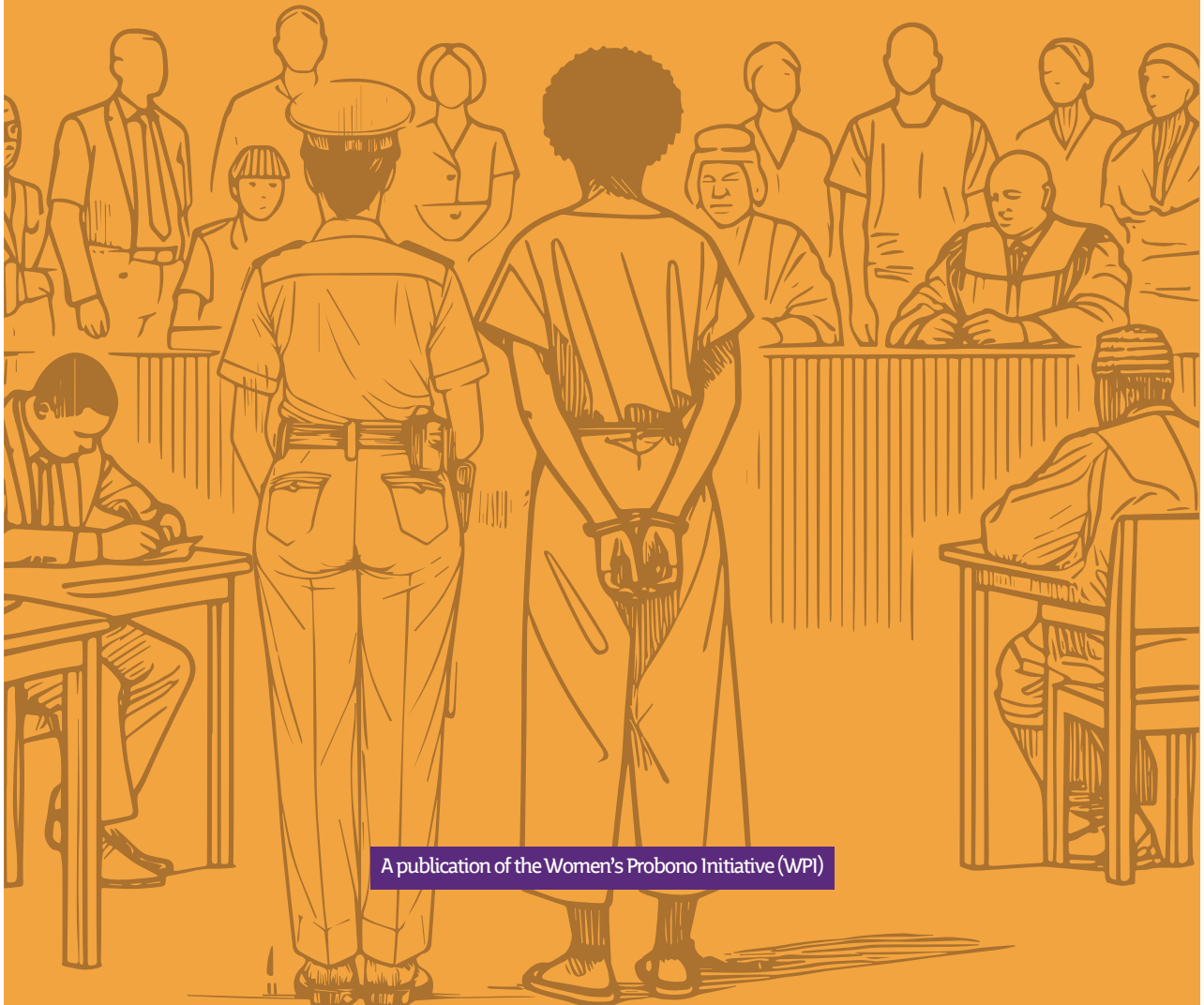




**Women's  
Probono  
Initiative**

Your rights, Your life

# **A HANDBOOK ON HOW TO NAVIGATE THE CRIMINAL JUSTICE SYSTEM IN UGANDA**



A publication of the Women's Probono Initiative (WPI)

# A HANDBOOK ON HOW TO NAVIGATE THE CRIMINAL JUSTICE SYSTEM IN UGANDA

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# 1

## About this Handbook & WPI

### 1.1 PURPOSE OF THE HANDBOOK

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The purpose of this handbook is to provide individuals representing themselves with a general understanding of the legal process and to offer guidance on self-representation.

The term "self-representation" is used when a person appears in court without a lawyer and presents their own case.

This is important because many individuals who choose to represent themselves are at a significant disadvantage. They may not understand their duties and responsibilities, be unfamiliar with legal procedures, and most importantly, lack knowledge and understanding of relevant laws and case precedents that may apply to their case.

This Handbook is merely intended to be a general aid to guide persons with regard to explaining the basic fundamentals in criminal law and offering guidance to any person who is involved in a legal dispute or may likely appear as a party in any matter on how to navigate the criminal justice system. It's advisable that one strongly considers consulting with a lawyer for more guidance on the interpretation of the above fundamentals and their application in case one chooses to self-represent in court.

