

**CRITICAL ANALYSIS ON THE LEGAL REGIME PROVIDING FOR  
THE RIGHTS ON AN ACCUSED PERSON UNDER CRIMINAL  
JUSTICE SYSTEM IN UGANDA**

**BY**

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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW  
PARTIAL FULFILLMENT OF THE AWARD OF THE DEGREE IN  
BACHELOR OF LAWS OF KAMPALA INTERNATIONAL  
UNIVERSITY**

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**2019**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
DECLARATION.....	IV
APPROVAL.....	V
DEDICATION.....	VI
ACKNOWLEDGMENT.....;	VII
LIST OF CASES.....	VIII
LIST OF STATUTES.....	VIII
LIST OF INTERNATIONAL INSTRUMENTS.....	VIII
LIST OF ACRONYMS.....	IX
LIST OF TABLES.....	IX
ABSTRACT.....	X
<b>CHAPTER ONE.....</b>	<b>1</b>
1.1 INTRODUCTION.....	1
1.2 BACKGROUND TO THE STUDY.....	1
1.3 STATEMENT OF THE PROBLEM.....	3
1.4 PURPOSE OF THE STUDY.....	3
1.5 OBJECTIVES OF THE STUDY.....	4
1.6 HYPOTHESIS OF THE STUDY.....	4
1.7 SIGNIFICANCE OF THE STUDY.....	4
1.8 SCOPE OF THE STUDY.....	4
1.9 METHODOLOGY.....	5
1.10 INTRODUCTION.....	5
1.11 TARGET POPULATION.....	5
1.12 RESEARCH APPROACH.....	5
1.13 SAMPLE.....	5
1.14 DATA COLLECTION TECHNIQUE.....	5

1.14.1	INTERVIEWS.....	6
1.14.2	QUESTIONAIRES.....	6
1.14.3	OBSERVATIONS.....	6
1.15	ETHICAL CONSIDERATIONS.....	6
1.16	CONCLUSION.....	7
1.17	LITERATURE REVIEW.....	7
1.18	CONCLUSION.....	9
 <b>CHAPTER TWO.....</b>		<b>10</b>
2.0	INTRODUCTION.....	10
2.1	RIGHT TO LIBERTY AND SECURITY.....	11
2.2	RIGHT TO BE INFORMED OF THE OFFENCE CHARGED.....	13
2.3	RIGHT TO HUMANE TREATMENT.....	13
2.4	RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY.....	14
2.5	RIGHT TO A FAIR HEARING.....	14
2.5.1	RIGHT TO COUNSEL.....	16
2.5.2	RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE DEFENCE.....	17
2.5.3	RIGHT TO AN INTERPRETER.....	17
2.5.4	RIGHT TO TRIAL WITHOUT UNDUE DELAY.....	18
2.5.5	RIGHT TO ACCESS OF COURT RECORDS AND EXHIBITS.....	18
2.5.6	RIGHT TO BE PRESENT AT THE HEARING.....	18
2.6	RIGHT TO AN EFFECTIVE REMEDY.....	19
2.7	RIGHT OF CIVILIANS NOT TO BE TRIED BY MILITARY COURTS.....	19
2.8	RIGHT TO BE BROUGHT PROMPTLY BEFORE A COURT.....	19
2.9	RIGHT TO HABEAS CORPUS.....	20
2.10	RIGHT TO BE RETAINED IN A PLACE RECOGNIZED BY LAW.....	20
2.11	RIGHT TO APPLY FOR BAIL.....	21
2.12	RIGHT NOT TO BE COMPELLED TO TESTIFY AGAINST HIMSELF.....	21

2.13 RIGHT TO CROSS-EXAMINE ADVERSE WITNESSES.....	22
2.14 RIGHT TO APPEAL.....	22
2.15 RIGHT TO SEEK PARDON.....	23
<b>CHAPTER THREE.....</b>	<b>24</b>
3.0 CORRUPTION.....	24
3.1 POLITICAL INTERFERENCE.....	27
3.2 MILITARY INTERFERENCE.....	28
<b>CHAPTER FOUR.....</b>	<b>31</b>
4.0 INTRODUCTION.....	31
4.1 RESPONDENTS' VIEWS.....	31
4.1.1 RESPONDENTS' AGE.....	31
4.1.2 RESPONDENT'S AWARENESS ON THE RIGHTS OF SUSPECTS.....	32
4.1.5 RESPONDENTS' OPINIONS ON WHAT CAUSES VIOLATIONS OF RIGHTS.....	32
4.1.6 RESPONDENTS' VIEWS ON THE LEVEL OF ADHERENCE.....	33
<b>CHAPTER FIVE.....</b>	<b>34</b>
5.0 INTRODUCTION.....	34
5.1 SUMMARY OF FINDINGS.....	34
5.2 RECOMMENDATIONS.....	35
5.3 CONCLUSION.....	36

**DECLARATION**

I, **ABIGABA INNOCENT**, of Registration Number 1153-01024-01264 hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information obtained and used has been duly acknowledged in this dissertation.

Declarant: ABIGABA INNOCENT

Signature:  .....

Date of Submission: 28<sup>th</sup>/6/2019 .....

## APPROVAL

I hereby certify that this work contained in this dissertation entitled, "Legal regime providing for the rights of an accused persons under criminal justice system in Uganda" has been under my supervision and I have approved it for submission to the faculty of law of Kampala International University.

Signature.....

MR. WANDERA ISMAIL

Date.....

## **DEDICATION**

This dissertation is dedicated to my parents, Asaba Jaiden and Kabasindi Margret whose love, support and interest in what I was doing enabled me to endure and overcome all the hardships.

## ACKNOWLEDGMENT

Gratitude goes to the almighty God who has made it possible for me to sail through my studies despite challenges that have overwhelmed me in this course.

I wish to thank my supervisor Mr. Wandera Ismail who dedicated his time and expertise to direct me accordingly which eventually culminated into the production of this thoroughly researched book.

I also express my acknowledgement for support from various individuals who gave me their helping hand and caring heart. My special thanks go to:

My family members Kaboyo Hillary, Muhairwe Catherine, Lucy Kobusinge Jackline, Kusiima Sarah and Mugisa Francis for their financial, moral support and encouragement throughout my research. Your nobility and kind heart will never be taken for granted.

Lastly to my friends Kusiima Juliet, Oyenboth Grace, Aisu Isaac, Kugonza Kenneth, Nyambane Kefa and many others for their countless support, encouragement and advise towards the success of this research. I deeply appreciate your wisdom for it has sustained and seen me through.



### **LIST OF CASES**

1. Attorney General v Tumushabe Constitutional Appeal Number 3 of 2005
2. Col (Rtd) Dr. Kiiza Besigye v. Uganda, High Court Criminal Session No. 149/2005
3. Foundation For Human Rights Initiatives vs The Attorney General Constitutional Petition No. 20 of 2006
4. James Soawabiri and Anor vs Uganda Criminal Appeal No 5 of 1990
5. Juma and Others vs Attorney General (2003) AHRLR 179
6. Uganda Law Society vs The Attorney General Constitutional Petition No. 8 of 2002

### **LIST OF STATUTES**

Constitution of the Republic of Uganda, 1995 Criminal Procedure Code Act' Cap 116  
Evidence Act Cap 6 Magistrates Courts Act Cap 16 The Police Act Cap 30

### **LIST OF INTERNATIONAL INSTRUMENTS**

1. African [Banjul] Charter on Human and Peoples' Rights
2. African Commission on Human & Peoples' Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,"
3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. International Covenant on Civil and Political Rights (ICCPR)
5. Rights and Privileges of Accused Person, Published by S R Paul, Dhaka 2003, Pp. XV + 295,
6. Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N.
7. The Universal Declaration of Human Rights 1948

## LIST OF ACRONYMS

1. ACHPR.....African [Banjul] Charter on Human and Peoples' Rights.
2. ACHPR.....African Commission on Human & Peoples' Rights.
3. CTCIDTP.....Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. DRC.....Democratic Republic of Congo
5. KNCHR.....Kenya National Commission of Human Rights
6. (ICCPR).....International Covenant on Civil and Political Rights
7. PRA.....Peoples' Redemption Army
8. UN.....United Nations
9. UNCPCTO.....United Nations Congress on the Prevention of Crime and the
10. Treatment of Offenders
- 11.10. UDHR.....The Universal Declaration of Human Rights 1948 .

