

FREEDOM FROM TORTURE, AN EXAMINATION OF THE LAW AND ENFORCEMENT OF
RIGHTS OF SUSPECTS AND DETAINEES IN UGANDA JUDICIAL SYSTEM

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DECLARATION

I, **Naluyange Jamirah** of Registration Number **1173-01032-12437** hereby declare that this research report has never been done by other universities and institutions. I do also declare that secondary information used has been duly acknowledged in this research.

Signature: Naluyange Jamirah

Date: 6/11/2018

Naluyange Jamirah

APPROVAL

I hereby certify that this work contained in this research report entitled, "freedom from torture, *An Examination of the Law and Enforcement of Rights of Suspects and detainees in Uganda Judicial System*", has been under my supervision and I have approved it for submission to the school of law of Kampala International University.

Signature: 

Date: 

Counsel Akampurira Enid

DEDICATION

This report is dedicated to my parents, especially my mum Mrs. Hadiija Nansereko Senoga for the kind, love and effort rendered to me.

ACKNOWLEDGEMENT

I do thank the Almighty Allah for granting me knowledge, life, grace and favour to be successful in this course of study.

I do thank my family for the ample time, facilities they have given me.

I do thank my supervisor Counsel Akamupurira Enid for the great work she has done for me.

I finally deeply appreciate Mr. Musasibwaki Noah for the time and help towards my success in this research and course at large, may god bless you abundantly.

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGEMENT	iv
TABLE OF CONTENTS	v
LIST OF CASES	vii
LIST OF STATUTES	vii
LIST OF ACRONYMS	viii
CHAPTER ONE	1
1.0 Introduction.	1
1.1 Background to the study.....	1
1.2 Statement of the problem	4
1.3 Major Objectives.	5
1.3.1 Specific Objectives.	5
1.4 Scope of the Study.....	5
1.5 Purpose of the Study	5
1.6 Literature review	6
1.7 Methodology	21
1.8 Targeted Population	21
1.9 Research Approach	21
1.10 Sample	22
1.11 Data Collection Techniques	22
1.12.1 Interviews.....	22
1.12.2 Questionnaires	22

1.12.3 Observation	23
1.13 Ethical Considerations.....	23
Conclusion	23
CHAPTER TWO	24
FOUNDING OF THE INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS (IRCT)	24
2.0 Introduction	24
2.1 The concept of torture in the modern times.	24
2.2 Forms of torture used in the modern days.	25
2.3 The impact of torture on human rights.	27
2.4 Effect of torture to human life.....	28
CHAPTER THREE	29
THE RIGHTS OF AN ACCUSED PERSON AND THE SUSPECTS IN UGANDA.	29
3.1 Introduction	29
3.2 Rights of an accused person and the suspects in uganda	31
CHAPTER FOUR	44
CAUSES OF TORTURE IN UGANDA	44
4.1 Political interference.....	44
CHAPTER FIVE.....	51
CONCLUSIONS AND RECOMMENDATIONS.....	51
5.1 Conclusion.....	51
5.2 Recommendation	52
REFERENCES.....	55
APPENDICES	57

LIST OF CASES

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

LIST OF STATUTES

1. Constitution of the Republic of Uganda, 1995
2. Criminal Procedure Code AcrCap 116
3. Evidence Act Cap 6
4. Magistrates Courts Act Cap 16
5. The Police Act Cap 30

LIST OF ACRONYMS

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

CHAPTER ONE

1.0 Introduction.

Torture in Uganda in line with the Constitution 1995 as amended it is prohibited no person should be tortured according to the law.

1.1 Background to the study

Torture is the act of causing great physical or mental pain in order to persuade someone to do something or to give information or to be cruel to a person. Torture may also be referred to the action or practice of inflicting severe pain on someone as punishment or in order to force them to do or say something. Torture is also the act of injuring someone or makes someone suffer in an effort to force that person to do or say what you want to be done or said. According to Cambridge advanced learners dictionary and Thesaurus. Under article 1 commits parties to taking effective measure to prevent any act of torture in any territory under their jurisdiction.¹

Torture has existed worldwide for ages but has received some attention in modern times. Torture more than any other form of human rights violation gives the most poignant meaning to the phrase "pure evil." **Article 2** of the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment in clause 2 states that there are no exceptional circumstances whatsoever whether a state of war or a threat of war, internal political instability or any other public emergency that may be invoked as a justification of torture.²

Under Article 2 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment states in paragraph I that each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

¹ United Nations convention Against Torture

² Article 2

Under Article 2 paragraph 3 provides that an order from a superior officer or public authority may not be invoked as a justification for torture. **Under Article 3 paragraph I** states that no party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.³

Under Article 3 paragraph 2 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment herein after referred to as Convention Against Torture (CAT) states that for the purpose of determining whether there are such grounds referred to in Article 3 paragraph I, the competent authorities shall take in to account all relevant considerations including where applicable, the existence in the state concerned of a consistent pattern of mass violations of human rights.

