TOPIC 3

EFFECTIVE COUNTERMEASURES FOR SPEEDY TRIAL

Chairperson	Mr. Thabrew Mahadura Thilak Ravindra	(Sri Lanka)
Co-Chairperson	Mr. Yoshihisa Denda	(Japan)
Rapporteur	Ms. Rebeka Sultana	(Bangladesh)
Co-Rapporteur	Mr. Chalermsak Pattarasumantg	(Thailand)
Members	Mr. Hideharu Arimitsu	(Japan)
	Ms. Takako Naomoto	(Japan)
Advisers	Prof. Hiroshi Iitsuka	(UNAFEI)
	Prof. Shoji Imafuku	(UNAFEI)

I. INTRODUCTION

Speedy administration of justice is the theme of many seminars held these days in most of the countries. In some countries, trial delays have reached alarming proportions and this phenomenon has far reaching consequences. The consequences of a delayed trial are numerous. If the trial is delayed, there is a danger that the real culprit may escape justice due to scattered evidence, and that the innocent must suffer unnecessary pains. If the defendant is under detention, the damage is more irrecoverable. Furthermore, delayed trial will deprive the deterrent effects of criminal judgment on the offender. The sense of retribution loses its significance when the judgment is delivered after a long passage of time. Additionally, trial delay will increase the number of remand prisoners and cause overcrowding. Therefore it is in the public interest to encourage speedy trial.

Speedy trial is considered a fair process conducted within a reasonable period of time. It is difficult to determine a precise time frame for a speedy trial, since it depends on the nature of the case, the legal framework and infrastructure related factors. However, speedy trial means not only the commencement of trial within a statutory prescribed time frame from the time the suspect is arrested, it also encompasses the completion of the trial within a reasonable time frame.

The reasons and causes of delay are manifold. Various parties are responsible for the delay: the court, prosecution, defence counsel or the criminal justice system itself. These factors are interrelated. To achieve speedy trial, the police, prosecutor, defence counsel and court must do their duty properly. The police play a pivotal role in ensuring speedy justice by completing investigations expeditiously. Similarly, the prosecution would have to do the screening of cases and file charges or indictment in court without delay. At the trial stage, the prosecutor and the defence counsel should refrain from moving for frequent adjournments. Finally, there is a duty cast upon the judge to ensure that the trial is concluded without delay and deliver judgement as early as possible.

In this paper we have identified some common problems faced by the participating countries, with regard to trial delay. We have also proposed some recommendations to these problems.

II. HEAVY CASELOAD ON JUDGES/ MAGISTRATES

A. Problem

With the increasing mobility of the population and with the advancement of communication and financial links, the modern world is facing significant change in criminality. An increasing number of economic crimes like bribery, corruption and computer crimes have led to a considerable number of new cases in the courts at all levels, in addition to the already overcrowded cases of the courts. Too many cases are fixed for a given trial date and it is impossible for the trial judge to hear them all, so only a few cases are heard on one trial date. Others result in postponement and are re-scheduled for hearing on other dates.

An insufficient number of judges to handle so many cases, and also the dual role of the judges in dealing both in civil and criminal cases, leads the court to divide the days for both criminal and civil cases. Besides this, some judges have to do administrative work too. In addition, due to heavy caseloads, judges have little time to write and deliver judgments. It is found that in some countries, because of a shortage of time or the dual role of judges hearing trials of both civil and criminal cases, delay in writing and delivering judgments has become a serious problem in practice.

B. Overview of the Current Situation in Some Countries

1. Bangladesh

Statistics of trial cases show that 49,472 cases were pending in 1996 and 60,791 in 1997. An insufficient number of judges/ magistrates is one of the main causes of trial delay. All reported cases go for trial, and there is no screening methods at the investigation level.

2. India

Statistics reveal that in 1996, 6,296,562 cognizable crimes were reported in the country, which is an increase of 43.3% over the year 1986, with a compound growth rate of 2.55% per annum. Among the reported cases, 76.9% were sent for trial. Another report indicates that the percentage of trials completed in a year is going down steadily. While about 30% of trials were completed in 1971, the percentage came down to 23.9% in 1981 and to 16.8% in 1991. This percentage has further come down to 15.5% in 1994. The number of pending trial cases under the Indian Penal Code was 5,280,000 in 1995, which increased to 5,620,000 in 1996. Out of these, 21.6% cases have been pending for more than 8 years. The number of cases pending trial for more than 8 years increased from 1,070,000 in 1995 to 1,211,000 in 1996, showing an increase of 13.3%.

