



Legal Implications of Cessation Order and Procedure of Transfer of Criminal Cases from Military Courts to Ordinary Courts of Law

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INTRODUCTION

On January 31, 2025, the Supreme Court of Uganda delivered a landmark judgment in *Attorney General v Hon. Micheal A. Kabaziguruka, Constitutional Appeal No. 02 of 2021*. The Court, among others, ordered that all charges or ongoing or pending criminal trials before military courts should immediately cease and be transferred to the ordinary courts of law with competent jurisdiction.

The said order was based on Court's declaration that the establishment and trial procedure of the military courts do not contain "any of sufficient constitutional guarantees and safeguards for

them to exercise their judicial functions with independence and impartiality," which is a prerequisite for fair hearing guaranteed under Articles 21, 28(1), 44(c), and 128(1) of the Constitution.

Following the judgment, military courts in Uganda ceased handling criminal trials. The Attorney General and the Director of Public Prosecutions (DPP) have taken several steps in an effort to cause the transfer of the trials in compliance with the judgement.

Unfortunately, the said processes have not yielded results that demonstrate sufficient compliance with the judgment and respect

for personal liberty, fair trial, and due process rights. This memo provides a brief explainer of the implications of the two orders, clarifies the position of the law, and proposes appropriate action to ensure compliance with the judgment and respect for fundamental rights and freedoms of individuals who were facing criminal trials in the military courts.

IMPLICATION OF ORDER TO 'IMMEDIATELY CEASE' CRIMINAL TRIALS

After finding that the military courts are incapable of ensuring fair trial guarantees, the Supreme Court ordered all ongoing or pending criminal trials before the court to 'immediately cease.' The word 'cease' is a legal term that means to stop or terminate something. In this context, the legal implication of the Court's order is the immediate discontinuance of proceedings, which has the effect of setting the suspects and accused persons involved in the case free. Judgments of the Supreme Court are self-executing, meaning they take effect immediately and automatically. As such, all charges, ongoing or pending criminal investigations or prosecutions in military courts were automatically terminated.

IS THE CONTINUED DETENTION OF THE ACCUSED PERSONS LAWFUL?

Under the law, there are only two circumstances under which a person can be admitted for detention in prison. Article 23(1) of the Constitution provides that no person shall be deprived of personal liberty except in execution of the sentence or on an order of a competent court of law. This means that unless there is a valid warrant issued by a competent court of law either for remand or for a convict to serve a sentence, no one should be detained in prison.

Section 57 of the Prisons Act, Cap. 325 further guides on procedure of admission of prisoners into prison. The said section provides that no person shall be received or admitted into prison custody without a valid commitment or a remand warrant, order of detention, warrant of

conviction or committal signed with a seal of a court of competent jurisdiction.

In view of the above, it is apparent that all individuals currently being detained in prisons on remand warrants issued by military court or tribunals are in illegal detention. Following the declarations and orders of the Supreme Court on January 31, 2025, the warrants issued by the court in criminal trials were rendered of no legal force.

The Uganda Prisons Force authorities therefore have no legal justification to continue detaining any one on the basis of remand warrants issued by military courts or tribunals. While the Supreme Court did not issue a release order, the order for immediate cessation of the criminal trials had the legal effect of an unconditional release order, pending review and transfer of the trials to the ordinary courts.

PROCEDURE OF TRANSFERRING OF TRIALS TO THE ORDINARY COURTS

The Supreme Court ordered for the transfer of all ongoing and pending criminal trials from the military court to ordinary civilian courts that have competent jurisdiction.

The ordinary procedure of transferring cases from one court to another is governed by the Magistrates Courts Act and other relevant laws. One of the key pillars is the existence of competent charges to be transferred. The primary objective of transfer of cases is to ensure that justice is served efficiently and effectively.

The transfer ordered by the Supreme Court in this instant case does not fall under the normal case transfers because of two grounds.

Firstly, unlike in ordinary transfer of cases, there are no competent criminal charges to directly transfer from the military court. The legal effect of the Supreme Court's declaration that the military court lacks independence, impartiality and other fair trial guarantees is that the criminal trials they were entertaining are tainted

by illegalities. Indeed, several unlawful actions, such as renditions, coerced confessions, prosecutorial misconduct, judicial bias, and denial of due process have been documented.

Secondly, the criminal proceedings that were active before the military court were instituted by the convening authority. This is in sharp contrast with the manner in which criminal proceedings are instituted in ordinary courts, where there is a clear separation of convening authority and prosecuting authority. In the military court, the convening authority exercised influence to determine the charges to be preferred, the prosecutor to be appointed to prosecute a particular case, among others.

In view of the foregoing, the appropriate process of transferring the criminal trials is to channel them through the ordinary case flow system for ordinary courts. This is essential to ensure that the root of fair trials as guaranteed by the Constitution in criminal cases is protected. The prison authorities should free all prisoners who are currently on remand on the basis of the expired warrants issued by the military courts and tribunals, and if anyone has any criminal allegations against them, the matter should be reported to the police for appropriate action. This will facilitate the recording of the criminal reference number, investigations and collection of evidence, and forwarding of the file to the Director of Public

Prosecutions (DPP) for further action or advise.

CONCLUSION

The right to personal liberty is a fundamental human right that can only be deprived in strict circumstances as provided under Article 23(1) of the Constitution. In the absence of a warrant signed by a court of competent jurisdiction, no person should be held on remand in any prison. Such detention, even if it is to provide time for administrative processes to transfer a file, is illegal and unlawful.

The Uganda Prisons Service should publish a list of names of individuals in their custody on remand warrants from the military courts and tribunals for transparency and proceed to promptly release them in the absence of remand warrants from courts.

In the absence of the said release, individuals who are still being held in illegal detention, and have the ability to petition the High Court, should consider filing applications under Section 15 of the Human Rights (Enforcement) Act, Cap. 12 to seek unconditional release orders. They should further consider asking court to find prison authorities who continue to detain them irregularly or unlawfully in violation of Section 15(9) of the Act which would expose them to imprisonment for a term not exceeding five years.

