

RIGHTS OF AN INDIVIDUAL IN THE CRIMINAL JUSTICE SYSTEM

A Reference Guide for Health Workers

Developed by:
**The Legal Support
Network**



CEHURD
social justice in health

Acknowledgement

This document was developed to guide health service providers by the lawyers of the Legal Support Network (LSN). The Network brings together lawyers that provide *pro bono* legal services to health service providers caught up in the criminal justice system for providing abortion-related services.

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1.0. BACKGROUND

The criminal justice system is comprised of various stages which include pre-trial arrest and detention. Pre-trial arrest and detention is the stage when a person that is suspected and accused of committing a crime is arrested and held in custody (whether at police or in prison) before a decision is made to confirm their guilt or innocence. The process of determining whether or not a person is guilty is what is referred to as a trial.

The law provides for the rights of individuals who are arrested and detained before being subjected to a trial. These rights are however, often overlooked especially by law enforcement officers in the course of making arrests and conducting investigations. Health workers are among the victims of violations of these rights and this has particularly affected those that provide health care services to patients affected by life threatening conditions that are abortion related.

It is on this premise that a group of legal practitioners came together to form a Legal Support Network (LSN) to devise ways in which the members can support health workers with legal compliance requirements in this very complex area.

2.0. INTRODUCTION

This reference guide is a simplified presentation of the law and procedures relating to pre-trial arrests and detention, and the rights of arrestees and detainees. It is a quick reference tool for health workers on what to do when you are threatened with arrest and/or detention on allegations of violation of the law relating to procurement of an abortion by a woman or a girl, and providing other abortion related services including post-abortion care.

2.1. Basis for Arrest and Detention

- 1) A person may be arrested once it is suspected that he or she has committed or is about to commit an offence under the laws of Uganda.¹
- 2) Some of the abortion related offences for which a health worker may be arrested or threatened with arrest include:
 - Attempt to procure an abortion, the maximum punishment for which is 14 years' imprisonment².
 - Supplying drugs to procure an abortion, for which the maximum punishment is imprisonment for 3 years.³
 - Killing an unborn child, the maximum punishment for which is imprisonment for life.⁴
 - Concealing the birth of a child. The punishment for this offence is imprisonment for any period that is less than 3 years.⁵
 - Murder, the maximum punishment for which is death.⁶
 - Manslaughter, the maximum punishment for which is imprisonment for life.⁷

¹ Article 23 (1), 1995 Constitution of the Republic of Uganda

² Section 141 of the Penal Code Act Cap 120

³ Section 143 of the Penal Code Act Cap 120

⁴ Section 212 of the Penal Code Act Cap 120

⁵ Sections 2 and 211 of the Penal Code Act Cap 120

⁶ Sections 188 and 189 of the Penal Code Act Cap 120

⁷ Sections 187 and 190 of the Penal Code Act Cap 120

- 3) Preventive arrests may also be made for the purpose of preventing a person from suffering physical injury.⁸

2.2. Power to Arrest

The following persons have the power to make an arrest:⁹

- a) Police officers
- b) Private persons, where they reasonably suspect a person of having committed an offence
- c) Magistrates, where the person they are arresting is within their area of operation

N.B: Where an arrest is made by a private person, he/she is supposed to immediately hand over the person they have arrested to a police officer or police station.

⁸ Section 25 of the Police Act Cap 303

⁹ Sections 2, 15,16 and 20 of the Criminal Procedure Code Act Cap 116

2.3. Procedure Involved in Pre-trial Arrest and Detention

The procedures involved in pre-trial arrest and detention are as follows:

