¹⁸ compared to the case load. An appraisal of the situation in the High Court will highlight the enormity of the problem and the attendant consequences. The staff strength of the Judiciary at Mag Grade 1 is 134, High Court is 60 Out of the approved 82. Court of Appeal has 12; while the Supreme Court has only 8 Justices. None of the higher benches is full - the Court of Appeal and the Supreme Court frequently fail to sit to discharge business for lack of quorum.
- h) Challenges in the cause-listing system causes increasing the likelihood of older cases not being cause listed first. Cause listing of several cases on a single day contributing to long adjournments and longer stays on remand
- i) Poor file tracking system leading to disappearance of cases in the *cracks*
- j) State Brief lawyers are only allocated to cause listed cases yet the problem starts right from the point of arrest. This means that a suspect/accused is not afforded a lawyer to assess the cases against him/her, give legal advice and assistance, apply for bail, look for missing files and advance the rights of accused persons from the point of entry into the legal system as is envisaged by the Constitution.
- k) Harsh bail terms that cannot be reasonably met by accused persons coupled with lack of substantial sureties
- l) Limited cooperation among stakeholders e.g. delayed release of police files or by State Attorneys
- m) Few prisons *vis-a viz* an increasing population. There are presently 236 prison facilities in the country for a growing population of 37 million and

¹⁶ Under the DCC guidelines

¹⁷ As of July 2014, the Court of Appeal had a back log of cases pending disposal

¹⁸ There are presently 48 Chief Magistrate Courts for the whole country.

n) Recidivism¹⁹.

All the above factors either singularly or together contribute to a build-up of cases in the system with the result that time limits set in the Constitution or other statutes are not adhered to. Persons accused of crimes take long to be processed through the system and ultimately resulting into infringement of their rights as enshrined in the Constitution.

3.0 STATEMENT OF THE PROBLEM

The criminal justice system is a chain of coordinated steps, processes, institutions, and interventions concerned with crime prevention, crime management, ensuring existence of a conducive criminal justice regulatory environment, management of crime and its effects, and supporting mechanisms to check against abuse. The criminal justice system is presently facing serious challenges in terms of case management manifesting through significant levels of prison overcrowding which is mainly caused by pre-trial detention²⁰, (approximately 200-300% over capacity), enormous case backlogs in the courts, slow rate of investigation of cases, huge case back log at prosecution level, noncompliance with existing service delivery standards, and inadequate resources. The system is not only overwhelmed, it is underperforming. The JLOS Semi Annual report of 2014 shows that the criminal justice component is very much challenged in the area of case back log. There are groups of prisoners at every stage of the criminal justice process that are not being afforded timely access to the courts, with little hope of having their cases heard within a reasonable time period, or at all in line with constitutional and other legal safeguards and provisions. According to the Uganda Police Force, the crime rate in 2013 reduced from 305 for every 100,000 Ugandans to 273 one of the lowest in the World.²¹The average length of stay on remand for capital offenders is at 11.4 months while for non-capital offenders is at 3 months. But the issue of huge case back log has remained across the system. The large number of prisoners who remain on remand for long periods of time awaiting committal , trial, or sentencing, show that Uganda is breaching its domestic and international obligations to protect individuals' fundamental right to liberty. The rights outlined in the Constitution regarding a speedy trial and maximum pre-trial detention periods are not being upheld. Though resource constraints are an inevitable challenge, the problem of back log can be ameliorated.

This proposed case back log intervention is aimed towards actualising the sector aspiration in SIPIII and addressing one of the priority areas of the Criminal Justice Working Group for 2013/2014; to reduce case back log across the criminal justice system.

¹⁹ See also the report of Uganda Law Society and Advocats Sans Frontiers PRE TRIAL DETENTION IN UGANDA: Combating Prolonged Pre-Trial Detention in Uganda, July 2014

²⁰ The prisons statistics for June 2014 puts the prisons population at 41,516 of which 55.8% are inmates on remand awaiting trial. 43.6% are convicts.

