

**THE ROLE OF MILITARY COURTS IN THE ADMINISTRATION OF
JUSTICE. A CASE STUDY OF MAKINDYE DIVISION IN UGANDA**

BY

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DECLARATION

I hereby declare that this research project is entirely my own original work, except where acknowledged, and that it has not been submitted before to any other university or institution of higher learning for the award of Diploma.

Signature.....

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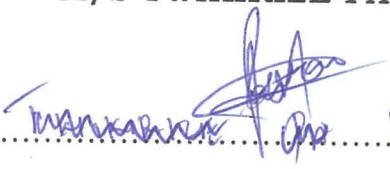
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APPROVAL

This research project has been submitted for examination with my approval as the University supervisor.

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Date:..... 18/10/2013

DEDICATION

The research project is dedicated to my parents Mr. Christian Kitakule and Jane Katushabe for their support and patience during my studies.

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LIST OF ACRONYMS

UPDF	Uganda People's Defence Force
NRM	National Resistance Movement
NCC	National Consultative Commission
IMF	International Monetary Fund
NRA	National Resistance Army
UNFR	Uganda National Rescue Front
FDMU	Federal Democratic Movement of Uganda
UNLA	Uganda National Liberation Army
NLC	National Liberation Council
ANC	Armee Natinale Congolaise

CHAPTER ONE

INTRODUCTION

1.0 Introduction

The administration of justice in the Uganda People's Defense forces (UPDF) has been a question of contention among academicians and political actors. Some of these have vehemently opposed the expeditious means of justice administration a system that is highly favored by men in the field. Most of the arguments have centered on the unconstitutionality of the extra judicial killings by past regimes for being a blatant violation of the human rights.

The topical of human rights and administration of justice in the Uganda People's Defense Forces (UPDF) is not new on this scene. However, to clearly grasp issues of human rights and administration in the setup of the army, it is important to look at the political and historical background of our country. The army shall consist of a regular force, regular reserve¹

1.1 Background

Uganda has been for a long time (51 years) of its existence since independence (9th October 1962) governed by army men². This fact put the army at the epicenter of Uganda's checkered political history.

A quick look at Uganda's history will be important for a clear understanding of the dynamics operation of the army since the country's independence.

¹ Section 3 of UPDF Act Cap 307 vol 12

² Understanding Uganda (New Vision magazine Uganda at 50) by New vision publishing company

Uganda got her independence in 1962 and its first election was held on 1st March 1961. Benedicto Kiwanuka of the Democratic Party became the first Chief Minister. Uganda became the Republic of the following year. In succeeding years, supporters of a centralized state viewed with those in favor of a loose federation and a strong role for tribally based local Kingdoms. Political maneuvering climaxed in February 1966 when Prime Minister Milton Obote suspended the all government powers, removing the position of President and Vice President. In September 1967, a new constitution proclaimed Uganda a Republic gave the President even greater powers and abolished the traditional Kingdoms.

On 25th January 1971, Obote's government was ousted in a military coup led by armed forces commander Idi Amin Dada. Amin declared himself President, dissolved parliament and amended the constitution to give him absolute power. Idi Amin's eight years of rule produced economic decline, social disintegration and massive human rights violation. In 1978, the International Commission of Jurists estimated that more than 100,000 Ugandans had been murdered during Amin's reign of terror.

In October 1978, Tanzanian armed forces repulsed an incursion of Amin's troops into Tanzanian territory. The Tanzanian army backed by Ugandan exiles waged a war of liberation against Amin's troops and Libyan soldiers sent to help him. On 11th April 1979 Kampala was captured and Amin fled with his remaining forces.

After Amin's removal, the Ugandan National Front formed an interim government with Yusuf Lule as president and Jeremiah Lucas Opira as Secretary General of the UNLF. This government adopted a ministerial system of administration and created a quasi-parliamentary organ known as National Consultative Commission (NCC). The NCC and the Lule cabinet reflected widely differing political views. In June 1978 following a dispute over the extent of presidential powers, the NCC replaced Lule with Geoffrey Binasisa. In a continuing dispute

over the powers of the entering presidency Binaisa was removed in May 1980. Thereafter, Uganda was ruled by a military commission chaired by Paulo Mwanga.

Obote ruled until 27th July 1985, when an army brigade composed mostly of ethnic Acholi troops and commanded by Lt Gen Bazilio Olara Okello, took Kampala and proclaimed a military government. Obote fled to exile in Zambia where he died. The new regime, headed by former defense force commander Gen. Tito Okello opened negotiations with Museveni's insurgency forces and pledged to improve respect for human rights, end tribal rivalry and conduct free and fair elections. In the meantime, massive human rights violation continued as the Okello government carried out brutal counter insurgency in an attempt to destroy NRA' support. Negotiations between Okello government and the NRA were conducted in Nairobi in the fall of 1985, with the then Kenya president Daniel Arap Moi seeking a cease fire and a coalition government in Uganda. Although agreeing in the late 1985, to cease fire, the NRA continued fighting and seized Kampala and the country in late January 1986, forcing Okello's forces to flee into North Sudan. Museveni's forces organized a government with Museveni as the president.

Since assuming power, the government dominated by the political grouping created Museveni and his followers, the national resistance movement has largely put an end to the abuse of human rights because earlier governments initiated substantial political liberalization and general press freedom and instituted broad economic reforms after consultation with the International Monetary Fund (IMF), World Bank and donor government.

In the northern areas such as Acholi land, there has been armed resistance against the government since 1986. Acholi based rebel groups included the Uganda People's Democratic Army and the Holy Spirit movement. Currently, the only remaining rebel group was Lord Resistance Army headed by Joseph Kony, which had carried out widespread abduction of children to serve as soldiers or sex slave.

