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**LEGAL ANALYSIS ON IMPLICATION OF ALTERNATIVE MEASURES TOWARDS
THE TIMELY CRIMINAL JUSTICE DELIVERING UNDER RWANDAN LEGAL
FRAMEWORK**

**Dissertation submitted in partial fulfilment of
Academic requirements for the Award of
Bachelor's Degree with Honours in Law
(LLB).**

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Kigali, October/2024



DECLARATION

I, MWEREKANDE PHILOMENE, do declare that this dissertation entitled “**Legal analysis on implication of alternative measures towards the timely criminal Justice delivering under Rwandan Legal framework**” for the Award of a Bachelor’s Degree with Honours in Law (LLB) is original and has never been submitted for any academic award in any University or High learning institution as whole or its part.

Names: MWEREKANDE Philomène

Signature:

Date: 05/10/2024

CERTIFICATION

This is serves to certify that this dissertation entitled “**Legal analysis on implication of alternative measures towards the timely criminal Justice delivering under Rwandan Legal framework**” is a study conducted by MWEREKANDE Philomène Under my supervision and guidance.

Names: NKUNDUKOZERA Emmanuel

Signature:

Date: 05/10/2025

DEDICATION

To my lovely husband and children

To my workmates

To my classmates

To all friends and siblings

ACKNOWLEDGEMENT

The achievement of this work was made possible with the material and moral support, cooperation, kindness and guidance of a number of people who deserve special thanks.

Firstly, I convey my heartfelt appreciations to my family and relatives for all their moral, financial support and encouragement which enabled me to reach to the completion of this project.

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May God bless you all!

Table of Contents

DECLARATION.....	I
CERTIFICATION	III
DEDICATION.....	IV
ACKNOWLEDGEMENT	V
LIST OF ABBREVIATIONS AND ACRONYMS	XII
GENERAL INTRODUCTION	XIV
1. BACKGROUND OF THE STUDY	XIV
2. INTERESTS OF THE STUDY	XV
2.1 Personal interests.....	XV
2.2 Academic interests.....	XVI
3. DELIMITATION OF THE STUDY	XVI
3.1 Delimitation in Space	XVI
3.2 Delimitation in Domain.....	XVI
3.3 Delimitation in time.....	XVI
4. PROBLEM STATEMENT.....	XVII
5. RESEARCH QUESTIONS	XX
6. RESEARCH HYPOTHESES.....	XX
7. RESEARCH OBJECTIVES	XXI
7.1 General objectives	XXI
7.2 Specific objectives.....	XXI
8. RESEARCH METHODOLOGY AND TECHNIQUES	XXII
8.1 Research techniques	XXII
8.1.1 Documentary techniques	XXII
8.2 Research methods.....	XXII
8.2.1 Analytical method	XXII
8.2.2 Exegetic method.....	XXIII
8.2.3 Comparative method.....	XXIII
9. SUBDIVISION OF THE STUDY	XXIII
CHAPTER ONE: CONCEPTUAL AND THEORETICAL FRAMEWORK	1
I.1 CONCEPTUAL FRAMEWORK.....	1
I.1.1 Offence	1

I.1.2 Arrest	1
I.1.3 Suspect	2
I.1.4 Offender.....	2
I.1.5 Co-offender.....	2
I.1.6 Victim.....	2
I.1.6 Charges	2
I.1.7 Accomplice.....	2
I.1.7 Accused	3
I.1.10 Charges	4
I.1.11 Law.....	4
I.1.12 Investigation	4
I.1.13 Prosecution	4
I.1.14 The burden of proof.....	4
I.1.15 Court	5
I.1.16 Criminal action	5
I.1.17 Conviction.....	5
I.1.18 Criminal law.....	5
I.1.19 Criminal procedure	5
I.1.20 Substantive criminal law	5
I.1.21 Felony offences	6
I.1.22 Misdemeanour offences.....	6
I.1.23 Petty offences.....	6
I.1.24 A person caught red-handed.....	6
I.1.25 Serious grounds for suspecting a person of an offence	6
I.1.26 Witness.....	6
I.1.27 Summons	6
I.1.28 Revenge	7
I.1.29 Recidivism	7
I.1.30 Arbitrary punishment	8
I.1.31 Unlawful arrest	8
I.1.32 Arbitrary detention	8
I.1.33 Compensation.....	9

I.1.34 Habeas corpus	10
I.1.35 Deprivation of liberty	10
I.1.36 Fair trial.....	10
I.2 THEORETICAL FRAMEWORK.....	11
I.2.1 LEGAL THEORIES IN CRIMINAL JUSTICE	11
I.2.1.1 Deterrence theory	11
I.2.1.2 Retributive theory.....	12
I.2.1.3 Rehabilitative theory	12
I.2.1.4 Restorative theory.....	12
I.2.2 LEGAL PRINCIPLES IN CRIMINAL JUSTICE.....	12
I.2.2.1 Principle of legality	13
I.2.2.2 Principle of equality before the law	13
I.2.2.3 Principle of the presumption of innocence	13
I.2.2.4 Principle of double Jeopardy	13
I.2.2.5 Principle of non-retroactivity	14
I.2.2.6 Principle of in dubio pro reo.....	14
I.2.3 LEGAL DOCTRINES IN CRIMINAL JUSTICE	14
I.2.3.1 Doctrine of burden of proof.....	14
I.2.3.2 Doctrine of standard of proof	15
I.2.3.3 Doctrine of fair trial.....	15
I.2.3.4 Doctrine of silence.....	15
I.2.3.5 Doctrine of admissibility of evidence	16
I.2.3.6 Doctrine of publicity	16
I.2.3.7 Doctrine of recourse	16
I.2.4 CRIMINAL JUSTICE CHAIN IN RWANDA	16
I.2.4.1 INVESTIGATION.....	16
I.2.4.2 PROSECUTION	17
I.2.4.3 COURT	19
CHAPTER TWO: IMPACTS OF PROCEDURAL DELAYS VIS-A-VIS THE DELIVERING OF TIMELY CRIMINAL JUSTICE IN RWANDA.	20
II.1 DYNAMICS OF EFFECTIVE JUSTICE	20
II.1.1 Access to Justice	20

II.1.2 Impartiality	21
II.1.3 Transparency	21
II.1.4 Consistency	21
II.1.5 Timeliness.....	21
II.1.6 Community engagement	21
II.1.7 Restorative practices	22
II.1.8 Education and awareness	22
II.1.9 Collaboration	22
II.1.10 Evaluation and reform.....	22
II.2 ANALYSIS ON THE MAXIM OF DELAYED JUSTICE, DENIED JUSTICE.....	22
II.2.1 APPROPRIATE DELAY	25
II.2.2 INAPPROPRIATE DELAY	25
II.2.3 JUSTICE HURRIED IS JUSTICE BURIED.....	26
II.2.4 JUSTICE HURRIED VERSUS JUSTICE DELAYED.....	27
II.2.5 JUSTICE DENIED VERSUS JUSTICE BURIED.	28
II.2.5.1 Disparities	28
III.2.5.2 Common grounds	28
II.3 CAUSES OF DELAYS OF JUSTICE.....	28
II.3.1 Case backlogs.....	29
II.3.2 Complex criminal procedure	29
II.3.3 Lack of access to legal representation	29
II.3.4 Corruption and mismanagement.....	29
II.3.5 Case Prioritization	29
II.3.6 Resource deficiencies	30
II.4 EFFECTS OF DELAYS OF JUSTICE.....	30
II.4.1 Effects on the accused	30
II.4.2 Effects on the victim.....	31
II.4.3 Effects on the society	31
II.5 RIGHTS OF THE ACCUSED	31
II.5.1 CONSTITUTIONAL RIGHTS.....	32
II.5.1.1 Right to life.....	32
II.5.1.2 Right to inviolability	32

II.5.1.3 Right to physical and mental integrity	33
II.5.1.4 Right to the equality before the law.....	34
II.5.1.5 Right to protection from discrimination	34
II.5.1.6 Right to due process of law.....	35
II.5.2 PROCEDURAL RIGHTS	35
II.5.2.1 Right to legal counsel or representation.....	36
II.5.2.2 Right to be notified of criminal charges	36
II.5.2.3 Right to appear before a competent court	37
II.5.2.4 Right to be visited by relatives and friends.....	37
II.6 RIGHTS OF THE VICTIM.....	37
II.6.1 Right to access Justice.....	38
II.6.2 Right to protection	38
II.6.3 Right to information	38
II.6.4 Right to legal assistance	38
II.6.5 Right to protection against re-victimization	39
II.6.6 Right to speedy trial	39
II.7 CASE-LAWS RELATED TO THE ISSUE OF DELAYED JUSTICE.....	39
II.7.1 JUSTIN MUGENZI & PROSPER MUGIRANEZA V. THE PROSECUTOR.....	39
II.7.2 CASE MATHEWS SIPHO LELAKA V. THE STATE	41
CHAPTER THREE: LEGAL AND INSTITUTIONAL MEASURES TOWARD THE EFFECTIVENESS OF TIMELY CRIMINAL JUSTICE DELIVERY IN RWANDA ..	
III.1 ALTERNATIVE MEASURES.....	43
III.1.1 Mediation.....	44
III.1.2 Plea-bargaining	45
III.1.3 Provisional release and bail on bond	47
III.1.4 Bail	48
III.1.5 Electronic monitoring and surveillance.....	50
III.1.5 House arrest	51
III.1.6 Reduction of the duration of provisional detention.....	51
III.1.7 Fine without trial	52
III.1.8 Periodic presentation or appear before the Judge	53
III.1.9 Increase use of suspended sentences	53

III. 2 INCREASING JUDICIAL CAPACITY	54
III.2.1 Appointment of more Judges.....	54
III.2.2 Decentralization of Judicial services.....	54
III.2.3 Allocation of resources	54
III.2.4 Reduction of backlogs	55
III.3 STRENGTHENING COORDINATION BETWEEN AGENCIES	55
III.3.1 Better coordination of criminal Justice organs.....	55
III.3.2 Effective witness management.....	56
III.4 SETTING UP PERFORMANCE BENCHMARKS	56
III.4.1 Judicial accountability	56
III.4.2 Judicial staffing and support	56
III.4.3 Monitoring and Auditing	57
III.5 LEGISLATIVE REFORMS.....	57
III.5.1 Enactment of Laws	57
III.5.2 Review of the existing Laws.....	58
III.5.3 Introduction of Time-bound regulation	58
III.6 RAISE OF THE PUBLIC AWARENESS.....	59
III.6.1 Legal awareness campaign	59
III.6.2 Transparency in the system	59
GENERAL CONCLUSION	60
RECOMMENDATIONS	62
REFERENCES	63

LIST OF ABBREVIATIONS AND ACRONYMS

ART: Article;

CAT: Convention Against Torture

CCP: Code of Criminal Procedure

CPS: Crown Prosecution Service

DOC: Document;

ECHR: European Convention on Human Rights

ECOWAS: Economic Community of West African States

ECtHR: European Court of Human Rights

ED: Edition;

EGAT: Economic Growth, Agriculture and Trade

ETC: et cetera;

EU: European Union

GA: General Assembly

HICD: Human and Institutional Capacity Development

HTTP: Hyper Text Transfer Protocol;

IACP: International Association of Chief of Police

Ibid: Ibidem;

ICCPR: International Covenant on Civil and Political Rights

ICTR: International Criminal Tribunal for Rwanda

LLB: Legum Baccalaureus

No: Number;

NPPA: National Public Prosecution Authority

O.G: Official Gazette

Op.cit: Opera Citato;

P: Page;

Para: Paragraph;

RCJ: Rwanda Criminal Justice

RIB: Rwanda Investigation Bureau

SC: Supreme Court

UDHR: Universal Declaration of Human Rights

UK: United Kingdom;

ULK: Université Libre de Kigali

UN: United Nations

USA: United States of America

USAID: the United States Agency for International Development

V: Versus;

WWW: World Wide Web.

GENERAL INTRODUCTION

This part of the research entitled **“Legal analysis on implication of alternative measures towards the timely criminal Justice delivering under Rwandan legal framework”** tends to understand the roles and responsibilities of State’s organs in charge of criminal matters, herein referred to criminal chain, with the intent to tackle all necessary measures that are meant to be applicable in the interest of human rights protection, best practices leading to fair and timely trial as well as Rwandan criminal chain.

Historical acknowledgements of delays in the justice system often recognise the perspective of the accused or the disputant, and suggest that for a person seeking justice, the time taken for resolution of their issue is critical to the justice experience. In essence, these acknowledgements are consistent with more recent research which has shown that the time taken to deal with a dispute is a, and in many cases the, critical factor in determining whether or not people consider that the justice system is just and fair¹.

The present research considers issues in the Justice’s system related to timeliness and the interconnectedness of the definition of delay and contends that the nature of delay in the current justice environment is contingent on many aspects and mechanisms utilised by the modern justice system. The question of whether justice delayed is justice denied appears to depend on whether delay is inappropriate, out of proportion or avoidable².

1. BACKGROUND OF THE STUDY

The study of delays in criminal Justice delivery in Rwanda stems from the country's unique history, particularly the 1994 genocide against the Tutsi, which devastated its legal and social fabric. The genocide led to the loss of more than one million lives in a span of 100 days and left the country’s judicial system in ruins.

Over the past three decades, Rwanda has made significant efforts to rebuild its institutions, including the criminal Justice system, even though challenges of timely Justice remain a critical issue to be redressed. Rwanda has undertaken significant reforms to modernize its judicial system in establishing new legal frameworks, such as the Penal Code (revised in 2018) and the establishment of specialized courts (e.g. High Council of the Judiciary and

¹ Ames, Nancy L.; et al. *The Processing of Federal Criminal Cases Under the Federal Speedy Trial Act of 1974 (As Amended in 1979)*. Cambridge, 1980

² Bender, R.; Heissler, B. (1978). *Rechtstatsachenforschung zur Reform des Strafverfahrens*. *Zeitschrift für Rechtspolitik*, pp.30-33

Intermediate Courts), aimed to enhance the efficiency of the judiciary and reduce case backlogs.

The Rwanda Investigation Bureau (RIB), created in 2017, was also intended to improve the handling and investigation of criminal cases.

Despite these reforms, delays in criminal case processing continue to affect the Justice system. Factors contributing to these delays include insufficient Judicial resources, the complexity of certain cases (e.g., terrorism, corruption, and economic crimes), and administrative inefficiencies within the courts. Therefore, the delays in Rwanda's criminal Justice system can be attributed to various factors, including judicial capacity constraints, case backlogs, investigative delays, administrative and procedural inefficiencies, etc...

The delay in criminal justice delivery in Rwanda remains a critical issue that has far-reaching consequences on the legal system, human rights, and public confidence in governance. This study aims to explore the root causes, effects, and potential solutions to these delays, contributing to ongoing efforts to strengthen Rwanda's post-genocide judicial system and uphold the principles of Justice and the rule of law³.

2. INTERESTS OF THE STUDY

This study tends to deeply analyze the concept of delays in criminal Justice as well as the implication of stakeholders in the field of Criminal sphere in rendering timely and effective Justice in general, and in Rwanda in particular.

2.1 Personal interests

This study aims at understanding, analyzing and interpreting the principle of timely delay in Criminal Justice, and sort out advantages and disadvantages it plays towards the accused and victim's rights. It also helps the victimized party to put in mind that respecting and protecting suspect's rights is not denying or not valorizing his or her suffering, and to create in their mind that for the justice to be fair and effective there are a couple of new and modernized understanding one must have beyond normal understanding such as adhering to the concept of alternative measures to normal imprisonment⁴.

³ Blumstein, Albert; Cohen, Jacqueline; Nagin, Daniel ((ed.). Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates. Washington: National Academy Press,1978

⁴ Idem,3

2.2 Academic interests

In the academic context, the study of the delays in timely delivering of Criminal Justice helps academicians and legal scholars, especially those who are in criminal field to get acquainted with advanced knowledge that will help them to give their contribution to the best of the effectiveness and fairness of the criminal Justice and towards the protection and promotion of human rights⁵.

3. DELIMITATION OF THE STUDY

This study is limited in domain, in space and in time.

3.1 Delimitation in Space

This study was conducted in Rwanda as it dealt with criminal matters within the Rwandan territory, especially in connection with the criminal procedure where the principle of timely delay in criminal Justice is applicable.

3.2 Delimitation in Domain

This study falls under the Constitutional Law as the principle of due Justice is provided for by the Constitution of the Republic of Rwanda, it also falls under International Law as it is provided for by the Universal Declaration of Human Rights⁶, finally it falls under Criminal law (Here the researcher refers to substantive criminal laws and the criminal procedure) as it is applied in criminal matters⁷.

3.3 Delimitation in time

This research is limited in time from 2012 when Rwanda enacted its second Penal code replacing the one we had by then, up to 2023 when the current law relating to criminal procedure was enacted, and extended from April up to October,2024, being the time the presented research has been conducted.

⁵ Cannavale, Frank J., Jr. Witness Cooperation. Lexington,Mass.: Lexington Books,1976

⁶ Art. 11 of the Universal Declaration of Human Rights, adopted on 10/12/1948, Available at: <https://www.standup4humanrights.org/layout/files/30on30/UDHR70-30on30-article11-eng.pdf> /Accessed online on 30/04/2024.