## ABSTRACT

The above research was carried out in the Republic of Uganda with an intention of examining the legal regime providing for the rights of accused persons under criminal justice system in Uganda in the republic aforesaid.

The research addresses the inherent and inalienable nature of human rights generally. It critically analyses rights of suspects and accused persons putting into consideration the legal initiatives that have been taken by various stakeholders in the justice system. In this light the research looks at the different legislations that provide for these rights.

During the research process, different methods of data collection were applied which included; questionnaires whereby information was gotten through structured questions containing both open and closed ended questions, interviews with police officers and suspects, observations which included fact finding missions whereby the researcher would observe the factors in the actual sense by interacting with the respondents, library research which involved comparisons of literature that was previously researched on a relevant field both in local and international level.

Basing on the research findings, the research revealed that the rate of awareness on the rights of suspects and accused persons in Uganda is alarming.

A large number of people even among them the educated don't understand and appreciate these rights. This trend of awareness among people undermines the fight against violations of rights of accused persons. It would be very difficult for citizens of Uganda to voice against violations they don't understand well.

The research addressed the major causes of violations of suspect's suspects. The largest proportion of blame is put on corruption, political interference and military interference. This can be accounted from the nature and circumstances surrounding our institutions ranging from the investigative organs to those charged with the duty of administration of justice.

The research recommends possible tenable solutions to the challenges facing the expected protection, fulfillment and promotion of rights of accused persons. Civic education, zero-tolerance to corruption, impunity and bad governance and participation of every stakeholder in the justice system some of the solutions recommended.

## CHAPTER ONE

### 1.1 Introduction

Human rights are inherent entitlements to all human being irrespective of their race, colour and status. It has been a subject of debate as to whether suspects, accused persons or convicts have any rights. I opine that all persons whether parties to a criminal case or not are equally entitled to their basic rights and strongly oppose the view that suspects and accused persons relinquish their rights by reason of their status. I derive my authority from the provisions of the Universal Declaration of Human Rights, which states that, “ everyone is entitled to all the rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...”.

The world has overtime developed common values within new diversified structures that have made it clear that all people deserve recognition and respect for their inherent human dignity. It is a well established principle of law that an accused person has a right to be presumed innocent until proven guilty or upon his or her own plea of guilty. Strict interpretation of this right is that, an accused person has rights bearing in mind that some human rights are non-derogable. The protection of human rights should practically be realized when all governmental agencies function in line with the Universal principles of human rights. The research seeks to examine the protection and enjoyment of these reknown human rights by accused persons before, during and after a criminal trial.

The world has overtime developed common values within the new diversified structures that have made it clear that all people deserve recognition and respect for their inherent human dignity it is a well established principle of law that an accused person has a right to be presumed innocent until proven guilty<sup>2</sup> . strict interpretation of his right is that , an accused person has rights like any other law abiding citizen . This however doesn't mean that convicts don't have rights bearing in minds that human rights are non derogable<sup>3</sup>. the protection of human rights should practically be realized when all government agencies function in line with the universal principles of human rights . the research seeks to examine the protection , promotion and enjoyment of these reknown human rights by accused persons before , during and after a criminal trail.

### 1.2 Background to the Study

A right is an abstract idea of that which is due to a person or government body by law or tradition or nature. Rights are endowed by their creator and some of them can never be granted to the government but must be kept in the hands of the people. A right is not something that somebody gives you, it is something that nobody can take away from you. Accused person are human being and as such they retain their rights even when in custody. This is so because human rights

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<sup>1</sup> The Universal Declaration of Human Rights 1948, Article 2.

<sup>2</sup> The Constitution of the Republic of Uganda 1995, Article 28(3)

<sup>3</sup> The Constitution of the Republic of Uganda 1995, Article 44

are universal. This means that every person, including an accused person, has human rights, no matter who he is, where he lives or his class, race, sex, age, social status, etc. Some of the rights are inalienable meaning that they can not be taken away from a person. However some of these rights are not absolute and can suffer derogation<sup>4</sup>. This means that the enjoyment of human rights may be restricted or limited in certain circumstances. For example, all people have the right to liberty, the right to practice any profession, occupation, trade or business, the right to freedom of movement, etc. But these rights are restricted when one goes to custody. Such restrictions or limitations are lawful and in line with the Ugandan Constitution and the application of international human rights law. Accused persons or people who have been sentenced lose some of their rights, such as freedom of movement, but they keep other rights such as the right to dignity.

These rights are majorly based on the presumption of innocence. Article 28(3)<sup>5</sup> of the constitution is to the effect that a person charged with a criminal offence shall be presumed innocent until proven guilty or upon his own plea of guilty. These rights ought to be adhered to from the time of arrest to the time of discharge, acquittal and conviction.

Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or she understands, of the nature and cause of the charge against him or her<sup>6</sup>. The information includes details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused. The accused must be informed in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release<sup>7</sup>.

An accused person also has a right to remain silent after arrest<sup>8</sup>. This doesn't mean that he or she should not cooperate with the police. An accused person should allow the necessary investigations to be conducted. It is a noble obligation of every citizen to facilitate ends of justice. An accused person should permit fingerprints, hair samples, photographs, DNA etc when necessary. An accused person ought to allow the police to conduct a search on his premises.

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<sup>4</sup> Supra 3

<sup>5</sup> supra 4

<sup>6</sup> The Constitution of the Republic of Uganda 1995, Article 28(3)b

<sup>7</sup> The Constitution of the Republic of Uganda 1995, Article 28(3)c

However during court proceedings an accused person has a right to object to such search where the search is illegal for want of a warrant of arrest.

In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body<sup>9</sup>.

The accused has the right to defend him or herself in person or through legal assistance of his or her own choosing. Legal representation is regarded as the best means of legal defence against infringements of human rights and fundamental freedoms.

These rights ought to be enjoyed without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status<sup>10</sup>.

It is of paramount importance to examine whether these rights are adhered to or not in Uganda.

This is because justice must not only be done to the victim but also to the- accused person.

### **1.3 Statement of the Problem**

The adherence to the rights of an accused person by various stakeholders in the criminal justice system is of paramount importance. Justice must not only be done to the victim but also to the accused person. Violation of rights of an accused person may even curtail access of the same to the victim. There is a lot of use of force by investigative organs sometimes resulting to incorrect confessions and misplaced convictions. It is against this background that it is fundamental to have strict adherence to the rights of suspects and accused persons and so is the research intended to suggest measures to be taken for that purpose.

### **1.4 Purpose of the Study**

The purpose of this study is to critically analyse the legal regime providing for the rights of an accused person under criminal justice system in Uganda.

Accordingly, the study will be done within a legal context and will review all the laws and institutional structures that fall within the ambits of the guidelines.

