

**AN ANALYSIS OF THE LAW ON RIGHTS AND FREEDOMS
OF SUSPECTS IN DETENTION CENTRES IN UGANDA.**

(This research report establishes and evaluates the law and freedoms of the suspects in their detention centres which must be observed and recognised by the law enforcement agencies which are bound to protect and take care of the suspects.)

BY

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**DESERTATION SUBMITTED TO THE FACULTY OF LAW IN
PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE AWARD OF A DIPLOMA IN LAW OF
KAMPALA INTERNATIONAL UNIVERSITY.**

.....¹⁸... /JANUARY /2018

DECLARATION

I declare that, this dissertation is from my own findings and has never been produced by anybody else for any award in any institution.

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Signature..... 

Date..... 18.01.2018

DEDICATION

I sincerely dedicate this book to **Hon. Justice Anup Sigh Choudry** for his overwhelming support both morally and financially, without which this course would still be a dream. May the almighty GOD sincerely reward you and bless the works of your mind and hands.

I also dedicate this book to my dear beloved mother **Ms Nassozi Jackie** for every support you have given me, moral, financial support, trust and Love. Because of you my dream has become a reality; may GOD bless and grant you more life so that you can live to enjoy fruits from your Son.


I also dedicate this book to my Uncles, **Kakembo Richard, Zubairi** and my beloved friend **Ms Namutebi Barbara** for the continuous love, moral and financial support, I will forever be proud of you and may GOD bless you.

APPROVAL

This is to satisfy that this dissertation has been done under my supervision and submitted to the school of Law for examination with my approval.

MADAM BIRUNGI MONICA

(Supervisor)

Signature.....

Date.....*23rd Jan, 2016*

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The military courts have in the past admitted into evidence confessions extracted by torture. In contravention of international legal standards, military courts continue to prosecute and order the detention of civilians. ^[168]..... 52

Now after the revelations of torture in Nalufenya, His excellence the president Museveni wrote in the newspapers that torture is not only unnecessary but unacceptable. This was

intended to show that torture in detention centres are not institutional but rather isolated incidents perpetrated by rogue elements in the forces. 52

I am reminded her of a folktale. *A family decided to set a trap for a rat. The cunning rat saw the trap and avoided it. But because of the imminent danger, the rat appealed for help from the other "members" of the household namely a chicken, a goat and a cow.* 53

He recommended that the facility be closed since it contravenes the provisions of the Constitution. The Minister said that Nalufenya was not an illegal facility but a gazette Police station established in 1954.^[170] 54

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ABSTRACT

This research report establishes and evaluates the law and freedoms of the suspects in their detention centres which must be observed and recognised by the law enforcement agencies which are bound to protect and take care of the suspects.

Freedoms and laws are breached by these Custodians at the large extent, following the incidents of incommunicado detentions, breach of the 48 hours rule, torture and inhuman degrading acts, lengthy pre-trial detentions and other effects which emanate from the results of the violations

This research paper analyses pre-trial detention (remand) in Uganda. It digs deep into the causes and effects of lengthy pre-trial detention and provides suggestions to end it.

The paper goes further to investigate the existence of the laws relating to detention at the national, regional and international level highlighting the particular provisions of law that state the confines within this kind of detention should take place and be dealt with.

In conclusion, this paper is a comprehensive analysis, investigating and reporting of the law relating on detainees in Uganda, Local and international legal frameworks with recommendations from the authors to various stakeholders in this country towards ending violations of the rights of detainees.

LIST OF CASES

1. Uganda vs yosefu. (1970) EA 575)
2. Francis Othieno vs Uganda, (MB 114/70)
3. Stephen Gidudu v AG complaint UHRC No. 210/1999
4. Miller v. Minister of Pension [1947] (2) All ER 372
5. Joseph Tumushabe V Attorney General 23[23] .(**Misc. Appl. No. 63/2003 (HC)**
(unreported)
6. Kidega Alfonsio v. Attorney General High Court Civil Suit No. 4 of 2000 [2008]
UGHC 86, 27 June 2008
7. Nziwa Buyingo v. Uganda

LIST OF STATUTES

1. The 1995 Constitution of the Republic of Uganda
2. Children Act, Cap 59
3. Criminal (Preventive Detention) Act, Cap 118
4. Criminal Procedure Code Act, Cap 116
5. Magistrates Court Act Cap 16
6. Penal Code Act Cap 120
7. Prisons Act Cap 304
8. The Police Act, 2012
9. Trial on Indictment Act, Cap 23
10. Uganda Peoples Defence Act, 2005
11. African Charter on Human and People's Rights 1986
12. African Charter on the Welfare and Rights of Children 1994
13. The Convention on Elimination of All Forms of Discrimination against Women 1979.
14. The Convention on the Rights of Children 1989.
15. The International Convention on Civil and Political Rights 1966
16. The Universal Declaration of Human Rights 1948

LIST OF ACRONYMS

1. MCA.....MAGISTRATES COURTS ACT
1. CMI.....Chieftaincy Military Intelligence
2. VCCU.....Violent Crimes Crack Unit
3. HC.....High Court
4. UHRC.....United Human Rights Commission
5. DPP.....Director of Public Prosecution
6. CPS.....Central Police Station
7. A.I.G.P.....Assistant Inspector General Police
8. HRC.....United National Human Rights Committee
9. ICCPR.....International Covenant on Civil and Political Rights
10. UPR.....Universal Periodic Review
11. UNCAT.....United Nations Committee Against Torture
12. ACHPR.....African Charter on Human and Peoples' Rights
13. PACRW.....Protocol to the African Charter on the Rights of
Women in Africa
14. ACRWC.....African Charter on the Rights and Welfare of the
Child.
15. ICESCR.....International Covenant on Economic, Social and
Cultural Rights
16. RRU.....Rapid Response Unit
17. JATT.....Joint Anti-Terrorism Taskforce

CHAPTER ONE¹

1.0 Introduction and Background to the Study

The constitution provides for the Protection of personal liberty^[1], were a number of laws and rights have been stated, like producing a suspect who is arrested to court not later than 48 hours,^[2] remanding period^[3] and the right of an order of Habeas corpus shall be inviolable and shall not be suspended^[4]

The constitution provides that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law^[5], every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty^[6], and the accused person as to be given adequate time and facilities to prepare his/her defence and be represented^[7]

The constitution also provides for prohibition of derogation from particular human rights and freedoms for instance right to fair hearing, freedom from torture, cruel, inhuman or degrading treatments and right to an order of habeas corpus and freedom from slavery or servitude^[8].

All the above 3 articles listed and others are under chapter four of the 1995 constitution of the republic of Uganda all fall under the topic of study which the Researcher seeks to evaluate and establish, the violation of these rights , law and freedoms of the suspects stated above has become rampant and the perpetrators are the police and other law enforcement agencies particularly the Paramilitary units such as CMI, RRU formally known as operation Wembley and VCCU which in turn would have been the parties to observe these rights , for instance the recent incidents which occurred in Nalufenya detention centre in Jinja , were suspects to the deceased A.G.I.P Felix Kaweesa were seriously tortured by police officers^[9] and other several incommunicado detention centres which are not known and not recognised by the law were some suspects have been detained , for instance the detentions of civilians by Army or

1 Article 23 (1) of the 1995 constitution of Republic of Uganda

2 Article 23 (4) (b) Ibid

3 Article 23 (6),(b)and (c) Ibid

4 Article 23 (9) Ibid

5 Article 28 (1) Ibid),

6 Article 28 (3) (a) Ibid)

7 Article 28 (3)(c),(d)and(e) Ibid)

8 Article 44 of the 1995 constitution of the Republic of Uganda

9 Nalufenya Detention Facility Must Be Closed — MPs by Our Reporter · May 24, 2017

the RRU formally known as operation Wembley in places known as “safe houses” which are not gazetted.

At the international level Uganda also is a member state to numerous conventions. At the international level, oversight and accountability mechanisms in relation to detention of suspects include the United National Human Rights Committee (HRC), which monitors the implementation² of the International Covenant on Civil and Political Rights, the United Nations Committee Against Torture and the Committee on the Rights of the Child. Furthermore, there are special procedures such as the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. There are also various international organisations that are involved in visiting places of detention such as the International Committee of the Red Cross (ICRC).

(a) **United Nations Human Rights Committee, The Human Rights Committee (HRC)** which is the monitoring mechanism for the implementation of the International Covenant on Civil and Political Rights (ICCPR), is one of the mechanisms for oversight and accountability. During its consideration of Uganda’s initial report, the HRC noted various important human rights concerns that demonstrate Uganda’s lack of compliance with the ICCPR. The Committee noted the frequent lack of implementation by the government of UHRC recommendations and decisions concerning awards of compensation to victims of human rights violations and the prosecution of human rights offenders.^[10] It further noted that state agents continue to arbitrarily deprive persons of their liberty, including in unacknowledged places of detention.^[11] It also noted the deplorable prison conditions such as overcrowding, scarcity of food, poor sanitary conditions and inadequate material, human and inimical resources. The Committee was concerned about the treatment of prisoners, especially the use of corporal punishment, solitary confinement and food deprivation as disciplinary measures, and the fact that juveniles and women are often

10. Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at Para. 7

11 Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at Para. 17

not kept separate from adults and males.^[12] The Committee also noted the practice of imprisoning persons for inimical debt, which is incompatible with article 11 of the Covenant.^[13] The Committee noted with concern shortcomings in the administration of justice, such as delays in proceedings and in relation to pre-trial detention and the lack of legal assistance.

³**(b) Universal Periodic Review**, Uganda was considered under the Universal Periodic Review (UPR) in October 2011, and states and other stakeholders raised a number of issues related to detention of suspects.^[14] In particular concerns were expressed regarding torture by security agents;^[15] reports of the use of 'safe houses' or unofficial places of detention;^[16] the regular use of torture as a method of interrogation by the police;^[17] the arbitrary arrest and torture of journalists;^[18] and a penitentiary system plagued by the poor treatment of detainees, overcrowding, inadequate feeding, poor medical care and sanitary conditions, forced labour, and inadequate rehabilitation programmes.^[19]

c) Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other mechanisms The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Forced or Involuntary Disappearances and the Working Group on Arbitrary Detention were established by Resolutions of the United Nations Human Rights Commission. Their visits are occasional and based on prior agreement by the state concerned in order to assess the country situation. Their recommendations are issued on the basis of information communicated to the Rapporteur and varied, or following visits carried out in the country being assessed. The recommendations are not binding, but provide guidance on how the situation can be improved. Public reports are presented at the session of the UN Human Rights Commission.