⁷ Idem,6

4. PROBLEM STATEMENT

The power to arrest a person; detain them against their will; issuing a judgment upon their behaviour; and ultimately impose punitive measures is the very essence of a criminal justice system. The use of such measures are among the most powerful instruments a State has against its citizens and it is the abuse of such powers which forms the basis for so many human rights abuses worldwide.

Many will consider the trial and determination of guilt or innocence, and if necessary the imposition of punishment, to be the moment when criminal justice is administered. Indeed, it should be hoped that a criminal justice system did act in a fair and reasonable way at that point.

However, for a Justice system to be worthy of the name, it must administer justice well before the time of trial. It must deal justly with all citizens before, during, and after they are arrested. In assessing a criminal justice system as a whole it is, therefore, important to understand the way in which the state, through official agencies, accuses its citizens of violating the criminal law and brings them to trial. That is, it is important to know how the State behaves towards its citizens before it puts them on trial⁸.

What occurs, from the moment of an accusation of a breach of the criminal law, to the day on which the accused stands before a judge or jury can have consequences for the administration of justice; consequences which may even undermine the trial process; consequences which may, in fact, mean that there is never a trial. In the broadest sense, pre-trial justice demands the right to be free from arbitrary arrest; the provision of information to the accused of the nature of their arrest; access to legal representation; and the right to bail until tried. It is convenient, therefore, to divide the issue of pre-trial justice into two parts: (1) Arrest and evidence gathering; and (2) Detention pending trial. While the Rwandan Constitution and legal framework guarantee the right to a fair and speedy trial (as enshrined in Article 29 of the Constitution), practical barriers still hinder the realization of this right.

The issue is particularly pronounced in rural areas, where the judiciary is often under-resourced, and in cases involving complex criminal matters such as corruption or genocide-related trials. Additionally, while Rwanda has made strides in digitizing and modernizing its

⁸ Church, Thomas W.; et al. Justice Delayed: The Pace of Litigation in Urban Trial Courts. Williamsburg, Va.: National Center for State Courts, 1978

judicial processes, the legal system still struggles to keep pace with the growing caseload and societal expectations.

Delays in handling criminal cases in Rwanda remain a significant issue despite the country's efforts to reform and modernize its judicial system. Various factors contribute to these delays, affecting both the accused and victims, as well as the overall functioning of the justice system. Furthermore, delays in handling criminal cases in Rwanda pose significant challenges to the country's judicial system, contributing to overcrowded prisons, prolonged pre-trial detention, and the erosion of public confidence.

While Rwanda has made strides in addressing these delays through judicial reforms, digital solutions, and capacity-building efforts, more work is needed to ensure that criminal cases are processed in a timely and fair manner. Addressing these delays is critical to upholding the rule of law, protecting human rights, and ensuring that justice is delivered for both the accused and victims⁹.

In Rwanda of the total prison population (not including Genocide cases and minors) 38%² is made up of persons held in pre-trial detention . As at the end of June 2011 there were a total of 7,876 males and females (excluding Genocide cases and minors) being held in pre-trial detention. Leaving aside the rights of the persons so detained, this illuminates the issue of prison overcrowding. If those held in pre-trial detention were to be removed from the prison population Rwanda would have almost sufficient prison space for all the people it detained. Not only would the Government save money on the daily costs of housing those removed from the system and save money on the staff costs of running the prisons but it would also save the huge capital cost of having to extend the existing prisons or build more. In a recent paper published by the Open Society Justice Initiative the effects of excessive use of pre-trial detention are explored¹⁰.

According to the brief summary of the Judiciary performance on main indicators during the year 2023/2024 and over the past five (5) years, in terms of delivery of timely and quality Justice, the number of disposed cases surpassed the number of filed cases by 2% and this triggered a decline in the percentage of case backlogs from 62% last year to 59% this year. In

⁹ Driendl, J. Verfahrensdauer und Strafprozeßreform in Österreich. Juristische Blätter, 1981,pp.125-138

¹⁰ Church, Thomas W. (1982). The "Old and the New" Conventional Wisdom of Court Delay. The Justice System Journal 7, 3, pp.395-41

terms of quality and effective Justice, the percentage of overturned reduced to 8%, while the rate of injustice case is 2%. Though the performance was commendable, the judiciary is still facing and experiencing a number of challenges hindering the fulfilment of its vision¹¹.

Despite significant legal and judicial reforms in Rwanda, aiming at enhancing and harmonizing the functioning of the Judicial organs in general, the criminal Justice system continues to face delays that impede the timely administration of Justice. These delays undermine the rights of both defendants and victims, eroding public confidence in the judicial process due to the fact that prolonged pre-trial detention, case backlogs, inadequate judicial resources, and complex legal procedures contribute to excessive delays in resolving criminal cases, ipso facto end up in creating significant challenges in delivering fair, effective and timely Justice¹².

In essence, a failure to adhere to the rule of law and a failure to satisfactorily monitor the practices of relevant State authorities in each of these parts can result in serious human rights abuses. These issues are not simply of concern to the accused - governments who rely heavily on pre-trial detention incur huge expense in holding those awaiting trial in custody; and exacerbate chronic overcrowding in detention facilities.

To address the delays in Rwanda's criminal Justice system, there is a need for continued reforms that focus on increasing judicial capacity, enhancing the efficiency of court processes, reducing case backlogs, and ensuring timely access to justice for all citizens. These efforts must be in line with Rwanda's commitment to upholding the rule of law and protecting human rights within the framework of its Constitution and international legal obligations¹³.

¹¹ The Judiciary performance report for the year 2023/2024.

¹² Eisenstein, James; Jacob, Herbert (1977). *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston/Toronto,1977

¹³ Feeley, Malcolm M. *Court Reform on Trial. Why Simple Solutions Fail*. New York: Basic Books,1983

5. RESEARCH QUESTIONS

1. To what extent do procedural delays impact on the delivering of timely and effective Criminal Justice in Rwanda?
2. What are legal and institutional measures to be applied in Rwandan Criminal Justice to speed up the proceedings and deliver effective Justice?

6. RESEARCH HYPOTHESES

1. Delays in criminal Justice are mostly linked to various factors such as case backlogs, scarcity of Justice personnel, lack of sufficient resources, and procedural complexities which end up in undermining the entire Justice system in the sense that it takes long for the System to administer effective Justice to the parties in due time as both the victim and the accused need it. In such a case, delays in Criminal Justice administration result into the loss of credibility of the judicial system toward the perception and beliefs of the public.
2. There are couples of things that can be adopted and used as best practices to help the Criminal Justice in Rwanda run smoothly and effectively serve the purpose it was established for. It is in this very perspective that alternative measures to imprisonment such as mediation, plea-bargaining, fine without trial, house arrest, electronic monitoring and surveillance, increment of suspended sentences, would be put in place and focused on as where they are being applicable, they are believed to contribute to the smooth, speedy, effective, timely and reliable Justice.

7. RESEARCH OBJECTIVES

In the present part of the study, general objectives and specific ones in regard to the applicability of the appropriate delay under Rwandan Criminal Justice have been covered.

7.1 General objectives

This study intends to find out, analyze and examine advantages and disadvantages of the implication of alternative measures to be used in Rwandan criminal Justice with the intent to provide a timely and effective Justice as below highlighted:

1. To find out alleged violated rights during the provisional detention period under pretext of the principle of presumption of innocence and the sake of public order as sole Justification to arrest and detention.
2. To assess the legal merits that can justify the use of alternative measures and mechanisms in order to only opt for provisional detention and imprisonment as last resort in the context of delivering a timely and trustworthy Justice, and provide all necessary efforts to address the legal issues related to the delay in delivering Justice and the implication of alternative measures in the speeding up of the proceedings¹⁴.

7.2 Specific objectives

Besides the above general objectives, the policy has the following specific objectives:

1. Produce a comprehensive analysis of the current state of affairs across all sectors/phases of the criminal justice system, based on a proper review of laws, correctional, rehabilitation and socialization rules and practices;
2. Avail a policy document that enables the criminal Justice system to be more harmonious, more coordinated and more consistent.

¹⁴ Garner, Joel H. E Pluribus Unum? Research on Processing Time in Criminal Cases. Paper prepared for the annual meeting on the American Society of Criminology. Atlanta, 1986

8. RESEARCH METHODOLOGY AND TECHNIQUES

In order to identify the aforementioned issues in regard to the timely delivering of Criminal Justice in Rwanda, there was a review of legal books, journals, articles, internet sources and decided cases, legislation and other important documents elaborated by different scholars in the same scope within this field.

In addition to that, available literature in this study was subject to the analysis in the perspective of the Law No. 058/2023 of 04/12/2023 amending Law No. 027/2019 of 19/09/2019 relating to the criminal procedure, The Law No. 059/2023 of 04/12/2023 amending Law No. 68/2018 of 30/08/2018 determining offences and penalties in general, Practice directions of the President of the Supreme court No. 002/2023 of 05/09/2023 governing plea bargaining procedure, the Criminal Justice policy dated September, 2022 and the Universal declarations of Human rights adopted on 10/12/1948

8.1 Research techniques

This part dealt with techniques used to enable the researcher collect information and data, process them and reach to the full interpretation of the needful situations in regard to the concern of timely delivering of Criminal Justice in Rwanda.

8.1.1 Documentary techniques

Through reading of books and other legal texts, the researcher used the documentary techniques to find out, analyze and examine advantages and disadvantages of the timely delivering of Justice.

8.2 Research methods

This part dealt with methods used to collect, process, analyze, interpret, and release the outcomes or findings in regard to the principle of Justice delayed, Justice denied and its applicability under Rwandan Criminal Justice.

8.2.1 Analytical method

The analytical method was used to analyze books and the legal texts in order to assess the effectiveness of timely delivering of Criminal Justice in Rwanda.

8.2.2 Exegetic method

The exegetic method was used to help the researcher have a critical interpretation on different legal texts, journals or even other articles in relation to the applicability of the alternative measures to be applied by Rwandan courts in the context of having an effective and working system that deliver the Justice on time.

This method also helps the researcher have a contextual analysis on a legislative history, societal norms and judicial interpretations which will be of great use for him to interpret the intent behind the use of alternative measures to enhance its Criminal Justice system.

8.2.3 Comparative method

Comparative method plays a crucial role in legal research because it provides valuable insights into the functioning of legal systems, the development of legal principles, and the potential elaboration or reform of laws.

In this study, the comparative method was used to compare legal texts and approaches from different jurisdictions worldwide in regards to the delays and timely delivering of Justice in order to find out if Rwanda can adopt and use some of the best practice in its legal system.

9. SUBDIVISION OF THE STUDY

Apart from the general introduction, this research is subdivided into Chapter one entitled **“Conceptual and theoretical framework”**; Chapter two entitled **“Impact of procedural delays vis-à-vis the delivering of timely and effective Criminal Justice in Rwanda”**, and Chapter three entitled **“Legal and institutional measures to ensure the effective and timely Criminal Justice delivering”**; and finally, it ends with the part of conclusion and recommendation.

CHAPTER ONE: CONCEPTUAL AND THEORETICAL FRAMEWORK

The following terms are mostly important to know before explaining in detail legal theories and principles from scholars and academicians in the field of criminal law. Therefore, the significance of the following terms is of great importance towards what we are dealing with and hence facilitates the Literature review on the delays in delivering timely criminal Justice¹⁵.

I.1 CONCEPTUAL FRAMEWORK

The presumption of innocence is a fundamental principle in criminal justice for which legal systems must enforce stringent measures to protect suspects' rights and maintain the integrity of the judicial process, ensuring a fair balance between public interest and individual rights.

It is under this section where different concepts such as Arrest, suspect, accused, charge, innocent, burden of proof, victim, defendant, claimant, witness, court, convicted, and many others are defined in order to gain a common understanding about the contents of this research.

I.1.1 Offence

The offence is defined as any act or omission that breaches public order and which is punishable by law.

I.1.2 Arrest

Arrest refers to an act of legally detaining an individual by the police and/or other law enforcement authorities based on the suspicion of involvement in a crime or having information about the crime committed, apprehending persons and placing them into police/RIB custody¹⁶. An arrest occurs when police officers take a suspect into custody. An arrest is complete as soon as the suspect is no longer free to walk away from the arresting police officer, a moment that often comes well before the suspect actually arrives at a jail¹⁷.

¹⁵ Gebauer, Michael. Die Rechtswirklichkeit der Unterschngshaft in der Bundesrepublik Deutschland. Göttingen, 1987

¹⁶ Arrest West's Encyclopedia of American Law, ed 2, (2008). Retrieved March 8 2024 from <https://legal-dictionary.thefreedictionary.com/arrest>

¹⁷ Paul Bergman, J.D., and Sara J. Berman, J.D., *The Criminal Law Handbook*, (2007), p.29

I.1.3 Suspect

A suspect is an individual who is believed by law enforcement authorities to have potentially committed a crime. This person is under investigation and may face charges, but has not yet been proven guilty in a court of law.

I.1.4 Offender

An offender refers to the person who commits an act punishable by law or omits to perform an act required by law;

I.1.5 Co-offender

Co-offender refers to the person who directly cooperates with the offender in the commission of an offence.

I.1.6 Victim

Victim refers to the individual who has suffered harm or injury as a result of a criminal offence.

I.1.6 Charges

This word intends to mean, a formal accusation by the authorities that the accused has committed a specified crime¹⁸. An official notification given to an individual by the competent authority of an allegation that they are suspected or accused of having committed a crime, also referred to as an 'accusation' or allegation. In criminal case, the specific statement of what crime the party is accused (charged with) contained in the indictment or criminal complaint is referred to as charge¹⁹.

I.1.7 Accomplice

Accomplice refers to the person having aided the offender in the means of preparing the offence through any of the following acts;

a) a person who, by means of remuneration, promise, threat, abuse of authority or power has caused an offence or given instructions for the commission thereof;

b) a person who knowingly aids or abets the offender in the means of preparing, facilitating or committing the offence or incites the offender;

¹⁸ Charge." Collins Dictionary of Law". 2006. W.J. Stewart 8 Mar. 2024, <https://legal-dictionary.thefreedictionary.com/charge>

¹⁹ Charge." Collins Dictionary of Law. 2006. W.J. Stewart 8 Mar. 2024
<https://www.thefreedictionary.com/suspect>

c) a person who causes another to commit an offence by uttering speeches, inciting cries or threats in a place where more than two (2) persons gather, or by means of writings, books or other printed texts that are purchased or distributed free of charge or displayed in public places, posters or notices visible to the public

d) a person who harbours an offender or a co-offender or an accomplice to make it impossible to find or arrest him/her, helps him/her hide or escape or provides him/her with a hiding place or facilitates him/her to conceal objects used or intended for use in the commission of an offence;

e) a person, who knowingly, conceals an object or other equipment used or intended for use in the commission of an offence;

f) a person who steals, conceals or deliberately destroys in any way objects that may be used in offence investigation, discovery of evidence or punishment of offenders;

I.1.7 Accused

An accused is an individual who has been formally charged with a crime by a competent organ (prosecution) but has not yet been tried or convicted. This person is subject to legal proceedings to determine their guilt or innocence. Accused person is the generic name for the defendant in a criminal case²⁰ and this term is commonly referring to persons' subject to more advanced stages of pre-trial proceedings and/or persons committed to trial²¹.

I.1.9 Evidence

The concept of evidence is fundamental to the legal system, playing a crucial role in both criminal and civil cases. Evidence refers to any information, material, or testimony that is presented in court to support or refute a claim, prove a fact, or establish the truth in legal proceedings. It is used to substantiate arguments, demonstrate the validity of claims, and ultimately influence the outcome of a case. The concept of evidence is central to the legal process, providing the basis for determining the truth and making legal decisions. Evidence must be relevant, admissible, and reliable to influence the outcome of a case. Understanding the types, rules, and procedures related to evidence is crucial for effective legal practice and ensuring justice in legal proceedings.

²⁰ Accused, The People's Law Dictionary. (1981-2005). Retrieved March 8 2024 from <https://legal-dictionary.thefreedictionary.com/accused>

²¹ Accused, The People's Law Dictionary. (1981-2005). Retrieved 20 March 2024 from <https://legal-dictionary.thefreedictionary.com/accused>

I.1.10 Charges

This word intends to mean, a formal accusation by the authorities that the accused has committed a specified crime²². An official notification given to an individual by the competent authority of an allegation that they are suspected or accused of having committed a crime, also referred to as an ‘accusation ‘or allegation. In criminal case, the specific statement of what crime the party is accused (charged with) contained in the indictment or criminal complaint is referred to as charge²³.

I.1.11 Law

Law is defined as a system of rules and guidelines which are created, recognized by the society and enforced through its social and governmental institutions to govern behaviours²⁴, maintain order, resolve disputes, protect individuals’ rights and promote Justice.

I.1.12 Investigation

Investigation refers to the process of gathering evidence and information meant to prevent and track down crimes, gather incriminating or exculpatory evidence as well as any other activity whose purpose is to check whether or not a suspect has to be prosecuted or not.

I.1.13 Prosecution

Prosecution refers to any act aimed at instituting legal proceedings in the court, summoning parties and appearing before court, preparing the hearing, litigating and using appeal procedures

I.1.14 The burden of proof

The burden of proof is the obligation to present evidence to support one's claim or accusation in a legal proceeding. In criminal cases, this responsibility typically lies with the prosecution, who must prove the defendant's guilt "beyond a reasonable doubt." In civil cases, the burden of proof is usually on the plaintiff, who must demonstrate their case by a "preponderance of the evidence²⁵" or, in some instances, by "clear and convincing evidence."

