JUDICIAL SYMPOSIUM ON HUMAN RIGHTS IN THE CONTEXT OF CRIMINAL JUSTICE SYSTEMS: RETHINKING THE WORKINGS OF THE JUSTICE SYSTEM IN UGANDA

Wednesday Nov 15 – Friday November 17, 2017

Imperial Botanical Beach Hotel, Entebbe

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Executive Summary

From Wednesday 15th to Friday 17th November 2017, the African Judges and Jurists Forum (AJJF), a pan African network of judges and jurists committed to the promotion of the rule of law and development in Africa, held its first Judicial Symposium in Uganda. The three day Symposium, which was held under the theme *"Human Rights in the Context of Criminal Justice: Rethinking the workings of the Justice Process in Uganda"* was hosted at the Imperial Botanical Beach Hotel, Entebbe as both a residential (for all the participating Judges) and non-residential (for non-judge resource persons) training.

In organizing this Symposium, the AJJF worked closely with a number of stakeholders namely: the OHCHR which provided the financial support, the Judiciary of Uganda, the Judiciary Studies Institute (JSI), the Human Rights Enforcement Forum (HUREF), as well as the International commission of Jurists (ICJ) through whom the planning and coordination of the Symposium at the various levels was made possible.

The major objective of the Symposium was to offer space to legal professionals including judges, prosecutors, legal practitioners, academics and legal aid providers to examine the shortcomings of Uganda's criminal justice system in light of the country's human rights obligations and develop concrete proposals for reform. Indeed, throughout the three days of the Symposium, the participants were engaged in discussion under a total of 10 panels carefully selected and composed in such a way as to provide varied stakeholder perspectives relating to each topic, all effort being made to trigger debate. For this reason, each of the 10 panels was followed by a one hour plenary in which the participants shared knowledge and experiences on the emerging issues and ways forward.

In keeping with its objective, the Symposium brought together Judges from courts of record, prosecutors, academics, legal aid service providers as well as legal practitioners involved in human rights litigation and criminal defense. The Symposium was attended by a total of 28 Ugandan Judges (19 male and 09 female) from across Uganda, including: The Honorable the Chief Justice of Uganda, Bart Katureebe who gave a key note address; the Principal Judge, Yorokam Bamwiine; 2 judges of the Supreme Court; a Justice of the Court of Appeal; and Judges from the different divisions of the High Court of Uganda. Aside the Judges, the symposium was also attended by the Director of Public Prosecutions (DPP), Hon. Mr. Justice Mike Chibita. Also notable is the Commissioner, Custodial, Safety and Security Operations in the Uganda Prisons Service (UPS), Mr. Robert Munanura, who represented the Commissioner General of Prisons, as well as Captain Samul Ogwal who represented the Deputy Chief of Legal Services and Inspector of Military Courts, Uganda People's Defence Forces, Colonel Dr. Godard Busingye. Although invited, the Head of the Ugandan Bar, Advocate Francis Gimara and the Minister for Justice and Constitutional Affairs, Hon. General Kahinda Otafiire, did not make it for the symposium as they had to attend The East African Law Society Annual General Meeting which took place around the same time. Even

then, they both wished AJJF good luck and expressed their commitment to support all causes geared towards an improved CJS.

Aside the local participants, the Symposium was blessed by the presence of the ICJ Africa Director, Mr. Arnold Tsunga, as well as the AJJF including the AJJF Board Chair, Justice Moses Chinengho from Zimbabwe and Professor Justice Bethuel Oagile Key Dingake from Botswana and Secrtetary General, Martin Okumu-Masiga who shared benchmarks, indicators and examples of best practice from the African region as panelists and generally as participants.

The Chief Justice's Key Note address highlighted a number of enduring challenges in Uganda's CJS namely: weak institutional mechanisms characterized by poor staffing, inadequate human rights knowledge among JLOS actors, outdated investigation approaches; lack of adequate legal aid services/a public defender system; failure to cope with sophisticated crime, among others which he said make it difficult for realization of human rights. His recommendations included urgent institutional and legal changes/reforms as well as a change of attitude on the part of the justice actors to be more sensitive to human rights needs of parties to a criminal proceeding. Added to this is the need for continuous training and judicial activism on the part of judicial officers to have human rights lenses whenever accused persons or victims appear before them. Finally, that every process undertaken should be assessed for human rights compliance.

At the end of the three days, a number of other recommendations and proposals for reform, had been made in order to enhance the protection of human rights in the administration of criminal justice in Uganda. This report provides a highlight of the three day proceedings and provides the key reactions and recommendations from the plenary following all the panels.

HIGHLIGHTS

DAY 1: WEDNESDAY 15th NOVEMBER, 2017

<u>Introductory Remarks:</u> Martin Okumu-Masiga, Secretary General-AJJF

In his introductory remarks, Martin welcomed the participants to the three day event which he said would among others lead to concrete suggestions a bouquet of practical proposals on how to improve the country's Criminal Justice System (CJS). Commenting on the nature of reception received by the AJJF, the Secretary General was pleased to report that the preliminary interactions he had with the different stakeholders in Uganda put across a gesture of welcome towards AJJF to work with the Judges and the Judiciary.

He urged the participants to think creatively about the positive changes that they feel need to be introduced to better protect Human Rights in the administration of justice, and to share freely their thoughts and recommendations during the meeting. He noted, however, that making meaningful recommendations in the administration of justice cannot be done without the role of the prosecution. He thus expressed gratitude for the attendance of the DPP in person, but regretted for the inability of AJJF to have more officers at the initial symposium but committed to work together with the DPP's office to see that more of its officers are involved in the future.

Mr. Masiga further thanked Justices David Wangutsi and Lillian Tibatemwa Ekirikubinza for their role in organizing the symposium; noting that the two were contrary involved in conceiving the idea of the symposium, determining its theme, putting together the topics for discussion, determining the resource persons, drafting participants list as well as in raising the funds. In the same regard, he also expressed gratitude to the OHCHR country rep, Dr. Uchenna Emelonnye whose office funded the symposium.

Finally, the Secretary General wished all participants in the symposium successful deliberations.

<u>Welcome Remarks</u>: Dr. Uchenna Emelonnye, OHCHR Country Representative

In his remarks, Dr. Uchenna begun by expressing gratitude for the opportunity given to him to address the participants in the Symposium and congratulated the organisers for successfully hosting the event.

According to Dr. Uchenna, the manner in which justice is administered in a society is one of the basic indictors of its well-being. For this reason, the UDHR states, in its preamble, that, *"…it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."* In Uchenna's interpretation, this provision means that the enjoyment of human rights is key for a peaceful society and that human rights should be protected by legal systems at the domestic and international levels. Commenting on the role of the judiciary in this regard, Dr. Uchenna observed that it is the judiciary which provides an avenue for redress to individuals whose rights have been violated. Secondly, the judiciary provides an avenue for enforcement of human rights provisions enshrined under the various legal enactments. In so doing, Uchenna noted, the judiciary breathes life into human rights provisions in statute and law books.

According to Dr. Uchenna, although the judiciary is not a key violator of human rights as it is a mechanism for their enforcement and redress, there have been situations where that institution presented itself as an accomplice to human rights violations. This is especially so where there is a failure on the part of the judiciary to effectively remedy rights violations. Noting that such results are often times unintended, Dr. Uchenna highlighted a need to provide judges with adequate information relating to the various human rights standards laid down in the different legal instruments, as well as on the related jurisprudence developed by universal and regional monitoring bodies and courts.

Most importantly, Dr. Uchenna emphasized a need for fora such as the AJJF Judicial Symposium which offer judges an opportunity to meet and examine their performance in ensuring protection for human rights. He also emphasized the commitment of OHCHR in providing technical support and advice to institutions working towards promotion of human rights including improving the administration of justice in Uganda. In the area of the CJS for example, the OHCHR provided support to the Judiciary Studies Institute (JSI), to develop a curriculum on the judicial enforcement of Economic, Social and Cultural Rights (ESCR), as well as supporting capacity development for judicial officers in adjudicating ESCR. Furthermore, the OHCHR supported the International Crimes Division (ICD) of the High Court in preparation and validation of its Rules of Procedure and Evidence. HE also noted that his office has had a number of strategic collaborations with the Office of the DPP.

Commenting on the status quo, Dr. Uchenna acknowledged the incredible work and commitment of the judiciary of Uganda towards improving the justice process in Uganda generally and in particular the criminal justice reforms it has embarked on for the last period

of about two years. Also notable, is what he referred to as a paradigm shift in the courts' enforcement of human rights in Uganda with a number of ground breaking court rulings by Ugandan judges where judicial activism and creativity has been witnessed. These include:

- *Centre for Health, Human Rights and Development (CEHURD), Mubangizi Michael and Musiimenta Jennifer v. The Executive Director of Mulago National Referral Hospital and the Attorney General of Uganda,* (Civil Suit No. 2012 of 2013) i.e.; the maternal health case;
- *Centre for Health, Human Rights and Development (CEHURD) & 3 others v. Attorney General (2015),* (Constitutional Appeal No.1 of 2013) concerning the political doctrine question on ESCR;
- *Hajji Musa Kigongo v. Olive Kigongo* (Civil Suit no. 295 of 2015) (Judgment in 2017) on property rights; as well as
- *Adbul-Rashid Mbaziira & Others v. The Attorney General* (Misc. Cause No. 210 of 2017) on torture in police custody.

According to Dr. Uchenna, the bold decisions of the judges in these cases and several others provide significant precedent for the judiciary's elasticity in the protection of human rights in Uganda. In his assessment, if such judiciary creativity and activism continues for the next couple of years, Uganda will be competing with one of the leading countries in this regard, South Africa.

He noted, however, that despite this remarkable progress, there remains a number of compelling gaps in Uganda's CJS which need to be addressed. Hence, following its review of the State of Uganda in 2016, the Universal Periodic Review (UPR) mechanism of the United Nations Human Rights Council (UNHRC) made a number of recommendations in order to improve the country's CJS. One of these was for the state of Uganda to *"…accelerate the improvement of the judicial, police and prison systems in line with international human rights standards"* and to *"…strengthen its cooperation with the OHCHR and seek international assistance for the implementation of the Plan of Action on Human Rights."*

Going forward, he committed the OHCHR to continue supporting the judiciary and other institutions in order to improve the country's CJS. He was also optimistic that the ongoing Symposium would be able to come up with clear strategies on how to address the bottle necks that still exist in the country's CJS.

He ended by wishing the participants fruitful deliberations and hoped that they would be able to accurately diagnose the problems facing Uganda's CJS in order to prescribe an appropriate therapy to make it human rights compliant.

<u>Opening Remarks</u>: Justice Moses Chinhengo, ***Chairman- Board – AJJF***

Justice Chinengo's remarks commenced with a preamble in which he alluded to the political developments in his home country, Zimbabwe, whose government had been taken over by the army on the evening of Tuesday 14 November, 2017, observing that the developments in that country symbolize no more than a failure on the part of those entrusted with the responsibility to govern. He thus called upon fellow judges, as governors of justice, to always perform their mandate diligently and properly, failing which might invite other forces to intervene.

Speaking about the day's event, Justice Chinengo noted that it was a historic day for the AJJF to host its first judicial symposium in Uganda. He expressed gratitude to the visionary leadership of the Judiciary in Uganda which allowed for the Symposium to held with its member Judges. He specially recognized the support of the Hon. The Chief Justice of Uganda, Bart Katureebe, whom he said is undoubtedly committed to both the continued professional development of Ugandan judges, as well as the improvement of the country's criminal justice system.

He also appreciated the support rendered by the Principal Judge, Yorokam Bamwiine, the Judiciary Studies Institute (JSI), the Human Rights Enforcement Foundation (HUREF) which the AJJF partnered with to coordinate the local arrangements for the Symposium, as well as the Office of the High Commissioner for Human Rights (OHCHR) who provided the logistical support. He noted that without the support of these stakeholders, the symposium would not have taken place.

Introducing the AJJF to the participants, Justice Chinengo mentioned that the Africa Judges and Jurists Forum (AJJF) is a pan-African network of judges and jurists committed to the promotion of the rule of law in the context of African development. That the AJJF is headed by a Secretary General who is currently Mr. Martin Okumu-Masiga. In order to achieve its objectives, the AJJF focuses on mainly three areas namely: judicial reform; Electoral Justice; as well as well as Rule of Law and Crisis Response.

In all this, the AJJF focuses on standard setting, capacity building and provision of legal advice to governments, inter-governmental organizations, private sector and donor agencies among others. Working on its programme areas. He mentioned the ICJ as one of the old partners of the AJJF with whom they have worked for over 6 years. He therefore welcomed the OHCHR and the JSI with whom the AJJF collaborated to host the ongoing symposium which sought to address matters of the rule of law.

He mentioned that although new in Uganda, AJJF has been active on the rest of the continent. For example, in 2015, the AJJF helped to resolve a standoff between the then Chief Justice

and the Government of Swaziland hence bringing about stability. AJJF engaged the Prime Minister of Swaziland and persuaded him to allow for mediation between the government and the detained CJ. AJJF was accordingly allowed to access the residence of the CJ who was under house arrest, and following the mediation championed by the AJJF, the CJ was released. The same has been done in Kenya for example in 2013. Furthermore, in October 2017, the AJJF had a special mission which championed dialogue following the tension created by the disputed elections. AJJF met with the Independent Electoral and Boundaries Commission (IEBC) on two occasions and was able to speak to key figures from the NASA and Jubilee parties in Kenya. AJJF also made missions to Zambia, Lesotho, Southern Sudan, among others to look into the disputes in the Judiciary, as well as between the judiciary and government, etc. He was happy to report that there has been good reception of the AJJF's efforts by most of the governments they have visited, attributing this to a general feeling that *"African problems are better resolved by Africans."* Hence, most of the recipients of the AJJF missions and recommendations have good will; as views from peers/fellow Africans as opposed to interventions from outsiders (i.e.; Europeans, e.t.c).

Commenting on the strategy adopted by AJJF in executing such critical missions, Justice Chinengo mentioned that AJJF missions are headed by former Chief Justices. That this is because the presence of such figures helps enhance the importance of judicial work in the respective countries let alone win moral support for the causes being fronted by the missions.

<u>Key Note Address</u>: Hon. Mr. Justice Bart Katureebe, Chief Justice of Uganda

In his speech, the Chief Justice expressed his pleasure to present the key note address for the symposium.

He begun by stressing the importance of the promotion and observance of human rights as a guarantee for good governance, democracy and the rule of law. Commenting on these concepts, Justice Katureebe observed that good governance has two critical elements namely: fair legal frameworks that are enforced impartially which in turn requires independent, impartial and incorruptible institutions; as well as full protection of human rights, particularly those of minorities.

Concerning the concept of the rule of law, Justice Katureebe highlighted the notion that 'no one is above the law' as the most significant feature of this concept, whose most important application he identified as the principle that governmental authority is legitimately exercised only in accordance with written and publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. He noted that this principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. As such, the rule of law is hostile both to dictatorship and to anarchy.

As regards the legal basis, Justice Katureebe observed that human rights are brought to bear through various international human rights instruments starting with the Universal Declaration of Human Rights, 1948 as highlighted below:

The International regime

The 1948 Universal Declaration of Human Rights (UDHR) sets the stage for the entry of human rights into the domain of criminal law. For example, article 8 of the declaration provides for the right of everyone to an effective remedy by competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Under article 9, arbitrary arrest or detention is prohibited. Furthermore, under article 10, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Under article 11, the right of everyone to a presumption of innocence and fair trial guarantees, is provided for. This article further prohibits retrospective application of the law which might manifest in punishment of individuals for act(s) or omission(s) which, at the time when they were committed, did not constitute a penal offence under national or international law. That provision further prohibits imposition of a heavier penalty upon any person, than the one that was applicable at the time the penal offence was committed.

According to Justice Katureebe, the above provisions initiated the entry of human rights into criminal law and justice by prescribing the various tests which must, as an obligation, be

passed by every criminal investigation, prosecution, trial, sentence as well as execution of sentence(s). He further noted that it was upon the above background that the International Covenant on Civil and Political Rights (ICCPR) was made, with the latter strengthening the position set up by the former. Collectively, the above provisions constitute the international Bill of Rights, and therefore the ones which entrench human rights into criminal law and justice.

The Domestic regime

Commenting on the applicable legal regime at the domestic level, Justice Katureebe cited the Bill of Rights as set out under chapter four of the 1995 Constitution of Uganda as the major local guiding principles, which he said was inspired by the above international framework, as well as the provisions in the African Charter of Human and Peoples Rights. This set up is complemented by the Treaty for the Establishment of the East African Community, 1999 *(as amended on 14th December, 2006 and 20th August, 2007)* particularly article 6 (d). The Chief Justice noted that in addition to incorporating the Bill of Rights, the Ugandan Constitution saves Uganda's obligations in respect of any treaty, agreement or convention (article 287).

According to the Chief Justice, although the entire Chapter 4 of the Constitution sets out an elaborate Bill of Rights, it is mainly ***articles 22*** (on protection of right to life); ***23*** (on protection of personal liberty); ***24*** (on respect for human dignity and protection from inhuman treatment); and ***28*** (on the right to a fair hearing) which are of particular importance to criminal law and justice. In this regard, he highlighted two cases (one on article 23 and another on article 28), which underscore the point that issues of human rights and the rule of law feature in the day to day conduct of affairs under criminal justice starting from investigation, prosecution, trial, sentencing and execution of sentences.

The right to personal liberty (article 23)

Among the many cases in which the right to personal liberty has received court interpretation, Justice Katureebe cited the decision of the East African Court of Justice in ***Katabazi and others v. Secretary-General of the East African Community and Another*** **(2007) AHRLR 119 (EAC 2007),** which he said intertwined the right to personal liberty with the rule of law and the independence of the Judiciary**.**

This was a reference to the East African Court of Justice by sixteen persons against the Secretary-General of the East African Community as the 1st respondent and the Attorney-General of Uganda as the 2nd respondent.

Background to the reference:

> The claimants' case was that during the last quarter of 2004, they were charged with treason and misprision of treason and consequently remanded in custody. Two years

later, on 16 November 2006, the High Court granted bail to fourteen of them but before they could be released, the court premises were surrounded by security personnel who interfered with the preparation of bail documents, re-arrested the claimants and took them back to jail.

A week later, on 24 November 2006, the claimants were taken before a military General Court Martial and were charged with offences of unlawful possession of firearms and terrorism. Both offences were based on the same facts as the previous charges for which they had been granted bail by the High Court. All claimants were again remanded in prison by the General Court Martial.

Following these events, the Uganda Law Society went to the Constitutional Court of Uganda, challenging the interference in the court process by the security personnel and also the constitutionality of conducting prosecutions simultaneously in civilian and military courts.

The Constitutional Court ruled that the interference was unconstitutional.

However, despite the decision of the Constitutional Court in these terms, the complainants were not released from detention and hence this reference.

Issue:

The issue was whether the acts complained of were a violation of the rule of law and, therefore, an infringement of the Treaty for the establishment of the East African Community.

Ruling:

The Court held that,

"…the intervention by the armed security agents of Uganda to prevent the execution of a lawful court order violated the principle of the rule of law and consequently contravened the Treaty. Abiding by the court decision is the cornerstone of the independence of the judiciary which is one of the principles of the observation of the rule of law."

The right to a fair hearing

In respect of the right to a fair hearing, the CJ noted that this right has been subject of interpretation in a number of cases, including ***Uganda Law Society & Anor v. The Attorney General*** **(Constitutional Petitions No. 2 & No. 8 of 2002) (alias the Kotido massacres case) whose** facts and circumstances he said are of peculiar interest to criminal justice. The facts leading to this case were that,

on 25th March 2002, two soldiers of the Uganda Peoples Defence Forces, were indicted, tried and executed on the same day for the murder of three civilians in Kotido District in North Eastern Uganda. The petitioners filed the petition seeking declarations that the entire process was unconstitutional. The evidence presented to court suggested that the accused's trial was held so hastily, so much so that it was not possible to give the accused persons the safeguards they were entitled to. That is:

- *the trial took less than three hours,*
- *the accused were not accorded time or facilities to enable them prepare for their trial,*
- *they were not allowed to be represented by counsel of their choice or any lawyer at all,*
- *they were not accorded services of an interpreter, and*
- *they were not allowed to call witnesses or to cross examine them.*
- *Furthermore, the Field Court Martial which tried the soldiers was neither independent nor impartial because its chairman was the commanding officer who was involved in investigations and the rest of the members of the Court were his junior officers who could not be expected to think independently from their commander.*

Under such circumstances, the petitioners argued, the soldiers never received a fair trial and speedy hearing before an independent and impartial tribunal as guaranteed under articles 28 and 44 of the 1995 Constitution of Uganda.