2.3.1. Arrest upon suspicion that a person has committed or attempted to commit an offence

- 1) When a person is arrested on suspicion of having committed or attempted to commit an offence, they are supposed to be informed in a language that they understand, of the reason for their arrest
- 2) In the course of the arrest, the arresting officer or person is permitted to touch or confine the body of the person being arrested using only reasonable force unless the person who is being arrested submits himself or herself into the arresting officer's custody by word or action.
- 3) The arresting officer is permitted to use all means necessary to make the arrest where the person being arrested forcefully resists or tries to flee from the arrest. The officer is however not permitted to use greater force than is reasonable to make the arrest.¹⁰
- 4) The arresting officer should also inform the person being arrested of what offence he has committed or suspected to have committed and his/her right to contact a lawyer and a member of the family so that they know about this development.
- 5) A person arrested can only be detained in legally designated places like a police station, till he/she is brought before court within 48 hours to be informed about the charge against him or her. It is court which will decide if the person arrested is to be remanded in prison for the investigations to be completed before the arrested person is subjected to a trial.
- 6) Always have the records of your patients in order and securely kept and have a duplicate copy kept in a safe place so that it is easy to facilitate the investigation process.

*Dos and Don'ts

Dos:-

- * Politely and calmly ask the arresting officer the offence for which he or she is arresting you. It is your right to know.
- * At the point of arrest, you may calmly try to explain to the arresting officer the legality of the act(s) for which he or she is arresting you. Avoid arguments.
- * If in the course of giving an explanation to the arresting officer, he/she shows any sign of aggressiveness, keep quiet. Reserve any further explanations for when you get to the police station. This is because the police officer may consider your explanation a form of resistance to the arrest and may use unnecessary force against you.
- * At the point of getting arrested, you may also request the arresting officer to allow you inform your lawyer of your arrest and a family member.
- * If the arresting officer states or indicates that you are to contact your lawyer when you get to the police station, then make sure you have your phone and your lawyers' contact number with you when you are taken to the Police station.
- * Be cooperative with the arresting officer and voluntarily submit yourself to his / her custody to avoid being roughly handled by him/her. It may also save you from an angry mob, especially where a complaint has been raised against you by the locals in the area where people are strongly opposed to provision of abortion services.

¹⁰ Section 2, Criminal Procedure Code Act, Cap 116

*Dos and Don'ts

Don'ts:-

- * Do not be rude to the police officers in any way as this may make them violent towards you.
- * Do not resist arrest in any way as this may give the police officer a reason to use unreasonable force against you and harm you in the process.
- * Do not try to hide, run away, destroy any evidence or property.
- * Do not cause commotion to draw unnecessary attention of the community to your arrest.
- * Avoid working alone when providing abortion-related services so that it is easier to provide corroborated information on the medical procedures undertaken.
- * Avoid any actions or omissions that may lead to an arrest or detention and where you are not sure it is best to consult.

2.3.2. Detention at police and interrogation of suspect

- 1) A person is presumed innocent until proven guilty.¹¹ Therefore, a suspect is not to be forced into confessing to a crime, as it is up to the State to prove his/her guilt. This is the reason the arrested person is referred to as a suspect.
- 2) Upon arrest, the suspect is placed in police custody, interrogated and required to record a statement. This is a statement of facts and not opinions or beliefs.
- 3) A suspect is not to be forced to make a statement, and he/she may request to make a statement after speaking to his/her lawyer.
- 4) The statement is supposed to be read back to the suspect and he/she is free to read it again before signing it or placing a thumb print. It is important to place a thumb print or initials on each page of the statement and the date.
- 5) The police are not supposed to torture the suspect in any way for the purpose of extracting information from him/her, as this is prohibited by law.¹² The suspect must be treated humanely and his/her human dignity shall not be violated at all by any police officer.
- 6) When a suspect chooses to confess to a crime for which he/she has been arrested, the following steps and conditions must be fulfilled:
 - The police officer must inform the suspect of the offence for which he/she is being charged or likely to be charged.
 - The confession must be made in the presence of a police officer of or above the rank of Assistant Inspector.¹³
 - The police officer must then caution the suspect that he/she need not say anything unless he/she wishes to, but that whatever he/she says will be written down and may be used as evidence against him/her.