²² Charge." Collins Dictionary of Law". 2006. W.J. Stewart 8 Mar. 2024, <https://legal-dictionary.thefreedictionary.com/charge>

²³ Charge." Collins Dictionary of Law. 2006. W.J. Stewart 8 Mar. 2024 <https://www.thefreedictionary.com/suspect>

²⁴ *Robertson, Geoffrey* (2006). *Crimes Against Humanity*. Penguin. ISBN 978-0-14-102463-9.

²⁵ The burden of the proof available at, <https://open.lib.umn.edu/criminallaw/chapter/2-4-the-burden-of-proof/2.4>, The Burden of Proof – Criminal Law (umn.edu), accessed on 14 March 2024

I.1.15 Court

A court refers to a judicial institution responsible for resolving disputes, administering justice, and ensuring the rule of law.

I.1.16 Criminal action

Criminal action refers to any action filed on behalf of the public before criminal courts and aimed at punishing the offender.

I.1.17 Conviction

This conviction occurs after the court has examined evidence, heard testimonies, and concluded that the individual committed the offense he/ she was charged with and guilty.

I.1.18 Criminal law

Criminal law refers to the body of rules and statutes that define a crime, determine its constitutive elements and related penalties, as well as providing for the procedure to be applied in investigating, prosecuting and punishing individuals accused and convicted of committing a crime. Criminal law is meant to maintain social and public order, deterring criminal behaviours, providing Justice for victims, and rehabilitating offenders.

I.1.19 Criminal procedure

Criminal procedural law refers to the set of rules and processes applicable by different stakeholders in criminal matters within a certain legal system to handle criminal cases from the initial investigation of a crime up to the resolution of a case.

I.1.20 Substantive criminal law

Substantive criminal law in Rwanda encompasses the laws that define criminal offenses, specify the penalties for those offenses, and outline the legal principles guiding the prosecution and defense in criminal cases. It is primarily codified in the Rwandan Penal Code, which provides a comprehensive framework for defining and prosecuting crimes in Rwanda. Substantive criminal law in Rwanda is governed by the Rwandan Penal Code, which defines offenses, establishes penalties, and provides the legal framework for addressing criminal behaviour. It encompasses a range of crimes, from personal and property offenses to economic and political crimes. The law also outlines the principles of criminal responsibility,

defences, and penalties, ensuring that justice is served while upholding the rights of individuals.

I.1.21 Felony offences

A felony is an offence punishable under the law by a principal penalty of imprisonment for a term of more than five (5) years or by life imprisonment²⁶.

I.1.22 Misdemeanour offences

A misdemeanour is an offence punishable under the law by a principal penalty of imprisonment for a term of not less than six (6) months and not more than five (5) years²⁷.

I.1.23 Petty offences

A petty offence is an offence punishable under the law only by a principal penalty of imprisonment for a term of less than six (6) months, a fine or the penalty of community service²⁸.

I.1.24 A person caught red-handed

A person caught during the course of committing an offence or immediately after committing the offence.

I.1.25 Serious grounds for suspecting a person of an offence

Serious grounds for suspecting a person of an offence are defined as plausible investigation acts leading to the suspicion that the suspect has committed an offence.

I.1.26 Witness

An individual who provides testimony or evidence relevant to the case either criminal or civil one and his/ her statement counting essentially in proceedings, as their statements can help establish facts and provide clarity on the case. The court may ask the parties if there are any witnesses that are not accepted and confirms those who will be heard, keep them separately outside the courtroom²⁹

I.1.27 Summons

A summons is a written notice issued by an investigator or a prosecutor to a person mentioned therein requesting him or her to appear before a prosecutor or an investigator on a date and at time therein specified. If possible and where proof may be available that the summons has

²⁶ Art. 17/2018

²⁷ Art. 18/2018

²⁸ Art. 19/2018

²⁹ Law No 22/2018 of 29/04/2018 *Law relating to the civil, commercial, labour and administrative procedure* as amended to date in the Official Gazette No Official Gazette n° Special of 29/04/2018 up-to-date, art. 72, (4)

been duly issued to the concerned person, the summons may be served to the concerned person by means of information and communication technology³⁰.

I.1.28 Revenge

Revenge is the act of inflicting harm, injury, or punishment on someone in response to a perceived wrong or injustice they have caused. It is often motivated by a desire to retaliate or seek retribution for a real or imagined offense. Revenge can be driven by emotions such as anger, resentment, or the desire to restore a sense of justice or balance. However, it can also lead to a cycle of violence and conflict, as one act of revenge may provoke further retaliation³¹.

I.1.29 Recidivism

Recidivism refers to the tendency of a person who has previously committed a crime or engaged in criminal behaviour to relapse into similar behaviour after being punished or rehabilitated. It is often used to describe the rate at which formerly incarcerated individuals are re-arrested, reconvicted, or re-incarcerated after being released from prison or completing a sentence. Recidivism is an important concept in criminal justice, as high recidivism rates can indicate the ineffectiveness of rehabilitation programs or the challenges individuals face in reintegrating into society. It is often measured within a specific time frame, such as within one, three, or five years after release. Reducing recidivism is a key goal in efforts to improve criminal justice systems and promote successful reintegration³². For felonies, recidivism occurs at any time when a person reoffends after conviction in a final judgment; For misdemeanours, recidivism occurs when a person convicted by final judgment, re-offends within five (5) years of completion of the sentence or after its prescription. Note that, every recidivist receives the maximum penalty provided by law and such penalty may be doubled³³. There is no recidivism if the previous offence is a petty offence; the penalty imposed on the previous offence was removed by amnesty or rehabilitation and when the person who was sentenced for a military offence re-commits a felony or a misdemeanour

³⁰ Art. 29/Criminal Procedure

³¹ <https://dictionary.cambridge.org/dictionary/learner-english/revenge/Accessed> on 25/08/2024

³² <https://nij.ojp.gov/topics/corrections/recidivism/Accessed> on 25/08/2024

³³ Idem, Art. 52

except if the previous penalty imposed for an offence that may be punished by ordinary penal laws³⁴.

I.1.30 Arbitrary punishment

Arbitrary punishment refers to a form of punishment that is imposed without a clear, consistent, or justifiable reason. It is often seen as unfair because it lacks a rational basis or adherence to established rules, laws, or standards.

Arbitrary punishment is often criticized because it can lead to abuse of power, erosion of trust in authority, and a sense of injustice among those affected. In a just system, punishments are expected to be fair, consistent, and based on clear legal principles³⁵.

I.1.31 Unlawful arrest

Unlawful arrest refers to the detention of an individual by law enforcement authorities or any other person without legal justification or authority. Such arrests violate the individual's rights and the legal procedures established to ensure that detention is lawful and justified.

Unlawful arrest involves detaining an individual without proper legal authority or justification, violating their rights and the legal procedures established to ensure fair treatment. Such arrests can lead to legal consequences for both the individual making the arrest and the authorities involved. Legal systems provide various remedies and protections to address and rectify unlawful arrests, ensuring that the rule of law is upheld and individual rights are respected.

I.1.32 Arbitrary detention

Arbitrary detention refers to the imprisonment or confinement of an individual without sufficient legal justification, due process, or adherence to established legal procedures. It occurs when a person is detained without a fair and transparent legal process, often violating their fundamental rights. Arbitrary detention is considered a serious violation of international human rights law, and various international bodies, such as the United Nations, work to

³⁴ Ibidem, Art. 53

³⁵ L. Jonathan, A Dictionary of Law (8 ed.), Oxford University Press, 2015.

prevent and address cases of arbitrary detention around the world. The writ of habeas corpus is one of the legal mechanisms designed to protect individuals from arbitrary detention³⁶.

I.1.33 Compensation

Compensation in criminal matters refers to the financial restitution or reparations provided to victims of crime or, in some cases, to individuals who have been wrongfully convicted and later exonerated. The purpose of compensation is to address the harm or loss suffered by the victim or the wrongfully accused and to provide some form of justice or remedy. There are two main types of compensation in criminal matters:

1. Victim Compensation

In the context of restitution, the latter is a court-ordered payment made by the offender to the victim as part of the criminal sentence. It is intended to cover the financial losses or damages directly resulting from the crime, such as medical expenses, lost wages, property damage, or funeral costs.

2. Compensation for Wrongful Conviction

In the context of Exoneration Compensation, individuals who have been wrongfully convicted and later proven innocent may be entitled to compensation from the State or Government. This compensation is meant to address the harm caused by the wrongful conviction, such as loss of freedom, damage to reputation, and emotional distress.

Many countries and states have specific laws that provide compensation to those who have been wrongfully imprisoned. The amount and type of compensation can vary widely, including financial payments, access to social services, and assistance with reintegration into society. Note that, this is not a practice in Rwandan Criminal Justice.

In essence, Compensation in criminal matters is an important aspect of justice, helping to repair the harm caused by criminal actions and providing support to victims and wrongfully accused individuals. It also serves as recognition of the suffering endured and an effort to restore some measure of equity and fairness.

³⁶ <https://www.ohchr.org/en/about-arbitrary-detention/Accessed> on March 20th 2024

I.1.34 Habeas corpus

Habeas corpus is a legal principle that serves as a fundamental safeguard against unlawful or arbitrary detention. The term "habeas corpus" is derived from Latin, meaning "**you shall have the body.**" Under the writ of habeas corpus, a person who is detained or imprisoned can petition a court to review the legality of their detention. If the court finds that the detention is not legally justified, it can order the release of the individual. The writ of habeas corpus is a crucial component of legal systems that value human rights and the rule of law, as it protects individuals from arbitrary or unjust imprisonment³⁷.

I.1.35 Deprivation of liberty

Deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which that person is not permitted to leave at will, by order of any judicial, administrative or other public authority³⁸. Arrest or any type of detention by the authorities, including when the police apprehend a person and question them without a judicial decision or any warrant. That person may be set free after questioning; however, deprivation of liberty applies if, for a certain period of time, they were not allowed to leave police custody. In addition to restrictions on physical freedom, liberty interests include all of the rights that are granted to the people either expressly in the Constitution, such as freedom of speech or freedom from unreasonable searches and seizures. Liberty also includes rights that are implied from the Constitution by the Courts³⁹.

I.1.36 Fair trial

Fair trial means that the court follows all procedures correctly and treats all parties equally, so that the trial itself is fair and effective, regardless of the decision and outcome. The right to a fair trial encompasses requirements for the court and its constitution as well as procedural guarantees during proceedings.

This right applies to different kinds of proceedings: criminal, civil and administrative. The right to a fair trial demands that the court be established by law and its judges be independent

³⁷ <https://www.usmarshals.gov/what-we-do/service-of-process/criminal-process/writ-of-habeas-corpus/Accessed> on March 20th 2024

³⁸ Deprivation of Liberty Definition | Law Insider, available at <https://www.lawinsider.com/dictionary/deprivation-of-liberty>, accessed on 20 March 2024

³⁹ In *Meyer v. Nebraska* (1923), the Court stated that liberty "*denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness of freemen*"

and impartial. “Established by law” means that there is a law explaining how the court functions and which rules and procedures it follows when hearing a case.

“Independence of judges” means that the judges only follow the law and are not influenced by anyone else. Moreover, “impartiality” requests that the judges cannot be personally interested in the outcome of the case, or be prejudiced or biased. In the context of Procedural guarantees, The right to a fair trial encompasses a number of important procedural guarantees which help to ensure the fairness of the court proceedings.

The following guarantees apply to all kinds of proceedings such as public hearing, consideration in reasonable time, equality of arms, access to a lawyer or an opportunity to represent oneself, reasoned decision in the context of criminal proceedings, this right implies that the accused person shall be presumed innocent until proven guilty and in addition to the above, the accused in criminal trial have the following guarantees:

1. To receive information about the nature and the cause of the charge;
2. To be present at the trial;
3. Adequate time and facilities to prepare a defense;
4. Protection against self-incrimination, To examine witnesses;
5. Free assistance of an interpreter if necessary.

I.2 THEORETICAL FRAMEWORK

The present part dealt with the understanding of criminal chain under Rwandan Criminal Justice, legal theories, principles and doctrines applicable in criminal matters, especially in line with the respect of the delays and suspect’s rights in the context of delivering due Justice in due time.

I.2.1 LEGAL THEORIES IN CRIMINAL JUSTICE

Legal theory refers to the supposition or set of ideas intended to explain a certain concept based on general principles or practices which are independent of the thing to be explained. In the following section, retributive theory, restorative theory, deterrence theory, and rehabilitation theory, all were defined and linked to the principle of Justice delayed, Justice denied.

I.2.1.1 Deterrence theory

Deterrence theory in penology refers to the concept that punishment should prevent future crimes by discouraging both the individual offender and the society as whole from

committing similar offenses. The primary aim of this theory is to reduce crime through the fear of punishment⁴⁰.

I.2.1.2 Retributive theory

According to this theory, the extent of the punishment to inflict upon the offender, co-offenders and their accomplices must be proportionate to the extent of the harm done or of the violation of the Law. This theory asserts that offenders should be punished because they deserve it, based on the moral wrong they have committed. Retributive theory remains a fundamental concept in the philosophy of criminal law, emphasizing the moral imperative to punish offenders in proportion to the wrong they have committed.

I.2.1.3 Rehabilitative theory

The purpose of this theory is to reform the offender as a person so that he or she may become a normal law-abiding member of the community once again. Rehabilitative theory in criminal justice emphasizes the reformation and reintegration of offenders into society. Rehabilitative theory represents a humane and constructive approach to criminal justice, focusing on transforming offenders into productive, law-abiding citizens. While it faces challenges related to effectiveness, cost, and public perception, its potential benefits in reducing recidivism and promoting societal well-being make it a crucial component of a balanced criminal justice system.

I.2.1.4 Restorative theory

Restorative theory in penology refers to an approach to criminal justice that emphasizes repairing the harm caused by criminal behaviour through inclusive and collaborative processes involving the victim, the offender, and the community. The goal is to restore relationships, promote healing, and reintegrate the offender into society⁴¹.

I.2.2 LEGAL PRINCIPLES IN CRIMINAL JUSTICE

Legal principle refers to a basic idea or rule that tends to explain and control how something happens and pre-determine the outcome of a certain situation in legal context. In line with the

⁴⁰ Alex Raskolnikov, Deterrence Theory: Key Findings and Challenges, CAMBRIDGE HANDBOOK OF COMPLIANCE, BENJAMIN VAN ROOIJ & D. DANIEL SOKOL (EDS.), CAMBRIDGE UNIVERSITY PRESS (2021). Available at: https://scholarship.law.columbia.edu/faculty_scholarship/2576/ Accessed on 25/07/2024.

⁴¹ The locus classicus of the argument (not cited by Hart) is A.M. Quinton 'On Punishment', Analysis 14 (1954), pp. 512–517.

present study, the principle of home grown solution, the principle of legality, the principle of equality, and the principle of fairness will be applicable in order to make the study meaningful.

I.2.2.1 Principle of legality

The principle of legality in criminal law refers to the fundamental concept holding that no one can be held guilty of an offence on account of any act or omission which did not constitute an offence under national or international law at the time when it was committed. This principle further means that a heavier penalty may not be imposed than the one that was applicable at the time the offence was committed. Thus it ensures the predictability, consistence, and fair applicability of criminal laws for the sake of maintenance of the rule of law and protection of individual rights⁴².

I.2.2.2 Principle of equality before the law

The principle of equality before the law refers to the fundamental concept in criminal law and even in broader legal systems, meaning that all individuals, regardless of their ethnicity, race, religion, gender, race, ethnicity, gender, religion, social and economic status, or any other characteristics, should be treated equally under the law, id est ensuring that everyone has same rights, obligations and opportunities within a certain legal system.

I.2.2.3 Principle of the presumption of innocence

The principle of presumption of innocence is a fundamental legal principle in criminal law that guarantees the right of every person accused of any crime to be considered innocent until proven guilty by a competent court after the prosecution has presented before it the proof beyond reasonable doubts on account of charges against him or her.

I.2.2.4 Principle of double Jeopardy

The principle of double Jeopardy is a fundamental legal concept in criminal law protecting individuals from being tried or punished twice on account of the same offence. The essential

⁴² CRISAN, Fundemental of crime, criminal law and criminal Justice, July, 2010

idea is that once a person has been acquitted or convicted of a particular crime, they cannot be tried again for that same offence⁴³.

I.2.2.5 Principle of non-retroactivity

The principle of non-retroactivity refers to the non-retrospective aspect underlying the application of criminal law. This is a fundamental and universal concept in different legal systems stating that laws should not be applied retroactively to criminalize conducts that were lawful when it occurred. In other words, individuals should not be punished for actions or omissions that were not considered illegal at the time they were committed.

I.2.2.6 Principle of in dubio pro reo

"In dubio pro reo" is a Latin legal maxim meaning "when in doubt, for the accused." This principle is a fundamental aspect of criminal law and embodies the idea that if there is any reasonable doubt regarding a defendant's guilt, they should be acquitted. "In dubio pro reo" is a cornerstone of criminal justice systems worldwide, ensuring that the fundamental rights of the accused are protected and that justice is administered fairly. By mandating that any reasonable doubt be resolved in favour of the defendant, this principle helps prevent wrongful convictions and maintains the integrity of the legal process⁴⁴.

