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FAILURE TO UPHOLD THE RIGHT TO TRIED WITHIN A "REASONABLE TIME": ANALYSING THE FEASIBILITIY OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL CASES

By:

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AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE.

2025

DECLARATION

I, **THABO BANDA,** do hereby declare that this dissertation titled **"THE FAILURE TO UPHOLD THE RIGHT TO BE TRIED WITHIN A REASONABLE TIME: ANALYSING THE FEASIBILITY OF ALTERNATIVE DISPUTE RESOLUTION IN CRIMINAL CASES"** which is hereby submitted to the School of Law at the University of Lusaka as part of the requirements for the award of the Bachelor of Laws (LLB) degree, is my original work and has not previously been submitted for the award of a degree at this or any other tertiary institution.

The sources that have been used or quoted have been indicated and duly acknowledged as complete reference.

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Date....20/ 11 / 2025....................................

SUPERVISORS RECOMMENDATION

I RECOMMEND THAT this obligatory essay under my supervision

By

THABO BANDA

(STUDENT NUMBER LLB22113214)

Entitled

THE 'REASONABLE TIME' CHALLENGE: AN ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION AS A MECHANISM TO UPHOLD SPEEDY TRIAL RIGHTS IN CRIMINAL PROCEEDINGS

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements relating to the format as laid down in the regulations governing directed research.

Supervisor: Kawama Mwamfuli

Signature..

Date....20/11/25.......

DEDICATION

This paper is dedicated to my beloved mother, Irene Liabwa, and my father, Bentry Banda, for their unwavering love, guidance sacrifices and unwavering support, along with their constant words of encouragement, have fueled my drive to do better. Your love and dedication have been the foundation of my achievements.

A heartfelt thank you to my uncle and mentor, Mukufute Matongo Mukelabai, who has been an absolute inspiration. His guidance and encouragement have been instrumental in shaping my journey, and I am profoundly grateful for his wisdom and example.

And to my wonderful siblings, Samuel Banda, Tawonga Banda and Mbuyoti Liabwa, for always believing in me and inspiring me to pursue my dreams.

This work is dedicated to each of you with heartfelt gratitude.

ACKNOWLEDGEMENTS

Firstly, I would like to thank God for giving me the opportunity to pursue my Bachelor of Laws and bring me this far, for without him this journey would have been impossible.

I would like to express my deepest gratitude to everyone who has supported me throughout this journey. To my friends Hope Chabwe, Bupe Mumbi, Salifyanji Musonda, Kimberly Maliko and Joseph Phiri, your constant encouragement and companionship have made my academic path far more manageable and enjoyable. I am deeply thankful for each of you.

A special thank you to my fellow class mates and course mates, whose unwavering support and guidance have been invaluable. Your help has been a true pillar throughout my studies.

I am also immensely grateful to Dr. Lumbwe, Ms. Mwanamwambwa, Ms. Mwanza and Ms. Kaputo, whose dedication and excellence as lecturers has profoundly enriched my learning experience. Thank you both for inspiring and guiding me along the way.

To each of you, I am grateful for your contributions, which have made this achievement possible.

Finally, I would like to thank the University of Lusaka for the opportunity given to me to pursue my degree and acquire the necessary knowledge required to excel in the course of my study.

ABSTRACT

This study examined the right of an accused person to be tried within a reasonable time, a fundamental yet overlooked right by the judicial system. Despite the role of the government to protect, promote and respect all human rights many cases indicate that there has been a failure to uphold this right. Key legislative instruments such as the African Charter on Human and Peoples Rights (Banjul Charter) and the Constitution of Zambia Act No. 2 of 2016 provide for this fundamental right, however many case studies indicate that its enforcement is weak. There are many factors that contribute to the weak enforcement which include case backlog, failure to obtain evidence promptly, unnecessary adjournments, inadequate infrastructure, procedural errors and slow processing of cases. As a result, many accused persons remain detained for lengthy periods without having their cases heard and concluded by the court, leaving them and the general public with a lack of trust in the justice system.

This research critically examined these gaps while drawing lessons from the United Kingdom and Rwanda, two jurisdictions with robust legal systems that have integrated Alternative Dispute Resolution (ADR) in criminal cases in order to address promote or amicable justice. Both jurisdictions have integrated ADR by establishing legislative and policy framework, restorative justice and victim centered programs and professional competence and standards.

Using a qualitative, phenomenological approach, the study captured the lived experiences through interviews conducted of accused persons that have been detained for lengthy periods without having their cases heard and concluded by the court. Data analysis involves thematic coding to identify patterns in their challenges and the shortcomings of existing legal protections.

The findings are anticipated to reveal significant gaps in Zambia’s framework, particularly regarding the enforcement of the right to be tried within a reasonable time. Based on international best practices, the study proposed targeted policy recommendations such as establish clear eligibility criteria, establish procedural rules, formalize plea bargaining procedures, mandate post referral judicial review, create community courts, guarantee legal representation in ADR, mandate specialized training, develop a centralized code of

conduct, establish a monitoring unit and prioritize public awareness. These reforms aimed to ensure the right to be tried within a reasonable time is upheld by providing alternative methods to resolve disputes other than the tradition court system process.

LIST OF STATUTES

The Constitution of Zambia Act No.2 of 2016

The Penal Code Chapter 87 of The Laws of Zambia

LIST OF CASES

Benedicto Daniel Mallya v United Republic of Tanzania (Application No.018/2015) [2019] AFCHPR 41 (26 September 2019)

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Zimbabwean Lawyers for Human Rights and Institute for Human Rights and Development in Africa v Zimbabwe (Communication No.293/04) [2009] ACHPR 98 (3 April 2009)

Holgate Mohammed v Duke [1984] WLR

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Re Mlambo 1992 (4) SA 144 (ZS)

George Njoroge Chege v Director of Public Prosecution 2012] EKLR Criminal case 28 of 2011

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Attorney General v Oatile 2011 2 BLR 209 CA

Wemhoff v Federal Republic of Germany (1968) 1 E.H.R.R

Stogmuller v Austria (1969) 1 E.H.R.R

Attorney Generals Reference (N0.2 of 2001) [2003] UKHL

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CHAPTER ONE

1. INTRODUCTION

Human beings are rational beings and by virtue of being human possess certain basic and inalienable rights or freedoms which are commonly known as human rights. Human rights are necessary in every society as they provide suitable conditions for the material and moral uplift of people.[1] Article 7(1) (d) of the African Charter provides that every individual has the right to be tried within a reasonable time by an impartial court or tribunal. The Constitution of Zambia[2] recognizes the right of any person charged with a criminal offence shall be afforded a fair hearing within a reasonable time. However, the Zambian judicial system has in recent years come under significant scrutiny concerning the delay of the dispensation of justice in criminal cases. The delay of justice is due to a number of factors, some of which include the backlog of cases, frequent adjournment, nature of the facts that are to be established, the number of accused or witnesses, joinders of the case etc. The complaints of citizens are also focused on the interpretation of the statutory provision encompassing the term "reasonable time" as opposed to the existence of the provision.

Alternative dispute resolution (ADR) refers to different forms of dispute resolution other than litigation or adjudication. ADR comprises mechanisms such as conciliation mediation, and arbitration. These mechanisms are recognized by the judicial system, provided that they do not contravene the Constitution.[3] In addition, the goals of ADR are inter alia to relieve court congestion, to facilitate access to justice and to provide alternative methods of dispute resolution other than the court system.

The need for this research can be seen as many citizens that allegedly commit criminal offences do not have their cases, including appeals heard within a reasonable time which subjects them to inter alia mental and physical distress. In addition, the society begins to

[1] Dr. H.O.Agarwal, Human Rights
[2] Act No. 2 of 2016
[3] Constitution of Zambia Act No.2 of 2016

view the judicial system as slow and loses confidence in the access to justice within a reasonable time. The introduction of alternative dispute resolution in criminal cases will restore the society's confidence in the judicial system if the perpetrators are tried, found guilty and sentenced within a reasonable time. While the innocent suspects are heard and tried within a reasonable time, reducing their exposure to methods of deterrence designed for the guilty. This research will weigh the positive and negative effects that alternative dispute resolution in minor (misdemeanour) and serious (felony) criminal case may have, balancing the promotion of criminal cases resolved within a quick or amicable time and that essential facts of cases are not overlooked in order to sufficiently deter criminal offences. This research will draw lessons from the practice of alternative dispute resolution in criminal cases in Rwanda and United Kingdom, as they both have a robust system promoting the access to justice.

1.1 BACKGROUND OF THE PROBLEM

Zambia's judicial system is criticized for the failure to uphold the right of citizens to be tried within a reasonable time. At the heart of this criticism is the debate on the interpretation of the term "reasonable time" and factors that may justify delay of dispensation of justice.

The Constitution[4] is the voice of the people in a democratic State like Zambia. The Bill of Rights contains fundamental rights that each human being is entitled to by virtual of being human and must not be taken away, unless where an exception is provided by law. The failure to uphold the right to be tried within a reasonable time has contributed to prison congestion, more costs, psychological distress, weakening evidence, erosion of public trust and increase of backlog of cases.

1.2 STATEMENT OF THE PROBLEM

There is a growing concern with regard to the delay of dispensation of justice by judicial systems all across the world and the Zambian judiciary is no exception to this concern. The African Charter under article 7 provides for the right for all persons to be tried within a reasonable time by an impartial court or judge. In addition, the Constitution of Zambia

[4] Act No.2 of 2016

Act No.2 of 2016 in article 18(1) recognizes this right as it states that if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by the law.

Despite the existence of this right enshrined in the Bill of Rights its enforcement is not adequately practiced. As a result, citizens have a feeling of uncertainty with regard to depensation of justice. Delay affects the reliability and the credibility of the justice system. In addition, delay can affect the motivation of the penal system. The longer a proceeding runs the lower the motivation of concluding or clearing the case. Furthermore, delay increases the financial costs of the procedure which majority of citizens cannot afford. These costs do not only negatively affect the respondent but the State as well.

The objective of the study is the consideration of alternative methods of dispensation of justice within a reasonable time in order to uphold the cited right. The scope of the study will examine the goals, advantages, disadvantages and types of ADR that may be applicable to the problem. Briefly, the goals of ADR are inter alia, to relive court congestion, provide alternative methods of dispute settlement, enhance community involvement, facilitate access to justice and cost saving as compared to the litigation process.

Therefore, the purpose of this research is to examine the feasibility of Alternative Dispute resolution in the criminal justice system to mitigate the delay of dispensation of justice, drawing lessons from the United Kingdom and Rwanda judicial systems.

