

In Search of Abbreviated Criminal Procedures

When there is a criminal justice response, mass atrocities easily result in a high number of open case files concerning international crimes (war crimes, crimes against humanity and sometimes genocide). This can overload the judiciary, so that it finds itself unable to process the opened cases at a corresponding pace, eventually leading to *de facto* impunity. This has arguably happened in several countries. Perpetrators, victims and witnesses end up dying before justice is rendered. This can undermine trust in the criminal justice systems concerned, contrary to what was one of the purposes of opening the case files in the first place. To avoid this situation, and to professionally assess the ability of criminal justice to respond to mass atrocity, we should properly explore the relevancy of the many examples of functioning abbreviated criminal proceedings in national legal systems.

The main purpose of abbreviated criminal procedures for international crimes is to ensure better judicial economy, while avoiding compromises in terms of rights of the accused, victims' rights, and interests of justice. By enhancing judicial economy, it is more likely that opened case files are processed within the criminal justice system, and that basic expectations of justice are met. A criminal justice system may provide means of limiting the number of prosecutions to better focus on certain crimes (such as decriminalizing minor offences or deferring cases to non-judicial mechanisms). It may also include procedures aimed at expediting certain phases of regular proceedings in order to deliver judgments with fewer resources or less time.

Furthermore, these procedures are assumed to meet the requirements that any judicial procedure should possess in order to be adequate for the level of justice demanded by international crimes: hence, they must be provided for by law and be sufficiently transparent.

Above all, the effect on judicial economy should somehow be proportional to the impact on the legitimate interests of the accused. Any model of criminal proceedings must balance contrasting, valid rights, even when this creates a dilemma for criminal justice policy. Due process and the rights of the accused need to be upheld. Justice for international crimes cannot lack in compliance with human rights. It has been noted that "there are two sides to the human rights argument". While the rights of the accused and the thoroughness of criminal trials entail important human rights issues, impunity and incapability to bring perpetrators to justice result in open-ended violations of the victims' human rights. The victims' rights to truth, justice and reparation must also be guaranteed. *Res judicata* empowers truth-finding, in the best interest of victims.