In agreement with the petitioners, the Constitutional Court held as follows:

> *"… the Kotido trial was conducted in total contravention of the provisions of article 28 (3) (e) of the Constitution of Uganda. I have mentioned above that article 28 of the Constitution is a package of protections to accused persons in order to guarantee them a fair hearing. If anyone of them is denied, then the trial cannot be said to be fair. Article 44 (c) of the Constitution states that a right to a fair hearing is absolute. It must never be denied in any circumstances whatsoever. In this case the soldiers were tried and executed without according them virtually all basic human rights guaranteed by articles 28 and 44(c) of the Constitution. It was a denial of natural justice precedented only by military trials of President Idd Amin era".* [per Twinomujuni, JA]

The Court concluded that the execution of the two soldiers at the orders of a Field Court Martial was illegal, unlawful and unconstitutional. Despite its affirmative nature, Justice Katureebe sadly lamented, the injustices could not be redressed, since death is an irreversible occurrence.

Despite the above legal framework and court pronouncements, the CJ noted that there are a number of challenges that still hinder the Judiciary and other law and justice agencies' successful enforcement of human rights in the course of administration of criminal justice as highlighted below.

Challenges in the administration of Criminal Justice in Uganda

According to the CJ, most of the challenges manifest in failure to adhere to international human rights standards, which failure he attributed to a number of factors namely:

1. ***Lack of effective institutional mechanisms***

The CJ identified a number of institutional failures in respect of Uganda's criminal justice process namely:

- poor investigation of criminal cases,
- weak forensic evidence gathering and analysis machinery,
- inadequate staffing of the judiciary mainly because of poor prioritization (Out of a total of 82 vacancies for judges at the High Court, only about 50 are currently 50 appointed vis a vis a total of over 400 MPs whose number is based on politically charged rationales),
- inadequate training of action officers in the entire Justice, Law and Order Sector (JLOS), among others.

He noted that presence of such shortcomings in any of the JLOS institutions has a significant negative impact over all the other institutions since the justice system is a chain and where no institution can execute its mandate in isolation. That if, for example, the police investigations are poor, the prosecution will not have a good case, which will then make it difficult for the courts to find adequate evidence for it to dispense justice for the victims of human rights abuses.

Commenting on the implications of these weaknesses, the CJ mentioned that such weaknesses pose a number of negative consequences such as,

- failure of cases due to poor investigations;
- prolonged stay on remand;
- over-congestion in prisons, etc.,

in contravention of human rights of both the victims and accused persons.

2. ***Absence of legal aid or a public defender system***

It is noteworthy that proper observance of the rights of an accused person necessitates effective legal representation from the point of arrest throughout the case process. However, according to the CJ, an accused person in Uganda is currently only entitled to provision of legal aid by the state if he/she is charged with an offence punishable either by death or life imprisonment through a system known as state brief. Worse still, these services are not provided early enough to the deserving accused persons.

According to the CJ, the current arrangement only avails advocates to accused persons after cause listing of their cases for trial. Given that it usually takes an accused an average of about

4 years on remand, this implies that for all that period, all the accused has heard in terms of forming his/her defense are the distortions following the contagion effect peddled by purportedly more experienced (long term) inmates. Hence, when a lawyer is finally availed, such an accused person cannot easily open up to a stranger in the name of an advocate.

He further noted that many of the advocates who accept to take on cases under the arrangement are either not the best or do not put in their best of input. As such, the provision of the advocate on state brief remains a mere legal formality.

Below and beyond these limitations, the CJ was alive to the fact that the majority of the court users have no access to legal aid at all.

3. ***Failure to cope with the increasingly sophisticated nature of crime***

The CJ also highlighted the problem of increased sophistication of crimes which are committed with the aid of advancement in ICT and changing social-economic trends. He mentioned that while crimes such as cyber-crime, trafficking in persons, corruption, fraud, money laundering, among other white collar crimes, are increasingly being committed with a lot of sophistication, the officers charged with handling them usually have little or no specialised training to do so. That this then impedes effective administration of criminal justice and fetters the rights of persons affected by such offences.

Going forward, the CJ made a number of proposals among JLOS institutions in order to register improvement in the administration of criminal justice.

Proposals on reforming the workings of Uganda's Criminal Justice Process

In order to develop a criminal justice system that places human rights and the rule of law at the forefront, the CJ made the following proposals.

1. ***Legal reforms***

Firstly is the need for crucial legal reforms, starting with adjusting most of the otherwise colonial criminal laws and procedures to suit the local circumstances pertaining in our society. He observed that most of the laws had colonial motives at the time they were made, and that many of them do not pass the human rights test. One of the laws he identified is the Witchcraft Act which he said needs to be struck out by the Constitutional Court. He mentioned that some offences call for de-criminization; while some procedures need to be modified to suit prevailing circumstances. He thus called upon the participants in the symposium to identify, discuss and agree upon some of the deserving reforms in the CJS and urged the organizers of the symposium to follow them up thereafter.

2. ***Embracing innovations such as plea bargaining and sentencing guidelines***

According to the CJ, the other way the criminal justice system can be improved is through coming up with and implementing innovative practices such as plea bargaining and sentencing guidelines. In this regard, the CJ mentioned that Uganda has already tried plea bargaining. He happily reported that through this mechanism, they have been able to reduce the remand population in prisons thereby decongesting the overcrowded prisons. Since inception of the programme in 2014 as a pilot, over 12,000 criminal cases have been disposed of through this process. He noted that the process of plea bargaining makes it possible for suspects who want to plead guilty to do so at the earliest possible opportunity. He added that plea bargaining is also one way of promoting reconciliation between parties in accordance with article 126 (2) (d) of the constitution. That if well managed, plea bargaining also contributes to the promotion of the human rights of offenders and victims. He however cautioned the participants about potential abuse of this mechanism which he said needs to be regulated.

Commenting on the aspect of sentencing guidelines, the CJ observed that these have been instrumental in creating uniformity, consistency and predictability in sentencing patterns with the effect of encouraging plea bargaining and hence improved productivity. He thus highlighted a need for greater training of stakeholders on and how to make use of the sentencing guidelines more effectively. Of particular importance, he noted, judicial officers should be oriented to develop and follow a human rights based approach in sentencing.

3. ***Use of ICT***

The CJ reported that the Judiciary in Uganda and JLOS in general have made use of ICT to improve the administration of criminal justice as can for example be seen in the use of video link technology in cases involving child victims of sexual offences. He commended this approach for being a powerful tool for protection of the rights of children who are enabled to go through a criminal trial without having physical confrontation with their alleged tormentors.

In terms of the future prospects, the CJ mentioned that although it started as a pilot project, this technique is intended to be extended countrywide with time. He also tipped the participants that there are plans to use ICT to connect with prisoners in prisons. Furthermore, that the judiciary is in the process of implementing full automation of the court process, which approach is intended to assist in the elimination of unnecessary delays, cut out opportunistic corruption, eliminate the problem of misplaced or lost files, cut out systemic inefficiencies and achieve a faster resolution of court cases. The CJ was optimistic that these innovations will have a tremendous impact on the observance of human rights in Uganda's CJS. He hoped that all Judges will be trained in the use of ICT through the support of both the government of Uganda and development partners.

4. ***Strengthening mechanisms to sexual and gender based violence***

Strengthening mechanisms to fight sexual and gender based violence is another initiative by the Judiciary and the entire JLOS in Uganda. The CJ reported that many, if not all, judicial officers, among other justice actors have undergone gender based training through the support of development partners. Additionally, a Gender Bench Book on Access to Justice by Women in Uganda and a Commonwealth Judicial Bench Book on Violence against Women and Girls in East Africa were recently launched, the later as recent as 2016. He mentioned that these bench books have been instructive in providing tools to judicial officers to understand and better interpret laws (through human rights lenses) to foster greater access to justice.

Conclusion

Justice Katureebe concluded his remarks with an observation to the effect that rethinking the way the criminal justice system works requires more than institutional and legal changes since it also calls for a change of attitude on the part of the justice actors. Added to this is the need for continuous training and judicial activism on the part of judicial officers to have human rights lenses whenever accused persons or victims appear before them. Finally, that every process undertaken should be assessed for human rights compliance and especially ensuring that justice for the victims is realised.

Panel 1

REGIONAL AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RELEVANT TO THE ADMINISTRATION OF CRIMINAL JUSTICE IN UGANDA

1.1 Identifying the Major Regional & International Human Rights Treaties & Standards. *Dr Uchenna Emelonnye, OHCHR Country Representative to Uganda*

Dr. Uchenna's presentation begun with an observation that the criminal justice process is mainly a curtailment on the rights of the accused, which must be done in compliance with internationally accepted standards. It is on this basis that he then highlighted the major instruments ratified by Uganda as well as other nonbinding instruments and guiding principles that are relevant to criminal justice.

At the international level, he highlighted the following instruments:

The Universal Declaration of Human Rights (UDHR)

The first instrument identified by Dr. Uchenna is the UDHR which he said provides a key normative basis for Human rights in the administration of justice. That that instrument provides for among others: effective remedy, course of a fair Trial, presumption of innocence and the non-retroactivity of law.

The International Covenant on Civil and Political Rights (ICCPR)

Following from the UDHR is the ICCPR which was ratified by Uganda, which implies that Uganda committed to undertake respect and to ensure protection for all individuals within its territory and to subject its self to the rights under the covenant. The rights he identified under this instrument as being of relevance to criminal justice include: article 9 on the right to liberty and security of persons; article 10 providing for the requirement of treating persons deprived of their liberty with humanity and for respect of the inalienability of human persons; article 11 prohibiting imprisonment on grounds of failure to fulfill a contractual obligation, and finally article 14 providing for the right to a failure trial in criminal and civil cases by an independent and impartial tribunal.

As a critical point worth of note by the Judges, Dr. Uchenna mentioned that the ICCPR provides for some limitations on some of the rights thereunder, on grounds of public order, public security, public health and morals. He however noted that these limitations must be provided for by law, and must be for a legitimate aim as construed in a free and democratic society. Additionally, that the ICCPR makes provision for permissible derogations during a publicly declared state of emergency that threatens the life of a nation. Even then, that such derogations must comply with the international obligations of the state and must as well

respect the non-derogable rights such as the right to fair trial, freedom from torture, inhuman and degrading treatment, as well as freedom from slavery.

Commenting on the mechanisms for the implementation of this instrument, Dr. Uchenna noted that the ICCPR provides for very weak mechanisms for implementation that is; the reporting obligation to the Human Rights Committee which takes a round of four years before Uganda can be reviewed again. Additionally, the Optional Protocol to this Convention provides for individual reporting in addition to the State reports. According to Dr. Uchenna, this window is quite weak.

The Convention on the Rights of the Child (CRC)

The third instrument he highlighted is the Convention on the Rights of the Child (CRC) which Uganda has both ratified and domesticated. That by ratifying and domesticating this Convention, Uganda commits that "in all actions concerning children, the best interest of the child shall be given primary consideration." He highlighted the specific rights under this Convention that are relevant to criminal justice to include: article 12 providing for the right to be heard in any judicial or administrative proceedings affecting the child; article 37(b) prohibiting unlawful and arbitrary deprivation of a child's liberty; article 37(c) providing for the right to humane treatment of a child who has been deprived of his/her liberty. Just like the ICCPR, the CRC provides for permissible limits on the rights provided for thereunder namely: on freedom of expression (article 13(2)); freedom of religion (13(3)); freedom of association (article 15(2)). However, unlike the ICCPR which allows for derogations under some albeit limited circumstances, the CRC does not, at any point, provide for derogation from any of the rights there under. According to Dr. Uchenna, it follows that the CRC has to be applied in its entirety under all circumstances.

In terms of the enforcement mechanism, Dr. Uchenna observed that this is the same as that under the ICCPR, i.e.; submission of reports by state parties to the relevant Committee, in this case the Committee on the Rights of the Child. The Optional Protocol to this Convention also provides for individual reporting in addition to the State reports. He thus reiterated the same concern of weakness of the enforcement mechanism which does not deliver effective results beyond the policy recommendations made in response to the reports submitted to the Committee. There is, for example, no direct benefits to the individuals whose rights may have been violated by the state.

The Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT)

Dr. Uchenna noted that Uganda is state party to this Convention, and that is has in addition gone ahead to domesticate the Convention by enacting the Prevention and Prohibition of Torture Act **(PPTA)** of 2012. That by so doing, Uganda submits herself to respecting and

protecting the rights laid down under the CAT. This legal framework provides for a number of obligations relevant to criminal justice administration namely: criminalization and adequate punishment for all acts of torture, in human and degrading treatment; proper investigation of such acts, etc.

Unlike the ICCPR and the CRC, the CAT does not allow for any limitations on the rights laid down thereunder. Similarly, the rights are non derogable.

Just like the ICCPR and the CRC, this Covenant is also implemented through the mechanism of state reporting. However, this Convention makes no provision for individual reporting. It thus remains for the State to report to the Committee, and for the Committee to raise its questions to the state party concerned.

Closer to home, at the regional level, Dr. Uchenna identified the following instruments:

The African Charter on Human and Peoples Rights (ACHPR)

He noted that as a State party of the AU, Uganda committed to recognize the rights provided for under the ACHPR and to undertake legislative and other measures to give effect to the rights thereunder.

Under this framework, Dr. Uchenna identified the some of the rights relevant to the administration of criminal justice to include: the right to equality and to equal protection of the law (article 3); the right to have one's case heard, the right to appeal to a competent judicial organ against acts involving violation of human rights, the right to a presumption of innocence, the right to defense, and the right to be tried in reasonable time, by an independent and impartial tribunal (article 7) among others.

Just as is the case with the ICCPR and the CRC, the ACHPR makes provision for certain permissible limits conditioned on the need to protect national security, law, order or morality and must be provided for under the law. Furthermore, the ACHPR provides for some allowable derogations as stipulated thereunder.

As regards the implementation mechanism for this instrument, Dr. Uchenna noted that the ACHPR is implemented through, among others: the African Court on Human and Peoples Rights; the mechanism of periodic reports to the African Commission where States peer review each other. According to Dr. Uchenna, Uganda actually submits more reports under this mechanism than it does under the international instruments.

The African Charter on the Rights and welfare of the Child (ACRC)

Dr. Uchenna noted that as a member to this charter, Uganda commits to implement the rights, freedoms and duties enshrined under the charter, and to undertake policy and legislative measures to give effect to the provisions of the charter. The key rights hereunder include

article 17 on the administration of juvenile justice and the right to special treatment of young offenders.

In terms of the implementation mechanisms, this system is implemented in three ways namely: the African Committee of experts on the rights and welfare of the child, which is a group of experts who make advancements in the protection of children's rights on the continent; reporting procedure where state parties submit periodic reports on the status of implementation of the rights enshrined under the charter; as well as the complaints mechanism where individuals can file complaints against violators of their charter rights.

In his conclusion, Dr. Uchenna noted that unlike the national legal frameworks, the international and regional mechanisms are mainly implemented through general reporting mechanisms (which do not give individual relief) and quasi adjudication complaints. As such, there is not as much protection under the international framework which remains a subsidiary/complement to the national framework. He thus observed that the best relief for human rights violations can only be obtained through national framework, which in turn relies on the persuasion that states should do the needful.

He ended with a call to local Judges to always be keen on the protection of human rights since it is usually the courts which will compel the state to do the needful in observing its human rights obligations.

1.2 Application of Regional & International Human Rights Treaties & Standards before Uganda Courts. *Dr. Daniel Ruhweza, Lecturer, School of Law, Makerere University*

To kick start his presentation, Dr. Ruhweza begun by positing a contrary view to Dr. Uchenna's assertion regarding the universality of human rights. He observed that while there is a dominant view that human rights are universal, there is need to take cognizance the school of thought which posits that you cannot apply all human rights universally (i.e.; the cultural relativism school).

In this regard, Dr. Ruhweza cited the Juba Peace Process of early 2000s as a contemporary example of the centrality of the debate about the universality of human rights. This, he based on the proviso, during that process, of having a concurrent application of remedies (for accountability), as well as traditional justice mechanisms *albeit* with necessary modification. According to Dr. Ruhweza, this example symbolizes the enduring challenge Uganda is faced with in respect of choice of a single approach to human rights and justice in general, and criminal justice administration particularly. Hence, during the Juba peace process, the powers that be in Uganda accepted the view that justice, as well as human rights, may not be uniform for everyone. They thus elected to take a multipronged approach to address the issues at hand.

Additionally, that since Uganda is a dualist country, international law and international human rights treaties, do not operate automatically but require a process of domestication

and incorporation into the national legal system. This, he noted, is so, because dualism posits that the rules of the systems of international law and municipal law exist separately and cannot purport to have an effect on, or overrule, the other. That this is a recognition of the fundamentally different nature of inter-state and intra-state relations and the different legal regimes used in either municipal law or international law. This, he noted, is different in monist countries where a treaty becomes operational the moment it is ratified.

As such, he noted, the application of international law in Uganda is not automatic. Hence, Judges are enjoined to administer law in accordance with the Judicature Act Cap 13. However, section 14(2) of the Judicature Act which gives the framework for the exercise of the courts' powers does not list international law as a source of law for the courts of Uganda. Therefore, for a treaty to be applied in Ugandan courts, it must have been ratified in accordance with the Ratification of Treaties Act Cap 204 and then domesticated by an Act of the Ugandan Parliament. He listed a number of treaties that have been domesticated by Uganda such as the: Arbitration and Conciliation Act Cap 4; Atomic Energy Act Cap 143; Bretton Woods Agreements Act Cap 169; Diplomatic Privileges Act Cap 201; East African Development Bank Act Cap 52; Foreign Judgments (Reciprocal Enforcement) Act Cap 9; Geneva Conventions Act Cap 363; International Development Association Act Cap 189; as well as the International Finance Corporation Act Cap 190.

He also cited Section 2(b) of the Ratification of Treaties Act which empowers Parliament to ratify treaties by way of resolution where the treaty in question relates to armistice, neutrality or peace; or with regard to a treaty in respect of which the Attorney-General has certified in writing that its implementation would require an amendment of the Constitution. All other treaties can be ratified by Cabinet in accordance with section 2(a) of the Act, provided that they are laid before parliament 'as soon as possible' in accordance with section 4 of the Act.

He thus concluded that the Ugandan Constitution remains the supreme law of the land. Hence, pursuant to article 2(2) of the constitution, to the extent that international law is incorporated into the national legal order as written law, it is subordinated, as a matter of Ugandan law, to the provisions of the Uganda Constitution. Furthermore, Article 286 provides that where any treaty, agreement or convention with any country or international organisation was made or affirmed by Uganda or the government on or after 1962 and was still in force immediately before the coming into force of the Constitution, then such treaty, agreement or convention shall not be affected by the coming into force of the Constitution, and Uganda or the government, as the case may be, shall continue to be a party to it.

Commenting on the approach of the Courts in applying international human rights treaties, Dr. Ruhweza observed highlighted a number of approaches namely:

1. ***Judges and advocates avoiding engaging with questions of international human rights law***

One approach adopted by judges has been to simply avoid engaging with questions of international human rights law which has taken the form of deciding cases on the narrowest possible grounds as long as they are perceived to be sufficient to dispose of the case at hand. He cited, in this regard, the case of ***Soon Yeon Kong Kim and Another v. Attorney General***, Constitutional Reference No 6 of 2007 as an example in this regard.