Under Article 4 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment in paragraph I states that each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by a person which constitutes complicity or participation in torture. This article also states that each state party shall make offences referred into in paragraph 1 made punishable by appropriate penalties which take in to account their grave nature. Remember Human rights are inherent entitlements to all human beings irrespective of their race, colour, and status.

It has been a subject of debate as to whether suspects, accused persons or convicts have any rights. I opine that all persons whether parties to a criminal case or not are equally entitled to their basic rights and strongly oppose the view that suspects and accused persons relinquish their rights by reason of their status.

I derive my authority from the provisions of the **Universal Declaration of Human Rights'** which provides that, "everyone is entitled to all the rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status . The World has

³ The United Nation Convention against Torture and Cruel, Inhuman treatment or degrading of 1984 ibid

overtime developed common values within the new diversified structures that have made it clear that all people deserve recognition and respect for their inherent human dignity.

It is a well established principle of law that an accused person has a right to be presumed innocent until proven guilty or upon his or her own plea of guilty. Strict interpretation of this right is that, an accused person has rights like any other law abiding citizen. This however doesn't mean that convicts don't have rights bearing in mind that some human rights are non derogable.⁴

In the Constitution of Uganda 1995, under Article 24 provides for respect for human dignity and protection from inhuman treatment. No person shall be subjected to any form of torture or cruel inhuman or degrading treatment or punishment.

Under article 44 provides for prohibition of derogation from particular human rights and freedom. That notwithstanding anything in this constitution there shall be no derogation from the enjoyment of the following rights and freedom.

- a) Provides for freedom from torture and cruel inhuman or degrading treatment or punishment, which is not being respected in Uganda.

It is so annoying that police and security forces in Uganda is the most group that violates the rights of suspects and accused. For example, the crash that took place in Kasese in 2017 where Mumbere was arrested with others, who were tortured and others killed. This left a big gap in respect of human rights. They were arrested in Nalufenya including the chairperson LC 5 Kasese and others who were injured.

Also in 2018 during Arua campaign and elections Bobi Wine (Hon. Kyagulanyi, Kyadondo east member of parliament) and Hon. Zake with other people were seriously injured to the extent that they were taken abroad for treatment, India and America. That had stoned the vehicle of the president which left many questions on the hearts of the people countrywide and worldwide.

⁴ Ibid

Because of politics in the country, people who are on the opposition side of the government are the most people who are being affected with this situation in Uganda.

The protection of human rights should practically be realized when all government agencies function in line, with the universal principles of human rights. The research seeks to examine the protection, promotion and enjoyment of these known human rights be accused persons before, during and after a criminal trial.⁵

1.2 Statement of the problem

Police and security forces in Uganda are responsible for maintenance of law and order. However, they remain the perpetrators of torture. The members of the public do not know how to react to arrest and do not question apparent excesses of the annotators. They thus become prone to torture. Also the courts in Uganda hardly concern themselves with how a prisoner came to court just like they do not concern themselves with how evidence was obtained. The investigating officers normally give hearsay evidence which is inadmissible. The prisoners conditions in Uganda are inhuman and degrading which affect their lives .This is seen when the suspect are arrested when their bodies are ok by the time they are presented in court they are having wounds. Thus the need for recommendations and refraction to ensure that the rights of members of the public are not infringed or undermined and that redress is afforded if the rights are infringed, particularly the rights of torture victims and prisoners against torture, inhuman and degrading treatment. As if it is not enough, to the rights of an accused person by various stakeholders in the criminal justice system is of paramount importance. Justice must not only be done to the victim but also to the accused person. Violation of rights of an accused person may even curtail access of the same to the victim. There is a lot of use of force by investigative organs sometimes resulting to incorrect confessions and misplaced convictions. It is against this background that it is fundamental to have strict adherence to the rights of suspects and accused persons and so is the research intended to suggest measures to be taken for that role.

⁵ The 1995Constitution of the Republic of Uganda.

1.3 Major Objectives.

To find out the rights of accused, arrests and suspects persons in Uganda.