### 1.2 ABOUT WPI

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The Women's Probono Initiative (WPI) is a feminist non-profit organisation with a mission to boldly advance gender equity, challenge gender discrimination and combat violence against women and girls, through advocacy, research, and creative lawyering. Established in 2018, WPI was formed partly out of the recognition that there were hardly any women that were actively engaged in litigation, more so for cases that addressed the rights of women and girls. The absence of female litigants meant that male lawyers, with all their credentials, could articulate the facts, but not necessarily communicate the lived realities of women and girls from a position of experience and deep understanding. In addition to providing legal aid, in its quest to challenge patriarchy in all its forms, and at its root, WPI has delved into research, engaged with communities, policy makers and other organisations in the women's movement to re-assess the meaning of gender equality, and to lead the call for efforts towards a new feminist agenda that champions full autonomy for women and girls.

#### **VISION:**

A just and equitable society where women and girls are free from ALL forms of discrimination and violence

#### **MISSION:**

To advance gender justice through promoting autonomy, voice and influence of women and girls in legislation, policy and practice.

### 1.3 BACKGROUND

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The Women’s Probono Initiative (WPI) is carrying out a project to promote dignity, justice, and transformative change within Uganda’s criminal justice system. The project aims to change public perceptions of incarcerated women. From August 2022 to December 2023, WPI provided legal assistance and representation to 362 women and successfully resolved 341 cases as part of this project. The project is specifically focused on minor offences, and 232 of the women we supported were involved in minor crimes such as theft and physical assaults resulting from bar fights or disputes over payments to female sex workers.

We have found that many courts and police stations imprison women without informing them about alternative solutions. Moreover, a large portion of the female prison population at Kigo Women’s Prison consists of those charged with minor offences. These cases could be resolved through mediation and reconciliation, thus avoiding unnecessary detentions. However, to achieve this, legal aid providers need to adjust their strategies to prioritise interventions before trial.

Furthermore, women should be empowered to defend their rights and navigate legal procedures through self-representation.

### 1.4 CONTEXT

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The Government of Uganda, under the Justice Law and Order Sector (JLOS), has made significant progress in strengthening the rule of law, human rights, and access to justice through the implementation of laws and policies, establishment of key justice institutions, and capacity building of personnel. However, the country still faces challenges, particularly due to institutional capacity limitations.

These challenges include capacity gaps in systems and processes, which affect the efficiency and effectiveness of institutions in addressing the justice needs of communities. Issues such as overcrowded prisons, high case backlogs, slow and poor-quality investigations, inefficiencies in case management, limited access to legal aid (especially for the most vulnerable), high rates of pretrial detention, and low staffing levels continue to undermine the right to quality, accessible, and timely justice for citizens, especially the poor and vulnerable. Poverty and illiteracy lead many women and girls to commit poverty-related crimes such as street vending, prostitution, and petty theft.

These women often cannot afford legal representation and struggle to apply for bail. Moreover, due to the stigma associated with such crimes, many women are unable to advocate for themselves to access justice, thereby damaging the presumption of justice.



# 2 OFFENCES AND ARREST



# 2

## Offences and Arrest

### 2.1 PETTY OFFENCES

These are offences with penalties that are tried by grade 1 and 2 Magistrates. Their sentences range from a caution, low-value fine, and community service, to imprisonment not exceeding ten years. The Penal Code Act lists some of these offences as prostitution, being a common nuisance, rogue and vagabond behaviour, public urination, and begging on the streets, theft, assault etc.

### 2.2 CAPITAL OFFENCES

A capital offence is one that carries a maximum sentence of life imprisonment or death and is handled by a judge of the High Court or Chief Magistrate. Examples of such offences include; Treason, Murder, Aggravated Robbery, Aggravated defilement, Rape among others.

### 2.3 WHAT ARE THE DIFFERENT CATEGORIES OF OFFENCES COMMITTED?

The Police handle all offences that are criminal in nature. Criminal offences are committed against the Government of Uganda and therefore government lawyers called State Attorneys or State Prosecutors appear in court on behalf of Uganda. Criminal and petty offences are either Misdemeanours or Felony offences. The first step will involve establishing whether the offence with which one is charged is a misdemeanour or a felony.

### 2.4 WHAT IS AN ARREST?

In Uganda, when a person is arrested, they are taken into police custody. The reasons for placing a person in custody are the same as those for a judicial arrest. Arrest means using legal authority to deprive a person of their freedom of movement.

### 2.5 WHO CAN EFFECT AN ARREST?

- ✓ **Police officers**<sup>1</sup>. In Uganda most arrests are carried out by the Police or other security agencies. Once anyone is arrested by the Police, they are legally supposed to be detained inside a police cell and are referred to as suspects<sup>2</sup>.
- ✓ **Magistrates** can arrest or direct the arrest of a person who commits a crime in their presence within the local limits of their area of control.
- ✓ **A private person** can arrest a person who commits an offence or arrest a person they reasonably suspect of having committed a felony or major offence. This is commonly known as the citizen's arrest<sup>3</sup>.
- ✓ **Area chiefs**<sup>4</sup>
- ✓ Uganda People's Defense Forces Act also gives powers to the **public or member of the army** to arrest any member of the armed forces committing an offence or who is wanted to answer to charges, or who is accused of being about to commit a crime.