12 Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at Para. 18

13 Human Rights Committee. 2004 Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at Para. 19

14 Summary of Stakeholders Information prepared for the UPR UN Doc A/HRC/WG.6/12/UGA, 20 July 2011, <http://daccessddsny.un.org/doc/UNDOC/GEN/G11/152/32/PDF/G1115232.pdf?OpenElement>,

15 Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/19/16, §46,

16 Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/19/16, §92 and Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §30,

17 Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §25,

18 Draft Report of the Working Group on the Universal Periodic Review

Uganda A/HRC/WG.6/UGA/3, §29,

19 Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §31,

Uganda has not had visits from these Special Rapporteur and Working Groups. Nevertheless, they have the potential to contribute to the process of oversight and accountability.

d) United Nations Committee Against Torture Article 20 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) gives the mandate to the Committee Against Torture to visit places of detention. However, the Committee can only visit States Parties to the Convention, who must authorise the visit. Visits are made only in the cases of 'systematic torture' and the proceedings are confidential. No visits by the Committee against Torture have been made to Uganda. Nevertheless, during the presentation of State Reports, the Committee has noted various human rights concerns which are still relevant.

The Committee was concerned about the lack of incorporation of the Convention into Uganda's legislation, such as the lack of a comprehensive definition of torture in domestic law, the lack of an absolute prohibition of torture, and the absence of universal jurisdiction for acts of torture in Ugandan law.^[20] The Committee expressed concern over the widespread practice of torture and ill treatment of persons detained by the military as well as by other law enforcement officials.^[21] Furthermore, it was concerned about the length of pre-trial detention, including detention beyond 48 hours as stipulated by the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail.^[22]

1:1 Statement of the problem

The main perpetrators, of the violations of the Law and freedoms of the suspects in detention centres are the police and other Law enforcement agencies, the major causes are the slow investigation processes leading to lengthy detentions, trial of the civilians in the Military courts, detaining of the suspects in the places which are not gazetted by the law and subjecting the suspects to complicated and harsh treatment measures during interrogations leading to torture.

This has become rampant, Thus the need for recommendations and reforms to ensure that Rights, Law and Freedom of suspects in there detention centres in Uganda are not infringed.

20 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at Para. 5,

21 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at Para. 6(c),

22 Conclusions and recommendations of the Committee Against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at Para. 6(a)

1:2 Objectives of the study

1:2:1 General Objective.

The Researcher will establish the appraisal of the law and freedoms which the suspects in detention centres must enjoy in Uganda, violation of the law, determination of loopholes in legislation and considering options or strategies and recommendations that can be applied to cover loopholes.

Specific Objective

- (i) To examine legal representation of the suspects in the detention centres.
- (ii) Access to communication of the suspects in their Detention centres.
- (iii) To examine the 48 hour Rule and how its implemented.
- (iv) The study also intends to establish the incidents of preventive and incommunicado detentions of the suspects.
- (v) To examine and analyse the law on the Remand of the suspects during trails.
- (vi) The study also intends to put forward the case for the necessity or importance of preventing Torture, and inhuman degrading treatments of the suspects in detention centres

1.2.2 Research Questions

- (i) How has legal representation of the suspects in the detention centres been observed?
- (ii) What can be done for the suspects to access communication?
- (iii) How the 48 hour Rule has been violated, recognised and implemented?
- (iv) What is the cause and effects of preventive and incommunicado detentions of the suspects?
- (v) What are the Reasons and effects of suspects in exceeding the remand time during Trails?
- (vi) What can be done to prevent Torture and degrading inhuman treatment of suspects in their detention centres, the necessity and importance of doing the same?

CHAPTER TWO

2.1 Scope of the study

This study will cover the Geographical area of Kampala - Uganda, in evaluation of the laws and freedom of suspects in their detention centres and the violation of the Law and freedoms. In attempt to answer the previous questions of the study the researcher considered, the 1995 constitution of the Republic of Uganda, Police Act cap 303, Criminal Procedure code Act, and others

2.2 Research Methodology

In an attempt to answer the objectives, the researcher adopted the qualitative mode of Research. And the Researcher used data collected by means of Research which comprised of interviews carried out using an interview Guide, interviewing suspects from Luzira and other detention Centres who were attending their trails at Makindye Chief Magistrate's court at Makindye and other respondents as the researcher thought fit.

This is a type of research Methodology of Data collection which the researcher used to collect data, employing Non-random sampling techniques known as Accident/ convenient sampling.

Since the researcher did not go to Luzira Prison for High costs reasons. The researcher encountered with only the Suspects who were brought for Trails at the court, this is more convenient type of sampling since it was not costly and time consuming.

Desk Research which included text books, statutes, case law, journals, News papers, and other related legal articles. The researcher adopted this mode of Research because it's appropriate for the Topic; it's easy to use and cheap compared to other modes of research.

CHAPTER THREE

3.1 Justification of the study⁶

The Laws and freedoms of the suspects in the detention centres are constitutional requirements, because the suspects are innocent group of people in which for them to be convicted the prosecution has the burden prove the case or allegations beyond reasonable.^[23]

These freedoms are violated by the Law enforcement agencies in the detention centres, this is due to slow investigation processes leading to lengthy detentions, trail of the civilians in the Military courts, detaining of the suspects in the places which are not gazetted by the law and subjecting the suspects to complicated and harsh treatment measures during interrogations leading to torture hence causing suffering of the suspects which is against the law and Natural Justice.

This study is therefore relevant to government Law enforcement Agencies and every department therein, in that it seeks to highlight the intersection between the Law and Freedoms of suspects and the practice.

3.2 Literature Review

There is no much Literature written on the topic , the one available is under Human Rights as whole however when is broken down it comprises of Literature limited on web materials, Reports, articles and cases which include ,

Joseph Tumushabe V Attorney General Misc. Appl. No. 63/2003 (HC) (unreported). The UHRC has taken a similar view of detentions of civilian in unlawful places (this is not being police station or prison or gazetted place for detention) eg Bugema Military Barracks; CMI offices at Kitante Road and later at CMI office at CPS and Safe Houses

Mark Shaw in his book Pre-trial Detention ^[24] argues many bad outcomes stem from the global over-use of pre-trial detention. He states “Excessive pre-trial detention shatters individual lives, destroys families, and degrades communities. It also undermines the rule of law by fostering corruption and encouraging criminality and exposes people presumed

23 *Miller v. Minister of Pension* [1947] (2) All ER 372

24 A publication of the Open Society Justice Initiative, Spring 2008 Mark Shaw (author) page 23

innocent to torture, disease, and overcrowding in conditions worse than most sentenced prisoners experience.”

In digest of pre-trial detention, according to Open Society, Justice Initiative in their Publication ^{7[25]} the rule of law is fundamental to all open societies. It is also an important aspect of socioeconomic development. “Excessive pre-trial detention undermines the rule of law by debasing the presumption of innocence, furthering corruption, and even promoting criminality”

The Publication by open society Justice Initiative is rich in relating pre-trial detention to rule of law in Uganda.

CHAPTER FOUR

4.0 Introduction and human Rights of Detained suspects

4.1 Introduction

This report in regard to the laws and freedoms of the suspects all begins when a suspected person is arrested in accordance to the laws, there is a number of factors leading to arrest of persons some of these include.

a) Breach of the Law

In many countries where the rule of law prevails, people who breach the provisions of the law are liable to punishment, so this follows their arrest.

b) Ignorance of the law

The common Law Doctrine states that ignorance of the law is no defence, however some people find themselves arrested for reasons they cannot explain but their wrongful acts are rather explainable in letters and the spirit of the law due to their ignorance of the existence of the laws.

c) Moral degeneration.

In Uganda, just like in many parts of the world, human morals have greatly degenerated to the extent that some hardened criminals no longer care whether they are arrested or what they do is morally upright.

d) The wide gap between the rich and the poor.

This is rampant to every developing country; because of the need for survival most of the people broke the law in cases like corruption, embezzlement and others.

These situation and others leads to arrest and detention of the suspects

After any person has been arrested is presumed to be innocent until the contrary is proved,^[26] then that particular person must be treated in accordance to laws, so the officers in charge of the detention centres have to observe the available rights and freedom, as a matter of the Law at national level , regional level and the international level and this will be a basis of Human rights

At the **national level**, the law relating to suspects in detention includes the Constitution of the Republic of Uganda⁸,^[27]Penal Code Act,^[28] Trial on Indictments Act,^[29] Criminal Procedure Code Act,^[30] Police Act,^[31] Prisons Act,^[32] Uganda Peoples' Defence Forces Act^[33] and the Children Act^[34] among others. These prescribe the rules for the treatment of detainees.

Uganda is also subject to a range of African regional instruments including the African Charter on Human and Peoples' Rights,^[35]the Protocol to the African Charter on the Rights of Women in Africa,^[36] the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights^[37] and the African Charter on the Rights and Welfare of the Child (ACRWC)^[38] among others.

26 Article 28 (3) of the 1995 constitution of the Republic of Uganda

27 The Constitution of The Republic of Uganda 1995 as Amended in 2005 and 2015

28 The Penal Code of Uganda, Cap 120, Laws of Uganda

29 Trial on Indictment Act, Cap 23, Laws of Uganda.

30 Criminal Procedure Act, Cap 116, Laws of Uganda.

31 The Police Act, 2012, Laws of Uganda

32 Prisons Act, 2006, Laws of Uganda

33 Uganda Peoples Defence Act, 2005, Laws of Uganda

34 The Children Act, Cap 59, Laws of Uganda

35 Uganda ratified the African Charter on 10 May 1986

36 Uganda ratified the Protocol to the African Charter on the Rights of Women on 22 July 2010

37 Uganda ratified the Protocol to the African Charter establishing the Court on 16 February 2001

38 Uganda ratified the ACRWC on 17 August 1994

4.1.0 National level.

4.1.1 The 1995 Constitution of the Republic of Uganda as amended in 2005 and 2015

The Constitution of Uganda is the supreme law where all laws in Uganda derive their authority.^[39] Chapter four of The Constitution provides for the individual rights of all citizens in Uganda including the rights of the detainees.

Constitution provides that a person charged of any offence is entitled a fair, speedy and public hearing.^[40] This means that persons charged with criminal offences should be tried speedily without being subjected to lengthy remand in prisons.