1.3.1 Specific Objectives.

To find out causes of violation of human rights in Uganda

To find out some possible solution for the violation of human rights

To put forward the case for the necessity or importance of preventing torture and protecting torture victims.

To suggest a policy or strategy of strengthening the weakness sighted in the protection offered in order to attain a more effective means of protecting the people more so the torture victims.

1.4 Scope of the Study.

This study shall cover the geographical area of Uganda as the country. The protection offered to torture victims in Uganda, the nature of torture being perpetrated the study shall analyze the question as to whether the protection in Uganda is effective in achieving its sole purpose of eradicating torture.

1.5 Purpose of the Study

The main aim of the study is to find out the rights of an accused person, the causes of violations if any, and suggestions on possible solutions to such problems. However, during court proceedings an accused person has a right to object to such search where the search is illegal for want of a warrant of arrest.

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

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

1.6 Literature review

In attempting to answer the previous questions the study shall consider domestic legislations.⁶ He further argues that The traditional expedients of making the victim stand on one leg for a long time, waterboarding and other types of near-suffocation, electric shocks and sensory deprivation have all been surpassed by cleverer strategies designed not to kill or destroy victims, or to prolong their agony', but to ensure their survival in order to turn them into willing collaborators. If physical and mental torment is not enough, one can systematically deprive the victim of sleep, food and light while issuing cunning threats, then alternate all this with teal misuse of persuasion and the remedies of rewards. After varying lengths of time depending on the victim's endurance there arises a psychotic state in which victim no longer recognizes himself, and perceives himself as worthless⁷.therefor looking at the current forms of torture i seem to agree with **Dr. Marcelo .N .Vinar** on the fact that the traditional modes of torture have been surprised by more cruel modes.⁷

The frightening lesson is that the definition of modern torture cannot be restricted to physical torment anti temporary humiliation. The definition lies not in the technical aspects of the process but rather in the goal. Demolition by means of a variety of sophisticated methods selected for the individual concerned. In other words, reducing a human being to a state in which he has no control over his thoughts, depriving him of everything that defines him as an individual and, through intense pain and shame, gradually making him a puppet of his master. I stress that when speaking of systematic and sophisticated torture, we must not confine ourselves to listing the means of inflicting physical suffering this include extreme pain, hunger, thirst etc and

⁶ Anti-torture Act, the 1995 Constitution of Uganda, evidence Act and other international instruments such as the UN Convention Against Torture and other Cruel, inhuman and Degrading Treatment of 1984, The Universal Declaration of Human Rights and many more.

⁷ Dr. Marcelo .N .Vinar

psychological torment can include isolation, sensory deprivation, sleeplessness which, when methodically applied for a sufficient length of time, can turn a person into a shadow of his former self. What must be emphasized is the extent to which the suffering of even a few chosen victims can instill terror and panic in the entire target community.

He also suggested that The traditional expedients of making the victim stand on one leg for a long time, waterboarding and other types of near-suffocation, electric shocks and sensory deprivation have all been surpassed by cleverer strategies designed not to kill or destroy victims, or to prolong their agony, but to ensure their survival in order to turn them into willing collaborators, If physical and mental torment is not enough, one can systematically deprive the victim of sleep, food and light while issuing cunning threats, then alternate all this with techniques of persuasion and the promise of rewards.

After varying lengths of time depending on the victim's endurance there arises a psychotic state in which victim no longer recognizes himself, and perceives himself as worthless .therefore looking at the current forms of torture i seem to agree with **Dr. Marcelo N ,Vinar** on the fact that the traditional modes of torture have been suppressed by more cruel modes .

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when methodically applied for a sufficient length of time, can turn a person into a shadow of his former self. What must be emphasized is the extent to which the suffering of even a few dozen victims can instill terror and panic in the entire target community.

It is somewhat amazing to think of bracketing together such conflicting notions as medicine and torture. But they both have the power to pinpoint, focus on and render communicative this intimate space where latent ancestral fears, such as the dread of infinite pain, have always lurked. What frightens us is not so much dying, but something even worse: endless suffering. This is a motif for fables, literary phobias, children's tales and some religious myths from all ages in every part of the world. It is a universal fear which stays with us throughout our lives. Illness and torture make real and palpable a potential of which we have always been aware, which was there prowling around us, besieging us in silence, signaling one of the basic elements of the human condition. The sentient body and its expression in speech. Dread of the destruction of the message is tantamount to the destruction of the psyche. "Gantheret" and the hangman's victory means a return to unbearable memories. For this reason we find raw testimony obscene and psychologically indigestible; it prompts only consternation and alienation, and in these extreme situations there is no room for thought which requires a familiar representation of emotion. Evidence of torture, this manual also provides an international point of reference for health professionals and adjudicators alike.