3. Japan

Statistics of 1997 show that 74.3% of district court cases were disposed of within three months, and 93.5% within six months after institution of the prosecution. In summary courts, 88.1% were adjudicated within three months and 97.5% within six months.

4. Malaysia

With regard to the total number of criminal cases at each court until the month of October 1998, statistics show that 4169 cases were registered, 2247 cases were closed. 1922 cases were pending in high courts, 7061 cases were registered, 4174 cases were closed. 2887 cases were active in sessions courts, 1,197,778 cases were registered, 636,563 cases were closed. 561,215 cases were active in magistrate's courts.

In most cases, high courts and subordinate courts deal both in civil and

criminal cases. Thus, the courts have to divide the days to handle both civil and criminal cases. In some cases, subordinate courts allocate only two days in a week to conduct criminal matters, and within those two days the court has to dispose of cases where the accused pleads guilty, call the probation officers and conduct criminal trials. Despite these constraints, subordinate courts still fix about two cases for hearing on a given criminal list day.

5. Pakistan

The court proceedings often go at a snail's pace. As to the percentage of disposal of cases in courts, statistics show that in 1996, 35.7% cases were disposed of within three months and 80.9% cases were disposed of within nine months.

C. Countermeasures

1. Increase of Judges and Courts

In order to reduce the heavy caseload on judges, the number of judges and courts should be increased. In addition, a specialized court may be established in order to effectively handle particular types of cases like tax evasion and banking offences, which require judges to have expertise. However this solution is easier said than done. Budgetary constraints may prevent a nation from establishing new courts or increasing the number of judges. Additionally, there was opinion expressed in the general discussion sessions that this is a only short-term solution, and it will not function well in the future. Some participants suggested that civil and criminal cases should be handled by separate courts to avoid the dual role of judges.

2. Reduction of Cases - Diversion

The judges' caseload will decrease if the number of cases is reduced. Diversion, such as traffic infractions and suspension of prosecution before the trial stage, are some of the effective measures to be taken in order to reduce caseload. In addition, proper consideration should be given to utilize conciliation or mediation in criminal proceedings. In fact, various forms of conciliation or mediation are applied in different countries, either before the cases are filed in the court or even when they are pending in court. For example, in Singapore, Bangladesh and Sri Lanka, relatively minor offences are listed as compoundable in the Criminal Procedure Code. Such offences may be compounded by the victim with the consent of the court, only after the defendant has been indicted. Compounding has the effect of an acquittal, and the defendant is discharged from the court proceedings.

3. Introduction of Arraignment

Some countries like Britain and the United States have an arraignment system. Under this system, if the accused pleads guilty in the opening proceedings, fact-finding can be omitted and the sentence can be rendered immediately. We all agreed that this would save a lot of the court's time. However, at the same time, as expressed by some Japanese participants, the court wishes to be satisfied that the accused has really committed the offence charged.

III. LACK OF KNOWLEDGE AND EXPERIENCE OF JUDGES

A. Problem

Incompetence and ignorance of law, and lack of experience of some judges/ magistrates were considered as factors in the delay of trial. Judges exercise their discretion, in respect of law, in various ways. The scope and methods of examining witnesses, prolonged and irrelevant cross-examination, determination of the admissibility and probative value of the evidence, the extent of admissibility of hearsay evidence, the degree of proof required for applicability of conflicting

rules, requires a high degree of professionalism. Failure to keep abreast of the law and jurisprudence, and lack of expertise and training of the judges/ magistrates may cause delays in trial.

B. Countermeasures

1. High Qualifications and Standards for Appointment

Various matters should be taken into consideration at the appointment level to improve the quality of judges. We all agreed that mere graduation from a law university is not enough for the appointment of judges. The candidate judge should pass a qualifying examination, and the qualifying standards should be set fairly high. For instance, in Japan, a person being qualified in the national bar examination has to receive two years intensive training in the Legal Training and Research Institute of the Supreme Court, and has to undergo 16 months of practical training in the courts, prosecutors office and private law offices. After completion of all those requirements, the legal apprentice has to qualify by final examination for appointment as an assistant judge. The Republic of Korea also has a similar appointment system.

