



Research Article

Comittal Is Not a Trial: Reconstructing the Gateway to the High Court

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Abstract: Uganda's committal procedure looks modest on paper. The Director of Public Prosecutions files an indictment and a summary of the case in a magistrate's court; the magistrate supplies and explains those papers; no plea is taken; and the accused is sent to the High Court. In practice, that short sequence has become the hinge on which liberty, access to the trial court and years of human life may turn. The constitutional question is therefore not exhausted by asking whether sections 168 and 169 of the Magistrates Courts Act are the "committal" mentioned in article 23(6)(c). They are. But they are so only as the statutory machinery presently giving factual content to that word. The Constitution does not entrench the machinery, approve prosecutorial control of the gateway, or permit the State to consume 180 days before acting. This article reads article 23(6) closely and in its constitutional setting. Paragraph (a) secures access to judicial consideration of bail; paragraphs (b) and (c) command release when their custody thresholds are reached. Paragraph (c) says that an accused in custody for 180 days before committal shall be released on reasonable conditions. It does not say that the prosecution may wait 180 days, that committal is a trial, that a paper transfer cures prior delay, or that custody becomes constitutionally harmless after transfer. Nor does it make release depend upon a fresh application. *Hon Sam Kuteesa and Others v Attorney General* supplies the controlling constitutional insight: committal changes the forum, not the justification for detention. Bail cannot lapse merely because a file crosses a jurisdictional line. Article 28 reaches further. Its guarantee of a fair, speedy and public hearing begins with the criminal charge and follows the case through investigation, committal, plea, trial and disposition. It protects people in custody and on bail. It also makes notice, adequate facilities, representation and the presumption of innocence relevant to committal practice. The Ugandan decisions considered here, among them *Shabahuria*, *Tesimana*, *Opoka*, *Opiyo*, *Bonafacio Mulugga*, *Byamukama*, *Kitandwe*, *Kawalya*, *Tumule* and *Muhwezi*, show a system repeatedly rescued by exceptional judicial orders because ordinary law does not assign continuous responsibility for a case. The article concludes that Uganda should replace prosecutor-controlled committal with prompt statutory sending to the High Court, followed by judge-led readiness and disclosure review, a single running case clock, automatic custody alerts, least-restrictive bail conditions and a graduated delay-remedy jurisdiction. The object is not speed for its own sake. It is a criminal process in which time is accounted for, coercion is justified and a grave accusation is either prepared for fair adjudication or brought to an end.

Keywords: *Committal proceedings; bail; personal liberty; speedy trial; fair hearing; pretrial detention; constitutional criminal justice; prosecutorial accountability*

1. Introduction

Committal is often described as a procedural bridge between the magistrate's court and the High Court. That image is too gentle for the cases examined in this article. A bridge ordinarily carries a traveller somewhere. Uganda's committal practice has too often left the accused beneath one jurisdiction and outside the other,

subject to remand warrants or bail conditions while no court capable of trying the charge has assumed meaningful control.

The human record is difficult to dismiss as a collection of unfortunate outliers. Matia Shabahuria lived for three years and nine months under a murder charge without

committal (*Shabahuria Matia v Uganda*, 1999). Rosemary Tesimana was lost within the institutions of criminal justice and mental-health detention for almost nine years (*Uganda v Tesimana Rosemary*, 1999). David Nicholas Opoka reported to court roughly twice a month for six years while a treason charge was neither committed nor withdrawn (*Republic of Uganda v Opoka Pyenlyce David Nicholas*, 2009). Bonafacio Mulugga and the other petitioners crossed the formal threshold into the High Court, then remained in custody for between three and six years without trial (*Bonafacio Mulugga and Others v Attorney General*, 2025). Alfred Byamukama spent twenty-eight years in legal custody before the State acknowledged that the police file and indictment could not be found or reconstructed (*Byamukama Alfred v Uganda*, 2025). Ivan Kawalya and Steven Tumule were eventually released after years of uncommitted remand (*Kawalya Ivan v Uganda*, 2026; *Tumule Steven v Uganda*, 2026). Gideon Muhwezi reached plea, but eight adjournments produced no prosecution witness (*Uganda v Muhwezi Gideon*, 2026).

These lives occupy different parts of the same process. They expose a defect deeper than slow paperwork: the law treats responsibility as episodic. Police investigate, the ODPP decides, a magistrate remands, a registry transfers, the High Court lists sessions, and prisons hold the person. Each institution performs a fragment. None is expressly charged with keeping the whole constitutional promise in view from the first court appearance until verdict or lawful termination.

The resulting legal question requires a qualified answer. Sections 168 and 169 of the Magistrates Courts Act presently supply the event to which article 23(6)(c) refers when it speaks of a case being committed to the High Court. In that narrow, functional sense, they are the process contemplated by the constitutional text. Yet they are not a procedure ordained or immunised by the Constitution. Article 23(6)(c) assumes that ordinary law will identify a committal event; it does not constitutionalise a prosecutor-controlled paper gateway. Parliament may alter or replace that gateway, provided the resulting system respects the rights and institutional responsibilities distributed across the Constitution.

That distinction matters because article 23(6)(c) has sometimes been made to carry a meaning its words cannot bear. The provision is a restraint on custody, not an allowance of delay. It tells the State what must happen to liberty when an uncommitted accused has remained in custody for 180 days. It does not tell the State that 180 days is a reasonable investigation period. Still less does it treat committal on day 179 as an answer to article 28. The Constitution measures liberty at one point in article 23 and the fairness and speed of the whole criminal charge in article 28. Reading one without the other produces the very anomaly visible in the cases: a system exact about moving paper, but imprecise about bringing a person to trial.

The analysis proceeds from the statutory design to the Constitution, then returns to the decided cases as a record of institutional behaviour. The method is deliberately doctrinal but not abstract. Each principal judgment is considered for the premise from which it began, the method by which it reasoned, the constitutional consequence it produced and the practical work its remedy could, or could not, perform. That approach makes room for a central truth which procedural shorthand often conceals: delay is experienced in days of custody, journeys to court, lost work, anxious families, fading memory and unresolved harm. Constitutional criminal procedure is credible only when its categories remain answerable to those facts.

2. The Statutory Gateway and Its Limited Office

2.1 What Sections 168 and 169 Do

The High Court may try an indictable offence only after the accused has been committed for trial in accordance with the Magistrates Courts Act (*Trial on Indictments Act*, Cap 25, s 2). Section 168 therefore controls access to the only court competent to try the gravest charges. Where a person before a magistrate is charged with an offence to be tried by the High Court, the DPP must file an indictment and a signed summary of the case. The summary must contain the particulars necessary to give the accused "reasonable information" about the nature of the offence (*Magistrates Courts Act*, Cap 19, s 168(1)–(3)).

Once those papers are filed, the magistrate gives copies to the accused, reads and explains them in a language the accused understands, informs the accused that no plea is required, commits the accused for trial and transmits the indictment and summary to the High Court registrar. The present Act also provides that bail granted by a magistrate does not lapse on committal, while preserving the High Court's power to cancel it (*Magistrates Courts Act*, Cap 19, s 168(4)–(5)).

Section 169 addresses cases which could lawfully be tried in either court. It places the choice of forum within the DPP's discretion and prevents the High Court from refusing a properly committed case merely because a magistrate could have tried it (*Magistrates Courts Act*, Cap 19, s 169). That discretion is constitutionally connected to article 120(5), which requires the DPP to consider the public interest, the interests of the administration of justice and the need to prevent abuse of legal process (*Constitution of the Republic of Uganda*, 1995, art 120(5)).

The statutory sequence performs four legitimate tasks. It selects the trial forum, gives formal notice of the accusation, creates a record for the High Court and maintains the legal position on custody or bail while jurisdiction moves. None of those tasks is trivial. The difficulty lies in the condition attached to them: until the prosecutor files the papers, the magistrate cannot complete the transfer and the High Court cannot ordinarily begin the trial process. The official whose

readiness is in issue therefore controls the event which gives a trial court effective control.

2.2 What Section 168 Does Not Do

Section 168 is not a preliminary inquiry. The magistrate hears no witness, tests no exhibit and determines neither probable cause nor a prima facie case. The accused does not plead. The magistrate's statutory obligation arises once the DPP has complied with subsection (1); the section supplies no express power to reject an evidentially weak summary, compel the DPP to file one by a stated date, or direct discontinuance when the investigation has failed.

Nor is the summary the equivalent of full disclosure. "Reasonable information as to the nature of the offence" is a notice standard. It does not, without more, require every witness statement, exhibit, expert report, digital record or item capable of assisting the defence. Those fuller obligations arise from other statutory rules and, more fundamentally, from article 28(3)(b) and (c). Treating the section 168 summary as if it carries the entire constitutional burden of disclosure produces two opposite errors: skeletal summaries may be accepted as sufficient notice, while courts trying to repair that weakness may convert committal into a sufficiency hearing the legislature did not design.