<sup>1</sup> The Police Act, Cap.3244

<sup>2</sup> <https://justicecentres.go.ug/glossary/police-custody/>

<sup>3</sup> Section 15 of the Criminal Procedure Act

<sup>4</sup> The Local Government Act

# 3 POLICE BOND AND CUSTODY





# 3

## Police Bond & Custody

### 3.1 POLICE BOND

When someone is arrested and held at a police station on suspicion of breaking the law, they may be released until the police complete their investigations. This release is conditional upon the person agreeing to turn up whenever required by the police, and it is known as a police bond. The purpose of the custody is to conduct an inquiry and a police interrogation.

An officer in charge of a police station may release a person who has been arrested without a warrant, after a proper police inquiry, if there is insufficient evidence to proceed with a charge. On the other hand, if the police officer in charge of the station believes that the inquiry into the case cannot be completed, they may release the person on the condition that they execute a bond to appear at a specified place and time<sup>5</sup>.

### 3.2 LEGAL DURATION OF POLICE CUSTODY

The Ugandan constitution states that a person who is arrested must be brought to court within 48 hours of their arrest. If no charges are brought against the person by the end of these 48 hours, the person must be unconditionally released.

### 3.3 HOW CAN ONE APPLY FOR A POLICE BOND?

- ✓ Once the Relative/suspect reaches the Police station, they can request for a Police bond. They will be required to avail their telephone contacts and address details to ensure that the suspect reports whenever required.
- ✓ Police bond is Form 18 and is available in all Police stations in Uganda. This is provided for under Section 25 (1) of the Police Act, cap 303 (Act 16/2006)
- ✓ Once a suspect is granted police bond and subsequently skips bond, they will be re-arrested and brought back into police custody.
- ✓ The Police may sometimes require one to submit a surety who will sign against the police bond form to ensure the suspect returns when called upon.

## NOTE

- A.** Police bond is free of charge<sup>6</sup>.
- B.** Police bond is not granted for offences of a serious nature under Section 17 of the Criminal Procedure Act.
- C.** Where a suspect is denied Police Bond, they have a right to re-apply for the same.

<sup>5</sup> <https://mjl Uganda/uncategorized/police-custody/>

<sup>6</sup> S. 38 (1) of the Police Act

### 3.4 RIGHTS OF A SUSPECT IN POLICE CUSTODY




The Constitution of Uganda gives police officers the power to investigate, search, arrest and detain persons suspected to have committed or who are planning to commit an offence. Such persons are referred to as suspects.

Like any other human being, a suspect has rights and freedoms some of which may be legally limited because of their circumstances. As a matter of principle, every suspect shall be presumed innocent until proven guilty by a competent court or until the person pleads guilty before court<sup>7</sup>.

#### ✚ The Definition of Human Rights

Human rights are the fundamental rights and freedoms that belong to every person in the world. Human rights apply regardless of origin, belief, ability, or stature in life. Human rights remain within a person, but sometimes restrictions apply– for example, if a person breaks the law, or the state declares a state of emergency in the interests of national security.

#### ✚ Characteristics of Human Rights

<p><b>ABSOLUTE</b></p> <p>Cannot be taken away by anyone</p> 	<p><b>UNIVERSAL</b></p> <p>Are enjoyed by all people, all the time, all rights, everywhere</p> 	<p><b>INDIVISIBLE</b></p> <p>Cannot be separated into parts, and are equally important</p> 	<p><b>INTER-DEPENDENT</b></p> <p>Are connected: the realization of one right contributes to the realization of another</p> 
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In that regard, a person arrested, restricted or detained has the following rights:

#### ✚ Right to counsel/ Legal Representation

A person arrested shall be informed immediately of their right to a lawyer of their choice. In addition, they have the right to reasonable access to their lawyer<sup>8</sup>. In the case of an offence which carries a sentence of death or imprisonment for life, the person arrested has the right to counsel at the expense of the State. An untried prisoner is allowed to apply for free legal aid and to receive visits from a legal advisor. An untried prisoner can request free legal assistance and can have visits from a legal advisor. Furthermore, conversations between the untried prisoner and the legal advisor may not be overheard by an officer.



<sup>7</sup> A Pocketbook for Police on BASIC HUMAN RIGHTS STANDARDS

<sup>8</sup> Article 28(3) and Article 9 (3) of the International Covenant on Civil and Political Rights

### ✚ Right to see a doctor

A person restricted shall be allowed reasonable access to medical treatment including access to private medical treatment at their request and cost. Where a person is restricted or detained, the next of kin, lawyer and personal doctor shall be allowed reasonable access to that person<sup>9</sup>.



### ✚ Right to information

When a person is arrested, they must be informed immediately of the reasons for their arrest and the nature of the offence in a language they understand. They should also be updated on the progress of their case before they are taken to court. Additionally, at the request of the arrested person, their next of kin should be informed of the arrest as soon as possible. If the person does not understand the language being used, they are entitled to an interpreter.



### ✚ Right to apply for Police bond pending investigations into the case

Every suspect has a right to be informed of their right to free police bond.



