

COMBATING PROLONGED PRE-TRIAL DETENTION IN UGANDA

1. INTRODUCTION AND BACKGROUND

The Uganda Law Society (ULS) is the National Bar Association of Uganda established in 1956 by the Uganda Law Society Act, Chapter 276 of the Laws of Uganda. The Law Society with over 1955 paid up members works to maintain and improve the standards of conduct and learning of the legal profession in Uganda: to protect and assist the public in Uganda in all matters touching, ancillary or incidental to the law, and to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Uganda.

Avocats Sans Frontieres (ASF) is an independent international non-governmental organization whose mission is to contribute to the establishment of institutions and mechanisms that allow for access to independent and impartial justice and which are capable of guaranteeing the protection of fundamental rights, including the right to a fair trial.

The ULS and ASF are implementing a project titled “Mobilizing Lawyers for the Right of Ugandan”. The main objective of the project is to strengthen the capacity of Ugandan Lawyers to protect the rights of vulnerable people in Uganda. One of the project result areas is advocacy for the implementation of policy and legislative frameworks that protect rights of vulnerable persons.

ASF and ULS have noted with concern the persistent violation of fundamental rights of vulnerable persons in prolonged pre-trial detention in the criminal justice system in Uganda. This is a grave violation of the right to liberty, fair and speedy trial and the presumption of innocence which rights are internationally and nationally recognized and entrenched in our constitution.

Pre-trial detention is a form of detention in which someone is kept detained in a government facility while she or he await legal proceedings such as a trial. People in detention are usually held in jails instead of prisons, or are held in specialized pretrial detention facilities. These prisoners are not guilty of any crime yet they are treated as offenders and deprived of their freedom and usually have their activities restricted while they are in detention.

The Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person. The Declaration further provides that no one shall be subjected to arbitrary arrest, detention or exile and that everyone has a right to be presumed innocent until proven guilty. Uganda also recognizes the International Convention on Civil and Political Rights; The African Charter on Human and Political Rights; The UN Convention on the Rights of the Child, to mention but a few.

With regard to our national laws, Article 23 of the 1995 Constitution provides for the protection of personal liberty while Article 24 of the same provides for the respect for human dignity and protection from inhuman treatment. Other local legislation includes the Police Act; The Magistrate Court Act; The UPDF Act and the Children’s Act which provides an elaborate framework for detention of juvenile etc.

2. SITUATION ANALYSIS:

The statistics on the number and percentage of persons formally accused of crime who are detained pending trial are not only problematic but also disturbing. A 2010 report from the Uganda Prisons Service showed an elevated national prison population of 30,585 of which 17,015 were suspects awaiting or on trial while statistics as at 30th June 2014 puts the general prison population at 41,516 of which 55.8% inmates are on remand, 43.6% convicted prisoners and 0.6% civil debtors. The prisons are overcrowded well above their carrying capacity by over 200% to 350% and prisoners lack basic needs and adequate beddings, food, clothing and medical care.

With the said congestion and over-crowding in prisons and detention places, it is disappointing that in Uganda, persons continue to be arrested and detained on suspicion that they have committed a criminal offence; often held for weeks, months or even years before a court even hears their cases let alone pass judgment. Our police even take the liberty to parade some of these suspects in public and the media totally negating the principle of presumption of innocence. The suspects' legal status is undermined and they are also under enormous personal pressures such as loss of income for those who are employed, separation from family and community ties and most even face torturous conditions. The pre-trial stage (from arrest to trial) of the criminal justice process is also particularly prone to corruption. Unhindered by scrutiny or accountability, police, prosecutors and judges may arrest, detain and release individuals based on their ability to pay bribes. It has a hugely damaging impact on the accused, their families and communities. Even if a person is acquitted and released, they may still have lost their home and job. They face the stigma of having been in prison when they return to the community.

Globally, pretrial detention is a very contentious issue. In some nations, Uganda inclusive, the number of people in detention awaiting legal proceedings is greater than the number of people who have actually been convicted and sentenced to prison. Pretrial detention contributes significantly to prison overcrowding and people can wait for years for legal proceedings to begin. Some governments- ours inclusive, have been accused of using pretrial detention to effectively imprison people indefinitely without trial.

Consultations and consensus building on the subject with key justice, law and order actors in the four regions of Uganda namely, central, eastern, northern and western Uganda have been held and the views and suggestions analyzed and presented here below to provide an insight into the problem for key policy makers, justice sector actors, human rights based organizations and the general public on the challenge of prolonged pre-trial detention in Uganda, the legal and constitutional context, its causes, implications and suggested interventions to alleviate the problem.