The present procedure is therefore caught between ceremony and substance. If the magistrate is only a conduit, prosecutorial control of the conduit serves little purpose. If the magistrate is expected to protect the accused against an unready case, the Act withholds the materials, standards and remedies needed for that work. Reform must resolve that contradiction rather than demand greater energy from a stage whose legal office remains uncertain.

2.3 A Statutory Form, Not a Constitutional Fixture

The Constitution does not specify who must prepare a summary, what the summary must contain, whether a magistrate must read it aloud, or whether forum transfer must await prosecutorial filing. It could be implemented through immediate electronic sending, a first-appearance transfer order, direct filing in the High Court, or a retained but time-bound committal procedure. The content of article 23(6)(c) is not the preservation of section 168. It is the protection of liberty at a stated custody threshold.

That point is reinforced by the current form of section 168(4). Its assurance that bail survives committal is not an inherited feature of the old legislation. It is the statutory settlement of a constitutional contest. To

understand why, article 23(6) must first be allowed to speak in its own grammar.

3. Article 23(6) Read on Its Own Terms

3.1 Three Paragraphs, Three Legal Effects

Article 23(6) begins with a common condition: a person has been arrested in respect of a criminal offence. It then creates three rules which should not be collapsed into a single, undifferentiated "right to bail."

Paragraph (a) says that the person is entitled to apply to a court for release and that the court may grant bail on conditions it considers reasonable. The entitlement is to approach a court and receive a judicial decision. Release remains discretionary, but the discretion belongs to the court, must be exercised judicially and may be burdened only by reasonable conditions.

Paragraph (b) addresses an offence triable by both the High Court and a subordinate court. After sixty days in custody before trial, the person "shall be released on bail" on reasonable conditions. Paragraph (c) addresses an offence triable only by the High Court. After 180 days in custody before committal, the person likewise "shall be released on bail" on reasonable conditions (*Constitution of the Republic of Uganda*, 1995, art 23(6)(a)–(c)). The current periods are sixty and 180 days.

The change from "may" in paragraph (a) to "shall" in paragraphs (b) and (c) is deliberate. Once the relevant factual conditions are established, the court's discretion concerns the conditions of release, not the existence of release. Paragraphs (b) and (c) also omit paragraph (a)'s express requirement that the accused apply. The better reading is that mandatory release does not depend on a technically competent motion by a person whom the State has kept in custody beyond the constitutional limit. A court order may still be administratively necessary, but the constitutional duty has already arisen. A registry which notices the date and lists the matter is giving effect to the Constitution; it is not conferring a favour.

This reading is consistent with the textual structure and with practical equality. If mandatory release depended on a fresh application, the most poorly represented prisoners would enjoy the clearest constitutional command least effectively. Article 20(2) binds all organs and agencies of government to respect, uphold and promote rights. That duty is inconsistent with a system which waits silently for an unrepresented accused to discover that the constitutional clock has expired (*Constitution of the Republic of Uganda*, 1995, art 20(2)).

3.2 What Article 23(6)(c) Says, and What It Leaves Unsaid

The discipline of close reading is particularly important here. Article 23(6)(c) has a narrow operative field, but within that field its command is exact.

The provision states

The provision does not state

It applies to a person arrested for an offence triable only by the High Court.	It does not make every exclusively High Court charge lawful or evidentially sufficient.
It counts 180 days of remand custody before committal.	It does not grant the prosecution a 180-day grace period.
At that point the person shall be released on bail.	It does not require dismissal, acquittal or extinction of the charge on day 181.
Release may carry reasonable conditions.	It does not authorise conditions which the accused cannot meet or which reproduce detention in another form.
It uses committal as a temporal marker.	It does not define committal or entrench sections 168 and 169.
It regulates pre-committal custody.	It does not declare post-committal custody immune from articles 23, 28, 44(c) or 50.
It says "shall be released", without repeating the application language in paragraph (a).	It does not make mandatory release depend on counsel, a formal motion or prosecutorial consent.
It ends its own clock at committal.	It does not say that committal is a trial, that the speedy-hearing clock restarts, or that prior delay is cured.

The most tempting error is to convert a trigger for release into a deadline for performance. A constitutional consequence and a prosecutorial timetable are not the same thing. The State should ordinarily be ready far earlier than day 180. If it is not, the available courses are to justify a short and specific investigative period while accepting lawful release, revise the charge, discontinue it, or commit on papers which responsibly disclose the case. The Constitution does not license a perfunctory summary on day 179 whose real purpose is to avoid bail.

The provision also does not impose an all-purpose committal deadline. Its factual condition is custody. An accused already on bail may wait beyond 180 days without activating paragraph (c), although the charge continues to restrict work, travel, reputation, sureties and peace of mind. That is not a drafting accident which a court may erase by pretending that paragraph (c) applies. It is the point at which article 28 becomes indispensable.

At the other end of the process, committal can function as a constitutional trapdoor. A literal application means that a person committed shortly before day 180 falls outside paragraph (c), even if trial remains years away. The text cannot honestly be rewritten to say "before trial". But it must be read within a Constitution which separately protects liberty and guarantees a speedy determination of the charge. Committal ends one specified route to mandatory release; it does not end constitutional scrutiny of continued detention.

3.3 Foundation for Human Rights Initiative: Useful Holding, Bounded Authority

The Supreme Court's decision in *Foundation for Human Rights Initiative v Attorney General* is frequently invoked in bail debates, sometimes for more than it decided. The Court held that article 23(6)(a) gives an accused the right to apply for bail, not an automatic right to receive it. It treated the then section 15 of the Trial on Indictments Act, now reflected in section 16 of the

current Act, as a framework for considerations relevant to specified serious offences, read under article 274 so that the statutory list of "exceptional circumstances" was not closed and judicial discretion survived (*Foundation for Human Rights Initiative v Attorney General*, 2018). The Court did not determine the mandatory-release burden under art 23(6)(b)–(c), the abolition of committal, or automatic lapse of bail on the merits because those matters were outside the issues properly arising on appeal.

That holding clarifies paragraph (a). It does not dilute the imperative language of paragraphs (b) and (c). Counsel in *FHRI* argued that those paragraphs are mandatory and require no application once their periods expire. The Supreme Court declined to decide that issue because it had not been raised and determined below. The Court likewise declined to decide whether committal proceedings should be abolished, describing the question as important but outside the ground of appeal. Its refusal to decide cannot be turned into approval of the present system. A reserved question remains open.

The reasoning in *FHRI* also calls for care when the language of a "right to bail" is used. Article 23(6)(a) constitutionalises access to a judicial decision; it does not predetermine that decision. Paragraphs (b) and (c), by contrast, constitutionalise release once their thresholds are met. Precision matters because an overbroad claim of automatic bail under paragraph (a) is easy to reject and may obscure the stronger, textually mandatory protection in the later paragraphs.

3.4 Kuteesa: Committal Cannot Cancel a Constitutional Judgment

Hon Sam Kuteesa and Others v Attorney General confronted the old section 168(4), under which bail automatically lapsed when an accused was committed to the High Court. The petitioners had been granted bail

and had complied with its conditions. Yet the statute required the committing magistrate to remand them solely because the case was crossing into the High Court (*Hon Sam Kuteesa and 2 Others v Attorney General*, 2012). The judgment reproduced the historical 120- and 360-day periods then applicable. Current art 23(6)(b)–(c) provides sixty and 180 days.

The Constitutional Court began from a sound constitutional premise: bail is rooted in personal liberty, and liberty is inherent rather than a concession from the State. Its method was equally important. The Court read the Constitution broadly and purposively, treated it as an integrated whole, examined the purpose and effect of the impugned law, and applied article 274 to a pre-1995 statute. Existing law was not allowed to survive as a legal fossil. It had to be modified to conform to the new constitutional order.

On the facts, automatic lapse ignored everything that mattered to a genuine bail decision. It did not ask whether the accused had honoured earlier conditions, whether any risk had changed, whether witnesses were threatened, or whether trial would be prejudiced. It gave neither side a hearing. It could even permit an inferior court to undo bail granted by the High Court. The Court accordingly held the old section inconsistent with articles 23(6)(a), 28(1), 126(1) and the constitutional hierarchy reflected in article 139. It read the provision so that bail did not lapse merely because of committal and so that a competent committing court could maintain, grant or cancel bail for sufficient reason after hearing the parties.

The premise deserves to be stated plainly: committal changes the court seized of the case; it does not itself change the accused's risk profile. A jurisdictional event cannot stand in for evidence. Once a court has restored liberty after judicial consideration, renewed detention requires a constitutionally sufficient reason and a hearing. The contemporary section 168(4)–(5), under which bail continues subject to the High Court's power to cancel it, is the legislative descendant of that holding.

