



# **THE TREATMENT OF PERSONS WHO USE AND INJECT DRUGS WITHIN THE CRIMINAL JUSTICE SYSTEM IN UGANDA**

**A Research Brief**

**2020**



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In collaboration with:



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## 1. INTRODUCTION

There are specific trends in the human rights abuses which People Who Use and Inject Drugs (PWUIDs) are vulnerable to suffer when they come into contact with the criminal justice system. Human rights violations suffered by PWUIDs within the criminal justice system are sure to increase their vulnerability to HIV infection as it drives them further underground and away from HIV prevention and treatment services and support.

This study sets out to identify trends in human rights abuses and violations suffered by PWUIDs who come into contact with the criminal justice system in Uganda in order to make recommendations to address the situation through advocacy and sensitisation of law enforcement officials.

Qualitative, primary research as well as secondary research were conducted for accomplishing the study objectives. The study had two research sites namely Kampala in the Central region and Mbale in the Eastern Region of Uganda. Primary data was collected among PWUIDs who had come into contact with the criminal justice system in both Kampala and Mbale. A total of 6 Focus Group Discussions and 8 in-depth interviews were held with PWUIDs. Key Informant Interviews were conducted with 16 law enforcement officials, providers of legal aid services and representatives of organisations working with PWUIDs. Secondary data was collected through the review of existing literature on human rights abuses suffered by PWUIDs who come into contact with the criminal justice system. All files of cases of PWUIDs handled by HRAPF's legal aid clinic from 2017 up to the first half of 2019 were also reviewed in order to identify trends and practices in the arrest and prosecution of PWUIDs. The Uganda Police Force Annual Crime Reports for 2017 and 2018 were also considered in order to document the number of arrests, prosecutions and convictions on the basis of crimes related to narcotics in recent years.

## 2. KEY FINDINGS

Every year, there are approximately 3000 cases related to narcotics recorded by the Uganda Police Force (UPF). This figure does not include instances where PWUIDs are arrested under the Penal Code Act's vagrancy provisions or on the suspicion of committing a crime that does not directly involve narcotics. PWUIDs are often arrested during police operations targeting a specific area in response to public outcry concerning crime rates. About two thirds of narcotics cases are prosecuted and heard by the courts and the conviction rate is 3 to 4 out of every 10 cases. Upon conviction under the minimum sentences of the Narcotics Drugs and Psychotropic Substances Control Act, 2016

(NDPSCA), PWUIDs would usually face a prison sentence due to the inability to meet the steep fines which the Act prescribes as an alternative to imprisonment.

The study finds that the following rights of PWUIDs are violated when they come into contact with the criminal justice system in Uganda:

## 2.1 The right to liberty

This right is violated in that PWUIDs are often arrested where there is no reasonable suspicion that the person is about to commit a crime, but is rather based on the person's appearance and the stigma that is attached to PWUIDs. A person presenting as a PWUID can easily be arrested for the purposes of extorting them for a bribe in return for their release or to 'teach them a lesson' by detaining them in police cells on an arbitrary basis. There may be a reasonable suspicion that the arrestee is addicted to drugs, however the study finds that the intention motivating the arrest of people believed to be PWUIDs is usually not to provide them with medical care and treatment, nor to protect the community.

*... they do night raids and release the ones with money but remember we don't have money and we stay there... If you have something like 120,000 shillings because I think the major aim of those raids is to extort money from us ... Those who fail to raise the money you board a vehicle up to ... court. [Interview with PWUID, CA, Kampala]*

This right is furthermore violated in that PWUIDs are rarely informed of the reason for their arrest at the time that they are arrested. PWUIDs are also not informed of their right to a lawyer and are often detained beyond 48 hours after being arrested. The right to liberty is furthermore violated in that PWUIDs are not given access to adequate medical care while they are in police detention; their withdrawal symptoms and need for medical care after a violent arrest are often ignored.

*...they don't receive any kind of treatment when they are at the station, in some places they will release them early like they don't ask for bond they will just give them bond so they can go home and get treatment, in other places because they think we might sue them, they keep them in hoping that they will get better before they release them. Either way unless a person is really, really grievously injured they don't take them for treatment. [KII with Lawyer who handles cases of PWUIDs at an NGO based in Kampala]*

## 2.2 The right to a fair trial

PWUIDs are usually forced to make statements by the police and in some cases evidence of drug possession is planted on them by the police.

*We asked them the exhibits they found with us and they said they have marijuana in their stores they can use as exhibits against you if you insist. [RG, FGD with male PWUIDs held in Mbale]*

PWUIDs are also usually tried for offences that no longer exist since some magistrates are not aware that section of the National Drug Policy and Authority Act criminalising possession of opium, smoking opium and frequenting a place used for smoking opium were repealed.