I.2.3 LEGAL DOCTRINES IN CRIMINAL JUSTICE

The principle of the presumption of innocence is a fundamental doctrine in criminal law, ensuring that an individual accused of a crime is considered innocent until proven guilty. This principle is enshrined in various legal frameworks, including international human rights instruments and national constitutions. In the context of Rwandan law and broader legal doctrines, several legal principles and doctrines align with and support the presumption of innocence⁴⁵.

I.2.3.1 Doctrine of burden of proof

The doctrine of burden of proof lies with the prosecution, meaning it is the responsibility of the State to prove the guilt of the accused beyond a reasonable doubt. In Rwanda, as in many legal systems, the accused does not have to prove their innocence. The prosecution must

⁴³ VIJOY, The conceptual analysis of the principle of double jeopardy and the protection of Human Rights in Criminal Justice Administration, Volume 4, Issue-1, November,2012

⁴⁴ <https://cld.irmct.org/notions/show/437/in-dubio-pro-reo-principle/Accessed> on 20/08/2024

⁴⁵ W. WILSON, criminal law ,3rd ed., Harlow, Pearson Education Limited ,2008

present sufficient evidence to convince the court that the accused is guilty of the crime charged⁴⁶.

I.2.3.2 Doctrine of standard of proof

The doctrine of the standard of proof reflects the idea that the evidence presented by the prosecution must be so convincing that there is no reasonable doubt in the mind of the Judge regarding the guilt of the accused. In Rwandan courts, this standard is rigorously applied to protect individuals from wrongful conviction. If the evidence is not compelling enough to eliminate reasonable doubt, the accused must be acquitted⁴⁷.

I.2.3.3 Doctrine of fair trial

The right to a fair trial is a broad doctrine that includes several protections for the accused, all of which support the presumption of innocence. This doctrine includes the right to be informed of the charges, the right to legal representation, the right to cross-examine witnesses, and the right to present evidence in one's defense. Rwandan law guarantees the right to a fair trial under the Constitution and the Code of Criminal Procedure. This ensures that the accused has a fair opportunity to challenge the evidence against them and to defend themselves in court⁴⁸.

I.2.3.4 Doctrine of silence

The doctrine of silence reflects the right to remain silent allowing the accused to refrain from self-incrimination. The fact that an accused person chooses not to testify cannot be used as evidence of guilty. In Rwanda, as in many other jurisdictions, the right to remain silent is respected, and no negative inference should be drawn from an accused's decision not to testify⁴⁹.

⁴⁶ Chittharajan F. Amerasinghe, *The principle actori incumbit onus probandi*, evidence in International Litigation, Brill,(2005),pp 61-95. Available at: DOI: https://doi.org/10.1163/9789047407775_010/Accessed on 15/08/2024.

⁴⁷ Bell Lamb and Joynson, *Understanding the standard of proof in criminal cases*, August,2022. Available at: <https://www.bljsolicitors.co.uk/blog/understanding-the-standard-of-proof-in-criminal-cases/Accessed> on 15/08/2024.

⁴⁸ International Covenant on civil and political rights,1966

⁴⁹ Richard Albert and David Kenny, *The challenges of Constitutional silence: Doctrine, Theory, and applications*,Oxford University Press,2018

I.2.3.5 Doctrine of admissibility of evidence

The doctrine of the admissibility of evidence reflects the exclusionary rule, which refers to a legal doctrine that prohibits the use of evidence obtained in violation of the accused's legal rights. If evidence is obtained unlawfully, such as through coercion, torture, or illegal searches, it is inadmissible in Rwandan courts. This protects the integrity of the presumption of innocence by ensuring that only legally obtained evidence is used to convict⁵⁰.

I.2.3.6 Doctrine of publicity

The doctrine of publicity refers to the right to a public trial ensuring transparency in the legal process and prevents secret or biased proceedings⁵¹ and tends to increase the transparency and credibility of the judiciary in front of the public.

I.2.3.7 Doctrine of recourse

The doctrine of recourse refers to the right to appeal allowing a convicted person to challenge the conviction or sentence in a higher court. Rwandan law provides the accused with the right to appeal against a conviction or sentence. In Rwanda, this doctrine is integral to the criminal justice process, reinforcing the principle that everyone is innocent until proven guilty beyond a reasonable doubt. The courts, by adhering to these principles, uphold the integrity of the legal system and ensure that justice is administered fairly⁵².

I.2.4 CRIMINAL JUSTICE CHAIN IN RWANDA

All institutions and activities that are involved in the criminal justice from the crime investigation up to the release of a convicted person after he or she has served his/her sentence or has been acquitted.

I.2.4.1 INVESTIGATION

Criminal investigation in Rwanda is primarily handled by the Rwanda Investigation Bureau (RIB), which is the main agency responsible for investigating crimes and gathering evidence to support prosecutions. The RIB was established in 2018, and entrusted with the power to investigate on serious crimes including murder, robbery, human trafficking, cybercrimes, corruption, and many more. In performing its responsibilities, RIB collects and analyzes

⁵⁰ Statute of the International Criminal Court, 1998

⁵¹ Rrustem Q., The principle of publicity as a constitutional category with special focus on civil contested procedure, Hungarian Journal of legal studies, Vol 62, Issue 2, 2022.

⁵² D.J. Gallican, Due process and fair procedures: A study of administrative procedures, January, 1997.

evidences, conducts interrogations, and collaborates with other law enforcement agencies including the police, the prosecution and the Judiciary to bring the wrongdoers to book.

As per the investigation process, once a crime is reported to the RIB through various channels, RIB takes charge of the investigation starting from the evidence collection by using forensic science, witness statements, and other investigative techniques to gather evidence so that when sufficient evidence is found, suspects may be arrested and detained in Police custodies while further investigations are being conducted.

In regard to Legal Framework governing RIB activities, the investigation process is governed by the Rwandan Penal Code and the Code of Criminal Procedure. These laws outline the rights of suspects and the procedures for conducting investigations including the right to legal representation and protection against torture or ill-treatment during detention.

However, in regard to challenges and reform, there have been concerns about human rights abuses during investigations, including allegations of torture. The government has been urged to improve transparency and ensure that investigations are conducted in line with international human rights standards and made a significant strides in improving its criminal justice system, including the establishment of specialized units within the RIB for crimes like gender-based violence and cybercrime. In summary, Criminal investigation in Rwanda is a structured process overseen by the RIB, with a strong legal framework to guide the proceedings. The country continues to develop its investigative capacity while addressing challenges related to human rights and ensuring justice is duly served.

I.2.4.2 PROSECUTION

Prosecution in Rwanda's criminal justice system is primarily handled by the National Public Prosecution Authority (NPPA). This authority is responsible for overseeing all prosecutions in the country, ensuring that justice is served fairly and efficiently. The NPPA is the central body in charge of prosecuting criminal cases in Rwanda and it carries out its missions independently from the executive branch of the government, although it operates under the oversight of the Ministry of Justice⁵³. Once the investigation process is done and the case submitted to the prosecution, The NPPA is responsible for deciding whether to prosecute cases based on the evidence provided by investigative bodies such as the Rwanda

⁵³ Criminal Justice policy, September, 2022

Investigation Bureau (RIB) or review the investigation when deemed necessary such as in case evidences are not sufficient in order to proceed at the next level by assessing the credibility of evidence, the legality of the investigation, and whether the case meets the legal standards for prosecution. If the NPPA decides to prosecute, it formally charges the suspect(s) with specific criminal offenses. These charges are based on the Rwandan Penal Code whereby it is stipulated that In the court proceedings, Prosecutors present the case in court, arguing on behalf of the state to prove the guilt of the accused. They work with evidence, witness testimonies, and legal arguments to make their case. In some cases, the NPPA may engage in plea bargaining, where the accused may plead guilty to lesser charges in exchange for a lighter sentence. This is particularly common in cases where the evidence might not be strong enough for a full trial or to expedite the legal process⁵⁴.

In the perspective of Legal framework, The Penal Code of Rwanda defines criminal offenses and the corresponding penalties, which makes the NPPA prosecute cases based on these legal provisions and the Code of Criminal Procedure which outlines the procedural rules that govern criminal prosecutions, including the rights of the accused, the role of the prosecution, and the conduct of trials. In regard to the rights of the accused, Rwandan law ensures that accused persons have the right to a fair trial, legal representation, and the presumption of innocence until proven guilty, and The NPPA is required to uphold these rights during the prosecution process. In the context of challenges that the NPPA experience in its daily activities, it has a trio fold aspect.

1. Primarily, in line with the case backlog which can delay justice and for which the NPPA has been working on to streamline processes and improve efficiency in handling cases;
2. Secondly, in line with capacity building for which continuous training is crucial for the NPPA to keep up with new forms of crime, such as cybercrime and financial crimes, ensuring prosecutors are well-equipped to handle complex cases;
3. Thirdly, in line with human rights concerns, There have been concerns regarding the treatment of suspects and the fairness of some prosecutions, especially in politically

⁵⁴ Idem, 45

sensitive cases. The NPPA, along with other parts of the criminal justice system, is under scrutiny to ensure that human rights are respected⁵⁵.

The prosecution process in Rwanda is a crucial element of the criminal justice system, led by the NPPA. While the system has made significant progress in terms of efficiency and specialization, challenges remain, particularly in areas of human rights and case management. The NPPA continues to play a key role in ensuring that justice is served in accordance with Rwandan law and international standards.

I.2.4.3 COURT

In Rwanda, the courts play a critical role in the criminal justice system by ensuring that justice is administered fairly and in accordance with the law. The judiciary is independent from the executive and legislative branches of government, and it operates under the principles of the rule of law and due process.

The role of the courts in criminal matters includes adjudicating cases, safeguarding the rights of the accused, and ensuring that the prosecution adheres to legal standards. The role of the courts in Rwanda's criminal Justice system is fundamental to ensuring that justice is administered fairly and in accordance with the law.

Through their adjudication of cases, protection of human rights, and oversight of the legal process, the courts help maintain the rule of law and uphold the principles of justice in the country. Despite challenges, ongoing reforms and modernization efforts are aimed at strengthening the judiciary's capacity to fulfil its critical role in criminal matters⁵⁶.

⁵⁵ NPPA QUARTERLY PROGRESS REPORT, JULY-DECEMBER,2021,RELEASED MARCH,2022

⁵⁶ www.judiciary.gov.rw/Accessed on 15/08/2024.

CHAPTER TWO: IMPACTS OF PROCEDURAL DELAYS VIS-A-VIS THE DELIVERING OF TIMELY CRIMINAL JUSTICE IN RWANDA.

Procedural delays in the criminal justice system can have significant negative impacts, especially in a context like Rwanda. These delays can affect not only the accused and victims but also society as a whole. Addressing these delays is critical for ensuring that Rwanda’s justice system continues to support post-conflict healing and national development.

In adverse, delivering timely Justice should be understood in the sense of prompt and efficient resolution of legal cases, ensuring that individuals receive fair outcomes without unnecessary delays through swift proceedings, efficient processes, access to resources, preventing delays, prompt enforcement and community engagement⁵⁷.

Therefore, timely Justice is crucial for maintaining public confidence in the legal system, protecting the individuals’ rights, and upholding the principle that Justice delayed is Justice denied.

II.1 DYNAMICS OF EFFECTIVE JUSTICE

Justice is understood as a multifaceted concept that generally refers to the pursuit of fairness, equality, and moral rightness within a society, seeking to create a balance where rights are respected, wrongs are punished and rectified, and public order maintained. Therefore, for the Justice to be effective and promising, needs to be characterized and built up by certain dynamics which involve several interconnected elements that are meant to work together to create a fair and functioning legal system.

II.1.1 Access to Justice

Access to Justice refers to the ability of individuals to seek and obtain fair resolution of legal disputes, as well as to fully participate in the legal system and upholding the rule of law and ensuring that everyone can seek redress for grievances and protect their rights in a fair and equitable manner, and ensuring that all individuals can easily access legal resources, representation, and support. This includes addressing barriers such as cost, language, and education⁵⁸.

⁵⁷ Gillespie, Robert W. *Judicial Productivity and Court Delay: An Exploratory Analysis of the Federal District Courts*. Washington, D.C,1977

⁵⁸ *Idem*,62

II.1.2 Impartiality

Impartiality is a cornerstone of effective Justice, ensuring that legal proceedings are fair and unbiased and it contributes to effective Justice in the following contexts:

1. In the context of neutral decision-making, Judges must make decisions based solely on evidence and legal principles, free from personal biases or external pressures.
2. In the context of equal treatment, all individuals, regardless of their backgrounds, status, or identity, should be treated equally under the law, promoting fairness in outcomes.
3. In the context of transparency in processes, open and transparent procedures help build trust in the Judicial system, as parties can see that decisions are made based on objective criteria.

In essence, impartiality is essential for delivering just outcomes, upholding the rule of law, and maintaining the integrity of the justice system. Judges, and other legal practitioners must act without bias, making decisions based solely on facts and evidence⁵⁹.

II.1.3 Transparency

Legal processes should be open and clear to the public. Transparency fosters trust in the system and allows for accountability.

II.1.4 Consistency

Laws and their applications should be consistent to ensure fairness. This helps individuals understand the consequences of actions and promotes a sense of stability.

II.1.5 Timeliness

Justice should be delivered promptly to prevent prolonged suffering and uncertainty for all parties involved. Delays can erode trust in the system.

II.1.6 Community engagement

Involving the community in the justice process can help ensure that the system reflects societal values and needs, fostering a sense of ownership and responsibility.

⁵⁹ Grau, Charles W.; Sheskin, Arlene. *Ruling Out Delay: The Impact of Ohios Rules of Superintendence on the Administration of Justice*. Washington, D.C,1982

II.1.7 Restorative practices

Incorporating restorative justice approaches can help repair harm and rebuild relationships, focusing on healing rather than punishment alone⁶⁰.

II.1.8 Education and awareness

Promoting understanding of legal rights and responsibilities among the public empowers individuals to advocate for themselves and seek justice.

II.1.9 Collaboration

Effective justice often requires cooperation among various sectors, including law enforcement, social services, and community organizations, to address underlying issues.

II.1.10 Evaluation and reform

Regular assessment of the justice system's effectiveness and responsiveness is crucial. This allows for the identification of areas needing improvement and the implementation of reforms. Note that, the aforementioned dynamics work together to create a justice system that is not only effective in delivering outcomes but also equitable and trustworthy in the eyes of the community.

II.2 ANALYSIS ON THE MAXIM OF DELAYED JUSTICE, DENIED JUSTICE

William E. Gladstone, former British Statesman and Prime Minister in the late 1800's, famously said 'Justice delayed is Justice denied'. However he was not the first to express this notion, and it is arguable that its meaning has been articulated in many different ways for thousands of years⁶¹.

Historical acknowledgements recognise the perspective of the accused or the disputant, and suggest that for a person seeking justice, the time taken for resolution of their issue is critical to the justice experience of this person and can render their treatment wholly 'unjust' in circumstances where finalisation of a dispute takes 'too long'. In essence, these acknowledgements are consistent with more recent research which has shown that the time taken to deal with a dispute is a, and in many cases the, critical factor in determining whether

⁶⁰ Supra,64,63,62

⁶¹ The idea is said to have first been expressed in the Biblical writings of Pirkei Avot 5:8, a section of the Mishnah (1st century BCE – 2nd century CE) in which it is stated 'Our Rabbis taught: ...[t]he sword comes into the world, because of justice delayed and justice denied...'; as well as in the Magna Carta of 1215, cl 40 of which reads, '[t]o no one will we sell, to no one will we refuse or delay, right or justice.; Martin Luther King Jr also said 'justice too long delayed is justice denied' in his Letter from Birmingham Jail (August 1963).

or not people consider that the justice system is just and fair⁶². Recent research by the Australian Centre for Justice Innovation's ('The Centre') about timeliness and justice has taken place in the context of recognition that the justice system has breadth beyond more formal justice processes that operate in courts and tribunals⁶³. In particular, civil dispute resolution mechanisms include many processes and institutions which are focused on justice, such as external dispute resolution ('EDR'), broader alternative dispute resolution ('ADR'), as well as the sort of 'everyday justice' that is used when disputes are either avoided or resolved directly⁶⁴.

This article considers issues in the justice system that are related to timeliness and the interconnectedness of the definition of delay, whilst also considering the impact of delay on the experience of the justice system user. This research also considers the innovations that have been introduced to address the issue of lack of timeliness in the justice system (including ADR) and provides an overview of potential innovations that might support timeliness into the future⁶⁵.

Initially, issues that arise in the context of a definition of timeliness are considered as these issues have arguably constrained the development of strategies⁶⁶. The principle "justice delayed is justice denied" highlights the negative consequences of delays in the judicial process, emphasizing that when the legal system fails to deliver timely justice, the very purpose of justice is undermined. This principle is rooted in the understanding that excessive or unreasonable delays can cause harm to both the accused and the victims, eroding confidence in the legal system⁶⁷.