The judgment's reach is nevertheless best understood with precision. At points the Court spoke broadly of the "right to bail". The text of paragraph (a) is more exact: it guarantees the right to apply and the judicial consideration which follows, while leaving release discretionary. The Court was also applying the historical custody periods then reproduced in the judgment, 120 and 360 days, not the present 60 and 180 days. Neither feature weakens the result. The result rests most securely on the prohibition against automatic detention: a person cannot lose liberty through a rule which hears no one, assesses no risk and treats a filing event as conclusive.

Article 28 did real work in the decision. The Court held that automatic lapse condemned the accused unheard on continued enjoyment of liberty. That reasoning carries beyond formal trial. A fair hearing is not reserved for evidence on guilt; it also governs judicial decisions

within the criminal process which materially alter liberty. *Kuteesa* thus supplies a constitutional principle for committal as a whole: the statutory stage remains subordinate to reasoned adjudication, institutional hierarchy and the rights of the person passing through it.

3.5 Release Is a Remedy for Custody, Not a Verdict on the Charge

The remedy in paragraph (c) is release on bail. It is not dismissal. That distinction preserves the public interest in prosecuting a grave offence while refusing to let imprisonment substitute for investigative readiness. It also prevents a misleading argument that enforcement of article 23 necessarily frees a guilty person from trial. The accused remains answerable to the charge; the State loses only the power to hold that person in custody on the same terms after the constitutional limit.

The distinction does not give a dormant charge eternal life. A prosecution may separately become unfair, oppressive or impossible to try. Article 28, article 50 and the High Court's power under section 17(2) of the Judicature Act may then support directions, a stay, discontinuance, dismissal, compensation or another effective remedy. The legal question changes: article 23 asks whether custody may continue; article 28 asks whether the charge is being determined fairly and speedily.

Section 17 of the Trial on Indictments Act illustrates why the distinction must be guarded. It directs release on the accused's own recognisance after the relevant pretrial-remand period, but creates exceptions where the person was committed before expiry or where a judge considers detention necessary for public protection (*Trial on Indictments Act*, Cap 25, s 17). In the current consolidation, s 16 contains the exceptional-circumstances bail provision formerly numbered s 15. The committal exception allows paper transfer to defeat the statutory safeguard precisely when the constitutional problem may be continuing. The public-protection exception is also constitutionally suspect if used to override paragraph (c)'s unqualified "shall". Demonstrated risk may justify necessary and proportionate conditions. Ordinary legislation cannot convert a mandatory constitutional release point into indefinite preventive detention because the prosecution is unready.

4. Article 28 and the Whole Life of a Criminal Charge

4.1 The Right Begins Before the High Court Receives the File

Article 28(1) entitles a person, "[i]n the determination ... of any criminal charge", to a fair, speedy and public hearing before an independent and impartial court established by law (*Constitution of the Republic of Uganda*, 1995, art 28(1), (3)(a)–(e)). Nothing in those words postpones the guarantee until plea in the High Court. Once the State formally charges a person, the

criminal process has begun to determine that charge. A pre-committal magistrate may lack power to try it, but remand decisions, adjournments, bail conditions and prosecutorial inactivity already shape whether and when a determination can occur.

This is why the statutory jurisdictional bar cannot control the constitutional clock. If article 28 began only after committal, the State could postpone the right by withholding the very paper which moves the case. A constitutional guarantee cannot depend on unilateral completion of a condition controlled by the authority bound to respect it. *Bonafacio Mulugga* was right to hold that time runs from the laying of the criminal charge, not from committal (*Bonafacio Mulugga and Others v Attorney General*, 2025).

The point also resolves the custody gap in article 23(6)(c). Article 28 protects the accused on bail as well as the accused in prison. Restrictive bail may be less severe than remand, but it can still require repeated reporting, immobilise sureties, obstruct employment and travel, and prolong the stigma of a capital accusation. The criminal charge remains undetermined. Liberty has degrees; constitutional responsibility does not disappear when the prison gate opens.

4.2 "Speedy" Is a Standard of Justified Progress, Not Haste

The constitutional word is "speedy", but the governing inquiry is not a stopwatch detached from context. A murder involving one incident and a known witness cannot be managed like a transnational fraud involving hundreds of accounts, encrypted devices and multiple accused persons. The relevant question is whether the case has moved with reasonable diligence in light of its real demands.

That inquiry should consider the total elapsed time; the inherent needs and complexity of the case; work actually performed; conduct of the accused, investigators, prosecutors and courts; the reasons recorded for each period of inactivity; custody or bail burdens; health and vulnerability; prejudice to defence and prosecution evidence; and the interests of victims and witnesses. Complexity is demonstrated by tasks, not asserted by labels. "Investigations continue", repeated without an account of what was done, what remains and when it will be completed, is not a reason. It is a formula which conceals the absence of one.

Speedy justice is not merely an accused-centred efficiency. Delay decays evidence, disperses witnesses and exhausts complainants. It can make conviction of the guilty less reliable and acquittal of the innocent less complete. The Constitution therefore does not set expedition against justice. Properly understood, expedition is one condition of justice.

4.3 Non-Derogability Does Not Abolish Judgment

Article 44(c) places the right to a fair hearing among the rights from which no derogation is permitted

(*Constitution of the Republic of Uganda*, 1995, arts 44(c), 50 and 126(2)(b)). *Kuteesa and Bonafacio Mulugga* properly treated that status as constitutionally weighty. Yet non-derogability needs careful expression. It means that the State cannot suspend the guarantee, even in circumstances in which some rights may be limited or emergency powers invoked. It does not mean that every adjournment is unconstitutional or that "speedy" has a single numerical content in every case.

Reasonableness is internal to the idea of a speedy hearing. A short delay required to obtain an essential forensic report may protect fairness. A longer delay caused by deliberate defence requests may not be chargeable to the State. By contrast, routine congestion, prosecutorial rotation, missing files and unexplained witness absence cannot be converted into constitutional exceptions simply because they are common. Non-derogability removes the power to abandon the standard; context determines whether the standard has been met.

This distinction matters for remedies. The Constitution does not compel automatic termination whenever a target date is missed. It does compel a court to investigate, demand an explanation and fashion a remedy capable of protecting the hearing. A right declared absolute but left without an operational response is secure in language and fragile in life.

4.4 Presumption of Innocence and Detention That Becomes Punishment in Effect

Article 28(3)(a) presumes every charged person innocent until guilt is proved or admitted. Lawful pretrial detention is not automatically punishment; it may serve appearance, evidence-protection or public-safety purposes. Duration and institutional conduct nevertheless matter. Detention which continues for years because a file is missing or the prosecution has no witness begins to perform the social and physical work of a sentence before conviction.

The constitutional vice is not cured by promising to deduct remand time from a future sentence. An acquitted person receives no benefit from that arithmetic. Lost health, employment, family life and defence evidence cannot be credited back. Nor is a remand warrant a complete answer. Formal legality at each mention does not establish that the continuing purpose of detention remains constitutionally valid. Article 23 identifies permitted grounds for deprivation of liberty; article 28 prevents the process used to pursue a charge from becoming punishment by inertia.

4.5 Notice, Disclosure and Adequate Preparation

Article 28(3)(b) requires immediate information, in a language understood by the accused, about the nature of the offence. Article 28(3)(c) guarantees adequate time and facilities to prepare the defence. Section 168 touches both interests, but satisfies neither automatically. Reading and explaining an indictment provides formal notice. Meaningful preparation ordinarily requires more:

the substance of witness accounts, identification evidence, exhibits, expert or medical material, interview records, digital evidence and known material which may assist the defence or undermine the prosecution.

Timing is part of adequacy. Disclosure supplied only after years of reporting or remand cannot undo every loss caused by the delay. Alibi evidence disappears; digital records are overwritten; scenes change; witnesses forget. For offences carrying death or life imprisonment, article 28(3)(e) adds a right to State-funded representation. Counsel appointed only when a High Court session finally opens may be formally present yet too late to preserve the defence. The constitutional purpose requires representation early enough to matter, ordinarily from the first appearance in an exclusively High Court-triable case.

This does not mean that every sensitive address or witness detail must be disclosed without protection. Redaction, judicial inspection, protective orders and staged disclosure can reconcile safety with adequate preparation. The important point is that "summary" and "disclosure" are not synonyms. Uganda needs rules for both.

4.6 Bail Is Not an Answer to an Undetermined Charge

One of the strongest passages in *Bonafacio Mulugga* rejected the suggestion that the petitioners' failure to obtain bail answered their complaint about delayed trial. Bail gives temporary relief from detention; it does not resolve the accusation. The same is true in reverse: the grant of bail does not make delay constitutionally benign.

Malcolm Feeley's account of lower criminal courts described how the process itself can become the punishment (Feeley, 1979; see also Open Society Justice Initiative, 2014). The Ugandan cases give that insight a precise local form. Opoka was not in a prison cell, yet six years of reporting under threat of arrest made the unfinished prosecution a continuing mode of control. The distinction between custody and bail remains legally important, but neither status permits the State to maintain a charge without responsible movement toward trial or closure.