Furthermore, according to the Constitution, any person arrested or detained for the purpose of bringing him/her to court should be brought to court not later than 48 (forty eight hours).^[41] Therefore the Constitution sets a clear time limit within which charged persons should be brought for trial before court. Production of a person before court is a fundamental right that cannot be derogated from under this constitution.^[42] Therefore it is clear according to the law (the Constitution) that prolonged detentions before trial such as detention by the police in the police cells is unconstitutional.

The Constitution also demands that charged persons should be kept in a place authorised by law^[43] and that any persons produced before court are entitled to apply for bail^[44]

In 2010, 42% of the complaints¹⁰ that were reported to the UHRC were against the Uganda Police Force involving detention beyond the stipulated 48-hour period.^[45] For example, in the

39 Article 2 of The Constitution of Republic of Uganda 1995

40 Article 28 of The Constitution of the Republic of Uganda 1995.

41 Article 23(4) of The Constitution of the Republic of Uganda 1995

42 Article 44 (d) Ibid

43 Ibid, Article 23(2)

44 Ibid, Article 23(6)(a),(b) and (c)

45 Uganda Human Rights Commission. 2011. Annual Report 2010. Kampala: Uganda Human Rights Commission. [http: www.uhrc.ug](http://www.uhrc.ug), accessed on 12th May 2017, page 17

case of *Kidega Alfonsio v. Attorney General*^[46] the High court of Uganda found that Mr Alfonsio's detention for nine days before appearing in court on a murder charge was unlawful. In several cases, the UHRC has found the Attorney General liable for the violation of the right to liberty where suspects have stayed longer than 48 hours in custody, and has ordered compensation for these victims.^[47]

4.1.2 The Penal Code Act, Cap 120

The Penal Code Act^[48] of Uganda is the law that provides for offences and their appropriate punishments in Uganda.

This Act prohibits wrongful detention and makes it a misdemeanour punishable by law.^[49] This means that a person that wrongfully detains the other commits a misdemeanour. Quite often the police in Uganda have unlawfully/wrongfully detained individuals. This usually arises where the police detain suspects pending their investigation for a period beyond that within which they are supposed to be produced before court. This Acts clearly prohibits such an unlawful detention.

The Human Rights Watch report 2011^[50] while condemning the actions of the police stated that "...it is indeed a practice for police to arrest suspects before concluding investigations and to continue investigations whilst the suspect is in police detention."

4.1.3 Criminal Procedure Code Act, Cap 116

The Criminal Procedure Code Act provides for procedure to be followed in criminal cases. The Act provides for detention of persons arrested without warrant. The law requires that where any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which the person is brought should release the person on his or her executing a bond, if it appears impractical to take him to the Magistrates Court^[51]

The major objective of this is to avert wrongful detention of a person and protect him or her from being subjected to lengthy detention in the police cells.

46 High Court Civil Suit No. 4 of 2000 [2008] UGHC 86, 27 June 2008

47 Uganda Human Rights Commission, Annual Reports, <http://www.uhrc.ug>, accessed on 15th May 2017

48 1950

49 Section 248 of the Penal Code, Cap 120)

50 Human Rights Watch. 2011. *Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit*. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>

51 Section 17(1) of Criminal Procedure Code Act, 1950

Also the Act imposes an obligation on the police officers to discharge an arrested person on suspicion of any charge where evidence is insufficient in his or her opinion after due police inquiry.^[52]

4.1.4 The Children Act¹¹, Cap 59

The Children Act majorly provides for the care, protection and maintenance of Children. It also provides for the offences committed by children, their detention and punishment.

In relation to detention of a child charged with any offence, the Act requires a child to be brought to court within a maximum period of 24 (twenty four) hours after he or she has been arrested^[53] The Act also sets the time that a child can spend on remand. A child charged with an offence should not exceed three months on remand in case of an offence punishable by death and forty five days months in case of any other offence.^[54] The Act goes ahead to specify the place of remand of a child charged with an offence as remand homes^[55] and also prohibits the remand of children in an adult prison.^[56]

Furthermore, children are entitled bail when produced before court unless the grant of such bail will put him or her in danger.^[57] Where that bail is not granted the court should inform the applicant (child) of his/her right to apply for bail to Chief magistrate or to the High court.^[58]

Therefore from the above, it is clear that the Act strongly protects juvenile offenders from being subjected to prolonged remand in detention centres. This is all meant to protect the child from the severe effects of lengthy remand.

4.1.5 The Uganda Peoples Defence Forces Act, 2005

The UPDF Act regulates the armed forces of Uganda. Important to note is that this Act also provides for the military courts under which the military and persons subject to the military are tried^[59]. It also provides for trial of military officers and their detention.

52 Ibid, Section 17(2)

53 Section 89(2) of The Children Act, Cap 59

54 Section 91(5)

55 Ibid, Section 91(1)

56 Ibid, Section 91(6)

57 Section 90(1) of the Children Act, Cap 59

58 Ibid, Section 90(2)

59 Sections 196, 197, 199 and 200 of the UPDF, 2005

The Act penalizes any person subject to military who unlawfully detains another person in arrest or confinement or unnecessarily detains any other person without bringing him or her for trial ^[60] Such a person commits an offence and is on conviction liable to imprisonment for a period not exceeding two. ^[61]

More to the above, the Act provides for reporting of delayed trial of a person under detention. Where a person tribal under military court has been detained for 48 (forty eight) hours, his or her commanding officer must report to the Service Chief of Personnel stating reasons for detaining the person and shall release the person on conditional bond after 72 (seventy two) hours. ^[62] The Act also provides that a person detained for 28 (twenty eight) days without commencement of his trial may at the expiry of the period petition the President or any such Authority as the President may appoint in writing for that purpose to be released from custody or for the disposal of the case. ^[63]

From the above therefore, lengthy detention of suspects is prohibited under the military and it is also regarded as an offence and punishable according to the Act for anyone that subjects any person to such kind of detention.

4.1.6 Prisons Act, 2006

The Prisons Act provides for the Prisons Authority that is responsible for providing reasonable, safe, secure and humane custody and rehabilitation of offenders in accordance with universally accepted standards.

Under this Act, for a person cannot be admitted or received into prison without a valid commitment or a remand warrant, order of detention, warrant of conviction or committal signed with a court seal or authenticated by a person authorised to sign or authenticate such warrant or order under the provision of any law. ^[64] This is intended to avoid any detention of persons before they appear before courts of law for trial.

60 Ibid, Section 170(1)

61 Ibid

62 Ibid, Section 190(1)

63 Ibid, Section 190(2)

64 Section 58 of the Prisons Act, 2006

This Act also provides for the prisoners' rights whilst in prison including entitlement to food,^[65] entitlement to exercise for the prisoners not deployed to outside work,^[66] opportunity to make complaints to officers assigned to represent them,^[67] right to information.^[68]

4.1.7 The Police Act, 2012

The Police Act provides for the powers of the Uganda Police to arrest and detain any persons suspected to have committed crime or about to commit crime.

The Police under this Act has the powers to arrest and detain a person in order to prevent that person from causing damage and suffering to people and property or unlawfully causing obstruction on highways.^[69]

From the above, the Act provides for circumstances where the police can detain a person under the above mentioned situations without bringing them for trial before courts. However, this doesn't warrant prolonged detention of the persons detained under such circumstances. The person detained should be released as immediately as possible after such risk of loss, damage or obstruction has been sufficiently removed.^[70]

4.2.0 REGIONAL LEVEL

4.2.1 The African Charter on Human and Peoples' Rights, 1986.

The African Charter on Human and People's Rights provides for the Human and People's rights of the member states that are signatories to charter in Africa. Uganda is a signatory to this Charter and therefore subjects it.

The Charter provides for the Right to Liberty^{13[71]} It prohibits the violation of this right and subjection of a person to arbitrarily detention.^[72]

65 Section 69 of Prisons Act, 2006

66 Ibid, Section 70),

67 Section 71 Prisons Act, 2006

68 Ibid, Section 77

69 Section 25 of the Police Act, Cap 303

70 Ibid, Section 24(3)

71 Article 6 of The African Charter on Human and People's Rights, 1986)

72 Ibid)

This provision makes the freedom from arbitrary arrest and detention very fundamental that should not be violated by the member states. It thus seeks to protect the people from arbitrary detention such as prolonged detentions in the police cells.

African Commission on Human and Peoples' Rights under the African Charter, the African Commission on Human and Peoples' Rights (ACHPR) has the mandate to promote and protect human rights.^[73] Uganda is party to the African Charter and is therefore subject to the African Commission. The ACHPR, which has been greatly supported by NGOs, fulfils its mandate through a complaints mechanism, consideration of State Reports, Special Rapporteur, site visits and resolutions which contribute to oversight and accountability.

The ACHPR has received two communications relating to illegal arrest, arbitrary detention and torture relating to Uganda. The case of *Nziwa Buyingo v. Uganda*^[74] involved a complaint of alleged illegal arrest, arbitrary detention, torture and extraction of money from the complainant by Ugandan soldiers in Kisoro contrary to articles 5, 6, 12 and 14 of the African Charter. The ACHPR dismissed the complaint as inadmissible as the complainant failed to demonstrate that local remedies had been exhausted.

4.2.2 The African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child seeks to promote and protect of the rights and welfare of the child in the African region.

The Charter provides for the administration of Justice of Juveniles offenders.^[75] It imposes obligations to the State Parties to the Charter to ensure that any child who is detained or imprisoned or otherwise deprived of his/her liberty to have the matter determined as speedily as possible by an impartial tribunal and if found guilty and shall not be subjected to torture and degrading treatment or punishment.^[76]

This Charter therefore protects the juvenile offenders from being subjected to lengthy remand¹⁴ and other acts that may come as a result of lengthy detentions such as torture and degrading treatment or punishment.

4.3 Human rights

Human rights are moral principles or norms^{15[77]} that describe certain standards of human behaviour, and are regularly protected as legal rights in municipal and international

73 The African Charter on Human and Peoples Rights, article 45(1) and (82),

74 *Nziwa Buyingo v. Uganda*, http://www.achpr.org/english/Decison_Communication/Uganda/Comm.8-88.pdf

75 Article 17

76 Article 17(2)(a) and (c)(iv) of ACRWC

77 James Nickel, with assistance from Thomas Pogge, M.B.E. Smith, and Leif Wenar, December 13, 2013, Stanford Encyclopedia of Philosophy, Human Rights, Retrieved August 14, 2014,

law.^[78] They are commonly understood as inalienable^[79] fundamental rights "to which a person is inherently entitled simply because she or he is a human being", and which are "inherent in all human beings" regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone. They are regarded as requiring empathy and the rule of law^[80] and imposing an obligation on persons to respect the human rights of others, and it is generally considered that they should not be taken away except as a result of due process based on specific circumstances; for example, human rights may include freedom from unlawful imprisonment, torture and execution.^[81]

The doctrine of human rights has been highly influential within **international law**, global and **regional institutions**. Actions by states and non-governmental organisations form a basis of public policy worldwide. The idea of human rights^[82] suggests that "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights". The strong claims made by the doctrine of human rights continue to provoke considerable scepticism and debates about the content, nature and justifications of human rights to this day.