The issue in that case was whether, under article 28 of the Constitution (right to a fair trial), an accused person was entitled to disclosure of copies of statements made to police by persons who would or might be called to testify as prosecution witnesses as well as of copies of documentary exhibits that would be offered in evidence by the prosecution before being called upon to plead the charges. Counsel for the applicants argued, among other things, that the wording used in the provision was deliberately similar to article 14 of the International Covenant on Civil and Political Rights and article 6 of the European Convention on Human Rights. Dr. Ruhweza noted that although the Court ruled in favour of the applicants, it did not refer to the arguments based on reference to international law, choosing to rely instead on judicial authorities from Kenya and South Africa.

He also cited the case of ***Uganda Association of Women Lawyers (FIDA-U) and Others v. Attorney General*****, Constitutional Petition 2 of 2003** in which the plaintiffs sought a declaration that certain provisions of the Divorce Act Cap 249 contravened constitutional guarantees to equality and non-discrimination. In that case, **Twinomujuni, JA** (as he was then) observed, in reference to arguments of counsel for the plaintiffs, that since no issue had been framed as to whether contravention of an international human rights convention amounted to a contravention of the Constitution, he would make no consideration or holding on the matter.

In addition to the judges, Ugandan Advocates have also followed suit to the same approach. He noted that a result of judicial apathy towards the country's obligations under International Human Rights treaties, it appears to be a choice among lawyers to avoid building their cases on the same. Also, in the case of ***Law and Advocacy for Women in Uganda (LAWU) v. Attorney General*****, Constitutional Petitions Nos. 13 /05 /& 05 /06 [2007]** which was a petition seeking a finding that certain sections of the Penal Code Act Cap 120 and the Succession Act Cap 162 contravened constitutional guarantees to, among others, equality and non-discrimination, violation of international law was initially framed as issue for the Court to determine. However, that when the parties appeared before the Registrar of the Constitutional Court for a scheduling conference (as required by the Court rules) the reference to violations of rights contained in International human rights conventions was dropped, hence leaving no room for the Court to address the issue.

Furthermore, in ***Attorney General v. Paul K Ssemogerere and Anor*****, Constitutional Appeal 3 of 2004** which sought, among other things, a declaration that the Referendum (Political Systems) Act 2000 was unconstitutional, and violated 'various International Human Rights

Conventions to which Uganda is a party or with which Uganda is otherwise obligated to comply'. At the hearing of the petition before the Constitutional Court (more than three years after its filing), this issue was not among those framed for determination, and was in the event never pronounced upon either by the Court

2. ***International law being used as a guide to Constitutional interpretation***

Even then, Dr. Ruhweza observed that courts in Uganda have used international law a guide to constitutional interpretation, especially the Bill of Rights. In this regard, **Justice Egonda-Ntende** in ***Tinyefuza v. Attorney General*****, Constitutional Petition 1 of 1996** stated that,

> 'In matters of interpretation where the words of the Constitution or other law are ambiguous or unclear or are capable of several meanings… we may have to use aids in construction that reflect an objective search for the correct construction. These may include international instruments to which this court has acceded and thus elected to be judged in the community of nations.'

A similar approach was taken in ***Muwanga Kivumbi v. Attorney General*****, Constitutional Petition No 9 of 2005 which was a** Constitutional petition that sought a declaration that section 32(2) of the Police Act (giving the power to police to prohibit the convening of an assembly or the formation of a procession in any public place) contravened, among others, the constitutional rights to freedom of expression and assembly. In that case, the impact of the European Convention for the Protection of Human Rights and Fundamental Freedoms on the United Kingdom Public Order Act of 1986 which gave the police similar powers was considered.

Also in ***Col (Rtd) Dr Kiiza Besigye v. Yoweri Museveni Kaguta and the Electoral Commission*****, Election Petition 1 of 2001 (Supreme Court,** Odoki CJ took the view that article 1(4) of the Constitution, which provides that *'The people shall express their will and consent to be governed through regular free and fair elections of their representatives or through referenda'),* incorporated the principles enshrined in articles 21 of the Universal Declaration of Human Rights (UDHR) and article 25 of the ICCPR (that all citizens have the right to take part in the government of their country directly or through freely chosen representatives) such that the breadth of the right to participation had to be considered with reference to those international instruments.

In another case, ***Attorney General v. Susan Kigula & 417 Ors*****, Constitutional Appeal No 03 of 2006 which** challenged the constitutionality of the death penalty in Uganda, the majority noted that the fact that the UDHR, the African Charter on Human and Peoples' Rights (ACHPR) as well as the ICCPR provided for the right to life and the right to freedom from torture it could not be said that by these provisions these international instruments had thereby abolished the death penalty.

The other case he cited is that of ***Victor Juliet Mukasa & Yvonne Oyo v. The Attorney General*, High Court Miscellaneous Cause 247 of 2006** involving two applicants identifying as lesbians living in a Kampala suburb, who were subjected to various indignities by the police and local council officials. In finding that there had been a violation of the right to freedom from torture court made reference to article 1 of the Universal Declaration of Human Rights on the equality of all human beings in dignity and rights and article 3 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

3. ***Interpreting domestic law in a manner that is consistent with undomesticated international agreements***

Dr. Ruhweza further noted that Ugandan courts have also highlighted the duty to interpret domestic law in a manner that is consistent with undomesticated international agreements. For example, **Egonda- Ntende Ag JSC** in ***Attorney General v. Susan Kigula & 417 Ors,*** **Constitutional Appeal No 03 OF 2006 observed thus,**

> 'It is worthwhile noting that Uganda acceded to the International Covenant on Civil and Political rights on 21st September 1995 and to the First Optional Protocol on 14th February 1996. At the very least the decisions of the Human Rights Committee are therefore very persuasive in our jurisdiction. We ignore the same at peril of infringing our obligations under that treaty and international law. We ought to interpret our law so as not to be in conflict with the international obligations that Uganda assumed when it acceded to the International Covenant on Civil and Political Rights.'

4. ***Interpreting international human rights provisions as part of the constitution***

According to Dr. Ruhweza, there are instances where International Human Rights Provisions have been interpreted as part of the Constitution. For example in ***Uganda Law Society & Anor v. The Attorney General***, **Constitutional Petitions No 2 & 8 of 2002,** which concerned the indictment, trial and execution of two soldiers in March 2002 for murder, the petitioners sought declarations that the entire process was unconstitutional as contravening the rights to a fair trial and to life. **Twinomujuni JA,** observed thus,

> 'we forget that the African Charter on Human and Peoples Rights [Banjul Charter] which was adopted on 27th June, 1981 by the OAU and which came into force on 21st October, 1986 is part and parcel of our Constitution. This is so by virtue of (Article 286 – international agreements, treaties and conventions remain valid upon coming into force of the Constitution),'

Dr. Ruhweza however cautioned that this assertion is questionable.

5. ***Importing international human rights standards as part of the Constitutional rights that are not expressly stated thereunder***

The other way identified by Dr. Ruhweza is the use of International human rights conventions as sources of rights not expressly stipulated under the Constitution. That in keeping with article 45 of the Constitution of Uganda, which provides that the statement of some rights in the constitution does not exclude those that are not expressly stated thereunder, international Instruments have been treated as sources of other rights. For example, in ***Uganda Law Society & Anor v. The Attorney General*, Constitutional Petitions No 2 & 8 of 2002 ,** *Twinomujuni JA* took the view that the Banjul Charter could be used, not just as an aid in the interpretation of the Constitution, but as an authoritative source of rights not expressly provided for under the Constitution.

Further still, some Judges have presented themselves as advocates of international human rights law by for example exhorting the parliament to domesticate certain international conventions to which Uganda is a party. In ***Re Muwanguzi Perez (An Infant),* HCT-00-FD-FC-0170-2008** for example, **Justice Egonda-Ntende** decried the fact that Uganda had not yet acceded to the Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption which entered into force on the 1st May 1995.

In his concluding remarks, Dr. Ruhweza stated that while judges in Uganda have not been entirely comfortable dealing with questions of international law that arise before them, there are signs that the courts are increasingly willing to engage with the question of the interaction between international law and the national legal system. He thus implored them to continue doing so. Furthermore, he called upon the judges to take an activism approach of going beyond Treaty Law in deserving cases, and apply Customary International Law since we live in the same community of states. He ended by recommending for further education being provided to Judges on issues of international law and its interplay with municipal law; including how to apply customary international law.

1.3 Plenary

In the plenary to this session, two points were raised. Firstly was the place of morals in the debate around the universality of human rights and cultural relativism. According to one member of the plenary, there are instances where some categories of rights otherwise recognized under the international human rights regime at the time contradict with the moral standing of some states. The participant highlighted homosexuality as a case in point in this regard. Responding to this concern, Dr. Uchenna observed that parliaments all over the world have the unlimited power to legalise or criminalize an act, for example on the basis of morality, for so long as due process is meant, and certain criteria such as non-discrimination are met. Additionally, the act must be the less intrusive way of dealing with the issue and if they are, then legislation will be deemed unreasonable. Therefore, for as long as a state is able to meet these tests, it can go ahead and criminalize such conduct that it deems contrary to its morals.

The second point raised was a concern about the contours of application of the CAT which, it was felt, is limited to acts of the state leaving out those acts committed by private actors, for example spouses against each other. This fear was however allayed by Dr. Ruhweza who noted that the proviso in the CAT is not only for state actors, but for every individual. He cited, in this regard, the case against Nganwo High School regarding corporal punishment, where non-state actor was held accountable for torture. He therefore opined that a similar position obtains in the case of all private actors.

Panel 2

THE PROBLEM OF PROLONGED PRE-TRIAL DETENTION IN UGANDA: RENDERING A DIAGNOSTIC PRESCRIPTION

Chaired by: Justice Dedus Keitirima

2.0 Introductory remarks

In his introductory remarks, Judge Keitirima, who chaired this session, observed that the problem of prolonged pre-detention is one of the major problems that critically bedevils Uganda's CJS. He cited, in this regard, statistics from the Prisons which show that over 54% of the detainees there are those with pending trials. According to Judge Keitirima, pre-trial detention makes a mockery of the Bill of rights, particularly the non-derogable right to a fair and speedy hearing and the presumption of innocence. He observed that although widely prevalent in Uganda and a number of other prisons across the continent, pre-trial detention should be an exception, rather than a rule. This, he observed, is due to the fact that over 50% of the people on pre-trial detention usually end up being acquitted.

2.1 Perspectives from the Judiciary. Judge David Wangutsi, Head, High Court Commercial Division

In his presentation, Justice Wangutsi begun by defining pre-trial detention, which he said connotes the detention of an accused before the trial takes place. He observed that it is important for the judges to consider what happens to accused persons during this period, including the manner in which they are arrested.

He defined pre-trial detention as a situation where a person has been produced before court and, either the law prohibits bail, or there are conditions that show that one is not likely to answer their charges when released on bail and/or if they are perceived to be a danger to the public. However, in cases where there is a likelihood of subjecting an accused person to mob-justice, an accused could as well be detained pending trial. He distinguished pre-trial detention from pre-charge detention, as well as how they are treated after being committed (post-charge detention), he said is, unfortunately, not computed by the Judges when computing time spent in detention for purposes of sentencing at the end of the trial. He observed that this has led to abuse of the right to liberty by especially the police which keeps piling on accused persons different charges; one after the expiration of another which prolongs the pre-trial detention of accused persons in total disregard of the presumption of innocence. Unfortunately, he noted, the judges seem to be working under a presumption that the police are respecting the 48hr rule.

Justice Wangutsi also decried the various irregularities associated with the CJS generally and pre-trial detention specifically namely: over congestion in prison facilities; arbitrary arrests

involving use of excessive force; arrests being carried out by non-uniformed personnel; arrests conducted in a manner that is similar to kidnap; the practice of transferring suspects from one station to another in order to defeat justice by denying them the legal safeguards such as the right to information about the reasons for arrest and unimpeded access to timely legal counsel; the practice of convicting accused persons prior to being tried by parading them before the public (through the media) and referring to them as thieves, murderers, terrorists thereby defeating the element of identification which is a key ingredient of a criminal trial; torture of victims in order to extract from them confessions against their will, let alone for offences that they have not committed; challenges of legal assistance to accused persons; inordinately long periods of pre-trial detention; limited human resource (few judges, few prosecutors using ancient methods hence poor quality of investigations), among others.

Justice Wangutsi observed that delays in the disposal of cases has devastating effects of both a social and economic nature, which include among others poor health, psychological torture especially where the detainee is innocent, breakdown of families, higher costs of maintaining overcrowded prisons, loss of provision to families whose breadwinners are the subject of detention, and higher rates of juvenile delinquency.

2.2 The Role of the Uganda Prisons Service; Mr. Robert Munanura, Commissioner: Custodial, Safety and Security Operations, Uganda Prisons Service

The perspectives from the Uganda Prisons Service were given by the Commissioner: Custodial, Safety and Security Operations, Mr. Robert Munanura, who spoke on behalf of the Commissioner of Prisons, Dr. Johnson Byabasaija.

Introducing the UPS to the Symposium congregants, Mr. Munanura mentioned that the UPS is the body that is by law mandated to keep custody of prisoners and rehabilitation of offenders. Aside its legal mandate, the UPS is assigned an additional role of producing cotton, seeds and furniture for all MDAs. That the UPS envisions to be a Centre of excellence in providing human rights based correctional services in Africa. He mentioned that the mission of the UPS is to *"…contribute to the protection and development of society by providing safe, secure, and humane custody of offenders while placing human rights at the centre of their correctional programmes."*

Commenting on the functions of the UPS as laid down under the Prisons Act, 2006, Mr. Munanura mentioned that the UPS among others is tasked under section 5 with ensuring that *"every person detained legally in a prison is kept in a safe, secure and humane environment, produced in court when required until lawfully discharged or removed from prison."*

Despite its mandate, the UPS has a number of challenges, some of which are related to prolonged pre-trial detention. This, he based on a situational Report which he presented to the Judges highlighting among others:

- ⇨ An inadequate staff population (9,834) to prisoners population (54,700) ratio i.e.; 1:7 instead of the ideal 1:3.
- ⇨ The UPS is having in its custody mostly detainees on pre-trial/remand at 51% compared to those on conviction 48%. Of the detainees on remand, about 37.8% (10,536) of them have spent an average of 23.1 months having been committed to the High Court on capital offences, 11% (3,254) detainees are on mention to be hard on capital charges and have on average spent over 3.5 months in jail. However, a large majority of the pre-trial detainees are those on petty cases (50.4%) and those pending Minister's Orders (0.1%) who have spent an average of 2 months and 9 years and 5 months respectively. According to Mr. Munanura, the state of affairs in the UPS is still poor and indicative of the problems of the CJS which has failed to try and convict more prisoners in order to reach a desirable 25% of remands. He thus called upon all stakeholders to join hands to see that the statistics in the UPS tilt towards the remands.

In order to deal with the issue of pre-trial detention, Mr. Munanura highlighted a number of roles being played by the UPS namely:

- ⇨ Delivery of prisoners to judicial courts to access justice. By October 2017, the UPS was delivering an average of 1,320 prisoners to courts.
- ⇨ Linking remands with other actors in the Criminal Justice System (CJS); legal representatives, diplomatic missions and families to increase access to justice.
- ⇨ Hosting Paralegal Advisory Services to provide legal advice and assistance to poor and vulnerable persons in conflict with the law.
- ⇨ Sensitization. Pre-trial prisoners are entitled to know the legal authority for their detention and when they will next appear in court.
- ⇨ Providing safe, secure and humane custody of prisoners through;
    - ✓ Provision of adequate healthcare services and other basic necessities e.g. food, clothing, etc.
    - ✓ Improved sanitation systems and increased supply coverage of safe water.
    - ✓ Initiate strategies to minimise overcrowding – *construction, renovation and expansion of prisons.*
- ⇨ Despite the large number of pre-trial detainees in Uganda Prisons, the Service has taken it upon itself in line with its mandate to ensure that there is respect for Human Rights for all prisoners in custody – *Human rights Committees have been established in all penal institutions to ensure compliance with all human rights obligations*.
- ⇨ UPS continues to network with other stakeholders in the Criminal Justice Systems to ensure increased access to justice.

Commenting on the challenges experienced by the UPS as a result of pre-trial detention, Mr. Munanura observed among others that it being the biggest contributor of the UPS population of detainees, prolonged pre-trial detention increases pressure on the UPS which is now

congested/overcrowded with an average of 228.4% prisoners above the capacity of the various prisons. In some cases, the prison occupancy levels are more than double this average for example: Gulu Main Prison, Lira Main Prison, Masindi Main, Lugore, Upper Prison, Arua Main and Kampala remand which follow each other at 639.6%, 580.6%, 564.9%, 540.8%, 503.7%, 476% and 417.8% respectively. Relatedly, it is difficult for the UPS to provide prisoners with adequate necessities of life such as food, clothing, shelter and healthcare services during their stay in prison.

The second challenge highlighted by Mr. Munanura is the fact that there is no defined maximum detention period for committals. That while the constitution of the republic of Uganda provides for the time limits within which prisoners must either be tried or released on mandatory bail (that is; 60 days for petty cases; and 180 days for capital cases), pre-trial detainees whose cases are committed to the High Court for hearing have no fixed time period within which their cases should be disposed of. Consequently, a total of 10,536 committals in custody of the UPS currently have averagely stayed on remand for over 690 days which is over and above the mandatory remand period of 180 days. Furthermore, over 500 remands committed to the High Court spend more than 5 years in prison before their cases are disposed of.

Thirdly is the issue of misalignment to courts which has led to among others: prisoners and staff accompanying them to these courts having to travel long distances ranging at times as long as 40kms in Buhweju; the UPS incurring high costs of fuel & vehicle maintenance; delayed delivery of prisoners to court, among others.

Added to these challenges is low staffing levels which compromises the security of prisoners. In order to attain its ideal staffing, the UPS currently needs to recruit over 18,200 custodial staff.

Finally, in order to deal with the problem of prolonged pre-trial detention, Mr. Munanura made the following proposals:

1. Appointment of the urgently needed 30 additional Judges of the High Court whose appointment has been pending since 2009, as well as magistrates in order to reduce the workload and its associated effects on prolonged pre-trial detention.

2. Strengthening of the plea bargaining programme. This way, majority of the cases pending in the High Court will come to logical conclusion faster and more cost effectively.

3. Strengthening other case backlog reduction programmes e.g. Alternative Disputes Resolution, Community Service for petty offenders, etc.

4. Legislation should be made to provide for the time period within which criminal cases committed to the High Court must be disposed of.

5. High Court sessions should be regularised to hear criminal cases at all times.

6. Increased budgetary provision for JLOS actors.

2.3 Plenary

In the plenary that followed a number reflections were made.

As regards Justice Wangutsi' presentation, the participants were concerned that some suspects have been denied police bond and ended up being detained on account of them not having produced substantial sureties yet this is not provided for as a requirement under the law. It also emerged that a number of suspects have been tortured in order to obtain confessions from them. This phenomenon was attributed to the pressure (in terms of performance requirements) which is exerted on officers investigating crimes. Relatedly, it was noted that some prosecutors investigate cases under pressure occasioned by the court of public opinion and at times by influential political figures who may want the prosecution to end in a particular direction.

It was further observed that as a result of the delayed justice process, there is mistrust of the judicial process which has in turn led to increased cases of mob justice as the people seek to resort to taking the law in their hands. This, they said, is especially because of the generally poor/inefficient manner in which the cases are investigated by the relevant institutions. Furthermore, pre-charge detention was blamed for involuntary confessions where, in order to secure a trial, accused persons seek to confess in order to be sentenced and get out of prison than having to wait for longer periods when the trial can finally occur.

Going forward, it was proposed that the judiciary should continue to explain to the government, in very clear/ quantitative terms, the extent of the problem of backlog and suggest strategies on how to dispose of cases in a timely manner. The other recommendation emerging from this session was a proposal to reform the trial process by introducing a requirement for the prosecution to produce some minimal evidence to enable the courts to determine whether or not to put the accused under detention.

