

**THE ROLE OF THE JUDICIARY IN THE PROMOTION AND PROTECTION OF  
HUMAN RIGHTS IN UGANDA.**

**BY**

**KIGERE IVAN**

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## 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.

Name: KIGERE IVAN

Sign; ..........

Date; .....12<sup>th</sup>/02/2018.....

## APPROVAL

This is to satisfy that this report has been done under my supervision for consideration on awarding of a diploma in law at Kampala international university.

**MADAM KABAKALI CYNTHIA**

(Supervisor)

Sign.....  


Date.....  
2 / 14 / 18

## DEDICATION

Praise be to the almighty God, with him everything was possible on my side.

This work is dedicated to **Mr. Kasala Nathan** and **Mrs. Kasubo Rosemary** who have been on my side throughout this academic goal. Financially, spiritually, morally and emotionally and also to **MR. KIGONGONGO EDWARD NAKABALE KEN** and **KEN Co.** at large.

## ACKNOWLEDGEMENT

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The work done by my supervisor **MADAM KABAKALI CYNTHIA**; which includes support, guidance that she rendered me during my research your effort can't be measured with anything may the almighty GOD bless you Amen.

My family [**MRS KASUBO ROSEMERY, MR KASALA NATHAN**) **MY BROTHERS AND SISTERS** , my classmates, my lecturers and to all those that have been there for me whenever I wanted them ,may the almighty GOD award you accordingly with the gift of life and all your wishes as well. Thank you so much.

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## ABSTRACT<sup>1</sup>

This research report analyses and evaluates the role of Judiciary, in adjudication, protection and promotion of Fundamental human Rights and other rights<sup>1</sup>, the violation of these rights by different state agencies and the way forward to propel the stopping of these violations.

The paper goes further to investigate the existence of the laws relating to Human rights at the national, regional and international level highlighting the particular provisions of law that state the confines of the Law.

In conclusion, this paper is a comprehensive analysis, investigating and reporting of the law relating role of Judiciary in protections and promotion of Human Rights in Uganda, Local and international legal frameworks with recommendations from the authors to various stakeholders in this country towards ending violations of the Human Rights.

### DEFINITION OF KEY TERM

**ARREST**; A restraint of a man's person, obliging him to be obedient to law. An arrest is the beginning of imprisonment, whereby a man is first taken, and restrained of his liberty, by a lawful warrant; also it signifies the decree of a court.<sup>2</sup>

**SUSPECT**: A *suspect* is a person who is believed to be guilty of a crime. If you leave the scene of a murder with blood on your hands and a weapon in your pocket, you're likely to become a prime suspect.<sup>3</sup>

**BAIL**; The freeing or setting at liberty one arrested or imprisoned, on others becoming sureties by recognizance for his appearance at a day and place certainly assigned, he also entering into his own recognizance.<sup>4</sup>

**LIBERTY**<sup>2</sup>: - Freedom; exemption from extraneous control. The power of the will, in its moral freedom, to follow the dictates of its unrestricted choice, and to direct the external acts of the individual without restraint, coercion, or control from other persons<sup>5</sup>.

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<sup>1</sup> chapter 4 Of the 1995 constitution of the Republic of Uganda

<sup>2</sup> Mozley & whiteley's law dictionary 10<sup>th</sup> edition at pg.32

<sup>3</sup> <https://www.vocabulary.com/dictionary/suspect>

<sup>4</sup> Mozley & whiteley's law dictionary 10<sup>th</sup> edition at pg 43

<sup>5</sup> Booth v. Illinois, 154 U. S. 425, 22 Sup. Ct. 425, 46 L. Ed. 623; Munn v. Illinois, 94 U. S. 142, 24 L. Ed. 77;

