



REVIEWING *the views*

Case Management in the Judiciary

FAYAZUDDIN AHMAD

PRE-CONDITION for a pro-people judiciary is proper enforcement of legislations maintaining peace, order and effective justice serving forums. Citizens' perception of rule of law largely depends on how it serves the interest of common people in an impartial manner. In the civil and criminal justice system, the case management processes have been excruciatingly slow, costly and time consuming, which restricts access to justice for the poor and the marginalized groups of the society. Another critical problem is the delay in disposal of cases which is highly detrimental to the common citizens. Weaknesses in procedural law, prevalence of vested interest groups, poor training and physical facilities for judges and lawyers, lack of inspection and supervision, intrusion of political considerations, all contribute to such undesirable outcomes.

The judiciary has been separated from the executive wing of the state with effect from November 2007. After the separation of the judiciary from the executive and with the introduction of judicial magistracy, the rate of disposal of criminal cases especially in the courts of magistrates accelerated. However, given the volume of cases pending, such acceleration is not enough. Thus, the second national poverty reduction strategy emphasizes the need for the government to focus on effective service delivery and preparedness for emerging pressure and challenges. There are efforts underway to review judicial reform thoroughly to undertake necessary changes so that it can effectively perform its role as an independent body to safeguard the constitution and protect the individual's rights and liberties.

ICT can play an important role for socio-economic development and in view of that, short, mid and long term propositions have been incorporated by the government in the ICT Policy 2009. To create an equitable society easy access to judicial information and services is important. Eliminating pending cases through digitalisation of cases and court management process, and finally improving legal enforcement system through integration of ICTs in all stages of legal process are significant facets in this journey.

The process of integration of ICTs in

the judicial system has started and some of the actions brought positive results with high potential. While there are a huge number of cases pending and the rate of filing cases is greater than the rate of disposal indicating increase of case-load every year, it is certain that judiciary will have to bear the huge backlog of cases on its shoulder for an uncertain period of time unless special measures are undertaken to deal with the situation. Backlog of cases does not only delay the disposal of cases and impose huge cost on the justice seeker but also perpetuates tensions among litigants.

The government took up a project known as the "Legal and Judicial Capacity Building Project" to improve the quality and pace of the civil justice delivery system incorporating ICT to reduce backlog; make the system more accessible to the users, particularly, the marginalised and institutionalise the resolution of disputes out of court. These reform initiatives have so far been limited to the Supreme Court and pilot district courts. The pilot districts have developed a case management and court administration (CMCA) model using ICTs. All complaints and applications are now filed in a single location of the court house to a Judicial Administrative Officer (JAO) and recorded in the computerized modern ICT-based case management system. The pilot Courts have made some progress in creating a climate where people get speedy justice at minimum cost. These reform programmes are expected to be implemented in other districts gradually.

The current court case procedure management system does not comply with the requirement of 21st century. Manual procedural record keeping and storage of case records limit its access and make the overall process slower. It also creates opportunities of misappropriation and rent seeking. There is also scope for exploitation with the cause list, leaving people vulnerable to unpredictable delays with date of hearing. In the lower courts things are more complex and level of disorder is higher since the issues are more widespread with higher number of court officials and clerks.

Since 2000, several pilot efforts have been undertaken, one of which resulted in creating web sites of the concerned ministry and the Supreme Court. In the Supreme Court's web page options like updated cause list, judgment and rele-



vant laws are incorporated. Some features have not yet been launched. Legislative and Parliamentary Affairs Division of the Ministry of Law, Justice and Parliamentary Affairs provides e-Content on Law, Acts & ordinance on their website. However, these efforts will need regular and proper maintenance along with updated information - otherwise these will not be very useful.

The present court environment is not well acquainted with modern technologies. People engaged with the process are not equipped with tools and do not possess the mindset to apply even if those are available. ICTs are mainly used by a handful of legal practitioners and chambers up to the extent of legal research. The overall process and people engaged still remain largely unaware of the benefits of the incorporation of ICTs. Few selected judges use and maintain their judgments in PCs, but not in any systematic manner and neither are they accessible by others. Paper-based system, one the one hand, requires more storage space and large number of human resource, and on the other, it is not efficient and eco-friendly. Digital Display Board of cases updated on a daily basis in all district courts and divisions of the Supreme Court is soon to come into effect. They are planning to

add features like case management and content management systems through a web-based application.

Introduction of technologies at whatever level available are still inaccessible to majority of the citizenry. Although there are some initiatives from the non-government agencies, both non-government and government agencies are failing to improve peoples' access to legal remedies. Legal services can be taken to the grassroots through online and other ICTs. Pledgers can start the preliminary process online. Agencies can maintain liaison with the local government institutions (LGI) to use their information access points (e.g. union information and services centre, UISC or one stop service point at the Upazilla headquarters) as their first face for filing any plea.