¹¹ Article 28 (3), 1995 Constitution of the Republic of Uganda

¹² Article 24, 1995 Constitution of the Republic of Uganda

¹³ Section 23 (1) (a) Evidence Act Cap 6

- The suspect must not be cross-examined when he/she is making his/her statement. (Cross-examination is when a person is asked to give details about answers or information he/she has already given).
 - The police officer must record the statement in the language and words being used by the suspect.
 - If there is no police officer with knowledge of the language being used by the suspect, then the translation should be done by another person that has knowledge of the language, and the police officer must record the statement as translated.
 - The statement should be read back to the suspect, after which he/she should be given the opportunity to make corrections to it before signing onto it or placing on his/her thumb print.
- 7) If there is no police officer of the rank of Assistant Inspector at the police station or police post to record the confession of a suspect, then he/she should be taken to a Magistrate to have his/her confession recorded.¹⁴ The following steps must be followed:
- The Magistrate must ensure that the police officer escorting the suspect leaves his/ her Chambers. (The term 'Chambers' is used to refer to a room that is used as the Magistrate's office space).
 - The Magistrate should ask the court clerk to sit in the Chambers with him or her so as to guard against unnecessary allegations and to act as an interpreter where necessary. (A court clerk is a person who helps a Magistrate to keep records of what happens in court or proceedings held in her Chambers).
 - The Magistrate should inform the suspect in the clearest possible terms of the allegations that are being made against him/her so that the suspect clearly understand the offence with which he/she is likely to be charged, and in respect of which he/she is to make the confession.
 - Upon informing the suspect of the offence in respect of which he/she is likely to be charged, the Magistrate shall caution the suspect, stating that he/she does not need to say anything unless

he/she wishes to do so, and that whatever he/she says will be written down, read to him to confirm that it is correct and may be used as evidence against him/her during the trial in court.

- The Magistrate should also inform the suspect that he or she has nothing to fear or hope for in making the statement.
 - If the suspect chooses to make a statement, then it should be recorded in the language that he/she uses and an English translation should be made of it.
 - Both statements should be read back to the suspect, to give him/her the opportunity of making corrections, where necessary, before he/she can sign or thumb mark them.
 - The Magistrate should countersign and date both statements.
 - The suspect and the original statements that he/she has made are handed back to the police officer for safe custody on the police file that is opened in relation to this matter.
- 8) A confession shall not be used as evidence against a suspect/accused person in court if it was obtained through use of violence, force, threat, intimidation or any kind of promise that is likely to cause an individual to make a false confession.¹⁵
- 9) A confession will however still be relied on by the court even if it was obtained:
- Under a promise of secrecy.
 - As a result of tricking the accused into making it.
 - While the accused was drunk
 - In answer to questions that the accused need not have answered.
 - Without warning the accused that he/she was not bound to make it and that it would be used as evidence against him/her.

¹⁴ Section 23 (1) (b) of the Evidence Act Cap 6

¹⁵ Section 24 of the

***Dos and Don'ts**

Dos:-

- * As soon as you get to the police station, request to contact your lawyer and next of kin to inform them of your arrest if you were not given the opportunity to do so at the point of arrest and inform them about the location of the police station where you are taken.
- * When making your statement, clearly state the facts that point to the legality of your actions/ your innocence. You may for example state that:
 - You provided the health services to save the life of the girl or woman in question after following the necessary procedures as required by law or any health policy/guidelines.
 - The tablets you prescribed and supplied were to control bleeding.
 - You have treatment and prescription notes that indicate the medical diagnosis and recommended treatment for the woman or girl in question, etc
- * Carefully read the statement that has been written by the police officer before signing it.
- * If a statement has anything that is contrary to what you stated, then politely request the police officer to correct it before you sign the statement.
- * When speaking to your lawyer, disclose all facts you think are important to your case. This will enable the lawyer to advise you appropriately without couching you on what to say or not to say. Your lawyer will be there to stand with you as you prepare your defense if the case is to be taken to court.
- * Regularly address your mind on the law on abortion/termination of pregnancy and the policies and guidelines for undertaking particular procedures in order to be well prepared to defend your actions, choices or advice given.