### ✚ Right to be produced before a competent court within 48 hours<sup>10</sup>

Every suspect has the right to appear before a judicial authority<sup>11</sup> for the purpose of having the legality of their arrest or detention reviewed without delay, and shall be released if the detention is found to be unlawful.



### ✚ The right not to be compelled/ forced to testify or confess to guilt

An accused person has a right to plead not guilty even if they are caught red handed committing the offence and no one should force them to accept that they committed the offence<sup>12</sup>. The accused may on their own volition confess or admit guilt. Likewise, a spouse of an accused person cannot be compelled to testify against them<sup>13</sup>.



### ✚ Freedom from torture or inhuman treatment

It is illegal to torture a person to extract evidence or as a form of revenge<sup>14</sup>. Where a person is tortured they can make a complaint to court upon which an investigation into the allegation is made and if proved to be true the person responsible for torture shall be charged<sup>15</sup>.



<sup>9</sup> Article 23 (5) (a), (b), (c) of the 1995 Constitution

<sup>10</sup> Article 10 of the UDHRs

<sup>11</sup> 1995 Constitution in Article 28(1)

<sup>12</sup> Article 28(11) of the 1995 Constitution

<sup>13</sup> Article 14(3) (g) ICCPR

<sup>14</sup> Article 24 of the 1995 Constitution

<sup>15</sup> A Citizens handbook on the law governing bail in Uganda

## + The right to access information

This is provided for by Article 23(3), Article 28(3) (f) of the Constitution and Article 9(2) of the ICCPR which states that;

*"A person arrested or detained shall be informed immediately, in a language that the person understands, the reason for arrest or detention, the charges against him/her and of his or her right to a lawyer of his or her choice. The person shall also be accorded an interpreter if he doesn't understand the language used."*



This right entails the following;

- A. When a person is arrested, they must be informed immediately of the reason why that person is being denied their liberty and the charges against them.
- B. Upon arrest an accused person should be informed of their rights as a suspect or detainee and how they can enforce them.
- C. The right to inform the accused person's next of kin, lawyer and personal doctor and to be allowed reasonable access to them. For the accused person to enjoy this right, they must request for it.
- D. If the accused person is a foreigner, in addition to the above rights, they must be promptly informed of their right to communicate with their embassy.

## + Special considerations for female suspects<sup>16</sup>

Section 72(3) Magistrate Court Act and Section 8 Criminal Procedure Code Act stipulates that *"whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency"*. Similarly, Section 23(2) of the Police Act stipulates that a female person shall only be searched by an authorised woman.



Female suspects arrested or detained shall:

- A. Not suffer discrimination, and shall be protected from all forms of violence or exploitation
- B. Be supervised and searched by female officers and staff
- C. Be detained separately from male detainees
- D. If pregnant or breastfeeding, special facilities should be provided for them while in detention.

<sup>16</sup> A Pocketbook for Police on basic human rights standards

# 4 BAIL



# 4

## Bail

### 4.1 BAIL

Bail is the release from custody of an accused person by Court either before trial or before conclusion of a case on condition that the released person will turn up for their trial whenever required<sup>17</sup>. When a person is arrested and detained or remanded, court is supposed to inform them of their right to apply to be released on bail pending trial.

Bail is granted to an accused person because a person is presumed innocent until proven guilty in Court. The purpose is to ensure that the accused person will attend their trial without being detained in prison on remand.

### 4.2 PRESUMPTION OF INNOCENCE

According to Article (28) (3) (a) of the Constitution, Article 11 of the UDHR, and Article 14(2) of the ICCPR,

*“Every person who is charged with a criminal offense shall be presumed to be innocent until proved guilty or until the person has pleaded guilty”.*

This right involves;

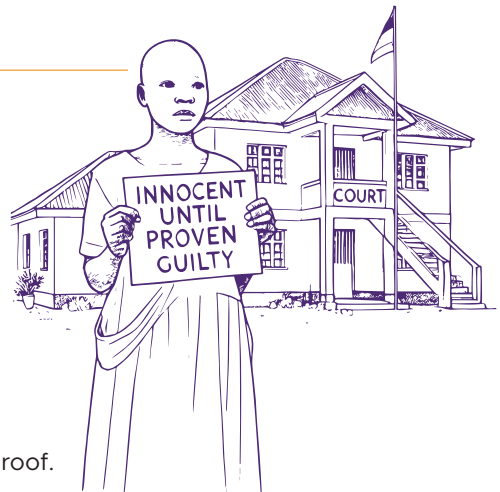
- A. The presumption of innocence.
- B. The burden of proof.

The presumption of innocence means that an accused person is by law presumed innocent and treated as such until they are pronounced guilty by a competent court of law or unless they plead guilty. This principle forms the basis for the right to bail. As justice Amos Twinomujuni (RIP) once stated; *“The idea is that a person presumed to be innocent and who is entitled to a speedy trial should not be kept behind bars for unnecessary long before trial.*

Thus, the presumption of innocence requires that the police thoroughly investigate the cases reported to them and prosecutors should successfully lead all evidence incriminating the accused person to enable the Court to apply the evidence to the law to conclude either guilty or not guilty.