## LIST OF STATUTES

1. The 1995 constitution of the Republic of Uganda as amended 2005 and 2015.
2. Mozley & whiteley's law dictionary 10<sup>th</sup> edition at pg.32.
3. The Convention on the Rights of Persons with Disabilities.
4. The United Nations Convention on the Rights of the Child (CRC).
5. The International Covenant on Civil and Political rights (ICCPR), 1976.
6. The African Charter on the Rights and Welfare of the Child (ACRWC).
7. The African Charter on Human and Peoples' Rights, 1986.
8. Prisons Act, 2006

## LIST OF CASES

1. Auto Garage Vs Motorkov.
2. Joseph Tumushabe Vs A.G const. petition No. 6/2004,
3. Booth v. Illinois, 184 U. S. 425, 22 Sup. Ct. 425, 46 L. Ed. 623;
4. Munn v. Illinois, 94 U. S. 142. 24 L. Ed. 77;
5. Nziwa Buyingo v. Uganda,

## CHAPTER ONE

### 1.1 INTRODUCTION<sup>3</sup>

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the 1995 Constitution of the Republic of Uganda as amended provides that any person who claims that a fundamental or other rights or freedom guaranteed under this constitution has been infringed or threatened, is entitled to apply a competent court for redress which may include compensation<sup>6</sup>.

The constitution also provides that any person or organization may bring an action against the violation of another person's or group's human rights<sup>7</sup>, this give a person or an organization a right to bring an action against any human right violations.

The Uganda human rights commission<sup>8</sup>, in the performance of its functions, the commission shall have powers of court to summon or other order requiring the attendance of any person before the commission<sup>9</sup>, the production of any document or record relevant to any investigation by the commission<sup>10</sup>, also questions any person in respect of any subject matter under investigation before the commission or require him disclose any information within his / her knowledge which is relevant to any investigation by the commission<sup>11</sup> and to commit persons for contempt of its orders<sup>12</sup>

### 1.2 BACKGROUND

The constitution provide for protection and promotion of fundamental and other Human Rights and freedoms<sup>13</sup>.there are numerous rights and freedoms where any person with a cause of action<sup>14</sup> can institute an action in court for any infringement or threatened freedoms and human rights. this places the sole mandate to the Judiciary for the adjudication of law relating to Human rights to protect and promote it. since every suit before its investigated by the Uganda Human Rights commission must have been instituted into court first.<sup>15</sup>

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6 Article 50 (1) of the 1995 constitution of the Republic of Uganda

7 Article 50 (2) ibid

8 article 51 ibid

9 article 53 (a)

10 Article 53 (b)

11 Article 53 (c)

12 Article 53 (d)

### 1.3 STATEMENT OF THE PROBLEM<sup>13</sup>

The judiciary at the great extent here in Uganda it has tried to protect and promote the human Rights of the citizens, under the case study there are many different decisions of complaints of human rights violations the court has ruled in the favour of the victims for instance in the case of **Joseph Tumushabe Vs A.G** <sup>16</sup>, the court observed that the right to bail is a fundamental right guaranteed under Article 23 (6) of the 1995 constitution of the Republic of Uganda . Its basis is found in Article “8 of the Constitution, which states that an accused person is to be presumed innocent until he/she is proved or he/she pleads guilty. Its also provides that an accused is entitled to a fair and speedy hearing before an independent and impartial court or tribunal established by law. Those two principles are part of the right to a fair hearing, which is declared to be inviolable by Article 44 of the 1995 constitution. The idea is that a person presumed to be innocent and who is entitled to a speedy trial should not be kept behind bars for unnecessarily long time before trail. This is the rationale of Article 23(6). (Per **judgment of Twinomujuni, JA. At p.8**).

On other hand there is still a problem of delayed justice. in the instance that there is a group of people who suffer prolonged pre-trial detentions which emanate torture for instance the suspected murderers of Kaweesa. denial of the freedom to assembly by the Uganda police to opposition leaders and other groups of people and other infringement and threatening of human rights where the Judiciary has vested little consideration or time to adhere to.