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<sup>9</sup>

The Constitution of the Republic of Uganda 1995, Article 28(1)

<sup>10</sup>

Supra 1

## **1.5 Objectives Of The Study**

- i. To critically examine the level of adherence to the rights of an accused persons in the Republic of Uganda.
- ii. To examine the role of various stakeholders in criminal justice system in as far as rights of accused persons are concerned,
- iii. To establish the causes of violations of right of accused persons.
- iv. Make proposals for the reform of criminal procedures in Uganda.

## **1.6 Hypothesis of the study**

- 1 The rights of accused are not respected, promoted and enjoyed to the expected standard.
2. The various stakeholders including and not limited to; the police, advocates, Director of Public Prosecutions, magistrates, judges, prison service play a major role in promotion and protection of rights of accused person.
3. Impunity, non-adherence to the rule of law, corruption, and incompetent police force are some of the major causes of the violation of human rights.

## **1.7 Significance of the study**

1. The findings will offer necessary measures to be taken in order to reform the institution of justice and improve level of protection, promotion and enjoyment of rights by accused persons in Uganda.
2. The findings will propose what ought to be done in order to ensure that complainants and the accused person access justice especially in criminal trials.
3. The study will also be an addition to the available research material on the same subject.

## **1.8 The scope of the study**

The study will be conducted in Kampala District within the Republic of Uganda. The target populations are ordinary citizens of Uganda, convicts, prison wardens, police officers and criminal legal practitioners.

## **1.9 METHODOLOGY**

### **1.10 Introduction**

This is a preview of the methodology, techniques and the tools that were used during the field research. It also provides the various methods of collecting the information necessary for this study.

### **1.11 Targeted Population**

Target population is a population that was sampled from whom information was gathered to conduct the research. The target population were ordinary citizens of the Republic of Uganda, convicts, prison wardens, police officers and criminal legal practitioners.

### **1.12 Research Approach**

The research approach followed in this study was a qualitative one. Qualitative research is multi method in focus, involving an interpretive, naturalistic approach to its subject matter. The qualitative researcher herein studied aspects in their natural settings, attempting to make sense of or interpret the whole phenomenon by collecting a variety of empirical materials- case study, personal experience, introspection, life stories and interviews, observational, historical, interactional and visual texts.

### **1.13 Sample.**

Sample refers to those persons who were selected from the target/study population to be interviewed by the researcher to generate the relevant information to be used as an input and analyzed to come up with the study findings respectively.

### **1.14 Data Collection Techniques**

The study was based on primary data and data collection techniques involving use of interviews as main instruments to enhance and give quality to the findings. Interviews were a useful tool through which data was acquired by reading the perceptions and feelings while collecting data. The researcher ensured that interviews were impressive to eliminate bias.



Questionnaires were administered to the members of the public to obtain their opinions on the subject matter.

Secondary data was also relied upon by reviewing literature of previous writers on the same study and included textbooks, Internet, Journals and previous research on database security in organizations.

#### **1.14.1 Interviews**

Interviews were conducted through structured interview guidelines, whereupon the researcher posed questions to the respondents and the latter responding accordingly. Most of the answers were noted down for referencing and presentation in material form.

#### **1.14.2 Questionnaires**

The questionnaires bore open-ended questions which were distributed to the target population for appropriate answers. This method of data collection gave the respondents ample time to fill in the questionnaires with the correct information freely. This information facilitated coding and data analysis.

#### **1.14.3 Observation**

The researcher made necessary observations on all matters relating to the study. This technique was helpful in verifying the findings got from interviews and to get to know better the problem at hand physically.

#### **1.15 Ethical Considerations**

Throughout the research process, the researcher abided by the ethical principles of the research and in particular, the important aspect of honoring the privacy of respondents. The research followed the strict standards of the principle of anonymity (this essentially means that the participant remained anonymous throughout the study). Accordingly, the principle of voluntary participation was followed, where respondents were not forced to participate in the research. With the exception of the information that is found to be useful for the purpose of the study, any confidential information revealed by the respondents was not revealed. The researcher expressly

informed the respondents that they would never be victimized as a result of having participated in the research

## 1.16 Conclusions

The above mentioned techniques and tools of data collection being the most suitable in the circumstances were used to collect information for the purposes of this research.

## 1.17 LITERATURE REVIEW

This is review on what has been published on a topic by other scholars and researchers about or related to the rights of an accused person and other matters related or incidental thereto in Uganda and other foreign states that apply common law system. The researcher analyses the available literature citing gaps that have necessitated this research.

According to De Rover (1998:68)", the term "Human Rights" can be explained'as "ihe legal entitlements which every person as a human being possesses" that are universal and belong to everyone, rich or poor, male of female, criminal or suspect. The question of universality as posed by De Rover is very controversial in as far as rights of suspects and accused persons, especially those in custody are concerned. There remains an unfilled gap as to whether the principle of universality applies to suspect's rights bearing in mind the fact that these persons are presumed innocent until proven guilty. Are suspects especially those in custody entitled to the exact conditions as if they were at their homes? Are they entitled to a comfortable bed, meals of their choice, conjugal rights just to mention a few? These questions require answers and thus call for further research.

The European Journal<sup>12</sup> states that certain suspects are in a weaker position than the average person owing to their age or their physical, mental or emotional condition when it comes to understanding or following the proceedings. These persons need specific attention to ensure that their particular rights are respected and to guard against a possible miscarriage of justice. The free assistance of an interpreter is to be an automatic right for a suspected person who cannot

<sup>11</sup> De Rover, C. 1998. *To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces*. Geneva: International Committee of the Red Cross.

<sup>12</sup> European Journal No 66 of 2004 on the rights of suspects and defendants in criminal Proceedings dated 28 April 2004

understand or speak the language used in court<sup>13</sup>. The right also covers translations of all the relevant documents in the proceedings. Legal and court interpreters should be qualified and provide accurate interpretation (and translation) and there should be a mechanism to replace those that fall below an acceptable standard. Proceedings where an interpreter is used are to be recorded so that quality can be subsequently verified in the event of a dispute/appeal. Though this right is practically implemented in our courts, there is a need to have the services of an interpreter even during the deliverance of a judgment. Some convicts find themselves entangled in legal jargon contained in the judgment and end up failing to find a reason to exercise their right of appeal. This research will address parts of the proceedings that are not adequately covered by the interpreter in our justice system.

According to Gopal Chandra Paul<sup>14</sup> the system of punishing the wrong-doers or offenders has undergone tremendous change and the modern criminal justice system has been evolved out of the ancient system through trials and errors. Before the modern criminal justice system was evolved the offenders were treated as if they were not human beings and the process of deciding guilt as well as punishment awarded to them was cruel and inhuman. Even if a person was falsely charged with an offense it was often impossible for him or her to save themselves from the ordeal destined to an accused. A person charged with committing an offence was presumed to be guilty and not an innocent person before he was found guilty by the Court. From the past experience English people for the first time could realize that such a system of criminal justice was not fair and just. So they evolved the modern criminal justice system which is based on the presumption of innocence of the accused till found guilty by a Court of law. This English common law system for the first time recognized the accused as a human being and the prosecutor was saddled with the responsibility of establishing the charge of guilt against the accused who is presumed to be innocent till found guilty by the Court. Though the accused has no responsibility to adduce evidence in support of his innocence has every right to challenge the veracity of prosecution evidence. Gopal Chandra however did not address the level of adherence

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<sup>13</sup> The Constitution of the Republic of Uganda 1995, Article 28(3)f

<sup>14</sup> Rights and Privileges of Accused Person, Published by S R Paul, Dhaka 2003, Pp. XV + 295,

to these rights. This research not only examines the level of adherence but also goes further to look unveil the major causes of the said violations.