2. Training

Basic training is essential to induct all persons appointed as judges into the profession, including those selected from the Bar. Additionally, to keep judges abreast of the trends in jurisprudence, they should undergo periodical training programmes. In this connection, the Japanese training system may be one of the models. The assistant judge system in Japan is aimed at providing professional experience through on-the-job training for an assistant judge, before qualifying as a fully-fledged judge. For the first five years, the judicial authority of an assistant judge is restricted. He or she can be an associate judge of a three-judge court, but as a single judge, s/he can decide only limited matters such as detention at the investigation stage. After five years experience, an assistant judge is qualified as a senior assistant judge to preside over a trial in a single-judge court. Joint seminars of police, prosecutors and judges should also be held periodically for better cooperation and mutual understanding

IV. LACK OF RESOURCES IN THE COURT

A. Problem

Because of the tremendous increase of crime and backlog of cases, there has been an enormous rise in the number of criminal cases, but court personnel have not been expanded to meet this demand. Lack of professional and technical skills, and low salary for court personnel, are also serious problems. For example, the shortage of court interpreters is one problem which the court is facing in many countries. Also, the lack of equipment may lead to trial delay. For instance, the method of recording evidence in some counties is slow and tedious, because they do not use tape recorders to record the testimony of witnesses. This may delay the completion of recording of witnesses examination or proceedings. Besides this, limited financial resources are also a grave problem.

B. Overview of the Current Situation in Some Countries

1. Algeria

Cases are registered manually and this creates a serious problem in case management. Court personnel sometimes intentionally do not register the cases properly and parties face problems in finding the case schedule.

2. Malaysia

Courts are experiencing an acute shortage of Chinese interpreters. The Chinese prefer to speak in their mother

tongue during trials. Low salary is the main reason why Malaysian Chinese are not interested in the job as interpreters, since they can obtain better pay in the private sector.

C. Countermeasures

1. Adequate Support Services

Adequate support services to judges by court clerks, court stenographers, court interpreters and research officials should be provided. Judges should closely supervise them to ensure that they perform their functions in an appropriate manner.

2. Modern Office Equipment

As well as human resources, modern office equipment such as tape recorders, computers, faxes and copy machines should be also provided in the court. For example, the use of tape recorders to record court proceedings could save the courts' time, instead of laboriously recording the testimony of witnesses testifying before court.

In most advanced systems, such as Singapore's, the courts have made extensive use of technological advances to enhance the efficiency of the courts. A Witness Video-Link enables vulnerable witnesses, such as child witnesses or victims of sexual offences, to give their evidence without physically being present in the courtroom to face the accused. The Technology Court was launched in 1995 in the Supreme Court to facilitate the presentation of evidence and other information. Within this court, there are video conferencing facilities, an integrated audio-visual system together with a litigation support system. Evidence is recorded digitally as computer files. This enables transcription to be done much faster than previously done with audiotapes.

V. TRIAL PROCESS - FREQUENT ADJOURNMENTS

A. Problem

In most of the participating countries, cases are generally tried on a piecemeal basis. This means that the trial proceedings are conducted in sessions spread out over a period of time. Hearing is set on one day and continued or postponed to another day until each party completes the presentation of evidence. For instance, one witness testifies for an hour or two for direct-examination in one hearing, and then continues at the next hearing for cross-examination. Consequently, particularly in complicated cases in which many witnesses are examined, it takes a long time to complete the trial.

B. Overview of the Current Situation in Japan

It is evident that in Japan the difficulties lie not in designating the first public trial date, but in scheduling subsequent trial dates. The courts are constantly grappling with problems created by the continuous trial requirement. The court cannot always schedule continuous trial dates when confronted with complicated cases, such as those requiring the examination of many witnesses or defendants.

One of the obstacles to the implementation of continuous trial is the lack of cooperation between the Bench and the Bar. The court faces great difficulty persuading defence counsels to accept continuous trial dates. Although the presiding judge has sole authority regarding the designation of public trial dates, the court cannot proceed realistically and smoothly without the cooperation of all parties. The court must consider a defence counsel's heavy schedule and opinion when fixing a case for trial.

Defence counsel argue that continuous trial dates prevent them from handling other cases, especially civil cases, and may cause them to lose work. In addition to this workload problem, counsel always claim that it is almost impossible for them to prepare adequately for trial if the court opens trial continuously. As a result, the practice of intermittent trial hearings has not changed.

C. Countermeasures

1. Continuous Trial

The court should make appropriate schedules for trials by seeking the cooperation of the parties concerned. More than one court session should be allocated in advance, and most desirably on consecutive trial dates. On the other hand, there is another view on this point. Intermittent hearings will bring about equal treatment among cases, while continuous or concentrated hearing will bring about more speedy disposition of a case once its trial has begun. However, if the latter is selected, it will inevitably delay the other cases pending in the trial roll. In this regard, it may be recommended that cases of special importance should be handled as fast as possible. For example, cases where many witnesses will be anticipated to be examined at trial should be handled as fast as possible.

