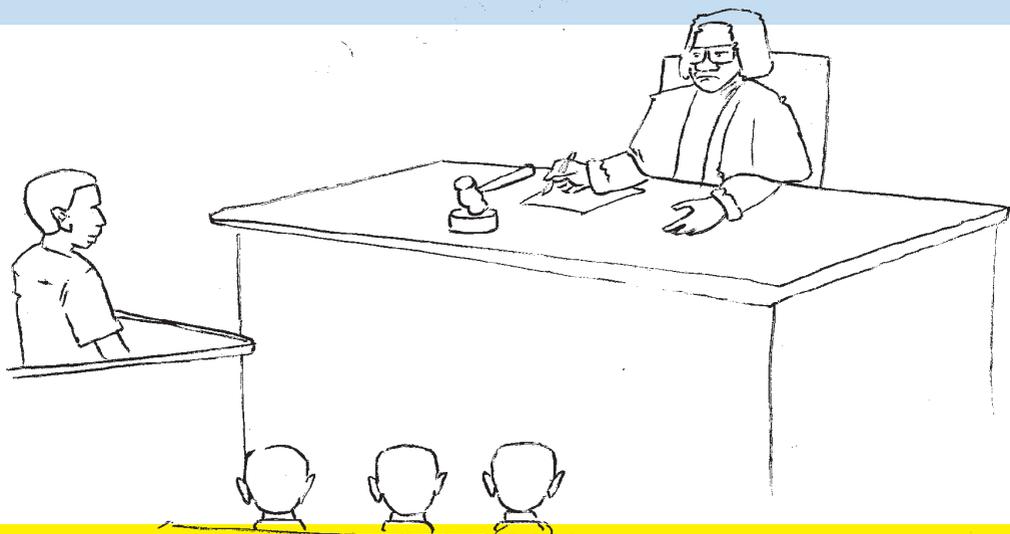




LEARNING YOUR RIGHTS



THE CRIMINAL TRIAL AND SENTENCING PROCESS

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FOREWORD

The National effort of creating awareness of our human rights and civic duties requires us to continuously educate ourselves and the general public on those aspects of the law touching on the promotion, respect and protection of human rights. These series aim at exactly doing that.

Street Law (Uganda) is fully committed to the promotion and protection of human rights through civic education. That is the rationale behind the production of the materials in the “Learning your Rights Series”. The objectives are in accordance with the organisation’s mission of working for the promotion of the rule of law, democracy and human rights in Uganda. It is a mission shared with the entire family of Street Law organizations in the individual countries in the continents of North America, South America, Europe and other countries in Africa.

We hope in the nearest future to translate these pamphlets into the major Uganda languages so as to reach a vast number of the population who can not read and write the English language.

It is our hope that this effort will have a far reaching impact on the promotion, respect and protection of human rights in Uganda by both the State and non-state actors.

Street Law (U) is grateful to the Open Society Initiative For East Africa who funded this project. Street Law (U) values the partnership with OSIEA.

Solomon Webalearaali
EXECUTIVE DIRECTOR

INTRODUCTION

This booklet deals with general principles in the administration of criminal justice otherwise known as criminal procedure. A crime is a wrong against an individual or a group of individuals punishable at the instance of the state. It is a contravention of criminal Laws of a state. In some cases it may not be a wrong against an individual or a group of individuals but generally a wrong against the state. Such violation may lead to political instability or general harm to the well being of the population. Such wrongs include treason or violation of environmental laws or laws against public order. Most offences for which a person is punishable in Uganda at the insistence of the state are found in the Penal Code Act Cap. 120 and other various Acts of Parliament and bye-laws. These wrongs are known as criminal offences. Criminal law to that extent can be said to be a branch of law through which the state controls the behavior of an individual or a group of individuals for the benefit of all and for its own existence.

In that regard, criminal law does not only constitute a body of criminal offences. It also provides a system on how an offender should be dealt with. It provides for steps through which an offender should be brought to justice otherwise known as criminal procedure.

This booklet discusses how an offender should be treated from the time he / she is suspected to have committed an offense up to the time his or her trial is concluded. In other words, the trial process. Ideally a trial commences with the charging in Court of an offender. However, it is important to discuss the pre-trial aspects such as issue and service of criminal summons, arrest, recording of accused's statement etc.