***Dos and Don'ts**

Don'ts:-

- * Do not make a statement before speaking to your lawyer if you are not certain of which facts are incriminating and which ones are not, since you may end up incriminating yourself.
- * If an officer refuses to correct anything in a statement that is different from what you stated, then do not sign it unless your lawyer advises otherwise.
- * Do not confess to committing the offence of which you are being accused. It is the duty of the state (police and the prosecution) to prove your guilt through adducing evidence to support every element of the crime, which if your actions and decisions are well aligned with the legal and policy requirements it would be next to impossible to sustain this charge against you in court.

2.3.3. Finalising investigations and forwarding the case to court

- 1) When police has conducted investigations and has gathered all the information that they think is relevant to the offence for which a person has been arrested, they will put the information in a file that also has a draft a charge sheet (a document that indicates the offence with which the person is being charged) and forward the file to the State Attorney (government officer who will prosecute the case) for perusal.
- 2) Upon perusing the file, the State Attorney may recommend that:
 - The suspect be charged with and tried for the offence that is indicated in the charge sheet;
 - Additional evidence be obtained;
 - The suspect be charged with a different offence;
 - The file be closed due to lack of sufficient evidence disclosing the offence suspected to have been committed.

- 3) If the police do not finalise investigations, then they never get to forward the file to the State Attorney, the case will not get to court.
- 4) Sometimes the complainant (the person accusing the suspect of committing the offence) may withdraw their complaint before police forwards the file to the State Attorney and the complainant being a key witness in this matter the case will not continue to court. The complainant is usually a relative of the woman or girl for whom an abortion is alleged to have been procured. It could also be a case of medical negligence for example where it is alleged that the health worker failed or neglected to apply due care and skill to ensure that the life of the woman or girl is saved or the damage is minimized.

***Dos and Don'ts**

Dos:

- * Immediately after making your statement at police, request to speak to the OC/CID to explain to him the legality of the actions in respect of which you are being accused of committing an offence. This may cause him/her to stop further investigations into the case and to have the file closed without going to court, and the charges against you would then be dropped. Be calm and collected when you approach and speak to the OC/CID.
- * If the OC/CID shows reluctance to close the file because of pressure from the complainant(s) then request for a mediation with the complainant(s) and also explain to them the legality of the actions in respect of which they are accusing you of committing a crime. This may cause him/her/them to withdraw the complaint and the file will not be forwarded to the State Attorney and then the court.
- * Cooperate with the investigation team so that you share with them copies of relevant documents as you will be advised by your lawyer.

Don'ts

- * Do not give/ offer the police officers or the complainant(s) money or other material gain in exchange for getting the charges against you dropped. This will make you an easy and frequent target for extortion.
- * Do not lose your collected and calm demeanor even where you are provoked.

2.3.4. Production of suspect in court

When the State Attorney recommends that a suspect be charged and tried in court, the suspect is brought to a Magistrate's Court. (This is because all criminal cases start from the Magistrates court). This is supposed to be within 48 hours and if the police exceed this timeframe it is important that they have compelling reasons to state before court.

- 1) When a suspect is produced in court, the offence with which he or she is being charged is read to him or her and he or she is asked to take plea. (Taking plea means admitting or denying the offence with which a person is charged).
- 2) If a person admits that he/she committed the offence, then it means that he/she has pleaded guilty.
- 3) If a person denies committing the offence, this means that he/she has pleaded not guilty.
- 4) Where a person chooses to keep quiet and not say anything, then he/she is considered to have pleaded not guilty.
- 5) A suspect should not be forced to plead guilty, despite the evidence that the state may have against him/her. This is because it is the duty of the state to prove their case against him/her, and the standard of proof in criminal cases is very high (beyond reasonable doubt).¹⁶
- 6) If the accused pleads guilty, a plea of guilty is recorded by the court and sentence is passed against him/her. The accused person has a right to say something directly, or through his/her lawyer, to convince the Magistrate to give him/her a lighter sentence (punishment).
- 7) Where an accused person pleads not guilty, the case continues to trial.
- 8) Where a case is triable by the High Court, the charges are read to the accused person, and they are informed that they are to take plea in the High Court where they are committed to for trial.
- 9) Any offence for which the maximum punishment is imprisonment for life can be tried by a Magistrate's Court, while any offence for which the maximum punishment is death can only be heard and judgement passed by the High Court.