2. Strict Non-adjournment Policy

A party might request the adjournment of a hearing based on improper reasons, such as insufficient preparation. Ordinarily, the court assumes a party makes a motion in good faith. Consequently, the court should carefully examine motions and should not easily grant adjournment of a trial date without strong grounds.

In Singapore, a strict "no adjournment" policy is adopted. Applications for the adjournment or vacation of hearing dates are scrutinized carefully, and these applications would be refused unless there are good grounds. Strict control is exercised for even those applications for adjournment made on medical grounds. With effect from 15 February 1997, only medical certificates, which state certain prescribed details such as the diagnosis, full name and designation of the medical practitioner, and a statement that the patient is to be excused from court attendance and not merely from work attendance, are accepted.

3. Time Limits for Completing Trial

Providing a time limit for completing trial is a more straightforward method for speedy trial. However, difficulty lies in the fact that not all cases have the same level of complexity. Some cases are extremely complicated and need a longer period of time to examine witnesses. In the Republic of Korea, for example, there is a provision which limits the time period for the pronouncement of judgment. It stipulates that the pronouncement of judgment in cases where the defendants are in custody must be delivered within two months. If the court fails to follow the time limit, the defendant in custody has to be released, though non-completion of trial in the above time frame does not prejudice the trial.

VI. LENGTHY PRELIMINARY HEARINGS

A. Problem

In some countries, there is a preliminary hearing or preliminary inquiry by a magistrate before the case is referred to the trial court. Its purpose is to see whether there are grounds for the accused being put to trial. However, some problems can be pointed out. The hearing takes a long period of time, amounting to about one to two years, to complete. The preliminary hearing creates a lot of unnecessary work, which is a duplication of the trial. These

problems should also be within the scope of the issue "speedy trial".

B. Overview of the Current Situation in Some Countries

1. Sri Lanka

Magistrates hold preliminary hearings in all cases, which are triable exclusively by the High Court, and in some other cases on request of the Attorney General. In the preliminary hearing, witnesses are examined and cross-examined relating to the offence, and evidence is recorded by the magistrate. This preliminary hearing takes a long period of time, sometimes two years. It is noted that in Sri Lanka, preliminary hearings were abolished once in the past, but revived again subsequently.

2. Thailand

After institution of a criminal case by the injured party, the court must order a preliminary hearing to see whether or not there is *prima facie* case. In preliminary hearings, the accused are not allowed to present their own witnesses. Thus preliminary hearings results in a long delay in certain cases.

C. Countermeasures

Some participants expressed the view that preliminary inquiries are not held in most countries. However, our group was view that the preliminary hearing could act as a method of screening. It also serves as an additional check by the courts on the prosecution. Consequently, in order to overcome some of these problems, some improvements should be made to the existing procedures.

1. Disallowing Cross-examination at the Stage of Preliminary Hearing

In the general discussion sessions, some participants argued on this point. If the defence is not given a chance to cross-examine the witness at the time of the preliminary hearing, it will be an injustice. Since the prosecution will support the *prima facie* value of the case, cross-examination is necessary for 'check and balance'. In Singapore, the defence counsel does not cross-examine the witness. But in order to counter-check, the defence is allowed to clarify some points.

2. Restricted to Complicated or Controversial Cases

Some participants stated in the general discussion sessions that this method is contradictory to the judicial system of some of the participating countries, as most of these cases are tried by High Courts. In other words, if a preliminary hearing is conducted in these cases, it takes even longer to conclude the hearing since these cases are difficult to handle.

3. Abolition

Some participants expressed that the preliminary hearing should be abolished. This has been done in Malaysia. However, others are of the view that preliminary hearings should not be abolished totally, but could be limited in certain ways to reduce delay. In this regard, limiting the cross-examination of witnesses to material points was suggested by some participants.

VII. INADEQUATE PREPARATION BY THE PROSECUTOR AND DEFENCE COUNSEL

A. Problem

Heavy caseloads of prosecutors will lead to inadequate preparation for trial. Thus inadequate preparation or non-preparation would lead to postponement, which causes delay in disposition of cases. Similarly, in many countries, heavy volume of cases handled by defence counsels lead to scheduling conflicts, and inadequate preparation results in adjournments. Moreover, failure by prosecutors to show a clear outline with regard to how they intend to present their cases, make it

difficult for the court to allocate sufficient time to hear and determine cases.

