

Helpdesk Research Report

Addressing case delays caused by multiple adjournments

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Question

Provide examples of more and less successful attempts to address case delays in developing countries, with particular focus on delays caused by multiple adjournments.

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1. Overview

Long delays in the processing of court cases are a common problem in developing countries.¹ Delays in the resolution of cases are often caused by multiple adjournments, particularly in common-law judicial systems, and can create challenges for the scheduling and management of courts.² There is a wide range of reasons why cases are held up by adjournments:

- Adjournments are often called by lawyers because they have not reviewed the case files, are otherwise ill-prepared, or have a scheduling conflict.
- Prosecutors are reluctant to provide full information on evidence to defense lawyers, prompting the latter to request an adjournment.

¹ A case delay can be defined as “the time taken, other than that required to properly obtain, present and weigh the evidence, law and arguments” (PJDP, 2015a: 4). A World Bank study estimates that a straightforward commercial dispute is typically resolved in around five months in Singapore, 33 months in Egypt, 43 months in Colombia and Liberia, and over 48 months in Bangladesh (World Bank 2014).

² In common-law systems, judicial cases are regarded as the most important source of law, which means judges have an active role in developing rules. In civil-law systems, by contrast, codes and statutes are designed to cover most eventualities, meaning judges have a more limited role of applying the law to the case in hand.

- Prosecutors are understaffed, with one prosecutor representing multiple separate cases simultaneously.
- Adjournments may be initiated by judges – for example, an indisposed or unprepared judge may decide to postpone a hearing.
- Parties, witnesses or lawyers are absent from court, often as a result of poor coordination between courts and service providers.
- Cases are transferred from one judge to another, or from one lawyer to another.
- To allow for various case interventions.³

The failure of courts to dispose of cases in a reasonable time frame can have serious consequences for the exercise of justice in society, as captured in the legal maxim ‘justice delayed is justice denied’. It can also erode public confidence in the legal system, which in certain contexts can result in community unrest. In some Pacific Islands Countries (PICs), for example, long delays to the resolution of disputes over land have been cited as underlying causes of community tensions and violence (PJDP, 2015a: 1). Legal certainty is a prerequisite for economic stability, as delays to commercial or contractual disputes impact negatively on business, investment and private sector growth (Ibid). Adjournments also impose a significant cost burden on the system.

A number of policy studies put forward recommendations for measures to tackle case delays in developing countries, including multiple adjournments, but relatively few of these recommendations are supported by rigorous empirical evidence that provide grounds for distinguishing more and less successful interventions. It also appears that data on court performance in developing countries is scarce. The exception to this is a series of World Bank studies, discussed below, which measure the effectiveness of its justice reform projects in a range of countries, typically using aggregate statistics and random samples of case files.

The majority of the information surveyed for this report is drawn from policy and grey literature; it appears that relatively few recent academic studies have been focused on this subject. The academic material that was found for this report typically dates from the 1990s and looks at judicial systems in high income countries.