¹⁶ Woolmington V D.P.P [1935] AC 462

*Dos and Don'ts

Dos:

- * Pay close attention when in court, especially at the point of taking plea. This is because after the offence for which you are being charged is read to you, specific facts relating to that offence shall be read to you and you will be asked whether you admit or deny them.
- * If you pleaded not guilty to the charge, then deny the facts as stated.
- * You may admit to part of the facts if you are sure of what facts are part of the offence and which ones are not. For example, if it is stated that on a particular day and at a particular place, you illegally procured an abortion for a particular woman, then you may admit that you procured the abortion, but state that you did it legally.

Don'ts:

- * Do not admit to all the facts that are read to you if you have pleaded not guilty, otherwise the admission may be used against you.

2.4. Rights Involved in Pre-Trial Detention

2.4.1. *The Right not be detained for longer than 48 hours in police custody*

- 1) When a person is held in police custody in respect of an offence, he/she is supposed to be either released, whether on police bond, or without charge, or presented before a Magistrate within 48 hours.¹⁷
- 2) To be given police bond that is the suspect is released from police custody, while investigations are still ongoing, on the understanding that he or she will report to police, as and when required to do so.
- 3) Police bond may be given, with or without sureties (people who undertake to ensure that the person released shall report to the police as required). This is supposed to be free.
- 4) It is customary for sureties to present identification documents that indicate their area of residence, occupation and status in society. They should be responsible persons in society.
- 5) When a person is detained beyond 48 hours, any other individual can apply to a Magistrate, within 24 hours, for that person's release.

*Dos and Don'ts

Dos:-

- * As soon as your relatives arrive at the police station, inform them that you will need sureties and that at least one of them should be prepared with his/her their national identification card/passport.
- * If you are detained beyond 48 hours and you had not contacted your lawyer earlier, politely request the police officer to give you the opportunity to contact him/her so that he/she can apply to the Magistrate for an order for your release.
- * Always have your lawyers' contact number(s) in preparation for such situations

¹⁷Article 23 (4), 1995 Constitution of the Republic of Uganda

***Dos and Don'ts**

Don'ts

- * In case you are detained beyond 48 hours do not panic and do not offer the police money or other material gain in exchange for your release.

2.4.2. Right to inform the next of kin of your arrest, have access to legal representation and medical treatment¹⁸

- 1) When a person is arrested and detained, he/she has to be given the opportunity, upon his/her request, to inform his/her next of kin and lawyer about the arrest.
- 2) The next of kin, lawyer and doctor of the suspect is supposed to be allowed reasonable access to him/her to cater to the immediate needs.
- 3) The suspect is also to be allowed access to medical treatment, upon request, including access to private medical treatment at his/her own cost.
- 4) The suspect has a right to be treated humanely and with dignity at all times when in police custody.

¹⁸ Article 23 (5) ,1995 Constitution of the Republic of Uganda

2.4.3. *Right to Apply for Bail*¹⁹

- 1) When a person is charged with an offence triable by the Magistrate's court, he/she has a right to apply for bail immediately after taking plea or at any stage during the trial.
- 2) Bail is when a person is released by the court while still under trial, on the understanding that the suspect will report to court as and when required.
- 3) A person who pleads guilty does not have a right to apply for bail, because immediately after pleading guilty, he or she is convicted and sentenced (punished).
- 4) Where a person is charged with an offence that is triable by the High Court, he/she has a right to apply for bail in the High Court before or immediately after his/her indictment (this is the equivalent of being charged in the high court) or at any stage during the trial.
- 5) Court may grant bail on such terms as it considers reasonable.
- 6) Considerations for bail in the Magistrates Court are as follows:²⁰
 - The nature of the offence, that is, whether it involves personal violence or not.
 - The gravity of the offence (Whether the maximum punishment for the offence charged is so grave that it might cause the accused person not to report to court as and when required).
 - The character of the accused, in particular whether the accused is likely to jump bail/ has ever jumped bail. (Jumping bail is when a person does not report to court as and when required to do so).
 - Whether the accused has a fixed place of abode (permanent home) within the court's jurisdiction (area of operation or control).
 - Whether the accused is likely to interfere with the prosecution witnesses and the investigations.