1.3 RESEARCH OBJECTIVES

II. To discover the rationale for the development of the right to be tried within a reasonable time, enshrined in the African Charter and The Constitution of Zambia.
III. To examine precedent set by the African Court on the violation of the right to be tried within a reasonable time.
IV. To draw lessons from the United Kingdom and Rwanda judicial system on the feasibility of Alternative Dispute Resolution in criminal cases.

1.4 RESEARCH QUESTIONS

II. What core principles explain the rationale for the development of the right to be tried within a reasonable time enshrined in the African Charter on Human and Peoples' Rights and the Constitution of Zambia Act No. 2 of 2016?

III. How does the African Court on Human and Peoples Rights define and apply the concept of a reasonable time during trial?

IV. What best practices can be drawn from the United Kingdom and Rwanda regarding Alternative Dispute Resolution to promote quick and amicable proceedings?

1.5 SIGNIFICANCE OF THE STUDY

This research will provide a well-fortified interpretation of the term “reasonable time” according to the precedent set by African Court on Human and Peoples Rights. In addition, by identifying the shortcomings of the current judicial system in relation to the delayed dispensation of justice this research will pave way to ensure that the right to be tried within a reasonable time provided in article 7 of the African Charter and article 18 of the Constitution of Zambia is upheld. By analyzing the feasibility of Alternative Dispute Resolution in the Zambian legal framework this research will go further to provide significant information on the advantages and pitfalls of the introduction of ADR in criminal cases. This research will also examine the ADR mechanisms adopted in Rwanda and the United Kingdom in relation to criminal cases in their jurisdictions.

The introduction of ADR in criminal cases may among other things strengthen the judicial system in dispensing justice amicably, significantly reduce litigation costs, reduce case backlog and promote community engagement. However, it is important to acknowledge the potential challenges of ADR in criminal cases such as power imbalances, community engagement in some cases may not be appropriate, lack of legal protection and suitability of cases with some offences being of serious nature and may concern public safety.

1.6 SCOPE OF THE STUDY

Geographical Focus – This study will primarily focus on the national legislation, specifically the Constitution of Zambia (Bill of Rights) granting citizens the right to be tried within a reasonable time before an impartial court or judge. It will also make reference to the African Charter on Human and Peoples Rights and precedence from the African Court on Human and Peoples Rights. In addition, it will also make reference to other national legislation interrelated to the said right.

This research will briefly look into the historical context of the development and protection of this fundamental right. Lastly, the study will incorporate lessons from the legal framework in Rwanda and the United Kingdom. These lessons will be focused on identifying the best practices and potential adaptations relevant to the Zambian judicial system.

1.7 DEFINITION OF KEY TERMS

In this research the following mentioned terms and phrases will have the following meaning:

Alternative Dispute Resolution/ADR means any method of resolving a dispute without litigation, promoting dispute resolution as opposed to dispute settlement. There are three forms of ADR which are conciliation, mediation and arbitration.

Citizen[5]**,** means a person born in Zambia who has enjoys the rights and protection of the Zambia.

Felony[6], means an offence which is declared by law to be a felony or if not a misdemeanour, is punishable without proof of previous conviction with death or imprisonment with hard labour for three years or more. It generally means a serious crime punishable by a significant term of imprisonment.

Misdemeanour[7], means any offence which is not a felony or of serious nature.

[5] Article 266 of the Constitution of Zambia No.2 of 2016
[6] Section 4 of the Penal Code Chapter 87 of The Laws of Zambia
[7] Section 4 of the Penal Code Chapter 87 of The Laws of Zambia

Rights and Freedoms[8], means the human rights and fundamental freedoms provided for in the Bill of Rights.

1.8 LITERATURE REVIEW

The Judiciary plays a pivotal role in ensuring that every person is afforded quick and amicable access to justice. However, there exists a growing concern that the access to justice is delayed or not rendered within a reasonable time. This literature review examines the legal framework providing the right to be tried within a reasonable time and the current judicial mechanisms.

William E Gladstone[9] asserts that historical acknowledgments recognize the perspectives of the accused or disputant. For a person seeking justice, the time taken for resolution of their issue is critical to the justice experience of this person and can render their treatment wholly unjust in the circumstances where finalization of a dispute take too long.

J Bentham[10] assets that the justice system should produce correct decisions with minimal delay and expense. Furthermore, every moment beyond what is necessary to achieve a correct decision was detrimental to its achievement. He specifically pointed out that delay could lead to the destruction of evidence and fading of memories. Also, that delay does not only tend to reduce, if not altogether eliminate, the practical value of a judgment, but also reduce the likelihood that the judge would reach the right decision. Building on this **W. Martin**[11] advocates that justice must be libera, free; for nothing is more odious than justice let for sale; because delay is a kind of denial.

Thomas Feltes[12] advocates that **“**there are many reasons for the concern of delay of justice in criminal justice system. Delay influences the effectiveness of the system and especially the effectiveness of the punishment. In addition, delay dilutes the strength of the prosecution because the victims and the witnesses burdened by the duration of the

[8] Article 266 of the Constitution of Zambia No.2 of 2016
[9] https://vuj.vu.edu.au/index.php/vulj/article
[10] Principles of Judicial Procedure
[11] Timeliness in the Justice System: Ideas and Innovations Forum, Australian Center for Justice Innovation, Monash University p.3
[12] Causes For Delay in The Criminal Justice System

proceedings, lose interest, refuse to cooperate or are no longer capable of contributing to the evidence because of the long period between the occurrence of the offence and the court hearing." Furthermore, delay may affect the motivation of members of the penal system. This entails that the longer the proceedings run the lower their motivation in clearing the case and delay increases financial costs on the procedure for both the State and the Respondent. Also due to delay, dangerous respondents if not incarcerated prior trial may be free and commit new crimes. On the other hand, if the respondent has been wrongly incarcerated the right of the offender may be violated if he/she is not granted reasonable time to prove innocence.

He also emphasizes that in accordance with the decision by the African Court on Human and Peoples Rights, "reasonable time" begins to run with the charge and ends with the sentence. Therefore, the reasonableness of the length of proceedings is assessed according to particular circumstances with reference to the complexity of the case, the conduct of the applicants, conduct of authorities etc.

Building on this **Yeh Yeau Kaun**[13] asserts that in relation to determining the timeline of the courts, an example of measurements without qualitative considerations of case characteristics can be seen in the criminal justice setting, where the tendency is to measure overall court delay without acknowledging the vast differences in cases and situations. For example, in criminal trial matters where the accused pleads guilty or the prosecution decides not to proceed with the matter the time taken is generally shorter than where trial is actually held to determine guilt or innocence.

Eirini Patsea[14] raises concerns about the fairness and proportionality of trial of accused persons and their eventual reintegration as constructive members in society. Justice delayed is more than justice denied due to the ripple effects which affect the mental health of the parties involved. A study reveals that accused persons awaiting trial often exhibit psychosomatic symptoms such as anxiety, feeling helpless and pessimism about the future as consequence of the delay. In addition, pre-trial detention subject accused

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[13] Long Term Trends in Trial Case Processing in New South Wales (2004) 82 Crime and Justice Bulletin Contemporary Issues in Crime and Justice

[14] https://www.osce.org/WesterBalkansTrialMonitoring

persons to harsh condition such as limited accommodation which also amplifies this mental toll. Furthermore, high profile cases subject the accused person to biased media coverage which worsen the situation of the accused person by creating social stigmatization. Also, accused persons subject to lengthy pre-trial detention are subject to deterioration in their private lives, such as loss of income, employment, housing and stained family relations.

Anderson Ngulube[15] the access to justice deals with how members of society work through various institutions to deal with legal issues. He further states that the uncomfortable reality of access to criminal justice in Zambia is that the absence of concerted efforts by the State and other players to make access to justice a reality prevents any sort of bridging process from developing that would lessen the justice gap.

Sunday B. Nkonde SC and William Ngwira[16] point out that the Subordinate Court is notorious for the delays of the disposing of cases. The frequency of adjournments is alarming, and this is usually blamed on the defense lawyers. On the contrary what inevitably contributes to delays in the disposal of cases is the lack of disclosure of evidence prior to trial in the Subordinate Court.

Building on that, **Chusa Sichone**[17], **"**President Hakainde Hichilema stated that the Zambian Judiciary should not deny justice to those that seek it by delaying the disposal of cases. He informed the Chief Justice Dr. Mumba Malila that when he was incarcerated for 127 days on a treason charge under the Patriotic Front regime, he had met some suspects who had been behind bars for up to 20 years without their cases being disposed of."

Mary Mutupa[18] advocates that the judiciary play a vital role in promoting ADR in Zambia. The court provides both supportive and supervisory roles. In addition, the courts' role is

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[15] Anderson Ngulube, The Role of The Judiciary In Safeguarding and Ensuring Access To Criminal Justice: The Case Of Zambia

[16] Sunday B Nkonde SC and William Ngwira in SBN Legal Practitioners, Accused's Rights and Access to Prosecution Information in Subordinate Courts in Zambia p.47

[17] Timesnewspaper.com/php

[18] Mary Mutupa, Zambia's Alternative Dispute Resolution Landscape: Exploring Legislation, Policy and Institutions Promoting the Practice

to provide both Constitution and other legislation such as the Arbitration Act and Statutory Instruments in mediation.

This literature review synthesizes these perspectives to provide a critical analysis on the right of an accused person to be tried within a reasonable time in order to ensure that an accused person's access to justice is not delayed and as a resulted denied. The review illustrates how the research makes a contribution to the consideration of alternative methods of dispute resolution in criminal cases to ensure that accused persons are tried within a reasonable time in order to promote the access to justice.

1.9 RESEARCH METHODOLOGY

1.91 RESEARCH APPROACH

This research will utilize the qualitative research approach. The main focus will be to understand the meaning of "reasonable time" then proceed to analyze the feasibility of ADR in the criminal justice system. According to Creswell[19] qualitative approach involves the use of exploration of phenomena and descriptions focusing on words, concepts, ideas or images to measure differences between variables and the relationship between them.

1.92 RESEARCH DESIGN

The research design adopted for this study is phenomenological design. This design has been favoured because data for this study will involve asking those with lived experiences to interpret them in order to grasp the meaning of those experiences.

1.93 RESEARCH TYPE

This research will involve drawing lessons from precedent set in the African Court on Human and Peoples Rights. On the other hand, will draw lessons from Rwanda and the United Kingdom in order to analyze the feasibility of ADR in the Zambian judicial system.