### 1.4 SCOPE OF THE STUDY

The study covered the geographical area of Kampala Uganda, in the evaluation of the role of judiciary in the promoting and protection of human rights, and the practical importance of the Uganda Human Rights commission against the human rights violations by state and other bodies.

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<sup>13</sup> chapters 4. Of the 1995 constitution of the Republic of Uganda)

<sup>14</sup> Auto Garage Vs Motorkov

<sup>15</sup> Article 53 (4) (a) *ibid*

<sup>16</sup> const. petition No. 6/2004.

## CHAPTER TWO

### 2.0 OBJECTIVES

#### 2.1 GENERAL OBJECTIVE.

The Researcher established the role of Judiciary in the promoting and protection of human Rights, violation of the law relating to Human rights by the Law enforcement agencies, determination of loopholes in legislation and considering options or strategies and recommendations that can be applied to cover loopholes.

#### 2.2 SPECIFIC OBJECTIVES.

- (i) To examine the protection of fundamental human rights of the accused and condemned persons by the Judiciary.
- (ii) To evaluate the protection of the fundamental human rights and other rights of the citizens.
- (iii) The study also intends to analyses the opposition fundamental Human Rights and other rights protection and promotion by the Judiciary.
- (iv) The study also intends to put forward the case for the necessity or importance of preventing and the violation of Human Rights by the law enforcement agencies.

#### 2.3 RESEARCH QUESTIONS

- (i) How does the judiciary promote and protect the suspects and condemned detainees Fundamental human rights and other rights?
- (ii) What are steps the judiciary has put forward in protection and promotion of citizens fundamental Human Rights and other Rights?
- (iii) How has Judiciary protected the violation of the Opposition Human Rights in Uganda?
- (iv) What are steps that can be put forward in prevention of the human Rights violations by the Law enforcement agencies by the Judiciary?

#### 2.4 RESEARCH METHODOLOGY

##### 2.4.1 OVER VIEW

This section presents the methodology of the study adopted. It presents the research design, target population, the sample and sampling techniques, research instruments, ethical consideration and Limitations.

#### **2.4.2 RESEARCH DESIGN**

The Researcher employed a qualitative method of Research since it was convenient for the topic under study, it was cheap and not time consuming compared to the quantitative method.

#### **2.4.3 TARGET POPULATION**

The target population was the judicial officers mostly the Magistrates at the Chief Magistrates courts of Makindye and the Prison wardens who used to bring the suspects for trial at the same court.

#### **2.4.4 RESEARCH INSTRUMENTS**

The Researcher employed a qualitative method of research and an interview as a research instrument and a desk research type of collecting data, reviewing Journals, web materials, text books, law dictionaries and many others. These instrument where suitable to the topic of study.

#### **2.4.5 LIMITATIONS**

The researcher encountered a number of constraints which limited time frame and non-response on the part of some targeted respondents, and the researcher employed a non-random sampling method of accidental, this was appropriate to the topic of research and in reducing the costs of transport to different parts of the country in order to collect information.

#### **2.4.6 ETHICAL CONSIDERATION**

Aware of the implications and challenges of field work, the researcher presented an introductory letter to the study area authorities. With this letter the researcher introduced himself and sought consent from the chief magistrate in order to be given opportunity to collect some information.

## CHAPTER THREE

### 3.1 JUSTIFICATION

The fundamental and other human rights under chapter 4 of the 1995 constitution of the Republic of Uganda consists of two categories those which are derogable and non-derogable which are enshrined under Article 44 of the constitution.

Though most of them the state can derogate them from the citizen, but this must follow the clear direction to enforce the laws, this has not been followed in due diligence where even at some extent the non-derogable human rights have been threatened by state law enforcement agencies.

This study is therefore relevant to government Law enforcement Agencies and every department therein, in that it seeks to highlight the proper and covering all the loop holes in the adjudication, promoting and protections of Human rights by the judiciary.