### **1.18 Conclusion**

In the review, most publications on the rights of accused persons and other matters coincidental thereto suggest that despite the- importance of these rights they are rarely respected in the contemporary Uganda.

## CHAPTER TWO

### Analysis on the Rights of an Accused Person

#### 2.0 Introduction

Human rights derive from the inherent dignity of the human person. Every law enforcement officials shall in the pursuit to fulfill the duty imposed on them at all times respect and obey the law by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Law enforcement officials shall not commit any act of corruption. They shall rigorously oppose and combat all such acts. All stakeholders shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Law enforcement officials shall report violations of those laws, codes and sets of principles which protect and promote human rights. They ought to respect the principles of legality, necessity, non-discrimination, proportionality and humanity.

Uganda is a party to a number of international and regional treaties that impose legal obligations on Uganda regarding the conduct of law enforcement personnel and treatment of detainees. These include the International Covenant on Civil and Political Rights (ICCPR)<sup>15</sup> the United Nations Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment (Convention against Torture),<sup>16</sup> and the African Charter on Human and People's Rights (ACHPR).<sup>17</sup> The rights that these treaties protect include the absolute prohibition on use of torture or other forms of inhuman or degrading treatment on any detainee, the right of detainees to be held in humane conditions and treated with dignity, the right to liberty and security, which includes a prohibition on arbitrary detention, and the right to due process and a fair trial.

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<sup>15</sup>International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987 ratified by Uganda, November, 3, 1986.

<sup>17</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58(1982), entered into force October 21, 1986, ratified by Uganda May 10, 1986.

Various instruments further elaborate the standards with which Uganda is expected to comply as a party to these treaties. These include the Standard Minimum Rules for the Treatment of Prisoners' Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa<sup>19</sup> among many others.

Court decisions reinforce these core rights, which are also incorporated into, and reflected in, Uganda's Constitution. For example, under the constitution, a criminal suspect must be kept in a place that is authorized by law.<sup>20</sup> The accused person is not to be subject to torture or cruel, inhuman or degrading treatment, although torture is not currently criminalized in law. There are references to the prohibition of torture in various laws, such as the Anti-Terrorism Act. However, despite evidence that torture has occurred during interrogations of terrorism suspects, there has never been a prosecution for torture under this provision.

## **2.1 Right to liberty and security**

The Government of Uganda shall ensure that the right of everyone on its territory and under its jurisdiction to liberty and security of person is respected. The Government must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause. The government shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention. Uganda should likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials

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<sup>18</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N.

<sup>19</sup> African Commission on Human & Peoples' Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal assistance in Africa.

<sup>20</sup> Constitution of the Republic of Uganda, 1995, art. 23(2)

authorized by law to use force and firearms. Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, it must be ensured that they are not kept in custody pending their trial<sup>21</sup>, However, release may be subject to certain conditions or guarantees, including the payment of bail.

Expectant mothers and mothers of infants shall not be kept in custody pending their trial, but their release may be subject to certain conditions or guarantees, including the payment of bail. The state must ensure that anyone who has been the victim of unlawful arrest or detention is enabled to claim compensation.

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her. The suspect is further entitled immediately upon arrest to be informed in a language he or she understands, of the right to legal representation of his or her choice and the facilities available to exercise this right. A suspect has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place the person is kept in custody.

In the event that the suspect is a foreign national, he or she must be promptly informed of the right to communicate with his or her embassy or consular post. In addition, if the person is a refugee or stateless person or under the protection of an inter-governmental organization, he or she must be notified without delay of the right to communicate with the appropriate international organization. An accused person shall be given reasonable facilities to receive visits from family and friends, subject to restriction and supervision only as are necessary in the interests of the administration of justice and of security of the institution. The form of detention and all measures affecting the human rights of a person arrested or detained shall be subject to the effective control of a judicial or other authority. In order to prevent arbitrary arrest and detention or disappearances, Uganda is ought to establish procedures that require police or other officials with the authority to arrest and detain to inform the appropriate judicial official or other authority of the arrest and detention.

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<sup>21</sup> Foundation For Human Rights Initiatives vs The Attorney General Constitutional Petition No. 20 of 2006  
Women ii April 2006

<sup>22</sup> Women in Prison and Children of Imprisoned Mothers: Recent Developments in United Nations Justice System, April 2006

## **2.2 Right to be informed promptly of the offence charged**

Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or she understands, of the nature and cause of the charge against him or her<sup>23</sup>. The information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused. The information should be in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release.

## **2.3 Right to humane treatment:**

The government is under a constitutional obligation to ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for the inherent dignity of the human being<sup>24</sup>. The state must ensure that no person, lawfully deprived of his or her liberty is subjected to torture or to cruel, inhuman or degrading treatment or punishment. Special measures ought to be taken to protect women detainees from ill-treatment, including making certain that their interrogation is conducted by women police or judicial officials.

Women should at all times be detained separately from men and while in custody they shall receive care, protection and all necessary individual assistance - psychological, medical and physical, that they may require in view of their sex and gender. It is prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him or her to confess, to incriminate himself or herself or to testify against any other person. A detainee while being interrogated shall not be subjected to violence, threats or methods of interrogation which impair his or her capacity of decision or his or her judgment. A suspect or an accused person in custody should not even with his or her consent, be subjected to any medical or scientific experimentation which could be detrimental to his or her health.

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<sup>23</sup> The Constitution of the Republic of Uganda 1995 Article 28(3)b

<sup>24</sup> The Constitution of the Republic of Uganda 1995 Article 24



The accused person or suspect or his or her representative or family whose right to be treated in a humane way has been violated shall family shall have the right to lodge a complaint to the relevant authorities regarding his or her treatment, in particular in case of torture or other cruel, inhuman or degrading treatment. The right to lodge complaints and the existence of such mechanisms should be promptly made known to all arrested or detained persons. The state is obliged to ensure that, officials or other persons who subject arrested or detained persons to torture or to cruel, inhuman or degrading treatment are brought to justice. The affected detainees are entitled to claim compensation against the government.

#### **2.4 The right to be presumed innocent until proven guilty**

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law<sup>25</sup>. The presumption of innocence places the burden of proof during trial in any criminal case on the prosecution. Public officials shall maintain a presumption of innocence. Public officials, including prosecutors, may inform the public about criminal investigations or charges, but shall not express a view as to the guilt of any suspect

#### **2.5 Right to a fair hearing**

In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body<sup>26</sup>.

The essential elements of a fair hearing include: Equality of arms between the parties to proceedings, equality of all persons before any judicial body without any distinction whatsoever as regards race, colour, ethnic origin, sex, gender, age, religion, creed, language, political or othei convictions, national or social origin, means, disability, birth, status or other circumstances; equality of access by women and men to judicial bodies and equality before the law in any legal proceedings; respect for the inherent dignity of the human person, especially of women who participate in legal proceedings as accused persons; adequate opportunity to prepare a case,

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<sup>25</sup> Supra

<sup>26</sup> The Constitution of-the Republic of Uganda 1995 Article 28(1)

present arguments and evidence and to challenge or respond to opposing arguments or evidence; an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings; an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body; an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the judicial body; an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions; and an entitlement to an appeal to a higher judicial body<sup>27</sup>. In the interest of effective delivery of justice, an accused person is entitled to be tried by before an independent tribunal. The independence of judicial bodies and judicial officers is guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities. Judicial bodies are established by law to have adjudicative functions to determine matters within their competence on the basis of the rule of law and in accordance with proceedings conducted in the prescribed manner. There ought not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law. In order to achieve independent tribunal, it is necessary to ensure that the process for appointments to judicial bodies is transparent and accountable. Any method of judicial selection should safeguard the independence and impartiality of the judiciary. This necessitates the criteria for appointment of judicial officers to be based on integrity, appropriate training or learning and ability.