Many of the basic ideas that animated the human rights movement developed in the aftermath of the Second World War and the events of the Holocaust, culminating in the adoption of the *Universal Declaration of Human Rights* in Paris by the United Nations General Assembly in 1948.

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ...— *1st sentence of the Preamble to the Universal Declaration of Human Rights* all human beings are born free and equal in dignity and rights.

78 Retrieved August 14, 2014, "rights (as freedom from unlawful imprisonment, torture, and execution) regarded as belonging fundamentally to all persons

79 The United Nations, Office of the High Commissioner of Human Rights, What are human rights?, Retrieved August 14, 2014

80 Gary J. Bass (book reviewer), Samuel Moyn (author of book being reviewed), October 20, 2010, The New Republic, The Old New Thing, Retrieved August 14, 2014,

81 Merriam-Webster dictionary,

82 Beitz, Charles R. (2009). *The idea of human rights*. Oxford: Oxford University Press. ISBN 978-0-19-957245-8.

At the international level, Uganda is subject to the human rights standards contained in instruments such as the International Covenant on Civil and Political rights (ICCPR),^[83] the International Covenant on Economic, Social and Cultural Rights (ICESCR),^[84] the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT),^{16 [85]} the United Nations Convention on the Rights of the Child (CRC)^[86] the Convention on the Rights of Persons with Disabilities^[87] and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)^[88] among others. These provide guidelines on suspects in detention and impose certain obligations in relation to detentions to the member states

4.3.0 INTERNATIONAL LEVEL

4.3.1 The International Covenant on Civil and Political rights (ICCPR), 1976

The ICCPR provides for the civil and political rights of the member states to be followed at the global stage. Uganda ratified this convention in 1986 and is therefore subject to it.

The Convention provides for the Right to Liberty and goes ahead to prohibit arbitrary detention of a person^[89] Under this Convention, anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released.^[90] The Convention further provides that it should not be the general rule that persons awaiting trial shall be detained in custody but however cautions the charged person can be released on guarantee that they will appear before court for judgment.^[91]

83 Uganda ratified the ICCPR on 21 June 1995

84 Uganda ratified the ICESCR on 21 January 198

85 Uganda ratified the UNCAT on 3 November 1986

86 Uganda ratified the CRC on 7 August 1990

87 Uganda ratified the CRPD on 25 September 2008

88 Uganda ratified the CEDAW on 22 July 1985

89 Article 9 (a) of the ICCPR, 1976

90 Ibid, Article 9(3)

91 Ibid

From the above, the Convention seems to put a strict restriction on detention of persons charged of criminal offences and gives no tolerance to long detention. It clearly rebuts the presumption of the general rule that a person awaiting trial should be detained in custody. It gives a room for release of such a person on bail as he/she awaits trial.

Lastly, the Convention gives a person who is deprived of his liberty by detention to take proceedings before a court, for it (court) to decide without delay on the lawfulness of his detention and can order his release if the detention is not lawful.^[92]

4.3.2 The United Nations Convention on the Rights of the Child (CRC)

This Charter provides for the protection and promotion of the Rights of Children across the world. Uganda is a signatory to this Convention and therefore subject to it.

The Charter prohibits the unlawful or arbitrarily detention or imprisonment of a child ^[93] It further makes it mandatory that child alleged as or accused of having committed any offence must have the matter determined without delay by a competent, independent and impartial authority or judicial body.^[94]

Therefore, the Convention strives to protect children from any form of unlawful arrest and also prolonged detention. It thereby imposes the obligation on the state parties to this Convention to ensure the protection of the rights of children by having a speedy determination of the cases against them.

4:3:4 The Convention on the Rights of Persons with Disabilities, The purpose of this Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity^{17 [95]}.

The Convention imposes obligation to the state parties to ensure that persons with disabilities, on an equal basis with others: Enjoy the right to liberty and security of person; Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.^[96] The Convention seeks to protect Persons with Disabilities from being unfairly detained without trial on the basis of their disabilities.

4:4 Conclusion

It is clear from the above analysis that there is an abundant legal framework at the national, regional and international level relation to detention of suspects. This framework directly

92 Ibid, Article 9(4)

93 Article 37(b) of CRC

94 Article 40(b)(1) of the CRC

95 Article 1 of the Convention on Persons with Disabilities

96 Ibid, Article 14(a)(b)

applies to Uganda. It is the obligation of the state to ensure that the obligations imposed by this framework in regard to conducting detention of suspects is strictly adhered by the state agencies in the Criminal Justice System of Uganda.

CHAPTER FIVE

5.0 Legal representation of the suspects.

Legal representation is a constitutional requirement^[97] the accused person has to be given time to execute this right though its relatively not possible to a great number of suspects in Uganda because most of them cannot afford to hire their own lawyers due to the wide spread of poverty within the Ugandan families, and this to my attention has led to poor access to the information to the suspected group of persons since they appear to court without knowledge on the general procedure of the court.

In my observation during the court sessions on my intern many of the accused persons, were informed of the right to apply for Bail^[98] and most of them missed out, not because they could not be granted it, but they where green about the knowledge of the requisites and other who were granted Bail their Bails were terminated because of the failure of the sureties attending court proceeding with the suspect on Bail.

The advocates on state briefs, on the representation of the suspects on the offence which carry maximum sentence of death or imprisonment for life^{18, [99]} this has been done but not effectively, since most of the represented group of the accused most of them are asked to plead guilty for the purposes of plea bargain, so that they can't take courts time in their matters to be given a lesser sentence than the maximum during the mitigation process, this violates the constitutional provision of presumption of innocence^[100] and due to

97 Article 28(3d) and 23(3) of the 1995 constitution of the Republic of Uganda

98 S.75 (1) of the MCA, cap 16

96 Ibid, Article 14(a)(b)

97 Article 28(3d) and 23(3) of the 1995 constitution of the Republic of Uganda

98 S.75 (1) of the MCA, cap 16

99 Article 28(3e) of the 1995 constitution of the Republic of Uganda

100 Article 28 (3a) of the constitution of the Republic of Uganda

distressfulness, miss guidance, lack of legal knowledge and fear for the Maximum penalties of the offences charged against them these suspects pleads guilty to the offences.

In my observation, all the court sessions I attended, when the advocate on state brief was in attendance all the accused persons pleaded guilty and the advocate was just submitting the submission of plea bargain and nothing further.

There has been rampant denial access to information of the suspected persons in detention centres, the recent submissions in the Parliament by Minister Jeje Odongo when he stated that his submissions will erase fears that Mudenyoo had disappeared without trace. However, Mr Waira Kyewalabye Majegere (Bunya County East-Ind) challenged the minister, asking why the family was denied access to their relatives, two months since they lost touch.^[101] This act breached this suspected Imam from accessing the Legal representation, since he could not communicate to anyone.

5.1 Conclusion

The principle of legal representation must be handed with greatest care, and this may also be extended to offences which carry a maximum sentence of 10 years since these cases are more in nature and the largest population is poor to afford private legal representation and this representation has to be made a reality rather than being just a Sham.

CHAPTER SIX

6.0 Access to information by the suspects.

This freedom is paramount for the suspects to get assistance for instance after the arrest, the suspect must be allowed to inform their family in order to execute the police bond or lawyers for advice,^[102] if the freedom is violated then the suspected person if not later on released on the police bond, they may face inhuman treatment and torture during the time of interrogation, following the remand without trial which may exceed the stipulated time in the constitution^{19;}^[103] in the interview with one of the respondent whose relative (Uncle) was

101 Article The monitor (Kampala) Uganda: Missing Mayuge Imam in nalufenya over Kaweesa murder-Jeje Odongo
<http://www.monitor.co.ug/News/National/Missing-Mayuge-Imam-in-Nalufenya-over-Kaweesa-Murder/688334-3951636-239vhn/index.html>

102 Article 28 (3) of the 1995 constitution of the Republic of Uganda

103 Article 23 (6)(b)(c) of the 1995 constitution of the Republic of Uganda

arrested, the respondent told me that at the time they arrested her Uncle after suspicions that he had participated in the mob justice following the killing of the person (a thief) , the uncle and three others were arrested and were not allowed to even contact their relatives or lawyers, the mob justice occurred in march, 2015 and the suspects were remanded without trail to Luzira up to 2017 when the complainants took interest in the case and trails commenced, this circumstance violated the right of access to legal representation,^[104] the time a person has to stay on remand before the trail begins^[105] and the right to an order of habeas corpus.^[106]

For instance the incidents which happen in Jinja at the Detention centre of Nalufenya, “During the visit, MPs on the Committee were informed that the Nalufenya operates as a special Police facility dedicated to handling “*high profile cases*,” where suspects are taken from any part of the country for investigation and interrogation. The Committee Chair, Hon. Kamateeka observed that “*detainees seem to live under fear and that there is a general fear of disclosure of information to any person, hence even though the detainees may want to disclose information, they are constrained.*” She said that because detainees have limited or no access to family, lawyers or doctors, Nalufenya is not a conventional Police station.^[107]

The suspects on remand must be facilitated with such measures as to help the accused persons to access information to contact their relatives, in my observation during court proceeding at Makindye chief magistrates court, many of the accused raised a complain of lack of communication to the relatives so as the result these suspects never got chance of applying for Bail because they had no sureties to represent them due to lack of communication.

Access to the outside world entails having access to legal representatives, judges, family members, medical personnel and visitors. Visitors could include national and international visitors to places of detention such as the national human rights institutions, Inspectorates of Prisons, civil society organisations, religious authorities, the International Committee of the Red Cross, among others.