²¹ Police Annual Crime and Traffic Report 2013

4.0 INSTITUTIONAL ANALYSIS: THE MAGNITUDE OF THE PROBLEM

The Uganda Police annual report of FY 2012/13 reported a total of 251,409 cases committed in 2013. The Uganda Prisons statistics for the month of June 2014 has a total of 23, 175 inmates awaiting trial. All the institutions in the criminal justice system are plagued by a large number of cases pending final disposal. Getting most criminal cases through our legal system is a complex, time-consuming process. The entry point of the system being the police is under resourced both in terms of human and capital resources, the prosecutions suffers the same or similar fate. Bottlenecks also occur because of ineffective procedures, poor task coordination, poor communication and crisis situations that increase new cases or slow processing and other factors already mentioned above.

4:1 UGANDA POLICE FORCE

The Force itself is inadequately equipped in terms of premises, training and personnel. It is very imperative to remember that in criminal matters without an efficient police force the Judiciary cannot be effective. It is the police who investigate crimes, summon and produce witnesses before court for trials and their approach evidently affects the tempo and quality of justice administered by prosecution and ultimately the courts.

CRIME TREND COMPARISON FOR THE LAST 5 YEARS

	2013	2012	2011	2010	2009
Total Cases	251,409	273,957	268,811	262,936	282,401
Non-Criminal Cases	151,450	173,492	169,490	163,260	178,809
Criminal Cases	99,959	100,465	99,321	99,917	103,592
Cases Under Inquiry	51,377	51,985	55,508	70,635	65,809
Cases Taken To Court	48,582	48,480	43,813	29,282	37,783
Cases With Convictions	11,927	12,055	12,029	5,440	9,942
Cases With Acquittals	749	783	984	180	879
Cases With Dismissals	5,847	6,307	6,033	1,290	4,340
Cases Pending In Court	30,059	29,335	24,767	22,372	22,622

CRIME RATE

	2013	2012	2011	2010	2009
Crime Rate	273	305	302	314	336

4.2 Uganda Prisons Service

The constraints faced by the prisons department are similar to those identified above in connection with police. It is the prisons department which produces remand prisoners before courts for trial.

Taking 2014 as an example, during the month of June, the overall prisoners' population increased by 0.2% from 41,433 in May to 41,516. In the same period, convicts and remands increased by 0.4% from 18,025 to 18,102 and 0.1% from 23,153 to 23,175 respectively. Due to the increase in the prisoners' population and constant holding capacity during the month, prisoners' occupancy rate further worsened from 258.3% in May to 258.8% in June. This further exacerbated the congestion dilemma in Prisons from 25,393 in May to 25,476 prisoners in excess of the actual holding capacity. The remands' population proportion reduced to 55.8% in June from 55.9% in May whereas convicts' population proportion increased to 43.6% from 43.5% in May. In terms of trends, over the last 12 months, the overall prisoners' population has increased by 8.5% (0.8% per month) from 38,158 in July 2013 to 41,516 in June 2014. Over the same period, remands increased more rapidly than convicts by 7.7% (from 21,390 in July 2013 to 23,175 in June 2014) and 8.1% (from 16,768 in July 2013 to 18,012 in June 2014) respectively.

It obvious from the above statistics that the prisons are overcrowded. Diseases, recidivism, economic costs to the government (feeding a prisoner costs 3,000/= a day) are just a few of the effects of overcrowding in prisons. The department has 236 prisons for a growing population of 36 million.

4.3 The Judiciary

Contrary to public perceptions, delay in administration of justice is not a singular attribute of the judiciary. It is the totality of the problems that emanate from all law enforcement agencies.

The need to coordinate and synchronize work in all government agencies is more than evident when one looks at the case back log of the judiciary. Institutional incapacities in the judiciary include insufficient numbers of judicial officers, poor skills, inadequate resources, huge geographical coverage and high crime rate.