The prosecution bears the burden of proof. This means that the prosecution has to prove an accused person’s guilt beyond a reasonable doubt. Thus, if at the end of the hearing of a case against the accused, there is any reasonable doubt as to the guilt of the accused, the benefit should be given to the accused because it would be harsh to the accused if there was a presumption of guilt as it would have been the duty of the accused to prove their innocence.

As a result, Magistrates and Judges have to conduct trials with fairness and impartially to reach an informed decision on charges brought against an accused person.



<sup>17</sup> *Aliphusadi Matovu Vs Uganda Criminal Miscellaneous Application No 15 of 2005.*

## + Forms of bail

- 1 - CASH BAIL:** Bail granted with a monetary sum that the accused pays to Court and in the event that they do not return to Court to face trial (jumps bail), without a justified reason, they lose that sum of money to the government and get arrested again for not honouring the promise they made to Court.
- 2 - NON-CASH BAIL:** Bail granted with a monetary sum that is not deposited in Court. However, if the accused person does not return to Court to face trial (jumps bail), without a good return, bail will be cancelled and they will be arrested again.
- 3 - MANDATORY BAIL:** An accused person<sup>18</sup> the right to apply to be released on mandatory bail if they have been on remand for sixty (60) days, that is to say, two (2) months before trial begins in the Chief Magistrates Courts and one hundred and eighty days (180), that is to say, 6 months on remand before trial starts in respect of an offence only triable by the High Court.

### HOWEVER:

A Judicial officer may refuse to grant bail to an accused person even if they have completed the mandatory days on remand if;

- A. The accused person is committed or referred to the High Court for trial.
- B. The Judicial Officer believes that the release of the accused person is a threat to the public.

## + Applying for bail

An accused person has a right to apply to Court to be released on bail at any stage of the proceedings before Court makes a judgement in the matter. Court may grant the accused bail on such conditions as it considers reasonable as provided for under Article 23(6) of the 1995 Constitution of the Republic of Uganda. The application can be by an accused person or their lawyer.



## + Review of bail terms once granted

With magistrates' courts, the Chief Magistrate has powers to review bail terms that can either be set aside, varied any time after a ruling has been made. Bail is not a punishment. It should therefore not be excessive and Magistrates or Judges should whenever possible grant bail to the accused person. Likewise, the amount to be paid as security should not be excessive as to defeat the whole purpose of granting bail. In determining the amount to be paid, Court should put into consideration the nature and gravity of the charges brought against the accused person and the sentence to be given to the accused person in case of a conviction



<sup>18</sup> Article 23(6)(b) and (c) of the Constitution

## NOTE

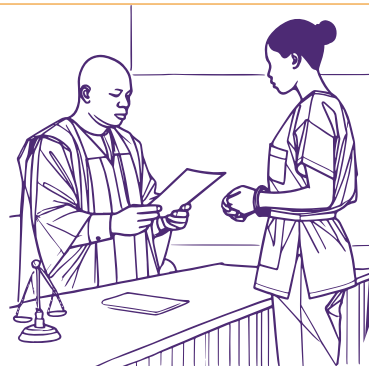
- A. An accused person has the right to APPLY for bail and NOT the right to bail. This means that granting bail to an accused person is not a must.
- B. It is within the Judicial Officer's discretion to determine whether or not the accused should be granted bail considering particular conditions and circumstances of the case.
- C. Once bail is granted it can be cancelled or lapse (expire). It lapses when the accused is found guilty or acquitted. The bail is cancelled when the accused fails to fulfil bail conditions, surety withdraws from being surety and the accused fails to find another substantive surety. In instances of cancellation the accused can make another bail application.
- D. If a person pleads guilty they forfeit the right to apply for bail. (Plea can be changed anytime before the accused is sentenced)
- E. Bail in the magistrate's court is made orally but at the High Court it is by way of Notice of Motion. An accused person can raise their hand request for audience before court and ask the magistrate that they want to apply for bail.
- F. A convicted person can apply for bail when appealing their case at any time pending the determination of their appeal. The High Court, Court of Appeal and Supreme Court have powers to grant bail to an appellant except where they have been sentenced to death. It is however a necessary requirement that the accused should file an appeal in a competent court before they apply for bail pending appeal.

## + Conditions or factors for consideration by a Judicial Officer before granting bail.

### 1. Bail in the High Court<sup>19</sup>

The High Court may grant bail to an accused upon the accused proving exceptional circumstances that entitle them to be granted bail and also showing that they will not abscond when released. The accused person must prove that there are;

- A. Exceptional circumstances existing to justify their release on bail. These exceptional circumstances include;
  - Grave illness certified by a medical officer of prison or other institution or place.
  - A certificate of no objection signed by the Directorate of Public Prosecution and;
  - The infancy or advanced age of the accused.



<sup>19</sup> *Trial on Indictment Act, Cap 25 (TIA)*



- B. That they will not escape when released on bail and in considering whether or not the accused is likely to escape, the Court may consider;
- Whether the accused has a defined residence within the authority or territory of the Court or is an ordinarily resident within Uganda.
  - Whether the accused has sound sureties within the authority of the Court to undertake that the accused shall comply with the conditions of their bail;
  - Whether the accused has on previous occasion when released on bail failed to comply with the conditions for their bail and
  - Whether there are other cases pending against the accused.