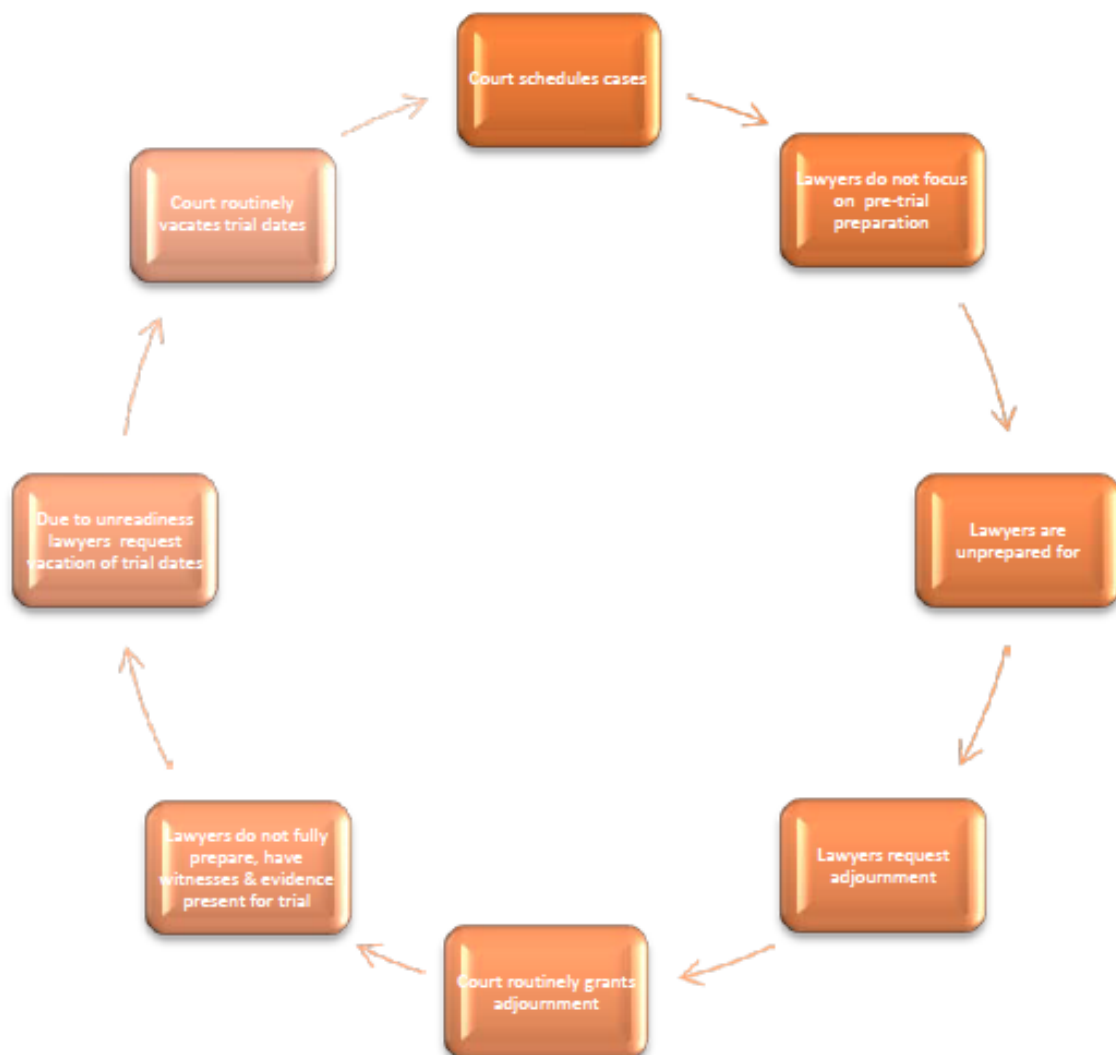
Key messages

- **Measuring court performance** and establishing **monitoring and reporting requirements** are important methods for reducing the incidence of adjournments and addressing delays more generally.
- **Better use of information technology** can assist in speeding up court processes and avoiding postponements; however, evidence from Ghana suggests that **automated courts are not necessarily more efficient than un-automated courts**.

³ These include: to attempt settlement out of court; to afford parties the opportunity to procure and furnish the court with evidence; to afford parties the opportunity to satisfy orders made by the court; to complete examination-in-chief, cross-examination, or re-examination of witnesses; to enable parties to amend various processes filed in court; to enable parties procure proceedings of previous court hearings; and to enable the court to consider various interlocutory applications (World Bank 2010b: 47).

- Notwithstanding the importance of technical improvements, it is also important that reform efforts address the **interests and incentives** of judges, lawyers and court staff which may create delays.
- **Strong judicial leadership** can help to reduce the number of adjournments.
- Whilst restrictions on adjournments can assist in reducing case delays, there is a risk that a lack of flexibility can result in **cases being dismissed prematurely**.
- **The use of penalties, sanctions and fines** for non-compliance with deadlines can be effective in addressing some of the cause of adjournments and other delays; however, there are circumstances in which the use of **'soft sanctions'** may be more appropriate.
- The success of the reform efforts in Ethiopia and Malaysia may be partly related to the fact that they focused on a **relatively small number of judges**, as this allowed members of the Supreme Court to keep close track of their compliance with adjournment policy.