1.94 STUDY POPULATION

[19] Creswell Research and Design: Qualitative, Quantitative and Mixed Methods Approaches

The population of this research will include that of Zambia, which is 21, 779,409 according to worldometer's elaboration.[20]

1.95 SAMPLE SIZE

The sample size will include 10 prisoners (criminal offenders) that have their cases unjustifiably or unreasonably delayed beyond a reasonable time. While the other 20 people will include victims of delayed justice, lawyers, judges and magistrates that have witnessed the negative effects of delayed justice on the penal system.

This sample has been predetermined by the schools' research unit therefore it does not reflect the main way of calculating a research study sample. However, it is a sufficient representation considering that secondary data will be utilized as well.

1.96 SAMPLE TECHNIQUE

Non-probability sampling technique has been favoured for this study because sampling will require giving due consideration of those people with more conducive attributes required. Therefore, purposive sampling techniques will be utilized when selecting the people to take part in this study. This implies that people will be selected based on their position or designation in an organization, community or institution.

1.97 DATA COLLECTION

Primary data for this study will be collected through qualitative interviews with research subjects. The exercise will require the use of an interview guide in the form of pre-determined set of questions. Furthermore, secondary data collected from text books, journal articles, organizational reports and records, national legislation such as the Constitution of Zambia, International agreements such as the African Charter on Human and Peoples Rights and precedence from the African Court on Human and Peoples Rights.

[20] Worldometers.info

1.98 DATA ANALYSIS

This study will utilize interpretative phenomenological analysis (IPA). IPA is designed to help in understanding the personal experiences of research subjects concerning major life events or their involvement in situation. Therefore, this form of analysis will enable this study to analysis people's personal experiences and how they interpret them. As a result, content analysis will be utilized to draw deeper meanings by analyzing certain words used, how they are used and how many times they are used.

1.99 ETHICAL CONSIDRATION

For this study permission will be sought from the UNILUS Research Ethics Committee through the School of Laws research unit. In addition, permission will be sought from different organizations, institutions or communities to be studied. Therefore, each research subject will be required to consent to the participation in this study by signing a research consent form that will be provided to them.

CHAPTER 2

Examining The Historical Development of The Right to be Tried Within a Reasonable Time: A Critical Analysis of the Rationale and Scope in The African Charter on Human and Peoples Rights and the Constitution of Zambia Act No. 2 of 2016

2.0 Introduction

This chapter will examine the foundational rationale for the development of the right to be tried within a reasonable time in the African Charter on Human and Peoples Rights. It will delve into the historical and philosophical underpinnings of this right, exploring its importance in safeguarding individual liberties and ensuring the integrity of the criminal justice system. Furthermore, this chapter will analyze the rationale of the inclusion of the right to be tried within a reasonable time in the Constitution of Zambia Act No. 2 of 2016 and other supporting national legislation.

2.1 Historical Context and Rationale of Legislation

For nearly two decades after its creation in May 1963, the Organization of African Unity (OAU) focused almost exclusively on decolonizing the continent and ending apartheid. Despite the OAU Carter mentioning the Universal Declaration on Human Rights, the organization did not prioritize the promotion and protection of human rights within the member states. Instead, it focused on political and economic independence, non-discrimination, liberation from colonialism and apartheid, often at the cost of individual liberty. The media church and NGOs, exposed serious human right abuses across the continent. These groups also accused OAU of abandoning its core mission of restoring dignity to the African people. Simultaneously, these same groups advocated for the creation of human rights protection mechanism for Africa. This movement gained momentum and during the summit in Monrovia, the OAU Assembly of Heads of State and Government adopted a resolution that required member states to follow international obligations. The resolution called for the creation of an expert committee to draft the

African Charter on Human and Peoples Rights, which would establish ways to promote and protect the rights embodied in the Charter.[21]

Zambia (formerly known as Northern Rhodesia) gained independence from the British Colony in 1964. This followed the development of a new Constitution, which was later replaced in 1991 Constitution, which introduced inter alia the Bill of Rights. The Bill of Rights refer to rights of citizens fundamental to democracy and constitutionalism. The Bill of Rights are meant to protect Zambian citizens and ensure they live a dignified and meaningful life. These rights are the basis of Zambia's social, political, legal, economic and cultural policies and State action.

2.2 What are Human Rights?

Human beings are rational creatures, and by virtue of their existence as humans are vested with certain fundamental and inalienable rights known as human rights. These are rights which no one can deprived of without a grave affront to justice.[22]

2.3 What are the Characteristics of Human Rights?

Human Rights have certain characteristics that set them apart from other reference to 'right'. These characteristics are that they are inherent, inalienable, universal and interdependent. When human rights are referred to as inherent this simply means they are the birthright of all human begins. Therefore, the law does not create the rights and freedoms, instead, the law recognizes the existence of human rights and facilitates their enforcement through the creation of procedures and institutions. Furthermore, human rights are referred to as inalienable in so far as no one can be deprived of his or her human rights, except under clearly defined legal circumstances. Human rights are universal as they are based on every human beings dignity irrespective of race, sex, color, religion, ethnicity, political or other social opinion. The Vienna Declaration and Programme of Action (1993) section 1 para 1 states that "the World Conference on human rights reaffirms the solemn commitment of all states to fulfill their obligations to promote universal respect for, and observance and protection, of all human rights and fundamental

[21] https://achpr.au.int/en/about/history

[22] Maurice Cranston, The Theory and Practice of Human Rights p.7

freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law.” Also, the African Charter on Human and Peoples Rights, whose adoption took into account the African people’s virtues of their historical tradition and values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights, also recognizes that fundamental human rights stem from the attributes of human beings, which justifies their national and international protection. In addition, to being universal human rights are interdependent. This means that protection of human rights depends on the effective promotion and protection of other rights. For instance, the right to life depends on the right to food, right to health and right to clean and healthy environment. The Vienna Declaration and Programme of Action (1993) under section 1 para 5 states that “all human rights are universal, indivisible and interdependent and interrelated. Thus, the international community must treat human beings globally in a fair and equal manner, on the same footing and with the same emphasis. Therefore, to ensure a minimum in one or more of the rights to avoid or prevent degradation human rights must be indispensable. There are no human rights which are more important than others. All rights and freedoms deserve equal respect, protection and fulfillment. Human rights are further divided into categories or groups. This research mainly seeks to examine procedural rights.

2.4 Procedural Rights

Procedural rights are fundamental to the integrity and fairness of the criminal justice system, ensuring that suspects and the accused are treated justly.[23] States are under a duty of political morality to provide people with fair procedures for settling disputes about the application of the law. However, despite the comprehensive legal framework (EU legislation and Banjul Charter) significant concerns have emerged on the inconsistent application of these rights across member states, especially during the early stage of the criminal process, when suspects are most vulnerable. The lax adherence of procedural rights can extend to the poor protection of substantive rights. A study conducted by the European Union Agency for Fundamental Rights (FRA) highlighted some of the challenges in pre-trial criminal proceedings. The common issues identified include delays

[23] https://ballotpedia.org/Procedural_rights:_A_timeline

in access to legal aid, difficulty in comprehending pre-trial rights and insufficient awareness among law enforcement and legal professionals on procedural safeguards. The study further highlights that vulnerable groups such as non-nationals and individuals from lower social economic backgrounds are affected due to language barriers and other obstacles which hinder their access to justice. In most situations, due to the failure to understand their rights breaches may be made in the pre-trial phase leading wrongful conviction and human rights abuses.[24] Building on this, individuals' perception of procedurally just encounters are based on the satisfaction of four features. The first feature is whether they were treated with respect and dignity during the pre-trial phase and going on. Secondly, whether they were given voice to express their concerns. The third feature is whether the decision-maker was unbiased and guided by transparent reasoning. Lastly, whether the decision maker conveyed trustworthy motives about those impacted by their decisions.[25]

2.5 Scope of Protection and Promotion

As stated above, human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion are the first responsibility of governments. This responsibility highlights governments obligation to protect individuals against the abuse of non-state actors, obligation to respect or refrain from interfering in individual rights and obligation to fulfill by taking positive action to ensure that human rights can be exercised and realized. Therefore, even an accused person has rights which the State has an obligation to respect, protect and fulfill. Part III of the Constitution Act No.2 of 2016 commonly referred to as the Bill of Rights, guarantees the promotion and protection of fundamental human rights and freedoms of individuals regardless of race, place of origin, political opinion, belief, sex or marital status. Pursuant Article 18 (1) the Provision to secure protection of law: if any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. In addition, section 33 (1) of the Criminal Procedure Code[26] (CPC) provides that when a person is arrested without a

[24] https://prisonersystems.eu/strengthening-procedural-right-across-the-eu-in-early-criminal-proceedings/
[25] https://law.yale.edu/justice-collaboratory/procedural-justice
[26] Chapter 88 of The Laws of Zambia

warrant of arrest, the officer in charge of a police station must ensure that the case is investigated and the person is taken before a magistrate court having territorial jurisdiction with 24 to 48 hours, if circumstance permit. However, if the offence is of a serious nature and it does not appear practicable to take suspect before a competent court with the time stated above, the officer in charge is expected to ensure that the case is investigated, at the same time the officer in charge is vested with discretional power to release the accused person on bond; if the offence is bailable in his own recognizance or otherwise with or without sureties to appear before court as provided under section 123 CPC.

In the matter of **Benedicto Daniel Mallya v United Republic of Tanzania**[27] the court noted that the right to be tried within a reasonable time is one of the cardinal principles of the right to a fair trial and unduly prolonging a case. Furthermore, in the matter of **Wilfred Onyango & 9 Others v United Republic of Tanzania**[28] the court held "the deterrence of criminal justice will only be effective if society sees that perpetrators are tried, and if found guilty sentenced within a reasonable time, while the innocent suspects, undeniably have a huge interest in the speedy determination of innocence."