### 3.2 LITERATURE REVIEW<sup>5</sup>

There is much literature written on the topic of study, and these include basically articles, journals, books and web related materials. For instance “The care of human life and happiness and not their destruction is the only object of good government”<sup>17</sup>

Most people living in the Commonwealth today are poor. Too many of them are among the absolute poor. A third of the 200 million citizens of the Commonwealth live on less than US\$1 a day – the internationally accepted measure of extreme poverty. There are also significant pockets of poverty in the richer states like the UK, Canada, Australia and New Zealand. As many people have pointed out poverty is much more than just lack of income.

Poverty is a condition brought about by people and policies and is not a natural and normal condition. It can and must be changed as a matter of priority. The state of poverty itself, and not the act to eliminate it, is a violation of human rights. Development sees human beings as having needs that should be fulfilled where possible. Human rights ensure that these become legal obligations of the duty holder - namely the State - against which claims can be made.

South Africa and Uganda have recognized the human rights to food, housing, health care, education and a clean and safe environment by writing them into their constitutions as

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<sup>17</sup> Thomas Jefferson (1743-1826), author of the Declaration of Independence, 3rd President of the United States of America.



fundamental rights that the State is legally obligated to provide for all citizens. In other countries like India and Bangladesh where non-binding constitutional directives to achieve similar goals exist, the judiciary has expanded the scope of the fundamental right to life to include some of these basic entitlements indispensable for the enjoyment of a life of dignity.

Despite this, poverty reduction efforts have traditionally been guided by the paternalist 'welfare' approach where the State becomes the benefactor of the poor who must wait upon the generosity and goodwill of the giver. In some countries with high incidence of poverty this approach has degenerated to distribution of patronage for buying support and approval for those wielding State power. The accent is also placed on 'reduction' rather than 'eradication' of poverty. A charitable approach to development also allows richer nations to keep development assistance at the level of grace and favor, reinforcing dependencies and sharpening misleading perceptions of the alleged inadequacies of the developing world.

In contrast, the rights based approach is by definition pro-poor in nature as it requires "developmental planning to target the weakest and the most vulnerable first and foremost. Human rights standards provide the benchmarks against which success of development policies must be measured. Setting targets based on human rights allows policymakers to create realistic frameworks for achieving rights and making informed evaluations of the effectiveness of their policies and programmes. Situating development and poverty alleviation within a human rights framework gives primacy to the participation and empowerment of the poor, insists on democratic practices, and ensures that the rationale of poverty reduction no longer derives only from the fact that the poor have needs, but is based on the rights of all through entitlements that give rise to obligations on the part of international community, nation-states, the commercial sector and local communities and associations as enshrined in law."<sup>18</sup>

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<sup>18</sup> David Beetham, "Democracy and Human Rights: Contrast and Convergence", paper presented at the Seminar on the Interdependence between Democracy and Human Rights, OHCHR, Geneva, November 2002: <http://www.unhcr.ch/democracy/DBeetham.pdf>

## CHAPTER FOUR<sup>7</sup>

### 4.1 INTRODUCTION.

The sole purpose of the Judiciary is to put in practice the Laws made by the Parliament, judicial officers in all categories from the lowest level to the High levels have a mandate to see that laws governing the country are not abrogated from.

### 4.2 THE LEGAL BASIS ON HUMAN RIGHTS.

There is a number of different Legal frame work enacted to address the issue of Human Rights, ranging from National, regional and international Level

#### 4.2.1 NATIONAL LEVEL.

##### 4.2.1.1 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.<sup>19</sup> 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.<sup>20</sup> 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).<sup>21</sup> 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.<sup>22</sup> 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.

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19 Article 2 of The Constitution of Republic of Uganda 1995

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

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

22 Article 44 (d) Ibid

#### **4.2.1.2 The Penal Code Act, Cap 120<sup>8</sup>**

The Penal Code Act <sup>23</sup> of Uganda is the law that provides for offences and their appropriate punishments in Uganda.