The Constitution obliges judicial officers to administer justice expeditiously. But even if judges wanted to speed up the trial process, they often don't have the capacity to do so. Trials are usually delayed because of a number of things allowed during the pre-trial phase such as hearings, interim applications, motions, and absence of witnesses. Lawyers and the parties to the trial are sometimes the cause for these delays. This is exacerbated by the fact that there are few Judges to handle the huge number of cases already in the system not to talk of new ones sprouting every day. The available statistical information related to caseloads in the courts is not accurate and the inventories of court archives are either

incomplete or based upon estimations. Accurate case inventories are not available and closed cases are seldom if ever reviewed for possible destruction, backlog and case purging efforts are also limited by staff and resources. This is complicated by the fact that most court staff has not received any records management training and their contribution to increased efficiency is very limited.

The office of the Director of Public Prosecutions as the Chief Prosecutor and overall overseer of criminal investigations faces similar institutional constraints. State Attorneys are poorly remunerated and are lured into the more paying jobs in the private sector and it is therefore rather difficult for the directorate of Public Prosecutions to retain or attract advocates of long experience in sufficient numbers. Statistics from the office of the DPP as of end August show that there are a total of 7,754 disaggregated into 7,499 male and 255 female committed cases.

The government Analytical Laboratory has whooping 1,260 cases pending DNA testing from 2007 to date. There 246 for ballistics and 54 for toxicology.

4.4 JUVENILE JUSTICE

Following the visit of the Working Group to Naguru Remand Home in December last year, it was observed that the issue of access to justice by the children should be given priority by all sector institutions. A number of issues need to be clarified if effective justice is to be accorded the children;

- a) The number of children's cases which are part of the case back log needs to be clarified. It seems that the number of cases at High Court (Criminal division cases) on children are not very huge in numbers. Most of the cases are petty offences.
- b) There is a need to categorize and have the cases disaggregated by year/age/subject in order to be able to access the files related to children easily.
- c) Promoting scrutiny of cases brought to the Police stations by students from LDC in order to ensure that minor /first time cases are not remanded.

It is the above statistical trends, issues observed by sector monitoring teams as well as sector commitment in SIPIII that inform the need for a closer look at the persistent issue of case back log. The above scenario is not only problematic for the parties, the public, but also the criminal justice system with the resultant increase in costs in both human and capital resources Backlog reduction might be a one-time effort of crisis management or a plan for continuous improvements in the case management flow.

5.0 OBJECTIVE FOR THE INTERVENTION

The overall objective of this intervention is to establish and have a better understanding of the status of back log in the individual institutions in order to catalyse the sector and leadership in discussions and interventions on the issue of back log.

5.1 Specific objectives

The specific objectives are:-

- (a) To access current institutional statistics on the nature and extent of back log in specific criminal justice institutions across the chain of criminal justice
- (b) To identify the gaps/weakness/points of intervention within the existing institutions dealing with criminal justice
- (c) To propose legal/non-legal mechanisms or initiatives (innovations) for addressing problems faced by institutions in disposal or management of cases across the criminal justice system

6.0 PROPOSED INTERVENTIONS

Recognising that the criminal justice system is a chain of coordinated steps, the sector must be placed in a position where it is able to ensure smooth operations at every stage of the chain to avoid delays and clogs in the system. This will have the effect of not only saving resources, releasing productive labour to contribute to economic transformation of the society but also aid family identity and bond and contribute to the realisation of JLOS priority undertakings and outcome 2 of SIPIII to ensure access to JLOS services by more people especially the vulnerable.