Figure 1. The cycle of adjournments and delay



Source: PJDP (2015b: 11)

2. Addressing multiple adjournments

World Bank evaluation studies

Ethiopia

In contrast to the majority of countries in Africa and the developing world, Ethiopia has good performance statistics for its federal and many of its regional courts and has used this information to identify and resolve problems in court performance. Target-setting and effective monitoring are central to recent judicial reforms. Most notably, since 2000 the judiciary in Ethiopia has used a digital case-tracking system to collect data on productivity, clearance, and congestion rates; appeal rates, execution of judgements; number of adjournments; and percentages of cases resolved within specific time frames (World Bank 2010a; Plummer, 2012: 203). The federal, regional, and municipal judiciaries use the system to identify shortcomings in service delivery and reduce delays.

One particular concern has been to limit the number and length of adjournments of hearings. This has been addressed primarily through tracking judges' disposition rates and overall productivity and through setting targets for the mean number of adjournments per case (World Bank 2010a: xvi). These targets have been adjusted to more demanding levels over time. In the Federal Supreme Court (FSC), for example, an average of five adjournments per case was initially considered reasonable. This has subsequently been reduced to two (Ibid: 20).

In addition, the frequency and length of adjournments has been addressed by applying the following rules:

- Judge-initiated adjournments are not allowed.
- Cases are closed if the plaintiff or both parties do not appear at a hearing.
- Cases proceed regardless of whether the defendant appears.
- A default judgement is given if the defendant does not appear.
- Only a limited number of adjournments are granted to the prosecution before a case is dismissed for want of prosecution.

Judges are evaluated on their performance on adjournments and therefore have an incentive to limit their occurrence. Prosecutors also have an incentive to limit delays, as their conviction rates – based on the ratio of convictions over indictments – are affected negatively if cases are closed prematurely by judges to avoid excessive adjournments. In addition, prosecutors have to ensure that once an indictment is registered, the case is completed without further delays. This means that defendants, witnesses and the prosecutor themselves must attend scheduled hearings and limit requests for further postponements (Ibid: 79).

Despite the progress that has been made in reducing delays in court proceedings, concerns have been raised that the Ethiopian system has created an incentive for judges to prematurely close cases in order to avoid excessive adjournments. It is observed in connection with this critique that there has been an increase during the reform period in the number of cases that are temporarily closed. Under the judicial arrangements in Ethiopia, cases that are closed without judgement can in principle be reopened. However, this does not occur frequently, if at all, in some courts. In 2014 the percentage of cases re-

opened by the prosecution was virtually zero. In the Federal High Court, the percentage dropped from 4.4 to 1 in 2008 to 2009, and from 3 to 2.1 in the Federal First Instance Courts (UNODC, 2014: 20). There are grounds, therefore, to believe that the Ethiopian policies designed to limit adjournments may be impeding the successful resolution of cases (World Bank 2010a: xvii-xxiv; 65).

On similar grounds, a United Nations assessment report asserts that some of the restrictions on adjournments in the Ethiopian system may be too inflexible, particularly in the case of serious and complex prosecutions where the investigation and compiling of evidence can take significantly longer than the average case. Furthermore, given their limited capacity, it may be difficult for police to ensure that all prosecution witnesses are present in court. Given the strict limit on adjournments, these circumstances might lead to a case being dismissed because the prosecutor is not able or prepared to proceed with the timelines mandated by the court, even though there may be a clear public interest in the proper resolution of the case (UNODC, 2014: 20).

Malaysia: Federal Court reform program

In late 2008, the Malaysian Federal Court embarked on a reform programme aimed at reducing case backlogs and improving efficiency in the judicial services. Focusing on particularly congested judicial centres in Kuala Lumpur and Shah Alam, the broad approach adopted was to increase the pressure on judges for greater productivity. The main components of the programme were as follows (World Bank, 2011: ii-iii):

- The creation of an inventory of cases and an improved physical filing system.
- A process of purging closed cases, separating inactive cases for rapid closure or further processing, and establishing targets for the elimination of older cases.
- The introduction of a new case management system involving pre-trial processing, overseen by a designated managing judge.
- The introduction of a tracking system to facilitate the closure of old cases and the creation of weekly quotas for judges.
- Improved technology in courtrooms, including Court Recording and Transcription (CRT) equipment and the development of an automated Case Management System (CMS).
- Closer monitoring of judges' activities and establishing targets for productivity and delay reduction.
- The creation of specialised High Court divisions in Civil and Commercial Law to address recent cases.
- The development of an automated queuing and e-filing system.
- Efforts to develop a better judicial training programme.