#### ✚ Procedure taken if an accused has been remanded for a longer period than is required by law

If an accused person has been remanded in custody before commencement of their trial for 180 days or more for an offence punishable by death, or 60 days or more in respect of any other offence;

- A Judge or Magistrate, before whom an accused is brought, shall release them on bail on their own cognizance.
- At the lapse of this statutory period, the accused or their advocate should notify the court of their status at the first appearance, and from then on, the court has no discretion in granting bail, but can only set the terms for the bail<sup>20</sup>.

#### ✚ What happens where the accused has been committed to the High Court but had been granted bail by a Magistrate court?

Committal occurs when an accused individual, who is going to be tried in the High Court, is sent for trial by a Magistrate's court. If an accused person who is out on bail is committed for trial to the High Court, their bail automatically expires, and they are required to submit a fresh application to the High Court. When the accused is committed, the State Attorney handling their case should prepare a document called Committal papers. These papers are presented before the Magistrates court, and then the accused person is sent to the High Court to have their case heard.

#### ✚ Can an accused apply for bail when appealing their case?

If a person has been convicted of a crime and is appealing that conviction, they can request to be released on bail while they await the outcome of their appeal. The High Court, Court of Appeal, and Supreme Court have the authority to grant bail to an appellant, except in cases where the appellant has been sentenced to death. However, in order to apply for bail pending appeal, the accused must first file an appeal in a competent court.

<sup>20</sup> *A Citizens handbook on the law governing bail in Uganda, a publication of Foundation for Human Rights Initiative (FHRI) Uganda*

## 2. Bail in a Magistrate's Court

A Magistrate considers the following factors before granting bail<sup>21</sup>:

- The nature of the offence or accusation against the accused. If it is a minor offence, there are high chances of granting that person bail.
- The gravity of the offence and harshness of the punishment which the offence may entail in case of a conviction. If the offence attracts a light punishment, then the Court will be more likely to grant the application. However, if it attracts a heavy sentence, the Court assumes that this may prompt the accused to disappear fearing the punishment.
- The antecedents (background and character) of the accused so far as they are known. Court considers the general character and past conduct of the accused person. Where the accused person is a first-time offender, they stand higher chances of being granted bail.
- Whether the accused has a fixed place of abode, which is a permanent residence or home within the jurisdiction of the Court.
- Whether the accused is likely to interfere with the State witnesses when released or any of the evidence to be brought against them in Court.
- The age and health status of the accused person.
- Whether the accused person has sureties or not.

### + General requirements

In both the High Court and Magistrates' Court, the accused is required to present a minimum of two sureties or more if the Court deems it fit as security.

### + Who is a surety?

A surety is a person who guarantees to the Court that upon the grant of bail to an accused, the accused will return to Court every time they are required to attend trial.

### + Obligations of a surety:

- A surety has the principal duty of ensuring that the accused does not escape from justice, therefore they have to ensure that the accused regularly appears in Court until the conclusion of the case.
- A surety has the duty to sign the bail bond form.
- To inform court where an accused person is not able to attend;
- They have the liability to pay the bail bond sum should they fail to ensure the attendance of the accused person before court.

<sup>21</sup> *Supra*, Note 27, Section 77.

## ✚ What should a substantial surety possess?

For a person to be a surety in Court, they should possess the following:



An introduction letter from the LC 1 Chairman of the area where they reside.



A valid original identity card indicating their place of work, business or residence, and in the alternative;



A passport or driving permit can also be used for identification.

## ✚ What happens when the accused fails to fulfill the bail terms?

If bail is granted, but the accused fails to comply with the terms, their bail will lapse and they will be remanded back to prison until a specified date or until they do comply with the terms. If they jump bail by refusing to come to court without excuse, they will be remanded to prison together with their surety.



## ✚ What happens when a Magistrate's court refuses to grant bail?

If a lower court refuses to grant bail to an accused because it does not have the authority to do so, it must explain why and inform the accused of their right to apply for bail to the High Court. The High Court can grant bail for offences a Magistrate court cannot handle. The High Court can also increase or decrease the bail bond amount set by a Magistrate court. If an accused person fails to follow an order to pay increased bail bond fees, they can be arrested and sent to prison.

**NB:** Bail bond is refunded at the conclusion of the case whether one is convicted or acquitted. For one to get back their money, they have to apply in writing to the court that granted them bail with their full name, address, and phone contact. The said number has to be registered in the suspect's name and documents such as an original bail bond form, receipt from Court, and where applicable, an original Uganda Revenue Authority acknowledgement receipt has to be attached on the application.

# 5 PLEA BARGAIN



# 5

## Plea Bargain

### 5.1 PLEA BARGAINING

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#### + 5.1.1 What do we mean by the term plea bargain?

A plea bargain is an agreement between the prosecution and the accused person where the accused agrees to plead guilty to a charge against them. This is formalised through signing a document called a plea bargain agreement. This is an agreement entered into between the prosecution and an accused person regarding a charge or sentence against an accused person<sup>22</sup>. A Plea bargain may be initiated orally or in writing at any stage of the proceedings before the sentence is pronounced.

In Uganda, criminal prosecution is handled by the Directorate of Public Prosecutions (DPP) and as such any party interested in doing a plea bargain has to go through the State Attorney/State Prosecutor. In plea bargaining, the accused signs the plea bargain agreement before going to court. Plea bargain is governed by the Judicature (Plea Bargain) Rules, 2016.

