

## **PRE-TRIAL REMANDS IN CUSTODY — UGANDA'S EXPERIENCE**

A memorandum by the Government of Uganda

The problem of persons held in custody in our prisons awaiting trial can be attributed to a variety of factors. These include the shortage of well-trained and experienced man-power in the Judiciary, the Department of Public Prosecutions as well as in the Criminal Investigations Department of the Police Force. The relatively slow process of criminal trials occasioned by technical procedural requirements for the reception of evidence, coupled with the need to respect and observe the rights of the parties, such as the right to bail and adjournment, are also instrumental in bringing about this problem. An examination of some of these factors may help to illustrate how the problem has come about in Uganda.

### Grant of Bail

In Uganda, a person accused of an offence under our criminal law has a constitutional right to bail. This means, therefore, that bail may be granted in respect of any offence under our legal system. However, there are some limitations to this right, depending on the gravity of the offence and the jurisdiction of the court dealing with the case.

Ordinarily, the power to grant or refuse bail in cases triable by Magistrates' Courts is discretionary and according to the provisions of Section 75 of the Magistrates Courts Act, the accused must be informed of his right to apply for bail. Except for certain specified offences, including those which are only triable by the High Court, a Magistrate's Court may at any stage in the proceedings release on bail any person accused of a non-capital offence upon taking from him a recognisance consisting of a bond with or without sureties for such amount as is reasonable in the circumstances. If bail is refused by a lower Court, a Chief Magistrate has power to grant it. Similarly, the High Court has power in any case to direct that a person be released on bail or that the amount required for bail be varied by reducing it to enable the applicant to afford it. Conversely, however, the High Court has power, if it is of the opinion that the amount of cash bail ought to be increased, to issue a warrant for the arrest of the accused to execute a new bond for the increased amount and may commit him to prison for failure to do so.

### Consideration for granting or refusing bail in a Magistrate's Court

In deciding whether bail should be granted or refused, Magistrates' Courts are guided by the statutory provisions and must have regard to the following matters:-

- (a) the nature of the accusation - is it of a nature that if given a second thought by the investigator it could amount to merely a civil dispute;
- (b) the gravity of the offence charged and the severity of the punishment which conviction might entail;
- (c) the antecedents of the applicant so far as they are known;

- (d) whether the applicant has a fixed abode within the area of the court's jurisdiction;
- (e) whether the applicant is likely to interfere with any of the witnesses for the prosecution or any of the evidence to be tendered in support of the charge. Essentially, the first four matters the court is required to take into consideration when dealing with a bail application are concerned with the vital question whether the accused will ultimately answer his bail or is likely to abscond.

Experience has shown that our magistrates have been very liberal in granting bail to accused persons although in most cases cash deposits have been insisted upon. Where cash deposits have been made an additional condition, the amounts have always depended on the gravity of the offence and severity of the sentence in the event of a conviction. This liberal approach by Magistrates' Courts is understandable otherwise our prisons would be flooded with inmates as it is in these courts that the greatest number of accused persons are dealt with. Furthermore, in view of the substantial delays in concluding investigations and trials, such liberal approach minimises cases of people overstaying in remand before their guilt or innocence is determined.

#### Consideration for granting or refusing bail in the High Court

Unlike in the Magistrates' Courts, the right to bail in the High Court appears to be severely restricted. This is so in view of the fact that the type of cases which come for bail in the High Court are mainly those where Magistrates' Courts have no jurisdiction to try and where the offences carry long prison sentences or the death penalty.

Accordingly, a person will be released on bail only under stringent conditions. First of all, he will have to prove to the satisfaction of the Court that exceptional circumstances exist justifying his release on bail. Secondly, he must also prove that he will not abscond when released on bail. Clearly, because of the nature of the offences involved the law casts the burden of proving these matters on the accused. The exceptional circumstances which he must prove are spelt out as:-

- (a) Grave illness as certified by a Medical Board, signifying that it will be impossible for the accused to receive adequate medical treatment while in custody; or
- (b) Evidence that he has been remanded in custody for a period of 15 months or more without having been committed to the High Court for trial; or
- (c) A certificate evidencing that the Director of Public Prosecutions has no objection to the accused being released on bail; or
- (d) Evidence that the accused is an infant or a person of advanced age.

#### Factors which still lead to large numbers of remands

Despite the right to bail, many people still continue to languish in our remand prisons, especially in cases triable by the High Court. This is because few can satisfy the bail conditions stipulated in the law. Secondly, in the case of those who wish to rely on ill health as a ground for applying for bail, they still experience problems of getting the

appropriate certificate from the Medical Board established to deal with such matters. Thirdly, although the Courts are required by law to explain to the accused persons their rights as to bail, there are still some, especially those unrepresented by Counsel, who are not conversant with the modalities of applying for bail, while others do not simply bother until life in prison begins to bite. All these factors have had their effect on congestion in our remand prisons. Thus, the problem of persons held in custody awaiting trial is real in Uganda. By way of illustration, recent statistics show that in Masaka District of Western Uganda alone, there were 154 remand prisoners awaiting trial as compared to 85 who were waiting trial in what was classified as petty cases, while the total number of those in remand exceeded those serving prison terms after conviction.