As regards suspects who need to be kept under detention, it was recommended that the prison facilities need to be improved in order to keep such detainees healthy and less congested. As regards the police transferring suspects from one station to another in order to defeat justice, it was proposed that the courts should consider revising the orders they issue for the production of such suspects before court in such a way that it binds any police station/officer who may be keeping a suspect of transitional detention in custody at any time.

In order to deal with human rights violations perpetuated by the police during arrest of suspects, it was proposed that the Inspector General of Police needs to be engaged at the JLOS level to negotiate how to observe human rights of the suspects while being handled by the police. The Judges also encouraged fellow judges to strictly follow the Constitutional requirement of granting mandatory bail to accused persons who spend longer periods of time in pre-trial detention beyond that provided for under the constitution.

Commenting on Mr. Munanura's presentation, the participants expressed awe about the UPS' thorough record keeping and invited the judiciary and other JLOS institutions to borrow a leaf. Also, the participants uploaded the force for changes in terms of the welfare of the prisons as seen in provision of bedding facilities, uniforms, etc. However, there were concerns about cases of violation of human rights of detainees which manifest in the form of having prisoners do manual labor on private farms; torture of prisoners; sexual abuses and homosexuality especially abuse of children who are mixed with mature prisoners among others. It was therefore proposed that the Judges should try as much as possible to make irregular visits to the prison facilities in order to follow up on the state of observance of prisoners' rights. There was also a concern that the judiciary currently does not have a mechanism of knowing whether or not the persons sent to prison actually served the sentence. It was therefore proposed that there is need for the UPS to find a way of availing the judiciary with this information.

In response, Mr. Munanura mentioned that where any abuses manifest, the UPS does not condone them. As regards the issue of young offenders being mixed with mature ones, he noted that this is as a result of the structural challenges such as limited space and lack of capacity on the part of the force to regulate the prisoners in their respective rooms. However, the UPS tries as much as possible to formulate internal links through informers in cells. Reacting to the issue of prisoners' labor, Robert clarified that this is catered for and has proved to be useful to the institution which has relied on the proceeds of this labor to develop the institution. However where any violations of the rights occur the UPS will continue to work towards improvement.

Panel 3

ADDRESSING DELAYS IN THE CRIMINAL JUSTICE SYSTEM: TOOLS AND STRATEGIES FOR AN EFFICIENT AND EFFECTIVE JUSTICE DELIVERY PROCESS

Chaired by Martin O. Masiga, AJJF

3.1 Perspectives from the Judiciary; *Justice Egonda Ntende*

In his preamble, Justice Egonda Ntende observed with concern that the issue of delays in the CJS, just like prolonged pre-trial detention, is a matter of serious concern, one that has endured for more than a the twenty six year period that he has himself spent in the judiciary. He observed that it is in recognition of the enduring nature of this problem that the Chief Justice recently appointed a Committee to investigate the state of backlog in the judiciary. Based on the report of that Committee, the Chief Justice deemed it important to renew the mandate of the Committee to be in charge of monitoring backlog and ensuring that it is resolved.

Observing that Uganda's CJS is largely dysfunctional by a number of standards, Justice Egonda warned that the delays in the CJS have serious implications for all Ugandans as it affects security of lives, persons and property which the CJS is intended to protect. He noted, however, that the current state of affairs is a sign of decline when compared with the performance of the courts in the previous years.

He recalled, for example, a 1972 criminal case involving a School master in Gulu, John de Saint Stenhass who, on February 20, 1971, discharged a gun during a school riot. That the Chief Magistrate's Court of Gulu tried and completed this case on record time (by March 1971), soon after the accused had been charged. By December 15 of the same year, his Appeal to the High Court had also been concluded (the appeal was dismissed). Dissatisfied by the ruling of the High Court, the defendant appealed to the East African Court of Appeal [EACA] which concluded the appeal on 14th March 1972. This whole process took only 13 months. According to Justice Egonda Ntende, this is a good example showing that Uganda has previously managed to achieve the acceptable standards of a CJ process.

He was however noted that returning to normal is possible especially if the judiciary wakes up to its primary responsibility of ensuring that justice is dispensed timely. He observed that it is possible for the courts to turn around the situation despite all the inefficiencies in the system by merely choosing to believe the constitution and applying it instead of looking for excuses which are usually fronted in the form of blames against others for not doing their work. He expressed a concern about a steady drop in the number of criminal appeals filed at the court of appeal in the last about 4 years. He warned that this could be an indication that the convicts in the lower courts have lost trust in, and therefore given up on further pursuing

justice from that court. For example, in a recent court of appeal criminal session he attended in Gulu, there were a number of cases that had spent as many as 7 to 8 years in the system.

According to him, it is the duty of the court to manage the meagre resources allocated to it to produce the results demanded by the constitution. He therefore hoped that the symposium would help to ignite the candle to create better awareness among the Judges, of their responsibility to the country.

3.2 Perspectives from the prosecution. *Justice Mike Chibita, DPP, Uganda*

In his presentation, Justice Chibita begun by observing that effective administration of criminal justice is a goal for all countries which he said is determined by a number of key indicators such as: the length of time it takes to conclude a case; effectiveness of the available work force; rate of disposal of cases; available tools; policy and work design in place; among others.

Commenting on the efficiency of Uganda's CJS process, Justice Chibita made reference to the case census commissioned by the Chief Justice which highlighted a number of challenges leading to inefficiency in the country's ability to dispose of cases. These include: poor case record management; inadequate staffing; lack of computer skills by sector staff; lack of an efficient system to record court proceedings; limited/shortage of court rooms/offices for both prosecutors and judicial officers; delayed criminal committal procedures; absence of sector-wide service delivery standards; absence of timelines within which cases should be removed from the system among others.

As a way of dealing with some of these challenges, a number of innovations have been introduced in the judiciary and the prosecution namely: introduction of use of ICT; introduction of a plea bargaining system; improved case regulation process between the police and prosecutors as well as a coordination between these two institutions by introducing prosecution-led investigations; improved pre-trial processes such as allowing for interfaces between prosecutors and defense counsel, agreement on non-contentious issues, agreement on minimum sentences, joint pre-session meetings, etc; creation of 16 regional state attorneys to improve on the quality and availability of DPP; infrastructure development; capacity building of state attorneys; appointment of a case backlog Committee on which the DPP sits as a member. He noted that the above innovations have helped to speed disposal of criminal cases.

Even then, the DPP noted that much of the work is slowly moving because of budgetary constraints. He noted that although the government had since increased the budget for the judiciary sessions, and for some infrastructure projects, the DPP is still grappling with poor remuneration of prosecutors which led to a Prosecutors' strike which had been ongoing for almost a month by the time the symposium was held. He however noted that piecemeal handling of the issues will not help the situation as the issues being addressed are

interconnected. He thus welcomed the symposium as one of the ways of rethinking how to improve Uganda's CJS holistically and hoped that more prosecutors would be invited in AJJF's subsequent trainings.

In his conclusion, the DPP observed that effective criminal justice administration remains an enduring challenge in many countries. He ended by advocating for a sector-wide approach deals with common problems at once. He ended by highlighting some of the key factors for improved disposal rates namely: motivation for staff; building improved and modern case management systems using ICT; creating innovations suitable for case backlog clearance; as well as quality control regimes for ensuring compliance and performance.

He ended by calling upon fellow actors at the symposium to come up with specific, suitable and locally viable solutions that will lead to efficient and speedy case disposal mechanisms.

3.3 A Comparative Approach from Botswana on Case Management in Criminal Justice; *Judge Bethuel Oagile Key Dingake, Botswana*

He begun by highlighting the four major players in the Criminal Justice system namely the judges, police, prosecution and the defense whom he said are all very critical in guaranteeing speedy disposal of cases. He however noted sadly, that all these players usually contribute to delays in the justice process hence abusing the basic tenet that a person who is facing a criminal charge (s) in a court of law must be tried speedily and fairly; by a legally constituted, competent and impartial judicial body.

For example, the police take a lot of time in the investigations, are usually not thorough (either as a result of insufficient capacity for the job or because of poor working conditions). According to Justice Dingake, any delay by the Police in investigating a matter and bringing a person accused of a criminal offence to court, contributes to delay in concluding criminal trials.

Commenting on the role of Prosecutors, he noted that if a case is not well prepared for in terms of witnesses and any documentary evidence, the pace of the trial is invariably affected.

To this he added the ill preparedness on the part of the Defence, particularly those with bad or indefensible cases who usually delay their defence for as long as is necessary in order to buy themselves some time.

Finally, as regards the the inefficiency and attitude of individual adjudicators, Judge Dingake observed that some judges readily grant adjournments, which are usually requested by the defence and the prosecution in order to delay the conclusion of criminal trials. He therefore noted that the courts must be mindful to avoid failing into such snares. Similarly, and perhaps exclusively limited to Africa, is the lack of adequate numbers of adjudicators, leading to those available being overworked and being unable to complete criminal cases in time.

Added to the above, Judge Dingake cited inadequate infra- structure for court operations as another cause of delays. That there are instances where there are critical shortages of courtrooms and adjudicators have to wait their turn for a courtroom to be available. Since it is impractical to have two criminal matters heard simultaneously, in the same court room, the pace at which criminal trials are concluded is invariably affected. He noted that while the courts and agencies which are responsible for criminal justice delivery may have the best of intentions, in the absence of the necessary personnel, infra-structure finances and other relevant support systems like efficient investigative wings, the delays in the dispensation of criminal justice will prevail for a very long time.

Commenting on the tools, he noted that perusal of most of the literature available on the subject of addressing delays in criminal justice administration reveals that the setting up of Fast Track Courts, to deal with certain criminal offences, is one strategy and tool that has been identified as a way of addressing delay in the disposal of criminal cases. This strategy not only speeds up justice, but serves as a useful tool in the reduction of backlog, which is a major cause of delay the dispensation of criminal justice.

Other strategies include the involvement and coordination of efforts among agencies that are involved in the administration of criminal justice; enhancement of adjudicators' knowledge through training and building capacity to enable them to speedily hear and dispose of criminal matters.

Sharing about the strategies used in other countries, Judge Dingake gave the following highlights:

Botswana

Botswana does not have judicial case management system in criminal matters. An attempt to introduce judicial case management in criminal matters did not gain favour at a judges meeting to consider same. However, judges are encouraged to promote the spirit of speedy resolution of criminal trials where that is possible. As a result the only opportunity judges have to dispose of criminal matters in a speedy manner is with respect to admissions.

Furthermore, the Prosecution is obliged to serve the accused with statements of the prosecution witnesses at the time of serving the indictment. In order to curtail the duration of the trial the judges routinely ask the lawyers to meet before the date set for the trial commence and to make admissions pursuant to provisions of the Criminal Procedure and Evidence Act.

In his experience, usually 90 percent of the summary of witnesses statements are admitted, after which the court proceeds to deal with the evidence of witnesses whose statements were not admitted. That in a few cases this engagement yields a guilty plea and the parties have to write a statement of agreed facts which the judge puts to the accused to confirm whether the plea of guilty is unequivocal as required by the law.

However, the debate as to whether judicial case management should be introduced in Botswana still rages on, particularly whether there must be a requirement for the defence to furnish the prosecution with a defence outline. Those who are against the idea of the defence outline point out that it will offend the principles of fair trial such as the right of the accused to remain silent. Those who support the idea of a defence outline say it would end speculative litigation and shorten the duration of trial including the expenses attendant to protracted criminal trials.

Botswana also attempted fast track criminal trial on corruption and traffic matters. Prior to this innovation corruption matters where heard at the magistrates court and appeals heard at the High Court. In terms of the fast track option all new corruption matters were heard by a designated judge of the High Court who was solely responsible for corruption matters.

However, it is not clear whether this approach has helped speedy trials on corruption. What seems to be clear is that matters continued to move at a snail's pace because of endless requests for postponements by prosecutors on account of resource and personnel constraints. Consequently, the few out stretched prosecutors where often booked several months ahead such that even where the judge's calendar allowed for an earlier date, prosecutors would not be available.

One of the first designated judges to deal with corruption cases observed that most of the corruption cases, given the heavy sentences imposed upon conviction, where strenuously defended, such that admissions were rare, and quite often the trial moves slowly as defence counsel canvasses issues in extreme detail to find fault in the prosecution case.

The judge also mentioned that with respect to a few matters the delay came from the office of the Registrar who failed to furnish the record of proceedings to the accused persons where the said accused persons are on bail and there would be no contact details on the record. In a sense this was also the fault of the police who would fail to inform them of trial dates when these accused persons report regularly to them as part of their bail conditions.

Namibia

During 2014 the Judge President of the High Court of Namibia introduced Judicial Case Management. The Old Rules of Court were repealed and replaced to accommodate the introduction of Case Management. Case Management is judge driven, because cases are managed by a managing judge once an individual docket is allocated to her or him. From docket allocation of a case until the trial or hearing, the managing judge controls and manages the procedure and processes relating to the case. The judge will be responsible for giving notice to the parties or legal representatives calling them for a case planning conference and directing them to present a case plan for such conference. It is during a case plan conference that a case plan is finalised and a case plan order is made. The holding of a case management conference and the holding of a pre-trial conference are managed by the managing judge.

As regards Criminal Case Management, he noted that the court conducts a criminal case management conference under the pre-trial roll for the purposes of curtailing the duration of the trial by timeously enquiring into and giving direction on all preliminary issues. During pre-trial the following issues are dealt with:

(a) The notification of the trial date to the accused and requesting his presence and if he has not attained the age of 18 years, that of his parents or guardian at the trial.
(b) It is also during the pre-trial stage where issues of the plea that the accused intends to tender at the trial are sorted out.
(c) The limitation of disputes likely to arise during the trial.
(d) Any admission the accused intends to make at the trial is also disclosed at this stage.
(e) The number and availability of witnesses for the prosecution and defence.
(f) The need for and availability of interpreters.
(g) The estimated duration of the trial.
(h) Issues regarding the accused's capacity to understand the proceedings mental illness or mental defect and criminal responsibility in terms of section 77 (1) and 78(2) of the Criminal Procedure Act 51 of 1977.
(i) An enquiry into any other matter that in the opinion of the presiding judge may curtail the duration of the trial

However, if the court is of the opinion that the parties have not dealt with all the matters referred to above in a satisfactory manner at the initial or at any subsequent pre-trial conference it must, if possible, postpone the conference to the earliest subsequent pre-trial date until the following have been recorded, namely:

(a) That the indictment and if there are any further particulars requested have been delivered to the accused.
(b) The content of the police dockets have been disclosed or discovered by the prosecution to the accused.
(c) Whether a legal representative has been engaged by the accused, his particulars and whether he has been placed in sufficient funds if the legal representative has not been instructed by the Director of Legal Aid.
(d) Whether the accused is prepared to put on record that he intends to plead guilty, whether the basis on which the accused intends to tender such plea is acceptable to the prosecution, the admission he intends to make and the basis of his defence if he is pleading not guilty,
(e) The number of witnesses he wishes to call and if he is in custody whether he needs the assistance of the police to secure the presence of those witnesses at the trial. The accused will have to provide names and physical addresses of his witnesses.

(f) The language the witness is likely to testify in a language other than English is likely to be used.

Where an accused indicates during a pre-trial conference that he or she intends to plead guilty to the offence charged, the prosecution may indicate to the court whether or not the plea of guilty on the basis as tendered by the accused is accepted by the prosecution and, if so accepted, the court may direct that the case be disposed of either on the pre-trial conference roll or on a date allocated for that purpose.

Again, if at any time before the trial date the accused desires to plead guilty to the offence charged, he must inform the Prosecutor-General of his intention to do so and on the basis on which event, either the accused or the Prosecutor-General may, upon not less than 10 days' notice to the other party set the matter down on the first available date for criminal pre-trial conference, to be dealt with as if the accused has given such indication during a pre-trial hearing.

Trials may be given priority due to the age of a child witness, the deteriorating physical or mental health of a witness, the availability of a witness when he or she is not residing in Namibia and the material nature of the evidence to be given to him and the contemptuous nature of the offence and the public interest in the administration of justice or for any other good cause in the public interest or State security.

Case management has proved to be effective and is well received by the parties. Furthermore, in the past there were problems in delivering judgments on time. However, this is now a thing of the past because the Judge President had issued practice directions and guidelines regarding the time limits within which rulings or judgments should be delivered. Every judge adheres to the limits. If the judge is unable to deliver a judgment within the prescribed time frame she must inform the Judge President when such judgment will be delivered and obtain his consent to extend the time frame of the delivery of the judgment.

The guidelines for delivery judgment in the High Court mainly provide for the following:

Review application – 6 months.

Trial- within a trial – 20 Court days.

Simple Criminal Trial – 4 months.

Complex Criminal Trial – 12 months subject to approval by the Judge President.

Sentencing – 20 Court days

Application for leave to appeal – 10 Court days.

Reasons in respect of any matter – 20 Court days.

Zambia

In Zambia, like other jurisdictions they are the courts are still grappling with delays in the disposal of criminal cases mainly because of backlog; brought about by a number of factors such as insufficient numbers of adjudicators. For instance, the High Court at Lusaka currently only has thirteen Judges on the General List, while the High Court at Ndola has five Judges to deal with Criminal Sessions. The General List at Kitwe has six Judges, while Kabwe has two Judges. Livingstone High Court has an establishment for two Judges but currently only has one Judge.

He sadly noted that as a result of insufficient adjudication personnel, even basic procedures such as bail hearings are affected, in some cases to the extreme detriment of the Applicants.

Even then, in order to offer more efficient and speedy criminal justice delivery, and recognizing the inter-linkage/interface with other agencies in the criminal justice delivery system, the Zambian Judiciary has engaged other stakeholders, such as the Police and the National Prosecutions Authority (NPA) through the office of the Director of Public Prosecutions. The Police, for instance, were included in some training workshops which outlined the importance of speeding up criminal justice and making it accessible to all who sought recourse thereto, particularly women and children.

Another step that had been taken in the quest to speed up criminal justice delivery is the decentralization of the functions of the National Prosecution Authority (NPA) which is headed by the Director of Public Prosecutions. This has been attained through the setting up of Provincial Offices for the NPA. Previously, State Advocates, who are clothed with the authority to carry out some of the core functions of the DPP, such as the perusal of dockets and committal of cases to the High Court for trial, were only available in major towns and cities such as Lusaka, Kitwe, Ndola and Livingstone. However, with the establishment of the NPA, under the auspices of an Act of Parliament passed in 2010[1] State Advocates now have a presence in towns such as Kasama and Mansa. This development has speeded up the process of committal of cases to the High Court for trial; as dockets and case records do not need to be taken to Lusaka or other major towns and cities for perusal and issuance of Committal Certificates for trial in the High Court. They are processed from the provinces; thereby considerably reducing the time taken for persons facing criminal charges to be taken before the courts of law.

The Judiciary has also, for some time now, been minded to have High Court Judges stationed in the Provinces. This has, however, been impeded by financial constraints to put up the infra-structure that is necessary for the running of a High Court.

Another critical step that had been taken to speed up the dispensation of criminal justice in Zambia is the setting up of Fast Track Courts for Gender Based Violence (GBV) cases and traffic offenses. The first GBV Fast Track Court was set up in Kabwe on 22nd January 2016 while a second one was opened in Lusaka on 11th March, 2016. Yet another GBV Fast Track

[1] The National Prosecuting Authority Act of Zambia, No.34 of 2010

Court is currently under construction in Ndola. Matters taken to these courts are dealt with and disposed off in the shortest possible time; which has greatly reduced on the backlog for such cases.

With the strategies outlined above, which have been adopted by Zambia, there has been a vast improvement in addressing the delay in disposal of criminal cases.
In his final remarks, Judge Dingake noted that delay in the dispensation of criminal justice is a miscarriage of justice, since if legal redress is not forthcoming in a timely fashion then that essentially translates into people having no redress at all, it remains for the tools and strategies identified for addressing these delays in administering criminal justice to be implemented. He noted that this can be attained by the setting up of judicial reforms especially those aimed at enhancing effective and efficient delivery of criminal justice; and not ones calculated to undermine and gnaw away at the independence of judiciaries. As such, there must be political will to ensure that the financial and human resources; and the infra-structure to achieve efficiency in the delivery of criminal justice are made available, as without these, the issue of delay may well outlive many generations.