### **2.3 The right to equal protection of the law, equality and freedom from discrimination**

PWUIDs are often arrested on the basis of their appearance and the assumption that they are perpetrators of crime. They are targeted for arrest due to their dress code and social habits which 'identify' them as PWUIDs, rather than on a reasonable suspicion that specific crimes have been committed. This right is furthermore violated when groups of people arrested during police operations are sometimes subjected to a 'screening' process with the help of local leaders: those who are known to be PWUIDs will remain in detention while those who are not identified as PWUIDs are released, which confirms that the basis of these arrests are not the suspicion of the commission of a specific crime.

*Somebody can happen to be in that place with the smokers when he himself is not a smoker. So the screening we involve LCs [Local Council leaders] of the area then they can tell you this one we know him much as he was found in that place ... of wrongdoers but he is not a wrongdoer and he does not smoke opium. So he is screened and he is questioned and set free... So when there is operation of massive arrests they call all the surrounding LCs to come talk about them. [Interview with Police Officer, Kampala].*

### **2.4 The right to dignity and freedom from cruel, inhuman and degrading treatment or punishment**

This right is violated in that PWUIDs are subjected to beatings during arrest. PWUIDs are furthermore not protected from assault by fellow inmates while in custody.

*When these people find you smoking there is a way they treat and beat you. I was once in the ghetto smoking and a police officer came and beat me on the ankles before arresting me. It took six months for the ankles to heal, I was even beaten on the neck, the ribs are rotten. [R1, FGD with male PWUIDs, Mbale]*

Even though manual labour in a prison setting is allowed by the Prisons Act, the way in which this is imposed in prison settings and to PWUIDs on remand violates their right to dignity and amounts to degrading punishment.

*... they go and arrest you in a bad way, they have beaten you up and in the morning when they come, they ask “where are the ones we brought at night? Come and mop the office, you mop the veranda” then you say “officer I am not feeling well”. Then sometimes he beats you and continues to hurt you and he tells you “you will mop it”, then he takes you by force but yet you are not feeling good. [Interview with SS, PWUID, Kampala].*

### 3. CONCLUSION

The study concludes that PWUIDs face severe violation of their rights when they come into contact with the criminal justice system, especially at the level of the police. These violations are usually over and above what other groups suffer and are based on their status as PWUIDs. Violations are recorded in the process of arrests; in the treatment during police custody; during court hearings and in respect of remand as well as during the serving of a sentence in prison. The study identifies inconsistencies in the way in which law enforcers interpret and apply the Narcotic Drugs and Psychotropic Substances Control Act, 2016. The study furthermore finds that there is a lack of provision of healthcare services and rehabilitative services in particular to PWUIDs at every level of the criminal justice process.

### 4. RECOMMENDATIONS

The study makes the following recommendations to various actors:

#### To Parliament

- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to decriminalise individual drug use or to allow for more lenient sentences where a person is an individual drug user as opposed to a trafficker.
- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to allow police officers to defer PWUIDs for medical treatment and rehabilitation upon arrest.
- Repeal all sections of the Penal Code Act containing vagrancy offences.

#### To the Ministry of Health

- Adopt a harm reduction policy which can guide future legislation, programmes, the establishment of rehabilitation centres and treatment of PWUIDs in Uganda.

- Ensure that the section of the NDPSCA which deals with rehabilitation is operationalised.
- Initiate and undertake trainings of police officers, prison officials and magistrates to grasp the intricacies of drug use and addiction and the required treatment for PWUIDs as a Key Population and vulnerable group.

### **To the Ministry of Justice and Constitutional Affairs**

- Train magistrates nationwide on the NDPSCA in order to understand its provisions, minimum sentences and the repeal of sections of the NDPAA.
- Adopt guidelines which allow community members to intervene in court cases where PWUIDs are the accused in order to support and guide them in court.
- Work with local CSOs to undertake a cost benefit analysis of the detention of PWUIDs, both at police level and in prison.

### **To the Ministry of Gender, Labour and Social Development**

- Undertake sensitisation and awareness raising at community level to allow communities to understand the plight of PWUIDs and to be willing to support them if they come into contact with the criminal justice system.

### **To the Uganda Police Force**

- Adopt guidelines to instruct station commanders on how to handle cases of PWUID arrestees. Such guidelines could include to release persons if they are in need of medical care which the station is not in a position to provide.
- Continue training and awareness-raising among police officers of different ranks in all regions of the country, particularly arresting officers and officers responsible for keeping the anti-narcotics desks at various stations.

### **To the Equal Opportunities Commission**

- Monitor and investigate the situation of PWUIDs and their treatment in the criminal justice system.
- Include PWUIDs' issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and police officers on the NDPSCA.

### **To the Uganda Human Rights Commission**

- Investigate and monitor human rights abuses committed against PWUIDs.
- Include PWUIDs' issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and police officers on the NDPSCA.



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