Therefore, the phrase "justice delayed is justice denied" suggests that justice must be delivered within a reasonable timeframe; and if it is delayed unnecessarily, it can invalidate the purpose of the legal system in the sense that it becomes ineffective or irrelevant, especially when the harm caused by the crime or dispute persists or worsens due to the delay or harm both the victim and the accused whereby victims may feel neglected, while the

⁶² T Sourdin, *Mediation in the Supreme and County Courts of Victoria* (Australian Centre for Justice Innovation, 2009) 117–118;

⁶³ Hillenkamp, Thomas, *Verfahrenshindernisse von Verfassungen wegen*. Manuscript, 1989

⁶⁴ T Sourdin, *Exploring Civil Pre-Action Requirements: Resolving Disputes Outside Courts* (Australian Centre for Justice Innovation, 2012) 127–47.

⁶⁵ *Idem*, 68

⁶⁶ T Sourdin, *The Timeliness Project: Background Report* (Australian Centre for Justice Innovation, 2013).

⁶⁷ *Idem*, 67

accused may suffer from prolonged uncertainty or unwarranted punishment such as pre-trial detention.

1. In the context of timely Justice as a fundamental right, many legal systems enshrine the right to a fair and speedy trial, for example the USA constitution's 6th Amendment guarantees a right to a speedy trial, and the European Convention on Human Rights (Art.6) echoes this right.
2. In the context of Natural Justice and fairness, the principle aligns with the natural law theory, which asserts that justice must not only be done but must be seen to be done in a reasonable period of time. Delayed Justice creates an impression of injustice or unfairness, particularly when individuals are held in limbo for years awaiting trial or judgement⁶⁸.
3. In the context of Judicial efficiency as part of Justice, efficient Judicial processes ensure that the rights of all parties are protected and the rule of law is upheld. When Justice is delayed, it suggests inefficiency, and the latter undermines the rule of law.

In summary, the maxim Justice delayed is Justice denied serves as a critical reminder that the timely administration of Justice is essential for a fair and functional legal system. While some delays are unavoidable due to the complexity of cases or the need for thoroughness, systematic, system inefficiencies or excessive delays undermine the very notion of Justice, ensuring a balance between efficiency and the process is the key to maintain the integrity of the Judicial system and upholding the rule of Law⁶⁹.

⁶⁸ Morgan, Patricia; Vennard, Julie, Pre-Trial Delay: The Implications of Time Limits. London: Home Office, 1989

⁶⁹ Thomas Feltes, Delays in the Criminal Justice System - Causes and Solutions. Council of Europe, Criminological Research, Vol. XXVIII, Strasbourg 1992, p.47-84

II.2.1 APPROPRIATE DELAY

In Rwanda, as in many other legal systems, the balance between ensuring a timely judicial process and protecting the rights of the accused and the interests of Justice is the key to improve the timeliness and effectiveness of courts and here below is how delay is understood in Rwandan perspectives:

1. In the context of right to a fair and timely trial, Rwanda's Constitution (Art. 29) guarantees the right to a fair trial within a reasonable time. This principle aims to ensure that criminal cases are processed without unnecessary delays while still providing adequate time for preparation by both the prosecution and defense⁷⁰.
2. In the context of balancing speed with due process, Rwanda's Judicial system has sought to improve efficiency without compromising due process. While the system prioritizes prompt resolution of cases, it must also ensure that both sides have adequate time for being tried.

In Rwanda, appropriate delay in criminal Justice system involves balancing the need for swift Justice with the need for fairness and thoroughness in legal proceedings. Therefore, Although Rwanda has made strides in improving the efficiency of its judicial system, ongoing efforts are required to ensure that Justice is delivered promptly without compromising due process or the rights of those involved⁷¹.

II.2.2 INAPPROPRIATE DELAY

Inappropriate delays in Rwanda's criminal Justice system refer to unjustified or excessive delays in the processing of cases, which can have significant consequences for defendants, victims, and the overall justice process. Despite Rwanda's reforms and improvements, certain challenges still contribute to these delays.

In the perspective of pre-trial detention and prolonged incarceration, extended pre-trial detention, one of the most common forms of inappropriate delays in Rwanda is prolonged pre-trial detention where individuals are held for long periods without trial. Although Rwandan law sets limits on the duration of pre-trial detention, there are still instances where

⁷⁰ Neubauer, David W.; et al. *Managing the Pace of Justice: An Evaluation of LEAA's Court Delay Reduction Programs*. Washington, D.C.: Government Printing Office, 1981

⁷¹ *Idem*, 53

defendants are detained for extended periods, often due to case backlogs or administrative inefficiencies⁷².

In regard to pertinent consequences, prolonged detention without trial can lead to overcrowded prisons and violate the rights of detainees, especially when they are held for minor offences or without sufficient evidence.

In the context of bureaucratic and administrative delays, the court administration can be the inappropriate delay in case of inefficient court⁷³.

In the context of court administration, it reflects the idea of inefficient court and administrative processes, such as delays in filing, scheduling, and notifying parties, can add to the overall delays in criminal proceedings.

Inappropriate delays in Rwanda's criminal Justice system, while lessening over time due to significant reforms, still occur and can have negative consequences for both defendants and victims. The government's ongoing commitment to improving judicial efficiency, reducing the backlogs, and strengthening legal safeguard is crucial to minimizing these delays and upholding the integrity of the judicial system⁷⁴.

II.2.3 JUSTICE HURRIED IS JUSTICE BURIED

The phrase Justice hurried is justice buried expresses the idea that when legal proceedings are rushed, the quality of Justice is compromised. In other words, hastily conducted trials or investigations may lead to mistakes, incomplete assessments, or unfair decisions, effectively termed as burying true Justice.

1. In the context of Justice hurried, the principle of due process may be skipped or undermined, investigations, hearings, or trials may be rushed without proper deliberation and evidence may not be thoroughly examined, and the rights of the accused or victims may not be respected.
2. In the context of Justice buried, truth and fairness are obscured due to haste; the rights of individuals to a fair trial or hearing may be overlooked and end up leading to wrongful convictions, acquittals, or miscarriages of Justice, ultimately burying the real issues and truth.

⁷² William H. Taft, "The chief reason why the State devotes so much time and effort to the administration of justice is to promote the cause of peace and tranquility in the community.", 1908

⁷³ *Idem*, 55

⁷⁴ *Supra*, 55, 54

II.2.4 JUSTICE HURRIED VERSUS JUSTICE DELAYED

The balance between Justice hurried and Justice delayed is a delicate one, as both extremes can undermine the fairness and effectiveness of the Legal system. In the context of Justice hurried, in other words rendered too fast, swift decisions can provide timely resolutions, prevent unnecessary prolongation of suffering for victims, and allow society to move forward and prevents accused individuals from remaining in legal limbo for extended periods; whereas when rushed, there is a higher chance of oversight, incomplete investigations, or procedural errors which may lead to wrongful convictions or the acquittal of the guilty for which haste may disregard due process, denying both victims and the accused fair treatment.

In the context of Justice delayed, or in other words delivered through a slow procedure, it encompasses the necessary time to conduct a credible and effective investigation, careful consideration of evidence, and proper defense. In this sense, it also promotes more accurate, fair, and thoughtful outcomes, ensuring that all aspects of the case are properly addressed.

Therefore, Justice delayed, Justice denied is a well known adage, meaning that delayed justice may fail to serve the needs of victims and society. Moreover, to strike the balance between Justice hurried and Justice delayed, a legal system must be efficient, thorough, fair and transparent.

In the context of efficiency, procedures should be designed to move cases forward in a timely manner without sacrificing quality; In the context of thoroughness, cases must be carefully investigated, and all evidence must be properly considered, while avoiding unnecessary delays; In the context of fairness, both the rights of the accused and of the victims should be protected, ensuring fairness in proceedings should take precedence over arbitrary deadlines or expediency. In the context of transparency, accountability and clarity in the judicial process help ensure that decisions are just, regardless of time constraints. In summary, the ideal legal process finds a middle ground between both concepts, ensuring that Justice is neither rushed to the point of injustice nor delayed to the point where it becomes ineffective or irrelevant.

II.2.5 JUSTICE DENIED VERSUS JUSTICE BURIED.

The concept of Justice denied and Justice buried both represent failures in the legal or judicial process, but they differ in terms of how justice is obstructed. Justice is said to be denied, when individuals or groups are completely deprived of Justice; it often refers to cases where Justice is not delivered at all; whether through excessive delay, corruption, lack of access to legal recourse, or systemic failures.

Justice is said to be buried when it refers to the situations where it appears to be served, but due to haste, lack of thoroughness, or intentional manipulation, the truth is hidden or ignored. It implies that Justice has been superficially applied, but the true facts or fairness are buried beneath procedural or institutional failures.

II.2.5.1 Disparities

Justice denied involves a complete lack of Justice either through delay, exclusion, or inaccessibility. No resolution or fair outcome is reached, leaving victims or defendants in legal limbo, whereas Justice buried involves complete or superficial Justice. A Judgment is rendered, but it is based on incomplete, rushed, or manipulated processes, burying the true fairness of the outcome.

III.2.5.2 Common grounds

Both situations represent failures of the judicial system but manifest in different ways. Justice denied is when Justice doesn't happen at all, whereas Justice buried is when Justice is incomplete, hidden, or distorted. Both undermine the integrity of the legal system and result in significant harm to individuals and society at large.

II.3 CAUSES OF DELAYS OF JUSTICE

Delays in the justice system can be linked to various factors such as high caseloads, limited judicial resources, procedural complexity, inadequate legal representation, investigative delays, etc...These causes are widespread and can occur for many reasons to and can undermine the effectiveness and fairness of the legal process. A combination of these factors often contributes to delays in Justice, with serious consequences for the people involved. Delayed Justice undermines the confidence in the legal system, denies closure to victims, and can lead to further suffering for both the accused and victims. Addressing these delays often require systemic reforms aiming at improving efficiency, increasing resources, and reducing procedural complexities.

II.3.1 Case backlogs

These make courts to be overburdened with more cases than they can handle, result in lengthy delays. This can be linked to resource constraints, lack of enough judicial personnel, etc...In the context of judicial congestion, the Rwandan judiciary, despite its reforms, continues to face case backlogs, particularly in certain regions or in courts with limited resources. This contributes to delays in the complex cases, especially those involving organized crimes, financial crimes, or appeals, tending to experience the longest delays. In the context of impact on Justice, delayed resolution of cases may result in witnesses forgetting details, evidence degrading, or victims and defendants becoming disillusioned with the system.

II.3.2 Complex criminal procedure

Excessively complicated or bureaucratic legal procedures can slow down the resolution of cases. Legal motions, appeals, and the formalities of trial processes can all contribute to delays. In the context of complexity of evidence, some criminal cases, particularly those involving financial fraud, organized crimes, or cross-border criminal activities, may require extensive investigation, which can lead to delays. Activities may require extensive investigation, which can lead to delays for which when they go beyond what is reasonable for the complexity of the case. Therefore, in the context of legal challenges, multiple legal motions or challenges can slow down the progress of a case. While this is part of the due process, it can contribute to extended delays, especially if the system is already overburdened.

II.3.3 Lack of access to legal representation

Lack of access to legal representation reflects the idea that in some legal systems, defendants or plaintiffs may not have access to legal representation, particularly in underfunded or rural regions. This can delay the ability to prepare for trials or defend one's rights effectively.

II.3.4 Corruption and mismanagement

Delays can also be a product of judicial corruption or mismanagement, where cases are intentionally postponed or influenced by external factors.

II.3.5 Case Prioritization

It may happen that some cases are given priority over others due to outside pressures, leaving other cases delayed for long periods.

II.3.6 Resource deficiencies

In the context of understaffed judiciary, in some areas, courts may lack enough judges, prosecutors, and other key personnel to handle cases efficiently. This can slow down the scheduling of hearings, trials, and appeals.

In the context of legal representation shortages, defendants, especially in rural areas, may face delays due to a lack of access to legal representation, particularly public defenders. This impacts their ability to prepare and present their cases on time.

II.4 EFFECTS OF DELAYS OF JUSTICE

Delays in the Criminal Justice in Rwanda, as in many other countries, can have significant social, economic, and legal impacts. Although Rwanda has made considerable progress in rebuilding its criminal Justice system following the 1994 genocide against the Tutsi, delays in the Criminal Justice process continue to pose challenges⁷⁵.

In summary, delays in criminal Justice system in Rwanda can undermine public confidence, violate human rights, and impede the country's recovery and reconciliation process. They have significant consequences for both the accused and society, affecting everything from economic stability to national unity. Addressing these delays is critical to ensuring Justice, peace, and long-term stability in the country.

II.4.1 Effects on the accused

The side effects of a delay in Justice on accused person can be severe, affecting various aspects of their life and well being.

In the context of prolonged pre-trial detention, delays can result in the accused being held in pre-trial detention for an extended period. This can be especially harsh if the individual is ultimately found innocent, as they have unjustly lost their freedom, and most of the time they are housed in overcrowded, under-resources facilities, where conditions are often harsh and detrimental to their well-being.

In the context of emotional and psychological stress, the uncertainty surrounding their case which can cause significant mental stress whereby the accused may suffer from anxiety, depression, and fear about outcome of the case and their future. Moreover, this can also cause

⁷⁵ Neubauer, David W.; et al. Managing the Pace of Justice: An Evaluation of LEAA's Court Delay Reduction Programs. Washington, D.C.: Government Printing Office, 1981

stigmatization whereby even without a conviction, the accused may face stigma from the society, friends or family. The delay in clearing their name exacerbates this stress and can lead to a decline of mental health, herein referred to mental health deterioration.

In summary, delays can have catastrophic effects on an accused person, often causing irreversible damage to their mental health, personal life, and future opportunities; even if they are ultimately acquitted as it underscores the importance of timely and the principle that Justice must be swift to be fair⁷⁶.

II.4.2 Effects on the victim

In the context of emotional harm, delays can prolong the trauma for victims, particularly in serious cases such as violent crimes or abuse. The wait for Justice can intensify feelings of victimization and helplessness.

In the context of loss of confidence in the system, victims may lose faith in the legal system if they perceive it as too slow, ineffective, or indifferent to their needs. This can deter future victims from seeking legal redress.

In the context of delayed compensation or redress, victims might wait years for financial compensation or other forms of redress, which can exacerbate their financial difficulties or suffering.

II.4.3 Effects on the society

When Justice is delayed, the public may lose confidence in the judicial system's ability to maintain order and fairness. This can lead to disillusionment with the rule of Law and democratic processes.

II.5 RIGHTS OF THE ACCUSED

The rights of the accused refer to the legal protections granted to individuals accused of a crime. These rights are critical to ensuring that the criminal justice process is fair and just. The specific rights and their application can vary significantly depending on the legal system in place. In Rwandan legal framework, suspect's rights can be divided in the following categories:

⁷⁶Nimmer, Raymond A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing. Denver Law Journal 48, 1976,pp.206-208

II.5.1 CONSTITUTIONAL RIGHTS

Constitutional rights are the fundamental rights and freedoms guaranteed to individuals by a nation's constitution. These rights are designed to protect citizens from abuses of power by the government and ensure a framework for a free and just society. The specific rights can vary depending on the country, but here are some of the common constitutional rights, particularly in democratic countries like the United States. These rights form the backbone of constitutional law and provide the basis for citizens' protection against government overreach and the maintenance of individual freedoms in a democratic society⁷⁷.

II.5.1.1 Right to life

The right to life is a fundamental human right enshrined in the Rwandan Constitution. According to the Constitution of the Republic of Rwanda, as revised in 2023, the right to life is protected under Chapter IV, which deals with fundamental human rights and freedoms.

The Rwandan Constitution explicitly guarantees the right to life stating that everyone has the right to life, and that no one shall be arbitrarily deprived of it⁷⁸. This provision underscores the inviolability of life, ensuring that the State and its authorities cannot arbitrarily take an individual's life⁷⁹.

In addition to the constitutional protections, Rwanda is a signatory to various international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which also protect the right to life. These international commitments further reinforce Rwanda's obligations to uphold the right to life. Overall, the Rwandan Constitution places a high value on the right to life, aligning with global human rights standards⁸⁰.

II.5.1.2 Right to inviolability

The concept of "inviolability" in the Rwandan Constitution refers to the protection of certain fundamental rights and freedoms that cannot be violated or interfered with by the state or other individuals. This protection is designed to ensure that individuals' dignity, freedom, and privacy are respected at all times.

⁷⁷ William F. Fox, The presumption of innocence as constitutional Doctrine, Volume 28, Issue 2, 1979.

⁷⁸ Art. 12, Rwandan Constitution

⁷⁹ Pamela Ferguson, The presumption of innocence and its role in the criminal process, 2016, p.27

⁸⁰ ICCPR, 1966

In summary, the Rwandan Constitution recognizes and protects the inviolability of the person, home, and correspondence, ensuring that individuals' dignity, privacy, and personal integrity are upheld and safeguarded from unjust interference⁸¹.

II.5.1.3 Right to physical and mental integrity

The right to physical and mental integrity is a fundamental human right that is recognized and protected under Rwandan law. This right ensures that individuals are safeguarded against any form of physical or psychological harm, abuse, or coercion⁸². In Rwanda, the protection of this right is enshrined in various legal instruments, including the Constitution, international treaties to which Rwanda is a party, and national laws. In the context of Constitutional Protection, The right to physical and mental integrity is explicitly recognized in the Constitution of Rwanda. Article 14 of the Constitution provides that every person has the right to physical and mental integrity, and no one shall be subjected to torture, cruel, inhuman, or degrading treatment or punishment⁸³.