104 Article 28 (3) (c,d,e) Ibid

105 Article 23 (6)(b) (c)Ibid

106 Article 44 (d) Ibid

107 Monitor Article; Nalufenya detention facility must be closed-Mps may 24, 2017).<http://kampalascene.com/index.php/2017/05/24/nalufenya-detention-facility-must-be-closed-mps/>

Generally, in practice pre-trial detainees are given access to the outside world, especially access to visitors. However, there are problems in terms of access to court. This is especially brought on by resource constraints such as the vehicles or fuel needed to transport detainees to court.^[108] Moreover, detainees also face challenges accessing health services.^[109] Some detainees are denied access to their families, especially in military detention facilities²⁰.^[110]

6:1 Conclusion.

The violation of this right is rampant though many people and Human Rights Activists have commented about it but still there is no change. More and powerful measures must be employed to see that this right is adhered to.

CHAPTER SEVEN

7.0 The 48 hour Rule.

The constitution provides that a suspected person after his/ her arrest, restriction or detention shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or arrest.^[111] But this has not been recognised due to slow and improper investigations in the Law enforcement agencies mostly the police detain the suspected persons passed the 48 hours, and don't produce them to court and allege that investigation are not yet done.

108 Asan Kasingye Undated The Role of the Police in Diversion: An assessment of success and failures, <http://www.createsolutions.org/unicef/Documents/resources/country/Africa/ugandapoliceroleindiversion.pdf>

109 Human Rights Watch 2011 'Even Dead Bodies Must Work': Health, Hard Labour, and Abuse in Ugandan Prisons. New York: Human Rights Watch

110 Uganda Human Rights Commission. 2010. Annual Report 2009. Kampala: Uganda Human Rights Commission. Pp.47-48)

111 Article 23(4) of the 1995 constitution of the Republic of Uganda)

There are several incidents which have happened, and the prominent one is the recent detention of the suspected Murderers of the A I G P Felix Kaweesa, who have been detained beyond 48 hours and tortured in the process of interrogation.^[112]

The Rapid Response Unit (RRU), formerly known as Operation Wembley and the Violent Crimes Crack Unit (VCCU), a section of the police created to combat armed crime, continues to detain people without charge, well beyond the constitutionally mandated 48 hours.^[113]

Furthermore there have been debates to amend this 48 hours to some offences, The Police and the Directorate of Public Prosecution have received a go ahead from the Ministry of Internal Affairs to initiate a process that will exempt them from applying the 48 hour detention rule for terrorism and Corruption suspects.

The move calls for a constitutional review of Article 23 (4).

Police has quite often been castigated for holding suspects beyond the mandatory 48 hours before trial. A Recent report by the Uganda Human Rights Commission (UHRC) indicated that complaints on detention beyond 48 hours topped the list of human rights violations recorded over the last one year.

The July 2010 terrorism suspects alleged to have masterminded the bombings in Kyadondo and Ethiopian Village, Kabalagala dragged the police to the constitutional court on similar grounds. The case has now taken into its fourth year pending conclusion..

Stephen Kagoda,²¹ the Ministry of Internal Affairs Permanent Secretary, observes a need to amend the constitutionally mandated 48 hours of pre-trial detention in order to help police in criminal case management and stop mob justice.

The DPP Justice Michael Chibita says, the two institutions; police and DPP are working together to ensure that the law makes an exemption to the rule to help in criminal case management.

Inspector General of police (IGP) General Kale Kayihura explains that the current justice

112 Monitor Article; Nalufenya detention facility must be closed-Mps may 24, 2017)

113 WORLD REPORT 2011; Uganda events 2010 <https://www.hrw.org/world-report/2011/country-chapters/uganda>

system in which police operates has proved to be impossible for investigations to be complete within 48 hours.^[114]

Also the police asked that the 48 hour rules be extended to 72 hours to enable investigation be completed, the Lt. AIGP Felix Kaweesa said that *"the period presents enormous challenges; you cannot investigate a capital offence in two days. It takes more than two days. We are saying it is unfair for a case to be managed in two days,"* Kampala Lord Mayor Erias Lukwago described the proposal as *"out rightly untenable. It is against the universally acceptable standards worldwide. All they want to do is to extend the hours of torture, to legalise torture. The period I spend in police custody is a nightmare. The conditions in the cells are appalling, the cells are filthy, stinking and poorly ventilated,"* he said. He advised the Force to instead change how they conduct business. Instead of asking for more time to hold suspects, Ms Jackie Asiimwe-Mwesige, a lawyer and human rights activist, challenged the police leadership to devote more resources to its investigate arm.^[115]

There are complains in the Uganda Human Rights Commission (UHRC) which stated that suspects are still being detained for more than 48 hours, which they said contravenes the rights of the suspects and the law and the answers from the claims by the policemen are that suspects could not be released due to incomplete investigations²².^[116]

7.1 Conclusion.

This is clear that the 48 hours are not respected by the police and other intelligence agencies and in whole debates the answer to this, is that investigations are impossible to be completed within 48 hours. The police and other agencies have to improve and employ measures and knew skills which can speed up the investigations to meet the required time by law.

114 <https://ugandaradionetwork.com/story/dpp-police-seek-to-waive-48-hour-detention-rule-for-terrorism-corruption-suspects>
URN DPP, Police Seek to Waive 48-hour Detention Rule for Terrorism, Corruption Suspects 30 Sep 2014, 11:54 0 Comments 2094 Views Kampala, Uganda Crime Editorial

115 12 October 2016The Monitor (Kampala) Uganda: Outrage as Police Seek to Extend 2-Day Detention
<http://allafrica.com/stories/201610120049.html>

116 UHRC tells police to respect 48 hour detention of suspects Posted By: editoron: March 21, 2017In
<http://westnilepress.org/uhrc-tells-police-to-respect-48-hour-detention-of-suspects/>

CHAPTER EIGHT

8.0 Preventive and incommunicado detentions

8.1 Preventive detention

This type of detention is governed by the Act,^[117] which provides that, When a person who in the opinion of the court is not less than thirty years of age is convicted of an offence punishable with imprisonment for a term of two years or more; and has been convicted on at least three previous occasions since reaching, in the opinion of the court, the age of sixteen years, of offences punishable with such a sentence, and was on at least two of those occasions sentenced to imprisonment, then, if the court is satisfied that it is expedient for the protection of the public that the person should be detained in custody for a substantial time, the court may pass on the person, in addition to or in lieu of any other sentence, a sentence of preventive detention for such term of not less than five nor more than fourteen years as the court may determine; but where a sentence of preventive detention is passed in addition to any other sentence, the total term of preventive detention and imprisonment shall not exceed fourteen years.^[118]

No person shall be sentenced to preventive detention unless, the Director of Public Prosecutions either in person or in writing asks that such a sentence be imposed; but no such request shall be deemed to fetter the discretion of the court as to whether or not such a sentence should be imposed; and at least three days' notice in writing has been given to the offender that it is intended to prove his or her previous convictions²³.^[119]

117 THE HABITUAL CRIMINALS (PREVENTIVE DETENTION) act cap 118

118 sec. 1 Ibid

119 sec. 2 Ibid

Furthermore the act states without prejudice to any right of the offender to tender evidence as to his or her character and repute, evidence of character and repute may, if the court thinks fit, be admitted as evidence on the question whether it is expedient for the protection of the public that he or she should be detained in custody for a substantial time.^[120]

As provided above the main objective of preventive detention is the protection of the public from menaces of habitual criminals. Public interest demands that criminal offenders who prefer making crimes their trade should be kept away from society for long periods,

The Magistrates courts Act provides that magistrate grade one may on conviction pass a sentence on preventive detention in accordance with the habitual criminals (preventive detention) act total; term of preventive detention must not exceed 10 years.^[121]

Uganda vs yosefu the court held that on whether to order a sentence of preventive detention, the courts should give consideration to the period between the current conviction of the accused and the time he was last discharged from.^[122]

Francis Othieno vs Uganda, the appellant had been convicted of retaining a bag of stolen rice on his own plea. He was sentenced to two years imprisonment and in addition to seven years of preventive detention. The sentence for preventive detention was set aside on the ground that although he had a number of previous convictions, the last conviction had been in 1960 therefore the appellant had desisted from committing crimes for a long time. The previous conviction must be the same in character as the current one and there must be proximity in time.^[123]

Forum for Democratic Change leader²⁴ Dr. Kiiza Besigye has filed an application before the constitutional court challenging the Police Act on preventive arrest. Besigye says that his petition challenges the provisions under which the police are acting to impose preventive

120 sec. 3 Ibid
121 S.163(1) of the MCA cap 16
122 (1970) EA 575
123 MB 114/70

detention on Ugandans, but Besigye says the police are breaking the same law, because his home is not a police detention area and the law should be scrapped²⁵.^[124]

IGP Kale Kayihura said that the police are withdrawing the security deployment around Dr. Kizza Besigye's home in Kasangati; he said that Besigye was never under arrest and he was only being kept under preventive detention to prevent him from disrupting the post election processes of tallying and announcing the winner of the 2016 presidential elections. Kayihura said that after the Supreme Court ruling on Thursday, which declared that President Yoweri Museveni had been validly elected; the police had decided that there was no longer any reason to keep Besigye under preventive detention.^[125]

Sporadic use of “preventive” detention of Besigye over several years clearly constitutes arbitrary detention in violation of international human rights law, and is an unconstitutional form of detention without trial or prospect of trial. It violates rights to liberty and security, freedom of movement and the presumption of innocence. The Uganda Human Rights Commission and among others, have explicitly said that preventive detention of anyone inside their home is a clear rights violation. The Police Act provision used to justify preventive detention is inapplicable to the factual reality as it applies only to “habitual offenders.” As of this writing, Besigye had not been charged or convicted of any crime. Practices of the criminal justice system violate international human rights law. As of 2014, 55 percent of the prison population consisted on remand, though international law provides that pre-trial detention should be an exception and as short as possible²⁶.^[126]

124 April 1, 2016

125 Ntv Uganda 4, 1 .2016 article on facebook

126 Universal Periodic Review of Uganda HRW's Submission to the Human Rights Council - March 2016

8.1.1 Conclusion.

The law enforcement agencies have breached the main objective of this Act^[127] instead they have turned this all issue into a political issue for instance the arrest of opposition leaders like the house arrest of the leader of Forum democratic change Dr. Kiiza Besigye.