Since its inception in 1986 the NRM government has been up a task of modernizing the army. A modernized army is one that respects human rights among other things. However, the new national army previously National Resistance Army renamed the Uganda people's defense force has faced great criticisms by certain sects of the public especially in the field of court marital justice administration in the UPDF from 1995 to the present. The reason for selecting this particular period of time is basically the fact that this is a time where we see major reforms in the army. From 1995 a great wave is seen in army as compared to more barbaric regimes that proceed this period. The period especially before 1986 witnessed a large scale human rights violation with the army being used as an instrument of terror.

Military history in Uganda

The military history of Uganda begins with the actions before the conquest of the country by the British Empire. After the British conquered the country there were various actions, including in 1887 and independence was granted in 1962. After independence, Uganda was played with a series of conflicts, most rooted in the problems caused by colonialism like any African Nation; Uganda endured a series of civil wars and coup d'états. Since 2000s in particular, the Uganda People's Defence Force has been active in peace keeping operations for the African union and the United Nations³.

1.2 Statement of the problem:

As noted above, throughout our checkered history the army has been used as an instrument of attaining and retaining power. To keep the population in utter royalty to the ruling government, the previous regimes indiscriminately decanted terror upon the public. Soldiers were given freedom to kill, rob and destroy at will. The army was ruled by law of jungle, so as to reverse this trend, the National Resistance Movement in its plan to modernize the army has

³ Post coloniality and the post colony

developed rules and regulations for the administration of justice in this rather had to rule institution.

Justice in the army was dispensed by the military courts through its relevant ranks as created by the UPDF Act Cap 307 vol 12⁴. The courts have different rules and regulations that govern their operation as opposed to ordinary courts. For example, they permit trial and sentencing which has been the center of controversy as was seen in the famous Kotido summary execution. On the other hand, the UPDF Act creates a different hierarchy of courts divergent from that under article 129 of the constitution. This according to human rights activists considered it a cover under which the military shield persons subject to military governance.

Though the government has tried to justify the above legal provision arguing that such procedures are relevant for keeping the security of the country in order, it has not found favor with a section of the population which that's is arbitrary. This research therefore seeks to investigate the administration of justice within the UPDF and establish its relationship; strength loopholes embedded therein and give the necessary recommendations for improvement of such administrations.

1.3 Purpose of the study

The researcher intended to examine the role of military courts in the administration of justice.

1.4 Objective of the study

1.4.1 General Objective

To determine the role of courts in the administration of justice.

⁴ Laws of Uganda 2000

1.4.2 Specific objectives

To determine with military courts follow the established legal principles in the dispensation of justice.

To find out procedures used in the administration of justice in the military

To find out the weakness in the judicial system of the military

1.5 Scope of the study

1.5.1 Subject matter

The study gives a general overview of the history of Uganda's military with specific reference being paid to the administration of justice in the military of former regimes. The study summaries the political history of Uganda in a bid to give a clear understanding of the operation of the army. The study puts special emphasis on those regimes when Uganda was purely ruled as a military state with the army being used as an iron hand of terror against civilians. The study further gives legal analysis of the administration of justice in the military paying particular attention to the adherence to stated rules and procedures. It concludes by high lightening the general challenges of justice within the forces and recommending the necessary change for improvement.

1.6.2 Geographical scope

The researcher focused on examining the role of military courts in the administration of justice in Makindye Division.

1.6.3 Time scope

The researcher took eight days carrying out this research.

1.7 Justification of the study

As indicated in the second section of this paper, through the government has made the greatest success in modernizing the army in a sense that it has reduced its terrorism of the civilian population, society still considers the administration of justice within the military as being attained with human

rights violation. The military has kept its administration more so its judicial system a secret thus keeping it a mystery to general society hence subjecting it to any kind of personal interpretation.

In addition to that, the army had continued to subject itself to judgment based on the checkered history of the military in Uganda. As a result, the population has looked at the military with utmost suspicion. The incoherent information on the operation of the military is accountable for the rational and irrational interpretation of the actions of the military.

There is thus need for research in this area so as to demystify the mystery behind the administration of justice in the military. There is need to unravel the secrets in the military judicial system so as to establish the challenges and areas for reform.

1.8 Literature Review

1.8.1 Introduction

This chapter represents the related literature by various scholars about the topic of human rights and justice administration in the UPDF's history is new in Uganda's literature. It should be noted that however there has been no comprehensive study on human rights and administration of justice in the UPDF. The available literature is mainly in form of newspapers, articles and reports from human rights watch dogs, case law and administrations. The chapter gives a historical analysis of administration of justice in the military since 1962 being the year of independence to 1986 when the contemporary Government took over power. It underscores the role of military justice in each of the many governments that held power between 1962 and 1986. This chapter is reviewing the past so as to rationalize the military justice system under the current government.

1.8.2 Relationship of the military/ Army with the Public

A member of the army shall not abuse, insult shoot at, beat or in any way annoy any member of the public, steal property or obtain goods by false pretence, take anything from a person without paying for its retain anything be borrows from any member of the public, kill any person etc⁵.

Any person subject to military law who conspires with any person, whether subject to military law or not to commit a service offence commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years⁶

In Uganda, cases related to the army or cases involving army men, they are handled or heard by court martial, as provided for under the UPDF Act Cap 307 Vol 12⁷. This is so in order to have justice done in a way that when one is found guilty, is convicted and sentenced and found not guilty, that he/she is acquitted.

This was seen in the case of Herbert Rwakihembo a soldier who shot his wife on grounds of adultery. A case was heard at church of Uganda primary school as the army court martial.