According to a progress report prepared by the World Bank at the request of the Malaysian judiciary, the overall reform programme has been particularly successful in discouraging frequent adjournments of hearings. The report notes that the reforms have primarily relied on creating incentives to encourage judicial staff to operate more efficiently. The use of productivity targets and the collection of statistics to measure progress (and their scrutiny by senior members of the reform team) have been particularly

effective in this regard (Ibid: iii). Whilst adjournments are not systematically monitored, they are included in daily reports on case progress which judges are required to compile (Ibid: v). Judges are required to observe strict rules regarding requests for postponements and the Chief Justice and other senior judges conduct spot checks and surprise court visits to ensure the rules are being observed. In order to avoid adjournments caused by judges taking leave due to sickness or maternity, the Malaysian judiciary has used senior assistant registrars or deputy registrars as substitutes (Ibid: 17, n. 39). As a result of the reforms, in one year, the backlog in the High Court was reduced from approximately 48,000 cases to just over 10,000 (Messick, 2015: 4).

Application to criminal cases: By late 2010, judge-caused adjournments in civil cases in Malaysia had virtually disappeared (World Bank 2011: 43). However, the reform process has been less strictly enforced in criminal cases and therefore less effective in tackling the backlog in this area (Ibid: 16). Absent witnesses have continued to provide a common justification for adjournments to proceedings in the criminal court. Although there are instructions for limiting adjournments and setting time limits for preparatory activities in the criminal jurisdiction, judges have tended to be more lenient in these cases to ensure that the prosecution and defence have sufficient opportunity to present their arguments. It appears that, in criminal cases, judges are less willing to refuse requests for adjournments, as to do so would result in the case either being dismissed or being decided on the basis of partial evidence (Ibid). In the civil jurisdiction, by contrast, judges have been stricter about disallowing adjournments and extensions to deadlines at the request of lawyers (Ibid: 16).

Given that adjournments in criminal cases are an on-going concern in the Malaysian judicial system, it is recommended that systematic monitoring be carried out on several bases:

- Overall number of adjournments within each reporting period by material, judge, court, district and system-wide.
- Average number of adjournments per case.
- Average length of postponements disaggregated as above (Ibid).

Ghana: evaluating the fast-track automated court system

As part of its efforts to develop more effective assistance to African judiciaries, the World Bank commissioned a study to track 320 court cases across the different divisions of the High Court in Ghana. The study sampled and analysed cases from the automated Fast Track Court, Commercial Court and Land Court, as well as the unautomated High Court. The automated Fast Track Court uses modern information and communication technology, and relieves judges from having to manually record evidence in long hand. The automation involved installation of recording and transcription machines, recruitment and training of relevant staff to handle the equipment, and the conversion of manual documents into electronic formats.

The study found there were in fact more adjournments and a greater number of delays in the automated courts than in the un-automated court. Moreover, statistics collected by the judicial service indicate there was no significant difference between the two types of courts in terms of their overall performance. In 2005 to 2006, for example, the Fast Track Court disposed of cases at only a rate of 1.1 per cent faster than the Regular Court (World Bank 2010b: 36). The only exception was the automated Commercial Courts, which had high case-disposition rates (Ibid: xv). The Fast Track court recorded 1000 adjournments, the highest number of adjournments of all the different courts by a large margin, whilst the Commercial Court accounted for the least number of adjournments, at 383 (Ibid: 37).

These findings indicate that automated court processes alone are not sufficient to deliver more efficient, quicker judicial proceedings, and that the required investment in human capital and infrastructure may not be justified (Ibid: 35). However, the underlying reasons for the failure of the automated courts to deliver fewer adjournments and delays is not clear from the available literature. The authors of the World Bank study into judicial reform note that a full diagnosis of the problems of the judiciary in Ghana is not possible due to a lack of effective case-management documentation and record-keeping (Ibid: 52).

