

PRE-TRIAL REMANDS IN CUSTODY

A memorandum by the Government of GHANA

With the phenomenal increase in crime especially white collar crime, there is a corresponding rise in the prison population. The prison population is made up of convicted offenders serving custodial sentences and also remandees awaiting trial. In Ghana the remandees amount to about 20% of the population and this has given cause for concern. The prisons are over crowded and contain more inmates than they can conveniently contain. The question is how to decongest the prisons?

2. In the case of convicted prisoners, alternative methods of punishment must be found. In Ghana today discussion is going on to find such alternative methods of punishments as fines, probation, community service orders, confiscation of assets, payment of compensation to victims etc. And some of these methods are already being employed by the Tribunals under section 16 of public Tribunals Law 1984 PNDCL 78. The case of the remand prisoners is more complex to solve. The presence of pre-trial remandees in prison poses a number problems for the prison authorities, for example the overcrowding in prisons, rise in feeding costs, idleness of the remandees as they have not yet been convicted, and subsequent bitterness generated thereby, coupled with extra strain on prison staff due to a large number of prison inmates.

3. Why do we have pre-trial remands? Section 15 of Ghana's Criminal Procedure Code, 1960 provides that when a person is arrested he must, unless he is granted bail by the police, be brought before an appropriate court within 24 hours after the arrest. This provision was repeated in Article 21(3) of the 1979 constitution. Section 96 Act 30 deals with bail. When a person is brought before a court the court will, in appropriate cases, grant bail pending the hearing, or remand the accused in custody for a special period, usually 7 days. Thereafter the detention becomes subject to periodic review.

4. Section 96 of the Criminal Procedure Code, 1960 Act 30 provides:

- '(1) Subject to the provisions of this section, a court may grant bail to any person who appears or is brought before it on any process or after being arrested without warrant, and who
 - (a) is prepared at any time or at any stage of the proceedings or after conviction pending an appeal to give bail, and
 - (b) enters into a bond in the manner hereinafter provided, with or without a surety or sureties, conditioned for his appearance before that court or some other court at a time and place mentioned in the bond.
- (2) Notwithstanding anything in subsection (1) of this section or 15, but subject to the following provisions of this section the High Court or a Circuit Court may in any case direct that any person be admitted to bail or that the bail required by a District Court or police officer be reduced.

- (3) The amount and conditions of bail shall be fixed with due regards to the circumstances of the case and shall not be excessive or harsh.
- (4) A court shall not withhold or withdraw bail merely as a punishment.
- (5) A court shall refuse to grant bail if it is satisfied that the defendant -
 - (a) may not appear to stand trial; or
 - (b) may interfere with any witness or evidence, or in any way hamper police investigations; or
 - (c) may commit a further offence when on bail; or
 - (d) is charged with an offence punishable by imprisonment exceeding six months which is alleged to have been committed while he was on bail.
- (6) In considering whether it is likely that the defendant may not appear to stand trial the court shall take into account the following consideration:-
 - (a) the nature of the accusation;
 - (b) the nature of the evidence in support of the accusation;
 - (c) the severity of the punishment which conviction will entail;
 - (d) whether the defendant, having been released on bail on any previous occasion, has wilfully failed to comply with the conditions of any recognisance entered into by him on that occasion;
 - (e) whether or not the defendant has a fixed place of abode in Ghana, and is gainfully employed;
 - (f) whether the sureties are independent, of good character, and of sufficient means.
- (7) A court shall refuse to grant bail -
 - (a) in a case of treason, subversion, murder, robbery, hijacking, piracy or escape from lawful custody, or
 - (b) where a person is being held for extradition to a foreign country.'

When bail is granted the matter is subject to review every two weeks. In all other cases except those referred to above, unless the court finds that there is the likelihood of the accused leaving the jurisdiction, bail is invariably granted. The problem is that the accused persons are usually men of straw and unable to provide persons to stand as sureties for them. A great number of pre-trial remandee prisoners fall into this category. These form a great majority of the ones which clog the prisons until their cases are heard and determined.

5. The only way of solving the problem posed by those unable to provide bail for themselves is to try such offenders speedily. But then with the already long list of pending criminal cases would it be fair to deal with recent cases over and above long pending ones merely because such accused persons are unable to secure bail? Should other offenders who have been able to provide sureties for bail, being sometimes first offenders, suffer delay in the trial of their cases for the benefit of remandees most of whom are frequent offenders? The answer to the question is not easy and straight-forward, but a solution should be found for this problem. If the trial of remandees is to take precedence over other long standing cases, probably the prisons should be decongested and government would save feeding costs, but it would mean that other criminal cases might never be heard because impecunious criminals repeat offences as soon as their cases have been dealt with, and they have either paid their fines or been released from short term custodial sentences. To those offenders on bail therefore it would mean a long delay in disposing of their cases with resultant mental agony. What then is the solution? The easy answer that comes to mind is the provision of more judges to handle cases, but this simplistic answer would evoke wider implications like the provision of funds. Lack of funds for expanding the judiciary is already a problem just as lack of funds to expand prisons and feed prisoners. Such suggested solutions to this problem of pre-trial remandees are:-

- (a) to further reduce bail bonds by judges;
- (b) to try cases as speedily as possible and in this exercise the co-operation of defence lawyers, prosecutors, police and judges would be required;
- (c) reducing custodial sentences and imposing other modes of punishment involved so as to decongest the prisons, e.g. imposition of fines and community service orders;
- (d) if custodial sentences are drastically reduced in preference to other non custodial sentences persons granted bail would be less likely to jump bail and would appear to face their trials. It is often the fear of inevitable prison sentences being imposed upon conviction which deters persons on bail from failing to appear to stand trial;
- (e) the time already spent in custody pending trial should also be taken into account in awarding punishment. In Ghana we already have provision for this in our laws.

6. The search for a solution to minimise pre-trial detentions should not overlook the interest of society which must be protected from criminals. A person who is not likely to appear to face his trial or who is a violent offender with a propensity to commit repeated offences whilst on bail should in all cases be refused bail whether he can provide sureties for bail or not. The interest of the criminal should not outweigh that of society.

7. In Ghana at present a committee has been set up comprising officials from the Ministry of Interior, Prisons, Attorney-General's Office, Welfare Department, etc, to look into this problem and it is yet to submit its report. Some suggestions advocated are:-

- (a) To appoint one Judge to take up the trials of all the cases of the remandees as and when their numbers increase unusually.
- (b) To review periodically cases of remandees by providing them with legal aid to enable them to go to court for a review of their cases.

They could then be granted reduced bail with the condition to report daily to the police in deserving cases. The suggestion by some to impose deadlines on prosecutions could also be considered but this requires careful study in view of the many difficulties that could impede early hearing of cases.