This Act prohibits wrongful detention and makes it a misdemeanor punishable by law.<sup>24</sup>

This means that a person that wrongfully detains the other commits a misdemeanor. 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.

#### **4.2.1.3 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.<sup>25</sup> 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,<sup>26</sup> entitlements to exercise for the prisoners not deployed to outside work,<sup>27</sup> opportunities to make complaints to officers assigned to represent them,<sup>28</sup> right to information.<sup>29</sup>

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<sup>23</sup> 1950

<sup>24</sup> Section 248 of the Penal Code, Cap 120)

<sup>25</sup> Section 58 of the Prisons Act, 2006)

<sup>26</sup> Section 69 of Prisons Act, 2006

<sup>27</sup> Ibid, Section 70),

<sup>28</sup> Section 71 Prisons Act, 2006

<sup>29</sup> Ibid, Section 77

## 4.2.2 REGIONAL LEVEL<sup>9</sup>.

### 4.2.2.1 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<sup>30</sup> It prohibits the violation of this right and subjection of a person to arbitrarily detention.<sup>31</sup>

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<sup>32</sup> 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*<sup>33</sup> 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.

### 4.2.2.2 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.<sup>34</sup> It imposes obligations to the State Parties to the Charter to ensure that any child who is detained or

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<sup>30</sup> Article 6 of The African Charter on Human and People's Rights, 1986)

<sup>31</sup> Ibid

<sup>32</sup> The African Charter on Human and Peoples Rights, article 45(1) and (82),

<sup>33</sup> *Nziwa Buyingo v. Uganda*, [http://www.achpr.org/english/Decison\\_Communication/Uganda/Comm.8-88.pdf](http://www.achpr.org/english/Decison_Communication/Uganda/Comm.8-88.pdf)

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.<sup>35</sup>

This Charter therefore protects the juvenile offenders from being subjected to lengthy remand<sup>10</sup> and other acts that may come as a result of lengthy detentions such as torture and degrading treatment or punishment.

#### **4.2.3 INTERNATIONAL LEVEL.<sup>11</sup>**

##### **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<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

##### **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<sup>39</sup> 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.<sup>40</sup>

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<sup>34</sup> Article 17

<sup>35</sup> Article 17(2)(a) and (c)(iv) of ACRWC

<sup>36</sup> Article 9 (a) of the ICCPR, 1976

<sup>37</sup> Ibid, Article 9(3)

<sup>38</sup> Ibid

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<sup>41</sup>.

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.<sup>42</sup> The Convention seeks to protect Persons with Disabilities from being unfairly detained without trial on the basis of their disabilities.

#### **4:4 Conclusions**

It is clear from the above analysis that there is an abundant legal framework at the national, regional and international level relating to Human Rights of different categories of people.

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<sup>39</sup> Article 37(b) of CRC

<sup>40</sup> Article 40(b)(1) of the CRC

<sup>41</sup> Article 1 of the Convention on Persons with Disabilities

<sup>42</sup> Ibid, Article 14(a)(b)

## CHAPTER FIVE<sup>13</sup>

### 5.0 Suspects and condemned detainees fundamental rights and other rights.

#### 5.1 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.<sup>43</sup> 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.

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.<sup>44</sup>

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.<sup>45</sup>

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

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

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

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

grounds. The case has now taken into its fourth year pending conclusion.. **Stephen Kagoda**.<sup>44</sup> 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 system in which police operates has proved to be impossible for investigations to be complete within 48 hours.<sup>46</sup>

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.<sup>47</sup>

Recently the court ordered for the compensation of all these suspects who were tortured and detained beyond the constitutional required time, by this it illustrates how courts have spear headed to curb down human rights violation thus protecting them and promoting them.

