Vulnerability in Detention: Persons with Disabilities

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INTRODUCTION

• WHO estimates that Person with disabilities account for 3% of the world’s population.
• Disabilities is largely associated with stereotype, stigma, discrimination and poverty
• Persons with disabilities are likely to come into contact with the law as:
  • person in conflict with the law - persons accused of an offence
  • persons in contact with the law - complainants, witnesses, experts.
  • Vulnerable persons - those that need protection
Models of Disability

- Medical Model - illness or disability, the result of a physical condition intrinsic to the individual.
- Social Model - disability is caused by the way society is organized, rather than by a person’s impairment or difference. It looks at ways of removing barriers that restrict life choices for disabled people.
Legal framework

- Penal Codes
- Relevant National disabilities legislation
- Constitutions
- African Charter on Human and Peoples Rights - Article 3 and 5
- Convention on the rights of Persons with Disabilities - Article 12, 13 and 14
Other Resources

• Guidelines on Article 14 CRPD
• Robben Island Guidelines
• WHO Resource Book on Mental Health, Human Rights and Legislation

What are the considerations

- Reasonable accommodation
- Access to healthcare for pre-existing conditions
- Minimum standards in detention
- Legal barriers
- Stereotypes and prejudices
- Resources in detention facilities.
Examples

• Article 3 European Convention on Human Rights

Serifis v Greece: challenged his detention on the basis of his health. The court found violation under Article 3

Dvbeku v. Albania: violation of Article 3 based on lack of access to medication to address his mental health conditions. He was released.
Article 5 ACHPR

- Purohit & Moore v. Gambia
- Called for review of LDA in Gambia
- Unconditional release of applicants
- Compensation and access to community based care
R. v. Mohammed Jaldesa & Another.

• Court denied to release accessed on bail for security reasons.
• Ordered that reasonable accommodation be provided and access to education for accused person.
Lessons Learnt

- Understand the nature of the problem
- Clear goal for litigation
- Adequate resources for litigation
- Litigation should be part of a broader strategy such as advocacy
- Potential impact of litigation
- Barriers/risks that the litigation may cause or the litigation might face.
- Potential partnerships.
Conclusion

• Listen to your client
• Research
• Be creative

Thank you
Conclusion: what lawyers can do

- Identify, share and discuss cases & strategies
- Build on existing cases to develop progressive jurisprudence
- Continue to build the capacity of judges.