4.7 The Public and the Victim Are Not Served by Permanent Accusation

Criminal justice is not a private contest between the State and the accused. Victims need safety, information and a decision reached while evidence remains usable. *Kiranda Timothy v Ndisaba* emphasised the State's positive responsibility to investigate and prosecute serious allegations effectively and in a timely manner, while recognising that victims cannot dictate the charge or replace independent prosecutorial judgment (*Kiranda Timothy and Another v Hajjat Fatuma Nabitaka Ndisaba and Others*, 2026).

That insight strengthens rather than weakens the accused's article 28 protection. A weak or abandoned file

maintained in the name of a victim offers false assurance. A hurried indictment filed only to prevent bail may collapse later, after memory and confidence have been spent. The public interest lies in an early, honest prosecutorial choice: prepare a case which can fairly be tried, identify the work genuinely needed, revise the accusation, or close it with reasons. Timeliness is the discipline which makes that choice unavoidable.

5. The Ugandan Cases as a Constitutional Record

The cases do not merely illustrate delay. Read together, they show how courts have gradually supplied duties and remedies absent from the statutory text. They also show the cost of leaving constitutional administration to exceptional applications brought after the injury has matured.

5.1 Shabahuria: The Magistrate Is Not a Remand Clerk

In *Shabahuria Matia v Uganda*, the accused was charged with murder in September 1995. For years, fortnightly returns produced the same response: inquiries continued, the police file was unavailable, or the State was absent. Bail was initially set on terms he could not meet. After a period on bail and a later arrest for default, the cycle resumed. The Chief Magistrate eventually sent the file to the High Court for revision (*Shabahuria Matia v Uganda*, 1999; *Judicature Act*, Cap 13, s 17(2)).

Egonda-Ntende J's premise was institutional, not sentimental. Courts cannot transfer to the Executive responsibility for preventing abuse of their own process. His method combined section 19(2) of the then Judicature Statute, the common-law abuse jurisdiction and articles 28(1) and 50. The judgment examined length, reasons, responsibility, institutional limits and prejudice. Three years and nine months without committal, supported by no adequate explanation, had ceased to be ordinary delay and become oppression. The prosecution was stayed, the charge dismissed and the accused discharged.

The constitutional consequence was larger than the individual order. A magistrate without jurisdiction to try murder still possesses responsibility for the process occurring before that court. Repeated remand is a judicial act; the court cannot describe itself as powerless while lending authority to stagnation. The practical message was that a magistrate may demand particular progress, refuse mechanical indulgence and invoke High Court supervision before prejudice becomes irreparable.

Two cautions are needed. First, the judgment arose under the historical bail regime and referred to periods no longer found in article 23(6); the present threshold in paragraph (c) is 180 days, not the former 360-day period. Secondly, a permanent stay remains an exceptional remedy. The importance of *Shabahuria* is not that every late committal must be dismissed. It is that unexplained time is judicial business and that the court's own process must not be used as a holding device.

5.2 Tesimana: When Mental Illness Meets Institutional Disappearance

Uganda v Tesimana Rosemary exposed a more severe form of the same failure. The accused, charged with murder in 1991 and believed to be mentally ill, disappeared into institutional custody for almost nine years without committal, a reliable medical pathway or an accountable prosecution decision (*Uganda v Tesimana Rosemary*, 1999). The court again used abuse of process and article 28, but it also confronted a procedural gap concerning an accused unable to participate in the case.

The judgment's humane premise was that incapacity increases the State's responsibility; it does not suspend it. The court drew upon justice, equity and good conscience to adapt procedures for inquiry into mental condition, treatment and prosecutorial decision-making. Its method was creative because the written law had failed. That creativity saved the individual case, but it also revealed the weakness of a system dependent upon judicial improvisation. A person with mental disability requires periodic clinical review, representation, a judicially supervised treatment plan and a date on which prosecution viability is reconsidered. None should depend on whether a file happens to return before an unusually attentive judge.

The eventual stay, dismissal and release recognised monumental prejudice. By then the remedy could only stop further harm. It could not restore memory, health or home. *Tesimana* therefore contributes a demanding constitutional proposition: a criminal file involving incapacity must remain more visible, not less. Article 23(1)(f) permits detention of a person of unsound mind for care, treatment or community protection. It does not authorise indefinite prison custody without review merely because criminal proceedings exist.

5.3 Opoka: Bail Can Carry an Accusation for Years

The accused in *Republic v Opoka Pyenlyce David Nicholas* was charged with treason in 2003, later released on bail and required to report roughly twice each month. Six years passed without committal or withdrawal. When the High Court summoned the prosecution to explain, no response was offered (*Republic of Uganda v Opoka Pyenlyce David Nicholas*, 2009).

The case matters because it strips custody of its monopoly over constitutional harm. Opoka described the charge hanging over his life, the cost of attendance, disruption of work and inability to perform community and family responsibilities. The High Court treated those consequences as oppression and dismissed the charge for abuse of process. The premise was not that bail equals detention. It was that the criminal process remained coercive and that coercion had become detached from adjudication.

The practical effect of the judgment was complete resolution, not merely relaxation of conditions. That remedy was justified by the duration, prosecutorial silence and absence of any demonstrated path to trial. It also exposes why article 23(6)(c) cannot carry the constitutional inquiry alone. Opoka was outside its custody trigger, but squarely within article 28 from the day the treason charge was laid.

5.4 Opiyo and Tumuhimbise: From Complaint to Managed Deadline

Opiyo v Uganda concerned a much shorter period, but a familiar refrain. After charging the applicant in December 2020, the prosecution repeatedly told the magistrate that inquiries were continuing. Gidudu J rejected the suggestion that judicial questioning would improperly enter the investigative arena. Once a case is filed, the court is not a warehouse. It may require the State to identify concrete steps and explain why an adjournment is necessary (*Opiyo v Uganda*, 2021).

The court did not ignore context. It acknowledged pandemic disruption and the State's eventual assertion that it was ready. Instead of terminating the case immediately, it ordered committal and disclosure within seven days, with automatic termination if the deadline was missed. The method was proportionate: identify the breach, distinguish explanation from incantation, and choose an order aimed first at curing the delay.

The judgment's statement that investigations should ordinarily precede arrest is especially important. Arrest may sometimes be necessary to protect evidence, a witness or appearance. It should not be the opening move in an investigation whose essential foundation has not been assembled. Charging first externalises the cost of incomplete police work onto the accused and the court.

Tumuhimbise Crescent Tibarwesereka v Uganda shows the same doctrine applied with greater patience to complexity. The alleged financial offending involved 381 accounts, 413 boxes of material, numerous accused persons and investigative disruption. The High Court accepted that a case of that scale required more time and that some delay arose from defence applications and institutional changes. It nevertheless refused to treat bulk as a permanent excuse. Once the prosecution said disclosure had been made and committal papers were ready, the court required committal within seven days or dismissal (*Tumuhimbise Crescent Tibarwesereka v Uganda*, 2025).

The two decisions belong together. *Opiyo* insists that the State show its work. *Tumuhimbise* demonstrates that a court can recognise genuine complexity without surrendering control. Their shared constitutional method is better than a rigid equation between elapsed time and breach: reasons are tested, responsibility is allocated, and a curative deadline is made enforceable.

5.5 Kitandwe: A Powerful Remedy at the Edge of the Statutory Text

Kitandwe Derrick Kivumbi v Uganda, reproduced in the ODPP's 2026 circular, arose after more than three years and eight months without committal. The accused had complied with bail. The police file was said to be missing; no indictment, summary or committal warrant was produced; and the State filed no evidence explaining the delay (*Kitandwe Derrick Kivumbi v Uganda*, 2026, reproduced in Office of the Director of Public Prosecutions, 2026).

The ruling's strongest premise was that charging a citizen creates a duty of reasonable diligence. Missing files and administrative disorder may explain what happened, but they do not justify it. The court measured complexity, the applicant's conduct, prejudice and assertion of the right, then found violations of articles 28(1), 44(c) and 126(2)(b), as well as abuse of process. It allowed one final month for a constitutionally serious choice: commit on proper papers, withdraw or allow automatic dismissal.

That remedy was carefully designed to prevent superficial compliance. The ruling required a detailed summary identifying intended witnesses and the substance of their evidence, the connection between the accused and the alleged robbery, stolen property and chain of custody, proof of the aggravating weapon, medical and scientific material, exhibits and the position of suspects still at large. A charge sheet repeated in longer prose would not suffice. Judicial review at the expiry of the month meant the prosecution could not certify its own compliance.

The constitutional instinct is persuasive. A filing which discloses no real case cannot cleanse years of limbo. The method nevertheless approaches the edge of section 168. The statute asks for particulars giving reasonable information about the nature of the offence; it does not expressly create a probable-cause hearing or require full witness disclosure at committal. The ruling's "arguable case" standard is defensible as a remedy under article 28(3)(b) and (c), but it should not be mistaken for settled content found on the face of subsection (2).