Other recommendations

Make more effective use of information technology: The evidence from the World Bank study on Ghana, discussed above, does not point to a dramatic advantage for automated courts. Nonetheless, studies on judicial reform in developing countries frequently mention better use of technology as key to improving the speed and efficiency of court processes.

In an analysis of congestion in the lower courts in India, Hazra (2006) notes that most cases are adjourned multiple times and in unpredictable ways, regardless of whether a trial has already begun. He points out that, barring a few states such as Karnataka and Delhi, the use of IT-enabled CMS that conforms to international best practice standards is rare in the Indian context. It is suggested that the use of automated CMS could help identify those defense lawyers who frequently use delay tactics, and judges who may be slow in disposing of cases.

In addition, better technology could enable judges to address poor attendance levels at court hearings by advocates, witnesses and parties, which is a major cause of adjournments. For example, mobile phone technology could be used to send alerts to lawyers and litigants with reminders of the expected times for case hearings, and the status of court hearings could be published live on the internet. This facility has already been implemented in the Supreme Court in India, although the degree to which this policy has made a positive difference to adjournment rates is unclear from the literature surveyed here (Hazra, 2006: 100).

Dandurand (2014: 424) argues that evidence and disclosure management are two areas where technical support and training for paralegal staff can significantly improve the efficiency of the court system. Particularly in complex cases with large amounts of detailed evidence, the electronic disclosure of evidence can be used to speed up the process and avoid unnecessary postponements.

Publish an adjournment policy: A report by the Pacific Judicial Development Programme (PJDP, 2015a: 23) suggests that publishing an adjournment policy could help to limit the frequency of adjournments being called without good cause, and could also help to reduce late applications for the vacation of trial dates. In addition, as some courts experience high rates of adjournment due to medical illness, it is suggested that the adjournment policy require a doctors' certificate and, if necessary, require the doctor to appear, with costs met by the lawyer.

Establish a date for the next event: A report prepared by the European Commission for the Efficiency of Justice recommends that adjournments should only be allowed if they are clearly justified, and if a date for the next event in the case process has been established. In the Riga Central District Court in Latvia, for example, hearings cannot be postponed if a new date has not been established (CEPEJ, 2008: 15).

Analyse case flow management: A PJDP toolkit report emphasises the importance of analysing where, when and why applications for adjournment are being made, and suggests that reform efforts should start with a survey of case types and reasons for adjournment over a set time period. By distributing the

survey results to judges and lawyers, it may be possible to reduce the number of adjournments by encouraging improved pre-trial preparation and compliance with deadlines (PJDP, 2015b: 9).

Measure, report on and publicise court performance: PJDP has found that measuring and reporting on court performance in PICs, and the increased transparency this creates, has resulted in greater proactivity in dealing with delays and backlogged cases. In several PICs, media coverage around courts' annual reporting has helped to generate community awareness of the performance and time standards which should be upheld by courts (PJDP 2015a: 10). Other studies have noted that pressure from civil society is often an important ingredient in successful judicial reform projects, particularly when there are vested interests that are aligned in opposition (Dakolias, 2000).

Impose monetary penalties for litigants seeking adjournments: An impact evaluation report by the World Bank (2013: 4) suggests that, in order to reduce the number of adjournments that affect cases in developing countries, judicial officers could be authorised to impose monetary penalties on litigants for adjournments beyond a reasonable number.

Plan ahead for transfers, training and workshops activities: An impact diagnostic study on court case delays across Kenya illustrates that delays in the determination of cases at courts were primarily caused by the absence of judicial officers from the court stations. These absences, which are often the result of staff transfers or training and workshop programmes, lead to frequent adjournments and therefore delays. It is suggested that a way of combatting these absences is to plan in advance for transfers and workshops that may require judicial officers to be away from their station (PMD: 2014).