The right to be tried within a reasonable time covers all stages of judicial proceedings, from the initial trial to the appellate court. Additionally, in determining the reasonableness of time within which a trial must be concluded, the court follows a similar approach as the Inter- American Court of Human Rights and the European Court on Human Rights. This approach considers three elements which should be taken into account in order to assess the reasonableness of time to conclude judicial proceedings. These elements are (a) complexity of the matter (b) procedural activities carried out by interested parties (c) the conduct of the judicial authorities.[29]

Also, in determining the scope of protection and promotion of the right to be tried within a reasonable time, the meaning of unduly delay is considered. According to Blacks Law

[27] Benedicto Daniel Mallya v United Republic of Tanzania (Application No.018/2015) [2019] AFCHPR 41 (26 September 2019)
[28] Wilfred Onyango & 9 Others v United Republic of Tanzania (Application 006/2013)
[29] Benedicto Daniel Mallya v United Republic of Tanzania (Application No.018/2015) [2019] AFCHPR 41 (26 September 2019)

Dictionary[30], unduly means excessively or unjustifiably. Therefore, if there is a justifiable reason for prolonging a case it cannot be considered undue delay. This standpoint is further exemplified in **Zimbabwean Lawyers for Human Rights and Institute for Human Rights and Development in Africa v Zimbabwe[31]** the African Commission noted there has been no development of a standard determining what is unduly or prolonged, but it can be guided by circumstances of each case and the common law doctrine of "reasonable man test." Although, rules of criminal procedure do not quantify a reasonable time, in international human rights jurisprudence a period of six (6) months is established as reasonable time.

2.6 Identified Gaps and Deficiencies

The effectiveness of the Banjul Charter and the Constitution of Zambia Act No.2 0f 2016 in fully safeguarding the rights of an accused person to be tried within a reasonable time is seriously violated by a number of gaps and deficiencies. On one hand, the persistent slowness of the justice system remains a long-standing issue that undermines its efficiency and credibility. As a result, to challenge this it is often recommended that legal proceedings be conducted within a reasonable timeframe. According to Guinchard and Ferrand 2004[32], the principle that should be implemented in the procedural rules is the need for expeditious trials. On the other hand, some scholars such as Montesquieu[33], argue that accelerated justice risks being rushed and poorly executed. He further argues that trial is neither simple nor unilateral but rather complex and multifaceted. As a result, the burden of justice are its costs, its duration and potential risks. In summary, the dangers of accelerated justice are overly rapid, hasty and flawed justice. Given these divergent perspectives on trial, between a rapid or accelerated investigation on one hand and one conducted slowly and cautiously, a gap is created in the guarantee of the right to be reasonable time.

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[30] Henry Campbell, Blacks Law Dictionary

[31] Zimbabwean Lawyers for Human Rights and Institute for Human Rights and Development in Africa v Zimbabwe (Communication No.293/04) [2009] ACHPR 98 (3 April 2009)

[32] General Principles of International Law

[33] The Spirit of the Laws

In addition, the concept of reasonable time is inherently imprecise and difficult to grasp. The aforesaid is due to the evidence that the term "reasonable time" has no precise definition in any national legislation or international instrument. However, its scope and assessment criteria have been clarified primarily through international jurisprudence. The reasonableness of the length of proceedings is evaluated based on the specific circumstances of each case. The four key criteria are as follows:

a) The conduct of judicial and State authorities
b) The conduct of the parties to the proceedings
c) The complexity of the case
d) What is at stake for the person concerned

Therefore, the key challenges contributing to the slow and often unfair administration of justice include in many African countries include:

a) The difficulty of balancing procedural speed with the time required for thorough investigation and proper defense.
b) The absence of clear criteria for assessing the reasonable duration of judicial proceedings.
c) A lack of urgency among the judicial and State authority as well as legal practitioners.

This leads to the main question of how the judicial system can reconcile the two differing interpretations and perspectives of judicial time? As Charles de Graulle once said, "What is written, even on parchment, is only as good as its application"[34] In other words, what ultimately matters is not what is merely written, but how judges apply it in practice.

2.7 Survey Findings and Analysis

The main finding that emanated from a comprehensive survey conducted to assess accused persons awareness and understanding of their right to be tried within a reasonable time provided under article 18 (1) of the Constitution of Zambia Act No. 2 of

[34] https://www.researchgate.net/publication/_The_Right_to_a_Fair_Trial_Within_a_Reasonable_Time_Under_Burundian_Law

2016 were very few. In relation to this ignorance of safeguards it was found that a high proportion of accused persons did not know of the existence of this right enshrined in the Constitution. In addition, it was found that many accused persons are unaware of the governments obligation to respect, promote and protect this right. Also, those that were aware of the existence of the right were inadequately informed of the importance and safeguards of the said right during the pre-trial phase in criminal matters. This lack of awareness prevents accused persons from actively monitoring their case, challenging undue delays or seeking remedies for the breach of their rights. In other words, this constitutes a serious problem, as ignorance of the law is bound to undermine accused persons right to be tried within a reasonable time.

The questionnaire also developed the impact of unreasonable delay in criminal cases which include:

a. **Concerns related to prison conditions**: Most of the incarcerated offenders narrated that the environment conditions in prison cells are “inhuman”. They gave description of their living conditions such as, lack of proper meals, poor sanitary environment, inadequate health care and overcrowding of prison cells. These conditions violate fundamental rights to food, a healthy environment and freedom from torture, inhuman or degrading treatment which the Constitution Act No. 2 of 2016 seeks to guard against. These deficiencies are not only perilous to the physical and mental well-being of accused persons but also relate to the common dissatisfaction of the public on the failure of the State to respect, promote and protect human rights.
b. **Loss of Evidence**: Other incarcerated offenders narrated that the lengthy pre-trial periods often lead to the loss of evidence, fading memories, difficulty in locating witnesses and immense pressure on the accused to plead guilty, even if innocent. This directly undermines the fairness of the subsequent trial.
c. **Punishment vs Confinement**: Accused persons also narrated that the pre-trial detention (which is aimed at securing the attendance at trial) resulted in a form of cruel and unusual punishment.

d. **Erosion of Public Trust**: Majority of accused persons detained have the opinion that the failure to remedy such a palpable and human right deficiencies contribute to the common dissatisfaction of the public. They have the opinion that this continuous failure erodes public trust in the States commitment to the rule of law and its ability to protect, promote and respect human rights for all citizens, including those in detention.

2.8 Conclusion

The key observation is that the African Charter on Human and Peoples Rights has a critical role in the promotion and protection of human rights, which includes those of an accused person. The historical and philosophical underpinnings highlight that the rationale of the development of the Charter is to ensure that the rights of all human beings are safeguarded. The creation of institutions such as the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights exercise their power and jurisdiction in matters relating to human right violations within the region. However, the persistent challenge is the practical application of procedural rights. The inconsistent adherence of procedural rights, particularly in the early stages of criminal proceedings often leads to delay in the access to justice, which has negative effects on the accused person and the general publics' trust in the judicial system. These issues underscore the importance of safeguarding the right to be tried within a reasonable time to prevent human right abuses. This chapter also identified several challenges contributing to slow access to justice, including two schools of thought. On one hand, that matter must undergo a thorough process of investigation to ensure that justice is not flawed, and on the other hand, that justice should be accelerated to ensure quick access to justice and the overall protection of the right to be tried within a reasonable time. Other challenges identified include, the lack of definition of the term "reasonable time" and the factors that contribute to lengthy delay of justice i.e. the complexity of the matter. Also, a comprehensive survey of accused persons in Zambia revealed a critical gap in awareness and understanding of this fundamental right. The lack of knowledge constitutes a serious problem, ignorance of the law undermines its protective function. Other findings brought to light the concerning conditions in correctional facilities that accused persons endure due to failure of the protection of the right to be tried within a reasonable time.

In summary, the right to be tried within a reasonable time is not merely a legal technicality but a core principle in a just and equitable society. Its inclusion in both international and domestic legal frameworks reflect the commitment to protecting individual liberties and upholding the rule of law.

CHAPTER 3

The Evolving Jurisprudence of the African Court on the Right to a Trial within a Reasonable Time

3.0 Introduction

Building on the previous chapter this chapter will strive to provide an in-depth examination of the African Court case law to understand the interpretation and the application of the right to be tried within a reasonable time. This chapter will critically examine the definition the term "reasonable time" based on a case-to-case approach, both at national and regional level. In addition, this chapter will go further to examine to what extent it considers delay to be on justifiable grounds. Furthermore, this chapter will compare the African Courts approach to that of other human rights bodies such as the European Court on Human Rights. Lastly, this chapter will reiterate the approach adopted by the Courts and its impact of human beings undergoing trial proceedings in criminal cases.

3.1 Defining "Reasonable Time"

The starting point is when the period of reasonable time to be tried commences. The nature of criminal proceedings in Zambia are commenced in two ways; (i) by complaint before a magistrate followed by the issue of summons or a warrant (ii) by arrest without a warrant. Pursuant Section 18(1) of the Criminal Procedure Code[35] arrest can be simply defined as placing a person in custody or under restraint. The main purpose of arrest in criminal proceedings restrain the accused person from committing an offence or general protection and safety of the public. In **Holgate Mohammed v Duke**[36] it was established that arrest is a continuing act which begins with the arrester taking custody and it continues until the accused person is released from custody or having been brought before a magistrate is remanded in custody by the magistrate's judicial act. Furthermore, in **Silungwe v The People**[37] a person can be arrested on suspicion but not charged, thus arrest on suspicion will be followed by investigation before they can be charged. Following

[35] Chapter 88 of the Laws of Zambia
[36] Holgate Mohammed v Duke [1984] WLR
[37] Silungwe v The People (1981) Z.R 286 (S.C)

these events the supreme law of the land the Constitution of Zambia[38] pursuant section 18(1) and The African Charter on Human and Peoples Rights pursuant article 7(1) (d) provide for the right to be tried within a reasonable time by an independent and impartial court established by law. However, the main challenge has been determining what constitutes a reasonable time in the trial process.

The concept "reasonable time" has had long difficulty in finding its definition. As a result, it is seen that this term can vary on a case-to-case basis or jurisdiction of the cases, but generally it refers to the length of time between the laying of criminal charges and the commencement of the trial. In **Re Mlambo**[39] the court the inquiry into whether there has been a violation of an accused person right to be tried within a reasonable time must begin prior to the commencement of the trial. Building on this in **George Njoroge Chege v Director of Public Prosecution**[40] the court stated that the relevant factors in determining if there has been unreasonable delay in an accused trial must be considered within the context of each case. Based on the two aforementioned cases it is evident that the courts do not aim at defining the term reasonable time but to describe factors that are used to determine it. There are a number of factors that the African Court take into consideration when determining if there has been unreasonable delay. These factors generally include:

3.2 Length of Delay

The critical factor is the time period between laying of charges and the start of the trial process. Generally, delay that exceeds what is considered typical or necessary for the preparation and conduct of the case may be deemed as unreasonable. The main question that arises is what is "typical?" This generally depends on a particular jurisdiction, for example the Ghanaian jurisdiction[41] provides that following the arrest of a suspect, he/she must be brought before court within a reasonable time to take plea, and if this is not done the police are bound by law to release the suspect on bail. In addition, in the event that the police choose not to grant bail but decide to bring the suspect before the court, the

[38] Act No.2 of 2016
[39] 1992 (4) SA 144 (ZS)
[40] [2012] EKLR Criminal case 28 of 2011
[41]

presiding judge can either grant the suspect bail or place the suspect on remand. In **Wilfred Onyango & 9 Others v United Republic of Tanzania**[42] the court stated although their rules of criminal procedure do not quantify a "reasonable time", in International Human Rights Jurisprudence a period of six (6) months is established as reasonable time to be tried. Therefore, based on the evidence that the applicants' case was commenced thirty (30) months and fourteen (14) days after their arrest that this constituted unreasonable delay. As a result, the said period the applicants were detained for without the commencement of their trial was a violation of the right to be tried within a reasonable time pursuant article 7 (1) (d) of the African Charter on Human and Peoples Rights.