B. Countermeasures - Pre-trial Conference

The pre-trial process in criminal proceedings has drawn much attention recently. At pre-trial conferences, the prosecution and defence are urged to disclose their respective cases and evidence, and are urged to agree on facts which are not in dispute. By conducting the conferences, the courts, as well as both parties, can identify real factual and legal issues, and will have reasonable prospects for the trial. There is also a likelihood that in the course of this process, the accused will plead guilty when faced with the prosecution's case and evidence. Moreover, last minute proposals for witness examination can be avoided, and witness examination can be made concentrating on the necessary issues of the case. The court should:

(i) require, when it deems proper, both parties to attend a pre-trial conference to determine trial dates, allocation of time to both parties, etc;
(ii) designate trial dates necessary beforehand, based on a plan made during the pre-trial conference, and shorten the interval between trial dates;
(iii) encourage the parties to discuss as many problems as possible beforehand, in order to prevent unnecessary disputes at trial; and
(iv) exclude improper questions and statements by the parties.

For instance, in Singapore, pre-trial conferences were introduced in 1993. The courts now play an active role in the management of cases, by ascertaining the status of the case and defining and clarifying the contentious issues for trial. This cuts down on the time for hearing and saves witnesses the inconvenience of attending court, when their evidence will not be disputed by the other party. Issues and areas of dispute are identified, and reasonably accurate assessments in respect of the time required for the trial can then be made.

VIII. DILATORY TACTICS OF DEFENCE COUNSELS

A. Problem

In many countries, some defence counsels use dilatory tactics by filing unnecessary motions for the review of court orders, and prolonging the cross-examination of a material witness, presentation of corroborative witnesses to prove matters that have already been established, etc. By these dilatory tactics, the defence counsel hopes that the victim's feelings will decline, the public will lose interest in the case, and the witnesses will become tired and disappear. Moreover, the defendant has to come before the court so long as the trial continues, and on each trial date the defence counsel takes money from the defendant. So for financial gain also, defence counsels desire postponement of the trial.

B. Countermeasures - Sanctions against Defence Counsels

In addition to the utilization of the above mentioned pre-trial conference, sanctions against defence counsels should be considered. For dilatory tactics, the court can award costs against the defence counsel and the court can take steps to report the defence counsel to the Bar Council. Article 303 of the Rules of Criminal Procedure of Japan states the measures available against an act of a defence counsel causing delay of a trial. It says that the court, if it deems necessary, shall notify the Bar Association to which the defence counsel concerned belongs, or the Japan Federation of Bar Associations, requesting appropriate steps be taken.

IX. DELAY OF EXPERT REPORTS

A. Problem

In cases where a trial is based on chemical or medical reports, a trial can be delayed if it takes time for these reports to be supplied. Delay of these experts reports occurs quite often in some countries.

B. Overview of the Current Situation in Some Countries

In Sri Lanka, submission of chemical and medical reports in connection with criminal cases before the court is always delayed, which is a strong cause of trial delay. Waiting for these reports, most of the 'heinous offence' cases remain pending for years before the court. Some participants pointed out in the general discussion sessions that expert reports are submitted at the time of investigation, for which often investigation is delayed. In very controversial and complicated cases, the court may ask for a second opinion of the expert report, which has been submitted by the investigating officer. That may cause trial delay. Additionally, forensic reports are often not submitted by the expected time, since most of the developing countries do not have facilities for forensic laboratories etc.

C. Countermeasures - Time Limits for Submitting Reports

On this point, some participants expressed that, in reality, it is almost impossible to provide time limits for experts, since experts are very limited in their countries. Additionally, there was a negative view on this point, since the accuracy of reports is more important than mere early submission. One participant recommended that meetings with experts should be conducted from time to time in order to see progress, and the format of the expert report should be provided to easily respond to questions.

X. CONCLUSION

The role of judges in dispensing justice is a sacred one, which demands that justice is meted out to everyone concerned in the legal process as speedily as possible. It is often said that "justice delayed is justice denied". However for the sake of achieving speedy justice, the quality of justice should not be sacrificed. There is a need to maintain a balance between speedy trial and fair trial. Public confidence in the fair administration of justice is very important.

It is our considered view that causes for delay in concluding trials are common to many countries. We fully understand that some of the issues which have been discussed in this paper are interrelated. Consequently, the countermeasures discussed are also interrelated. For instance, time frames for trials could not be implemented unless the problem of overloading is solved. The investigating officers, public prosecutors, defence counsel and the judiciary should all do their best to ensure that trials commence as soon as possible, and once commenced, every case should be disposed of impartially and without undue delay.

The recommendations proposed may not be acceptable to all the participating countries, due to the social and economic conditions prevailing in those countries. Our intention has only been to suggest some effective countermeasures for the problems discussed in this paper.