Ensure clear and early communication between defense counsel and prosecutor: A review of best practice carried out by Dandurand (2005) suggests that effective communication between the defence counsel and the prosecutor in a particular case, including the early disclosure of evidence, facilitates better case management and can prevent ineffective hearings and unnecessary adjournments. Moreover, the early examination of key prosecution witnesses can speed up the resolution of cases. In the District Court of Esbjerg in Denmark meetings are set up by the court to bring together the prosecutor and defense lawyer to establish the schedule of the case, in an effort to avoid unnecessary adjournments during the trial (CEPEJ, 2008: 15).

Lessons from judicial systems in high income countries

- A study of eight magistrates' courts in the United Kingdom showed that courts that took control from other agencies and demanded that professional users be accountable to the court experienced less delays and fewer collapsed trials (Raine and Willson, 1993). The Bexley and Bristol court, for example, imposed stringent lead times for the preparation of cases, with adjournments denied and penalties imposed for non-compliance with deadlines. The most efficient courts were those that also engaged in strategic negotiation regarding scheduling (Ibid: 247). A study by Michels (1995) similarly argues that early court control over the scheduling of cases is critical to reducing the number of adjournments and the number and duration of trials.
- Some studies recommend focusing on the working practices of prosecution services in order to reduce the number of ineffective hearings, delays and adjournments. A study by the National Audit Office in England identified problems in the prosecution process which were partly responsible for unnecessary court hearings. These included: lack of preparation, inadequate prioritisation of cases, poor case tracking, mislaid files, and incomplete evidence on file. In response, the study recommended:

- A better process for preparing cases
 - Making more lawyer time available for review and preparation
 - Improving technology
 - Increasing collaboration between the prosecution and other criminal justice agencies (National Audit Office, 2006; cited in Dandurand, 2009: 26)
- In British Columbia, judges are afforded wide discretion on whether to grant an adjournment and are not bound by prior adjournment orders of other judges. It is also within the judge's discretion to refuse to grant further adjournments if they have already granted numerous adjournments to an accused (Libman, 2006: 168).
 - Successful delay reduction programmes in the United States have often started by addressing the incentives facing judges. A common practice is for judges to be rewarded for setting firm dates for trials and hearings, and for exerting control over the pace of litigation. Judges, in turn, often respond by imposing fines on lawyers who seek unjustified postponements or otherwise create delays (World Bank, 1999: 34)

3. Additional delay prevention measures

The Pacific Judicial Development Programme has put forward a series of recommendations for addressing general delays in court proceedings, which are based on practical experience of delay reduction measures in the Vanuatu Supreme Court.

Address the quality of lawyering: Across PICs, non-compliance and tardiness on the part of lawyers is frequently cited as a source of case delay. In seeking to promote compliance, courts should make use of their discretionary powers to discipline parties and lawyers in case of breaches of procedural rules or legal ethical obligations. Courts should pay particular attention to a lack of readiness to proceed on set trial dates, as this is a major cause of case delay. There are a range of punitive measures that judges can deploy, including rejecting incomplete filings, issuing a caution, requesting an apology, threatening a fine against the lawyer or party, and, in exceptional circumstances, taking action for contempt of court (PJDP, 2015b: 26).

In other contexts, the use of 'soft sanctions' may be a more appropriate way of encouraging better quality, more timely lawyering. These measures could include:

- Arranging meetings or discussion groups to address problematic areas of practice and strategies to improve
- Organising presentations by legal educational specialists on a particular area of law which is proving problematic
- Engaging an external facilitator to assist in communication between the court and lawyers
- Informing lawyers of the consequences of non-compliance with deadlines or other requirements
- Creating rules and procedures that encourage the full preparation of cases before filing (Ibid: 26-27).

Establish timeframes and set procedures: Goals concerning time-frames for the determination of different types of cases can be established, which enable courts to measure which cases are exceeding the targeted time and to evaluate whether delay reduction policies are working. Case management procedures can be improved through pre- and post-filing mediation, and pre-trial judicial conferencing (Ibid: 27).

Equitable and intelligent case assignment: The equitable distribution of new cases across judges, combined with regular reviews, can help to prevent any one judge from becoming overloaded. Assigning cases to particular judges based on their expertise in a particular field of law can also improve efficiency (Ibid: 28).

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