ARREST;

Arrest simply means the confinement of a person in relation to a criminal charge. Apart from the police, S. 15 of the Criminal Procedure Code Act empowers a private person to arrest any who in his / her view has committed a cognizable offence. Under S. 2 of the same Act, the Police Officer or other person effecting arrest is empowered in so doing to actually touch or confine the body of the person to be arrested. However where the person submits to arrest, there is no need to even touch their body. At this level the arrested person is called a suspect.

AFTER ARREST

Where the bringing to justice of a suspect begins with arrest, the suspect will usually be detained at the police station for sometime not exceeding 48 hours before being taken to Court. At the police, the suspect may be asked to make a statement. It should be noted that a suspect has a choice to make or refuse to make a statement. The Police will also take statements from the complainant and other people who have evidence on how the offence was committed. Such other people may be summoned as witnesses for the state during the trial of the accused.

According to the law, the police should have carried out investigations and established that the suspect is actually the person who committed the alleged offence for which he/she is likely to be tried in Court. Ideally arrest should be carried out after some level of investigations on which the police officer is satisfied that there is an arrestable offence revealed. This however is not the practice in Uganda, it is wrong for the police to arrest a person simply because another person has lodged a complaint against him or her and then commence investigations. This accounts for why suspects spend more than the Constitutional limit of 48 hours in custody which is an abuse of the right to liberty. Thorough investigations should be carried out before every arrest in order to ensure that the person being arrested is the actual offender and that the evidence available can sustain the charge.

Once the police is through with their investigations, the suspect will be taken to Court where the Directorate of Public Prosecutions will take over the prosecution of the case.

THE CRIMINAL TRIAL

According to the Constitution Criminal prosecutions must always be brought in the name of the State Uganda. For example, **Uganda Vs John Dobbi**. It is the state that seeks redress on behalf of the victims of the crime by seeking to punish the offender who is also referred to as the accused. In a case where Dobbi has stolen Kabi's shirt, the title of the case will not be **Kabi vs. Dobbi**, but **Uganda vs. Dobbi**. Kabi will be called to Court as a state witness to explain how Dobbi stole his shirt.

In the paragraphs that follow, we discuss trial procedures where prosecution has begun with arrest.

But as earlier stated, it is not mandatory that every prosecution should start with the arrest and production in Court of the accused. The DDP may commence prosecutions by securing criminal summons requiring the accused to appear in Court on a particular date and time to answer criminal charges.

CHARGES

Before a suspect is produced in Court to answer to any alleged offence, the offence alleged together with the section of the law contravened and the brief facts explaining its commission must be clearly stated in what is called a charge sheet. In fact the task of ensuring this is placed on judicial officers in Order to prevent abuse of Court process. According to the Constitution, a person should only be charged with a criminal offence which is defined by the Law and whose punishment is prescribed. See Article 28(12) of the Constitution. For example, the offence of theft is created under Section 261 of the Penal Code Act chapter 120 of the Laws of Uganda. The punishment for the offence of theft is stated as imprisonment for not more than ten years.

The offence of bribing Voters during election periods is created under Section 68(1) of the Parliamentary Elections Act No. 17 Of 2005. The punishment for the offence is also clearly stated in the section as a fine of Uganda shillings not exceeding one million, four hundred and forty thousand (sh.1,440,000) or imprisonment **not exceeding** three years or both imprisonment and a fine.

The words **not exceeding** or **not less** are important. It means the trial magistrate or judge may not give you less or more than what is provided for in the law. The law gives the trial magistrate or judge the discretion to decide between the two positions. In the case of theft as above, the magistrate may sentence the offender to four or ten years but not ten and half years.

A criminal offence can not be created through oral pronouncements of politicians or political leaders or security personnel. Some political leaders are fond of making statements such as “all those people who do not cooperate with the government shall be arrested.” Such leaders should be asked “arrest under what law?” In some cases, security personnel have been quoted saying “we shall

arrest all those people who attend rallies of the opposition because they have not obtained police permission.” Such security personnel should be asked “arrest under what law?” On some occasions those officials go ahead and effect the arrest and later release the victims without any charge or after warning them. The release is not because they later pardon the victims. It is because there is no law under which they could charge the victims. Such officials should be sued so that they can pay compensation to the people whose rights they have violated. That will also be a lesson to others. It should however be noted that in Uganda, the Law does not permit one to impose individual liability on policemen simply because they do most of these things under the guise of “course of employment”, in which case it is the Attorney General to bear the liability. In fact this explains the continued violation of people’s rights by the Police Officers.