3. RECOMMENDATIONS:-

Due to its severe and often irreversible negative effects, international law states that pre-trial detention should be the exception rather than the rule and that if there is a risk, for example, of a person absconding, then the least intrusive measures possible should be applied. **A range of non-custodial measures are available and these include:-**

- a) Bail

- b) Confiscation of travel documents
- c) Reporting to police or other authorities
- d) Submitting to electronic monitoring or curfews in advanced countries.

Other suggestions from the research and consultations include the following:-

1. Enforce constitutional limits on maximum detention periods:

Aside from enforcing the 24-hour rule, a review should be carried out of all prison inmates on remand and those who have been detained beyond the constitutional limits in order to determine whether their cases should be dismissed for want of prosecution, or whether they can be released on suitable bail and bond conditions pending disposal of their cases.

2. Set time limitation non pre-trial detention, investigations and trial periods: a qualified detention, investigations and trial periods. The popular view during the regional consensus meetings suggested, with certain qualifications, a time limit of 3 months be set for investigations to be carried out and concluded, 6 months for the accused to be released unconditionally after committal if trial is not held; while 4 months were suggested for any criminal trial to be concluded from the start of the hearing.

3. Expand the jurisdiction of Registers and Chief Magistrates. To reduce backlog and long periods of Pre-Trial detention, there should be legislative reform giving registrars and chief Magistrates increased jurisdiction over some cases expressly to handle situations where suspects want to plead guilty.

4. Increase the number and capacity of the High Courts, Chief and Magistrate's courts and state attorneys: For the above mentioned reasons, more resources should be provided to enable courts deal with their high case load e.g. appointing more judicial officers and prosecutors and increasing resources at all levels of the judiciary to increase efficiency. Disciplinary action should be taken against judicial officers who are habitually absent from their duty stations.

5. Monitor General Court Martial and Associated Prisons: It was established that the General Court Martial (GCM) has disproportionately high average days on remand. The majority of detainees under the jurisdiction of the court martial had been detained beyond the constitutional limit. There should be increased analysis and reform of the process that lead to these delays and rights violations. Further, the jurisdiction of the court martial should be restricted to military personnel. Since the GCM is not part of the JLOS sector, it falls out of the loop of the JLOS programs that have helped clear some of the backlog of cases. Therefore, different strategies should be considered to alleviate PTD in the GC.

6. Enhance communication and ensure the proper administration of transfer of prisoners, observance of remand and production warrants and adherence to set court dates. It is essential that when a judicial officer sets a court date, the prison and the court staff should ensure that the detainee is brought before the court on that date and that any adjournments or delays are authorized and recorded on the court file and on the remand warrants. Subsequent court dates must always be scheduled. Transfer of prisoners by the Uganda Prison Service should also be immediately communicated to stakeholders.

7. Improve effectiveness of legal representation for detainees by members of the legal profession and allow detainees access to lawyers and paralegals.

8. **Improve and increase on juvenile detention facilities, man power, resources and management.**
9. **Increase awareness sessions and community sensitizations on pre- trial detention and bail requirements and observance for police and prison staff as well as members of the general public.**
10. **Work with police to enforce the 48hr rule and avoid arbitrary arrests.** A case tracking system should be developed to monitor detention in police stations and posts charged with enforcing the 48 hour rule. Police should issue police bond and first complete investigations before arresting an individual. A police officer should personally face accountability for their actions in instances where a person has been held beyond the prescribed 48 hours or arbitrarily arrested. Lastly, a person should not be charged unless there are minimum investigations on file.

4 CONCLUSIONS

It is established that the excessively long remand periods of prisoners in Uganda awaiting commencement and completion of their criminal prosecution exposes them to gross human rights violations which contravenes Uganda's domestic and international obligations to protect its citizens' fundamental rights.

Although resource constraints remain an inevitable challenge, the problem of lengthy pre-trial detention can be ameliorated by streamlining court processes, distributing caseloads more equitably ensuring legal representation, recruiting and training staff more effectively, among other measures recommended above the most important of which is getting government buy-in to eradicate this vice.

A fair and functioning justice system is a critical component of a free and democratic society, and Uganda has made important strides in this direction. Priority also needs to be given to consistently protecting the rights of the most vulnerable-especially those hidden from public view in places of detention-in order to ensure that the right to be presumed innocent and to have a fair and speedy trial is universally respected, both in law and practice.