¹⁹ Article 23 (6), 1995 Constitution of the Republic of Uganda

²⁰ Section 77 of the Magistrates Courts Act Cap 16

- 7) Considerations for bail in the High Court are as follows:²¹
 - Exceptional circumstances, which include the accused person's illness, advanced or infant age and a certificate of no objection from the Director of Public Prosecutions.
 - Whether or not the accused person will or is likely to jump bail. This is determined by ascertaining whether or not the accused person has substantial sureties and a place of abode (home) in the area of the court's jurisdiction (area of operation and control) and whether or not he/she is facing other criminal charges.
- 8) Conditions for bail include:
 - Having substantial sureties. These are people who will ensure that you report to court as and when the suspect is required. In determining whether they are substantial, court will consider their relationship to the accused person and their standing in society.
 - Security. This is what the accused person gives court to guarantee that he/she will report to court when required to do so. Some of the examples of such guarantees/securities include passports and land titles.
 - Cash bond (security in form of money) which is determined by the judge or magistrate. This is refundable.
- 9) Where an accused person is kept on remand for 60 days for an offence triable by the Magistrates Court and 180 days for an offence triable by the High Court, without the trial taking off, then the suspect is entitled to a mandatory release on bail on such conditions as the court deems fit. Trial begins upon the first prosecution witness gives his/her evidence.

²¹ Section 15 of the Trial on Indictment Act Cap 23

***Dos and Don'ts**

Dos:-

- * While still in police custody, inform your relatives that you are likely to need sureties at court, and that at least two of them should be prepared with their national identification cards/passports and letters of recommendation from the LCI Chairperson of the area within the courts' control (LCI letters are required at court).
- * Ensure that your sureties are people of good character and reputation in society; otherwise they might be rejected for not being substantial.
- * At all times remain collected, polite and in touch with your lawyer.
- * Make preparation for the lawyer's fees or get in touch with the LSN if you are not in position to raise money quickly so that they arrange a lawyer for you in a timely manner.

***Dos and Don'ts**

Don'ts

- * Do not get people that are not related to you or that do not know you personally to stand surety for you. They will be rejected for not being substantial and you will not be given bail.
- * Do not jump bail (fail to report to court when required), otherwise the people that stand surety for you will be arrested.
- * Do not offer any money to seek for favours from the prosecution, prison warders, court officials and no one should convince you to organize for money to be given to the Judge or magistrate. These are usually conmen that hang around court and police premises.

2.5. Enforcement of Rights

- 1) If any of your rights as set out above are violated, you may take action against a particular private individual, state actor or state agency to get assistance or compensation for such violation.
- 2) Some of the various forms of action that you can take include:
 - Lodging a complaint at the Police Professional Standards Unit. This can be helpful where you are detained beyond 48 hours, as an order can be made for your release by the Director at this Directorate. Their toll free lines are:
 - 0800199199
 - 0800199299
 - 0800200019
 - Filing a complaint at the Police Directorate of Legal and Human Rights Affairs
 - Filing a complaint at the Uganda Human Rights Commission
 - Lodging a suit in the High Court
 - Contacting the LSN for advice and support in getting an appropriate remedy.
- 3) Contact your lawyer to help you lodge your complaint/suit and to give you legal advice and representation during the hearing of the complaint/suit.

CENTER FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT

**Plot 4008, Justice Road, Canaan Sites,
Nakwero, Gayza-Kalagi Road
P.O. Box 16617, Kampala Uganda
Tel: +256 414-532283
0800-313131 (toll-free)
Email: info@cehurd.org
Web: <http://www.cehurd.org>**