According to S. 85 of the Magistrate’s Courts Act, a proper charge sheet from which a Magistrate reads the charge to the accused should contain; a statement of the specific offence(s) with which the accused person is charged together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged. For example a charge sheet shall read as follows;

Statement of offence

Theft contrary to Section 261 of the Penal Code Act Cap. 120 Laws of Uganda.

PARTICULARS OF OFFENCE

John Dobbi on or about the 7th day of march 2011 at Katwe in Kampala District stole Kabi’s suit from his bedroom in his residence at Katwe

The charge sheet should contain a provision for the signature of the officer preferring the charge as well as a provision for the signature of the trial Magistrate. No Court in Uganda will proceed to put a person on trial where the offence is not stated together with the Section of the Law creating the offence. While there are very many criminal offences created by different laws, most of the serious criminal offences are found in the Penal Code Act.

Below is a list of different acts. Some are criminal offences and others are not. Tick off those acts that are not criminal offences.

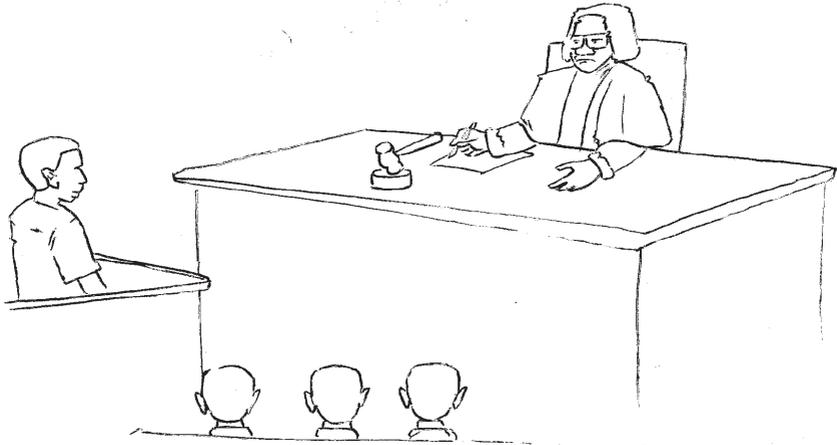
- Throwing stones at a police station.
- Sitting in some one's car without the owner's permission.
- Grazing cattle in a school compound without the head teacher's permission.
- Refusing to join the ruling party after being requested to do so by the President of Uganda.
- Refusing to go to the office of the RDC after being ordered to do so by the RDC (Resident District Commissioner)
- Addressing a political rally and telling the people that you don't like the president.
- Addressing political rallies and telling the people that NRM is worse than Amin's regime.
- Caressing a woman's hair against her will.
- A man kissing a fellow man on the lips in public.
- A woman kissing a fellow woman on the lips in public.
- A man kissing his wife on the lips in public.
- Refusing to attend a security meeting called by the UPDF battalion Commander in your area.
- Failing to produce an identity card at a UPDF road block
- Giving information to the LRA on the positions of the UPDF in your locality.
- Keeping a fire arm in your house without a license so that you may use it to protect your property and family when attacked by robbers because the police is not providing you with enough protection.
- Selling your child to a rich family which has no children and wants to

adopt yours.

- Threatening to beat your wife because she spent the night out without your permission.
- Refusing to disclose to police the hiding place in your house of the opposition leader when they want to arrest and yet he has not committed an offence.
- Warning a government minister that he will be made to answer for his anti -people actions when the present government leaves power.
- Being anti government.
- Refusing to send your children to school.
- A priest telling people in church that “boona bagagawale” is a flop.
- Finding the Prime minister stuck in a pot hole at night and refusing to help push his car out but instead you tell him “Serves you right, those are your roads”
- Refusing to attend LC meetings.
- Writing to amnesty international that the government of Uganda is violating human rights

THE TRIAL PROCESS

According to S. 124 of the Magistrates Courts Act, once the accused is produced in Court, the Magistrate will read and explain the substance of the charge to the accused. Then the Magistrate will ask the accused whether he or she admits or denies the charge. The accused may admit commission of the offence in which case a plea of guilty shall be entered, or he or she may deny the charge in which case a plea of not guilty shall be entered. Where an accused does not say a word a plea of not guilty should be entered. There are cases where an accused renders an explanation, it is highly advisable that the exact words of the accused



should be recorded so that if the explanation tends to contradict the particulars of the offence, a plea of not guilty should be recorded.