6.1 SHORT TERM

- a) Explore early access to Legal Aid like is done in other jurisdictions. The Case Back log subcommittee will be tasked to research on this.
- b) Promote Plea bargaining – through awareness creation and advocacy to the sector structures to provide funding for the same. In the recent pilot of the same that took place in 5 High Court Circuits of Mpigi, Nakawa, Mubende, Entebbe and Kiboga, 5 Judges were assigned for three weeks to handle cases on Plea Bargaining. Uganda Law Society sent 15 Lawyers to represent accused persons. DPP availed 10 state Attorneys. A total of 261 cases were disposed of out of the 694 of those that had expressed willingness to plea bargain. It was reported that 40% of them had ‘misconceived’ the idea and changed plea at the last moment. This revealed a need for more sensitisation and awareness raising.
- c) Strengthening the community service program and other options to imprisonment
- d) Development of consolidated service delivery standards for the criminal justice system
- e) Weeding out of case should be resumed to review files contained in the court archives with an effort to identify those which no longer need to be kept in storage and that qualify for termination.
- f) Disseminate and create more awareness of the new performance standards outlined in the Chain Linked Guidelines

- g) Establishment and support to the Regional Chain-linked Committees as well as the Advisory Board of the Chain-linked Committee as provided for in SIPIII. This will strengthen performance monitoring leading to management for results. More emphasis should be placed on coordinated monitoring and getting action points with follow ups.

6.2 MEDIUM TERM

- h) Need for a comparative study from a developed country on the issue of performance ratios for judicial officers
- i) Advocate for resourcing of the Task Force on Sentencing Reforms to develop guidelines for other offences
- j) Capacity building and training of duty bearers. Refresher courses should also be planned for.
- k) Resourcing for acquisition of tools and equipment across the chain of criminal justice.
- l) Need to build and develop clear information management systems. This affects evidenced planning. Without proper statistics it is hard to make decisions. The sector through the Publicity Committee should come up with one single publicity budget with input from the institutions
- m) Advocacy for reform of specific laws in addition to the Penal Code Act, TIA, MCA and Criminal Code Act which are being undertaken by the ULRC;
- n) Make case backlog initiatives more inclusive that the current one which only looks at DPP, Police, Prisons, GAL and Judiciary

6.3 LONG TERM

- o) The need for the Children's Act to review the time period of cases related to children as they are at the moment seemingly more severe for children than for adults in the system. The time for non- capital offences needs to be brought down to one month and the ones to capital offences to three months. (For adults it is three and six months respectively as per the revised standards). To avoid appeals from clogging the system it is suggested that the appeals regarding child cases should be limited to the next available level (for example if the appeal from FCC it should be limited and bound by the decision of the High Court instead of again pending appeal .This is especially true of cases related to maintenance and custody)
- p) It is also proposed that the jurisdiction of child related capital cases be allowed to be disposed of at Chief magistrate level instead of the High Court as the maximum punishment warranted by law will not exceed three years in the case of a child. As the maximum punishment is already prescribed there is no need for additional scrutiny at a higher level. If required the complainant can always move the High Court on appeal. This will free up the case load at High court in cases of defilement.
- q) Promote and carry out advocacy the law on Parole

- r) development a Comprehensive criminal justice strategy

The outcome of the proposed interventions is enhanced access to justice services, efficiency, effectiveness and expeditious handling of matters by all the institution sin the chain of criminal justice which will lead to case back log reduction and ultimately increased public trust in the justice system.

CONCLUSION

Although resource constraints remain an inevitable challenge, the problem of lengthy pre-trial detention can be addressed by stream lining court processes, distributing caseloads more equitably, ensuring legal representation/assistance, recruiting and training staff more effectively but of outmost importance getting the political leadership interested in eradication of case back log.

As echoed in the SIPIII and other national development policies, a fair and functioning justice system is a critical component of a free and democratic society as well as a catalyst for growth and development. Protection of the rights of the vulnerable is a key area of intervention by the sector and the rights of those in places of detention must be protected and promotion of interventions concerning their plight must not only be immediate but holistic in law and in practice.

“The significant problems that we face cannot be solved by the same level of thinking that caused them” – Albert Einstein