3.3 The conduct of Judicial and State Authorities

The Court will examine factors that contribute to the delay of trial within a reasonable time. In some cases, delay is caused by factors outside the control of the prosecution. On the other hand, delay is caused by factors caused by the conduct of Judicial and State Authorities. Delays caused by Judicial and State Authorities can be as a result of negligence, incompetence and in the extreme deliberate tactics can be used to unreasonably delay trial proceedings. In **Benedicto Daniel Mallya v United Republic of Tanzania**[43] the applicant alleged that on 19th May 2000, he filed a Notice of Appeal to the High Court of Tanzania challenging his conviction and sentence. He further alleged that since filing the Notice of Appeal, he was not provided with certified true copies of the record of proceeding and judgment to enable him to file his appeal at the High Court despite several letters he sent to the District Registrar of the High Court of Tanzania. The Court unanimously found that the Respondent State violated the Applicants right to appeal pursuant article 7 (1) (a) and (b) of the African Charter by failing to provide him with certified true copies of the record of proceedings and the judgment. The Court went further to state that the violation of this right to appeal is interlinked with the overall right of an accused person to be tried within a reasonable time. The aforementioned case highlights instances where delay can be caused by negligence, incompetence and

[42] Wilfred Onyango & 9 Others v United Republic of Tanzania (Application 006/2013)
[43] Benedicto Daniel Mallya v United Republic of Tanzania (Application No.018/2015) [2019] AFCHPR 41 (26 September 2019)

deliberate tactics by State Authorities. Also, in **Wilfred Onyango**[44] the Court stated that based of the evidence that the case had over 55 adjournments and only one witness testified there was lack of diligence on the part of the Judicial and State Authorities.

3.4 The complexity of the case

The main factor in determining unreasonable delay is the complexity of case, which generally varies from case to case. This factor simply entails that more complex cases often require additional time for the preparation and may have more extensive pre-trial procedures. The complexity and size of a cases can be due to several other factors such as the nature of the facts established, the number of accused persons or witnesses, international elements i.e. extradition and joinder of the case. In **Mugenzi and Mugiraneza**[45] the Trial Chambers stated that the size and complexity of a case can determine the pace of the trial. However, the fact that the prosecutions decided to jointly charge four senior government officials was not sufficient to justify the prolonged case. Also, the contention that failed investigations resulted in unreasonable delay was dismissed by the tribunal. In contrast, in **Gatete Jean Baptiste**[46] the Trial Chambers observed that the present case could not be compared to a multi-accused trial, which run for years and involve hundreds of trial days, hundred of witnesses and over a thousand exhibits. However, the Trial Chamber found that the case was complex based on the number of counts, allegations and nature of the crime. Therefore, though a complex case may justify longer proceedings, even very complex cases unreasonable delay may still occur.

3.5 Prejudice to the accused interests

The court will assess whether the delay has caused prejudice to the accused's ability to mount a proper defense. Firstly, the loss of evidence in relation to witnesses because memories fade over time making it difficult for them to accurately recall key details necessary in the case. Secondly, the inability to locate witnesses due to passage of time it can be difficult to secure witnesses attendance for the trial. Thirdly, diminished credibility

[44] Wilfred Onyango & 9 Others v United Republic of Tanzania (Application 006/2013)
[45] ICTR-99-50-A
[46] ICTR-00-61-A

of both prosecution and defense witnesses. In other words, the evidence becomes less reliable or the accused's ability to gather evidence in their defense is significantly hindered, the delay may be deemed unreasonable. In addition, the prejudice to liberty of the accused person may be affected. An accused person is subject to a degree of restriction on their liberty. As a result, the longer the proceeding the more severe the impairment becomes. In other words, the accused's freedom of movement is limited and as a result will be unable to work. In **Wilfred Onyango**[47] the Applicants sought reparation for material loss which the alleged they ensued from almost six (6) years of detention. The Respondent State challenged the claim as baseless on the ground that the Applicants were lawfully prosecuted and imprisoned. The Court held that the material damage was not justified. However, the Applicants were entitled to some compensation based on the precedent set in **Lohe Issa Konate v Burkina Faso**[48]. This loss as the court held is to be remedied on a case-by-case basis and quantified based on sufficient evidence. Consequently, the court granted discretionary amount of US Dollars Two Thousand ($2000) to one acquitted Applicant, David Mburu for loss of income and US Dollars Two Hundred and Fifty ($250) to another acquitted applicant Peter Mburu, for medical expenses. Also, in **Attorney General v Oatile**[49] The appellant was **arrested for murder** on February 13, 1995. He remained in **custody** until August 13, 1998, when the charge was conditionally withdrawn. The reason for the withdrawal was that the single eyewitness was only seven years old at the time of the incident and was considered too young to appreciate the oath and testify. The appellant was recharged in 2004 and subsequently **released on bail**. He was brought to **t**rial in 2007. While he **admitted** killing the deceased, he claimed to have acted in self-defense. On August 29, 2007, he was acquitted. He was awarded constitutional damages of P100 000 in the High Court for failure to be tried within a reasonable period of time. The Attorney-General appealed against that order on the grounds, first, that the delay was not unreasonable as it had been properly explained; second, that the concept of 'redress' as contained in s 18(1) of the Constitution of Botswana did not include a claim for constitutional damages and, third,

[47] Wilfred Onyango & 9 Others v United Republic of Tanzania (Application 006/2013)
[48] (Application No. 004/2013) [2013] AFCHPR 39
[49] 2011 2 BLR 209 CA

that the damages awarded were excessive on the facts. The court held that where the respondent was acquitted after an unreasonable delay and no remedy was available, an award of constitutional damages was the only practical or appropriate way of vindicating his rights. The court also found that the four years from 2004 to 2007, during which the respondent was unlawfully denied his right to be tried within a reasonable period of time, could be taken into account in assessing the quantum of the court's award. Lastly, that the respondent was entitled to an enhanced award because of the presence of an aggravating feature, namely, the gross insensitivity of the Director of Public Prosecutions in failing to recharge him until 2004 when the eyewitness turned 12 in 2000, from which date the witness would have been considered capable of testifying in court.

3.6 Comparison and Influence Between the African Court and Other the European Court

To begin with, the African Court and the European Court on Human Rights emanate from different histories and have different issues and problems. The legal basis of the right to be tried within a reasonable time in the European jurisdiction is derived from Article 6 (1) which states, "In the determination of civil rights and obligations or any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law." This right guarantees the protection of a defendant who is not guilty to clear his name without excessive delay. In addition, it protects a defendant from undergoing punishment of protracted delay. In **Wemhoff v Federal Republic of Germany**[50] where the applicant was arrested in 1961 on suspicion of breach of trust contrary to section 266 of the German Criminal Code. The general fear was that if the applicant was released he would abscond or likely suppress evidence and as a resulted remained in detention. The investigation relating to the suspicion of breach of trust were only concluded in 1965, which resulted in the applicant filing an application for the prolonged trial. The court held that the prolonged trial of the applicant was a violation of article 6(1) of the ECHR. The Court was of the opinion that the precise aim of the cited provision in criminal matters is to ensure that the accused person does not have to lie under the charge for too long and that the charge is

[50] (1968) 1 E.H.R.R

determined. Also, in **Stogmuller v Austria**[51] Stogmuller was arrested on 3rd March 1958 on the suspicion of having committed an offence under the Usury Act. The applicant was released on prole in April 1958, but a further allegation was made against him in relation to fraud. As a result, preliminary investigations were commenced in 1959 to investigate thirty to thirty-one cases of aggravated fraudulent conversion. The court ordered the rearrest of the applicant in August 1958, following his unauthorized travel outside the jurisdiction. The Court stated that article 5(3) which general provides that any person arrested on suspicion of committing an offence must be brought promptly before a judge or judicial authority and has the right to be tried within a reasonable time. The Courts interpretation of this article is that it clearly implies that the persistence of suspicion does not suffice to justify, after a certain lapse of time, the prolongation of the detention. In other words, detention must not exceed a reasonable time. The court did admit that it is not feasible to translate the period of reasonable time into fixed days, weeks, months, years or into various periods depending on the seriousness of the offence. Therefore, the court takes into account the facts by the decisions of the said authorities and non-futed facts advanced by the person concerned. On the other hand, there is no confusion between the stipulation made in article 5(3) and the one contained article 6(1). The latter applies to all parties to court proceedings and its aim is to protect them from excessive procedural delays in criminal matters. Also, the latter is designed to avoid that a person charged should remain too long in a state of uncertainty about his life. In contrast, the former applies to situations where a person has charged and detained. It implies that there must be diligence in the conduct of the prosecution of the case concerning such a person. The Court also stated that even if the duration of the preliminary investigation is not open to criticism, that of detention must of exceed a reasonable time. In relation to the prolonged preliminary investigations the court will consider facts including the number of Judges or whether the system of assigning cases makes it possible to avoid prolongment and dispose cases allocated to them at a satisfactory rate. Also, in **Attorney Generals Reference**[52] in April 1998 there was a disturbance at an English prison. Proceedings were brought against several inmates and when the matter finally reached