The divisional court martial of Bombo military Headquarters sentenced Herbert Rwakihembo for killing his wife, Irene Nakibirango plus Zaina Nassolo, Loyce Kawendeke and injuring Ali Bavawala⁸

The 32 year old soldier was sentenced to 30 years for killing his wife, 30 years for murdering Nasolo and another 30 years for killing Kawendeke without malice a fore thought and five years for attempting to kill Bavawala on 10

⁵ Section 14 UPDF Act Cap 307 Vol. 12.

⁶ Section 60 UPDF Act Cap 307 vol 12.

⁷ Laws of Uganda 2000

⁸ New vision 29th January 2003 Vol. 28 No. 21 pg. 5

December 2012 at Kisenyi Zone III in Luzira, Nakawa Division in Kampala. Rwakihembo who served as African Union Mission in Somalia will serve 35 years in jail. The court ruled that the convict will serve the sentences for the first 3 counts concurrently and thereafter serve other 5 years for attempting to murder.

The sentence was read by the court martial chairman, Col Geoffrey Kakama.

Muhumuza the lawyer to Herbert Rwakihembo said that they are to appeal against the sentence in General court martial. The sentence is illegal because the maximum sentence for manslaughter is life in jail which is 20 years.

Therefore, in the argument of Muhumuza, this was unjust and therefore there was no justice.

The constitution provides that, no penalty shall be imposed for a criminal offence that is severe in degree than the maximum penalty that could have been imposed for that offence at the time when it was committed.⁹ Therefore, court did not put this into consideration and also no justice.

The former chief of International Security Organization Brig Henry Tumukunde faced a life sentence coupled with dismissal from the defence forces with disgrace if he is convicted of charges of spreading harmful propaganda conduct prejudicial to good order and discipline, court said¹⁰.

Military court judge advocate Maj. Augustine Bwengendo summed up the case and gave a 10-member panel of military court one month to study the law and submissions of the state and defence by delivering an appropriate judgment for Tumukunde.

⁹ Article 28 (8) of 1995 Constitution of Republic of Uganda

¹⁰ New Vision March 15 2013 Vol. 28 No. 054

With the decision of the military court judge, agreed that there is administration of justice of which the accused was give his right of presumption of innocence until proven guilty¹¹. Any person subject to military law, who spread harmful propaganda, commits an offence and is, on conviction, liable to suffer death or life imprisonment¹². The offence was committed on May 5th 2005 when he was hosted on Radio One. He was charged by the same court on May 30th 2005.

The UPDF soldier accused of murdering 10 people at Bombo has been committed for trial by General court Martial at the murder scene close to the Barracks. The court chairman, Brig Fred Tolit fixed April 22nd, 2013 as date when the trial will start. Private Patrick Okot Odoch faced charges of murder after he, on March 8, reportedly attacked patrons at a local pub in Bombo central market with gun, killing five soldiers and six civilians on the spot as well as injuring two others.

“Your request is granted and the status for hearing this case is that the matter will be taken closer to the people of Bombo who have asked to be part of the trial and want to see how transparent we (UPDF) are,” said Tolit. We are people’s army and, therefore, we shall do what they have asked of us given the gravity of the matter. The people want to follow until justice is dispensed, “ he added.

During his last appearance before court on March 27 2013, he (Okot) pleaded guilty to murder charge and was removed to Luzira prison¹³. This shows that there is existence of justice in the military courts as argued above and do agree with the above information.

¹¹ Article 28 (3) (a) 1995 Constitution Republic of Uganda

¹² UPDF Act of 2005

¹³ New Vision, April 18 2013. Vol 28 No. 078. Pg 4

However there is also respect of the constitution as indicated by Tolit of which he agreed that the matter shall be handled in the presence of people. In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing¹⁴ which was done.

However, this is to ensure that justice seen to be done. On 23 January 1964 unrest in 2 companies of one of the army battalions at Jinja was put down by British troops. The mutineers were sent to prison for short terms.¹⁵

24th February 1966, two officers allegedly ordered the arrest of Prime Minister Milton Obote and attempted to raise a false alarm. They were later found guilty by a court martial and on appeal were released¹⁶. For this matter, the court martial in Uganda exercised justice by carrying out trials against the alleged and made its ruling and found guilty, however, on appeal, they were released. This reflects administration of justice by the military courts by conducting trials until one is found guilty or innocent.

In many instances, the military may well be closer to the people than the so-called elected "representatives" of the civilian governments they replaced. This theme of the professed oneness of the military and the masses in most consistently stressed throughout the writing of Mao tse trung.

Curiously, it is reflected in the growing tendency of Ghana's National Liberation Council to de-emphasize to military character of its seizure of power and to try to convince others that it was the verdict of the people.

Uganda's military has been transformed from abroad of bandits that terrorized citizens to an elite and highly professionalized people's forces¹⁷

Article 28 (1) constitution of Uganda 1995.

Conflicting images of the military in Africa by Keneth W. Grundy

Conflicting images of the military in Africa by Keneth W. Grundy

Understanding Uganda (Uganda at fifty magazine) printed by New Vision printing and publishing company.

The army has not every where been power hungry undisciplined or identified with anti popular cases. On the contrary, in many countries of Africa the military has played a positive role in economic development and political stability.

This has been serving as an example in country where army men have been always called upon to volunteer in any work that the government may need the involvement of the services to the community.

In countries like United Arab Republic (Egyptian portion only), Military courts have administered justice in such countries.16th January 1953-25, Army officers were arrested on charges of conspiring to overthrow the government¹⁸.

A military court on 20th January found Lt. Col. Muhammed Hushial-Damanhuri, who had been appointed Governor of the western desert after the July 1952, coup guilty of attempting to incite rebellion among the armed forces on 14 January and his brother Capt. Hasan Rifaal al- Damanhuri, guilty of failing to give information on the plot. The former was condemned to death and the latter to 5 years imprisonment and dismissal from the army.