3.4 Plenary

During the third plenary, it was emphasized that funding remains a central part of the CJS so much so that without the necessary resources, all other efforts would be an exercise in futility. It was recommended that the CID institution should be properly facilitated in order to be able to do its investigations before arresting suspects. It emerged, however, that it is hard to avoid arrests before completion of investigations, as by so doing, it is likely that the suspects will disappear and yet the police has no capacity to trace them. This recommendation was based on a best practice in the UK where some Ugandan Diplomats were arrested after over two years of investigations. However, in attempt to do away with backlog, the judiciary was cautioned not to be tempted to set unrealistic targets. For example, the court of Appeal should not target disposing of over 600 cases when its capacity is only 200.

Furthermore, the judiciary was encouraged to conduct self-policing through mechanisms such as the collegial courts system where the Judges do a self-critique regarding both the quality of judgments, and to as well address issues of ethical conduct of the individual judicial officers. A strategy of weeding out petty offenders who have spent over a year on remand was also proposed. Furthermore, it was proposed that the JLOS should improve the investigations department by elevating it to a more professional body that has more competent people e.g. lawyers, Drs, cyber experts. In the meantime, the DPP was encouraged to be proactive in order to address investigation gaps especially in emerging crime such as cybercrime.

The judiciary was also encouraged to set the pace of adherence to human rights standards in the criminal justice process by ensuring that cases are heard timeously in order for the officials to execute their duties with care. Similarly was a need for the judiciary to eliminate gaps such

as having disorganized registries, not having proper statistical records, etc. The judiciary was also encouraged to send out clear messages that it won't tolerate any measures that fall below the minimum standards of a fair trial.

Panel 4

THE ROLE OF JUDGES, MAGISTRATES AND PROSECUTORS IN PREVENTING TORTURE AND ILL-TREATMENT OF ACCUSED PERSONS

Chaired by Lay Justice Oumo Oguli

4.1 Practices in the High Court & Proposals for Reform; ***Hon. Justice Dr. Winfred Nabisinde, Lira***

Justice Nabisinde begun by observing that Uganda is a signatory to a number of international and regional treaties providing for protection of the various human rights of accused persons, including freedom from torture, cruel, inhuman and degrading treatment. Commenting on the definitions of the terms torture and ill treatment, she noted that these can be defined very widely and that the acts constituting these violations are similarly wide.

In terms of the legal framework, she highlighted the Constitution of Uganda which makes general provisions in article 20 and specific provisions on the prohibition of torture and ill treatment in art 24. Furthermore, article 44 which makes provision for limitations/allowable derogations on human rights makes freedom from torture and ill treatment non-derogable rights. Under article 45, provides for rights which may not be expressly catered for under the constitution. As such, taken together, the constitution mandates courts to enforce all HR and as well others not specifically provided for in the constitution, but are contained in instruments to which Uganda has ratified. In this regard, the state of Uganda has also ratified a number of these rights: e.g., the Anti-torture Act which among others provides for the definition of torture, mentions a number of other purposes for which the Act can be applied, prohibits torture which is criminalized in sec 4, as well as for aggravating factors and remedies, parties and accessories to acts of torture, etc.

Commenting on the role of the courts in preventing torture and ill treatment given the above legal environment, Justice Nabisinde observed that the High Court in Uganda majorly adjudicates criminal matters of a capital nature, but is also charged with the inherent original jurisdiction in all matters. As such, the High court is mandated to address acts of torture and ill treatment of accused persons. In this regard, she highlighted a number of practices in the High Court in its fulfilment of the above role namely:

- The inspection role of the High Court which has since been upgraded and is now being headed by a Supreme Court Justice. She mentioned that the Judges are now monthly facilitated to do regular inspections of the JLOS institutions in their jurisdictions.
- The High Court also has a supervisory role over all JLOS institutions within its circuit.
- The high court also undertakes periodic inspections of places of detention including police cells, prisons as well as places of juvenile detention. Where human rights abuses are detected, appropriate action is taken.

- JLOS has also strengthened networking and coordination among its actors through the creation of Chain Linked Committees which are headed by an Advisory Board on which all JLOS actors sit headed by the Hon. The Principal Judge. At the circuit level, this is headed by the Resident Judge while at the district level, it is headed by the resident Magistrate. These committees are intended to strengthen the inspection role of the courts and inter alia identify and provide practical solutions and remedies within the law including handing of complaints of human rights abuses.
- There is also the appeals system which is already part of the country's criminal legal system where criminal appeals are required to be expeditiously handled.
- The revisionary powers of the high court in respect of matters handled by quasi-judicial institutions and inferior courts.
- Creation of a fully-fledged Judiciary Studies Institute (JSI) headed by a Judge of the High Court with a mandate to identify and provide continuous training to all judicial officers at all levels in order to enhance their capacity to deliver justice.
- There is also in place a Bench book on SGBV and a gender training manual and a Book is currently being worked on to address better management of juvenile justice.
- There is also a Case Management Committee to give the courts directives on effective handling of cases as well as to minimize human rights abuses.
- A public relations department created and is now operational.
- Introduction of the practice of having annual court open days in order to enhance accountability to the people of Uganda in whose name justice is administered.
- Courts are required to do speedy handling of cases within their circuits, including handling of specialized matters such as matters of habeas corpus where allegations of abuses of human rights maybe indicated.
- Courts have also been empowered to grant special orders for human rights abuses even when it is a criminal matter. These can then be followed through civil actions.

Despite the above interventions, Justice Nabisinde noted that there are some challenges which still hinder their effective implementation namely: circuits failure to adhere to or to implement human rights standards which are the bedrock of the laws on torture and ill treatment; poor investigations, inadequate experience of the officers; failure to promptly address complaints raised by victims, among others. Going forward, she made the following proposals:

Firstly, regarding legal reforms, she noted that it is important to expedite passing of the Administration of Justice Bill so that the judiciary can handle its affairs independently as an arm of government. This way, the judiciary would be able to prioritize its activities including polishing judicial officers at all levels whenever the need arises. This would also facilitate the speedy hearing of cases. She also suggested a need to explore more home-grown solutions and best practices that can effectively respond to the needs of the people instead of relying on imported provisions which may be had to implement.

Other recommendations included establishing of partnership with other actors such as the UHRC and CSOs using referral systems; giving priority to public interest matters involving human rights of especially the marginalised; strengthening the role of paralegals as whistle blowers to human rights abuses especially within the JLOS institutions; development of witness programs specially for key witnesses in cases involving human rights abuses especially by state agencies; creation of a public defenders' system to defend suspects and their rights right from the point of arrest which different from the current model of state briefs offered at trial, should be arranged in a way similar to other departments such as the prosecution; improving on the provisions governing rule of law; avoiding police interference in court orders and processes; strengthening gender training especially where cases of SGBV are very rampant; expediting the handling of cases committed by juvenile offenders instead of having them to wait for sessions; granting adequate redress to deserving victims; revisiting role of assessors so that they are limited to giving facts only and not on law as is required by the current system during the summing up; revisiting the system of how committal proceedings for capital offences are currently handled noting that these proceedings may be made summarily at first appearance in court where the DPP is certain that they have a good case; bail after committal should be cautiously handled and finally, the PR department of the judiciary should be strengthened in order to improve access to information.

4.2 Role of Prosecutors and Proposals for Reform; David Baxter Bakibinga, *President- Uganda Association of Prosecutors and Resident State Attorney of Nakawa*

In his presentation, Baxter begun by defining a prosecutor as a government appointed attorney or lawyer or officer who initiates and pursues court cases against suspected criminals or persons who are suspected of breaking the law. That a prosecutor is guides police to collect the right evidence which is then compiled into a police file including statements, reports, and documents among others. The prosecutor then presents the evidence before court and makes legal arguments.

The prosecutor is therefore enjoined to assist the court in arriving at the truth of the matter in dispute and in securing justice. Furthermore, a prosecutor has a duty to ensure that witnesses are protected; a duty to support victims of crime and ensure they get justice; a duty to disclose both inculpatory and exculpatory evidence; as well as prevent injustice, abuse of process and protect the innocent.

Commenting on the role of the DPP in protecting accused persons from torture and ill treatment, Baxter noted that this includes: upholding the constitutional rights such as the 48 hour rule; control over private prosecutions- S.13 PPTA; rejecting illegally obtained evidence- S.14 PPTA; handling complaints from alleged tortured suspects and accused persons; prosecuting torture suspects; terminating cases where accused persons were tortured by entering *Nolles* or Withdrawal Forms; as well as consent to charges against non-citizens- S. 19 PPTA.

He noted however, that the prosecution is yet to perform these roles effectively on account of a number of challenges by the ODPP namely: torture of accused persons during criminal investigations and counter-terrorism; the fact that the office has no control over Police Professional Standards Unit; militarization of the police with its implications for human rights observance; torture of victims tried before the court martial; lack of an enabling ODPP Law; limited reporting of torture cases to ODPP; lack of monitoring unit of detention facilities such as Nalufenya, among others.

Going forward, Baxter proposed the following reforms: an independent Police Professional Standards body comprised UPF, ODPP, IGG, Judiciary, UHRC to deal with torture investigations; amending the Evidence Act to remove confessions from the mandate of police officers which mandate should be given to courts who should be well trained in criminal investigations akin to *Juge d'instruction* or Investigating magistrate under Napoleonic Code or Civil Law countries; revision of the Criminal Justice Rules; establishment of an independent Police Professional Standards body comprised of the Uganda Police Force (UPF), ODPP, IGG, Judiciary and UHRC to deal with torture investigations; enactment of an enabling law for the office of the Director of Public Prosecutions (ODPP); staff reorientation on separation of powers in Rule of law (ROL) sectors; re-skilling middle to senior staff in Police on civilian-police relations; the removal of a military officer as IGP; a need for the RCCs and DCCs to play an active role in combating torture and abuse of the legal processes; ODPP establishing an outreach program deal with prevention of torture, as well as establishment of an ODPP monitoring unit of detention centres.

4.3 Plenary

During the plenary, the participants decried loopholes in the legal framework by which acts of torture and ill treatment continue to be perpetuated. Case in point is the Witch Craft Act which, despite having been declared unconstitutional by the courts, is still on the law books notwithstanding the ongoing developments around the world. Also decried was the plight of accused persons charged with capital offences who are willing to confess but nevertheless take so long before they can have their plea entered as the prosecution insists that it is still undertaking investigations.

As a way forward, the Judges were called upon to mediate cases involving torture to ensure that the victims achieve quick justice. It was also emphasized that involuntary confessions need to be discouraged by the courts. As regards the gaps in the existing legal regime, for example regarding the continued relevancy and mandate of the assessors and the police in recording statements, it was proposed that the Uganda Law Reform Commission should undertake a comprehensive review of the entire CJS.

Panel 5

THE PLEA BARGAINING SYSTEM: TRAVERSING ITS GAINS, LIMITATIONS AND PROSPECTS IN UGANDA

5.1 Progress, challenges and proposals for reform; *Katheryn Howard on behalf of the PJ.*

Katheryn's presentation mainly highlighted the major advantages of the plea bargaining system; challenges that impede its effective implementation as well as proposals for reform. It was based on the findings and recommendations of a high level study undertaken by her and a colleague on behalf of the UN women. That study investigated the plea bargaining initiative of the judiciary.

She noted that while most studies by practitioners and academics have mainly looked at plea bargain target either it's impact upon the administration of justice, or upon the individual victims, their study focused on its impact in case involving the rights of women and girls. She noted that overall, the study found that, if implemented in a gender sensitive and victim centered manner, plea bargaining can be an invaluable tool in enhancing women's access to justice.

Commenting on the advantages, Kathlyn noted that the advantages of Plea bargaining are in three categories namely: institutional, to the victim, as well as to the community. At the institutional level, plea bargaining has the capacity to reduce on the case backlog, hence leading to fast adjudication of cases; it leads to reduced pre-trial detention among other advantages. She noted that it is mainly because of these institutional advantages that plea bargaining was introduced. For the victims, plea bargaining enhances the victims' role and participation in the trial process; it can increase victim safety and security; it saves the victims the psychological trauma of having to testify; has a potential to increase victim satisfaction by offering them a chance to meaningfully participate in the trial. That this is so even if the desired results are not the ones that are finally obtained. As regards the potential community advantages, Kathlyn highlighted more meaningful justice for especially women and girls; leads to reduced impunity; it increases certainty of justice as well as increasing deterrence to crime and by necessary extension reduces cases of violence against potential victims.

In terms of the challenges, Katheryn noted that plea bargaining has certain elements which seem to give more protection to the accused persons than is necessary; the public still has a negative perception towards plea bargaining mainly because of the cancer of corruption that has traditionally affected Uganda' justice process. She noted however that with more transparency, the process can gain the necessary legitimacy in the eyes of the people. Furthermore, the process is affected by a challenge of sentencing which has yet to be standardized. As such, the judges base their sentences on discretion. She reported that in their study, they found that the agreements have virtually no relationship with the existing

sentencing guidelines of the judiciary. Usually, sentencing is based on the individual considerations of the judge, prosecutor and the victim and there is no guidance on the rights and role of the victims during the sentencing. As such, victim participation in plea bargaining is still very low. Even where some form of participation is provided for, it is generally superficial as the victims are not given adequate information to enable them understand the process and therefore to engage with it meaningfully. Furthermore, she noted that there are limited mechanisms for enforcing the victims' rights. She noted that victim participation is further crippled by logistical obstacles such as resistance of some judges to such participation; lack of transport and communication facilitation for both victims and prosecutors.

Going forward, Katheryn made the following recommendations: amending the plea bargaining guidelines in order to strengthen the rights, role and voice of the victims; establishment of internal protocols for the prosecutors to serve as guidelines; more budgetary allocation to the JLOS institutions charged with administering justice through the pl a bargaining system; improving on the mechanisms that are meant to ensure accountability on the part of the Judicial officers and the prosecutors in order to guarantee victims' rights; fast tracking specialized courts to handle special matters such as those involving the rights of women and girls; improving on communication about the process as well as the outcome of plea bargaining in order to promote transparency; developing internal guidelines and procedures on sentencing in order to promote consistency and certainty in sentencing among others.

5.2 Issues, Benefits, challenges and proposals for reform; *Justice Mike Chibita, DPP, Uganda*

Justice Chibita begun with a brief history of the plea bargaining system in Uganda which he said was introduced into the Ugandan criminal justice system in May 2014 although the first session occurred following nearly a year of extensive research and the development of guidelines by a task-force established by the Honorable Chief Justice Benjamin Odoki in April 2013.

Commenting on the performance, he noted that the plea bargain pilot program worked with 261 inmates in the Nakawa High Court Circuit (approximately 37.7% of the total number of committals in this circuit) which demonstrated great success and, therefore, the scope was expanded to include additional circuits. At this time, plea bargaining was not initiated in the Magistrate Court due to limited funding for the program. In 2016, the Honorable Chief Justice chaired the Rules Committee that created The Judicature (Plea Bargaining) Rules Statutory Instrument No. 46.

As regards the objective, he noted that one of the primary goals for the adoption of the plea bargaining process in Uganda was to reduce case backlog. Various methods were utilized in the past to address this issue, including mediation, alternative dispute resolution, and small

claims, but all were unsuccessful in producing considerable results. Additionally, the reduction of prison congestion was another desired result of plea bargaining implementation.

He noted that a successful plea bargaining system offers further benefits for Uganda including a reduction in financial and human resources related to criminal trials, a speedier adjudication process, and the promotion of asset recovery for victims. Additionally, both parties are able to find contentment with a plea agreement. This is because a defendant may receive a lesser sentence and may have his or her case heard at an earlier time than if a case was carried to a full trial. Moreover, the prosecutor is able to obtain a conviction for the record.

Plea bargaining empowers victims to participate in the adjudication process. Without plea bargaining, victims only provide an account of what happened. With the system in place, however, they are consulted and are able to contribute to the sentence given to the accused.

Furthermore, Plea bargaining cuts the number of days needed to conclude a case and drastically reduces the cost. In contrast, ordinary criminal trials create case backlog which ultimately delays justice.

Additionally, the remand to convict ratio has been brought down due to the upsurge in plea bargaining. Prisons authorities will bear me out that for the first time in a long time there are more convicts than remand prisoners. Conviction rate in plea bargained environments hovers above 90% as opposed to 56% currently in ordinary trials.

Even then, implementation of the plea bargaining system has been accompanied with a number of challenges namely: lack of uniformity among plea agreements for similar crimes especially due to limited jurisprudence regarding plea bargaining; the difference in approaches taken by judges when considering the period of time an inmate spends on remand prior to finalizing a plea agreement with Some judges choosing to incorporate the remand time into the final sentencing which reduces the sentence, while others do not consider the time on remand which could lead to an inmate serving more time after receiving the plea agreement than if he or she never entered a plea agreement; lack of transparency displayed by the current process as a result of which the public holds limited knowledge of plea bargaining.

Furthermore, some stakeholders often view plea bargaining as a form of corruption. Hence, without the proper sensitization to the system and its benefits, plea bargaining may appear to some to be institutionalized corruption. This can cause the public to lose confidence in the Ugandan criminal justice system.

Another challenge is the lack of guidelines for Prosecutors and Judicial Officers regarding Plea Bargaining. This issue relates to the need for prosecutors and Judicial Officers to have parameters set in place for specific types of cases and to be supervised during their plea negotiations.

The other challenge is the lack of a Public Defender's office within the Uganda criminal justice system. He observed that in other countries such as the United States, the justice system mandates that an attorney be provided to a criminal defendant in every case. Uganda has the same provision for capital offences. However, the USA has an operating Public Defender institution. This allows for the defendant to receive the best representation possible during their court proceedings. Therefore, without the presence of a defense attorney, a defendant is at a risk of receiving an unfair and impartial plea agreement.

He also reported that some accused persons have complained that sometimes judges deviate from the sentences agreed on in the Plea Agreements.

Furthermore, is the failure to adequately address interests of the victims of crime due to:

- Accused person dominated criminal justice system
- Case backlog
- Loss of interest in case
- Lack of facilitation to trace victims
- Lack of contact information for the victims
- Pressure of time and the tyranny of the urgent need to conclude, etc.

In terms of the solutions to the above challenges, Justice Chibita noted that his office began making presentations about plea bargaining in new police officer training sessions as a way of promoting transparency. H noted that if police officers are made aware of the purpose and steps of plea bargaining, then they will begin to perceive the new process in a positive light instead of considering the process to be institutionalized corruption.

Additionally, the prosecutors should include their supervisors, such as Regional Officers, in their decision-making process for plea negotiations. He noted that this will create accountability for the Prosecutors and build the public's trust in their involvement in plea bargaining. Furthermore, there needs to be more involvement by the courts in the plea negotiations. Courts can assist in monitoring prosecutors' actions to ensure that they are not conducting plea negotiations in a coercive manner.

To address the lack of uniformity in plea agreements, he recommended that the judges need to encourage their clerks and the attorneys that engage in the plea bargaining sessions to properly record the plea agreements. These recordings should include specific facts from the case and the final agreements. This will enable the justice system to gain accurate statistics about the plea bargaining program's performance and better assess its strengths and weaknesses.

He further mentioned that the ODPP is now in the process of developing a manual to be utilized by prosecutors as a source of guidance during plea negotiations.

To address the lack of representation for defendants, a pilot program was initiated for Uganda's first public defender's office earlier this year. This pilot is intended to further the work of plea bargaining and is currently operating in the Mukono Chief Magistrate's Court. There are high hopes for the program, however, funding is needed for attorneys to fill the public defender positions.

In conclusion, Justice Chibita observed that although Uganda's plea bargaining system is still in its beginning stages with much learning and development ahead, there have been accomplishments during these few short years that prove that future success of the plea bargaining process within the Ugandan criminal justice system is possible. He ended by reiterating his confidence in plea bargaining as one of the innovations that promises to deal a fatal blow to the perennial cancer of case backlog. He thus called upon all participants to to embrace it and make it work better.