8.1.2 Incommunicado detention

Ordinarily, the power of arrest as an aspect of their function to maintain law and order and to detect and prevent crime lies primarily with police force,^[128] the constitution entitles every person to personal liberty,^[129] such liberty is however capable of being suspended if its authorised by law. After arrest the suspects must be detained in lawful places recognised by law^[130]

Nonetheless, since 1995, other than the police, the army intelligence agencies (CMI) and other paramilitary units (RRU) have been involved in the instances of unlawful arrests and thus deprivations of personal liberty. These has been severe criticism of the involvement of the Army and other paramilitary units in arresting and detaining civilians, However , the UHRC seems to admit the power of the military to arrest the civilians who by the nature of their actions, become subject to military Law.^{27[131]}

The Uganda Peoples' Defence Forces handle military personnel and other individuals who are subject to the Ugandan Peoples' Defence Forces Act, for example, those found in illegal possession of firearms. It is important to note that there have been special agencies which combine the Police and the Military such as the Joint Anti-Terrorism Taskforce (JATT) and

127 THE HABITUAL CRIMINALS (PREVENTIVE DETENTION) act cap 118

128 S. 117 prisons act,2006 on arrest

127 THE HABITUAL CRIMINALS (PREVENTIVE DETENTION) act cap 118

128 S. 117 prisons act,2006 on arrest

129 Article 23 of the 1995 constitution of the Republic of Uganda

130 Article 23 Ibid

131 Stephen Gidudu v AG complaint UHRC No. 210/1999).

the recently disbanded Rapid Response Unit (which is notorious for human rights violations).^[132]

Ugandan law explicitly prohibits keeping individuals in unauthorised places of detention, i.e. those that have not been officially gazetted by the Minister of Internal Affairs. In spite of the law, there are reports of the use of 'safe houses' or unauthorised places of detention.^[135] Those placed in safe houses have included terrorism and treason suspects, civil debtors and persons selected for such detention due to personal disputes.^[136] Detention of suspects in unauthorised places of detention exposes them to torture and other cruel, inhuman and degrading treatment and punishment.^[137] Moreover, most detainees in such unauthorised places are often not brought to court within the requisite 48 hours. The Uganda Human Rights Commission (UHRC), the national human rights institution, has received a few complaints of people detained in unauthorised places referred to as 'safe houses'. In 2010, the UHRC received at least nine such complaints.^[138] Concerns of detention in unofficial places of detention were also raised during Uganda's Periodic Review in October 2011, although Ugandan government representatives denied these allegations.^[139] Detention in unauthorised places of detention is especially used by the JATT.^[140]

The detention of suspects in incommunicado detentions has become rampant, recently there have been instances and the most famous one is the detention centre of Nalufenya, where the suspected persons on the murder of AIGP Kaweesa were detained and tortured "*As I contemplate the debate around the victims and perpetrators of torture in Nalufenya and other places yet to be uncovered, I shudder at the short-sightedness of my fellow countrymen. Anyone with clear eyes cannot claim that the Nalufenya torture chamber was not to be expected under Museveni's rule*" President Museveni said²⁸.^[141]

132 Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>. See also Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.ug. APCOF Policy Paper November 2012 4)

135 Report of the Working Group on the Universal Periodic Review: Uganda, A/HRC/19/16, §92 and Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 – Uganda, A/HRC/WG.6/UGA/3, §30

136 Amnesty International. 2007. Uganda. <http://www.amnesty.org/en/region/uganda/report-2007>, accessed 30 October 2012,

137 Human Rights Watch. 2009. Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda. New York: Human Rights Watch. <http://www.hrw.org/reports/2009/04/07/open-secret-0>. Also see The Redress Trust. 2007. Torture in Uganda: A Baseline Study on the Situation of Torture Survivors in Uganda. London: The Redress Trust,

138 Uganda Human Rights Commission. 2011. Annual Report 2010. Kampala: Uganda Human Rights Commission. p.12

139 Report of the Working Group on the Universal Periodic Review: Uganda, A/HRC/19/16, p. 12, §92, p.13, §105

140 Human Rights Watch. 2009. Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda. New York: Human Rights Watch. <http://www.hrw.org/reports/2009/04/07/open-secret-0>

141 Article daily monitor: Uganda: Of Nalufenya Tortures and How to Cook a Live Frog (<http://www.monitor.co.ug/OpEd/Commentary/Of-Nalufenya-tortures-and-how-to-cook-a-live-frog/689364-3944274-15qw1pcz/index.htm>)

There is still more stories, rumours and other instances of incommunicado detentions at large, and the worse and precious answers/reply by the perpetrators is that “we *a still investigating and the detainees are habitual criminals who needs special care*” , and these paramilitary groups have secrete detention centres where even access to detainee files and other information is denied to the authorities who have interest in these cases, and this only is enough to show that human rights violation of the detainee is at the upper hand, for example production to court within 48 hours, right of habeas corpus and others “The RRU in September arrested Kenyan human rights activist Al-Amin Kimathi, who had criticized the handover of Kenyan suspects in the July bombings to the Ugandan authorities without due process. Kimathi was detained for six days without charge, denied access to a lawyer, and eventually charged with terrorism in the July bombing. At this writing, he is awaiting trial with 16 other suspects. Human Rights Watch was denied access to all the detainees on this file.”^[142]

According to APCOF Policy Brief note,^[143] detainees are entitled to certain rights. “They must be detained in adequate facilities, treated in a humane and respectful manner, and given access to outside contacts. Both international and Ugandan law provide for these rights, but practice frequently deviates from the law. Pre-trial detainees in Uganda are held in both police and prison facilities.”

8.1.3 Conclusion

If this constitutional right is adhered to the incidents of torture will eventually reduce, in my view if a person is detained in a place which is inconspicuous from public eye, then even the perpetrators are at the upper hand to violate the rights the accused or the suspected person could have enjoyed by virtual of being in those places , since these custodians are rest assured that no one will touch on their hand during their duties, it turns out that the suspects suffer other damages as a result of incommunicado detentions like Torture and others.

142 World Report 2011: Uganda events of 2010 (<https://www.hrw.org/world-report/2011/country-chapters/uganda>)

143 PRETRIAL DETENTION IN UGANDA, Roselyn Karugonjo Segawa (Author) APCOF POLICY BRIEF No. 4 of 2012Page 10

CHAPTER NINE

9.1 Remand of suspects.

Remand is defined as a committal to custody especially when a trial is adjourned²⁹.^[144] This normally happens when investigation on the accused file is not complete and when witnesses are not present to testify at that material time, so the court adjourns the proceeding to allow the prosecution complete the investigation and waiting the attendance of the witnesses on both sides^[145] and other circumstance in which the court may think fit to adjourn and Remand the accused person. In the case of an offence which is triable by the high court as well as the subordinate court, if that person has been remanded in custody of the offence for sixty days before trial, that person shall be released on bail on such conditions as the court considers reasonable^[146] or the offence triable by the High court only and the person has been remanded in custody for one hundred and eighty days before the case is committed to high court that person shall be released on bail on such conditions as the court considers reasonable.^[147] In due diligence the judicial officer handling a case in this manner will always discharge the accused person for want of prosecution^[148] which is a discharge where a defence of double jeopardy will not sustain like a discharge of failure of the prosecution to establish a prima facie case to answer against the accused.^[149]

The Prisons Act provides for the Prisons Authority that is responsible for providing reasonable, safe, secure and humane custody and rehabilitation of offenders in accordance with universally accepted standards.

144 https://www.google.com/search?biw=1242&bih=562&q=remand&oq=remand&gs_l=psyab.3...0i20i264k1j0i67k1l2j0j0i67k1l3j0j0i67k1l2.28427.39286.0.39774.43.16.0.0.0.650.1163.5-2.3.0...0...1.1.64.psy-ab...41.2.1988.6..35i39k1.1340.rL6Cl7av-0k

145 S.128(3) MCA ,cap 16)

146 Article 23 (6)(b) of the 1995 constitution of the Republic of Uganda

147 Article 23 (6) (c) Ibid

148 Section. 119 of MCA, cap 16

149 section. 127 Ibid

Under this Act, for a person cannot be admitted or received into prison without a valid commitment or a remand warrant, order of detention, warrant of conviction or committal signed with a court seal or authenticated by a person authorised to sign or authenticate such warrant or order under the provision of any law.^[150] This is intended to avoid any detention of persons before they appear before courts of law for trial.

This Act also provides for the prisoners' rights whilst in prison including entitlement to food,^[151]

Entitlement to exercise for the prisoners not deployed to outside work^[152] opportunity to make complaints to officers assigned to represent them^[153] right to information.^[154]

In practice this has been recognised but the problems come in as a result of the detentions which are illegal in nature.

The arrested suspects by the RRU await trial before military courts for long periods of time. The slowness of the military courts has resulted in instances of defendants serving longer periods on remand than would result from the maximum sentence for their charges.^[155]

Human Rights Watch remains concerned that Uganda's military court system, in practice, fails to uphold fair trial and due process rights. Infrequency of sessions and painfully slow processes mean that trials are not completed in a reasonable time. Defendants do not enjoy adequate time or facilities for the preparation of their defence, and the army commanders who act as judge's lack any legal expertise. Suspects are sometimes held on remand for many years, leading some suspects to feel that pleading guilty is the only avenue available to conclude their case. Some suspects have awaited trial in detention for periods exceeding the maximum sentence for their charges³¹.^[156]

150 Section 58 of the Prisons Act, 2006

151 Section 69 of Prisons Act, 2006

152 Ibid, Section 70

153 Section 71 Prisons Act, 2006

154 Ibid, Section 77

155 WORLD REPORT 2011; Uganda events 2010) (<https://www.hrw.org/world-report/2011/country-chapters/uganda>)

156 Universal Periodic Review of Uganda HRW's Submission to the Human Rights Council - March 2016

During the course of research in the field, in the interview sessions I managed to extract relevant information from my respondents regarding the chapter in the topic and below are the summarised views of the respondents regarding Remand time of the suspects in the detention centres, the causes of prolonged detention and effects.

9.1.1 Causes of prolonged detentions

(a) Delayed completion of Police investigations. The respondents stated that this is due to lack of enough resources and man power to enable efficient and expeditious investigation of the cases reported at the police stations. They stated that whereas there are a reasonable number of police investigation officers, the number of criminal offenders is high and has overwhelmed the investigation departments. They further stated that some of the offences nowadays are too sophisticated in nature that it takes the police investigation department too long to trace the evidence. They cited examples of several recent murders of Moslem clerics, Joan Kagezi (the former Acting Deputy Director of Public Prosecution) and Andrew Felix Kaweesa, former Assistant inspector general of Police as some of the cases that were too sophisticated in nature.

They concluded saying that delayed Police investigations as stated above greatly result into suspects staying for a very long time on remand and some in the police stations.