30th March 1953, Rashal Mehanna, a well known moslem brotherhood supporter, was sentenced to 25 years imprisonment with hard labor for instigating a plot overthrow the government. Sentences ranging from one to 15 years were imposed upon 14 other military and civilian defendants¹⁹. However, there was some sign of justice to sentence such people for threatening peace and imposing war against the government, on the other side; court did not show justice in away that if one is tired of poor and bad government, he has a right to oppose it.

¹⁸ Ibid

¹⁹ Ibid

1.8.3 The new age of justice administration and the emergence of the NRM government

By mid 1985 the demoralized UNLA began to disintegrate. Obote's promotion of Opon Acak a junior officer from Obote's home region of Lango to army chief of staff alienated much for the Acholi dominated corps. The UNLA's failure to the defeat of NRM which had emerged as the strongest anti-government guerilla group widened the gulf between the army and Obote's regime. On the 27th July 1985, Brigadier Basilio Olara Okello and a small group of UNLA soldiers overthrew the Obote regime²⁰. The military had once again opposed civilian rule and decided to usurp the will of the majority for their personal benefits.

According to Okello, he launched the coup to stop the bloodshed, create conditions for viable peace, unity, development and promotion of human rights. Under the new government which ruled through a military council, General Tito Lutwa Okello became head of state and Brigadier Basilio Olara Okello invited all political parties and guerilla organizations to co-operate with the new regime. In august 1985, members of FEDEMU, FUNA, UFM and URNF agreed to this proposal thereby gaining representation on the military council. This alliance was only composed of weak groups but strongest for all being the NRM shunned the coalition. The war continued with acts of human rights violation being the order of the day until the military council was toppled in 1986. The leader of NRM having been parts of the former chaotic regimes was well acquainted with the dynamics of the Uganda military. The NRM put security and administration of justice within the military at the helm of its agenda²¹. The military had to respect war period, the NRM kept strict principles in the military²². The military had to respect villagers and had to pay for all the food they ate. Museveni had clearly understood and Uganda's military had been at a

²⁰ Uganda Since Independence

²¹ Uganda since independence

²² The mastered seed

center so its past violation. He realized that there was need for a strategy change if one had to consolidate power rather than giving the military unlimited power, the president decided to create a strong leadership over the military with the strict principles of justice.

1.8.4 Field court martial

The above court comprises of the Field Commander of the operation as the chairman and eight other members appointed in writing by the deploying authority before departure²³. A field court martial operates in circumstances where it is impracticable for the offender to be tried a unit disciplinary committee or division court martial.

Article 137 [5] of the constitution recognizes the special nature of a field court martial in that if a question as to the interpretation of the provisions of the Constitution for a decision. Again by clause 6 of article 121 of the Constitution the provision in that article relating to prerogative of mercy do not apply to convictions and sentences imposed by a Field court martial as a special court established to maintain law and order and military discipline in a field of operation where to employ at the same level with the field court martial thus it has unlimited jurisdiction to try any offence under the act.

1.8.5 General court martial

This has both original and appellant jurisdiction over all offences and persons under the Act²⁴. The composition of the General court martial for Defense Forces shall consist of the chair person who shall not be below the rank of lieutenant colonel, two senior officers, two junior officers, a political commissar and one commissioned officer all of whom shall be appointed by the command for a period of one year.

Section 78 UPDF Act Cap 307 vol 12.

Section 81 UPDF Act Cap 307 Vol. 12.

The General Court Martial Appeal Court. This hears and determines appeals from powers on who have been tried and convicted by a General Court Martial. It shall have revisionary powers in respect for any finding, sentence or order made or imposed by any summary trial authority or unit disciplinary committee to be exercised in accordance with the provisions of part 13 of the Act.

1.8.6 Court Martial Appeal Court

This hears and determines appeals from people who have been tried and convicted by a General Court Martial²⁵.

1.8.7 The legal status of military courts

The nature of military courts especially the Field Courts Martial has been a subject of debate and adjudication. The major question has been whether the Field Court Martial is a special court that should not be bogged down by appeal procedures of the civilian courts.

1.9 Methodology

1.91 Introduction

This section describes the research methodology and includes the research design, population study, sampling procedures and sample size, tool of data collection and data processing and analysis.

1.9.2 Research design

The study was used a cross sectional research design to evaluate the role played by military court martial in the administration of justice in relation to human rights. This is because data about the variables can easily be obtained from secondary sources at any one time.

²⁵ Section 84 of the UPDF Act Cap 307 vol 12.

1.9.3 Population study

The researcher targeted a population of 10 people of which include Uganda Police Forces, UPDF, Uganda Prisons Service and judiciary, Parliament and Ministry of Ethics and Integrity.

1.9.4 Sampling procedures

The researcher adopted two sampling techniques which included simple random sampling and stratified sampling, so as to acquire a good quality representative of few people from the entire population will provide reliable information.

1.9.5 Simple random sampling

The researcher used this method in order to avoid bias in the process of selecting the respondents from the group of possible respondents for the number needed for this study.

1.9.6 Stratified sampling

The researcher also used this method where group of possible respondents were arranged in different groups within the targeted population such as Uganda Police Forces, UPDF, Uganda Prisons, Service, Parliament, Judiciary and Ministry of ethics and integrity.

1.9.7 Sample size

From the six groups of people identified, include 2 from Uganda Police Force, 2 from UPDF, 2 from Uganda Prisons service, 2 judiciary and 2 from Parliament. Thus making a sample size of 10 members.

1.9.8 Tools of data collection

1.9.9 Questionnaire

The researcher used questionnaire method to collect primary data whereby the questionnaires will be distributed to various respondents within targeted population so as to get reliable and various views of respondents.

1.9.10 Interviews

The researcher also used interview method to collect data whereby structured interview will be used that is face to face questions will be asked to respondents. This is because the researcher will get more details through the use of probe questions.