[51] (1969) 1 E.H.R.R
[52] (N0.2 of 2001) [2003] UKHL

court in January 2001, the judge stayed proceedings on ground that there has been a violation of the reasonable time requirement provided under article 6(1). The Attorney General referred the matter to the Court of Appeal, which led that stay would have been imposed if a fair trial were not possible; such cases apart, however, a stay would not normally be appropriate. On the present application the issue to be determined was whether criminal proceedings may be stayed on the ground that there has been a violation of the reasonable time requirement in circumstances where the accused cannot demonstrate any prejudice arising from the delay. In other words, does the breach lie in the holding of a trial within a reasonable time. Lord Bingham observed with reference to **H.M Advocate v R**[53] that in continuing to prosecute criminal charges after the lapse of a reasonable time, the Lord Advocate would act incompatibly with article 6(1). Further reference can be made to the case of **Van de Kerkhof v Belgium**[54] which involved the excessive length of proceedings pending before a court in the Brussels judicial district. The applicant had brought the case against the vendors of a flat and the intermediary real estate agency. The proceedings, which had lasted seven years and eight months for just two levels of jurisdiction, were still pending before the French-Language Brussels Court of First Instance. The Court held that the applicant's case had not been heard within a reasonable time. It emphasized that the problems with excessive length of proceedings in the Brussels judicial district were structural in nature. The Court, invoking the principle of subsidiarity where national courts are primarily responsible for securing Convention rights found that this system could not function properly if domestic courts failed to administer justice promptly. Consequently, the Court held that the Belgian State must take the necessary measures to guarantee the right to a hearing within a reasonable time in that judicial district. Belgium was ordered to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

[53] [2002] UKPC D3, 2
[54] (Application No.13630/19) [2023] ECHR

3.8 Conclusion

The African Court on Human and Peoples Rights, much like its counterpart the European Court on Human Rights has not developed a rigid definition of the term “reasonable time” in criminal proceedings. In defining this key term, the Courts have relied on a case-to-case analysis which demonstrates the primary factors considered by the court, which include the length of the delay, with the periods exceeding six months is often deemed as unreasonable. In addition, the conduct of the judicial and state authorities is also a critical factor, as delays caused by negligence, incompetence or deliberate tactics can constitute a violation of an accused person right. Also, the court considers complexity of the case, recognizing that more complex cases may require more time, but long delay is not automatically justified. Lastly, the court considers the conduct of judicial and State authorities and as a result the prejudice the accused may suffer. The prejudice suffered can include loss of evidence due to faded memories, inability to locate witnesses or limitations on their liberty. Although monetary compensation for material loss id not justified, the court may grant discretionary amounts to compensate for demonstrable damages such as the loss of income or medical expenses.

In summary, by focusing on these factors the African Courts approach underscores the importance of a justice system that is both thorough and timely. It protects the accused from the punishment of protracted delay and ensures that they do not remain in a state of uncertainty for too long. The analysis of these precedents confirms that while the right to be tried within a reasonable time is a fundamental principle, its application remains a nuanced process guided by unique circumstances of each case.

CHAPTER 4

Examining the Use of Alternative Dispute Resolution in Criminal Cases: A Comparative analysis the Judicial Systems of United Kingdom and Rwanda

4.0 Introduction

Alternative Dispute Resolution (ADR) is typically associated with civil cases but it can also play a role in criminal litigation involving less serious offences, albeit to a lesser extent due to unique nature of criminal cases and public interest involved. It must be noted that ADR in criminal cases must be approached cautiously considering factors such as the seriousness of the offence, public safety and the right of victims. Where ADR is implemented in criminal litigation must be a balance between justice, rehabilitation and accountability. This chapter aims to discuss the best practices adopted by the United Kingdom legal system and the Rwanda legal system in dealing with criminal cases through ADR. This chapter will also list and discuss the advantages and disadvantages of ADR in criminal cases, in light of cases involving misdemeanors and felonies. This chapter will conclude with an oversight of the feasibility of the mentioned best practices in the Zambian legal system.

4.1 ADR Methods that can be used in Criminal Litigation in the United Kingdom

The first method that can be used in criminal cases is negotiation. Just like in civil cases negotiation is a fundamental skill in criminal law. It entails that the parties to the dispute engage in discussions to reach a mutually acceptable agreement. Negotiation can take place at various stages of the criminal justice process, such as during plea-bargaining or pre-trial settlement discussions. Plea-bargaining involves negotiation between the prosecution and the defense where the defendant agrees to plead guilty to a lesser charge or receive a reduced sentence in exchange for avoiding trial. Effective negotiation skills can help criminal law practitioners advocate for their client's interest and potentially lead to favorable outcomes.[55] In addition, this form of ADR helps expedite cases, reduce costs and reduce court congestion.

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[55] Smith, J. (1970) "Plea Bargaining as ADR in Criminal Cases: Efficiency and Considerations" Journal of Criminal Law, 30(3), 123-140

The second method used is restorative justice programs. This approach focuses on repairing harm caused by the offense and involving the victim's offenders and the community in the resolution process. It must be noted that this approach is commonly used in recent traumatic events with the goal of truth seeking, reparation and justice. While not prevalent in all jurisdictions, restorative justice programs can be used for certain types of criminal cases to promote accountability, rehabilitation and reconciliation. Similar to this is victim center dialogue which allows victims and offenders to engage in facilitated conversation to address the harm caused and work toward resolution.[56] This process can be used in certain criminal cases to promote understanding and healing.

Diversion Programs is another method that is used in criminal litigation. These programs include deferred prosecution, allow certain offenders to avoid formal prosecution by completing specific requirements, such as counseling, community service or restitution. For example, minor offense such as public urination in the UK legal system are punishable by a fine or community service. The purpose behind such programs is not to let the offender continue to break the law without strict sanctions rather to rehabilitate the offender while keeping them out of the traditional criminal justice system.[57]

The third method is through the establishment of Community Courts.[58] In some jurisdictions community courts have been established where low-level-offenders are referred to the non-traditional sentencing options, often involving community service, counseling and restitution. These courts focus on addressing the underlying causes of offending behavior.

Similarly, the establishment of Drug Courts and Mental health courts. These types of courts specifically focus on underlying issues of substance abuse or mental health disorders that may contribute to criminal behavior. These courts provide treatment and support service as an alternative to incarceration.[59]

[56] Johnson, M (2012) "Restorative Justice in Criminal Litigation: Bridging Victims and Offenders." Law and Society Review, 15(2), 201-220

[57] https://document/london-metropolitan-university/public-law/05-adr-in-criminal-litigation

[58] Ibid

[59] Ibid

Another method recently adopted is through arbitration via arbitration tribunals. In certain cases, especially in white-collar crime or financial offenses, arbitration can be used as an alternative to a criminal trial. Arbitration can lead to restitution and financial penalties rather than incarceration.[60]

The United Kingdom legal system has also relied in mediation specifically in Juvenile cases. Mediation can be used in juvenile justice systems to resolve disputes between young offenders and their victims. It provides offenders an opportunity to take responsibility, make amends and avoid a formal adjudication process.[61]

4.2 The Application of ADR in the Rwanda Criminal Justice System

In Rwanda, there is a state recognized ADR mechanism which is known as the Abunzi.[62] Their aim is to decongest the traditional justice system and improve access to justice for the citizens of Rwanda. The term “Abunzi” directly translates to “those who reconcile” and refer to about 35,000 mediators who are selected by the state to mediate over both criminal and civil disputes whose value is below 3 million Rwandese Francs to go through the Abunzi mediators before getting to the court system.

This system seeks to bring justice to the people who cannot afford to participate in litigation. In addition, the system is based on the premise of restorative justice and mediators are in fact barred from issuing punitive verdicts.[63] Their role is promoting reconciliation and cohesiveness through involving the whole community in conflict resolution while promoting unity and consensus building.

Despite its many successes, the Abunzi system has several challenges with the one major thing being heavy state influence[64] which dilutes the independence of the institution. Furthermore, there have been complaints that the system is vulnerable to political manipulation[65] which might lead to retribution instead of promoting restoration.

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[60] Ibid
[61] Ibid
[62] Mutisi, M. (2011) The Abunzi Mediation in Rwanda: Opportunities for Engaging with Traditional Institutions of Conflict Resolution
[63] Ibid
[64] Doughty, K C (2014) “Our Goal Is Not to Punish but to Reconcile”: Mediation in Post-genocide Rwanda. American Anthropologist 116(4), 780-794
[65] Ibid

Lastly, there have been complaints that the system is limited as it is only applicable to small community disputes and are often ill equipped to handle felonies or serious crimes.

4.3 Case Study: ADR in Rwanda's Gacaca Courts

Rwanda's post-genocide experience illustrates the transformative nature of ADR in post-conflict societies. Following the 1994 genocide, Rwanda faced the mammoth challenge of trying hundreds of thousands genocide related cases. The country turned to its traditional Gacaca courts, which were a form of community-based ADR rooted restorative justice system. The system enabled survivors and perpetrators to engage dialogue, fostering reconciliation and healing.

From 2002 to 2012, Gacaca courts handled approximately 1.2 million cases at a fraction of the cost of formal litigation. According to Rwanda's National Commission for the Fight Against Genocide (CNLG), Gacaca court saved the state billions in legal costs and helped rebuild trust in communities. Over 75% of the cases resulted in resolutions that promoted reconciliation, demonstrating the potential of ADR to resolve even the most complex and sensitive disputes.[66]

However, the Gacaca system had its flaws. Critics pointed out how some perpetrators were granted leniency in exchange for confession, leading to concerns about justice for victims. Additionally, power dynamics within communities sometimes resulted in biased outcomes. Nevertheless, the Gacaca courts remain a strong example of how ADR may be integrated effectively in criminal cases, including those involving serious crimes and how ADR can complement legal systems and provide culturally relevant solutions to mass disputes.[67]

4.4 Potential Benefits and Challenges of ADR in Criminal cases

4.41 Enhancing Efficiency

The integration of ADR into the criminal justice system is a key advantage for enhancing efficiency and timeliness. Traditional judicial procedures are often lengthy and resource-

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[66] How ADR is Revolutionizing Africa's Legal Landscape and Shaping the Future of Justice - Legal Africa

[67] Ibid

intensive, leading to significant delays in resolving cases. ADR techniques, such as mediation and plea-bargaining, provide choices for accelerated resolution, resulting in quicker outcomes and lightening the load on the judicial system.[68] By simplifying the procedure, ADR directly helps to reduce case backlogs and increases overall efficiency.

4.42 Promoting Victim Satisfaction and Empowerment

Unlike conventional court procedures, ADR is effective in promoting greater victim satisfaction and empowerment. ADR employs a victim-centered approach through techniques such as restorative justice and mediation, which gives victims a voice and an active role in the resolution process. This participation allows them to voice concerns, seek compensation, receive an apology and even communicate with the perpetrator. The result is a process that focuses strongly on resolving their needs, fostering healing and mending relationships.[69]

4.43 Addressing Offender Accountability and Rehabilitation

ADR techniques offer offenders a vital opportunity to own up to their mistakes and work toward recovery. Restorative justice practices specifically motivate offenders to actively contribute to mending the harm they have caused victims and the community, thereby reinforcing their accountability.[70] By integrating offenders into the resolution procedure and offering assistance for rehabilitation and reintegration.