It is well understood that change management in the judiciary system will take time due to lack of confidence and 'fear of unknown' among the relevant stakeholders. Thus, the strategic priorities should aim actions, which are relatively easier to implement as well as will bring confidence among the stakeholders.

Case process management

One of the strategic priorities should be

to introduce ICT-based system of case procedure management, which will make its functions more efficient and increase transparency and accountability. For example, gradual transformation to audio-visual evidence, which can be easily captured, will make the process faster and authentic. Day to day case management system may be transformed into digital system, starting from filing, recording of presence (hazira) to witness and evidence production. Following the case filing system, as foreseen and planned in the higher court, the lower judiciary will also start to record online the presence of the accused, which will be displayed in the board outside the court room.

This will automatically generate cause list of the day in the respective court with specified time. All proceedings as recorded digitally may be displayed during the argumentation. At the end of every case hearing process, updates and judgment may be recorded digitally. This will save a huge amount of man hour and will make the overall process transparent. Data interoperability between higher and lower courts may be established. Redeployment of existing human resource may create scope for processing more cases and facilitate reducing number of pending cases.

Court and other process fees may be paid online after online payment mechanisms are set in place. In the long run, preparation of e-case filing (e.g. using portfolio format) may be made possible. Other services like summons, notice, warrant may be communicated through e-mails or SMS along with existing communication methods. In places where connectivity will take time, the local post office will serve as the point to receive and deliver these messages. In the courtroom, through a gradual step-by-step process, technologies may be made available to judges, clerks and arguing lawyers with facilities of audio-visuals or oral evidence. Oral depositions may be recorded on audio-video devices supplemented by digital transcription and authenticated by witness and the judge using digital signatures.

Digital record keeping

Introducing modern record keeping, filing and keeping case proceedings using ICT based management system will strengthen the judiciary governance mechanism. Digitisation of current files and introduction of e-filing may be done

at the same time. At the initial stage, proceedings can be kept in softcopy form. Simultaneously older records may be scanned and preserved. Once introduced, all suits can be encouraged to file with soft copies of necessary legal documents. Indexation of digitised record may be completed for easy retrieval. An authentication process may be designed to authenticate digitised records and simultaneous weeding out of paper records. For Judges, e-Case files will lessen their handling of bulk of paper-documents.

At present, cause lists are generally developed and maintained in hard copies, which leaves scope for manipulation. Gradual shift of online publication and management of cause-lists will decrease level of external interference in the higher court and will help secure clients' interest by keeping the process transparent and fair. A computerized court case recording and tracking system, that makes the information accessible to people through the website, will improve court governance. Digital display board of cases on a daily basis will support legal practitioners to perform their jobs more efficiently. Orders and judgments dictated in the courts/ chambers should be signed using digital signature and need to be automatically added to the respective e-Case file.

Digital documentation

The court website should ideally provide information on- general court information, cause lists, roster, court fees, case status, orders and judgments in PDF/digitally signed, online forms for application for urgent listing, inspection, process fee, information about certified copies, online filing, web cast and live streaming of certain cases, archived court cases, court functions, swearing in of judges and full court references. Bangladesh Supreme Court Records (BSCR) which contains all noteworthy judgments should be published online by leveraging a search enabled online database. Gradual streamlining of the current administrative procedure will deter arbitrary decision making by court staff. All judgments, some of which are stored in respective Justice's computers, should be put online in a systematic manner.

The writer is an Advocate and Legal Analyst working with UNDP's Access to Information (A2I) Programme at the PMO.