1.9.11 Data processing and analysis

The researcher processed and analyzed the data by making references to the available literature in order to compare and contrast different opinions presented by different authors. The intervention will expose the gaps in the existing literature upon which the findings and recommendations will be based.

1.9.12 Limitation of study

- i. The researcher lacked enough money for transport, typing and printing and binding of the book
- ii. Lack of enough secondary data. The researcher lacked enough data.
- iii. Some respondents refused to give detailed information due to fear that they may lose their jobs.

CHAPTER TWO

LEGAL AND INSTITUTIONAL FRAME WORK

2.0 Introduction

This chapter contains and explores the legal and institutional framework relating to MILITARY COURTS and the conclusion by pointing out the different laws applicable to MILITARY COURTS disclosing the different provisions as to establishment, composition jurisdiction among others.

The chapter gives a brief discussion of different institutions involved and which cooperate with military courts in their daily activities the administration of justice would remain of disuse in the statute books with were good intentions worthy nothing but unenforceable. Thus the existence of such a legal and institutional frame work creates room for implementation of military courts activities.

2.1 The Constitution

The constitution²⁶ under National Objectives and Directive Principles of State policy, Objective I provides that all organs and agencies of the state all citizens, organizations and other bodies and person shall be guided by objectives and principles herein, in applying or interpreting the constitution or any other law and in taking and implementing any policy or decisions for establishment and promotion of a just, free and democratic society.

Objective II is to the effect that the state shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.

⁶ The Constitution of Uganda 1995 (as amended)

Objective III affirms that all organs of the state and people of Uganda shall work together to promote national unity, peace and stability.

Objective V provides or guarantees that state shall protect, respect and promote Human rights by providing them with adequate resources to function effectively.

Objective VI provides for gender balance and fair representation of marginalized groups.

Article 1²⁷ provides that all power belongs to the people who shall exercise their sovereignty in accordance with the constitution, while Article 2²⁸ provides for supremacy of the constitution, with binding force on all authorities and pronouns through our Uganda.

The Constitution expressly provides that, judicial power is derived from the people and shall be exercised by the courts established in the name of the people and in conformity with law and with the values, norms and aspirations of the people²⁹

Also Article 127³⁰ provides that people should participate in the administration of justice, by courts which duty is casted on military courts.

2.2 The UPDF Act

All military courts are established under the UPDF ACT.

2.2.1 Unit Disciplinary Committees and Courts Martial

There shall be a Unit Disciplinary Committee for each unit of Defence Forces which shall consist of a chairperson who shall not be below the rank of capital,

²⁷ Constitution of Republic of Uganda 1995

²⁸ Article 126 of Constitution of Republic of Uganda 1995

²⁹ Constitution of Republic of Uganda

³⁰ Ibid

the Administration officer of the Unit, the Political Commission of the Unit, the Regiment Sergeant major or company Sergeant major of the unit, two junior officer and one private³¹

2.2.2 General Court Martial

The General Court Martial is established under section 197 of the UPDF Act of 2005.

It shall consist of³², a chairperson who shall not be below the rank of Lieutenant colonel, two senior officers, two junior officers, a political commissioner and one non-commissioned officers of all whom shall be appointed by the high command for a provide of one year.

2.2.3 Jurisdiction of General Court Martial

The General Court Martial shall have unlimited original jurisdiction under the UPDF Act of 2005 and shall hear and determine all appeals referred to it from decisions of Division Courts. Martial and Unit disciplinary Committees³³

2.2.4 Court Martial Appeal Court

There shall be court Martial Appeal Court for the defence Forces, which shall hear and determine all appeals referred to it under the Act from the decisions of the General Court Martial³⁴

2.2.4.1 Composition

The court martial Appeal Court shall consist of³⁵ a chairperson who shall be an advocate qualified for appointment as a judge of the High Court of Uganda,

³¹ Kampala Law Reports Laws of Uganda Acts 2005

³² Section 195 of the UPDF Act 2005

³³ Section 197 (2) UPDF Act 2005

³⁴ Section 199 (1) UPDF Act 2005

³⁵ Section 199 (2) UPDF Act 2005

two senior officers of the Defence Force and two advocates, who are members of the Defence Forces.

The Quorum of the Court Martial Appeal Court shall be when an appeal against a judgment involving a sentence of death, fire members and in any other case, three members including chairperson³⁶

2.2.5 Field court martial

There shall be field martial courts / Field court martial which shall consist of the field commander of the operation as the chairperson and eight other members appointed in writing by deploying authority before departure³⁷

A field court martial shall only operate in circumstances where it is impracticable for the offender to be tried by a Unit Disciplinary committee or Division court Martial.³⁸

2.2.6 Decisions of Courts Martial Unit disciplinary Committees

The verdict of court martial or Unit Disciplinary committee shall be by majority opinion and when a decision is reached in that manner, it shall be binding on all members of the court concerned³⁹

It shall be an offence for any member who takes part in proceedings of court martial or Unit Disciplinary Committee to later disassociate himself or herself from some decision of that court and any body found guilty of that offence shall be dismissed from the court by the High Command⁴⁰

³⁶ Section 199 (4) UPDF Act 2005

³⁷ Section 200 (1) UPDF Act 2005

³⁸ Section 200 (2) UPDF Act 2005

³⁹ Section 201 (1) of UPDF Act of 2005

⁴⁰ Section 201 (2) of UPDF Act of 2005

2.2.7 Staff Court

There shall be at any proceedings of a court martial or Unit Disciplinary Committee the following officers appointed by the High Command or any other authority as may be authorized in that behalf by the High Command⁴¹

A secretary who shall record all the proceedings of the court and an advocate or, in the case of a Unit Disciplinary Committee, a Para-legal who shall sit on and advise the court during proceedings on the law and procedure and a prosecutor.