4.44 Reducing Case backlog and Court Congestion

ADR techniques are instrumental in reducing case backlog and court congestion by allowing the judicial system to practice strategic case management. Through the referral of certain cases to mediation the courts can reserve their resources and time for handling more complicated and serious crimes.[71] This alternate approach to conflict resolution enables quicker settlements and lessens the overall burden of the legal system, including judges, prosecutors and defense lawyers.

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[68] https://lawbhooomi.com/advantages-and-disadvatages-of-alternative-dispute-resolution/
[69] Ibid
[70] Ibid
[71] Ibid

4.45 Ensuring Procedural Fairness and Access to Justice

ADR techniques can improve access to justice and procedural fairness. They offer a collaborative atmosphere for conflict resolution that is less antagonistic and promotes open communication and the consideration of other viewpoints. ADR techniques frequently involve the parties in the decision-making process directly, encouraging openness and a sense of ownership over the result. This can increase confidence in the system and offer a more open and accessible channel for settling disputes.[72]

4.5 Challenges and Limitations of ADR in Criminal Cases

Despite the considerable potential advantages of integrating ADR techniques into the criminal justice system, their implementation presents several significant drawbacks and obstacles.[73] Addressing these principal difficulties is essential to maintain the fairness and efficacy of ADR procedures. The following are the key implementation and procedural challenges:

1. **Ensuring Mediator and Facilitator Competency:** Ensuring mediator and facilitator have the necessary training and credentials to handle delicate matters. Unlike civil disputes, criminal matters involve complex issues such as public safety, culpability and victim trauma, which require expertise beyond the general mediation skills.
2. **Balancing Rights and Interests in Settlement**: Striking a balance between the rights and interests of the victims, offenders and the community. During the settlement process a balanced outcome must provide justice and closure to the victims while promoting accountability and rehabilitation for the offender, all while protecting the community's interest in safety.
3. **Addressing Power Disparities**: Addressing power disparities among the parties involved, particularly in domestic violence or other crimes where there are large power disparities. This is common in cases involving domestic violence or other crimes where one party may exert control or intimidation over the other party.

[72] Ibid
[73] Ibid

Mediation under such conditions can be coercive, undermining the voluntary nature and fairness of the process.

4. **Maintaining systematic credibility and integrity**. There is a fundamental challenge in integrating ADR techniques in a way that successfully maintains the credibility and integrity of the traditional justice system. The public and legal community must trust that ADR outcomes do no trivialize the severity of the criminal offenses or circumvent established legal protections.
5. **Enforceability of agreements**. A limitation concerns the practical reality of ensuring that agreements achieved through ADR proceedings are followed and enforced. The mechanism for monitoring compliance and imposing sanctions for non-compliance must be robust and clearly defined to give agreements legal weight and meaning.
6. **Preserving secrecy and privacy**. This is paramount when the case involves delicate information or prominent people whose reputation or safety could be jeopardized by public disclosure.

In order to maintain the fairness and efficacy of the ADR procedures in the criminal justice system, addressing the aforementioned problems is crucial. This requires a commitment of careful analysis, the establishment of proper protections for all parties, and the adoption of clear rules and standards for the operation of ADR in criminal cases.

4.6 Integrating ADR Within the Existing Framework

Integrating ADR practices within the current legal system is crucial for maximizing the use of ADR in the criminal justice system. This entails creating precise norms and procedures for the effective implementation of ADR proceedings. As stated above, determining which cases are eligible for referral to ADR is necessary and setting up systems for cooperation between ADR practitioners and criminal justice specialists. Also, ADR may be effectively used as a supplementary technique alongside the conventional adversarial process by providing seamless integration in the following ways.[74]

a. **Ensuring Proper Training and Qualifications**

[74] https://www.researchgate.net/publication/342232097_Alternative_Dispute_Resolution_in_Criminal_Cases

It is essential that mediators, facilitators and practitioners possess the required training and credentials in order to uphold the integrity and the efficacy of ADR in the criminal justice system. As a result, ADR specialists must undergo a training that covers both aspects of ADR and have sufficient knowledge of the criminal justice system. This knowledge should include power dynamics, cultural sensitivity and ethical issues. In addition, these skills and knowledge may be improved by further training and continuous professional development programmes, which can also guarantee the provision of high-quality service.

b. **Implementing Essential Standards for ADR**

The successful integration of ADR in the criminal justice system requires establishing clear standards to ensure uniformity, fairness and accountability. These guidelines must cover all critical aspects, including the certification of practitioners, the confidentiality of proceedings, the selection of appropriate cases, and the enforcement of agreements. Explicit rules and expectations can protect ADR's integrity and efficacy, which helps to preemptively address potential concerns.

c. Prioritizing Public Awareness and Support

For ADR techniques to gain traction, public awareness/knowledge and acceptance are paramount. This entails that a focused campaign must be launched to inform the public, legal experts and all interested parties about the specific advantages, restrictions and uses of ADR in criminal cases. This effort is necessary to dispel myths and empowers stakeholders to make informed decisions. Building public confidence requires a cooperative approach among ADR organizations, criminal justice agencies and community groups. Its potential advantages may be maximized by applying ADR in the criminal justice system as effectively as possible by integration, training, guidelines and public awareness. This will support the ideals of justice and fairness and lead to a more effective, victim-centered and therapeutic approach of resolving criminal matters.

Conclusion

Alternative Dispute Resolution (ADR) techniques represent a powerful shift from purely adversarial criminal procedures, offering significant and distinctive advantages. Methods such as mediation and restorative justice enhance the criminal justice systems effectiveness by prioritizing efficiency, victim satisfaction, establishing clearer criminal responsibility and notably lowering recidivism rates. However, the succession and full integration of ADR demand careful consideration and strategic action. To maximize its potential, the current legal system must be adapted through new rules and standards, ensuring that practitioners are properly trained and qualified, and that its public acceptability is continually built.

While integrating ADR, it is essential to remain vigilant against potential difficulties such as addressing power disparities and consistently maintaining procedural fairness and the integrity of the legal system. Therefore, ongoing research, assessments and cooperation among ADR practitioners, legal professionals and stakeholders are vital to identifying and overcoming structural obstacles. By focusing on these steps, we can work towards a justice system that is more effective, victim-centered and rehabilitative. Also, a system that facilitates healing and supports rehabilitation for victims, offenders and society by optimizing the use of ADR in criminal justice.

Chapter 5

Conclusion and Recommendations

Introduction

This chapter gives the overall conclusion from a close analysis of the feasibility of ADR in the criminal justice system. This conclusion and recommendations are guided by the comparative insights gained from the definition of the term "reasonable time" and from an analysis of the integration of ADR in the criminal justice system of the United Kingdom and Rwanda. This chapter will also assess the strengths and weaknesses of ADR in criminal cases. The recommendations on legal reforms will go further to indicate how the existing legal framework and justice procedure falls short in protecting the right of accused persons to be tried within a reasonable time. These recommendations, leaning on the best practices of the United Kingdom and Rwandan legal system, could go a long way in improving the access to justice, reduce case backlog, reduce costs (including judicial costs) etc. In this respect, it is the aspiration of this chapter to contribute to the potential feasibility of ADR practices in the Zambian legal system, particularly on building more substantive and effective methods of promoting amicable justice which uphold the right to be tried within a reasonable time.

5.1 Chapter Two: Examining the Historical Development of the Right to be Tried within a reasonable time; A Critical Analysis of the Rationale and Scope in The African Charter and the Constitution of Zambia

5.11 Conclusion

Chapter two examined the historical development of the right to be tried within a reasonable time, focusing on the rationale and scope of the right enshrined in the Banjul Charter and the Constitution of Zambia. As much as the law specifically provides for the right to be tried within a reasonable time there are some deficiencies and gaps in it, such as the lack of definition of the term "reasonable time." In addition, though this right is cast in stone there is a noticeable failure of the State to protect, promote and respect it. As a result, many accused persons are detained for lengthy periods without having their cases heard and finalized. Furthermore, the survey indicates that the extent of the right to be tried within a reasonable time weakened by the impact of awareness among accused persons about their rights. Additionally, the failure to uphold the right to be tried within a reasonable time has raised several concerns such as concerns related to the prison conditions, loss of evidence, punishment vs confinement and erosion of public trust.

5.2 Chapter 3: The Evolving Jurisprudence of the African Court on the Right to a Trial within a Reasonable Time

5.21 Conclusion

The examination of the African Court on Human and Peoples' Rights (the "Court") jurisprudence confirms that the right to a trial within a reasonable time, as enshrined in Article 7(1)(d) of the African Charter, constitutes a fundamental and justiciable procedural safeguard. The Court, in alignment with international human rights bodies such as the European Court of Human Rights (ECHR), has deliberately refrained from establishing a fixed, quantitative standard for "reasonable time." Instead, it has adopted a contextual, four-factor analytical framework to determine compliance on a case-by-case basis.

This judicial methodology mandates a rigorous assessment of the: (i) **Length of Delay,** where periods exceeding established international norms, such as six months, shift the burden to the Respondent State for justification; (ii) **Conduct of Judicial and State Authorities,** where delay attributable to negligence, incompetence, or deliberate tactics is deemed a direct violation; (iii) **Complexity of the Case,** a recognized factor that may justify longer proceedings, yet does not furnish an automatic defense against protracted delays; and (iv) **Prejudice to the Accused's Interests,** encompassing both material harm (loss of income, medical expenses) and non-material harm, particularly the impairment of the ability to mount an effective defense due to faded memories or loss of evidence. The analysis further highlights the Court's approach to remedy. While the Court is reticent to grant large-scale monetary compensation for alleged material loss based solely on detention, it has definitively established the principle of reparations for demonstrable damages, including discretionary awards for loss of liberty and income, as evidenced by ***Lohe Issa Konate v Burkina Faso***. This demonstrates the Court's commitment to vindicating the protected right through practical, quantifiable relief when a violation is established.