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46 <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

47 12 October 2016The Monitor (Kampala) Uganda: Outrage as Police Seek to Extend 2-Day Detention <http://africafirst.com/stories/201610120049.html>



## 5.2 Remand of suspects.

Remand is defined as a committal to custody especially when a trial is adjourned<sup>15,48</sup> 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<sup>49</sup> 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<sup>50</sup> 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.<sup>51</sup>

In due diligence the judicial officer handling a case in this manner will always discharge the accused person for want of prosecution<sup>52</sup> which is a discharge where a defense 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.<sup>53</sup>

## 5.3 Incommunicado detentions

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,<sup>54</sup> the constitution entitles every person to personal liberty.<sup>55</sup> 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<sup>56</sup>

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

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<sup>15</sup> [https://www.google.com/search?biw=1242&bih=562&q=remand&oq=remand&gs\\_l=psyab.3...0i20i264k1j0i67k112j0j0i67k113j0j0i67k112.28427.39286.0.39774.43.16.0.0.0.650.1163.5-2.3.0...0...1.1.64.psy-ab...41.2.1988.6..35i39k1.1340.rL6Cl7av-0k](https://www.google.com/search?biw=1242&bih=562&q=remand&oq=remand&gs_l=psyab.3...0i20i264k1j0i67k112j0j0i67k113j0j0i67k112.28427.39286.0.39774.43.16.0.0.0.650.1163.5-2.3.0...0...1.1.64.psy-ab...41.2.1988.6..35i39k1.1340.rL6Cl7av-0k)

<sup>49</sup> S. 128(3) MCA, cap 16

<sup>50</sup> Article 23 (6)(b) of the 1995 constitution of the Republic of Uganda

<sup>51</sup> Article 23 (6) (c) Ibid

<sup>52</sup> Section. 119 of MCA, cap 16

<sup>53</sup> section. 127 Ibid

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.<sup>16 57</sup>

### **Conclusion.**

The judiciary and the UHRC have tried so hard to see that these case of incommunicado detentions reduce, and most the time if the perpetrators are apprehended they must be penalized and compensation which is adequate is awarded by the victims by the courts, this if is done to held those who violate others Human rights personally liable this will create a fear and such cases will reduce.

### **5.4 Death Penalty.**

The case study of the case of **Susan Kigura & 416 Ors vs AG**, this case setup a precedent for the condemned group of personnels, who are on the death row, the courts brought up what really torture is, in reality of a person who is to suffer death, in the unanimous Judgment the judges said/held that if a person is imprisoned for more than **3 years** and is on the death row the punishment or sentence will revert from death sentence to Life imprisonment. since the delay to most of the judges was described as degrading in nature and inhumane treatment. But it must be noted that the death penalty sentence is still valid in Uganda laws since in the ratification of the second protocol of the ICCPR convention which orders a member state to stop and to abolish death penalty Uganda from its laws was not ratified, but however the judiciary revised it and they reduced on the number of offences which carry a maximum sentence of the death penalty.

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54 S. 117 prisons act, 2006 on arrest

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

56 Article 23 Ibid

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

## 5.5 Access to information<sup>17</sup>

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.<sup>58</sup> 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<sup>59</sup>

The courts have again and again asked the prison wardens to allow the suspects who come for trials to allow them to access information, like contacting their relatives to come as sureties in order for them to get bails and sometimes compel them to do so, I myself witnessed this when I was in court during my internship at the Chief Magistrates' courts at Makindye, the day before the suspect told the magistrate that he was denied a phone to contact his relatives to come to court, to resolve this the Magistrate ordered the Prison warden to avail the suspect with the phone in order to make a call for the sureties to attend court the next hearing and this was done and in that hearing the suspect was released on bail.