### Pre-Trial Criminal Procedure

As a feature of our criminal justice, preliminary proceedings are to be found in cases to be tried by the High Court only. According to the provisions of Section 1 of the Trial on Indictments Decree No. 26 of 1971,

"no criminal case shall be brought under the cognisance of the High Court for trial unless the accused person has been committed for trial to the High Court in accordance with the provisions of Part XV of the Magistrates' Courts Act, 1970."

Part XV of the Act deals with preliminary proceedings in cases to be tried by the High Court. Under Section 173 of the Act, if a person is charged with an offence to be tried by the High Court, the Director of Public Prosecutions is required to draw up and file an indictment together with a summary of evidence with the Magistrate's Court exercising jurisdiction. The summary of evidence must contain the substance of the evidence which each witness is expected to give at the trial and also a reference to any exhibits which the prosecution intends to produce at the trial. When the accused person appears before the Committing Magistrate, the indictment is read out and explained to him. He is told not to plead to the indictment but is informed that he will be tried in the High Court where he will be able to defend himself and call witnesses on his behalf. The summary of evidence shall then be read out to him and, where necessary, translated into a language he understands.

The Magistrate should take care to ensure that the details of any witness the accused intends to call at his trial must be noted for the purpose of summoning them. When these and other minor requirements, not mentioned here, are complied with the Magistrate shall commit the accused for trial to the next convenient sessions of the High Court, and in the meantime, "remand the accused person in custody".

The basis for this procedural requirement is to afford the accused person an opportunity to know the case against him and prepare his defence. It also gives an equal opportunity for the prosecution to prepare its case well in time. Similarly, by reading the summary of evidence beforehand, the trial judge will have the opportunity of acquainting himself with some of the problems which are likely to arise at the trial.

In trials by the High Court there is what is known as preliminary hearing which precedes the testimony of witnesses from the witness box. At the preliminary hearing, both the prosecution and the defence are required to agree on such matters as are not in dispute so as to promote a fair and expeditious trial. Upon such agreement, the trial judge is required to prepare a memorandum setting out such matters as are agreed upon, which memorandum must be signed by both parties.

Our experience is that both preliminary proceedings and preliminary hearing procedures are cheap and expeditious, and were intended to give the accused persons a speedy trial and thereby reduce over-crowding in our remand prisons.

## Adjournments

A Magistrate's Court has discretion to adjourn the hearing of a case upon an application made in open court but only if sufficient cause has been shown by the party applying for the adjournment. Similarly, the High Court may grant an adjournment in course of criminal proceedings due to absence of witnesses or other reasonable cause to the recorded in the court file. In the meantime, the court may either remand the accused in custody or release him on bail.

Therefore, although the decision to grant or refuse adjournment is discretionary, the discretion must be exercised judicially. In other words, good cause must be shown to the satisfaction of the court by the applicant. For example, in Uganda V. Badrudin Adatia, (High Court Monthly Bulletin No.128 of 1971) where the prosecutor applied for an adjournment sine die on the ground that the principal witness had gone to India for a specialised treatment and that the date of his return was unknown, the High Court rejected the application on the ground that it would be monstrous to hold a charge over the accused person's head indefinitely. Even where the accused is the applicant, the same principle will still apply. In another case Y. Gitta V. R. (High Court Monthly Bulletin No.20 of 1959) the accused was released on bail and the hearing of the case fixed a month later. On the due date, he applied for an adjournment on the ground that his advocate was not available. In support of his application he produced a letter from the advocate saying that he (the advocate) was unable to appear as he was engaged in another court on the same date. In fact, the accused had not instructed the advocate until the eve of the trial. The trial magistrate refused adjournment as all the prosecution witnesses were present and the prosecution was ready to proceed with their case. On appeal it was argued on behalf of the accused that the refusal of the magistrate to adjourn the hearing so as to enable the appellant to be legally represented occasioned a miscarriage of justice. It was held that in refusing adjournment the magistrate exercised his discretion correctly. That the appellant had plenty of time to instruct an advocate long before the hearing date of the case but instead he waited and did so on the eve of the trial. In those circumstances, the court observed, it could not be said that the appellant was deprived of the right to be represented by counsel through no fault of his own.

It is clear, therefore, that normally the courts are not prepared to adjourn a case unless good cause is shown. Needless to say, a protracted trial, punctuated with unnecessary adjournment not only contributes to over-crowding in prisons, but may also lead to injustice to the accused. In spite of this, the courts continue to experience practical problems. Frequently, a prosecutor may find himself unable to proceed with a case because of the absence of witnesses. Similarly, Counsel for the defence might find it necessary to ask for an adjournment because of other court engagements. Even the court itself might be unable to proceed with a case due to the work load before it. All these factors inevitably contribute to overcrowding in remand prisons.