#### + 5.1.2 Impact of plea bargain

- The accused person can avoid a costly and timely trial as well as the risk of a harsher punishment.
- It saves the court's time and the cost of going into a full trial.
- Sometimes, the accused must go beyond merely pleading guilty. For instance, the prosecution may require the accused to testify against other co-accused (if the accused is charged with one or more persons on the same file).

#### + 5.1.3 Who is involved in the process of plea bargain?

- Court Prosecution
- Accused person
- Counsel for the accused person
- Victims
- Probation officers

#### + 5.1.4 Requirements for an effective and fair plea bargain include the following factors:

- The plea bargain agreement must be explained to the accused by an advocate or a justice of the peace in a language the accused understands.
- If the accused person has negotiated with the prosecution through an interpreter, the interpreter should be present during the negotiation and execution in respect of the content of the agreement.
- Prosecution must take into consideration the complainant's and community's interests.
- Implications of the agreement must be explained to the accused and court must be sure that it is not obtained under force, coercion or misrepresentation of facts<sup>23</sup>.

Where the court accepts a plea agreement, the same shall become part of the court record and binding on the prosecution and the accused. It's also important to note that either party may at any stage of the proceedings before court passes sentence, withdraw a plea agreement.

<sup>22</sup>Judicature (Plea Bargain) Rules, 2016, Sec 4

<sup>23</sup> PLEA BARGAINING By Anthony Wesaka and Sheila Wamboga

# 6 TRIAL AND SENTENCING



# 6

## Trial and Sentencing

### 6.1 TRIAL PROCESS IN MAGISTRATE AND HIGH COURTS.

#### + 6.1.1 Procedure of hearing and determining cases in the Magistrates' Court

This is provided for under Section 114 to 160 of the Magistrate Courts Act (MCA). They are summarised as follows;

1. When the accused is presented in court for the first time, they will be called upon by the magistrate to take their place in the dock. Before the hearing of the evidence commences, the magistrate must ensure that the accused has had an opportunity to seek services of an advocate.
2. The court shall then read out loud the substance of the charge to the accused person and the accused person shall be asked whether they admit or deny the truth of the charge. The charge shall be read out to the accused and explained to them in the language they understand.
3. If the accused pleads guilty, the judicial officer shall proceed to convict them and pass sentence upon them or make an order against them unless there shall be another reason to the contrary.
4. If the accused pleads not guilty plea, the court shall record a plea of not guilty and shall proceed to hear the prosecution case as provided in the act.
5. If the accused person refuses to plead, the court shall order a plea of not guilty to be entered for them.
6. If the accused claims that they have been previously convicted, acquitted, or pardoned for the same offence, the court must verify the truth of the claim. If the court finds that the facts alleged by the accused do not support the claim or if it is found to be false, the defendant will be required to plead to the charge.

#### + 6.1.2 Procedure on plea of not guilty<sup>24</sup>

This is provided for under Section 114 to 160 of the Magistrate Courts Act (MCA). They are summarised as follows;

1. If the accused person does not admit the truth of the charge/plead guilty, the court shall proceed to hear the evidence for the prosecution. The prosecution is the first to state its case why because he who alleges must prove. Here, the prosecutor either calls or fixes the case for hearing. This means they will call all material witnesses relating to the case to place the accused at the scene of crime and prove that the accused omitted or participated in the committing of the offence.
2. The witnesses for the prosecution are examined in chief and must give evidence on oath. Examination in chief is the examination of a witness by a party who calls them.

<sup>24</sup>Sec 126 of the MCA

3. The accused person or their advocate may then put questions to each witness produced against them. This is called cross examination. Cross examination is the examination of a witness by the adverse or opposite party.
4. The prosecution will then re-examine its witnesses after the cross-examination. Re-examination is the examination of a witness after the cross examination by the party who called them. Re-examination is strictly limited to the matters referred to during cross examination and if a new matter is by the permission of the court introduced, the adverse party may further cross examine upon that new matter.
5. Leading questions may not be asked during re-examination. Leading questions are those that require a yes or no answer.
6. If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether they wish to put any questions to that witness and shall record their answer.

### **✚ 6.1.3 Procedure of hearing and determining cases in the High Court.**

The trial process in the High Court is almost the same as that of the magistrate's court, however, it is compulsory to first commit the accused for trial in the High Court after committal proceedings in the Chief Magistrates Court<sup>25</sup>. The procedure is governed under sections 58-98 of the Trial of Indictment Act and is as follows;

1. When the accused is presented in court, the indictment shall be read out to them by the chief registrar or other officer of the court and shall be explained and interpreted where need for interpretation arises.
2. During the trial, the accused responds to the charges by pleading guilty, or not guilty, or stating previous acquittal or pardon.
3. If the pleas are denied by the prosecution, the court shall go ahead to determine whether the plea is true in fact and if the court finds that the plea is false, the accused shall be required to plead to the indictment.
4. If the accused person refuses to plead and just stands mute, or fails to answer directly to the indictment, the court shall if it thinks fit, enter a plea of not guilty on behalf of the accused and such plea shall have the same force as if the accused person had actually pleaded not guilty.
5. If the accused pleads guilty, the plea shall be recorded and they may be convicted on it.
6. If the accused pleads not guilty or a plea of not guilty is entered and the court shall proceed to choose assessors and try the case.