5.3 Challenges to Accused Persons and Proposals for Reform; Allan Nhsiimye, Legal Practitioner

Nshimye begun by commenting on the historical background of plea bargaining in the criminal justice management in Uganda was initiated in April 2013 with the appointment of a nine-member Taskforce headed by the Principal judge, Hon Justice Dr. Yokoram Bamwine. The Taskforce also included three High Court judges, the Chief Registrar, a representative of the Attorney General, a representative of the DPP's office, the commissioner general of Prisons, and a representative of the Uganda Law reform Commission. With support from different organization such as the United States based Pepperdine University, the task force held sensitization seminars for the stakeholders who included, the Judiciary, DPP's office, Prisons, Police and defense lawyers.

Based on the feedback generated from these sensitization seminars and the piloted plea bargain court sessions, the Judicature (Plea Bargain) Rules, 2016 were enacted in order to deal with the identified challenges of accused persons especially stemming from diverging perceptions to plea bargain.

He noted that the Plea Bargain system has several obvious advantages which include, more cases concluded per session, lower cost per file handled compared to traditional cost incurred in a full trial, reconciliation between accused and victims as they are all consulted in the sentencing, Community involvement through the community impact assessment reports, less cases onappeal, reduction in the backlog cases, potentially rewarding to defense lawyers, less congestion in the prisons and more importantly it allows an informed accused person to take criminal responsibility of his actions.

Allan however noted that although the accused persons have fundamental rights enshrined in the constitution of the Republic of Uganda, they nonetheless face some challenges in the plea bargain system which bring to the foe the fact that some of their rights are not upheld, including:

1. Unclear procedures of scheduling plea bargain sessions.

Although article 28 (1) of the Uganda constitution provides a fair, speedy and public hearing before an …a court established by law, accused persons find it difficult to get scheduled for plea bargaining sessions, the current procedure requires them to register with the prison authorities expressing their intention to participate in plea bargain. Once they finish registering they then resort to prayer, because they have no assurance as that the list will be sent to the relevant court officers, worse still is the fact that the prisons officers cannot also inform the accused persons when a plea bargain session will be scheduled. This has caused a lot of stress to the accused persons.

He therefore proposed that the administrative procedures and time lines from registration to the scheduling of the court session should be improved and streamlined as a proposal for reform. Additionally, the registration of accused persons in prison should be allocated to a specified designated welfare officer. Also important is to have the mechanism of transmission of the list to the relevant court officials, as well as streamlining the time from the registration to the scheduling of the plea bargain and ensuring that the accused are accordingly informed on when they will be able to appear in court.

2. Uncompromising officers at the office the director of public prosecutions

According to Allan, the plea bargaining process calls for a negotiation leading to an agreement between the prosecution and the accused person. He noted that whereas some officers who have had plea bargain training respect the process of plea bargain negotiation, mindful of the fact that concessions must be made and that all the parties must freely participate, the majority of the officers are poisoned by the prosecution mindset which often leads to fixed proposals for sentencing, with a take it or leave it attitude.

He proposed that the prosecutors should be trained or sensitized to ensure that they bear in mind that they have a duty to offer concessions to induce a guilty plea and should not approach plea bargain negotiations with fixed pre negotiation terms. It is also important to remember that during the plea bargain negotiations the accused person is still presumed innocent until proven guilty.

3. Rejection of plea bargaining agreements by the court.

He noted that it is important to preserve the sanctity of a plea bargain agreement as the Accused persons who learn at court that their plea bargain agreements have been rejected lose

faith in the plea bargain system, which turns them into prophets of doom of the whole process. He therefore proposed that pretrial meetings should be made mandatory before production warrants are issued and sent to the prison authorities, the accused persons whose agreement have been rejected should not be produced at the court.

4. Uniformity of sentences

According to Allan, the accused persons usually decry the lack of uniformity in the sentences that their lordships find acceptable in the proposed plea bargain agreements. That this problem stems mainly from the fact that the accused persons do not have access to sufficient resources (precedents) which would guide the stakeholders on sentencing. Added to these is the limited pool of documented precedents for consideration in plea bargaining negotiations.

Going forward, he suggested that the sentence and reasons for sentence by their lordships handling plea bargaining sessions should be documented in order to create more precedents that will create a guide for the stakeholders in the plea bargain process thereby leading to uniformity in sentence.

5. Private brief plea bargaining

Allan noted that the current administrative procedures have not been fully conformed to the plea bargain system demands. When an accused person instructs an advocate to represent him in plea bargaining on private brief, the dilemma that an advocate will be faced with is how to engage the DPP as well as the Registrar's of the high court, who are used to handling plea bargain in organized sessions with public brief lawyers.

He therefore proposed that it should be possible for a practitioner to generate a list of accused for representation on private brief, relay the list to the registrar of court and the office of the DPP, and the designated officer of the DPP arranges to handle the plea bargain negotiations, while the Judiciary expediently avails an Judge to handle the cases.

As such, the office of the Director of Public Prosecutions and the judiciary should create practical mechanisms that allow a private practitioner to generate a list of clients interested in plea bargain. Furthermore, the office of the Director of Public Prosecutions should appoint a specific officer to receive plea bargain requests, and coordinate as well as allocate officers to expediently handle for plea bargain sessions. Thirdly, the judiciary should put in place mechanisms that require the court to give any plea bargain requests priority in fixing, hearing and conclusion.

He ended by emphasizing that in lieu of the challenges to accused persons in plea bargain exist, it is imperative that all the stake holders consider the proposals he made, and where agreeable adopt them for better plea bargain system in Uganda that will uphold the accused person's constitutional rights and be of benefit to the stakeholders.

5.4 Plenary

During the plenary, the Judges expressed a concern about the practice of defense lawyers who convince unprepared accused into accepting plea bargain only to later start backtracking. The Judges mentioned that this is one of the reasons as to why plea bargaining is rejected. It was therefore proposed that the defence lawyers should avoid pushing accused persons into plea bargaining before they are psychologically ready to do so. As regards the issue of non-uniformity in the sentencing at plea bargaining, it was suggested that there is need to take into account the fact that each case comes with its own peculiar circumstances which may not be similar.

As regards the need for more awareness among the actors about the plea bargaining process, it was proposed that there should be regular bench-bar meetings so that everybody is brought on board. Furthermore, the need to ensure that other rights of the accused who do not want to plead guilty should be protected.

A participant from the Uganda Prisons Service raised a concern about the perception among their inmates that plea bargaining is responsible for the delayed trial of those who do not want to undergo plea bargaining. That the inmates think that the plea bargaining process is unfairly quicker while the trials are delayed. He however noted that the judiciary has done its best to sensitize the accused persons about the concept of plea bargaining.

Regarding the concerns about the rigidity of the prosecution in sentencing, the DPP noted that his office is currently developing a manual to guide the prosecutors on how to address different scenarios during the plea bargaining process.

Finally, was a call for more research into the plea bargaining process in order to make it work better.

Panel 6

INTERNATIONAL HUMAN RIGHTS LAW AND THE ADMINISTRATION OF JUSTICE THROUGH MILITARY TRIBUNALS

Chaired by Dr. Donald Rukare

6.1 Regional and international HR norms and standards applicable to administration of justice through Military Tribunals. *Dr. Ronald Naluwairo, Senior Lecturer and Ag. Deputy Principal School of Law, Makerere University*

Dr. Naluwairo commended the AJJF for thinking through the topic which he said is usually ignored in efforts aimed at reforming the administration of justice, including initiatives by the JLOS itself. Noting that the topic is a very wide one, Dr. Naluwairo highlighted a number of key questions that he said need to be addressed for purposes of the symposium namely:

1) Whether international norms and standards are applicable to the administration of criminal justice through military tribunals;
2) To what extent do the international human rights norms and standards apply to military tribunals; and finally
3) What are these norms and standards and where are they found?

In terms of the applicable international norms and standards applicable to the administration of justice through military tribunals and their sources, he noted that these are the same as those applicable to the administration of justice in civil courts. He mentioned that majority of these rights are what has come to be known as the right to a fair trial which is provided for under article 14 of the ICCPR, article 7 of the African Charter on Human and Peoples Rights (ACHPR).

Article 14 of the ICCPR, for example, makes provision for a total of close to 20 rights such as to a fair and speedy trial; presumption of innocence; the right to trial before an independent and impartial tribunal; information on the nature and cause of offence; adequate time and facilities, etc. He noted, however, that these provisions are not clear on the nature and scope of the right to a fair trial. However, these details have been clarified by the supervisory bodies through General Comments.

He cited general comment No. 32 of 2007 where the Human Rights Committee has expressly stated that apply to civil courts apply military courts in full, just as they do to other civilian and specialized tribunals. The Committee in that general Comment further noted that the guarantees cannot be limited or revised because of the special character and role of the court concerned. He added that the African Commission has also made a similar pronouncement.

For purposes of the symposium, Dr. Naluwairo highlight two rights where a number of issues arise during administration of justice through military tribunals. These rights include; the right to a competent tribunal and the right to an independent tribunal. Regarding the right to an independent tribunal, Dr. Naluwairo noted that a competent court must have jurisdiction over the person it tries as well as the subject matter involved. He noted that the issue of jurisdiction is a matter that is conferred by law. That is; before a military court can assert its jurisdiction over any person or subject matter, there should be a law that confers that jurisdiction. In this regard, he stated that under international human rights law, the jurisdiction of a military tribunal must be limited only to serving military personnel accused of committing military offences.

Following from this background, he addressed the question whether military tribunals can try civilians. He noted that although this can happen, it is only permissible in very limited circumstances; as an exception. Citing general Comment 32 of 2007 (above), he noted that the state must have to show that the trial of such persons by the military is necessary and is justified by objective and serious reasons and where the regular civilian courts are unable to conduct the trial. He noted, however, that this position of the human rights Committee is militated by the UPDF act which provides for over 10 grounds under which a civilian may be tried by a military tribunal. This way, he noted, the country is lacking.

Commenting on the regional position, Dr. Naluwairo noted that the African Commission has completely prohibited any trial of a civilian by a military tribunal. That this position is stated in the of cases *Media Rights Agenda v. Nigeria*; as well its Principles and Guidelines on the Right to a Fair Trial in Africa which limits the jurisdiction of military courts to only offences of a purely military nature that are committed by military personnel.

Commenting on the right to a competent tribunal, he noted that this requires that the persons undertaking the trial are competent and have the integrity to handle the trial while guaranteeing justice for the accused persons.

As regards independence of the tribunal, Dr. Naluwairo noted that this is not well guaranteed in Uganda where members of the military tribunal are appointed for only one year, subject to renewal. He said that this follows far below par as the international standards on security of tenure of judicial officers prescribe a minimum period of at least 4 years.

The final important element highlighted by Dr. Naluwairo in regards to the independence of the tribunals are the conditions under which the judicial officers work. According to him, it is important to examine whether the conditions prevailing in Uganda's military tribunals are such as to guarantee the independence of the officers. This is especially considering that these conditions are not provided for under the law.

6.2 Perspective from the Military Courts; Captain Samuel Ogwal, Legal Officer, CMI/UPDF representing Col. Dr. Godard Busingye, *Deputy Chief of Legal Services, Inspector of Military Courts*

In his presentation, Samuel noted that international jurisprudence on the human rights and administration of justice through of military tribunals (in some jurisdictions, such as the United States of America, referred to as a Commission), especially on the African continent is undeveloped. Globally, only a few cases alleging violations of the human rights by military tribunals have been brought before international human rights bodies. A few have been taken to national courts. He observed that the civilian population remains of great importance in critiquing, with a view to improving the administration of justice in military tribunals, where suspicions of human rights violations remain high. He was however hopeful that with increased education and awareness, both in the military circles and the civilian populations, this unfortunate situation might improve.

Commenting on its rationale, Samuel noted that the essence of the military justice system is to ensure strict discipline among members of the armed forces, and that it covers functions such as discipline in the armed forces, administrative action to support the armed forces policy, inquiries to establish facts relevant to operation and command of the armed forces, and the provisions for review and management of complaints. Commenting on the historical relationship between the civilian courts and the military justice system, Samuel mentioned that this has been marked with mistrusts and misunderstandings yet the military tribunals must be an integral part of the general judicial system.

He noted that in municipal jurisdictions such as Uganda that apply the traditional dualist approach to international law, the administration of justice in military tribunals remains constrained by the conceptualizations of international human rights law by sovereign states. Even then, he noted that it is still possible to apply human rights law directly in such jurisdictions, if the international instrument embodying it has crystalized into customary law.

He noted that a military tribunal is different from a regular civilian criminal court in a way that in a tribunal, military officers act as both judge and jury. After a hearing, guilt is determined by a vote of the 'Judges' (or Commissioners). Also, unlike a criminal jury, the decision does not have to be unanimous, but it is binding on all 'judges'. There is no dissenting or minority judgment in military tribunals. Furthermore, the jurisdiction of the Military Tribunal is limited to criminal matters only.

Even then, he mentioned, the two court systems have certain similarities. For example, in both courts, an accused person is assured and accorded a full and fair trial, which includes: the right to be informed immediately, in a language that the person understands, of the nature of the offence; the right to legal representation, the right to defend his or her case against the accusations made against him or her, the right to be presumed to be innocent until proved

guilty or until that person has pleaded guilty; the right to be given adequate time and facilities for the preparation of his or her defence; the right to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice; in the case of any offence which carries a sentence of death or imprisonment for life, the right to legal representation at the expense of the State; the right to be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial; the right to be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court, and the right to obtain, free of charge, a copy of the proceedings of the military tribunal.

Beyond the military personnel, Samuel mentioned that Military tribunals are sometimes used to prosecute or determine the rights of civilians under certain exceptional circumstances. He noted, however, that this is not an automatic occurrence.

He mentioned that in the case of the Republic of Uganda, the Uganda Peoples' Defence Forces Act, 2005 provides: members of the Courts martial shall be appointed by the High Command from members of the Defence Forces. It is therefore only in the case of the Court Martial appeal Court, where the Chairperson is an advocate qualified for appointment as Judge of the High Court. The current chairman of the Court Martial appeal Court is a civilian who was appointed because he fulfilled the statutory requirements for the office of the chairman of the court.

He mentioned that the application of human rights in military tribunals has improved the state of observance of international human rights in such tribunals. He however noted that there is need to involve civilians in the review of administrative decisions taken by military tribunals, especially in cases of alleged human rights violations occasioned by the military tribunals. Furthermore, he recommended a system of automatic appeal and review for both adjudicated cases and investigations of alleged violations of human rights through domestic legislation.

Additionally, that the civilian Human Rights Commissions should work towards ensuring the proper investigation of alleged human rights violations and to ensure that the perpetrators are brought to justice, and that a fair trial is administered.

Finally, that more research should be carried out to establish the exact magnitude of the problem of international human rights violations in military tribunals with a view to propose reforms in the law governing military tribunals.

6.3 Plenary

During the plenary, a number of concerns and recommendations were made. To begin with, the participants were concerned about the increasing phenomenon of trying civilians in military tribunals; the intensifying/continued defiance of the military to writs of habeas

corpus issued by civil courts; interference by the military in cases involving civilians. e.g.; re-arrest of accused persons released on bail by a civil court; threat of command structure interference with effective CJ in military tribunals; the ability of military tribunals to catch up with new dynamics; the tendency of the military arresting and detaining civilians granted bail by the civil courts; as well as a fear that the possibility of protecting the rights of the accused person being tried under military courts is very minimal especially in lieu of the command structure of the military. According to Samuel, the UPDF has also since established a legal training Centre in Jinja in order to facilitate dialogue between the command and the legal department in order to be able to work together and appreciate each other's roles.

It was also proposed that the military should respect civil courts and the orders therefrom. Relatedly, the judiciary was encouraged to engage with the military top administration to report concerns such as the disregard of the civil courts' orders. Also, in order to capture the recent developments in respect of observance of human rights, it was proposed that there is need for legal reform to provide a basis for this.

Panel 7

ASSESSING BAIL CONDITIONS: CRITICAL COMMENTS ON APPROPRIATENESS, CHALLENGES AND THE WAY FORWARD

Chaired by Hon. Lady Justice Damalie Lwanga

7.1 Perspectives from the bench; Hon Mr. Justice Yasin Nyanzi, Criminal Division

Justic Nyanzi begun by defining bail as the temporary release of an accused person awaiting trial, sometimes on condition that may be set by the court granting the bail. He noted that bail may be mandatory for example under Section 16 ((a) and (b) of the Trial on Indictment Act and Section 76(a) and (b) of the Magistrate Courts Act or upon an application which maybe orally or formally made before the court.

Bail in Uganda is a constitutional right provided for under Article 23(6) (a), Section 14 of the TIA. He also cited a number of international instruments providing for this right namely: the International Convention on Civil and Political Rights of the United Nation 1966; the African Charter of Human and Peoples Rights of 1981; as well as the American Convention on Human Rights.

Commenting on the conditions for the grant of bail, Justice Nyanzi highlighted that these include: Whether the accused has a fixed place of abode with the jurisdiction of court or is ordinarily resident outside Uganda; Whether the accused has sound sureties, within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail; Whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; Whether there are other charges pending against the accused; and that there would be no likelihood of interference with investigations and witnesses.

Additionally, that Courts in Uganda have developed other guidelines to consider under whether to grant or not to grant bail. For example, in Reference No.0020 of 2005, *Uganda (DPP) Vs. Colonel (RTD) Dr. Kiiza Besigye,* gives the following guidelines;

(i) Protection of society from lawlessness.
(ii) Congestion of un convicted people in prison facilities.
(iii) Gravity of the offence.
(iv) The possibility of the applicant absconding.
(v) Threatening behaviour of the accused.
(vi) The status of the offence and the stage of proceedings.
(vii) Extent of evidence pointing to the guilty of the applicant.
(viii) Prolonged remand period.

The court in the above case recognised that the list of considerations cannot be exhaustive.

Commenting on the appropriateness of bail conditions, Justice Nyanzi said that he interpreted appropriateness to mean whether the conditions are effective to help the accused to be granted bail and to protect the State that the accused returns for trial.

(i) Payment of cash for bail

That more often than not, whenever the applicant is granted bail, he /she is required to pay an amount of money in cash before he/she is released, and that the amount usually has a bearing to the gravity of the offence. He however observed that there is no empirical evidence on the relevance of this payment at all as many of the applicants who actually pay the amount have absconded or jumped bail. He contrasted this with accused persons who are bonded by court without cash but who never jump their bail. Therefore, according to him, this condition is a mere money collecting exercise and that it is no wonder that some judicial officers abuse the process by holding on bail money.

Justice Nyanzi commented on the realities in rural areas with a non-monetary life. That in such areas, a big number of in mates fail to pay the bail sum even miserable figures are imposed. As such, cash payment becomes a barrier to them getting bail. Alive to such realities, he shared his experience while a circuit Judge in Arua where he granted bail based on social-economic situation of the applicants by allowing them to pledge small land holdings and animals to court.

(ii) Sureties:

As regards sureties, he noted that this is one of the best safe guards to ensure that the accused returns to stand trial. The surety is supposed to be in contact with the released person. In case of failure to report to court he/she informs court. Failure to do so, he/she is required to pay the bond in cash that was executed with court or may be imprisoned in event of failure to pay.

He however noted that the practical situation is that standing surety is just a formality because in many cases where bail is jumped, the process end there instead of starting from there. The surety is not called to account for the whereabouts of the accused, forced to pay the bond or be imprisoned. This is so despite the fact that relevant particulars are recorded from them when they appear before court. He therefore proposed that the surety should be made also to report to court once every after three months, as a sign of further commitment.

(iii) Fixed place of abode:

Justice Nyanzi observed that a fixed place of abode is defined by courts to be the place where the applicant ordinarily resides. In case of lower courts, it must be in the jurisdiction of that court. HE however noted that this notion of a fixed place of abode is limiting in the vast urban and semi- urban emerging areas where many people are tenants who do not own houses. The

people are also highly mobile depending on many factors; work and ability to pay rent being the most operative ones.