There is a practical concern as well. Reconstructing a vanished capital file and retaking statements within one month may rescue reliable evidence; it may also contaminate memory or encourage a paper case assembled to meet a deadline. A better legislative regime would require an independent evidential audit, identification of reconstructed material, preservation of earlier versions, disclosure of gaps and a judicial assessment of whether a fair trial remains possible. *Kitandwe* is valuable precisely because it makes the deficiency visible. It should prompt rules, not a patchwork of different summary requirements from different judges.

5.6 Kawalya and Tumule: Liberty Restored, Prosecution Unresolved

The release orders in *Kawalya Ivan v Uganda* and *Tumule Steven v Uganda* contain little reasoning, but the

facts are stark. Kawalya had been on remand since April 2021 without committal. Tumule had spent four years, seven months and twelve days in the same position. Both were released on their own recognisance in July 2026 (*Kawalya Ivan v Uganda*, 2026; *Tumule Steven v Uganda*, 2026).

The orders vindicate the mandatory logic of article 23(6)(c): after such periods, inability to perfect a prosecution cannot justify continued custody, and unaffordable sureties would hollow out release. Their brevity, however, limits their institutional value. The orders do not identify the custody calculation, address the status of the charge, require a prosecutorial decision, or establish continuing case management. Liberty is the first remedy, but not the final answer. Without a companion order to commit responsibly, discontinue or appear at a delay review, the accused may leave prison only to enter Opoka's longer form of limbo.

5.7 Bonafacio Mulugga: A Constitutional Victory Without an Effective Cure

Bonafacio Mulugga and Others v Attorney General is the clearest judicial rejection of the idea that committal completes constitutional responsibility. The petitioners had been committed, yet remained in custody without trial for periods between three and six years. The Attorney General answered, in substance, that their custody was lawful, bail was available and remand time could be credited against a future sentence (*Bonafacio Mulugga and Others v Attorney General*, 2025).

Kazibwe Kawumi JCC began from the correct premise: lawful custody is not an answer to a speedy-trial complaint. Nor is bail. The right is to have the criminal charge determined; release only alters the conditions under which the person waits. The Court drew upon *Shabahuria*, comparative authority and international standards, and treated the clock as running from charge. With no case-specific explanation for delays measured in years, it found violations of articles 23(1), 28(1), 28(3) and 44(c).

That holding has substantial constitutional consequence. It closes the apparent gap created by article 23(6)(c): paper committal cannot launder continuing detention. It also recognises that the presumption of innocence is weakened in practice when remand becomes indistinguishable in duration and effect from punishment.

The remedial reasoning is less satisfactory. The Court declined to prescribe a maximum post-committal period, considering such a rule a matter for Parliament or a practice direction from the Chief Justice. Institutional restraint was warranted against inventing a universal criminal limitation period from one record. But the choice was not limited to legislation or a bare declaration. The Court could have ordered individual status hearings, required the State to explain each case by a fixed date, directed periodic review of similarly situated detainees, or retained supervisory jurisdiction over an implementation report. Those measures would have

enforced the existing right without drafting a criminal code.

Egonda-Ntende JCC's additional opinion makes the deficit impossible to soften. The constitutional petition itself took ten years. The Court had failed to obey article 137(7)'s command to determine constitutional business as soon as possible, and the petitioners received what he accurately called a pyrrhic victory: an authoritative declaration with no effective individual remedy. The opinion is more than institutional candour. It demonstrates article 50's central lesson, constitutional meaning without timely redress can reproduce the violation it names.

There is one further doctrinal gap. The declaration that article 23(1) was violated was plausible but under-explained. A remand order is not self-justifying forever. Detention initially authorised to secure trial may become arbitrary when the State makes no diligent effort to try. The Court should have made that reasoning explicit. Formal judicial warrants establish a legal form; article 23 still asks whether the deprivation remains within the constitutionally permitted purpose.

5.8 Byamukama and Muhwezi: The Failure After Committal

Alfred Byamukama's case is a warning against analysing delay only through ordinary adjournments. He was charged in 1997, committed in 1998 and found incapable of making a defence in 2000. Proceedings were postponed and he remained in prison under the mental-health and executive-order framework. Later assessments found him fit, but the case did not return effectively to court. When trial was eventually attempted in 2025, the police file and indictment were missing and could not be reconstructed. The High Court dismissed the charges and discharged him after twenty-eight years (*Byamukama Alfred v Uganda*, 2025; *Constitution of the Republic of Uganda*, 1995, arts 23(1)(f), 24 and 28).

The court correctly identified grave injustice and used sections 17(2) and 33 of the Judicature Act to stop it. Yet the constitutional analysis can be carried further. Article 23(1)(f) permits detention of a person reasonably suspected to be of unsound mind for care, treatment or protection. Once repeated assessments found Byamukama fit, that purpose could no longer sustain prison custody. Article 28 required a process in which fitness was periodically reviewed and the charge advanced or ended. Article 24's protection of dignity also resists a legal arrangement in which a human being becomes the forgotten object of ministerial correspondence. The missing file was the final failure, not the first.

Uganda v Muhwezi Gideon involved a shorter but equally revealing post-committal breakdown. After plea, the prosecution obtained repeated adjournments and failed on eight listed dates to produce a witness or a satisfactory explanation. The High Court refused another adjournment, discontinued the proceedings and

discharged the accused (*Uganda v Muhwezi Gideon*, 2026). The premise was that remand rests on an implicit undertaking of diligent prosecution. Once that undertaking is persistently broken and no realistic trial date exists, continued detention loses justification.

Together, the cases show why reform cannot stop at faster committal. Byamukama was committed promptly by comparison with the years that followed. Muhwezi had taken plea. A system which celebrates transfer while ignoring readiness, witness management, mental-health review and trial scheduling merely moves the site of constitutional failure.

5.9 Kiranda: Timeliness Also Belongs to Public Confidence

Kiranda adds the perspective of victims and complainants. The High Court linked equal protection and dignity to a positive State obligation to investigate and prosecute effectively and in a timely manner. It also maintained an essential boundary: victims may participate, receive information and seek protection, but they do not acquire the DPP's constitutional power to select, continue or withdraw a charge.

The reasoning should be used with doctrinal care. Article 28(1)'s criminal-charge language primarily protects the person against whom the charge is determined; a complainant is not thereby transformed into a prosecuting party. Victim interests may be grounded in dignity, equality, article 50, statutory protection and the public administration of justice. That foundation is strong enough without diluting the accused's fair-hearing right into one interest to be traded away.

The practical lesson is nevertheless compelling. Delay injures both sides of a serious allegation. The answer is neither automatic prosecution nor automatic dismissal. It is a system which makes a reasoned decision early, communicates it appropriately, preserves evidence and ensures that a viable charge reaches adjudication while justice is still possible.

6. Why the Present Design Continues to Fail

The cases span nearly three decades. Their recurrence shows that the problem is structural, not a temporary shortage of diligence.

First, the DPP controls a jurisdictional gate while the Act supplies no ordinary clock for opening it. Article 120 protects prosecutorial independence; it does not create independence from constitutional time. When filing the indictment and summary is both a prosecutorial act and the condition for High Court control, unreadiness can perpetuate its own lack of supervision.

Secondly, the magistrate's role is too formal to test readiness and too important to abandon. The court signs remand warrants and maintains bail conditions but cannot, under the express text of section 168, require a filed indictment by a fixed statutory date. Judges have filled the gap through inherent jurisdiction and revision.

A constitutional system should not depend on an accused finding counsel able to bring a separate High Court application.

Thirdly, the committal marker distorts incentives. Because article 23(6)(c) and section 17 of the Trial on Indictments Act attach consequences to pre-committal custody, a paper transfer can become more urgent than an honest assessment of evidence. The law thereby risks rewarding a thin summary over a responsible withdrawal.

Fourthly, the system separates pre- and post-committal delay. A magistrates-court number may disappear from one performance register once the High Court receives it, while plea and trial wait elsewhere. *Bonafacio*, *Byamukama* and *Muhwezi* show why a transferred file must retain one clock and one history.

Fifthly, the physical police file is treated as the prosecution itself. When it is missing, every institution waits for another to find it. Digital records will help, but scanning disorder is not reform. The system needs a single case identifier, named custodians, audit trails, verified backups and rules for lawful reconstruction which preserve provenance and disclose gaps.

Sixthly, bail administration can conceal both poverty and delay. A release order set on conditions beyond a person's means is detention by price. Reporting requirements continued for years are restrictions which must be periodically justified. *Kuteesa* rejects automatic cancellation at committal; the same constitutional logic requires conditions to remain necessary and proportionate over time.