(b) Missing of files both in investigation and prosecution offices. The respondents raised this view as a cause of prolonged detention of suspects in Uganda. They stated that at times because of poor storage facilities, negligence or deliberate action both at the police stations and prosecution registries, most files of the charged persons usually end up getting misplaced, lost or stolen from the stores. This delays the trial of a charged person since the searching of it and the processing of a new one usually takes long.

(c) Inadequate number of trial judges/magistrates to cover all High Court Circuits and magisterial areas. It was noted by the respondents that Uganda still has a challenge of few judges and magistrates that are not proportionate to the number of cases brought before court. Due to the inadequate number of judges, there is always backlog of cases waiting the High court circuit sessions. This causes delay in the trial of some of inmates charged with capital offences.

(d) Political influence most especially on the side of political detainees. It was stated that at times there is always delay in the trial of political detainees due to the influence of some

officers in government. The respondents stated that most of these victims are opposition members of the government and the process of investigation of their cases by the police is usually deliberately delayed. Sometimes the Magistrates/ Judges also deliberately keep on unnecessarily adjourning their trial with a view of keeping them long in prison. They also noted that such political detainees are always deliberately denied bail even after a long period on remand.

(e) Inadequate funds to ensure continuity of High Court Sessions. There was a concern about the **inadequate** funds to ensure frequent High Court Sessions. This has resulted into infrequent sessions and has therefore led to case backlog at these courts. The case backlog at these courts tends to increase the period of time a charged person will spend in detention and it has been a prolonged problem in Uganda.

(f) Unnecessary adjournments of sessions and cases. The respondents also noted that one of the major causes of detention of suspects in Uganda is the fact that judges and magistrates unnecessarily adjourn the court sessions which causes delay in the determination of the matters and therefore resulting into prolonged pre-trial detention. They highlighted that the commonest causes of adjournments are usually the prosecution side who usually ask for unnecessary adjournments, the many cases to be handled by the judges or magistrates in a day and also big numbers of witnesses from either side that have to be cross examined.

(g) Unnecessary delay in passing on judgments. The respondents noted that many times judges and magistrates take a long time to pass judgments and these results into the detainees awaiting the judgment staying longer on remand than necessary. They noted that this has been a prevalent matter and it has persisted for a very long time in the judiciary.

(h) Delay of witnesses to come to court to testify. The respondents stated that cases that have delays in the coming of witness to court to testify always take longer to be decided. They noted that because witnesses are crucial in criminal matters, it takes a long time for the judges and magistrates to study and examine the other form of evidence in sensitive cases like murder, treason, rape etc., than it would have been if there witnesses. It is the delay of witnesses coming to court to testify that delays trial and in turn causes lengthy pre-trial remand.

(I) Corruption in offices. It was noted that corruption is also among the causes of lengthy pre-trial detention in Uganda. The respondents stated that many times some relatives of the offended families in cases such as defilement, theft and some of the misdemeanour usually bribe the police officers, judges and other judicial officers to have the charged persons stay longer in prison.

(J) Inadequate Magistrate's and High Courts. The respondents stated that there is still a challenge of effective distribution of Magistrate's and High Courts in Uganda. They noted that current courts have been overwhelmed by the number of cases brought before them and this has resulted into case backlog in these Courts. They stated that case backlog has greatly contributed to lengthy pre-trial detentions.

9.1.2 Effects from prolonged detentions

When the detention of the suspects, lengthens from the normal and reasonable time, there are side effects which emanate from the delay;

(a) Congestion in Police and Prisons detention centres. The respondents stated that prolonged pre-trial detention of persons charged with offences has caused congestion in prisons in Uganda. Citing the example of Luzira Maximum Security Prison, they stated the detainees have increased beyond the capacity of the prison and that majority of the detainees are on remand awaiting determination of the cases against them. They further stated that congestion in prisons like Luzira Maximum Security Prison has severe consequences to the detainees such as reduced rations of food, poor hygiene, easy spread of diseases especially airborne diseases and occasional fights due to competition for space in the cells.

(b) Public loss of trust in the courts and judicial system. The respondents noted that lengthy pre-trial detention causes loss of confidence and trust in the courts and the police among the public. This usually happens especially when the police arrest and detains mere suspects of misdemeanours for long in the police cells who are latter found innocent of the offences charged against them. Such acts provoke concern and anger among the public about lives of such detainees. This therefore leads to loss of confidence in the criminal justice system in the country.

(c) Abuse of Rights of the pre-trial detainees. The respondents noted that lengthy pre-trial detention results into infringement of the rights of the pre-trial detainees. They noted that since the 1995 Constitution of The Republic of Uganda provides for a speedy trial of the

persons charged with offences, it would be abuse of their rights to be detained for more than a year or two years awaiting trial in courts of law.

They further noted that the police many times violates the rights of persons charged with criminal offences by detaining them in the police cells longer than the constitutionally set time of forty eight hours provided for under Article 23(4).

(d) Mental disorders among the detainees/inmates.

The respondents noted that due to the long time on remand, most detainees end up getting mental disorders due to frustration. Some of them are always worried of losing their jobs, property, being detached from their family members or missing important flights abroad due to detention. With all these worries, a person ends up getting mental disorders. They stated that a significant number of detainees suffering from mental disorders as a result of detention have been noted at Luzira Maximum Security Prison and some of these have been people on remand.

(e) Loss of prime witnesses. It was noted that as a result of prolonged detention, some of the key witnesses of both sides lose interest in the case or sometimes forget to appear or others die. As a result, this weakens evidence of either party and thereby frustrates service of justice. The most affected side is always the detainees (defence) who compared to the prosecution do not maintain touch with some of their witnesses because of being in incarceration.

9.1.3 Conclusion.

In conclusion, it was noted by the respondents that the major causes of lengthy remand periods (detention) are inadequate number of judges and magistrates and the delayed investigations by the police. They further noted that lengthy detention has severe consequences such as congestion in prisons, mental disorders and abuse of rights of the detainees.

CHAPTER TEN

10.1 Torture and degrading inhuman treatment of suspects in their detention centres

For the purposes of the Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act

he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.^{32.[157]}

Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. ^[158] Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature. ^[159]

Freedom from torture and ill treatment is provided for in the 1995 Constitution of the republic of Uganda as a non-derogable right.^[160] The Constitution further provides that it is not a right that can be derogated from, even in emergencies.^[161] Nevertheless, torture and ill treatment is rampant in Uganda. It is one of the most common complaints received at the UHRC.

Table 1 illustrates the report of violations received by the UHRC for 2009, 2010 and 2011, and the percentage of these complaints against the total number of complaints received. In addition, the 2011 report of the UHRC also reflected the steady increase of these complaints between 2006 and 2011, with only 2010 showing a slight decrease.

157 Article 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

158 Article 4(1) Ibid

159 Article 4(2) Ibid

160 Constitution of the Republic of Uganda, article 24

161 Constitution of the Republic of Uganda, article 44

Table 1: Complaints of torture, cruel, inhuman and degrading treatment and punishment to the Uganda Human Rights Commission

2011 2010 2009

Complaints of torture, cruel, inhuman and degrading treatment and punishments	428 276 314
Total complaints	1 231 975 1 013
Percentage of total complaints	34.77 28.3 31.0

Source: Uganda Human Rights Commission, Annual Reports 2010, 2011 and 2012

Human Rights Watch and Amnesty International have also documented allegations of torture and other ill treatment.^[162] This has been affirmed by local civil society organisations such as the African Centre for Treatment and Rehabilitation of Torture Victims³³.^[163] Recently, it was reported that a police officer squeezed the breast of Mrs Ingrid Turinawe, of opposition party Forum for Democratic Change, during her arrest.^[164] Suspects are more vulnerable to torture and ill treatment shortly after arrest and during long detentions. They are also vulnerable to torture and ill treatment while in detention at the hands of their fellow inmates and when they are taken out to farms to work.^[165]

The persistence of torture has been exacerbated by the lack of an adequate law that prohibits, prevents and punishes individuals who subject others to torture and ill treatment. Fortunately, the Parliament has heeded the calls to enact such a law by the UHRC and the Coalition of Civil Society Organisations against Torture, and recently passed the Prohibition and

162 Human Rights Watch, UPR submission on Uganda, March 2011, <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/HRW-HumanRightsWatch-eng.pdf> 163 African Centre for Treatment and Rehabilitation of Torture Victims. 2011. Annual Report 2010. http://www.actvuganda.org/uploads/1309243277_ACTV%202010%20Annual%20Report.pdf%20mail.pdf

164 The Daily Monitor, 23 April 2012. Police under ire over Ingrid arrest. <http://www.monitor.co.ug/News/National/-/688334/1391926/-/avjydsz/-/index.htm>. Also see BBC News Africa. 23 April 2012.,

165 Uganda Ingrid Turinawe 'sexual abuse' protesters strip. <http://www.bbc.co.uk/news/world-africa-17814860>, accessed 29 October 2012 APCOF Policy Brief No. 4 8

Prevention of Torture Act, and assented to by the President in July 2012. The Act domesticates Uganda's international obligations under the UN Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (UNCAT). Notably, Uganda has not yet ratified the Optional Protocol to the UNCAT.

Since 2010, UHRC has registered a total number of 5,054 complaints. The top five complaints registered by the UHRC in the past five years include torture, cruel, inhuman or degrading treatment or punishment with 1637 (32.39%) complaints, deprivation of the right to personal liberty with 1,358 complaints (26.86%), denial of child maintenance with 734 complaints (14.52%), deprivation of property with 410 complaints (8.11%) and deprivation of life with 203 complaints (4.01%).

The highest number of complaints registered in 2014 was against the Uganda Police Force. These increased by 34.90% from 424 complaints registered in 2013 to 572 complaints. This was followed by complaints against private individuals which increased by 21.47% from 163 complaints in 2013 to 198. Uganda Peoples' Defence Forces had an increase of 103.63% registered against it from 55 in 2013 to 112. Complaints against the Uganda Prisons Services remained at 36 complaints while complaints against the Local Government increased by 14.28% from 28 in 2013 to 32. Since 2010, the UHRC has registered 5,054 complaints of which the Uganda Police Force has been the top respondent with 2,169 (42.1%) complaints. This is followed by private individuals with 1,070 (21.17%), Uganda Peoples' Defence Forces with 492 (9.73 %), Uganda Prisons Services with 177 (3.5%) and Local Governments with 183 (3.62%) registered against them³⁴. [166]

The conditions in places of detention such as police, prisons, military detention centres, and remand homes. In 2014, the places of detention inspected by UHRC increased by 5.8% from 1,060 in 2013 to 1,122 in 2014. Of these were: 180 prisons, 22 military detention facilities, 232 were police stations, 681 police posts and 5 Remand homes.