The trial court ought to be impartial. A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.

An accused person to criminal proceedings before a judicial body is entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt. The impartiality of a judicial body can be determined on the basis of three

relevant facts: (i) that the position of the judicial officer allows him or her to play a crucial role in the proceedings; (ii) the judicial officer may have expressed an opinion which would influence the decision making; (iii) the judicial official would have to rule on an action taken in a prior capacity.

The right to a fair hearing would be violated against an accused person where the impartiality of a judicial body is undermined in some of following instances: a former public prosecutor or legal representative sits as a judicial officer in a case in which he or she prosecuted or represented a party; a judicial official secretly participated in the investigation of a case; a judicial official has some connection with the case or a party to the case; a judicial official sits as member of an appeal tribunal in a case which he or she decided or participated in a lower judicial body. In any of these circumstances, a judicial official would be under an obligation to step down.

### **2.5.1 Right to counsel**

The accused has the right to defend him or herself in person or through legal assistance of his or her own choosing<sup>28</sup>. Legal representation is regarded as the best means of legal defence against infringements of human rights and fundamental freedoms. The accused even has the right to be informed, if he or she does not have legal assistance, of the right to defend him or herself through legal assistance of his or her own choosing.

This right applies during all stages of any criminal prosecution, including preliminary investigations in which evidence is taken, periods of administrative detention, trial and appeal proceedings.

The accused has the right to choose his or her own counsel freely. This right begins when the accused is first detained or charged. In capital cases, a judicial body may not assign counsel for the accused if a qualified lawyer of the accused's own choosing is available. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer, without delay, interception or censorship and in full confidentiality.

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<sup>28</sup>  
The Constitution of the Republic of Uganda 1995 Article 28(3)d

The right to confer privately with one's lawyer and exchange confidential information or instructions is a fundamental part of the preparation of a defence. Adequate facilities shall be provided that preserve the confidentiality of communications with counsel.

### **2.5.2 Right to adequate time and facilities for the preparation of a defence:**

The accused has the right to communicate with counsel and have adequate time and facilities for the preparation of his or her defence<sup>29</sup>. The accused may not be tried without his or her counsel being notified of the trial date and of the charges in time to allow adequate preparation of a defence. The accused has a right to adequate time for the preparation of a defence appropriate to the nature of the proceedings and the factual circumstances of the case. The accused or the accused's defence counsel has a right to all relevant information held by the prosecution that could help the accused exonerate him or herself. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

Factors which may affect the adequacy of time for preparation of a defence include the complexity of the case, the defendant's access to evidence, the length of time provided by rules of procedure prior to particular proceedings, and prejudice to the defence. The accused has a right to facilities which assist or may assist the accused in the preparation of his or her defence, including the right to communicate with defence counsel and the right to materials necessary to the preparation of a defence. Following a trial and before any appellate proceeding, the accused or the defence counsel has a right of access to (or to consult) the evidence which the judicial body considered in making a decision and the judicial body's reasoning in arriving at the judgment.

### **2.5.3 The right to an interpreter**

The accused has the right to the free assistance of an interpreter if he or she cannot understand or speak the language used before the judicial body. The right to an interpreter does not extend to the right to express oneself in the language of one's choice if the accused or the defence witness

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<sup>29</sup> The Constitution of the Republic of Uganda 1995, Article 28(3) c

is sufficiently proficient in the language of the judicial body. The right to an interpreter applies at all stages of the proceedings, including pre-trial proceedings. The right to an interpreter applies to written as well as oral proceedings. The right extends to translation or interpretation of all documents or statements necessary for the defendant to understand the proceedings or assist in the preparation of a defence. The interpretation or translation provided shall be adequate to permit the accused to understand the proceedings and for the judicial body to understand the testimony of the accused or defence witnesses. The right to interpretation or translation cannot be qualified by a requirement that the accused pay for the costs of an interpreter or translator. Even if the accused is convicted, he or she cannot be required to pay for the costs of interpretation or translation.

#### **2.5.4 Right to trial without undue delay**

Every person charged with a criminal offence has the right to a trial without undue delay. The right to a trial without undue delay means the right to a trial which produces a final judgment and, if appropriate a sentence without undue delay. Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake: in the proceedings.

#### **2.5.5 The right to access court records and prosecution exhibits.**

All information regarding judicial proceedings is supposed to be accessible to the accused and the general public, except limited information or documents that have been specifically determined by judicial officials not to be made public<sup>30</sup>.

#### **2.5.6 The Right to be present at the hearing.**

In criminal proceedings, the accused has the right to be tried in his or her presence<sup>31</sup>. The accused has the right to appear in person before the judicial body. The accused may not be tried in absentia. If an accused is tried in absentia, the accused shall have the right to petition for

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<sup>30</sup> Juma and Others vs Attorney General (2003) AHRLR 179

<sup>31</sup> The Constitution of the Republic of Uganda, 1995, Article 28(5)

a reopening of the proceedings upon a showing that inadequate notice was given, that the notice was not personally served on the accused, or that his or her failure to appear was for exigent reasons beyond his or her control. If the petition is granted, the accused is entitled to a fresh determination of the merits of the charge.

The accused may voluntarily waive the right to appear at a hearing, but such a waiver shall be established in an unequivocal manner and preferably in writing.

## **2.6 Right to an effective remedy.**

Everyone, an accused person inclusive, has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the international law, notwithstanding that the acts were committed by persons in an official capacity. The right to an effective remedy includes: access to justice; reparation for the harm suffered; access to the factual information concerning the violations.

The State has an obligation to ensure that: any person, whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body; any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities.

## **2.7 Right of civilians not to be tried by military courts.**

The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel. While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines. Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts<sup>32</sup>.

## **2.8 Right to be brought promptly before a judicial officer.**

Anyone who is arrested or detained on a criminal charge has a right to be brought therefore a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. This is important in order to: assess whether sufficient legal reason

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<sup>32</sup> African Commissions on Human Rights: Principles and guidelines on the right to a fair trial and legal assistance in Africa

exists for the arrest; assess whether detention before trial is necessary; determine whether the detainee should be released from custody, and the conditions, if any, for such release; safeguard the well-being of the detainee; prevent violations of the detainee's fundamental rights; give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights. The accused person who is under arrest or detention has right to take proceedings before a judicial body in order that that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.

### **2.9 The Right to Habeas Corpus.**

The right to habeas corpus though not usually invoked by the suspect or accused person, its exercised for the benefit of the suspect or accused person. In brief it a right on part of any persons concerned or interested in the well-being, safety or security of a person deprived of his or her liberty to demand knowing the whereabouts of the detainee. The interested persons have the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of such a person and/or identifying the authority ordering or carrying out the deprivation of liberty. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found. Judicial bodies shall at all times hear and act upon petitions for habeas corpus, and no circumstances whatever must be invoked as a justification for denying the right to habeas corpus.