Finally, remedies arrive too late and vary widely. Release, seven-day committal orders, one-month final opportunities, dismissal, permanent stay and declarations all appear in the cases. Variation is not itself wrong; remedies should respond to context. The deeper problem is that the ordinary statute does not provide a ladder of intervention before a judge is forced to choose between further indulgence and termination of a grave case.

7. The 2026 ODPP Circular: An Important Bridge, Not a Constitutional Settlement

ODPP Circular No 5 of 2026 is a serious institutional response. It directs prosecutors to identify capital cases which remain uncommitted, record reasons for delay, submit monthly returns, seek guidance where evidence is insufficient and commit cases supported by sufficient evidence within the constitutional period. By circulating *Kitandwe*, it also warns that a summary must contain meaningful substance (Office of the Director of Public Prosecutions, 2026).

The circular improves visibility and gives supervisors information they should already have. It also recognises an uncomfortable professional duty: where evidence does not warrant committal, the proper course may be withdrawal or discontinuance, not another adjournment. Those are valuable changes in culture.

Its central formulation still requires qualification. "Commit within 180 days" can be heard as permission to use the whole period. Article 23(6)(c) does not say that. The circular should set earlier internal milestones and treat day 180 as a failure requiring release, review and explanation, not as a normal target met by last-minute filing. It should also track cases after committal. An administrative return which marks a file "committed" as complete would repeat the formalism condemned in *Bonafacio*.

Nor can a circular alter the statutes, create enforceable rights for the accused, disapply section 17(c), or confer a clear sufficiency jurisdiction on magistrates. It may be revised internally and its data may remain unpublished. Its proper office is immediate management and preparation for legal reform.

A stronger protocol would require named reviews at days 30, 60, 90, 120 and 150; identify the investigator and prosecutor responsible for each outstanding act; record custody and bail status; require senior approval for every case still unready after 120 days; and continue the dashboard through plea, trial and disposition. Aggregate results should be published. Constitutional administration improves when delay is visible not only upward within an institution, but outward to courts, Parliament and the public.

8. Comparative Practice: Borrowing Functions, Not Slogans

Comparison is useful when it identifies a function Uganda needs and the institutional conditions required to perform it. No foreign model eliminates delay. A borrowed ceiling without judges, prosecutors, defence counsel and reliable records can become another number ignored in practice. Five models nevertheless sharpen the available choices.

8.1 England and Wales: Send First, Manage Evidence in the Trial Court

Section 51 of the Crime and Disorder Act 1998 replaced committal proceedings for indictable-only offences with a sending process. An adult charged with such an offence is ordinarily sent forthwith from the magistrates' court to the Crown Court. Contemporary procedure then addresses plea, preparation, disclosure and trial management in the court which will try the case (*Crime and Disorder Act 1998*, ss 50–51 and sch 3; *Criminal Justice Act 2003*, s 41; *Criminal Procedure Rules 2025*, SI 2025/909; Crown Prosecution Service, 2023).

The useful lesson is separation. Jurisdictional routing need not await a prosecutorial narrative of the whole evidence. Sending answers "which court?" Disclosure and readiness rules answer "what case?" Combining both questions at the gateway gives the prosecutor power to keep the competent court outside the file. Uganda need not copy England's infrastructure or custody limits to adopt the narrower design principle: the authority whose

readiness is disputed should not possess indefinite control over access to the supervising court.

8.2 Kenya: Regional Abolition, with a Remedial Caution

Kenya repealed Part VIII of its Criminal Procedure Code, which had governed committal proceedings, through the Criminal Law (Amendment) Act 2003 (*Criminal Law (Amendment) Act 2003* (Kenya), s 83, repealing pt VIII of the Criminal Procedure Code). Its 2010 Constitution now expressly entitles an accused to have trial begin and conclude without unreasonable delay (*Constitution of Kenya 2010*, art 50(2)(e)). The repeal demonstrates that inherited committal is not indispensable to East African criminal procedure.

Kenyan authority also cautions against treating delay as an automatic acquittal. In *Julius Kamau Mbugua v Republic*, the Court of Appeal distinguished pretrial rights violations from the fairness of a conviction and contemplated public-law redress where a fair trial remained possible (*Julius Kamau Mbugua v Republic*, 2010). The caution is sound, but it should not become remedial weakness. Damages years later may recognise injury without ending present oppression. Uganda should combine prompt sending with powers to compel progress, release, preserve evidence and terminate only when lesser measures cannot secure justice.

8.3 India: Retained Committal with a Visible Clock

India's Bharatiya Nagarik Suraksha Sanhita 2023, in force from July 2024, retains committal to the Court of Session. Section 232 links committal to prior supply of case documents, requires transmission of the record and evidential articles, and sets a ninety-day period from cognisance. A magistrate may extend the period up to 180 days for recorded reasons. Applications by the accused, victim or an authorised person travel with the case (*Bharatiya Nagarik Suraksha Sanhita 2023* (India), ss 230–232, in force 1 July 2024; Ministry of Home Affairs, 2024).

For Uganda, the model shows how a retained stage can acquire time, reasons, document transfer and procedural continuity. It also shows the limit of a timetable standing alone. An extendable 180-day period may become an expected duration, and the section does not by itself answer what follows from unjustified default. India's constitutional decisions in *Hussainara Khatoon* and *Abdul Rehman Antulay* locate speedy trial within personal liberty and favour a contextual assessment over a single universal limitation period (*Hussainara Khatoon (I) v Home Secretary, State of Bihar*, 1980; *Abdul Rehman Antulay v RS Nayak*, 1992). The strongest lesson is therefore hybrid: ordinary stages need clear presumptive dates, while constitutional courts retain authority to respond to the actual prejudice and responsibility in the case.

8.4 South Africa: Make Investigation of Delay a Judicial Duty

Section 35(3)(d) of the South African Constitution guarantees trial beginning and conclusion without unreasonable delay. Section 342A of the Criminal Procedure Act converts that principle into ordinary courtroom work. Where proceedings appear unreasonably delayed and substantial prejudice may result, the court investigates duration, reasons, responsibility, seriousness, complexity, prejudice and the effect on the administration of justice. It may refuse a postponement, impose conditions, strike a matter from the roll subject to controls, refer official default and make other suitable orders (*Constitution of the Republic of South Africa 1996*, s 35(3)(d); *Criminal Procedure Act 51 of 1977*, s 342A).

In *Wild v Hoffert*, the Constitutional Court emphasised the affirmative responsibility placed on criminal courts to address delay; *Sanderson v Attorney-General, Eastern Cape* warned that a permanent stay is a radical remedy which may deny society a trial on the merits (*Wild and Another v Hoffert NO and Others*, 1998, para 32; *Sanderson v Attorney-General, Eastern Cape*, 1998). The combination is valuable. Courts intervene early with a menu of orders, while termination remains available when a fair trial or fair prosecution is no longer possible. Uganda's judges already improvise a similar ladder under section 17(2) of the Judicature Act. Parliament should make the duty express and available in every criminal court.

8.5 Canada: Whole-Case Ceilings and the Least-Restrictive Approach to Bail

In *R v Jordan*, the Supreme Court of Canada adopted presumptive ceilings of eighteen months in provincial-court cases and thirty months in superior-court cases, subject to exclusion of defence delay and proof of exceptional circumstances. The decision was aimed at a "culture of complacency" in which delay had become ordinary (*Canadian Charter of Rights and Freedoms 1982*, s 11(b); *R v Jordan*, 2016, paras 46–47, 68–81, 105). The durations are not suitable for direct transplantation into Uganda, but three features are: the clock follows the whole case, the burden shifts after a visible ceiling, and institutional shortage is not automatically exceptional.

Canada also offers a useful bail principle. *R v Antic* requires release at the least onerous level appropriate to demonstrated risk, with more restrictive forms justified step by step (*R v Antic*, 2017, paras 44–67). Article 23's requirement of reasonable conditions points in the same direction. Personal recognisance should be the starting point after mandatory release, not the last concession after an accused proves poverty cannot satisfy a monetary bond.

8.6 International and African Standards

The ICCPR separates two related duties: a detained accused is entitled to trial within a reasonable time or release, and every accused is entitled to trial without undue delay. The Human Rights Committee explains

that pretrial detention must be exceptional, individually justified and periodically reviewed; it also treats complexity, conduct of the parties and the manner in which authorities handle a case as relevant to delay (*International Covenant on Civil and Political Rights 1966*, arts 9(3), 14(3)(c); Human Rights Committee, 2014, paras 37–38; Human Rights Committee, 2007, paras 27, 32, 35).

The African Charter guarantees hearing within a reasonable time. The African Commission's Fair Trial

Principles make clear that "without undue delay" concerns a final judgment, and sentence where appropriate, not merely commencement. Relevant factors include complexity, party conduct, public-authority conduct, detention and the interests at stake (*African Charter on Human and Peoples' Rights 1981*, art 7(1)(d); African Commission on Human and Peoples' Rights, 2003, N(5)). Those standards confirm the weakness of equating committal with constitutional performance. A file can move and justice still stand still.