HUMAN RIGHTS *monitor*

Breaking through the silence: HIV and the deaf

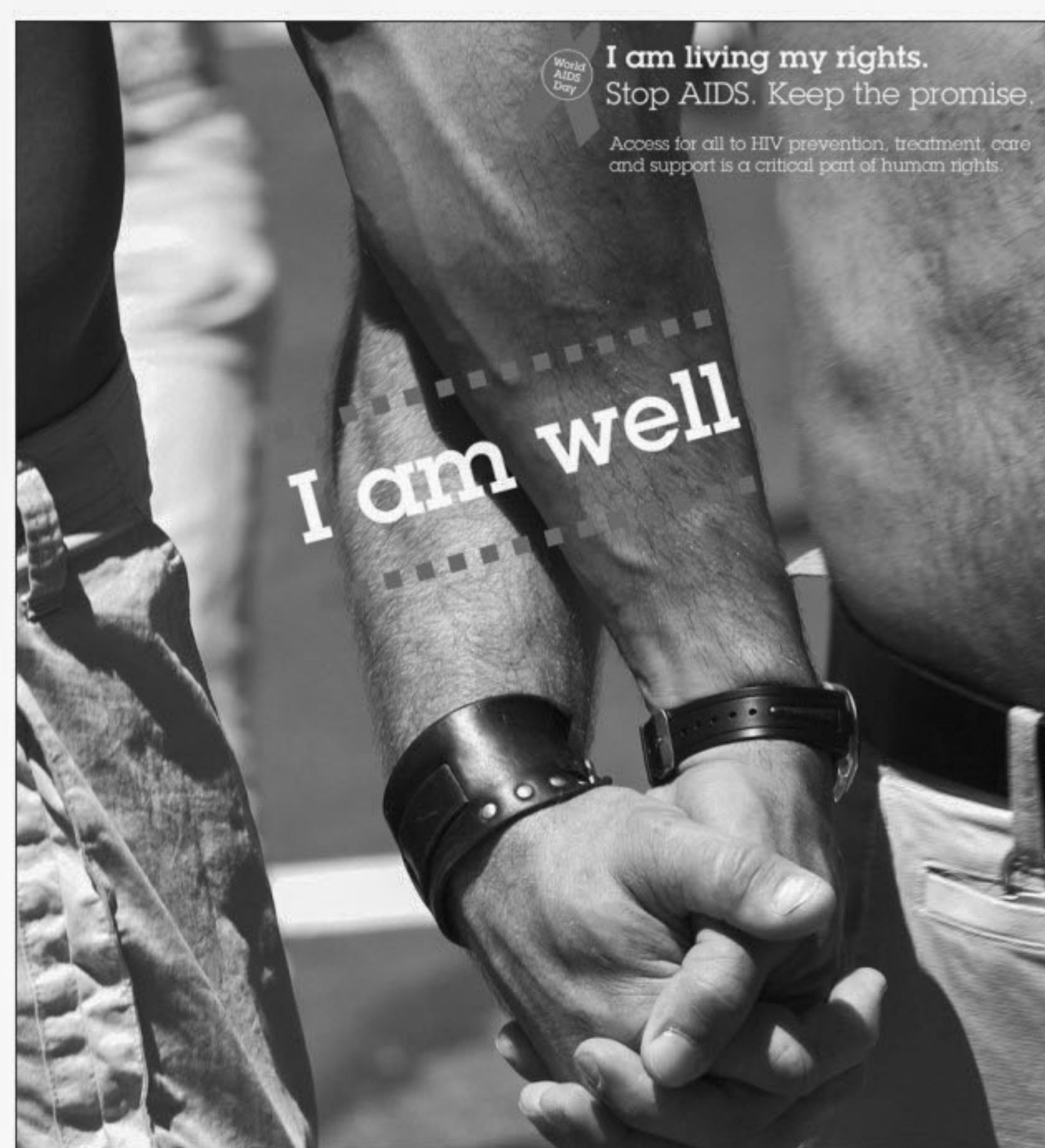
THIS week, different groups around the world are observing World AIDS Day and the International Day of Persons with Disabilities, on December 1 and 3 respectively. Rarely have the two been observed together. At least until this year. Events hosted at UN headquarters in New York and the US State Department are drawing attention to the strong link between disability and HIV.

Here are the facts: Persons with disabilities have the same types of sexual relationships and frequency of sexual activity as persons without disabilities. Individuals with disabilities sometimes use drugs or visit or work as sex workers. According to the World Bank, persons with disabilities may be more vulnerable to HIV because they are more likely to be abused, marginalized, discriminated against, illiterate, and poor. Women with disabilities are up to three times as likely to be victims of sexual violence.

But many of the stories of people with disabilities and their experiences with HIV - particularly those who are deaf - are shrouded in silence.

Take the story of John Meletse in South Africa. He went to the local clinic to get an HIV test. They had no sign language interpreter and referred him to another doctor. This doctor did not know sign language either, but communicated with handwritten notes. The doctor administered the test without any counselling. Fifteen minutes later, the doctor wrote in big bold letters: "YOU ARE HIV POSITIVE." John asked if this was really true. The doctor replied, "Yes, and you can go now."

Imagine the experience of Erica, an HIV-positive deaf woman in Uganda. She was not aware that she was having twins when she went into labour. The nurse did not know sign language and did not tell her to keep pushing after she gave birth to her first child. Erica subsequently lost the second twin. It is not clear if she ever received information about mother-to-child transmission of HIV. Erica's children



are beaten by her neighbours. When they played with the neighbours' children, they were told to go away. They said, "You'll spread deafness to my family."