In summary, the African Court's evolving jurisprudence underscores a critical balance, ensuring a thorough and just adjudication process while simultaneously protecting the accused from the punishment of uncertainty and excessive procedural protraction. The application of this four-pronged test affirms that, although the right to a trial within a reasonable time is absolute, its proper enforcement is a nuanced process guided by the unique factual matrix and procedural history of each application. The Court's approach reinforces the imperative for Member States to exercise due diligence and procedural efficacy in criminal justice administration.

5.3 Chapter Four: Examining the Use of Alternative Dispute Resolution in Criminal Cases; a Comparative Analysis of the Judicial Systems of United Kingdom and Rwanda

5.31 Conclusion

The comprehensive analysis of Alternative Dispute Resolution (ADR) mechanisms, notably Restorative Justice, Plea Bargaining, and Diversion Programs, confirms their strategic utility in the modern criminal justice system. Comparative review, specifically detailing the best practices within the United Kingdom and the community-based success of Rwanda's *Abunzi* system and historical Gacaca Courts, demonstrates that ADR offers significant systemic advantages over purely adversarial processes, particularly in matters involving less severe offenses and post-conflict resolution. The paramount benefits derived from this integration include enhanced operational efficiency, a critical reduction in case backlog and court congestion, and the promotion of a victim-centered approach. By providing a platform for direct dialogue and reparation, ADR techniques are instrumental in fostering greater offender accountability and facilitating rehabilitative outcomes, thereby contributing to reduced recidivism rates.

However, the successful and ethical implementation of ADR is contingent upon the immediate and sustained resolution of inherent structural challenges. These challenges include, but are not limited to, the imperative of ensuring stringent mediator competency, the mitigation of power disparities between parties to prevent coercion, and the establishment of robust mechanisms for the enforceability of all resulting agreements. Fundamentally, any integration must be undertaken in a manner that preserves the procedural fairness and systemic credibility of the legal framework, ensuring that the gravity of criminal offenses is not diminished.

Therefore, the optimized deployment of ADR in criminal cases necessitates strategic legislative adaptation, mandatory standardization of training and qualifications for practitioners, and proactive public education campaigns. By prioritizing these safeguards, the legal system can effectively leverage ADR not merely as a supplementary tool, but as an essential component for achieving a justice paradigm that is more timely, restorative, and effective for victims, offenders, and society at large.

5.4 Recommendations

Based on the comparative analysis of the United Kingdom and Rwandan systems, the following recommendations are proposed for the effective, ethical, and sustained integration of Alternative Dispute Resolution (ADR) mechanisms into the domestic criminal justice framework:

5.41 Legislative and Policy Framework

Establish Clear Eligibility Criteria: To begin with the Ministry of Justice should suggest enactment of a statutory instrument that clearly defines which criminal offenses are eligible for ADR referral. This must be strictly limited to minor offenses (misdemeanors, low-level property crime) and exclude serious felonies such as homicide, sexual offenses, and organized crime. The rationale behind the exclusion of felonies is that it may affect public policy goals, rule of law, power imbalance and re-traumatization. For example, some crimes require punishment, deterrence and protection of the community, and ADR which focuses on reconciliation may fail to satisfy the societal need for retributive justice and form a clear statement that certain conduct is unequivocally wrong and will be punished severely. In relation to the rule of rule, it may give the impression that certain serious crimes may be “bought off” or settled behind closed doors rather than being handled through the transparent public court trial process. In relation to power imbalance cases involving homicide or sexual offences (with the victim’s family) the emotional and psychological trauma can create power imbalance between the victim/survivor and the offender. In such instances the victim may be pressured to accept unsatisfactory resolution, which makes the negotiation difficult. In relation to re-traumatization forcing a victim of a sexual offence to set face to face with the perpetrator may risk re-traumatization.

Establish Procedural Rules: Similar to the rules governing mediation in civil cases in the Zambian jurisdiction, mediation in criminal case must begin at the scheduling conference or at the filing of the defense. Court annexed mediation must be at the discretion of the judge but must also recognize part autonomy. In addition, the mediation process must include a Statement of Understanding where the mediator discloses who they are, schedule a meeting specifying the date and time. Given the magnitude of a particular offense these sessions must be held in separate rooms or in joint sessions. In the event that there is an agreement between the parties (the State and the accused) the mediator must draw up a mediation settlement which will contain the signature of the parties and which is later registered by the court. Also, in the event that the parties fail to reach an agreement the mediator must come up with a mediator report to state the reasons why settlement was not reached. All records of proceeding must always be returned to the court whether the process fails or succeeds.

Formalize Plea-Bargaining Procedures: Plea-bargaining is simply the pre-trial agreement between the prosecution and the accused in which the accused pleads guilty in exchange for certain concession made by the prosecution. Plea- Bargaining is used effectively in many jurisdictions around the world. The suggested recommendation is to formalize and regulate the process of plea-bargaining as a Negotiation-based ADR mechanism. This regulation must ensure judicial oversight, full disclosure of evidence, and guaranteed voluntariness to prevent coercion and uphold the defendant's right to a fair trial.

Mandate Post-Referral Judicial Review: This recommendation entails that all agreements reached through ADR (e.g., mediation, restorative justice) must be subject to mandatory judicial review to ensure compliance with legal standards, proportionality of the outcome, and protection of the victim's rights before they are entered as court orders.

5.42 Restorative Justice and Victim-Centric Programs

Pilot Restorative Justice Programs: This views crime as a violation of one person's right by another person and believes that justice in a criminal context should emphasize compensation for victim's harm. The suggested recommendation is to immediately establish pilot Restorative Justice (RJ) programs, focusing on juvenile delinquency and non-violent, community-based offenses. These programs must be victim-led, requiring the offender to directly address the harm caused through dialogue (Victim-Offender Mediation) and reparation. In addition, to include the concept of reparation and restitution in the context of transitional justice, which is constructive action taken by the offender on behalf of the victim and society, which may include community service.

Create Community Courts and Diversion: To establish specialized Community Courts or diversion streams for low-level offenders dealing with specific underlying issues (e.g., Drug Courts, Mental Health Courts, as seen in the UK). As stated above the establishment of such courts can help decongest the main courts by dealing with criminal matters related to the abuse or transaction of drugs, as well as matters relating to mental health of offenders. It's evident that in Zambia many petty crimes are committed by "street kids" that majority of the time are under the influence of drugs or suffering from mental health conditions which can stem from lack of housing, lack of education and other basic needs. This recommendation seeks to provide such offenders with an optional of rehabilitation for their crimes. Successful completion of these rehabilitative programs should lead to the dismissal or conditional withdrawal of charges.

Guarantee Legal Representation in ADR: To ensure that indigent offenders are provided with legal counsel or a qualified defense representative during all formal ADR proceedings, especially those involving plea negotiations, to address potential power imbalances.

5.43 Professional Competency and Standards

Mandate Specialized Training and Certification: This requires the Judiciary and the Law Association must collaborate to establish a mandatory certification curriculum for all ADR practitioners engaging in criminal matters. This training must exceed general mediation skills and include specialized modules on criminal law, power dynamics, trauma-informed care, and ethical conduct

Develop a Centralized Code of Conduct: Similar to our existing rules of court annexed mediation in civil disputes under the Industrial Relations Court (Arbitration and Mediation) Rules of 2002, which provide that though a mediator must prepare a mediator's report or a mediation settlement depending on the outcome of the dispute the mediation process nevertheless must be confidential. The meaning of the aforesaid is that the mediator must not communicate with the judge. Therefore, the recommendation is to institute a comprehensive, enforceable Code of Conduct for criminal ADR practitioners to ensure confidentiality, impartiality, and accountability, thereby maintaining the integrity and public trust in the dispute resolution process.

5.44 Monitoring and Public Outreach

Establish a Monitoring and Evaluation Unit: This seeks to create a dedicated unit within the Ministry of Justice to systematically monitor all criminal ADR outcomes, focusing on recidivism rates, cost savings, compliance with agreements, and measures of victim satisfaction. This recommendation seeks to ensure that ADR mechanisms are effectively integrated into the system and ensure checks and balances on the use of these mechanisms.

Prioritize Public Awareness and Acceptance: Currently there is a lack of adequate awareness of ADR practices that may promote the access to justice. It will be of great benefit to launch sustained public education campaigns to demystify criminal ADR, emphasizing its role in rehabilitation, its separation from civil mediation, and the legal safeguards in place. This is crucial for building the public acceptance necessary for full integration, similar to the community support observed in Rwanda’s system.

5.45 Conclusion

The successful integration of ADR requires careful legal adaptation, professional training, and continuous effort to build public trust. As stated above, by establishing legislative and policy framework, restorative justice and victim- centric programs, professional competency and standards and monitoring public outreach have been some of the general reforms outlined in this chapter that are necessary for the smooth integration of ADR practices in the Zambian criminal justice system, with the aim of prompting the access to amicable justice. Such reforms do pose challenges such as financial costs for the infrastructure and the likelihood of perpetrators of serious crimes escaping more severe punishment for their actions. But there are benefits from such reforms far outweigh the obstacles.

The implementation of these measures will not only protect the right of accused persons to be tried within a reasonable time but it will also prevent the erosion of public trust in the judicial system. Citizens will be left with the impression that the State wishes to promote, protect and respect rights of all people and increase the access to timely justice. These reforms are also vital for enhancing efficiency, reducing case backlog, promoting victim satisfaction, accountability and rehabilitation. Therefore, this strategic implementation of ADR is a viable and necessary strategy to solve the problem of delayed justice, allowing Zambia to align its practice with constitutional and international human rights guarantees.

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RESEARCH CLEARANCE FORM

NAME: Thabo Banda **STUDENT NUMBER:** LLB22113214

SUPERVISOR: K. Mwamfuli **TOPIC:** Failure to uphold the right to be tried within a "Reasonable Time": Analysing the feasibility of ADR in Criminal Cases.

Stage	Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Research questions & objectives to mirror one another	28/07/25	28/07/25
Chapter 1 – Introduction	Each chapter to be 10 pages long.	02/08/25	02/08/25
Chapter 2 –	Cite the statistics in footnotes.	11/08/25	11/08/25
Chapter 3 –	Conclusion to have total of two paragraphs.	12/09/25	12/09/25
Chapter 4 –	Add citation for cases.	27/10/25	27/10/25
Chapter 5 – Conclusions & Recommendations	All work cited to be reffer to in Bibliography.	31/10/25	31/10/25
Table of Contents, Bibliography and Appendices	Good.	01/11/25	01/11/25
First Draft	Brainstorm on possible titles.	07/11/25	07/11/25

Second Draft	Amend grammatic & spelling errors.	~~Signature~~ 10/11/25	~~Signature~~ 10/11/25
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