Jurisdiction	Gateway or control	What deserves adoption	What Uganda should avoid
England and Wales	Forthwith sending to Crown Court	Separate routing from readiness; early trial-court ownership	Assuming strong infrastructure will appear with abolition
Kenya	Committal provisions repealed	Regional proof that abolition is workable; express unreasonable-delay right	Relying mainly on later damages when present coercion can be cured
India	Retained committal; 90 days, reasoned extension to 180	A clock, reasons, document supply and transfer of applications	Turning the maximum extension into the ordinary period
South Africa	Statutory judicial delay inquiry and remedy ladder	Early, court-initiated investigation; graduated remedies	Reserving intervention until prejudice is irreversible
Canada	Whole-case presumptive ceilings; bail ladder	Burden shift, continuous clock, least-restrictive release	Copying foreign durations without Ugandan capacity evidence

The comparative synthesis is modest but firm: transfer jurisdiction promptly; preserve one clock; give disclosure its own rules; make judges investigate delay before it becomes fatal; require reasons for every exception; place the burden of exceptional delay on the State; and match the remedy to what can still be repaired.

9. Reform Choices and Their Constitutional Costs

9.1 Retain and Discipline Committal

The least disruptive option is to retain sections 168 and 169, prescribe an ordinary period, define staged disclosure, require prosecution progress statements and give the magistrate a statutory remedy ladder. This would preserve familiar roles and may be implemented quickly.

Its weakness is structural. A meaningful sufficiency inquiry risks duplicating High Court work, exposing witnesses twice and generating interlocutory appeals. A paper-only inquiry adds little beyond routing. Most seriously, the DPP's filing remains the jurisdictional switch. Time limits may restrain that power, but they do not remove the incentive to file enough paper to defeat mandatory release.

If retention is chosen as an interim measure, committal should ordinarily occur within sixty days of first appearance. One extension of no more than thirty days should require a hearing before a Chief Magistrate, case-specific reasons and a written plan. Default should trigger a High Court review, immediate reconsideration

of liberty and power to strike the charge from the list subject to controlled reinstitution. The constitutional 180-day point would remain an outer release ceiling, never the statutory target.

9.2 Direct Sending with High Court Readiness Review

The stronger option is to replace prosecutor-controlled committal with statutory sending. At the first appearance, or within seven days where administrative preparation is necessary, the magistrate should identify that the charge is exclusively triable by the High Court, address immediate bail and representation, preserve the custody calculation, and send the entire proceeding. The absence of an indictment or summary should not prevent transfer.

The High Court would then hold an early readiness hearing. The DPP would file the indictment, disclosure record and a signed case-responsibility certificate within a defined period. If essential investigation remains, a supervising prosecutor would state what has been completed, what remains, why arrest or charge preceded completion, and when the work can realistically end. The judge could extend time, revise bail, order

disclosure, sever counts, require witness-protection measures, summon the responsible officer, or direct discontinuance where the evidence cannot support prosecution.

This model does not ask the High Court to investigate crime. It asks the court which alone can try the charge to supervise the use of its process. It also prevents disappearance between registries: the case obtains one High Court number, one next date and one accountable judicial owner.

9.3 Automatic Termination at a Fixed Day

A rule dismissing every uncommitted charge on day 181 would be clear and forceful. It would also confuse article 23's release remedy with final adjudication, disregard defence-caused delay and expose victims to termination of complex but viable cases. It may encourage premature, low-quality committals.

Automatic consequences still have a place. Release should follow automatically at the constitutional custody point. Earlier unexplained default should trigger a mandatory show-cause hearing. Dismissal without prejudice may follow failure to comply with a peremptory order, while reinstitution should require senior written authority, proof that the default has been cured and judicial satisfaction that renewed prosecution is fair. A permanent stay should remain available where evidence has decayed, the State has acted contumeliously or trial itself would now be oppressive.

9.4 Administrative Reform Alone

File audits, monthly returns, prosecution camps and digital dashboards can produce immediate gains. The ODPP circular should be implemented and evaluated. These measures cannot, on their own, alter jurisdiction, make release self-executing, create disclosure rights or

supply remedies. Administrative reform is an essential bridge. It is not a constitutional settlement.

10. The Preferred Model: Direct Sending and Continuous Constitutional Control

The best option is direct sending to the High Court, coupled with a structured readiness jurisdiction. The recommendation is not based on a belief that the High Court will work faster by definition. It rests on a simpler proposition: the court responsible for trial should acquire authority over the case before delay becomes the case's defining feature.

10.1 One Clock, with No Reset at Committal or Sending

Time should run from the first court appearance until verdict, discontinuance, withdrawal, dismissal or stay. Every adjournment should record who requested it, the reason, the next act, the responsible officer, the date promised and the accused's custody or bail status. Sending, committal, amendment of the indictment, change of prosecutor, judicial vacation and physical file movement should not restart the clock.

Article 23(6)(c) can continue to operate during statutory transition by treating sending as committal for the limited purpose of the existing text, while legislation expressly preserves all accrued custody time and prevents transfer from defeating mandatory release. In the longer term, constitutional amendment should replace the stage-specific pre-committal formula with a custody rule tied to commencement of trial, without weakening the earlier right to seek discretionary bail. A serious charge should not become less urgent because its paper has moved.

10.2 A Staged Timetable

The periods below are proposed policy, not current law. Their purpose is to produce intervention well before the constitutional ceiling.

Time from first appearance	Required event	Responsible actor	Consequence of default
0–7 days	Send exclusively High Court-triable charge; transmit custody, bail and application record	Magistrate and registry	Automatic notice to Chief Magistrate and High Court registrar
14 days	Initial evidential screening and investigation plan	Named ODPP prosecutor	Supervisory review; notice to defence and court
30 days	First High Court readiness hearing	High Court	Representation, bail, disclosure and preservation directions
60 days	Indictment, core disclosure and case-responsibility certificate	ODPP	Show-cause hearing; strong presumption against further custody
90 days	Plea or specifically justified investigation extension	High Court	Peremptory directions; no routine postponement
120 days	Senior certification for every unready custody case	Regional or designated senior prosecutor	Personal attendance and remedial order

180 days	Mandatory constitutional release where article 23(6)(c) applies	Court and prison authority	Release on recognisance or least-restrictive reasonable conditions
12 months	Presumptive whole-case review for ordinary High Court prosecutions	All institutions	State bears burden to prove exceptional circumstances; escalated remedies

The twelve-month review is not an acquittal point. It is a burden-shifting point. Complex terrorism, organised crime, multiple-accused or exceptional forensic cases may require more time, but complexity must be demonstrated through an investigation and trial plan. Court congestion, rotation of counsel and an unaccounted file should not qualify as exceptional.

10.3 Disclosure in Stages, Not by Slogan

Core material needed to understand the charge and argue bail should be supplied promptly after first appearance. Before plea, the prosecution should provide witness statements or protected summaries where safety requires, exhibit and digital-evidence schedules, expert reports, records of identification and interview, and known material capable of assisting the defence or weakening the prosecution.

A named prosecutor should certify that each count has been personally reviewed, available evidence supports a realistic prosecution, jurisdiction and joinder have been considered, exculpatory material has been identified, disclosure has been completed or itemised, and outstanding work is specified. The certificate should create professional accountability without becoming evidence of guilt. Honest revision or discontinuance must be encouraged; reckless certification should have consequences.

Kitandwe shows why substance is necessary, but legislation should define the standard and protect sensitive witnesses. The summary which routes the case, the disclosure which enables defence and the judicial assessment which determines readiness are related but distinct instruments.

10.4 A Statutory Duty to Investigate Delay

Every magistrate or judge before whom a criminal matter is pending should act when delay appears unreasonable, on application or on the court's own motion. Relevant considerations should include total and segmented time, real complexity, work completed, responsibility of every actor, custody and bail burdens, health and disability, prejudice to all evidence, victim and witness interests, and the remedy still capable of curing the problem.

The first response will often be managerial: refuse an unjustified adjournment; fix a peremptory date; order disclosure; vary bail; appoint counsel; preserve evidence; sever an accused or count; require a reconstruction audit; or summon a supervising prosecutor, investigator or registry officer. Escalated orders should include release, costs where authorised, referral for professional discipline, striking off subject to controlled reinstitution, exclusion of evidence where forensic unfairness results,

compensation proceedings and permanent stay or dismissal where no lesser remedy can protect justice.

An accused's failure to protest early may be relevant to responsibility for a particular period, but it should not amount to waiver of a non-derogable fair-hearing guarantee. Many people on remand lack counsel, literacy or access to the record. Courts share the constitutional duty.

10.5 Mandatory Release Must Work Without Wealth

The court system should generate alerts before day 60 or 180, list the matter automatically, verify the calculation and prepare the release order. If the State contests the calculation, it should produce the custody record. Once the threshold is crossed, the question is the least restrictive reasonable condition, not whether the person has earned release.