Or Jane, who fled her village in northern Uganda as a result of raids by the Lord's Resistance Army. She is hard of hearing and was never able to go to school. In her words, "I fear HIV so I don't move around." This fear is also why she stays with her husband, who physically and sexually

abuses her. Jane has not benefited from any community HIV programs because she hasn't been able to find out about them.

Consider the barriers preventing persons who are deaf or hard of hearing from receiving HIV information and care. Radio programs, a common part of public awareness campaigns, completely exclude persons who are deaf or hard of hearing. Printed material alone is clearly

not sufficient. Sign language interpretation and presentations are key, but they are rare, especially in the developing world.

An estimated 90 percent of deaf people in developing countries cannot read or use formal sign language. Instead, deaf people in developing countries often communicate with local signs or family-specific gestures. This makes medical settings especially problematic because they must bring a close family member along to communicate for them. When dealing with sensitive or stigmatised topics, such as sexual assault or HIV testing, the lack of confidentiality often dissuades people from revealing their concerns. Stigma in the community and myths that people with disabilities are asexual or virgins further isolate them from HIV information, testing, counselling, and other services.

Because of communication barriers, lack of education, ignorance and fear, deaf people around the world are overlooked by HIV services. UNAIDS and the US State Department are taking a first step at addressing this gap by getting policymakers to think about how to make HIV strategic plans, programs and services inclusive to people with all types of disabilities. Much more needs to be done, though, particularly on the national level. Basic sign language and disability awareness training for health workers is absolutely fundamental to stopping the spread of HIV among people who are deaf. In addition, governments need to ensure that children who are deaf or hard of hearing are able to attend schools to learn sign language and about health topics such as HIV.

Without a concerted effort to reach out to the deaf population, they will continue to live in silence and fear, and the HIV epidemic will quietly continue to spread.

Source: Human Rights Watch.

FOR YOUR *information*

Asian HIV epidemics remain largely stable

- Most national HIV epidemics in the region appear to have stabilised.
- An estimated 4.9 million [4.5 million - 5.5 million] people were living with HIV in 2009, about the same number as five years earlier.
- An estimated 300 000 [260 000 - 340 000] people died from AIDS-related causes in 2009 compared to 250 000 [220 000 - 300 000] in 2001.

Progress in the HIV response among children

- Wider access to services that prevent mother-to-child transmission of HIV has led to a significant drop in new HIV infections among children.
- An estimated 22 000 [15 000 - 31 000] children 0-14 years of age became infected with HIV in 2009 - a 15% decrease from the 1999 estimate of 26 000 [18 000 - 38 000].
- AIDS-related deaths among children declined from 18 000 [11 000 - 25 000] in 2004 to 15 000 [9000 - 22 000] in 2009 - a decrease of 15%.

Mixed progress on new HIV infections

- An estimated 360 000 [300 000 - 430 000] people were newly infected with HIV in 2009, compared to 450 000 [410 000 - 500 000] in 2001 - a 20% reduction over eight years.
- In India, Nepal and Thailand, the incidence rate of new HIV infections fell by more than 25% between 2001 and 2009.
- Between 2001 and 2009, the incidence rate of new HIV infections in Bangladesh and the Philippines - countries with relatively low epidemic levels - increased by more than 25%.

HIV epidemic patterns vary between and within countries

- Overall trends in the epidemic hide important variations. In China, for example, five of the country's 22 provinces account for 53% of people living with HIV.
- In Indonesia's Papua province, HIV infections levels are 15 times higher than the national average.
- Thailand is the only country in Asia with an HIV prevalence of close to 1%.
- In Cambodia, adult HIV prevalence declined from 1.2% [0.8% - 1.6%] in 2001 to 0.5% [0.4% - 0.8%] in 2009.

Key populations are central to the region's HIV epidemics

- Asia's HIV epidemics remain largely concentrated among injecting drug users, men who have sex with men and sex workers.
- About 16% of people who inject drugs in Asia are living with HIV. In some countries, this estimate is considerably higher: 30% - 50% in Thailand and 32% - 58% in Viet Nam.
- High prevalence among men who have sex with men has been reported in several countries in the region: 29% in Myanmar, 5% in Indonesia, and between 7% - 18% in parts of southern India.
- Nearly one in five (18%) female sex workers surveyed in Myanmar tested positive for HIV in the mid-2000s.

Source: UNAIDS, the Joint United Nations Program on HIV/AIDS, is an innovative United Nations partnership that leads and inspires the world in achieving universal access to HIV prevention, treatment, care and support.