In the context of International Human rights, Rwanda is a signatory to several international treaties that protect the right to physical and mental integrity, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture (CAT). These treaties require Rwanda to uphold and protect the rights enshrined within them. As far as the right to physical and mental integrity is concerned, in the context of prohibition of torture and inhumane treatment, Rwandan Law strictly prohibits torture, whether physical or psychological, in any form. In addition, any other form of cruel, inhumane, or degrading treatment is also prohibited. This includes acts that may not meet the definition of torture but still cause significant physical or psychological harm.

The right to physical and mental integrity is a cornerstone of human dignity and is robustly protected under Rwandan law. Rwanda's legal framework, in line with international standards, ensures that individuals are protected from physical and psychological harm and that those who violate these rights are held accountable. The ongoing efforts to strengthen mental health services and protect vulnerable groups further reflect Rwanda's commitment to

⁸¹ *Idem*, 67

⁸² Art. 14, Rwandan Constitution

⁸³ *Idem*, 71

upholding this fundamental right. Everyone has the right to physical and mental integrity, no person shall be subject to torture or to abuse or cruel, inhuman or degrading treatment.

II.5.1.4 Right to the equality before the law

The right to equality before the law is a fundamental principle enshrined in Rwandan law, which guarantees that all individuals are treated equally in the eyes of the law, without discrimination. This principle is a cornerstone of justice and fairness in Rwanda's legal system, ensuring that every person has access to legal protection and that their rights are upheld regardless of their background⁸⁴. In the perspective of Constitutional Framework, the right to equality before the law is explicitly provided for in the Constitution of Rwanda. Article 15 of the Constitution states: "All persons are equal before the law. They are entitled to equal protection of the law." This article underscores the commitment of the Rwandan state to ensure that all citizens, regardless of their social, economic, or ethnic background, enjoy equal rights and legal protections⁸⁵.

In essence, the right to equality before the law is a fundamental aspect of Rwanda's legal and constitutional framework. Rwanda's commitment to this principle is reflected in its Constitution, national laws, and adherence to international human rights treaties. While challenges remain, the Rwandan government continues to work towards ensuring that all individuals enjoy equal protection and treatment under the law, contributing to a more just and equitable society. All humans are equal before the law and they enjoy equal protection of law⁸⁶.

II.5.1.5 Right to protection from discrimination

The right to protection from discrimination is a key component of human rights in Rwanda. This right ensures that all individuals are treated equally and fairly, without being subjected to unfair treatment based on characteristics such as race, ethnicity, gender, religion, disability, or other status. Rwanda's legal framework, including its Constitution and various laws, provides robust protections against discrimination and promotes equality for all citizens. In the context of Constitutional Protection, The right to protection from discrimination is enshrined in the Constitution of Rwanda. Article 16 of the Constitution states: "**All Rwandans are born and remain free and equal in rights and duties. Discrimination of whatever kind or its**

⁸⁴ Art. 15, Rwandan Constitution

⁸⁵ Idem, 72

⁸⁶ Supra, Note 83,82

propagation through any speech, writing, images, or any other means is punishable by law." This article provides a broad guarantee of equality and non-discrimination, affirming that all individuals have the same rights and responsibilities under the law⁸⁷.

II.5.1.6 Right to due process of law

The right to due process in Rwanda refers to the legal guarantees that ensure fair treatment through the judicial system. This right is fundamental to the rule of law and aims to protect individuals from arbitrary or unjust legal actions by providing a structured and fair process in both civil and criminal proceedings⁸⁸. In the context of Constitutional and Legal Framework, The right to due process is enshrined in the Rwandan Constitution and criminal procedure code, both reflecting a strong commitment to upholding this right in both civil and criminal matters.

(1) Everyone has the right to due process of law, which includes the right:

(a) To be informed of the nature and cause of charges and the right to defence and legal representation;

(b) To be presumed innocent until proved guilty by a competent Court;

(c) To appear before a competent Court;

(d) Not to be subjected to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute an offence under national or international law at the time it was committed. Offences and their penalties are determined by law;

(e) Not to be held liable for an offence he or she did not commit; criminal liability is personal;

f) Not to be punished for an offence with a penalty that is more severe than the penalty provided for by the law at the time that offence was committed;

(g) not to be imprisoned merely on the ground of inability to fulfil a contractual obligation;

II.5.2 PROCEDURAL RIGHTS

Procedural rights in Rwandan criminal law refer to the legal protections and processes that are afforded to individuals accused of crimes. These rights are designed to ensure fairness, transparency, and justice in the criminal justice system. These rights are enshrined in various legal texts, including the Rwandan Constitution, the Criminal Procedure Code, and other relevant laws and international treaties to which Rwanda is a party. The effective

⁸⁷ Art. 16, Rwandan Constitution

⁸⁸ Art. 12, par 1, Rwandan Constitution

implementation of these procedural rights is crucial for maintaining the integrity of the criminal justice system and protecting individuals from abuses of power.

II.5.2.1 Right to legal counsel or representation

Right to counsel means a defendant has a right to have the assistance of counsel and, if the defendant cannot afford a lawyer, requires that the government appoint one or pay the defendant's legal expenses⁸⁹. Every person is entitled the right of having legal counsel of his/her choice⁹⁰. Respect for the right to defense and to legal counsel⁹¹. Under Rwandan law, if a suspect is unable to get a legal counsel, the investigator or the prosecutor informs the President of the Bar Association for him or her to assign a legal counsel to the suspect⁹². The suspect who is assigned a legal counsel as provided by the law cannot refuse the counsel without substantial reasons⁹³.

In the context of rights of the suspect during interrogation, An investigator or a prosecutor notifies the suspect of his/her right to legal counsel and to have private communication with him or her and the notification is recorded in a statement. If a suspect is unable to get a legal counsel, the investigator or the prosecutor informs the President of the Bar Association for him or her to assign a legal counsel to the suspect. The suspect who is assigned a legal counsel as provided for in this paragraph cannot refuse the counsel without substantial reasons. If the suspect is a child, he or she is entitled to a legal counsel. The legal counsel is allowed to consult the case file in Public Prosecution⁹⁴.

II.5.2.2 Right to be notified of criminal charges

It is constitutional right to be informed the nature and cause of charges. In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense⁹⁵.

⁸⁹ law n°83/2013 of 11/09/2013 *establishing the bar association in Rwanda and determining its organization and functioning*, art.58-60, official gazette n° 44 of 04/11/2013

⁹⁰ BEANEY, W. M, “*The Right to Counsel*”, 49(6), pp. 80, Past, Present, and Future, Virginia Law Review.

⁹¹ Legal Information Institute, “*Miranda v. Arizona*”, 384 U.S. 436 (1966), Cornell Law School

⁹² Art.29, *supra* note 11

⁹³ BEANEY, W. M. *The Right to Counsel: Past, Present, and Future*. Virginia Law Review, 49(6), 1150, (1963), <https://doi.org/10.2307/1071050> accessed on 23 March 2024

⁹⁴ Art. 46, Rwandan Constitution

⁹⁵ Art. 29, par 1, (a), *supra* note 11

Everyone charged with a criminal offence has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him⁹⁶.

II.5.2.3 Right to appear before a competent court

If the public prosecution decides to prosecute an accused, it submits a complete case file to the competent court⁹⁷. Accused has the right to appear before a court of competent jurisdiction⁹⁸. It is the court which has jurisdiction over the offense being investigated. Jurisdiction and competency of courts are determined by the law⁹⁹.

II.5.2.4 Right to be visited by relatives and friends

In Rwanda, the rights of prisoners are governed by various legal provisions and regulations designed to ensure humane treatment and respect for fundamental rights. Inmates have the right to be visited by relatives and friends, reflecting the importance of maintaining family ties and social connections during incarceration.

II.6 RIGHTS OF THE VICTIM

In Rwanda, victims of crime have specific rights that are enshrined in various laws and legal frameworks to ensure their protection, participation, and access to justice. These rights aim to balance the criminal justice process by giving victims a voice and safeguarding their interests while also ensuring fair treatment.

The Rwandan criminal justice system provides a comprehensive set of rights for victims to ensure their protection, participation, and access to justice. These rights are crucial for balancing the needs of victims with the broader goals of justice, ensuring that victims are not marginalized or forgotten in the pursuit of criminal accountability. By safeguarding these rights, Rwanda aims to create a justice system that is responsive, inclusive, and respectful of the dignity of all those affected by crime.

⁹⁶ Statute of the International Criminal Court, 1998

⁹⁷ Art. 92, *Supra* Note 78

⁹⁸ *ibidem*, art. 98 par 1

⁹⁹ N°30/2018 of 02/06/2018 *Law determining the jurisdiction of courts*, title II, Official Gazette n° Special of 02/06/2018

II.6.1 Right to access Justice.

In Rwanda, the right of the victim to access Justice is a fundamental aspects of the country's legal framework, ensuring that victims of crime can seek redress and have their grievances addressed in a fair, timely, and transparent manner. This right is safeguarded through various legal provisions and mechanisms designed to promote accessibility, participation, and protection for victims within the Criminal Justice system¹⁰⁰.

The right of victims to access Justice in Rwanda is supported by legal provisions that emphasize fairness, protection, and participation. Victims are therefore entitled to report crimes, participate in legal proceedings, receive compensation, and access legal aid though the prosecution.

II.6.2 Right to protection

Victims have the right to protection from further harm or intimidation by the offender or others during the criminal justice process. This includes protection from threats, retaliation, or harassment. Rwanda's laws provide for measures to protect victims who testify in criminal cases. Witnesses, including victims, may be placed in special protection programs if their safety is at risk due to their involvement in a case.

II.6.3 Right to information

Victims have the right to be kept informed about the progress of their case, including decisions made by prosecutors, court hearings, and the outcome of the trial. This ensures transparency and keeps victims engaged in the justice process.

Victims have the right to be notified of key stages in the criminal justice process, such as the arrest of the accused, bail hearings, court dates, sentencing, and the release of the offender.

II.6.4 Right to legal assistance

Victims, particularly in serious criminal cases, have the right to seek legal assistance to help them navigate the criminal justice process. In certain cases, they may be entitled to free legal aid, especially if they cannot afford a lawyer.

Victims have the right to be represented by a lawyer, who can advocate on their behalf during the proceedings, ensuring that their rights and interests are protected.

¹⁰⁰ The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice systems (67/187).

II.6.5 Right to protection against re-victimization

Victims are protected from further emotional or psychological harm caused by the criminal justice process itself. This includes protection from aggressive questioning, being blamed for the crime, or being treated insensitively by legal personnel. Special care is taken in cases of sexual violence, domestic abuse, or crimes involving children to prevent victims from being re-traumatized during investigations or court proceedings.

II.6.6 Right to speedy trial

Victims have the right to expect their cases to be handled in a timely manner, without unnecessary delays. Prolonged delays in the criminal justice process can exacerbate victims' suffering, so the system must work to ensure that justice is delivered promptly. While the rights of the accused are protected, victims also have the right to expect a fair trial in which their concerns are heard, and justice is served¹⁰¹.

II.7 CASE-LAWS RELATED TO THE ISSUE OF DELAYED JUSTICE.

Case-laws refer to legal principle and rules that a Judge can establish while deciding on case after consultation and making reference to the decision taken by a certain court. In the present research, the following two cases were consulted in order to give more clarity on the issue of delays in delivering a timely and effective criminal Justice.

II.7.1 JUSTIN MUGENZI & PROSPER MUGIRANEZA V. THE PROSECUTOR

The present case-law reflects the delayed Justice which is done in the interests of the Justice, herein termed as appropriate delay; id est the delay that has legal grounds of justification.

1. Case No. ICTR-99-50-A

2. Court seized: ICTR/ Appeal Chamber

3. Date of application: 04/02/2013

4. Parties

A. MUGENZI Justin & MUGIRANEZA Prosper, Appellants

B. ICTR Prosecutor, The respondent

¹⁰¹ R.LOHMAN, Speedy trial Act of 1974, Defining the sixth amendment Right, in Catholic University Law review, Vol.25,(1975),pp.130-147

5. Subject matter

Review of the Case in matter of delayed Justice and violation of right to fair trial.

6. Case summary

MUGENZI Justin and MUGIRANEZA Prosper, were arrested in Cameroon on 06/04/1999¹⁰²; following the Arrest warrants issued by the International Criminal Tribunal for Rwanda, (ICTR) where they were transferred on 31/07/1999 and before which they first appeared on 17/08/1999;

The Trial chamber's Judgement was pronounced on 30/09/2011 and issued in writing on 19/10/2011; and they were convicted and sentenced to 30 years' imprisonment each; id est the period between their arrest and pronouncement of Judgement was 12 years, 5 Months and 24 days.

Based on the length of this period, MUGENZI and MUGIRANEZA filed a case on 04/02/2013 before the Appeal Chamber of the same Tribunal, on the accounts of violation of their rights to fair trial and delayed Justice by the trial chamber.

7. Applicable laws

Statute of the International tribunal for Rwanda, adopted by the UN Security Council Resolution of 08/11/1994.

8. Court findings

- a. The Appeal chamber finds that there was a delay;
- b. The Appeal chamber finds that the said delay was due to the size and complexity of the case as all along the proceedings 171 witnesses were heard; and this had to take more time and that the trial chamber had legal reasons to administer justice based on good quality of evidence and accuracy of witnesses despite the irregularities that may have incurred¹⁰³;
- c. The appeal chamber finds that MUGENZI and MUGIRANEZA failed to prove and justify the legal grounds of their appeal;

¹⁰² Trial Judgement, Para 8,17

¹⁰³ Justin Mugenzi et al. Case No. ICTR-99-50-A

d. The Appeal chamber finds no merit in their contentions.

9. Court decision

The appeal chamber of the ICTR hereby decides that the length of proceedings did not amount to undue delay and that there has been no violation of right to fair trial by the Trial Chamber.

10. Composition of the Court

Robinson, Judge

II.7.2 CASE MATHEWS SIPHO LELAKA V. THE STATE

The present case-law reflects the delayed Justice which is done hors-line the normal procedure, and which has no legal ground for justification, in other words herein termed as inappropriate delay.

1. Case number: CAF10/2014 ZANWHC 34

2. Court seized: North West High Court, seated at Mafikeng/ South Africa

3. Date of application: 10/10/2014

4. Parties

A. Mathews Siphon LELAKA, The appellant

B. The State, Respondent

5. Subject matter

Delay of Justice & Review of the case over charges of assault

6. Case summary

On 10/02/2013, Mathews went in a bar accompanied by X, he ordered a bottle of whisky, which the bar attendant served him. Instantly, X took a bottle and started drinking on it without Mathew's consent. The latter was taken by a strange anger, took the bottle from the table, and hit X's head. He was taken to hospital and gets admitted while Mathews was arrested.

On 14/02/2013 Mathews appeared before the Court over charges of Assault with intention to do grievous bodily harm (GBH), which he pleaded guilty and convicted, waiting for the verdict to be pronounced.

On 28/02/2013, The prosecutor informed the Court that the victim had died which made the Court to be adjourned on 27/05/2013, in order to enable the Court to weigh its options with regard to the new development of the case; and on this very day the post-mortem certificate was available reflecting the cause of death as “severe blunt force head trauma”.

At this level, the question was either to continue with the previous matter or the new one, for which the case was sent back to the Director of Public Prosecution (DPP) for instruction on what to do in light of new development.

In meantime, the question was either to proceed with the previous case or to consider the new subject matter brought in by the prosecution; and this involved different issues such as

7. Applicable laws

Criminal Procedure Act 51 of 1977 (The CPA).

8. Court findings

- a. The Court of appeal finds that there has been a delay in pronouncing a verdict after the accused was convicted;
- b. The Court of appeal finds that it did not sound fair for a Judge to recuse herself from the case in the pretext of preserving Justice’s image
- c. The Court of appeal finds out that there was an error in the previous proceedings.
- d. The court of appeal finds that the appeal lodged by LELAKA has merit

9. Court decision

The court of appeal decides that the criminal case NO. RE571/2013 held at Magistrate Odi, Ga-Rankuwa is to be reviewed and set aside.

10. Composition of the Court

1. D.I MATLAPENG, Acting Judge of the High Court
2. SAMKELO GURA, Judge of the High Court
3. T.J DJAJE, Acting Judge of the High Court

CHAPTER THREE: LEGAL AND INSTITUTIONAL MEASURES TOWARD THE EFFECTIVENESS OF TIMELY CRIMINAL JUSTICE DELIVERY IN RWANDA.

In a broad sense, legal and institutional measures refer to the frameworks, laws, policies, procedures and organizations established by the Government, public entities, or other governing bodies to regulate, guide, or control behaviours and practices within a society or tending to respond to a certain issue and help to maintain order, ensure Justice, and uphold social and organizational objectives¹⁰⁴.

In this perspective, the legal measures referred to in this research are binding rules established by Rwandan legislature to regulate issues pertaining to the probable delay in delivering timely, and effective criminal Justice, for which include repealing the redundant laws, enacting new laws, or even reviewing the existing ones in conformity with the concerned issues; while institutional measures involve the structure, systems, and processes within State's institutions such as Courts, Central and local government entities that support the implementation or enforcement of laws and regulations, inter alia policies, mechanisms, training, capacity building, procurement of equipment, monitoring and evaluation, etc...