Positive developments noted by the UHRC included: increase in the number of human rights committees in prisons and military detention facilities, phasing out the bucket system during

166 The 17th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda
http://www.uhrc.ug/sites/default/files/ulrc_resources/UHRC%2017th%20Annual%20Report%202014.pdf

the day, increase in construction and renovation of police facilities, increased access to health services in prison and police facilities, and an increase in detention facilities that had updated registers.

There were however some human rights concerns observed which included: persistence of cases of long and arbitrary detention in police, prison and military detention facilities, an increase in police detention facilities that did not provide adequate food, incarceration of children with adults, continued detention of prisoners awaiting ministers orders, increasing tendency by Crime Preventers and local Council Leaders to assume the role of Law enforcement officers and the dire working conditions of prisons and police³⁵.^[167]

The military courts have in the past admitted into evidence confessions extracted by torture. In contravention of international legal standards, military courts continue to prosecute and order the detention of civilians.^[168]

Now after the revelations of torture in Nalufenya, His excellence the president Museveni wrote in the newspapers that torture is not only unnecessary but unacceptable. This was intended to show that torture in detention centres are not institutional but rather isolated incidents perpetrated by rogue elements in the forces.

But there's an explanation for the naïveté that gave His excellence so much latitude. I am told that if you want to cook a frog alive you do not put it in hot water.

It will jump out because it is instinctively averse to extreme heat. *You put it in a pot of cold water and then put a fire under the pot. The frog will notice temperature changes and the warmth will make it comfortable and it lowers its guards. By the time the water is hot and boiling it is too late.* The frog gets cooked alive.

Why do people think themselves immune from the evils of a fascist regime? It is almost as laughable as a person celebrating because a lion that is devouring people has promised to eat him last!

167 The 17th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda http://www.uhrc.ug/sites/default/files/ulrc_resources/UHRC%2017th%20Annual%20Report%202014.pdf

168 Universal Periodic Review of Uganda HRW's Submission to the Human Rights Council - March 2016, <https://www.hrw.org/news/2011/03/29/universal-periodic-review-uganda>

I am reminded her of a folktale. *A family decided to set a trap for a rat. The cunning rat saw the trap and avoided it. But because of the imminent danger, the rat appealed for help from the other "members" of the household namely a chicken, a goat and a cow.*

"There is a dangerous trap which has been set ostensibly for me but I think it can cause problems for all of us", cried the terrified rat.

The chicken told the rat in no uncertain terms that rat-traps are for rats not chicken and so would the rat mind its own business. The goat also laughed off the rat's appeal. The cow looked at the trap once and walked away without even bothering to honour the rat with a reply.

In the night, the family members heard the trap go off and they thought that at last they had got the stubborn rat. The lady of the house went in the dark to feel the trap. But alas, it had not caught the rat but a poisonous snake! It was too late. The snake bit the lady and killed her. During the funeral, custom had to be followed strictly. A chicken has to be killed at the gravesite followed by a goat. So the indifferent chicken and goat were slaughtered.

Since the family was a well-known one, there were many mourners. The insolent cow was slaughtered to feed the mourners. The rat watched all this from a safe distance. A stitch in time saves nine! This to me sums up the story of the belated outrage of my fellow citizens³⁶.^[169] Parliament has condemned the rampant torture reported in various Police stations and detention facilities in the country.

Debating the Parliament Human Rights Committee Report on alleged torture in the Nalufenya detention facility, in Jinja district, the MPs demanded that perpetrators of torture including those involved in the torture of Kamwenge Town Council Chair, Geoffrey Byamukama, be charged in court other than the Police Force's disciplinary unit.

"It is clear from this evidence that torture takes place at the Nalufenya detention facility, but the tortured suspects were hidden at the time of the visit of the Committee," said Hon. Akol.

169 Uganda: Of Nalufenya Tortures and How to Cook a Live Frog <http://www.monitor.co.ug/OpEd/Commentary/Of-Nalufenya-tortures-and-how-to-cook-a-live-frog/689364-3944274-15qw1pcz/index.htm>

He recommended that the facility be closed since it contravenes the provisions of the Constitution. The Minister said that Nalufenya was not an illegal facility but a gazette Police station established in 1954.^[170]

10.2 International perspective on torture

The 1980s: History of Torture and Terrorism Begins:

Torture inflicts severe pain to force someone to do or say something and has been used against prisoners-of-war, suspected insurgents and political prisoners for hundreds of years. In the 1970s and 1980s, governments began to identify a specific form of violence called "terrorism" and to identify prisoners as "terrorists." This is when the history of torture and terrorism begins. While many countries practice torture against political prisoners, only some name their dissidents terrorists or face potential threats from terrorism.

International Conventions against Torture:³⁷

Despite ongoing debates about whether torture is justified against terrorism suspects, the world community consistently finds torture repugnant under any circumstances.

It's not a coincidence that the first of the declarations below appeared in 1948, just after the end of the Second World War. The revelation of Nazi torture and "science experiments" performed on German citizens in World War II produced a global abhorrence of torture, anytime, anywhere, conducted by any party—but especially sovereign states.

- International Conventions Against Torture
- 1948 Universal Declaration of Human Rights
- 1948 European Convention on Human Rights
- 1955 Standard Minimum Rules for the Treatment of Prisoners
- 1966 International Covenant on Civil and Political Rights
- 1969 American Convention on Human Rights
- 1975 World Medical Association Declaration of Tokyo
- 1975 Declaration on the Protection of All Persons from Torture

170 Nalufenya Detention Facility Must Be Closed — MPs by Our Reporter · May 24, 2017
<http://kampalascene.com/index.php/2017/05/24/nalufenya-detention-facility-must-be-closed-mps/>

- 1984 Convention Against Torture^{38[171]}

10.3 Conclusion

Torture in the modern world is a relic of the distant past. Though there are many proponents, claiming that torture is acceptable in a number of certain cases such as against terrorists or maniacs, I believe they should not be tolerated due to several reasons. Torture is illegal: international laws prohibit the use of torture against anybody. The country that approves torture also risks losing the trust of its citizens in itself and its judicial system. In addition, torture that is officially approved at least once tends to become a regular practice. There is no such thing as a “special occasion” when it comes to torturing^{39 [172]}.

CHAPTER ELVEN

11.0 Recommendations and conclusions

11.1 Recommendations

(a) Uganda Police Force should invest in training and re-training of law enforcement agents to equip them with modern investigation skills, in a bid to avoid use of torture in obtaining information.

(b) Uganda Police Force and the Directorate of Public Prosecutions should be equipped with the necessary facilities to enable them to fulfil their constitutional obligation to produce suspects before courts of law within 48 hours and to efficiently perform their duties.

(c) Ministry of Justice and Constitutional Affairs should handle matters proposed for amicable settlements in a timely manner and should ensure that the victims of human rights violations are promptly compensated.

(d) Government through the Parliament and Ministry of Foreign Affairs should ratify and domesticate the Optional Protocol to the Convention against Torture, which provides for

171 Humanities › Issues History of Torture and Terrorism <https://www.thoughtco.com/history-of-torture-and-terrorism-3209175>)

172 <https://academicjhelp.net/samples/academics/essays/persuasive/torture.html>

additional preventive mechanisms in the prevention of torture and ill treatment.

(e) State agencies and institutions indicated as respondents should cooperate with UHRC to enable it effectively implement its mandate and fight impunity in the country.

(f) Ministry of Internal Affairs, Ministry of Gender, Labour and Social Development and Ministry of Local Government should strengthen the institutions dealing with child-related issues such as the Family and Child Protection Unit of Police, the Family and Children's Court, the Probations and Social Welfare office and local council courts.

(g) Ministry of Finance, Planning and Economic Development should increase funding to the Uganda Prisons Service, Uganda Police Force the Uganda Peoples' Defence Forces and Ministry of Gender, Labour and Social Development to ensure that the rights of inmates and staff are respected.

(h) Uganda Prisons Service, Uganda Police Force and Uganda Peoples' Defence Forces should enforce the Prohibition and Prevention of Torture Act (2012) in order to hold perpetrators of torture accountable in places of detention.

(i) Parliament should amend the law to prohibit the detention of civil debtors in line with Government obligations under the International Covenant on Civil and Political Rights.

(j) Ministry of Internal Affairs, Ministry of Gender, Labour and Social Development, Uganda Police Force and the Uganda Prisons Service should ensure that children in conflict with the law are separated from adults in all places of detention.

(k) Central Government should take over the responsibility of funding the remand homes in order to address the perennial challenge of limited funding.

(l) Justice, Law and Order Sector should strengthen the mechanism for diversion of children away from the criminal justice system including through mediation and arbitration.

(m) Uganda Prisons Service, Uganda Police Force and the Uganda Peoples' Defence Forces should completely phase out the bucket system.

(n) Ministry of Justice and Constitutional Affairs should establish an efficient mechanism for handling cases which are pending Ministers Orders.

11.2 Conclusions

It is clear from the study that the problem of violation rights of suspects in the detention centres is still prevalent in Uganda and has huge effects on the lives of inmates posing a great challenge to the criminal justice system. From the study, the respondents noted that major factors that have exacerbated violation of rights and freedoms of suspects in detention centres include the inadequate number of judges to expeditiously handle the increased number of cases and inadequate staffing, funding and integration of skills in the police investigation department that has caused slow investigations.

Violation of rights and freedoms of suspects in detention centres in Uganda has had big effects on the Criminal Justice system such as; congestion in the prisons, abuse of rights of inmates and defilement of justice of these persons and other health related problems. These have dented the image of criminal justice system in Uganda among the public.

The laws and legal framework analysed have been able to lay down a range of legal way that provides guidelines on how, when and why rights and freedoms of detainees should be conducted. This evaluation has been conducted to give a deeper understanding of the rights and freedom detained suspects in Uganda through a comparison of what the legal framework provides and what actually is done on ground in the criminal justice system in the country.

With the thorough analysis of the legal framework relating to the detention and the results given from the field study, this research can be helpful to scholars, government agencies like courts of law, police and the Law Reform Commission in understanding the root cause of this violation of the rights and freedom and the effects this problem has and thereafter find possible solutions to end it with the help of the analysis of the legal framework analysed.

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