So where court releases a person believing his fixed place of abode as a tenant in this year his place of abode would have changed to another the next year.

He noted, however, that there is no legal obligation that the bailed person informs court of the new place. As such, there appears to be a need for the applicant who is a tenant to be required to have his/her land lord involved in his or her release, which may require the land lord to confirm to court the period of tenancy and the circumstances when it will end.

He therefore proposed that an applicant may be required to place emphasis on place of work in addition to place of abode. He based this proposed requirement gets on the fact that the suspected offenders who are known by what they do are more responsible and always return to court for trial. These include Senior Civil servants, Members of Parliament, Local Council members and established businessmen. Furthermore, no record show that knowing a place of abode of the accused has helped in making him/her attend his/her trial and do not abscond. Hence, although it remains a condition for bail, it is no longer effective.

(iv) Jumping bail:

According to him, jumping bail has resulted from the weak and un-operative conditions for granting bail. The Criminal Division Registry for example was recently found not be having any records of how many accused persons were on bail; when their bail was granted; when they would return for trial; in case of bail pending appeal, the status of the appeal; as well as the manner of reporting to have the bail extended. As such, the way the bailed person returns to court for bail extension only required that a bond document be produced, otherwise the files would not be traced. It was also feared that some bailed applicants sent relatives with bond documents to have the bail extended.

He noted that in reality, the accused persons released on bail, do not turn up for trial mainly due to the long periods before trial commences. For example, some files show bail to have been granted 2-3 years ago and no trial has commenced. He noted that this state of affairs also applies for bail pending appeal. That such an extra-ordinary long period before trial makes any conditions that were imposed before bail was granted to fail to work, so much so that it can simply be said that bail is another form of discharge from criminal liability.

As such, it appears that there has been a failure to get a balance between the right of the accused to bail and the obligation of the State to prosecute.

Going forward, Justice Nyanzi proposed that Bail Rules should be made to provide for:-

- Better ways of locating the accused.
- Obligation of sureties and consequences of failure to honour the obligation.

- Ways of serving the person on bail to attend trial.
- The proposed rules are equated to the rules relating to the granting and vacating of temporary injunctions.
- The rules will provide a wider opportunity than the Statutes to include the required amendments.

Secondly, he recommended the shortening of the pre-trial period. Finally is the rare exercise of the discretion to grant bail pending appeal, as many beneficiaries are known to disappear completely. Our registry is stuck with unheard appeals where bail pending appeal was granted.

7.2 Plenary

During the plenary, the Judges were cautioned about the emerging trend of professional sureties who further abuse the bail process. Additionally is the phenomenon of forging documents such as LC recommendation letters, etc which are then produced to court to seek bail/stand surety. It was also noted that some police officers are exploiting the loopholes in the bail process by taking bribes from accused persons who jumped bail as a guarantee for not being re-arrested. The participants also proposed the approach of granting temporary bail as is the case with temporary remedies (injuctions) in order to enable the court to continue monitoring the bail since currently it appears that jumping bail is an acquittal.

Secondly, it was proposed that there is need for standard setting in order to hold the sureties more accountable to the court for accused persons who jump bail. As for the accused persons who jump bail, it was proposed that the judiciary should look into using court bailiffs to trace them instead of the police.

As regards bail pending appeal, one of the judges shared that he rarely allows bail pending appeal as he encourages hearing the appeal and have a determination thereof once and for all. Furthermore, in order to deal with the challenge of poor record keeping, it was proposed that the judges insist on having the bail record attached to the case file in order to save time and resources that are wasted when accused persons jump bail.

Panel 8

ESTABLISHING AN EFFECTIVE FRAMEWORK FOR THE DELIVERY OF LEGAL AID SERVICES: THE LAW, POLICY AND PRACTICE

Chaired by Justice Wangutsi

8.1 The experience of Uganda; Ms. Sylvia Namubiru Mukasa, Executive Director, Legal Aid Service Providers' Network

In her presentation, Sylvia begun by noting that access to legal assistance is central to ensuring access to justice, especially for the poor and most vulnerable people. Citing the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, she noted that legal aid is an essential aspect of a fair, humane, and efficient criminal justice system based on the rule of law. That without access to legal aid, millions of people around the world are at high risk of having their rights ignored or violated when they interact with a criminal justice system, including through arbitrary pretrial detention, torture, coerced confessions, and/or wrongful convictions.

Citing the 2016 HiiL Justice Needs Research, she observed that over 80% of Ugandans cannot afford legal representation by a private practitioner in order to access justice services and yet over 88% experience a legal problem in one way or the other. Therefore, provision of legal aid either by state or non -state actors remains majorly the only way the poor, (indigent); vulnerable and marginalized of society can be able to access justice and seek remedy either through formal or informal justice systems.

Commenting on the applicable legal framework on legal aid service provision, Sylvia noted that at the international level, Uganda is a state party to different International and Regional treaties that guarantee the right to fair hearing and legal representation, for example the International Covenant on Civil and Political Rights (ICCPR) Article 14(1) of the ICCPR guarantees equal rights for all before all courts and tribunals while also emphasizing every person's right to a fair hearing. Under Article 14(3) (d) of this instrument, free legal representation for all persons who cannot afford legal services is guaranteed. Added to this is the Lilongwe declaration (which was adopted by 21 African countries in 2004) which states that a legal aid programme should include legal assistance at all stages of the criminal process, including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings to ensure that human rights are protected.

At the national level, the applicable law include the 1995 Constitution which, although not explicitly providing for legal aid, contains certain provisions which infer the notion of legal aid. These include: article 21 which guarantees equality and freedoms of all persons before the law including even the most vulnerable groups in society; article 28 (3) (e) providing for legal representation at the expense of the State for persons charged with capital offences. It

further guarantees the right to fair hearing, particularly right to legal representation is further entrenched under. In the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State. Aside the constitution, there are other laws namely: the Poor Persons Defense Act Cap 20 which provides for a framework for an indigent person to apply for a pauper suit, where they can be exempted from payment of court fees and other costs related; the Advocates Act Cap 267 as amended by Act 2010 and the Probono regulation made thereunder defining Probono services as service given for public good and requiring lawyers to provide 40 hours of their services annually or payment in lieu of the service towards providing legal services to the indigent; the Advocates (Legal Aid to Indecent) Regulations 2007, which provides for standards which include: focus on the quality of services delivery and client care; effectiveness, facilities and qualifications of personnel (advocates and Paralegals); criteria for selection of clients & geographical coverage; the Advocates (Student Practice) regulations 2004 which provides for students to be issued with a practicing certificate and to provide legal aid services under supervision of an advocate. Additionally, currently there are Regulations of Paralegals which is still in draft and under way for approval by the Uganda Law council which is a body empowered to regulate through inspect, approve and regulate service providers of legal aid in Uganda.

Commenting on the practice and delivery models of legal aid in Uganda, Sylvia mentioned that although Uganda lacks a state funded legal aid scheme for its citizens, there are quite a number existing legal aid delivery mechanisms and models which include state and non-state actors models namely:

- **The State brief scheme** as provided for under article 28 of the constitution, in this case lawyers are retained by government/judiciary to defend suspects with capital offences. This scheme is challenged by poor remuneration of advocates, inadequate preparation of some of the lawyers and lack of client lawyer confidence.
- **The LDC clinic of Law Development Centre**, this operates the student advocate model utilizing the Law development bar students. Additionally, the Public Interest Law Clinic of Makerere University is also picking on the student model by using university students to provide legal advice and sensitization of public on legal related issues.
- **The pilot legal aid programs such as Justice Centres Uganda**, Paralegal Advisory Services hosted by the Foundation for Human Rights Initiative. The former employs staff advocates, paralegals and psycho-social support officers. The clients are provided with a one stop centre services including psychosocial support services, tool free services and outreaches. And the latter employs paralegals who traverse the justice system supporting suspects to know their rights, link them up with relatives and justice system actors. This intervention has contributed to prison decongestion and safeguarded rights of suspects through empowerment

- **The Probono service of Uganda Law Society**, this involves lawyers giving back to society through legal aid services. Currently Uganda Law Society has over 1368 lawyers who voluntarily enrolled for Probono services that have been significant in providing legal aid services across the civil and criminal areas of justice
- **The non-state Actors models**: The Legal Aid Service Providers Network (LASPNET) coordinates over 52 member organizations that provide legal aid in form of legal assistance, representation, advice and counselling as well as empowerment through information and sensitization. Some of the Legal Aid Service Provides have provided the service for over 40 years for example in case of FIDA-U, others over 25 years for example LAP of Uganda Law Society, FHRI, and many more for over 10 years such as Platform for Labour Action, UCLF, Uganda Land Alliance, Refugees Law Project , NUDIPU and many more. These non-state actors have thematic interventions related to land, women and children, labor, HIV/AIDS, Persons with Disabilities, refugees and juvenile justice. Therefore interventions by non-state actors have bridged the existing state gap by ensuring they provide the services to the indigents and vulnerable who include men, women children, refugees, persons with disability

In term of the service delivery mechanisms, she noted that the state and non-state actors apply various service delivery models which include: use of staff advocates; use of staff and community paralegals; outreach through IEC , radio Programmes and mobile clinics; self-help representation for example in the cases of African Prisons Project; use of ADR mechanisms and involving informal justice systems for quick resolution of disputes; use of strategic interest litigation in cases of communal violations; models seeking to empower like FIDA–U SAME; holistic approach to legal aid including Pyscho -social, Justice Centres Uganda, FIDA; use of students in legal aid PILAC, LDC; provision of services to special interest group, PWDs-NUDIPU interpretation service; as well as *pro bono* and use of duty counsels who station in courts of law and provide on spot advice and counselling, including designating the annual Probono day.

Sylvia noted that legal aid has enormous benefits; that is: it is a safeguard for protection of rights, driver for social justice and rule of law and a backbone for peace and development. She noted that without access to legal aid, millions of people around the world are at high risk of having their rights ignored or violated when they interact with a criminal justice system, including through arbitrary pretrial detention, torture, coerced confessions, and/or wrongful convictions.

She also noted that there is a nexus between legal aid provision and socio-economic development in Uganda in a number of ways below:

- **Legal aid provision promotes equitable access to justice for all.** The United Nations and Rule of Law, emphasizes that Legal aid programmes are a central component of access to justice for all. Suffice to note legal aid targets marginalized groups or

communities such as women, children and PWDs who cannot afford the cost of legal services. For example, women in Uganda provide 70-80% of all agricultural labor and over 90% of food crop production. However, female-headed households are the most profoundly affected by land conflicts, either through concerns about future conflicts (14%) or involvement in current (3.3%) and resolved conflicts (5.7%). Therefore, by providing legal aid services especially to the poor, vulnerable and marginalized their capacity to seek legal remedy is guaranteed as well as their access to resources and socio-economic welfare is improved.

- Legal aid service provision addresses the concerns of the poor and vulnerable, focusing on challenges they face to access justice arising from; **ACCESSIBILITY** which includes alienability due to technicalities , language, ignorance of the law , **AFFORDABILITY** (user costs , fees and legal representation), **AVAILABILITY** due to distance from the beneficiaries to service points
- **Legal aid contributes to poverty reduction**. Legal aid interventions lead to empowerment of poor and vulnerable individuals and communities which is a key strategy to poverty reduction, thereby contributing to socio economic development. According to NDPII, over 19.7 per cent of Ugandans are under the poverty line and live on less than one dollar a day. The Government of Uganda banks on the agricultural sector done in the rural areas by the people who are most affected by poverty to boost economic growth. Notably, when these people interface with the justice system, they usually spend their little earnings in the unpredictable and lengthy litigation due to ignorance of the law. With legal aid, such person are given appropriate legal advice which save their time and see them invest their energies in productive activities. Therefore whereas legal aid it is not a substitute for other important development interventions, through legal empowerment of the poor an enabling environment for providing sustainable livelihoods and eradicating poverty can be achieved.
- **Provision of legal aid strengthens the Rule of law.** Respect and upholding the rule of law is a strong pillar of socio-economic transformation. To strengthen rule of law, NDPII envisages enhancing access to Justice, Law and Order services particularly to vulnerable persons which therefore implies providing them with legal aid. More importantly, when rule of law is strengthened, good governance which is a tenet of socio-economic development is also promoted.
- **Legal aid provision reduces on overall costs incurred by State on detention facilities.** The estimates for Uganda indicate the average daily cost of maintaining a prisoner at about UGX 3,000 and for the estimated 25,000 prisoners on remand, this translates the daily expenditures for remand prisoners to a tune of UGX 73 million or UGX 26.8 billion annually. Additionally, people detained while awaiting trial cannot work or earn income to contribute to the Gross Domestic Product and eventually the socio-economic transformation.

- **Creation of employment opportunities.** Provision of legal aid as proposed in the National Legal Aid Policy could potentially offer jobs and reduce on the unemployment burden in the country. For instance, graduates leaving university and law schools getting absorbed into formal employment especially in Legal aid clinics, Justice Centers, Paralegal Advisory Services and Legal Aid Service Providers, among others. This therefore means government will receive taxes to contribute to the socio-economic development of the country.
- **Empowerment & Accountability.** NAMATI calls it giving people the power to understand and use the law[2]
- **Improves efficiency in Courts of Law**: It helps them to have information and support to navigate the legal terrains in the justice system. It helps to reduce case backlog and increases functionality of courts.
- Protecting rights impacts on social and economic wellbeing and avert abuse of fundamental human rights in
- Family Justice; (divorce and separation, custody and maintenance; Inheritance widows deprived of property; Domestic relation, sexual gender based violence, rape, defilement, psychological violence which are currently rampant in Uganda and I believe in many African countries.
- Land Justice; Promotes security of tenure and averts repercussion that may arise from eviction of masses such as what happened recently in Mubende, Apaa, Bunyoro region among others, landlessness and reduction of productivity, affects peace and security, leads to commission of other crimes like murders, mob justice, grievous harm, malicious damage to property
- **Reduces structural violence** that results from violation of health rights, housing and land user rights especially in communal areas like Karamoja. Promotion and protection of rights ids therefore instrumental to reducing **vulnerability** and social and economic deprivation.
- **Promotes corporate accountability** and limits investors from abusing workers' rights and land rights especially in oil and extractive industries such as in Bunyoro and Karamoja regions.
- **Averts dangers of bad governance which** mainly affect the have nots, class division, the poor becoming poorer and breakdown of institution which has a big implication on rule of law and human rights, e.g. the proposed constitutional amendments to article 26 and 102 (b). At the national level we speak "Politics but at lower levels they speak livelihood which implies that the social, economic and political context of governance very much determines the nature of livelihood across the country

[2] Gdowin & Maru 2014

Despite the above benefits, Sylvia noted that in Uganda, Legal aid service provision is faced with many challenges and gaps which are attributable to social, economic and political factors as well as structural and systemic factors which among others namely: Poverty which has rendered many Ugandans powerless to pursue justice in case of violations; vulnerability which includes the possibility of being poor or disadvantaged by social and economic factors as a result of which *many vulnerable persons find it hard to traverse the justice system in pursuit of justice at the same levels with their counterparts who often have the means and platform; m*arginalization as a result of which many people find hurdles in traversing the justice system; geographical barriers which limits access to JLOS services, most of which are urban based; technical Barriers due to the low levels of literacy; attitudinal Barriers characterized by lack of confidence/trust in the justice system especially the formal as being fair or impartial especially where there are real and perceived incidence of corruption affects more of the poor and vulnerable especially because often due to poverty they don't know where to go to seek remedy or to oil the system; an expensive Justice process/system; insufficient legal aid service provision in Uganda & lack of National Legal Aid Policy among others.

As a way forward, Sylvia highlighted a number of recommendations such as enactment of relevant legislations; testing innovations through embracing public/private Partnership; use of public interest litigation and judicial activism among others.

8.2 The comparative experience of Zimbabwe; *Justice Chinengo, Zimbabwe*

In his presentation, Justice Chinengo begun with an observation that access to justice is the bedrock of any functional judicial system. That as such, the principle needs to be implemented, not merely as a legal ideal.

He noted that a non-represented accused is at a very high risk of not having their rights observed, hence the plethora of human rights instruments which create an obligation on states to provide legal assistance to persons before courts of law, who cannot afford their own legal representation.

In terms of the Zimbabwean experience in provision of legal aid, Justice Chinengo shared that his country adopted a new constitution in 2013 which provides for the provision of legal assistance to accused persons facing criminal charges if substantial injustice would otherwise arise. However, the constitution does not expressly provide for legal aid in respect of civil cases as is the case under the South African Constitution whose section 34 makes this right available for all accused persons.

He however noted that the 2013 constitution came after the Legal Aid Act of 1996 which among others created a legal aid fund and a directorate of legal aid which was charged with undertaking all necessary measures to promote legal aid. The Directorate is funded through the Legal Aid Fund established by the Act which is made up of funds allocated by Parliament,

contributions by recipients of legal aid as determined by the Director, reductions or any damages paid under the Act, levies, etc. However, levies are yet to be implemented. The Act also allows lawyers who have not yet been enrolled to litigate before Zimbabwean courts as long as they were working under the Legal Aid Directorate.

Additionally, a Judge, Magistrate or Attorney General in Zimbabwe has the power to order/recommend that an accused person before him/her be offered with legal aid in order that the ends of justice are met.

Furthermore, that legal aid is also provided by other means such as pauper proceedings where an indigent person may take an application to the Registrar of the High Court who then appoints a lawyer on the Law Society Register to assist such an indigent person. This, he noted, is done after a means test is made. Furthermore, the lawyer appointed has a right to make an assessment of whether or not the case has merit failing which it is abandoned.

Furthermore, Zimbabwe has two legal aid clinics at two universities where law students under the supervision of their law lecturers, who are also usually practicing advocates, offer legal advise to indigent clients.

The other window cited by Justice Chinengo is that of legal assistance by CSOs such as the Legal assistance foundation; the Zimbabwe lawyers for Women's rights; as well as the Zimbabwe Female Lawyers' Association.

As regards the challenges of provision of legal aid services, Justice Chinengho noted that from 1996 up to 2012, the Directorate operated only one office which made it inaccessible. In 2012, regional offices were established, albeit in the main provincial Centres which further marginalizes the people in rural areas.

Furthermore, he noted that legal aid service recipients in Zimbabwe are not exempt from paying court fees, security, fees eg for the summons, and other execution fees. This, he noted, ultimately affects realisation of justice by the people who may not be able to raise these fees yet the state is not capable of providing this.

Therefore, in his general assessment, Justice Chinengo noted that the Directorate of Legal Aid Services in Zimbabwe is still very far from fully executing its mandate of effectively providing legal aid services. This, he attributed to lack of resources. He thus noted that the role of non-government players remains invaluable in providing legal assistance to Zimbabweans as well as in Uganda where state-led legal aid service provision is also limited in a number of ways.

Finally, he proposed a need for more studies to be conducted on how to provide legal aid more effectively.

8.3 Plenary

In the plenary following this session, there was a concern about the potential of abuse of legal aid services by people who can actually afford to pay private lawyers. This way, legal aid is perceived by some people as an alternative to legal services. A need for more sensitization about the purpose of legal aid services was therefore emphasized. The other concern related to the practice of not awarding costs to advocates arguing cases on a probono basis. Also of concern was how to hold the advocates offering probono services accountable to their clients in order to guarantee justice for the latter. This concern was based on a realisation that the senior lawyers usually send their less experienced colleagues to handle probono cases which then affects the quality of how the process is handled.

In addition to the recommendations made by the presenters, the participants highlighted a need for adopting legislation on legal aid as well as fast tracking of the National legal Aid policy as a way of improving legal aid service provision in Uganda; ensuring that legal aid services are not misappropriated to non-indigent litigants; creation of an endowment fund for legal aid services; as well as allowing probono lawyers to apply for costs in order to motivate more advocates to offer such services. AJJF was also encouraged to collaborate with other actors to undertake a study on comprehensive legal aid in order to come up with concrete proposals on how to make it work.

