



HIGH COURT DECLARES DENIAL OF DETAINED PERSONS ACCESS TO THEIR LAWYERS DURING COVID-19 A VIOLATION OF HUMAN RIGHTS

On 15th June 2020, the High Court of Uganda issued its decision in the case of Human Rights Awareness and Promotion Forum (HRAPF) Vs. Attorney General and The Commissioner General of Prisons, High Court Miscellaneous Cause No. 81 of 2020. The ruling was signed by Justice Michael Elubu of the High Court Civil Division on 5th June 2020.

The Court declared that denial of 19 persons detained during the COVID-19 lockdown access to their lawyers was a violation of their rights to a fair hearing and liberty. The Court also awarded damages of UGX 5,000,000 to each of the Accused Persons.

The 19 youths were part of a group of 23 people arrested from a homeless shelter in Kyengera, Wakiso District on 29th March 2020. They were charged with 'doing a negligent act likely to spread infection of disease' contrary to section 171 of the Penal Court Act, before the Chief Magistrates Court of Mpigi at Nsangi. They were then remanded to Kitalya Prison on 31st March 2020. Attempts by HRAPF's legal aid lawyers to access them for purposes of preparing their bail applications were denied by the Prisons authorities both physically and

in writing. In a letter dated 22nd April 2020 and signed on behalf of the Commissioner General of Prisons, the reason for the denial of access was stated as the 'current COVID-19 pandemic' and HRAPF was advised to 'be patient until the situation improves.'

It was upon this background that HRAPF filed this application seeking orders that the denial of access to lawyers was a violation of the Accused Persons' right to a fair hearing and the right to liberty. Article 28(3) (d) of the Constitution of Uganda requires that every accused person should be 'given adequate time and facilities for the preparation of his or her defence,' which would include accessing a lawyer, while Article 23(5)(d) requires that a person detained is allowed access to their lawyers.

The Court observed that the right to a fair hearing could not be waived even during the COVID-19 crisis since the right is 'inalienable whatever the circumstances.' The Court further observed that the Chief Justice issued guidelines for some urgent matters to be heard including bail applications during the COVID-19 lockdown, something that showed that lawyers had to

have access to their clients if these matters were to be heard. The Prisons authorities could therefore not deny lawyers access to their detained clients using the excuse of COVID-19.

On the right to liberty, the Court observed that although the right could be limited, there were many options available to prisons authorities to allow lawyers to access their clients without putting people at risk of contracting COVID-19. Therefore, denying the Accused Persons access to their lawyers for 40 days was 'unreasonable and unjustifiable.'

HRAPF welcomes this ruling of the Court as a vindication of the human rights of the 19 accused persons. We call upon the Government of Uganda to ensure that all lawyers have access to their clients who are in detention during this period of COVID-19 in order to uphold the non-derogable right to a fair hearing and to realise the right to liberty of the detained persons as decided by the High Court and as required by the Constitution of Uganda and international human rights instruments.

Taking human rights to all

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