2.2.8 Jurisdiction of appellate courts

Any person or a party to the proceedings of a unit Disciplinary committee or court martial other than a field court martial who is not satisfied with its decision shall have the right to appeal to an appellate court or any or all of the following matters⁴²

- a) The legality or propriety of any or all the findings
- b) The legality of the whole or part of the sentences.
- c) The severity or leniency of the sentence

In case of a death sentence imposed by a court martial other than a field martial, the sentence shall not be executed until after the expiration of the time within which notice of intention to appeal against conviction may be given and, if notice of intention to appeal is duly given, the sentence shall not be executed until appeal has been determined or abandoned⁴³

⁴¹ Section 202 UPDF Act 2005

⁴² Section 227 (1) of UPDF Act of 2005

⁴³ Section 227 (3) of the UPDF Act of 2005

2.2.9 The Advocates Act

The constitution provides that the next-of-kin, lawyers and personal doctor of a person charged with an offence shall be allowed reasonable access to that person⁴⁴ and shall be permitted to appear before court in person or, at that person's own expenses, by a lawyer of his or her choice⁴⁵ An advocate means a person whose name has been duly entered on the roll and entitled to practice as such in Uganda under the law⁴⁶

2.2.10 The Amnesty Act

2.2.10.1 Grant of amnesty

A person shall be taken to be granted the amnesty declared under section 2 if the person⁴⁷ reports to the nearest army or police unit, a chief, a member of the executive committee of a local government unit, a magistrate or religious leader with the locality.

a) Renounces and abandons involvement in the war or armed rebellion.

b) Surrenders at any such place or to any such authority or person any weapons in his or her possession and is issued with certificate of amnesty as shall be prescribed in regulations to be made by the minister.

A person seeking to be granted amnesty under the Act⁴⁸

Amnesty means a pardon, forgiveness of punishment by state⁴⁹

Article 23(5) of the Constitution of Republic of Uganda

Article 28(3) of the Constitution of Uganda

The Advocates Act cap 267

Section 3 of the Amnesty Act cap 294

Amnesty Act cap 294

bid

CHAPTER THREE

FIELD FINDINGS ABOUT THE ADMINISTRATION OF JUSTICE BY MILITARY COURTS

3.0 Introduction

This chapter presents the field findings about status of military courts in the administration of Justice. Data were collected from soldiers, police men, Uganda prison service employees by means of questionnaire and interviews through an in-depth interview.

An interview guide was used to carry out interviews military, records were also consulted to established whether or not military court administer justice.

The findings are presented first and the discussion later in the chapter. The findings presented and discussed in this chapter provide an answer to research questions as seen in chapter one respectively.

Do military courts follow the established legal principles in the dispensation of justice?

3.1 Findings from military court record.

The records were consulted to establish how military courts had administered justice. Records for only three days proceedings, the researcher visited the court martial and records were considered.

Every suspect is brought before court for trial as the law under the constitution provides for a right to a pear before court for trial which is known as the right an order of habeas corpus⁵⁰.

Article 44 (d) of constitution of Republic of Uganda

Therefore, from the above information and evidence witnessed by the researcher at the court martial in Makindye, military courts have administered justice in Uganda.

Military courts have also administered justice in away that every person is presumed innocent until proven guilty.⁵¹ This is after various trials held in court where by a person to be convicted has to be tried and also found guilty. The punishment is also passed depending on the gravity of the offence and its nature⁵². Therefore this shows that military courts follow the established legal principles in the dispensation of justice.

Military courts follow the established legal principals in the dispensation of justice in a way that soldier (suspects) are treated like any other ordinary people during trial. Suspects in military courts also have a right to legal representatives known as lawyers⁵³ who have to be present during trial. Also the suspects have a right to be present during trial⁵⁴ have following the legal principles in dispensation of justice.

There also has been bail granting in military courts which are a constitutional right⁵⁵ to the suspect or any person appearing before any court.

Also the UPDF Act of 2005 has it clear that an officer or militant who has been remanded by a civil or military court or in detention other than by reason of a sentence of a court or is on bail shall be entitled to one-half of his or her case

⁵¹ Article 28 3 (a) of constitution of republic of Uganda

⁵² Article 28 (b) of Constitution of republic of Uganda

⁵³ Article 28 (3) (d) of constitution of Republic of Uganda

⁵⁴ Article 28 (3) (d) of constitution of Republic of Uganda

⁵⁵ Article 23 (6)

and shall acquittal, discharge by court or release, recover the balance of his or her basic pay⁵⁶

3.2 Procedures Used in the Administration of Justice in the Military

Military courts like any kind of court have different procedures used to administrative justice.

Military courts have administered justice using procedures that are recognized by laws of Uganda. This is done to ensure that justice is seen to be done in military courts.

Military court to ensure that justice is administered the suspect is arrested and then later produced to court for trial.

Witnesses are called upon to come and testify against the suspect. This is done to produce enough evidence to show that there is a case to answer. If the evidence is not satisfactory, then it means that the suspect has no case to answer and has to be acquitted.

Where a witness produces satisfying evidence against the suspect, for committal of the crime or against the case alleged against him, he is convicted and then sentenced.

Quorum is also an important aspect as procedure used in administration of justice. For example in the General Court Martial, members consist of a chairperson who shall not be below the rank of lieutenant, two senior officer, two junior officers a political commissioner and one non-commissioned officer all of whom shall be appointed by high command for a period of year⁵⁷

Sec 89 of UPDF Act 2005

S. 197 UPDF Act of 2005

3.3 Appeals

Appeal is a proceeding under taken to have a decision reconsidered by a high court authority especially the submission of a lower court's decision to a high court for review and possible reversal⁵⁸

A party to the proceeding of a Unit Disciplinary Committee or court martial other than a field court martial who is not satisfied with its decision shall have the right to appeal to an appellate court on any or all of the following matters⁵⁹

- a) The legality or propriety of any or all of the findings
- b) The legality of the whole or part of the sentence
- c) The severity or leniency of the sentence.