### **✚ 6.1.4 Procedure on plea of not guilty**

The trial process at this stage begins with selecting assessors, who are lay persons chosen by the chief magistrate. Once assigned to a criminal session, the trial will proceed through the same stages as those in the magistrate's court. The difference comes after the final submissions when the judge will summarise the evidence and relevant law to the assessors, who will then be expected to give their opinions. After the assessors give their opinions, the judge will make a final judgment<sup>26</sup>.

<sup>25</sup>Section 168 of the MCA

<sup>26</sup>Investigations and the trial process in Uganda, paper presented to the Kisoro inmates by Akatukunda Joel Kakuru.



## 6.2 SENTENCING IN THE MAGISTRATE AND HIGH COURT.

### + 6.2.1 What do we mean by the term 'Sentencing'

Sentencing is the process by which a Court determines the punishment for a convicted individual/person. The Honourable Chief Justice, The Honourable Principle Judge, Justice Yorakam Bamwire summarized the effects of the sentencing as follows:

*"Sentencing is the final stage of a trial. It legally impacts on public confidence in the whole trial process. Therefore, due diligence ought to be exercised while assessing the same. The conviction may be proper but if the sentence is laughable or amounts to a travesty of justice the whole process stands to be faulted".*

- ① After all the prosecution witnesses have testified and have been subjected to all the examination, the court shall assess the evidence and if it appears to the court that a case is not made out against the accused person sufficiently to require them to make a defence, the court shall dismiss the case on a finding of no case to answer and shall forthwith acquit the accused.
- ② After hearing arguments from both sides, the court will either deliver a judgement or postpone it to a later date. If the verdict is not guilty, the accused is acquitted. If the verdict is guilty, the accused receives a sentence, which can be reduced or lessened. The court will then issue a sentence in accordance with the law.
- ③ If the accused is found guilty, the court will ask the state attorney to provide information about the accused to determine an appropriate sentence. This process is known as **allocutus**. The accused will also have the opportunity to present reasons for a reduced sentence. Following this, the magistrate will issue a sentence that they feel is appropriate given the circumstances.
- ③ The court is responsible for informing the party who lost the case about their right to appeal. Typically, this must be done within 14 days from the date the sentence was passed. An accused individual can appeal against the conviction, the sentence, or both.

### + 6.2.2 What would happen if the complainant fails to appear for the trial?

If, in any case in which a magistrate's court has jurisdiction to hear and determine, the accused person appears in court as summoned, but the prosecutor does not show up and has prior notice of the hearing, the court will dismiss the charge. The court may choose to adjourn the hearing to a later date under certain conditions, allowing the accused to be released on bail or held in custody. Dismissing the charge does not however prevent further proceedings against the accused for the same offence.

## CONCLUSION

This Handbook is once again merely intended to be a general aid to guide persons with regard to explaining the basic fundamentals in criminal and offering guidance to any person who is involved in a legal dispute or may likely appear as a party in any matter on how to navigate the criminal justice system. It's advisable that one strongly considers consulting with lawyer for more guidance on the interpretation of the above fundamentals and their application in case one chooses to self-represent in court.

# References

## Legal Instruments

### National Laws

1. The 1995 Constitution of the Republic of Uganda
2. Police Act Cap 324
3. The Trial on indictment Act Cap 25
4. The Criminal Procedure Code Act Cap 33
5. The Magistrates Court Act Cap 19
6. The Magistrates Courts (Magisterial Areas) Instrument 2017
7. The Judicature (Plea bargain) Rules 2016
8. The Local Government Act, Cap. 138
9. UPDF Act, Cap 330
10. Judicature (Plea Bargain) Rules, 2016

### International Laws

1. Universal Declaration of Human Rights (UDHR)
2. International Covenant on Civil and Political Rights (ICCPR)
3. International Covenant on Economic, Social and Cultural Rights (ICESCR)
4. United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### Books and Reports

1. Breaking barriers: Pathways to justice for women behind bars in Uganda by the Women's Probono Initiative (WPI)
2. A Pocketbook for Police on basic human rights standards
3. A Citizens handbook on the law governing bail in Uganda, a publication of Foundation for Human Rights Initiative (FHRI) Uganda.
4. Human Rights Training Manual, For Police Trainers and Resource Persons, 1999.
5. A guide to Criminal procedure in Uganda by B.J.Odoki, Chief Justice of Uganda, 3rd Edition, published by L.D.C, in 2006
6. Black's Law Dictionary, 8th Edition, Bryan A Garner.
7. Objection My Lord; Legal Practice Demystified Volume 3 by Isaac Christopher Lubogo
8. Handbook for Northampton County Self-Represented Litigants
9. Investigations and the trial process in Uganda,paper presented to the Kisoro inmates by Akatukunda Joel Kakuru.

### Links




1. <https://justicecentres.go.ug/what-is-police-bond-and-who-has-the-mandate-to-grant-it/>
2. <https://mcjl.ug/uncategorized/police-custody/>



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