In essence, ensuring timely justice delivery is crucial for maintaining public trust in the legal system, upholding the rule of law, and preventing unnecessary delays that can harm victims, accused individuals, and society at large. It is in this perspective that certain measures such as adopting alternative measure to the punishment of imprisonment, streamlining court procedures, increasing Judicial capacity, Reducing backlogs, Several measures can be implemented to help achieving and serving the intended cause.

III.1 ALTERNATIVE MEASURES

In criminal Justice, alternative measures refer to non-traditional or non-custodial responses to crimes, typically used as substitutes to imprisonment or other formal judicial proceedings, designed to address less serious offences or first time offenders and aim to reduce the burden on the court and prison systems while promoting rehabilitation, reintegration, as well as delivering due Justice in due time. These alternatives are intended to focus on rehabilitation, reduce recidivism, and address the root causes of criminal behaviour while balancing the need for accountability.

¹⁰⁴ Nimmer, Raymond. A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing. *Denver Law Journal* 48, 1976, pp.206-208

III.1.1 Mediation

Mediation in criminal matters, often referred to as "restorative justice mediation," is a process where the victim and the offender, along with any other stakeholders, engage in a facilitated dialogue to address the consequences of a crime and agree on steps to repair the harm caused. This approach involves voluntary participation of the victim and the offender, facilitated dialogue between them by a competent organ or person, commonly known as a mediator helping to guide conversation, ensuring that it remains constructive and focussed on resolving the issue, restorative aspect aiming to restore the harm caused by the crime, and it reflects the aspect of confidentiality as during the process of mediation, all communication must be confidential in the way that parties are encouraged to be open and honest as a crucial tool to reach to the resolution with a variety of actions, such as restitution, community service, or other reparative measures.

Mediation is generally considered appropriate in cases involving minor offenses, first-time offenders, or when the parties involved are willing to participate in the process. It is less commonly used in serious crimes, although some jurisdictions have successfully implemented restorative justice programs even in cases of serious offenses, with the consent and participation of all parties involved.

In conclusion, mediation in criminal matters offers a restorative approach to justice that can complement the traditional criminal justice system. By focusing on healing, accountability, and reconciliation, it provides an alternative pathway that can lead to more satisfying outcomes for victims, offenders, and communities.

In Rwandan legal perspective, the new version of law governing criminal procedure has vested the Rwanda Investigation Bureau investigators with the power to initiate mediation between the suspect and the victim, under the following guidelines:

In case he or she believes that mediation is the appropriate way of providing remedy to the victim, reversing the consequences of the offence and helping the suspect mend his or her ways and come to his or her senses. This provision is endowed with restriction or limitation such as in case the offence committed is not punishable with imprisonment for a term exceeding 5 years and in case of physical and sexual violence between spouses. In essence, this is how mediation in criminal matters can be a useful alternative measure to provisional

detention even to the punishment of imprisonment, hence witnessing the applicability of the presumption of innocence as being discussed herein.

III.1.2 Plea-bargaining

In the courts of Rwanda, there is an overabundance of pending and non-judged criminal cases mainly due to various reasons including the increase in crimes¹⁰⁵, insufficient judges, people involving others in unnecessary cases, etc. The government of Rwanda, through the principle of home-grown solutions¹⁰⁶; resolved to adopt and establish various mechanisms aiming at harmonizing judicial system. One of the mechanisms we are going to talk about is the plea bargaining which is applicable in criminal justice to reduce the number of cases, speeding up the procedure and deliver justice in due time as the Justice delayed is the Justice denied¹⁰⁷.

The plea-bargaining is a procedure whereby the defendant agrees to plead guilty in exchange for a reduction in the number of charges or a promise by the prosecution not to seek the maximum penalty allowed by the Law. The plea-bargaining agreement must specify the promised punishment to be sought by the prosecution, conditions for release if the suspect is under arrest or detention and the conditions for restitutions to the victim if this is part of the agreement. The plea-bargaining tends to enhance the efficiency of the criminal justice system for the timely, orderly, predictable, uniform, consistent and equitable resolution of criminal matters; to enable the defendant and the prosecution to reach an informed agreement on an appropriate and just resolution of criminal matters; to provide a remedy and/or reduce the consequences of an offense on the victim; to facilitate case backlog reduction and correctional facility decongestion; to encourage defendants to engage in rehabilitation by taking appropriate responsibility for their conduct; to encourage victim participation in the adjudication process and to facilitate in the revealing of hidden information about committed offences.

¹⁰⁵ Analysis of causes of crimes, challenges and prevention strategies in Rwanda elaborated through a joint research conducted by the National Public Prosecution Authority (NPPA) and Rwanda National Police (RNP), Kigali October, 2016. Available at: <https://www.nppa.gov.rw/index.php?eID=dumpFile&t=f&f=51610&token=8b776a2b98298402f01e11b97d97acda8a8c0d4c/> accessed online on 15/08/2024.

¹⁰⁶ Art. 11 of the Constitution of the Republic of Rwanda of 2003 as amended to date. See official gazette No. Special of 04/08/2023.

¹⁰⁷ The idea is said to have first been expressed in the biblical writings of Pirkei Avot 5:8, a section of the Mishnah (1st century BCE – 2nd century CE) in which it is stated ‘Our Rabbis taught: ...[t]he sword comes into the world, because of justice delayed and justice denied...’; as well as in the Magna Carta of 1215, cl 40 of which reads, ‘[t]o no one will we sell, to no one will we refuse or delay, right or justice.’; Martin Luther King Jr also said ‘justice too long delayed is justice denied’ in his Letter from Birmingham Jail (August 1963).

In regard to its scope, the plea bargaining applies to all offences, institutions partnering in the enforcement of the plea bargaining procedure and other relevant stakeholders may agree on a roadmap in the implementation of the plea-bargaining procedure, for which the roadmap indicates the offences and the territorial jurisdiction to start with in the process of enforcing the plea-bargaining procedure and the method of extending its application.

Note also that, A plea-bargaining agreement may include or be the result of all or some of the followings:

- (a) a plea of guilty by the defendant in exchange for a recommendation for a reduction of charges or dropping heavier charges;
- (b) a plea of guilty by the defendant in exchange for a recommendation for a lesser penalty;
- (c) a plea of guilty by the defendant in exchange for a recommendation for immediate provisional release or an application to the court for the release of the defendant was detained pursuant to a court order;
- (d) a promise by the defendant to cooperate as a witness of the prosecution in exchange for reduced charges or reduced criminal penalties, or both;
- (e) a plea of guilty to some charges in exchange for a withdrawal of one or more charges, in case of multiple charges;
- (f) payment of a fine without trial for any offence that has not already been brought before the court.

In regard to its form, A plea-bargaining agreement is always in written and it is signed by all the parties present to the negotiations. It should follow the standards below:

- (a) when the parties agree in their plea-bargaining negotiations, they sign a plea bargaining agreement. The plea- bargaining agreement is submitted to the Court.
- (b) where the plea bargaining agreement involves a defendant, who is a minor between the ages of 14 years and 18 years old, the civil liability clauses of the agreement shall be endorsed by either the parent, the guardian, or his or her legal representative.
- (c) if the plea agreement includes a compensation clause to the victim, the victim or complainant or his or her legal representative shall duly sign the agreement.

In regard to its procedure, The plea-bargaining may be initiated at any stage of the proceedings for any criminal case where the court has not yet taken a decision. The prosecutor shall, wherever appropriate, ensure that plea-bargaining negotiations are initiated at the earliest opportunity.

As per its effects, in case of an agreement of plea bargaining, the public prosecution charges the suspect as agreed on by both parties, The court may admit or reject an agreement of plea bargaining but cannot alter the agreement. In case the agreement is admitted, the court, while taking a decision, considers the agreement on plea bargaining concluded between the public prosecution and the accused¹⁰⁸.

III.1.3 Provisional release and bail on bond

Provisional Release and Bail on Bond are legal terms related to the temporary release of a person accused of a crime while they await trial. Provisional Release refers to the temporary release of an accused person from custody, usually under specific conditions, while they await trial or the next court hearing. This release can be granted based on the assessment that the accused is not a flight risk, will not interfere with witnesses, and poses no danger to the public. The conditions may include reporting to a police station, surrendering a passport, or remaining within a certain jurisdiction. Bail is an amount of money or property that an accused person or someone on their behalf deposits with the court as a guarantee that they will appear in court when required. If the accused fails to appear, the bail amount may be forfeited¹⁰⁹.

Bail on Bond is therefore a specific type of bail arrangement. When someone is released on bail on bond, a bond (usually secured by a bail bond company) is posted to the court on behalf of the accused. The bond company charges a non-refundable fee (typically a percentage of the total bail amount) and may require collateral to ensure the accused will attend all court proceedings. If the accused fails to appear in court, the bond company is responsible for paying the full bail amount to the court¹¹⁰.

In summary, Provisional Release allows the accused to be released from custody under specific conditions, usually without a financial deposit while Bail on Bond involves a financial guarantee through a bond, ensuring the accused appearance in court. The Rwandan law regulates provisional release and bail as follows:

¹⁰⁸ The legal Aid forum, The impact of pre-trial detention on Access to Justice in Rwanda, February,2013.

¹⁰⁹ Prajesh Shrestha, Two steps back: The presumption of innocence and charges to the bail Act 2013 (NSW),2015. P.37.

¹¹⁰ Idem,83

Article 80: Instruction to respect certain conditions

If, at any stage of criminal proceedings, there are serious grounds for suspecting a person of an offence, the suspect may not be detained but may be instructed to adhere to certain requirements. Some of the requirements the suspect may be instructed to comply with are:

- 1 ° To reside in a territorial jurisdiction of the authority who subjected him or her to certain conditions;
- 2 ° Prohibition from going to or going beyond a prescribed area without prior authorization from the authority who subjected him or her to certain conditions;
- 3 ° To refrain from going to a given area or not to be in a given place at a given time
- 4 ° To report to a specified authority in a prescribed period of time;
- 5 ° To report whenever required to do so;
- 6 ° To post bail;
- 7 ° To be monitored through technology;
- 8 ° To surrender his/her identification papers to a prescribed authority¹¹¹;

The order of the judge must indicate the grounds on which the judge based while approving provisional release of the suspect.

The public prosecution verifies whether the conditions imposed by the court are observed and if not, the prosecution requires that the suspect be provisionally detained. No person is ordered to report to a designated officer for a period exceeding six (6) months for felonies and for a period exceeding three (3) months for misdemeanours. For purposes of proper enforcement of the obligations provided under Paragraph One of this Article, the court order on provisional release may also instruct that only one condition among the mentioned ones be respected. The judge may at any time, upon request by the prosecutor or the suspect granted provisional release, modify the conditions imposed in order to adjust them to new circumstances. The Judge may, if necessary, due to new and serious circumstances order that the accused be re-detained.

III.1.4 Bail

Bail is a legal concept that allows an accused person to be released from custody while awaiting trial, under the condition that they provide a financial guarantee or agree to certain conditions to ensure their appearance at future court proceedings. The purpose of bail is to

¹¹¹ Art. 80, Criminal procedure, 2019

balance the individual's right to liberty with the need to ensure that they will not abscond or commit further offenses before their trial.

Article 81: Bail

The suspect may be provisionally released on bail upon approval by:

- 1 ° an investigator in case of a petty offence and a misdemeanour;
- 2 ° a Prosecutor, in case of bailable offences in accordance with the provisions of this Law;
- 3 ° a Judge, in case of offences referred to under Item 2 in a trial on provisional detention or release and at any time before the closing of hearing at the first instance or appeal.

The competent authority may release the suspect on only bail or on bail with one or more conditions referred to under article 80 of this Law.

The bail guarantees that the suspect will appear before the court and from which damages arising from the offence, property to be restituted, fines and court fees are deducted, if found guilty.

Article 82: Offences subject to bail

Without prejudice to due diligence of the competent authority to take decision, bail may be deposited on all offences¹¹². However, for felonies, the suspect required to deposit a bail is ordered to comply with provisions of Article 80 of this Law.

Article 83: Types of bail and where it is deposited

Bail may be in form of cash, immovable property or guaranteed by a third party.

The amount of money paid as bail is deposited into the account opened and managed by the authority that ordered bail. The immovable property surrendered as bail in a manner mentioned in this article is considered as a guarantee in the normal procedure of property suretyship. If a person accepts to stand as a surety that the accused will not evade justice with intention to be prosecuted while free, the surety must be a person of integrity and have the capacity to pay for indemnification in case the accused fails to appear. The surety ends with the finalization of the normal appeal procedures. If the accused appeared in the trial proceedings at the last instance, he or she is responsible for all trial costs. If the accused did not appear in such proceedings and he or she loses the case, the surety may be accountable for the damages caused by the offence as ordered in the proceedings without the need for another

¹¹² Idem, Art 82

hearing to decide them. The surety pays if the property of the accused is unable to compensate for the damages¹¹³.

Article 84: Determination of bail

Bail is determined in consideration of the damages caused by the offence, the good conduct of the suspect attested by the local authority of his or her residence and on whether he or she has never been condemned by a court. If the offence is against property, bail must be at least double the value of the property which he or she is required to retribute. For other offences, bail is determined at the discretion of the competent authority in consideration of the gravity of the offence committed and the wealth of the guarantor¹¹⁴.

Article 85: Bail refund

If the accused is not found guilty or if the file is finally closed, the bail is refunded. If the accused loses the case, the court decides on the use of the bail in accordance with the provisions of Article 81 of this Law.

In conclusion, Bail is a crucial component of the criminal justice system, balancing the rights of the accused with the need to ensure public safety and the proper functioning of the judicial process. It allows individuals to remain free while awaiting trial, under the assurance that they will return to court and not engage in further criminal activity. However, the concept of bail is also subject to ongoing debate and reform, particularly in relation to fairness and the impact on vulnerable populations.

III.1.5 Electronic monitoring and surveillance

Electronic monitoring and surveillance are tools used in the criminal justice system to track and monitor the activities of individuals who are under legal supervision, such as those on bail, probation, or parole. These tools serve as alternatives to incarceration, allowing individuals to remain in the community while ensuring compliance with legal conditions and protecting public safety. The Rwandan criminal procedure, in its Article 70 provides for the Monitoring of a suspect through technology, stating that a suspect may be monitored through technology and that an order of the Minister in charge of justice determines the modalities through which a suspect may be monitored through technology¹¹⁵. In essence, Electronic monitoring and surveillance are powerful tools in the criminal justice system, offering alternatives to incarceration and enhancing public safety. However, their use must be

¹¹³ Ibidem, Art. 83

¹¹⁴ Art. 84, Criminal procedure,2019

¹¹⁵ Art. 70 Criminal Procedure/2019

carefully balanced with respect for individual rights and freedoms. Proper legal frameworks, oversight, and safeguards are essential to ensure that these technologies are used fairly, effectively, and ethically¹¹⁶.

III.1.5 House arrest

House arrest, also known as home confinement or home detention, is a legal practice where an individual is confined to their residence instead of being held in a prison. This measure is often used as an alternative to incarceration, allowing the person to serve their sentence or await trial while remaining at home, typically under strict conditions and monitoring. House arrest in Rwanda is a legal measure that allows individuals to serve time or await trial at home under strict conditions. It is used as an alternative to incarceration in specific cases, with the aim of balancing punishment with the rights and needs of the individual. Monitoring and enforcement are key components to ensure compliance with the terms of house arrest.

III.1.6 Reduction of the duration of provisional detention

Reducing the duration of provisional detention (pre-trial detention) is a significant concern in the criminal justice system, as lengthy detentions can have negative effects on individuals, the legal system, and society as a whole. Efforts to reduce the duration of provisional detention involve a combination of legal reforms, procedural changes, and the implementation of alternative measures that balance the rights of the accused with the need for public safety and the integrity of the judicial process.

Reducing the duration of provisional detention is crucial for upholding the principles of justice, human rights, and fairness in the criminal justice system. By implementing legal reforms, improving court efficiency, and promoting the use of alternatives to detention, the negative impacts of extended provisional detention can be mitigated, benefiting both the accused and society at large. This approach not only protects individual rights but also enhances the overall effectiveness and credibility of the justice system. Reducing the duration of provisional detention in Rwanda is an important issue that aligns with the broader goals of justice reform, human rights protection, and judicial efficiency in the country. Rwanda's legal system, like many others, faces challenges related to the overuse and lengthy periods of

¹¹⁶ Idem,111

provisional detention, which can have significant social, economic, and human rights implications¹¹⁷.

In summary, reducing the duration of provisional detention in Rwanda requires a multifaceted approach that includes judicial reforms, the use of alternatives to detention, improved legal representation, and ongoing legal and procedural reviews. By addressing these challenges, Rwanda can enhance the fairness and efficiency of its criminal justice system, uphold human rights, and ensure that the principle of presumption of innocence is respected throughout the legal process.