3.4 Bail

Bail is constitutional Right provided for under the 1995 constitution of the Public of Uganda.

Where a person is arrested in respect of a criminal offence, the person is entitled to apply to the court to be released on bail⁶⁰

In addition section 219 provides that a military court may grant bail to a person charged with a service offence on same considerations that govern bail granting in civil courts⁶¹

In exceptional circumstances, and on such condition as it may impose, the appellate court may grant bail pending appeal except in cases where the

⁸ Blacks law Dictionary page 105

⁹ S 227 UPDF Act of 2005

³ Article 23 (6)

¹ UPDF Act of 2005

appellant has been sentenced to death or to a turn of imprisonment exceeding five years⁶²

3.5 Courts Martial in the United States

Courts-martial in the United States are criminal trials conducted by the U.S military. Most commonly, courts-martial are convened to try the members of the U.S military to violation of the uniform code of military justice which is the U.S military's criminal code. However they can also be convened for other purposes, including martial law in an occupied territory.

Court martial are governed by rules of procedure and evidence laid out in the manual for courts- martial, which contains rules for courts martial military rules of evidence and guidance.

Courts-marital are adversarial proceedings, as are all United States criminal courts. That's, lawyers representing the state and the accused present the facts, legal aspects, and arguments most favorable to each side, a military judge determines question of laws, and the members of the panel (or military judge in a judge alone case) determine questions of fact.

3.6 The Nuremberg trials

The international military trials in Nuremberg began in November 1945 and lasted until August 1946⁶³ Twenty four major was criminals and six criminal organizations were indicated for conspiracy to commit crimes against peace, planning, initiating and waging was of aggressions, war crimes against humanity. Those indicated included Adolf Hitler's cabinet, the leadership of Nazi party, the Gestapo, and the general staff and High command of the army. Verdicts were announced on September 30th and October 1st 1946. Resulting in three acquittals, 12 sentenced to death by hanging and seven sentences to

⁶² UPDF Act of 2005 Sec 231

⁶³ www.wikipedia.com/RFA background war crimes Tribunals in History accessed on 25th February 2008

life imprisonment or lesser terms. The sentences of the death were carried out on the morning of October 16th, 1946.

3.7 Historical development

From the earliest beginnings of the United States, military commander have played a central role in the administration of military justice. The American military justice system, derived from its predecessor, predates the articles of confederation and the constitution. While military justice in United States has evolved considerably over the years, the convening authority has remained the instrument of selecting a panel for courts martial.

Tribunals for the trial of military offenders have coexisted with the early history of armies. The modern court martial is rooted in systems that predated written military codes and were designed to bring order and descriptive to amend and sometimes barbarous, fighting forces.

Both the ancient Greeks and the Romans had military justice codes, although no written version of them survives. Moreover, nearly every form of military tribunal included a trial before a panel of members of some type.

3.8 Principles governing the Administration of justice through military tribunals⁶⁴.

Establishment of military tribunals by constitution or the

Respect for the standard of International law.

Application of martial law

Application of humanitarian law

Jurisdiction of military courts to try civilians

⁶⁴ United Nations Economic and social council (DCAF 2011) published by DCAF

Jurisdiction of military tribunals to try minors and trial of prisons accused Of serious human rights violation guarantee of habeas corpus

Right to a competent, independent and impartial tribunal.

Public nature of hearing

Guarantee of the defence and right a just and fair trial.

Access of victims to proceedings

Non-imposition of Death penalty

Review of codes of military justice

3.9 Weakness in the judicial system of the military

18th July 2013 Egypt's president was overturned by the military amid popular protests on two occasions since the start of Arab.

In the past 3 years, wide scale protests against an Egyptian president began to destabilize the country with the demonstrations ending after an army intervention twice. To understand Egypt's current predicaments, its important to look and the differences and similarities between the cases⁶⁵.

In any governing establishment, there is legal legitimacy and popular legitimacy, ideally, the got together, but not always.

In most democratic regimes, the president despite popular legitimacy can have his legal legitimacy removed (by impeachment, for example).

A lawful leader's popular legitimacy might be questioned and he might call for early elections.

⁶⁵ ibid

Winning at the ballot box is never the only thing that courts, whether it should or not, there are always other variables. It is not often, nor should it be, that a military gets to be one of those variables.

In February 2011, Hosni Mubarak, under pressure from the military and popular protests, resigned as president and transferred authority to the armed forces, in a legally and procedurally problematic move.

A number of activities and other public figures had called for a road map to be put in place before he resigned, to avoid such legal quandaries on the route ahead although that would have been based on the assumption that the judiciary and legal process in Egypt have full integrity and consistency which is arguable, to say the least.

Early this month (July 2013), the military again, pressed the president to respond to the pressure of popular protests. A few things were certainly uncommon. For example, Muhammed Morsi had been voted president in a free vote unlike Mr. Mubarak, and had been in office for one year, as opposed to Mr. Mubarak who has been in power for 30 years.

3.10 Soldiers who rape, commanders who condone⁶⁶

Sexual violation and military reform in the democratic Republic of Congo⁶⁷.

This report from Human Rights watch looks at sexual violence committed by the Forces Armées de la République Démocratique du Congo (FARDC). It finds that sexual violence by FARDC continues despite the efforts of the government to international community and Congolese civil society. The DRC's military justice is a weak institution and has done little to bring perpetrators of sexual violence to justice.