## 5.6 Conclusions.

The judiciary have played really a big and great role in observing, protection and promotion of the fundamental Human rights of the arrested and condemned group of people, but the state intelligences still deny these rights from these people, like for example the many who have been awarded compensation by courts still the state have not paid these compensations to these people. For example the Lord Mayor Elias Lukwago after being flogged by the police during his arrest when he was left in bad shape, the compensation the court awarded to him was like a sham, because nothing was paid to him. This must be considered and enforced, the state should try all possible ways to see that the Orders of the Courts are observed with due diligence.

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<sup>58</sup> Article 28 (3) of the 1995 constitution of the Republic of Uganda

<sup>59</sup> Article 23 (6 )(b) (c) of the 1995 constitution of the Republic of Uganda

## CHAPTER SIX<sup>18</sup>

### 6.0 Judicial Roles in protection and of the citizen's human Rights.

The importance of the Judiciary as one of the arm/organ of a democratic country like Uganda is to interpret Laws which are enacted by the Parliament, in doing so there comes a complex and an inevitable part of the law which is Human Rights.

In practice the Judiciary has played a great part in promoting and protection of the Citizen's human Rights, as we have seen from different discussions above that the main Perpetuators of the Human Rights violation are the Law enforcements Agencies, like Police, Army, Para-Military agencies and others, so the Judiciary has also been the last resort for the victims of torture to get redress.

In torture cases there is a committee which is established by the 1995 constitution of the Republic of Uganda as amended, the Uganda Human Rights Commission (UHRC), in its composition it's led by the qualified Judicial Officers and the chairperson must be a Judge of High court<sup>60</sup>, so at another hand it's like judicially at work but indirectly.

Freedom from torture and ill treatment is provided for in the 1995 Constitution of the republic of Uganda as a non-derogable right.<sup>61</sup> The Constitution further provides that it is not a right that can be derogated from, even in emergencies.<sup>62</sup> 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.

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<sup>60</sup> Article 51 (3) 1995 constitution of the Republic of Uganda

<sup>61</sup> Constitution of the Republic of Uganda, article 24

<sup>62</sup> 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.<sup>63</sup> This has been affirmed by local civil society organisations such as the African Centre for Treatment and Rehabilitation of Torture Victims<sup>19, 64</sup> 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.<sup>65</sup> 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.<sup>66</sup>

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 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.

<sup>63</sup> Human Rights Watch, UPR submission on Uganda, March 2011,

<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/HRW-HumanRightsWatch-eng.pdf>

<sup>64</sup> 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](http://www.actvuganda.org/uploads/1309243277_ACTV%202010%20Annual%20Report.pdf%20mail.pdf)

<sup>65</sup> 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.

## CHAPTER SEVEN

### 7.1 The prohibition and protection of the opposition Leader's' human rights against Violations by the state.

One of the major important freedoms for the opposition leaders is the protection of freedom of conscience, expression, movement, religion, assembly and association.<sup>67</sup>, but this has not been observed by the state agencies following incidents of house arrests and incommunicado detentions of different opposition leader during and after elections of different categories for instance:

Forum for Democratic Change leader<sup>20</sup> Dr. Kiiza Besigye 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 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 scrapped<sup>21,68</sup>

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.<sup>[125]</sup>

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

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<sup>66</sup> 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

<sup>67</sup> Article 29 of 1995 constitution of the republic of Uganda

<sup>68</sup> April 1, 2016

<sup>69</sup> Ntv Uganda 4, 1.2016 article on facebook

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.

## **7.2 Conclusions**

On this topic the courts have tried their legal best to show clearly that the rights of the opposition leaders have to enjoy are constitutional, they have awarded different remedies to different victims, and have gone further to suggest that Parliament must enact Laws which should held liable any Police officer or any Agent of the State who tries to Harm Another in Instance of exerting much power which improprieate in affecting arrests and taking decisions to the citizens.

## CHAPTER EIGHT

### 8.0 Recommendations and Conclusions.

#### 8.1 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 fulfill 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 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' Defense 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' Defense 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' Defense 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.

## **8.2 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 analyzed 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 analyzed.

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