Personal recognisance should be the starting point. A more onerous condition should respond to a proved risk of flight, interference or serious harm and be reviewed periodically. A bond which the accused cannot satisfy is not a reasonable implementation of "shall be released".

Section 17(c) of the Trial on Indictments Act should be repealed or recast so that sending or committal does not erase the custody safeguard. Section 17(d) should state expressly that it cannot override article 23(6). Public protection may inform conditions and, before the mandatory threshold, discretionary detention. It cannot place an ordinary statute above the Constitution.

10.6 Forum Choice Under Section 169 Requires Public Reasons

The DPP should publish binding guidelines for choosing the High Court where a magistrate also has jurisdiction. Relevant matters may include likely sentence, legal or evidential complexity, related accused, witness vulnerability, territorial scope, public importance and the capacity of each court to deliver a timely trial. Improper considerations should include political pressure, a desire to obtain a harsher bail forum, avoidance of a prepared magistrate or use of the High Court route to prolong investigation.

A short reason should be filed and served. Review in the High Court should be prompt and limited to legality, rationality, procedural fairness and abuse. This respects prosecutorial independence while recognising that constitutional discretion is never invisibility.

10.7 Records, Mental Health and Legal Representation

Police, ODPP, prisons and courts should use one case identifier. The shared record should show arrest and first-appearance times, every custody day, bail status,

file location, investigator, prosecutor, disclosure state, sending date, plea, trial dates, reasons for adjournment and outcome. Sensitive evidence requires permissions and audit logs; aggregate delay data should be public by station and institution.

For an indigent person charged with an offence carrying death or life imprisonment, legal representation should begin no later than first appearance. Counsel must be present while alibi, digital and medical evidence can still be preserved, not merely when trial finally opens.

Where fitness or mental illness is in issue, a judge should receive periodic clinical reports, distinguish treatment from punitive custody, review whether the basis under article 23(1)(f) continues and require a prosecution decision at fixed intervals. *Tesimana* and *Byamukama* should never again be possible as an administrative category.

10.8 Victims Should Be Informed, Not Made Substitute Prosecutors

Victims should receive notice of major dates, reasons for material postponement, protection decisions and the broad reason for withdrawal or discontinuance where law and safety permit. Their applications should travel with the case. They should be heard on protection and scheduling, but possess no veto over an independent assessment that evidence is insufficient. Constitutional prosecution must resist both indifference to victims and the false compassion of maintaining a charge which cannot be tried.

11. Legislative Architecture

The following clauses state the substance of reform. They are a framework for parliamentary drafting, not a finished bill.

Direct sending. Where an accused appears on an offence triable only by the High Court, the magistrate shall send the case to the High Court within seven days and transmit the charge, custody calculation, bail orders, applications and available case material. No plea shall be taken. Failure by the prosecution to file an indictment or summary shall not prevent sending.

First High Court review. The registrar shall list the case within thirty days of first appearance. The judge shall address representation, bail, disclosure, preservation of evidence, investigation needs, joinder, vulnerable participants, plea and provisional trial dates.

Prosecution responsibility. Within sixty days of first appearance, the DPP shall file and serve an indictment, core disclosure and a certificate signed by the responsible prosecutor, or seek a defined extension supported by an affidavit from a supervising prosecutor.

Extension. An extension shall be granted only where the outstanding work is specified, prior diligence is shown, the period is necessary and proportionate, and adequate safeguards protect liberty and fair trial. Reasons shall be

recorded. General resource pressure shall not, without evidence of prioritisation and concrete work, suffice.

Continuous time. Sending, committal, joinder, severance, amendment or transfer shall neither suspend nor restart a constitutional or statutory period. The record shall preserve time already elapsed and identify delay attributable solely to a defence request.

Custody ceiling. At the applicable constitutional threshold, release shall occur on personal recognisance or the least restrictive reasonable conditions. No committal, sending order or public-protection provision in ordinary legislation shall defeat article 23(6).

Delay inquiry. A court before which criminal proceedings are pending shall investigate delay which appears unreasonable and may make any order necessary to prevent substantial prejudice and protect fair administration, including the graduated orders set out in this article.

Reinstitution. A case struck off for prosecutorial default may be reinstituted only with written authority from the DPP or a designated senior officer, proof that the default has been cured, notice to the accused and judicial satisfaction that reinstitution is fair. Prior elapsed time remains part of the constitutional calculation.

Reconstruction. Where an original file or material is lost, reconstruction shall be documented, independently supervised, version-controlled and fully disclosed. The court shall determine whether provenance, completeness and memory contamination permit a fair trial.

Reporting. The Judiciary and ODPP shall publish quarterly anonymised performance data and an annual joint report to Parliament covering custody, sending, disclosure, plea and trial waiting times, delay orders, missing files, mental-health cases and institutional compliance.

Consequential amendment is required to the High Court jurisdictional bar in section 2 of the Trial on Indictments Act, sections 17(c) and (d), sections 168 and 169 of the Magistrates Courts Act, and associated rules on bail, disclosure and registry transfer. A Chief Justice practice direction can begin much of the case-management work, but primary legislation is needed to alter the gateway and give remedies secure legal footing.

12. Choosing the Best Option

Direct sending is preferable to retaining the present committal design for four connected reasons. It removes the prosecution's capacity to keep the competent trial court outside the file. It preserves useful functions, notice, bail continuity and record transfer, without pretending the magistrate has adjudicated evidence. It allows one judicial forum to see pre- and post-transfer delay on a continuous clock. It reduces the temptation to file a skeletal summary merely to avoid mandatory release.

The serious objection is capacity. Earlier High Court registration will expose cases which are not trial-ready and require judges to manage them. But those cases already exist. Keeping them in magistrates' registries does not reduce their human cost or investigative burden; it conceals them from the court capable of imposing discipline. Regional pretrial lists, designated judges, supervised registrars and remote administrative appearances can distribute the work. Early withdrawal of weak cases and disciplined disclosure should also save trial time.

A second objection is that local magistrates provide accessible protection. They should continue to do so at first appearance by enforcing forty-eight-hour production, recording custody, addressing immediate bail, securing counsel, preserving evidence and transmitting the complete record. What they should not do is wait indefinitely for papers they cannot compel under the present statute.

A third objection invokes public safety. Direct sending does not require indiscriminate release. Before a mandatory constitutional point, courts may refuse discretionary bail on lawful and evidenced grounds. After that point, risk may be addressed through necessary, affordable and proportionate conditions. What constitutionalism rejects is using institutional unreadiness as proof of dangerousness.

The reform sequence should therefore be immediate, legislative and directional. The ODPP circular should operate now, accompanied by published data and earlier internal milestones. The Chief Justice should issue a practice direction requiring automatic delay reviews, continuity of bail, transfer of custody records and prompt post-sending listing. Parliament should then enact direct sending, amend section 17, create disclosure and responsibility certificates, and establish a statutory delay-remedy jurisdiction. Constitutional amendment may eventually replace the artificial pre-committal custody marker with a pretrial rule. Ordinary law need not wait to stop exploiting the gap.

13. Conclusion

Sections 168 and 169 provide the statutory committal event to which article 23(6)(c) presently refers. That is the extent of the constitutional endorsement. The text does not preserve the procedure, approve prosecutorial control of access to the High Court, license 179 days of inactivity, or convert the filing of a summary into a trial.

Article 23(6) is careful in its work. Paragraph (a) opens the courthouse door for a bail application and protects judicial discretion. Paragraphs (b) and (c) close the custody door after specified periods and command release on reasonable conditions. *Kuteesa* adds that committal cannot itself cancel a reasoned grant of liberty. The forum changes; constitutional justification does not.

Article 28 carries the question further. It follows the charge from the day it is laid. It reaches the prisoner

whose file has not moved, the person on bail who reports for years, the accused committed but never listed, the defendant found fit after mental-health detention, and the case called repeatedly without a witness. Its promise is not frantic adjudication. It is accountable progress toward a fair determination.

The decisions examined here show judges repeatedly building emergency exits: release on recognisance, seven-day orders, final one-month opportunities, stays, dismissal, discontinuance and constitutional declarations. Those remedies have protected individuals and clarified doctrine. Their recurrence is also an indictment of ordinary design. Constitutional criminal justice should not require heroic litigation to make a file move.

The governing principle is continuity. One record must follow the case. One clock must retain the whole delay. One court must have authority to demand reasons. Release must protect liberty without wealth. Disclosure must permit a real defence. Victims must receive truthful information rather than indefinite assurance. The State must either prepare a viable case for fair trial or bring the accusation to an end.

Committal is not trial. At most, it is a door. A constitutional system cannot permit that door to remain locked by the authority responsible for approaching it, nor celebrate its opening while a person waits for years in the room beyond.

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