⁶⁶ Human Rights watch 2009

⁶⁷ The Armed forces of the African States by Wood, David, 1966 Institute for strategic studies edition for English

The FARDC is one of the main perpetrators of sexual violence in the DRC, committing gang Rapes, rapes leading to injury or death and abductions. As an example, since its creation in 2006, the 14th brigade has committed many crimes of sexual violence in North and South Kivu.

Despite protests by victims, residents, NGOs and even politicians, Congolese military courts have done little to bring those responsible to justice.

Serious efforts have been done/made to fight sexual violence, including a nation wide campaign to raise awareness and push for an end to impunity. A sexual violence law has come into force, and the international criminal court has launched an investigation into crimes, including sexual violence, in the Kivus. The government donors and NGOs have taken steps, some times as part of broader security sector reform, to address the FARDC's poor human rights record. As a result, the military justice system has made some progress in dealing with sexual violence.

3.11. Despite the above effort, however, the military justice system remains a weak institution.

Only a small fraction of total number of acts of sexual violence committed by soldiers has been prosecuted.

Military prosecutions of sexual violence have focused on lower-ranking soldiers. No officer above to rank of captain has been convicted for sexual crimes.

Military commanders continue to be treated as untouchable by political and military leaders. They continue to protect their soldiers in many instances, obstructing the course of justice.

The Congolese government and its international partners should intensify efforts to prevent and punish sexual crimes by soldiers.

CHAPTER FOUR

FINDINGS ABOUT PEOPLES ATTITUDE TOWARDS ADMINISTRATION OF JUSTICE BY MILITARY COURTS

4.1 Introduction

This chapter presents the findings about the attitudes of the community members towards the administration of justice by military courts. It presents findings on community members' attitudes towards administration of justice by military courts.

What are the attitudes of people towards military courts in the administration of justice?

4.1 Community members' attitude toward military courts in the administration of justice.

Likert scale items were given to community members to find out their attitudes military courts in the administration of justice.

Their responses are presented below in a table where

1. Stands for strongly agree
2. Stands for strongly agree
3. Stands for disagree
4. Stands for strongly disagree

This was done in areas of Makidye, Central Police Station in Kampala and abalagala police station. I consulted various kinds of people including police officers, suspects in court cells and also other local people.

Table 1 community members' response on attitude test items.

Attitude test item	Number of respondents by rating			
	1	2	3	4
A person is innocent until proved guilty	25	43	-	4
Suspected offenders should be killed	3	7	17	45
Some people are arrested when they are guilty	22	39	4	7

The table above (table1) shows that;

Majority agreed or strongly agreed that a person is innocent until proved guilty.

Majority disagreed or strongly disagreed that suspected offenders should be killed.

Majority agreed or strongly that some people are arrested when they guilty.

Overall community evaluation of the military courts in the administration of justice.

Respondents were asked to state whether or not they were comfortable with military courts in the administration of justice.

and their responses are given in the table below (table 2).

Reasons for discomfort with military courts in justice administration.

Response	F	Percent
Yes	30	41.7
No	42	58.3
T/C	72	100.0

The table shows that majority (58.3%) of the respondents reported that they were not comfortable with the military courts in administration of justice.

During the discussion some respondents said that some offenders in the military (soldiers) who commit crimes are of higher ranks and they are not questioned for the offences done. It was agreed that some of them are just left without bringing them in court for trial. This weakens the administration of justice in military courts hence leading to obstruction of justice. This was argued out by Eliab Nampala a police officer at central police station in Kampala.

Some have influence among the people (quorum) of judges that are supposed to handle their cases. This is because the accused or suspect may be either a friend or relative to the person who has to determine the case brought before him. This was argued by Isiah Healinghope Stef a student at Kampala International University.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONN.

5.0 Introduction

This chapter provides the summary conclusion and recommendation to the serious stakeholders, including the policy makers and law reforms which can be useful for the sustainability and effective implementation of the UPDF Act Cap 307 Vol 12 and UPDF Act of 2005, other legislation and military courts in the administration of Justice.

5.1 Conclusion.

The investigation was embarked on with a view to analyze the operation of military courts and assessing their role in the administration of Justice. The exploration looked at military courts as a unit, its historical evaluation, legal and institutional framework and factors that affect it in administrating Justice (Weaknesses) in the judicial system of the military.

A number of authors concede that military courts exist as Courts martial, Field martial courts, General court martial Court Martial Appeal Court with jurisdiction within the precincts of their localities, handling army matters and soldiers' matters and other army related cases. The military courts however have not become the panacea to the problem of the inaccessibility of justice

here are several reasons for this;

1. In the first place there is the session of executive and judicial power in the same powers.

This inherently posed dangers to the proper administration of justice in the kind of society in which courts operate

Secondly it should be recognized that the courts still administer the basic principles of an alien law and this puts limitation in accessing substantive justice.

Military courts to a greater extent have promoted and administrated justice since a number of matters to which soldiers are a party have been handled and justice has been seen done.

However, some people on other hand are not satisfied with military courts since they delay judgments which may deny justice.

This was a complaint by citizens of Bombo town where court delayed to decide over private Patrick Okot's cases of murder which took place in March of 2013.

5.2 Recommendation

From the discussion, military courts have to/must handle cases within reasonable time so as to ensure that justice is administration.

There should be done something so as to improve the judicial system of the military for effectiveness on the administration of justice.

The military should extremely be excluded from the politics of the country. This will help to avoid instances that happen in most countries like Egypt to avoid blood shed.

Severe punishments should be given to soldiers who commit offences like rape, murder and other offences.

Officers of higher ranks should also be trial without any fear or favour in promotion of justice in military courts since no one is above the law this is in accordance with the constitution of the Republic of Uganda 1995⁶⁸.

⁸ Article 21 (1)

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