## Time spent in custody and the sentencing process

It is common knowledge that after conviction it is the duty of the court to pass sentence upon the accused according to law. Except where the sentence is fixed by law, assessing the proper sentence in any given case has no mathematical formula, and is often the most difficult task of the court. In this connection, therefore, our law provides that before passing sentence, the court is required to make such inquiries as it thinks fit in order to inform itself as to the proper sentence to be passed, and may inquire into the antecedents of the accused and take them in consideration. One of the matters to be taken into account in favour of the accused is the period he has spent in remand awaiting trial.

### The Establishment of Magistrates Courts:

The courts of Uganda consist of six hierarchical tiers. The lowest four tiers comprise the Magistrates' Courts. These are the courts of the Chief Magistrate below which there are those of Grade I, Grade II and Grade III Magistrates. They are subordinate courts of record whose decisions are subject to review by superior courts. Generally, the jurisdiction of Uganda Courts is confined within its territorial boundaries. However, where offences of Treason; those arising out of acts intended to alarm, annoy or ridicule the President; concealment of treason; terrorism; and those acts intended to levy war against a lawful authority are committed outside Uganda, the same may be tried by Uganda courts, if they are committed by Uganda citizens or persons ordinarily residing in Uganda.

Whereas the High Court has unlimited territorial jurisdiction within Uganda, Magistrates' Courts have theirs confined to the local limits of their magisterial areas. As a general rule, therefore, every offence committed in Uganda must be inquired into or tried by a court within the local limits in whose jurisdiction it was committed. The reason for this is obvious. Evidence is more likely to be available in the area where the offence is alleged to have been committed. Also both the prosecutor and the defence are likely to find it more convenient to secure their witnesses and organize better their respective cases.

Presently, there are magisterial courts in every District Administrative Headquarters throughout the country, as well as in all urban and heavily populated areas. On the average there is a Grade II Magistrate's Court for every sub-county Division. To a large extent, because of the wide-spread number of magisterial courts, the problem of over-population in our prisons caused by persons in remand awaiting trial has been considerably minimized. But more could be done to improve the situation, depending on our resource capability in terms of the necessary funds to rehabilitate the war-damaged court buildings and put up new ones and increasing, particularly, the prosecution personnel.

### The Training of Police Officers

Expeditious disposal of criminal cases by the courts depends largely on the quality of investigations by the Criminal Investigation Department of our Police Force. The mounting of prosecutions is often delayed because of poor investigation. Consequently, the Uganda Government has continued to lay emphasis on the training of police personnel and, particularly, those involved in criminal investigation. The introduction of the Certificate of Law Course at the Law Development Centre at Makerere is designed to equip police officers, not only with the basics of the law and how to apply them, but also to improve on the techniques of crime detection and investigation. These efforts have so far yielded dividends, and generally other problems such as transport apart, there has been a remarkable improvement in the quality of criminal investigations in our country. Without a properly trained manpower in criminal investigation, there will always be delays in prosecuting cases and therefore over-population in our prisons.

### Transfer of Prisoners on Remand

The transfer of prisoners from one remand prison to another is one of the ways of minimizing congestion in our prisons. This happens to a limited extent due to lack of better facilities in most of our prisons. Secondly, the prison authorities are usually apprehensive about transfers as experience has shown that it is during such transfers that prisoners tend to escape.

## Manpower Improvement in the Department of Public Prosecutions and the Magisterial Courts

Within the limited resources of our country the Government has tried to ensure that justice is not denied to the people of Uganda through unnecessary delays. The increase in the intake of students to Makerere University's Law Faculty, and to the Law Development Centre which offers a Post Graduate Bar Course, is purposely to improve on our manpower development in this area, both in terms of numbers and quality. The result has been a gradual but steady turn-over of young lawyers most of whom are appointed State Attorneys in the Department of Public Prosecutions, while others are appointed and posted as Magistrates up-country. The DPP's Department has also been further strengthened by the posting of regional State Attorneys to expedite the process of prosecuting criminal cases up-country. From Uganda's experience, therefore, there is no doubt that these efforts have helped to reduce considerably the volume of cases pending before the courts and thereby cutting down on the number of remand prisoners awaiting trial.

## Conclusion

In conclusion, it must be stated that the law enforcing agencies in particular and the Government of Uganda in general, are committed to seeing that everything possible is done to minimise, if not eliminate altogether, the problem of persons held in custody awaiting trial, without denying the accused person the rights that he may have under the law during his trial. In so doing, the Government of Uganda will, obviously, need and welcome any assistance from any Commonwealth member state, particularly in the areas of rehabilitating the courts and the training of our police force.