Panel 9

PERSPECTIVES AND EMERGING HUMAN RIGHTS ISSUES ON WOMEN IN THE ADMINISTRATION OF CRIMINAL JUSTICE

9.1 A Critical Evaluation of the Law and Current Practices; Hon. Lady Justice Prof. Lillian Tibatemwa-Ekirikubinza, Supreme Court

Justice Tibatemwa begun by describing her presentation as a call for judicial activism/creativity and for mainstreaming of gender in each of the activities undertaken by the actors in the CJS. This, she noted, is because enhancing women's access to justice will always be a call for judicial activism, a concept that is often misunderstood and often deemed to be derogatory.

According to Justice Tibatemwa, judicial activism merely connotes a process by which new legal principles are evolved to upgrade existing law. That judicial activism is therefore judge made law whose purpose is to bring the law in conformity with the current needs or expectations of society which are usually reflected in progressive constitutions and other universally accepted norms and standards.

Speaking on the topic at hand, she noted that any discussion of the treatment of women in the CJS calls for an understanding of gender, which she said is important whether the women are being processed in the system as offenders or as victims or witnesses. This, she noted, is because an appreciation of gender gives actors an insight into how to develop a more robust understanding of justice. She emphasized that gender moves with what society expects of women and men which is usually a product of gender bias, so much so that many of the gender roles are based on stereotypical beliefs rather than an independent imagination of one's expectations and/or abilities.

She reminded fellow actors in the CJS to be alive to gender biases and their implications for justice of women by closing their ears to the social expectations of each gender in order to adjudicate/prosecute/litigate cases fairy.

Warning that bias and discrimination against women and girls can manifest in various forms; as direct or indirect, Justice Tibatemwa beseeched the CJS actors to learn to recognize gender biases both in statutory law as well as in practice, as well as in judge made law (precedents). That even when the biases are embedded in the precedents, it is possible for the judges to do away with them by making reference to progressive constitutions as well as emerging international norms and standards.

She ended by emphasizing a need to mainstream gender analysis in the work of the different actors in the CJS. This, she noted, is important because it ensures that women's and men's experiences are integral to the justice process with the aim of ensuring that both genders have

equal benefit. That this way, the actors would be acknowledging the inherent differences between women and men in society which then affect their justice needs.

9.2 Plenary

During the plenary, it was highlighted that the social biases still impede access to justice of women in the CJS. Various recommendations were made as a way forward namely: that the bench must adopt a gender analysis of all questions before court; there is need to sensitise the public about unconscious stereotypes that need to be mainstreamed in the CJS; a need to change the attitudes of judicial officers, the public, as well as law and policy makers through various trainings in order to change the social construction; sensitising and training Judges on issues of gender justice; the judges making sure that they refer to the bench book on how to handle sexual and gender based violence cases; as well as a need to audit subordinate laws for compliance with the constitutional guarantees in respect to addressing gender issues. Finally, the participants requested Justice Lillian to provide leadership in designing a gender mainstreaming strategy for the Judiciary as well as a guiding tool for use in adjudicating Gender-related cases.

Panel 10

SENTENCING GUIDELINES FOR COURTS OF JUDICATURE: TOWARDS A FAIR, UNIFORM AND PREDICTABLE SYSTEM FOR THE PUNISHMENT OF OFFENDERS

Chaired by Justice Night Percy Tuhaise

10.1 Perspectives from the Bench; Hon. Justice Eldad Mwangusya, Supreme Court

Justice Mwangusya begun with the background to the sentencing guidelines, which he said came after the Supreme Court decision in the Suzan Kigula case which outlawed the mandatory death penalty for capital offenses and is now a matter of a Judge's discretion. Since then, courts have awarded varying sentences for such offenses; stretching from as low as 2 years upwards to the death penalty.

Unfortunately, the Judge noted, at times the nature of sentences issued for even much similar cases have huge disparities with some seemingly severe crimes receiving lighter sentences than the less severe ones. Under such circumstances, it was important to harmonize sentencing in order to give guidance on when to give a minimum or a maximum sentence.

As to whether the guidelines have achieved their objective, Justice Mwangushya said that this is yet to happen. He therefore called upon fellow judges to nurture the guidelines in order to give them meaning.

Furthermore, the Judge emphasized the role of the prosecution and the defense in helping courts to arrive at a proper sentence. That if these can put in an extra effort to submit authorities during the sentence hearing, which show the treats of sentencing for the crime in question, the judges can be able to award sentences that are not patently different.

Also of concern to the Judge is the proposal to have the guidelines transformed into a more binding instrument such as Rules. He suggested that given the discretionary nature of judicial work, it is important for the judges to discuss and come up with a way forward on the proper course to follow that is; whether to stick to the guidelines or to elevate them to a status of Rules.

He noted that while it is important to have uniformity and predictability in sentencing, at times the circumstances around a particular case greatly impact the discretion of the Judge. He for example highlighted two cases he previously adjudicated involving defilement of minors who ended up pregnant. He mentioned that while he would ordinarily be expected to detain the accused juvenile offenders, he ended up cautioning them as they expressed willingness to support the girls (whom they took to be their wives) and the children. Hence, in order not to deny the girls the necessary support, he allowed for the boys to be released to

fulfill that responsibility. According to him, although seemingly a light sentence considering the crime, cautioning was adequate to guarantee non retribution.

10.2 Plenary

During the plenary, the participants dismissed the idea of elevating sentencing guidelines to the level of Rules, noting that this would be Ann interference with the discretion of the judge. As such, it was proposed that these be maintained as guidelines and that with time more uniform sentences will be passed. It was however proposed that what is needed is a uniform approach, and not necessarily uniform penalties.

Additionally, there was a fear that making the sentencing guidelines more forceful might be an abuse of the principle of separation of powers since it is Parliament that has the minimum responsibility to legislate crimes and the penalties therefore.

The participant representing legal aid service providers raised a need for impact assessments being conducted before a sentence is passed. Such assessment should involve interactions with the victims as well as the community in order to understand their expectations. Accompanying the assessment should be a report which would then explain to the public why a particular case was given a particular sentence. She noted, however, that this would best be provided for by law guiding the processes of sentencing.

CLOSING REMARKS

The closing remarks were given by the Principal Judge who reiterated the need to deal with the enduring problem of case backlog that is affecting Uganda's Judiciary. As such, he expressed his appreciation for the new knowledge generated during the symposium and was hopeful that it would be used to help deal with the challenge of backlog.

On the part of the judiciary, he undertook to follow up the recommendations made during the symposium in order to create a much needed change. One way of doing this, he stated, is promoting people-centered delivery of justice that is both accessible and timeously delivered. Added to this is the introduction of modern management principles in the country's judicial process, as well as guaranteeing accountability of the judicial officers. He also added that in the foreseeable future, the judiciary will be starting to undertake quantitative and qualitative assessment of Judges work as a way of enhancing performance. He ended by thanking the participants, organizers, sponsors and partners without whom the symposium would not have been a success.

In his sendoff remarks for the participants, the Secretary General of the AJJF, Mr. Martin O. Masiga highlighted a number of areas of potential collaborations/training which had been identified during the three day symposium. These include: Gender sensitization; children's rights particularly child sacrifice; Africa's electoral justice, as well as alignment of the various laws to the constitution. He also promised to more judges/jurists in AJJF's fact-finding missions.

ANNEX I

PROGRAMME
JUDICIAL SYMPOSIUM

THEME:
HUMAN RIGHTS IN THE CONTEXT OF CRIMINAL JUSTICE: RETHINKING THE WORKINGS OF THE JUSTICE PROCESS IN UGANDA

Organized by the Africa Judges and Jurists Forum (AJJF) in conjunction with, the Judicial Training Institute, the International Commission of Jurists (ICJ) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

Tuesday 14 November 2017 (4:00pm till late)

Resident participants checking in at the Hotel

Wednesday 15 – Friday 17 November 2017

TENTATIVE AGENDA

DAY ONE: Wednesday 15th November 2017

Time	Activity	Speaker
0800-0845	Registration	
Opening Ceremony		
0845-0850	**Welcoming Remarks**	*Martin Okumu Masiga, Secretary General-Africa Judges and Jurists Forum (AJJF)*
0850-1855	**Welcome Remarks**	*Dr. Uchenna Emelonye, Country Representative, Office of the High Commissioner for Human Rights*
0855-0905	**Opening Remarks**	*Hon. Justice Moses Chinhengo, Chairman- Governing Board - AJJF*
0900-0930	**Keynote Address**	*Hon. Chief Justice Bart Katureebe*
0930-1000	Group Photo	
1000-1030	Tea Break	
PANEL 1		
1030-1100	**Regional and International Human Rights Instruments Relevant to the Administration of Criminal Justice in Uganda**	***Chair:*** *Hon. Justice Lydia Mugambe-Ssali* ***Panelists:***

	Identifying the Major Regional & International Human Rights Treaties & Standards - *Application of Regional & International Human Rights Treaties & Standards before Uganda Courts -*	1. *Dr. Uchenna Emolonye, Country Representative-OHCHR* 2. *Dr. Daniel Ruhweza, School of Law, Makerere University*
1100-1200	Plenary	
PANEL 2		
1200-1230	**The Problem of Prolonged Pre-Trial Detention in Uganda: Rendering a Diagnostic Prescription** *The Judicial Perspective* *The Role of the Uganda Police Force* *The Role of the Uganda Prisons Service* *Experiences of Defense Counsel*	***Chair:*** *Hon. Dr. Justice Henry Peter Adonyo, Executive Director, Judicial Studies Institute (JSI)* ***Panelists:*** *1. Hon. Justice David Kutosi Wangutusi, Head-Commercial Division* *2. Dr. Johnson Byabashaija, Commissioner General, Uganda Prisons Services* *3. Advocate Peter Walubiri*
1230-1300	Plenary	
1300-1400	Lunch	
1400-1430	Plenary – Continued	
PANEL 3		
1430-1500	**Addressing Delays in the Criminal Justice System: Tools and Strategies for an efficient and effective Justice Delivery Process** *Perspectives from the Judiciary* *Perspectives from the Prosecution* *A Comparative Approach from Botswana on Case Management in Criminal Justice*	***Chair:*** *Hon Martin O. Masiga, Secretary General, AJJF* ***Panelists:*** 1. *Hon. Justice Frederick Egonda-Ntende, Constitutional/Appeal Court* 2. *Hon. Justice Mike Chibitta-Director of Public Prosecutions* 3. *Hon. Justice Dr. Bethuel Oagile Dingake, Botswana*
1500-1600	Plenary	
1600-1630	Tea Break	
1830-2100	Welcome Dinner	

DAY TWO: Thursday 16 November 2017

Time	Activity	Speaker
0830-0840	**Recap of First Day**	*Arnold Tsunga, Africa Director - International Commission of Jurists*
	PANEL 4	
0840-0900	**The Role of Judges, Magistrates and Prosecutors in Preventing Torture and ill-treatment of Accused Persons** *Practices in the High Court& Proposals for Reform* *Duties of Prosecutors and Proposals for Reform*	***Chair:*** *Hon. Justice Margaret Oumo Oguli* ***Panelists:*** *1. Hon. Justice Dr. Winfred Nabisinde, Lira* **2.** *Mr. Baxter Bakibinga, President-Uganda Association of Prosecutors*
0900-1000	Plenary	
1000-1030	Tea Break	
	PANEL 5	
1030-1100	**The Plea Bargaining System: Traversing its Gains, Limitations and Prospects in Uganda** *Progress, Challenges and Proposals for Reform* *Issues, Benefits, Challenges and Proposals for Reform* *Challenges to Accused Persons and Proposals for Reform*	***Chair:*** *Jacqueline Asimwe-Mwesige, Director-WellSprings, Uganda* ***Panelists*:** 1. *Hon. Justice Yorokamu Bamwine, Principle Judge and Head of Court* 2. *Hon. Justice Mike Chibitta, Director of Public Prosecutions* 3. *Advocate Allan Nhsiimye, Legal Practitioner*
1100-1200	Plenary	
	PANEL 6	
1200-1230	**International Human Rights Law and the Administration of Justice through Military Tribunals** *Overview of Regional & International Human Rights Norms and Standards* *The Legal and Practical Challenges of Defending Persons*	***Chair:*** *Dr. Donald Rukare, Executive Director-Freedom House (FH).* ***Panelists:*** *1. Dr. Ronald Naluwairo, Senior Lecturer and Ag. Deputy Principal School of Law, Makerere University* *2. Advocate Ladislaus Kiiza Rwakafuuzi, Human Rights Legal Practitioner*

	Accused before Military Courts in Uganda *Perspective from Military Courts*	*3. Col. Dr. Godard Busingye, Deputy Chief of Legal Services, Inspector of Military Courts*
1230-1300	Plenary	
1300-1400	Lunch Break	
PANEL 7		
1400-1420	**Establishing an Effective Framework for the Delivery of Legal Aid Services: The Law, Policy and Practice** *The Experience of Uganda* *The Comparative Experience of Zimbabwe*	***Chair:*** *Hon. Mr. Justice David Kutosi Wangutsi, -Commercial Division* ***Panelists*:** *1. Sylvia Namubiru Mukasa – Executive Director, Legal Aid Service Providers' Network* *2.Hon. Justice Moses Chinhengo, Zimbabwe*
1420-1520	Plenary	
PANEL 8		
1520-1540	**Assessing Bail Conditions: Critical Comments on Appropriateness, Challenges and the Way Forward** *Perspectives from the Bench* *Perspectives from the Bar*	***Chair:*** *Hon. Justice Duncun Gaswaga, Mbarara* ***Panelists:*** *1. Mr. Justice Yasin Nyanzi, Criminal Division* *2. Advocate Nicholas Opio, Chapter Four Uganda*
1600-1630	Tea Break	

DAY THREE: Friday 17 November 2017

Time	Activity	Speaker
PANEL 9		
0830-0900	**Perspectives and Emerging Human Rights Issues on Women in the Administration of Criminal Justice** *A Critical Evaluation of the Law and Current Practices* *Perspectives from the Ministry of Gender, Labour and Social Development (MGLSD)*	***Chair:*** *Prof. Ben Twinomugisha, School of Law, Makerere University* ***Panelists:*** *1. Hon. Lady Justice Prof. Lillian Tibatemwa-Ekirikubinza, Supreme Court* *2. Jane Sanyu Mpagi, Director, Gender & Community*

		Development Directorate, MoGLSD
0900-1000	Plenary	
1000-1030	Tea Break	
PANEL 10		
1030-1200	**Sentencing Guidelines for Courts of Judicature: Towards a Fair, Uniform and Predictable System for the Punishment of Offenders** *Perspectives from the Bench* *Perspectives from the Bar*	**Chair:** *Hon. Lady Justice Night Percy Tuhaise, Head, Family Division, High Court of Uganda* ***Panelists*:** *1. Hon. Justice John Wilson Kwesiga, Head – Criminal Division* *2. Advocate Francis Gimara, President-Uganda Law Society* *3. Hon. Mr. Justice Eldad Mwangusya*
1200-1300	Plenary	
1300-1400	Lunch	
1400-1500	**Recommendations: Charting a Path towards Reform**	***Rapporteur:*** *Arnold Tsunga*
1500-1600	**Closing Ceremony**	***Chair:*** *Martin O. Masiga* *Hon. Prof. Lady Justice Lillian Tibatemwa-Ekirikubinza, AJJF* *Maj. Gen. Kahinda Otafiire- Min. of Justice and Constitutional Affairs*

Saturday 18 November 2017

Checking out at the Hotel (**By 9:00am**)

ANNEX II

LIST OF PARTICIPANTS

No.	NAME	SEX	DESIGNATION
	Judges		
1.	BART KATUREEBE	M	SUPREME COURT, CJ
2.	CHRISTOPHER MADRAMA	M	HCT, KAMPALA
3.	DAMALIE LWANGA	F	HCT, KAMPALA
4.	DAVID MATOVU	M	HCT, FAMILY DIVISION
5.	DAVID WANGUTSI	M	HCT, COMMERCIAL DIV
6.	Dr. WINFRED NABISINDE	F	HCT, LIRA
7.	Dr. YOROKAMU BAMWINE	M	PRINCIPAL JUDGE
8.	ELDAD MWANGUSYA	M	SUPREME COURT Judge
9.	FLAVIAN ZEIJA	M	HCT, MBARARA
10	FMS EGONDA NTENDE	M	COURT OF APPEAL Judge
11	JOHN EUDES KEITIRIMA	M	HCT, MASAKA
12	KETRAH KATUNGUKA	F	HCT, FAMILY DIVISION
13	LUMUNYE TIMOTHY	M	MAGISTRATE, Personal Assistant to the Principal Judge
14	MAGRET OUMO OGULI	F	HCT, KAMPALA
15	MOSES KAZIBWE KAWUMI	M	HCT, KABALE
16	MUBIRU STEPHEN	M	HCT, ARUA
17	NATWIJUKA ALOYSIOUS	M	PA/CJ
18	NIGHT PERSY TUHAISE	F	HCT, FAMILY DIVISION
19	OYUKO ANTHONY OJOK	M	HCT, FORT PORTAL
20	PATRICIA BASAZA WASSWA	F	HCT, BAILIFF & EXECUTION DIV
21	PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA	F	SUPREME COURT Judge
22	RUGADYA ATWOOKI	M	HCT, MASINDI
23	SUSAN OKALANY	F	HCT, MBALE
24	VINCENT OKWANGA	M	HCT, GULU
25	WILSON MASALU MUSENE	M	HCT, JUDGE
26	YASIN NYANZI	M	HCT, KAMPALA

27	NAKIBUULE GLADGYS K	F	MAGISTRATE, DEPUTY REGISTRAR JUDICIARY TRAINING INSTITUTE
28	KISAWUZI ERIASA	M	MAGISTRATE, REGISTRAR, JUDICIARY TRAINING INSTITUTE
	Prosecutors/ Office of the DPP		
29	CHELSEA MACK	F	CONSULTANT
30	DAVID B. BAKIBINGA	M	PROSECUTOR
31	MIKE CHIBITA	M	DPP
32	TANIMA KISHORE	F	SPECIAL COUNSEL
	Other Resource Persons		
33	ALAN NSHIMYE	M	ADVOCATE
34	CAPT. SAMUEL OGWAL	M	LEGAL OFFICER, MINISTRY OF DEFENCE
35	DANIEL RONALD RUHWEZA	M	LEGAL ACADEMIC
36	DR. DONALD RUKARE	M	CHIEF OF PARTY, FREEDOM HOUSE
37	DR. UCHENA EMELONNYE	M	OHCHR COUNTRY REPRESENTATIVE
38	JACQUELINE ASIIMWE	F	LAWYER
39	KATHRYN WILKES	F	CONSULTANT
40	MUNANURA ROBERT	M	COMMISSIONER OF PRISONS, UGANDA PRISONS SERVICE
41	PROF. BEN TWINOMUGISHA	M	LEGAL ACADEMIC
42	PROF. OAGILE KEY DINGAKE	M	HCT JUDGE, BOTSWANA
43	SYLVIA NAMUBIRU MUKASA	F	LEGAL AID SERVICE PROVIDERS' NETWORK (LASPNET)
	Others		
44	ARNOLD TSUNGA	M	ICJ AFRICA PROGRAM DIRECTOR
45	BARONGO ATEENYI	M	HUREF
46	BRIAN KIBIRANGO	M	HUREF
47	BRIAN PENDUKA	M	ICJ LEGAL OFFICER

48	CHARITY AHUMUZA	F	OHCHR
49	CHARLES OWGU	M	OHCHR
50	FLORENCE EPODOI	F	NLO
51	MARTIN O. MASIGA	M	AJJF
52	MOSES CHINENGO	M	CHAIRMAN GOVERNING BOARD, AJJF
53	RITAH MUKUNDANYE	F	COMMUNICATIONS OFFICER, JUDICIARY
54	SANDRA MBABABAZI	F	JSI TRAINING SECRETARIAT
55	SAUL KASULE	M	OHCHR