### **2.10 Right to be detained in a place recognized by law.**

Suspects and accused persons have a right to be held in an officially recognized place of detention. Any detention that takes place in places not prescribed as recognized place of detention is unlawful and an infringement on the inherent rights of an accused person. Further, accurate information shall be recorded regarding any person deprived of liberty including: his or her identity; the reasons for arrest; the time of arrest and the taking of the arrested person to a place of custody; the time of his first appearance before a judicial or other authority; the identity of the law enforcement officials concerned; precise information concerning the place of custody; details of the judicial official or other authority informed of the arrest and detention. Accurate

information on the detention of such persons and their place or places of detention, including transfers, ought to be promptly available to their family members, their legal representative or to any other persons having a legitimate interest in the information. The detaining officials are administratively obliged to keep an up-to-date register of all persons deprived of liberty in every place of detention and shall be made available to any judicial or other competent and independent national authority seeking to trace the whereabouts of the a detained person.

### **2.11 The right to apply for bail**

The Ugandan Constitution also provides for a right to bail. The Supreme Court affirmed a constitutional right to bail in 2009 for all civilians, whether before military or civilian courts. The court in *Attorney General v Tumushabe*<sup>33</sup> ruled that the General Court Martial is not exempt from the constitutional requirement to comply with the provisions on entitlements to bail. The case was brought by 27 individuals suspected to be members of the Peoples Redemption Army (PRA), a Congo-based rebel group charged with treason by the general court martial. For more than two years, the military refused to obey High Court orders for the suspects to be granted bail and access to their lawyers or families.

In practice, accused persons are rarely released on bail. Instead, in the civilian court system, defendants are detained for an indeterminate period of time until the case is committed to the High Court for trial. This delay is partly due to the huge backlog of cases in the courts, but also gives the prosecution time to fully investigate the case against the accused. In practice defendants accused of serious crimes are prevented from exercising their right to bail during the investigative stage which usually lasts for at least six months—because they are brought periodically before a magistrate's court, which does not have jurisdiction over the case, and so cannot hear a bail application.

### **2.12 The right not to be compelled to testify against himself or herself.**

The accused has the right not to be compelled to testify against him or herself or to confess guilt. Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or

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<sup>33</sup> Constitutional Appeal Number 3 of 2005 .



admission obtained during incommunicado detention shall be considered to have been obtained by coercion. Further, silence by the accused may not be used as evidence to prove guilt and no adverse consequences may be drawn from the exercise of the right to remain silent.

### **2.13 The right to cross-examine adverse witnesses.**

The accused has a right to examine, or have examined, witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her<sup>34</sup>.

The prosecution shall provide the defence with the names of the witnesses it intends to call at trial within a reasonable time prior to trial which allows the defendant sufficient time to prepare his or her defence. The accused's right to examine witnesses may be limited to those witnesses whose testimony is relevant and likely to assist in ascertaining the truth. The accused has the right to be present during the testimony of a witness. This right may be limited only in exceptional circumstances such as when a witness reasonably fears reprisal by the defendant, when the accused engages in a course of conduct seriously disruptive of the proceedings, or when the accused repeatedly fails to appear for trivial reasons, and after having been duly notified.

The testimony of anonymous witnesses during a trial will be allowed only in exceptional circumstances, taking into consideration the nature and the circumstances of the offence and the protection of the security of the witness and if it is determined to be in the interests of justice. Evidence obtained by illegal means constituting a serious violation of internationally protected human rights shall not be used as evidence against the accused or against any other person in any proceeding, except in the prosecution of the perpetrators of the violations.

### **2.14 The right to appeal.**

The right to appeal is not automatic but rather a creature of a statute. Everyone convicted in a criminal proceeding shall have the right to review of his or her conviction and sentence by a higher tribunal<sup>35</sup>. The right to appeal shall provide a genuine and timely review of the case.

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<sup>34</sup> James Sowabiri and Anor vs Uganda Criminal Appeal No 5 of 1990  
<sup>35</sup> Uganda Law Society vs The Attorney General Constitutional Petition No. 8 of 2002

including the facts and the law. If exculpatory evidence is discovered after a person is tried and convicted, the right to appeal or some other post-conviction procedure shall permit the possibility of correcting the verdict if the new evidence would have been likely to change the verdict, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to the accused. A judicial body shall stay execution of any sentence while the case is on appeal to a higher tribunal.

When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction should be compensated according to law.

#### **2.15 Right to seek pardon.**

Every person convicted of a crime has a right to seek pardon or commutation of sentence. Clemency, commutation of sentence, amnesty or pardon may be granted in all cases of capital punishment.

## CHAPTER THREE

### Major Causes of Violations of Rights of Accused Persons

The rights of accused persons like any other rights of other persons ought to be protected, promoted and fulfilled. However, these rights are usually prone to breach by the members of the society. It is imperative to unearth the exact causes of these uncalled for violations and equally this chapter seeks to achieve that objective.

#### 3.0 Corruption

The term "corruption" comes from the Latin word *corruptio* which means "moral decay, wicked behaviour, putridity or rottenness". The concept may have a physical reference, as in "the destruction or spoiling of anything, especially by disintegration or by decomposition with its attendant unwholesomeness and loathsomeness; putrefaction"; or moral significance, as in "moral deterioration or decay... the perversion or destruction of integrity in the discharge of public duties by bribery or favour..,"<sup>36</sup>

The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of the exploitation and injustice which characterize our world.

An analysis of corruption that draws on accused's human rights will emphasize the harm to individuals that corruption causes. From this perspective, it is often taken for granted that corruption "violates" human rights. When people make this claim, they have a range of issues in mind. They mean that, when corruption is widespread, people do not have access to justice, are not secure and cannot protect their livelihoods. Court officials and the police pay more heed to bribes than to law. In numerous ways corruption encourages discrimination, deprives vulnerable people of income,- and prevents people from fulfilling their rights. UN treaty bodies and UN special procedures have concluded that, where corruption is widespread, states cannot comply with their human rights obligations<sup>37</sup>.

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<sup>36</sup> Oxford English Dictionary, 1978, pp. 1024-1025.

<sup>37</sup> Statement by the UN Special Rapporteur on independence of judges and lawyers in E/CN.4/2006/52/Add.4. para 96. -

Some international documents have even considered corruption to be a "crime against humanity", a category of crimes that includes genocide and torture.<sup>38</sup>

A state is responsible for a human rights violation when it can be shown that its actions (or failure to act) do not conform with the requirements of international or domestic human rights norms. To determine whether a particular corrupt practice violates a human right, therefore, it is first necessary to establish the scope and content of the human right's obligation in question and whether it derives from domestic law, international treaty, custom, or general principles of law. Human rights obligations apply to all branches of government (executive, legislative and judicial) at all levels (national, regional and local).

The right to a fair trial is established in the constitution of the Republic of Uganda in 1995 and several human rights treaties ratified and domesticated by the state. It is composed of a broad range of standards that provide for the fair, effective and efficient administration of justice. These standards address the administration of justice including the rights of the parties involved, the efficiency of procedure and effectiveness. It should be noted that, when referring to the scope and content of the right to due process, we are applying standards that human rights supervisory bodies have developed on the basis of treaties that are binding on states that have ratified them. Some important "soft law" standards are also relevant - like the Bangalore Principles of Judicial Conduct established by the Judicial Integrity Group. "Soft law" standards do not have the same binding authority as treaties.

In the context of the judicial system, corruption may be defined as "acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain".<sup>39</sup> "Private benefit" includes both financial or material gain, and non-material gain such as the furtherance of professional ambition. This definition of judicial corruption covers a wide range of acts carried out by actors at different points in the judicial system (the judiciary, the

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<sup>38</sup> The Nairobi Declaration, adopted at the Regional Conference on the Human Rights Dimensions of Corruption convened by the Kenya National Commission of Human Rights (KNCHR), March 2006.