Pleading guilty means the accused has accepted having committed the offence while pleading not guilty means the accused denies having committed the offence.

Where the accused pleads guilty, the magistrate must record the words of the accused. The magistrate must ensure that the accused has understood the nature and substance of the charges. If the magistrate is satisfied that the accused has understood the charge before pleading guilty, he or she will then require the prosecutor to outline the facts or summary of the case and allow the accused to respond. If he admits those facts the Magistrate will proceed to convict the accused on his own plea of guilty. There is no need to go through the full trial process of proving the guilty or otherwise of the accused who has accepted his or her guilt. What follows is called sentence mitigation where the prosecutor may depend on the nature of the offence, character of the accused etc plead for a harsher sentence while the accused pleads for lenience. .

Where the accused pleads not guilty, the magistrate will proceed with the trial process by asking prosecution to produce its witnesses. The accused need not tell the Court any thing at this stage until after Court decides that a case has been made requiring the accused to be put to his defence.

PROSECUTION OF THE CASE

Where the accused pleads not guilty, the prosecutor will begin by calling witnesses to prove that the accused committed the offence with which he or she is charged. The prosecutor will ask each witness what he or she knows about the case and how the accused committed the offence.

After each prosecution witness's evidence, the accused (or **the defence lawyer**) will have chance to ask each witness questions (**cross examination**). The aim of the cross examination is to discredit the evidence of prosecution with the object of proving that the accused is not guilty. This is called examination in chief. After the examination in chief, the Magistrate will give chance to the accused to cross examine the witness. Cross examination is the process by which an adverse (opposite) party asks questions to a witness aimed of testing the credibility, reliability and relevance of the witness' testimony or evidence.

After the cross examination of each of the state witnesses by the accused (or defence lawyer), the prosecutor may ask the witness further questions (called "**re-examination**"). The aim of the re-examination is to clear up or explain away any contradictions that may have been occasioned during cross – examination. The Court may also ask any questions at any stage of the trial to explain any unclear aspects of evidence but Court should not take centre stage of the trial as if he or she were party. After all the prosecution witnesses have testified, prosecution closes its case and the Court is required by law to determine at this stage whether a strong case has been made to (a prima facie case) requiring an accused person to be put to his defence.

If it appears to the Court that the facts stated do not make out a strong case against the accused, the Court may dismiss the case and acquit the accused without

putting the accused to his or her defence. In other words, the Court forms the opinion that the accused should not be bothered to defend a non starter case filed against him. However if the Court is convinced that the prosecution has made out a strong case, then the accused will be required to adduce his evidence in defence.

DEFENCE OF THE ACCUSED

Where the Court rules that the accused has a case to answer or should be put in his or her defence, Court is required to explain to an accused person that he has 3 options of defending himself. The first being giving sworn evidence in which case he will be cross – examined by the prosecutors, the second being giving unsworn evidence in which case he is not liable to cross-examination and the last being keeping or staying mumb and leaving it all to Court to decide. Of course each of the above, choices has legal implications e.g sworn evidence is given much more weight as compared to unsworn evidence. This is because sworn evidence is tested under cross examination as to its reliability, relevance and credibility. On the other hand remaining mumb is a risk in as far as all allegations remain unexplained and may easily be believed by Court against the accused.



It should be noted that only an accused person has the privilege of choosing whether to give unsworn evidence or keeping quite. However all other witnesses during a criminal trial must give sworn evidence and can not refuse to say something in Court.

The prosecutor may cross examine each of the defence witnesses then the accused or his or her lawyers is allowed to re-examine the witness. The Court may also put questions at any stage where certain facts are not clear.

After all the defence witnesses have testified, the defence closes its case and both parties await the decision of the Court which is commonly referred to as Judgment.