III.1.7 Fine without trial

For any offence that falls within his/her competence, if the prosecutor considers that the offence may be punishable by a fine, he or she may ask the suspect to choose between being brought before the court or paying a fine without trial, which fine cannot exceed the maximum fine increased by any possible additional amount stipulated by Law. If the suspect decides to pay the fine without trial, the criminal action against the suspect is discontinued. The decision is notified to the victim¹¹⁸. The payment of fine does not constitute admission of guilt. If we look around the world we find very different types of alternatives measures to pre-trial detention. Among them, for example: Bail bond, electronic monitoring, house arrest, separation from home in case of domestic violence, prohibition of approaching or communicating with specific persons, prohibition of leaving a given area without authorization or of going to certain places, withdrawal of driving licence, withholding of travel documents (Passports and/or identity card), obligation to appear before the Judge or another designated authority(also called periodic presentation), a promise to submit to the proceedings and not to obstruct the investigation, commitment to follow a specific treatment program or subjection to the care or supervision of a given person or institution, restorative Justice programs, etc....There is no numerus clausus list of alternative measures to pre-trial detention. Each State, each criminal justice system has different measures to impose as an alternative to preventive detention

¹¹⁷ <https://unictr.irmct.org/en/cases/ictr-98-44a/Accessed> on 22/08/2024.

¹¹⁸ B.GAUTAM, Disposal of cases without trial,1973

III.1.8 Periodic presentation or appear before the Judge

The term periodic presentation or appearance before the judge refers to a requirement where an individual must regularly appear in court or before a judge as part of their legal obligations. This is often a condition set during probation, parole, or a suspended sentence. In the context of regular court appearance, the individual is required to appear before a judge at specified intervals (e.g., weekly, monthly) to report on their compliance with the terms set by the court.

These terms could include staying out of trouble, maintaining employment, or attending rehabilitation programs. In the context of monitoring compliance, the purpose of these periodic appearances is for the judge to monitor the individual's behaviour and ensure they are following the conditions imposed by the court.

In summary, Failing to appear before the judge as required can lead to serious consequences, including the revocation of a suspended sentence, additional penalties, or even imprisonment so as periodic appearances may be used in various legal situations, such as during probation, when a sentence is suspended, or when someone is released on bail or bond. It acts as a method for the judicial system to keep track of the individual's progress and ensure that they are not violating the terms of their release. This practice is part of the broader system of judicial supervision and accountability designed to help individuals reintegrate into society while ensuring public safety¹¹⁹.

III.1.9 Increase use of suspended sentences

A suspended sentence is a legal term referring to a sentence given by a court that is not immediately enforced. Instead, the sentence is delayed or "suspended," often under specific conditions. In this situation, the court decides to suspend the enforcement of the sentence, meaning the person will not have to serve the sentence immediately, or possibly at all, provided they comply with certain conditions such as ordering the person not committing any other crime during a specific period which we refer to probation period, abiding by certain rules, like attending counselling, performing community services, or avoiding certain activities or people.. If the person fails to comply with the conditions set by the court, the

¹¹⁹ SANDERS and R. YOUNG, criminal justice.3rded., New York, Oxford university press ,2007

suspended sentence can be "activated," meaning the person may then be required to serve the original sentence¹²⁰.

III. 2 INCREASING JUDICIAL CAPACITY

Judicial capacity refers to the combination of so many components including the structure, organization, and competence to smoothly and effectively run the judicial system as a whole. Again, this also reflects its means such as in financial and human means.

III.2.1 Appointment of more Judges

One of the main reasons for delays is an overburdened Judiciary; for which hiring and appointing more Judges at all levels (Pre-trial, trial, appellate, and Supreme Courts) can reduce case backlogs.

III.2.2 Decentralization of Judicial services

Decentralization of judicial services in Rwanda refers to the process of distributing judicial authority and resources away from central institutions to regional and local levels. This approach aims to enhance the accessibility, efficiency, and responsiveness of the judicial system to the needs of Rwanda's diverse population. Below is an overview of the decentralization efforts, their implementation, challenges, and impacts in Rwanda.

Decentralization has notably improved the ability of Rwandan citizens to seek legal redress without the need to travel to central locations. This is particularly beneficial for rural populations who previously faced significant barriers to accessing justice. The presence of local courts has also facilitated the resolution of disputes in a manner that is more culturally sensitive and contextually appropriate.

The decentralization of judicial services in Rwanda represents a significant step towards a more accessible, efficient, and equitable justice system. While challenges persist, ongoing reforms and investments are expected to further strengthen the judiciary, ultimately contributing to Rwanda's broader goals of sustainable development and the rule of law.

III.2.3 Allocation of resources

Allocation of resources is crucial for delivering timely criminal justice in Rwanda because it helps in proper distribution of resources where needed, either during investigation, in the

¹²⁰ Idem, 142

prosecution even at the Court level to enable them to provide a timely Justice to the citizen. Among areas to be financed include trainings of staffs of the concerned organs, equip them with modern equipment, without leaving behind their salaries. Note also that inadequate resource allocation can result in delays, wrongful convictions, or unjust outcomes. Ensuring that each component of the system is well-resourced will enhance efficiency and deliver timely justice.

III.2.4 Reduction of backlogs

In the context of early case filtering, there should be introducing screening mechanisms for frivolous or non-serious cases that can help reduce unnecessary congestion in Courts.

In the context of summary trials, minor offences should be handled through summary trials where possible, allowing for quicker resolutions without compromising Justice.

In the context of establishment of the specialized courts, like fast-track courts or tribunals for specific cases should be aimed at to accelerate the resolution of particular case types.

III.3 STRENGTHENING COORDINATION BETWEEN AGENCIES

Strengthening cooperation between criminal justice organs is essential for delivering effective and timely justice in Rwanda. The criminal justice system involves multiple institutions, including law enforcement agencies, prosecutors, courts, correctional facilities, and legal aid organizations. Effective coordination and collaboration among these entities can significantly reduce delays, increase efficiency, and promote justice.

Therefore, fostering stronger cooperation among criminal justice organs through technology, communication, training, and process streamlining, Rwanda can improve the efficiency and timeliness of its justice system. Collaboration at all levels, either local, national, and international is essential for delivering justice that is not only swift but also fair and accessible¹²¹.

III.3.1 Better coordination of criminal Justice organs

Better coordination between RIB agents, prosecutors, and the Judiciary ensure that each and every procedural step is being on time at each level without any delay.

¹²¹ Taft, William H. (1908-1909). The Delays of the Law. Yale Law Journal Vol.XVIII, pp.28-39

III.3.2 Effective witness management

In the point of view effective witness management, this will ensure that witness are properly summoned and protected from undue influence or harassment that can prevent adjournments and expedite trials.

III.4 SETTING UP PERFORMANCE BENCHMARKS

Setting up Court performance benchmarks to speed up Justice refers to the establishment of specific, measurable criteria or standards that guide and assess the efficiency and effectiveness of Courts in processing cases. These benchmarks help courts to manage case backlogs, ensure timely hearing and decisions, and improve overall performance. The ultimate goal is to streamline the judicial process, reduce delays, and deliver timely Justice to all parties involved¹²².

In summary, setting up court performance benchmarks is an important strategy to accelerate the delivery of Justice. It helps improve efficiency, accountability, and transparency within the judicial system by providing measurable standards for courts to follow. However, successful implementation requires careful planning, adequate resources, and periodic reviews to ensure that the benchmarks lead to real improvement in the Justice system.

III.4.1 Judicial accountability

In the context of Judicial accountability, courts can adopt performance metrics, such as setting timeframes for delivering judgements or completing trials, and publicly reporting progress on clearing backlogs.

III.4.2 Judicial staffing and support

Judicial staffing and support play a crucial role in delivering timely and effective criminal justice in Rwanda. An adequately staffed judiciary, supported by well-resourced administrative systems, can help address case backlogs, reduce delays, and ensure that justice is delivered efficiently. To deliver timely criminal justice in Rwanda, judicial staffing and support must be optimized. This involves not only increasing the number of judges and support staff but also enhancing their training, improving case management through technology, and ensuring efficient court procedures. Strengthening legal aid services,

¹²² Idem,125

fostering cooperation among justice institutions, and improving physical infrastructure are equally vital for a well-functioning and timely judicial system¹²³.

III.4.3 Monitoring and Auditing

In the point of view, monitoring and Auditing, there should be independent bodies to monitor the performance of Courts to ensure timely case disposal and suggest reforms when needed.

III.5 LEGISLATIVE REFORMS

Legislative reform in the context of delivering timely criminal justice in Rwanda involves making changes to laws, regulations, and legal frameworks to address inefficiencies, modernize legal processes, and ensure that the justice system is more effective, accessible, and responsive. These reforms are essential for reducing case backlogs, enhancing fairness, and improving the overall speed of justice delivery. Legislative reform is essential for creating a criminal justice system in Rwanda that is both timely and effective. By simplifying procedures, expanding access to justice, promoting alternative dispute resolution mechanisms, and integrating technology, legislative reforms can address key bottlenecks and inefficiencies that slow down the delivery of justice. Additionally, reforms that emphasize collaboration between law enforcement, prosecutors, and the judiciary, while protecting the rights of defendants and victims, are vital for building a more responsive and fair justice system.

III.5.1 Enactment of Laws

The enactment of laws in terms of delivering timely justice in Rwanda refers to the process of passing new legislation or amending existing laws to create a legal framework that enhances the efficiency, accessibility, and fairness of the justice system. Enacting appropriate laws is crucial for addressing systemic delays, reducing case backlogs, improving judicial processes, and ensuring that justice is delivered in a timely manner.

The enactment of laws in Rwanda plays a vital role in delivering timely justice by creating a legal framework that improves the efficiency of the judicial process, enhances access to justice, and reduces systemic delays. By establishing clear procedures, promoting alternatives to full trials, regulating pre-trial detention, and embracing technology, new laws can ensure that justice is delivered swiftly and fairly, contributing to public trust in the legal system. Legislative reforms also support the creation of specialized courts, improve accountability,

¹²³ Wildhorn, Sorrel; et al. Indicators of Justice. Lexington, 1977

and foster collaboration between justice organs, all of which are necessary for the timely delivery of justice.

III.5.2 Review of the existing Laws

Reviewing existing laws is a critical component of delivering timely criminal justice in Rwanda. It involves evaluating the current legal framework to identify outdated, inefficient, or redundant provisions that contribute to delays in the judicial process. This review can lead to amendments, repeals, or the introduction of new laws to ensure that the justice system functions more efficiently, is more accessible, and better serves the needs of the population.

The review of existing laws is essential to ensure that Rwanda's criminal justice system functions effectively and delivers timely justice. By identifying and addressing inefficiencies, outdated provisions, and gaps in the current legal framework, the review process can modernize laws, streamline procedures, and enhance coordination between justice organs. This, in turn, helps reduce case backlogs, prevent delays in trials and appeals, and ensures that justice is delivered fairly, efficiently, and promptly. In essence, Review of the existing laws tends to repeal, amend obsolete laws that contribute to legal complexity which can make legal processes more efficient.

III.5.3 Introduction of Time-bound regulation

The introduction of time-bound regulations in Rwanda's criminal justice system is a crucial reform to enhance the efficiency and timeliness of legal proceedings. Time-bound regulations set specific deadlines for various stages of the criminal justice process, ensuring that cases are resolved promptly, minimizing delays, and reducing the backlog of cases.

The introduction of time-bound regulations in Rwanda's criminal justice system is essential for ensuring that justice is delivered efficiently and fairly. These regulations establish clear deadlines for all stages of the judicial process, from investigation to trial and appeals, which reduces delays, prevents case backlogs, and enhances accountability.

By promoting swift justice, improving inter-agency coordination, and incorporating technology, time-bound regulations can significantly contribute to the timely and efficient delivery of criminal justice in Rwanda, building greater public trust and strengthening the rule of law, without leaving behind that those laws are meant to set a time limit for different stages of judicial processes, ensuring cases are concluded within a reasonable timeframe.

III.6 RAISE OF THE PUBLIC AWARENESS

Raising public awareness plays a significant role in enhancing the delivery of criminal justice in Rwanda by ensuring that citizens are informed about their rights, the functioning of the justice system, and the available legal avenues for seeking redress. When the public is well-informed, the criminal justice system becomes more transparent, accessible, and efficient.

In essence, public awareness is a vital component in the effective delivery of criminal justice in Rwanda. By informing citizens about their rights, legal processes, and available resources, awareness campaigns help improve access to justice, promote accountability, reduce crime, and enhance cooperation with law enforcement. A well-informed public can engage more effectively with the justice system, ensuring that criminal cases are processed more efficiently, victims' rights are upheld, and the rule of law is strengthened throughout the country¹²⁴.

III.6.1 Legal awareness campaign

Legal awareness campaign tends to educate the public about legal rights and procedures ensuring that people are well-informed and do not engage in frivolous litigation, helping the system function more smoothly and Justice delivered in due time¹²⁵.

III.6.2 Transparency in the system

Transparency in Judicial system allow public access to case statutes, promoting transparency in Judicial appointments, and keeping citizen informed about efforts to improve Justice delivery and build public confidence and trust.

¹²⁴ <https://www.ojp.gov/pdffiles1/ojdp/178926.pdf>/Accessed on 25/09/2024

¹²⁵ https://www.undp.org/sites/g/files/zskgke326/files/publications/Justice_PN_En.pdf/Accessed on 25/09/2024

GENERAL CONCLUSION

The nature of delay in the current justice environment is contingent on many aspects and mechanisms utilised by the modern justice system. The question of whether justice delayed is justice denied appears to depend on whether delay is inappropriate, out of proportion or avoidable. Proportionality and appropriateness of time taken to provide an outcome for disputants is said to form part of the definition of timeliness, as per the definition above. The discussion about delay and timeliness highlights some of the issues which are being and have been actively considered by stakeholders, commentators, courts and other justice actors. Many innovations have been directed at enhancing timeliness, where implemented with supporting mechanisms and sufficient resources, they appear to support a more efficient and proportionally timed justice experience for users.

However, there are some challenges that must be surmounted in order to apply these systems (for example a lack of resources as well as the lack of consistent qualitative data about disputes), and in some cases there must be careful consideration as to the appropriateness of speedier process, versus other important interests (for example, public interest or other justice issues).

First and foremost, better data collection and maintenance is required to provide the fundamental material for analysis as to what is avoidable and what is unavoidable delay. Only once this contextualisation is available, can innovations then be more logically applied and extended, to ensure that disputes can be resolved as quickly as possible, and with timelines that are appropriate, depending on the complexity and other characteristics of that dispute and the disputants.

In addition, it will be important to ensure that there is an appropriate distinction between the concepts of time lapse and delay and that case management and other mechanisms are employed only in appropriate cases, where the delay is ‘avoidable’. Some commentators have suggested that the notions of ‘avoidable’ and ‘unavoidable’ are value laden concepts and must not be equated with what is warranted and what is unwarranted to ensure a meaningful and fair analysis of what is ‘avoidable’ or not.

Further, it is imperative that a balance is struck between timelines and quality of the justice experience and this can only be measured quantitatively, by engaging with, and hearing the voice of disputants and participants. Some commentators have suggested that in some instances, delay in some courts and tribunals might be inevitable, or at least are so at the

moment due to a lack of court resources. As a result, other options for resolution, such as ADR may be increasingly recognised as a more efficient way to resolve many disputes. However clearly this is not a complete answer, a strong and timely courts based system shapes the broader ADR sector and decision making across the community by shaping parameters and defining rights. Where judicial hearing and resolution of disputes takes place there needs to be recognition that this can be a time consuming and costly exercise. In order to support public confidence in the justice system and the promise of timely justice, future directions must be ultimately geared toward the support required by justice agencies as well as the interests of disputants and participants in the justice system¹²⁶.

¹²⁶ Neubauer, David W.; Ryan, John Paul. Criminal Courts and the Delivery of Speedy Justice: The Influence of Case and Defendant Characteristics. *The Justice System Journal* 7, 2, 1982,pp.213-235

RECOMMENDATIONS

In Rwandan Criminal Justice, one of the crucial strategies to be implemented in its penal system is the development of a wide range of alternative measures to pre-trial detention, not only to promote the use of this type of measures, but also to have a larger array of measures to avoid the use of prison during the pre-trial investigation; which at some extent is considered to be used as a tool that violates human rights.

Taking into account the best related practices learnt from other jurisdictions, such as Spain where electronic monitoring and house arrest among its alternative measures are not considered, and in Japan where, in line with The Tokyo Rules and the Bangkok rules (2010) encourage criminal justice systems to provide a wide range of non-custodial measures allowing the accused to remain in the community and to promote conditions to avoid the overuse of pre-trial detention, promoting the use of alternative measures to pre-trial detention requires not only the enlargement of the range of measures but also to ensure its start-up and to allocate the resources to implement them.

In order to promote the use of alternative measure to pre-trial detention in Rwanda and ensure that this last is used as a last resort, The following recommendations should be made to the legislature of Rwanda and other State's organs whose mandates are in direct link with the issue in discussion:

1. Enactment of the law governing compensation in case there has been a wrongful detention and conviction as well as when there was a delay in rendering timely justice.
2. Review of the existing criminal procedure in order to adopt and reinforce other alternative measures to pre-trial detention such as temporary conviction, reduction of the duration of provisional detention; enhancing the plea-bargaining scheme, the workable practice of bail, fine and restitution without trial, etc...
3. Get familiarized with the use of electronic monitoring and surveillance, house arrest and geographical-based limitations, periodic presentation before the Judge, increase the use of suspended sentences, etc...
4. Provide extensive and continuous professional capacity building enabling RIB officers to carry out investigation and proceed with the arresting suspect without undermining their rights

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