<sup>39</sup> Transparency International, 2007.

police and prosecutors). For example a prosecutor may be paid a bribe to manipulate evidence that would otherwise lead to the conviction of an innocent suspect. A court official may be paid a bribe to allocate a case to a harsh judge, to lose defence exhibits, or to delay the hearing of a case. Police can be bribed to tamper with criminal evidence. Prosecutors can be paid to bring a case forward or to assess the evidence in an unfair manner. Any actor within the judicial system is acting corruptly if he or she applies inappropriate influence affecting the impartiality of the judicial process. Such acts imply a direct violation of the right to due process against a suspect or an accused person.

These standards require compliance with several principles, including the independence, competence and impartiality of tribunals. Corruption may jeopardize judicial independence in several ways. Corruption in appointment processes, for example, will interfere with the principles in several respects.

Other standards which have been discussed in detail under Chapter Two of this research; protect the rights of parties to a trial. Individual rights and principles related to the right to a fair trial include: the right to a public hearing and pronouncement of judgment; equality of arms; presumption of innocence; freedom from compulsory self-incrimination; the right to know the accusation; adequate time and facilities to prepare a defence; the right to legal assistance; the right to examine witnesses; the right to an interpreter; the right to appeal in criminal matters; the rights of juvenile offenders; no punishment without law; *ne bis in idem* (not to be punished twice for the same act); *ex post facto* (law that makes illegal an act that was not illegal when committed); and the right to compensation for miscarriage of justice.

These are basic rights to procedural guarantees to which all human beings are entitled. If acts of corruption impair any of these elements, there would be a violation of the right to a fair trial. Acts of corruption might take the form of a bribe for a favourable judgment, or a more subtle infringement of the principle of equality during the trial process (such as impeding some parties from being in a procedurally equal position during a trial). Standards that refer to efficiency require that hearings take place "within reasonable time". According to human rights bodies, the determination of the meaning of "undue delay" or "expeditious procedure" depends on the

Corruption and Human Rights<sup>40</sup> circumstances and complexity of the case as well as the conduct of the parties involved.

The right to be tried without undue delay will be infringed if, for example, a judge is bribed to delay the proceedings as much as possible. Although in this case the right to a fair trial would be infringed by the bribe itself, in cases where there is insufficient evidence to prove that a judge has been bribed, violation of the requirement that hearings should take place in a "reasonable time" may enable a corrupt process to be challenged.

The principle of impartiality is of great importance: there must be impartiality in objective terms and there should be no appearance of partiality.

In this context, it should be noted that corruption in the process of appointment of judges and judicial officials may have the effect of lowering their quality.

Appointments should be based on personal qualifications, moral authority and competence; if they are influenced by corrupt interests, the judiciary is likely to become less able as well as less independent, and the rights of those who apply to the justice system will not be fully protected.

In addition, corruption affects the administration of justice and the right to a fair trial when corrupt acts take place before a case reaches court, often at the investigation level. The police may manipulate evidence in favour of one of the parties, for example, or a prosecutor may alter the facts of a case. This is not a minor issue.

### **3.1 Political Interference**

Political interference in the judicial system occurs when those in political power use their influence (including military threat, intimidation or bribery) to force or induce a court official to act and rule according to their interests and not in accordance with the application of the law. Political interference also occurs when judicial appointments, salaries and conditions of service are manipulated, allowing those in political power to have leverage over judges, prosecutors and court staff, thereby creating a judicial system which is pliant and deferential.

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<sup>40</sup> Corruption and Human Rights: Making the Connection 3

Judges can be forced to stand down or reassigned from sensitive positions; they may not be promoted or may be physically intimidated or harmed. Political interference also includes the application of immunity laws to judges. While corrupt judges can sometimes shelter behind outdated immunity laws, in the absence of an immunity law independent judges may become the target of vexatious cases mounted by the political authorities. Contempt laws can be used in a similar way to hound independent judges out of office, or protect corrupt ones unjustly. In this typology, however, it refers primarily to bribes that are demanded from, or given by, civil society actors, including vulnerable and low-income citizens who can ill afford to pay them. Every official in the system a judge, court administrator or police investigating officer can potentially solicit bribes for services that should be provided as a matter of normal duty.

### **3.2 Military Interference**

The role of the military in maintaining national peace and security and defending Uganda's sovereign integrity cannot be over emphasized. In execution of their duties however, the army has often gone overboard and fallen short of society's expectations. Antecedents of Uganda's armed forces indicate that they have often engaged in human rights violations and committed heinous crimes among them obstruction of justice.<sup>41</sup> The military court has been blamed for keeping a blind eye on the violations of rights of accused persons which violations were being committed under its auspices.

A classical example, of a case of political interference was the infamous treason case against Dr. Kiiza Besigye. This personality was a presidential candidate in Uganda's presidential elections held in 2001. Immediately after the election, allegations were made that he was collaborating with rebel movements operating in western Uganda at the time. Besigye was rendered a fugitive after going to South Africa for exile. Between the year 2003 and the beginning of 2005, a number of alleged rebels including 22 others who were subsequently charged along with Besigye, were caught in various places in the Democratic Republic of Congo (DRC) and Uganda. The Government alleged that they had linkages with the Peoples' Redemption Army (PRA), a rebel movement that had also been associated with Besigye. The 22 were detained in various military establishments around the country and were never charged or tried in any court.

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<sup>41</sup> The Report of the Commission of Inquiry into Violations of Human Rights: Findings, Conclusions and Recommendations. Kampala. 1994

of law until Besigye's return in late 2005. These 22 detainees were arbitrary and unlawfully deprived of their inherent rights probably for political reasons. It raises eyebrows of a reasonable man as to why the government would detain suspects for a period of 3 years for no good reason then charge them immediately after the return of an opposition leader. By necessary implication this was a clear case of political manipulation intended to give political results. Besigye was charged with another offence of rape allegedly committed in 1997. However the High Court acquitted him and termed his prosecution as persecution. In his judgment, while quoting Lord Brougham's speech in support of Queen Caroline, Justice Bosco Karatsi held that "the evidence before court was inadequate even to prove a debt; impotent to deprive of a civil right; ridiculous for convicting of the pettiest offence; scandalous if brought forward to support a charge of any grave character; and monstrous if to ruin the honour of a man who offered himself as a candidate for the highest office of this country".<sup>42</sup>

On November 16<sup>th</sup> 2005 the accused were taken to the High Court for a bail application before Justice Luguyizi. Fourteen of the accused were granted bail. As the hearing was proceeding, armed security personnel dressed in black raided the court premises, and surrounded the holding cells in which the successful bail applicants were waiting to be released. As a result of this action, the bail papers could not be processed. The armed personnel who subsequently came to be dubbed "Black Mambas" by the media entered into some of the offices and interrupted the court's normal duty of processing bail. The accused were thus returned to prison.<sup>43</sup> While addressing journalists during a weekly cabinet press briefing, army spokesman, Major Felix Kulaigye, informed the public that the Black Mambas had been deployed to re-arrest the suspects in case they had been granted bail by the High Court, in order to ensure that they faced new charges that had been brought against them in the General Court Martial.

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<sup>42</sup> Col (Rtd) DR. Kiiza Besigye v. Uganda, High Court Criminal Session No. 149/2005

<sup>43</sup> G. Sseruyange, Black Mambas intended to re-arrest PRA suspects.