JUDGEMENT

A judgment refers to a final decision reached by Court with regard to the evidence produced in Court. Prior to judgment is what is called filing of final submissions where after the defence has closed it's case, the prosecutor makes a summary of the facts of the states' case, and the evidence given by state witnesses the legal positions citing the relevant law and decided cases and why the Court should convict the accused. The prosecutor will also put forward persuasive arguments as to why Court should not believe the evidence of the accused and that of his/her witnesses. The prosecutor concludes by requesting Court to convict the accused.

Once the prosecutor has concluded, the defence also make it submissions in reply why the Court should not convict the accused but set him/her free. The defence also pleads with the Court not to believe the facts as presented by the prosecutor citing relevant legal provisions and or decided cases in support of those arguments. The matter is then left for Court to make its judgment.

Where the accused is found guilty, then he or she proceeds to convict the accused. Where the accused is not found guilty then he or she is set free (acquitted.)

Where the accused is found guilty, the magistrate conducts a hearing as regards an appropriate sentence earlier referred to as mitigation of sentence. i.e the Magistrate asks the prosecutor to state the nature of sentence he desires Court to impose and a similar chance is given to the accused who will in most cases plead for mercy or leniency from Court in imposing punishment. The accused may plead for mercy on the ground that he or she regrets committing the offence and that he or she is a first offender. That he or she has young children he or she is looking after, who will suffer if he or she is sent to prison etc. This is known as **mitigation**.

The magistrate then imposes appropriate sentences to the accused taking into consideration the mitigating factors. It should be noted however that in cases where the sentence is by law made mandatory, then there is no need for mitigation.

If the accused is dissatisfied with his or her conviction and or sentence, he or she may appeal to a higher Court. It is mandatory for the magistrate to explain to the convict his or her right of appeal if any.

The law gives a number of sentencing options. However, judges and magistrates usually have a choice concerning, length and conditions of the sentence. In deciding this, the Court takes into account the accused' mitigation factors, earlier criminal record, medical, educational and employment backgrounds as well as recommendations for sentencing by the prosecution.

Sentencing powers:

The Magistrate / Judge may choose any or more than one of the sentencing options below;

Cautions: This is the most lenient sentence. Here, the convict is warned that he or she should not commit the offence again and is set free without being fined or sent to prison. Although the sentence is similar to an “acquittal” (a “not guilty” decision”), it is recorded by the Court as a “previous conviction” (that is, the accused has previously been found guilty of a crime).

Suspended sentence; Here, a sentence is given but the convicted person is not required to serve a prison sentence provided he or she is not guilty of a similar offence during the period of the suspension. For example, a person may be sentenced to 5 years imprisonment on suspension on condition that the accused is not convicted of a similar offence during the next 5 years. This means that the CONVICT will not be sent to prison.

Fine: A fine is an amount of money a convict is ordered to pay to Court. Sometimes the convict may have to pay a fine in addition, or as an alternative to a period in prison. Fines collected form part of the government's revenue and are not money to be paid to the complainant or the victims of the crime and are provided for under S. 180 of the Magistrates Courts Act.

Compensation and restitution; where the crime has caused damages or loss of property, (including money), A Magistrate's Court is empowered by S. 199 of the Magistrates Courts Act to ask the convict to pay compensation for the loss of property or money to the victim of the crime besides any of the foregoing sentences. Restitution is provided for under S. 200 of the Magistrate's Court Act.

Imprisonment:

This is the most common sentence imposed by Courts. The Court imposes a custodial sentence for a particular period mentioned by the Court e.g it may be 6 months, 2 years, 15 years or life imprisonment.

Community service:

This is a very recent development in the administration of justice system of Uganda provided for under the Community Service Act Cap 115 Laws of Uganda. This sentence is meant to decongest prisons and to save government expenditure. The Court imposes the sentence in respect of petty offences and the offender is allowed to stay in their homes and family while service his sentence at the district, municipal, church, Court premises, sub county etc for a given period.

Reconciliation:

Courts are empowered to encourage reconciliation between the complainant and the accused. This however is with regard to minor offences. The parties may be friends, relatives or where they have lost interest. The complainant may inform Court that the dispute has since been settled and as such no need for further prosecution e.g where a person is charged with criminal trespass but decides to vacate the property or where an accused is charged with receiving money by false pretences and he pays. However, this is inapplicable in serious crimes like murder, rape, aggravated defilement etc. this is because the offence is a danger to society, hence Court cannot on the ground of public morality allow reconciliation.

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