As a result of the acts of the Black Mambas on that day, Justice Edmound Lugaizi who was hearing the case resigned from proceeding with the trial. The file was subsequently allocated to another judge Justice Bosco Katutsi who also after hearing the rape charges declined from hearing the treason and misprision charges. The attack of the High Court premises by the Black Man-has was widely condemned not only in Uganda but world over. In the words of Justice James Ogbola, the Principal Judge of High Court, he condemned it as 'a naked rape, defilement and desecration of our temple of Justice. Not since the abduction of Chief Justice Ben Kiwanuka from the premises of Court during the diabolical days of Idi Amin has the High Court been subjected to such horrendous onslaught as witnessed'. All these action were done with the full intention of scoring political goals at the expense of the 14 suspects' inherent rights.

In conclusion, it is undisputed that corruption, political interference, military interference all which can be summarized as impunity are the major causes of violations of human rights against accused persons,

## CHAPTER FOUR

### **Research Findings and Data Analysis**

#### **4.0 Introduction**

Notwithstanding the efforts made by various stakeholders whose efforts are exhibited in various international, regional and municipal laws, the fight against gross violations of human rights against suspects and accused persons either at custody or at large continues to thrive in our society. The right to a fair hearing, the right to access exhibits and court records, right to liberty, right to habeas corpus among others are some of the rights that suffer gross infringement. Inter alia, corruption, political interference, military interference are some of the causes of the said violations.

This chapter presents the findings with reference to the research objectives and the research questions. It entails an analysis of the rights of suspects and accused persons by ordinary citizens, professionals personalities like lawyers and suspects responding on different research questions contained herein.

Therefore, the chapter presents the findings from the various questionnaires administered to the ordinary citizens, interviews conducted on the subject amidst various categories of interviewees including lawyers and suspects.

#### **4.1.1 Respondents interviewed**

During my research I interviewed ordinary Ugandans/ respondents who responded positively to the interview questionnaires however it was hard for me get the information I wanted from people who were imprisoned and freed

#### **4.1.2 Respondent's age**

The research findings was mainly done on adults in the age bracket of (21-50) years respectively. Many were seriously concerned about their vulnerability, compounded by the lack of awareness regarding the existing regional and international mechanisms

that could be utilized in the of violations of their respective human rights while in prisons or still at police stations in Uganda.

#### **4.1.4 Respondents<sup>1</sup> awareness of the rights of suspects and accused persons.**

The study on awareness of the rights of suspects and accused persons show that a majority of 60% don't know anything about the rights of suspects and accused persons, while the remaining 40% know about them however much it is hard for them to enforce such rights. Source of this data is the data got while conducting research in the field.

Based on the above data obtained it is vividly clear that, majority of people in our region are unaware of the right of suspects and accused persons. Probably of the mindset that when a person is arrested, he or she relinquishes everything good which is accorded to him or her by the state.

#### **4.1.6 Respondents' (only those who know about the rights of suspects and accused persons)**

The accused persons face challenges whereby majority of them are affected by high rate of , political interference and military interference, as factors causing and sustaining violations of human rights against suspects and accused persons in Uganda.

Corruption, political interference and military interference are the factors that majority of the respondents considers as the causes of violations of human rights against suspects and accused persons in Uganda. This probably is because the three factors have proved to be compatible with the Ugandan Political setting.

Corruption as discussed in previous chapters of this research is a common challenge spread from every small unit of community to the national institutions which are charged with the duty of discharging justice.

Political interference as a cause of human rights infringement against suspects and accused persons is probably as a result of the Uganda's political situation. It appears that Uganda is a country in transitional stages in attaining real democracy and rule of law.

Military interference can be explained in the same way as political interference. Uganda's politics stem from military influence given the post-colonial history of the country.

#### **4.1.7 Respondents' views on the level of human rights adherence as far as suspects and accused persons are concerned.**

The outcome of the research shows, that 65% believe that the level adherence is below the required international standards whereas 35% believe that the level of adherence in Uganda is up to the required standards.

## CHAPTER FIVE

### Summary of major findings, Recommendations and Conclusion

#### 5.0 Introduction

This chapter introduces the summary of the major findings of the research, recommendations and conclusions.

#### 5.1 Summary

In a nutshell, the research revealed that the rate of awareness on the rights of suspects and accused persons in Uganda is alarming. A large number of people even among them the educated don't understand and appreciate these rights. The initial questionnaires administered to 40 respondents reflected that a wide-majority of about 60% did not know anything about these rights but only a minority of 40% who can ably submit on these entitlements.

Among the minority, only a few who know and appreciate these rights and these are a segment of the educated class, those who have taken their time to research on them, especially lawyers who are obliged by their professions to understand them.

This trend of awareness among people undermines the fight against violations of rights of accused persons. It would be very difficult for citizens of Uganda to voice against violations they don't understand well. A strong political will in pursuit of ensuring observations, protections and promotions of rights would be one of the appropriate remedy. However the political will emanates from the citizens who foster an idea from a point of knowledge. It is of no doubt that, lack of awareness on the rights of accused persons would mean lack of political will.

A test as to what causes and sustains infringement of rights of accused persons in Uganda; a wide majority of the respondents blamed it on corruption, political interference and military interference. A big portion of blame is attributed to corruption. This can be accounted from the nature and circumstances surrounding our institutions ranging from the investigative organs to those charged with the duty of administration of justice.

The Political and Military interference is also to blame for the gross violations of rights of suspects and accused persons. This in my opinion emanates from the post-colonial political

history of Uganda. The deployment of armed security officers in court premises every time a high profile case is being adjudicated has made the public to perceive security organs as tools of violations of rights against suspects and accused persons.

## **5.2 Recommendations.**

The government, non-governmental organizations, the civil society and all other stake holders should take charge on civic education to enlighten the public on the rights of suspects and accused persons. In absence of such sensitization, the people will continue to think that when a person is categorized as a suspect or accused, he or she absolutely loses his rights. Without such sensitization it will be very difficult to build a strong political will that is vital in ensuring promotion and protection of such rights. The promotion and protection of human rights in any state is mostly dependent on the political will of that state. Awareness on the part of the wider public would prompt political will for the desired promotion and protection of those group rights. Crusades and seminars ought to be conducted throughout Uganda to educate and enlighten citizens about these rights.

The government ought to undertake further appropriate measures to deal causes of violations of human rights against suspects and accused persons. The fight against corruption, impunity and bad governance and other factors friendly to such violations need to be intensified.

International instruments ratified by Uganda need to be domesticated in order to conform to the international standards. Laws enacted for prevention of the above and other causes need to be implemented, otherwise it will be quite problematic to violations of these rights. It is time for Uganda to fight these causes with action other than mouth.

The various stakeholders in the administration of justice ought to participate actively in ensuring protection, promotion and fulfillment of rights of suspects and accused persons. The investigative organs being the police, judicial officers and prison department must comply with the constitutional rights of suspects and accused persons in exercise of their powers and authority. The police while exercising their power of arrest and search must operate within the legal limits prescribed in various municipal legislations and international instruments. The judicial officers must eliminate all forms of injustices that are likely to occasion a miscarriage of justice against accused persons. The judicial officers must ensure that everything is done with

due diligence. For example in the event of a desire to appeal by a convict, the judiciary must ensure that court proceedings are ready within time.

### **5.3 Conclusion**

In conclusion, respect, promotion and fulfillment of rights of suspects and accused persons remain a pertinent issue in administration of justice in Uganda. Therefore, there is a great need to counter the causes of violations of these rights. Corruption, military and political interference need to be eliminated from the institutions that are involved in the administration of justice. The government should take the lead in combating corruption and promoting rule of law.

Also Human rights Defenders in Uganda should have various protection mechanisms available to them at the national, regional and international levels for the effective carrying out their duties. However, most Human rights Defenders are aware of these mechanisms or do not know how to utilize them which has led to the increased violation of their rights by state and non- State actors.

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