During the past two decades, much has been learned about torture and its consequences, but no international guidelines for documentation were available prior to the development of this manual. The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. This manual includes principles for the effective investigation and documentation

of torture which if followed could help prevent torture cases and even abolish it in the long run

The right to be free from torture is firmly established under International law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment all expressly prohibit torture. Similarly, several regional instruments establish the right to be free from torture. The American Convention on Human Rights, the African Charter on Human and Peoples' Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms' all contain express prohibitions of torture.⁸

During the past two decades, much has been learned about torture and its consequences, but no international guidelines for documentation were available prior to the development of this manual. The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. This manual includes principles for the effective investigation and documentation of torture which if followed could help prevent torture cases and even abolish it in the long run.⁹

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⁸ Page paragraph 3, 2004 Istanbul protocol manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment

⁹ Rapp our has taken under his or her mandate and persistently draw attention to the importance of prompt investigation of torture allegations'

Convention for the Protection of Human Rights and Fundamental Freedoms' all contain express prohibitions of torture.¹⁰

Rapporteur pointed out in paragraph 136 that "both under general International law and under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States are obliged to investigate allegations of torture."¹¹

The Special Rapporteur urges the competent national authorities not only to provide comprehensive information on the case but also to carry out an independent and impartial investigation concerning the case transmitted and to take immediate action to ensure that no further violation of the human.

Discussing his concern about torture practices, the Special Rapporteur pointed out in paragraph 136 that "both under general international law and under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, States are obliged to investigate allegations of torture".²⁰ again it may be inappropriate to perform a full genital or anal examination without a general anesthetic. Furthermore, the examiner should be aware that the examination itself may be reminiscent of the assault and it is possible that the child may make a spontaneous outcry decompensate during the examination.

Another source of literature review is the book *upstanding torture: law, violence, and political identity* by John T. Parry is an extremely powerful intervention in the field of Torture studies John .T. work lies in an ability to effortlessly move from law, to liberal theory, to post colonial studies in diverse contexts to help understand torture.

The central argument of Parry's book is that torture is not aberrati0na rather it is already a part 'and parcel of the modern liberal state. As Parry puts it, ". . .torture understood colloquially and broadly instead of as a strictly defined tend of art is already part of the modern state's coercive apparatus" This statement brings us jediately to the

¹⁰ Under paragraph 21 of the report, the Special Rapporteur emphasized this recommendation in his report of 9 January 1996 ²⁴ Discussing his concern about torture practices, the Special.

¹¹ The Special Rapporteur emphasized this recommendation in his report of 9 January 1996.²⁴

relationship between law and violence, and specifically law and torture. While acknowledging that law is actually meant to "channel and regulate" the violence 27, Parry ultimately argues that law in its various forms "will likely fail" to regulate state violence rights theory that is closely related to the protections against torture, he argues, in fact, that rights are constitutive of the modern state's ability to construct the individual and subjects, and therefore cannot be understood as adequate constraints on the state's powers. I concur with Parry on his assertion that torture is already part and parcel of us this is witness was torture and limits the location of the actions to a prison. Avoid asking questions with lists, as this can force the individual into giving inaccurate answers if what actually happened does not exactly match one of the options. Allow the person to tell his or her own story, but assist by asking questions that increase in specificity.

Courage the person to use all his/her senses in describing what has happened to him or her. Ask what he or she saw, smelled, heard and felt. This is important, for instance, in situations where the person may have been blindfolded or experienced the assault in the dark.

Torture can impact a child directly or indirectly. The impact can be due to the child's having been tortured or detained, the torture of parents or close family members or witnessing torture and violence. When individuals in a child's environment are tortured, the torture will inevitably have an impact on the child, albeit indirect, because torture affects the entire family and community of torture victims. A complete discussion of the psychological impact of torture on children and complete guidelines for conducting an evaluation of a child who has been tortured is beyond the scope of this manual. Nevertheless, several important points can be summarized. If a child has been physically or sexually assaulted, it is important, if at all possible, for the child to be seen by an expert in child abuse. Genital examination of children, likely to be experienced as traumatic, should be performed by clinicians experienced in interpreting the findings. Sometimes it is as appropriate to videotape the examination so that other experts can give opinions on the physical findings without the child having to be examined. Para of

the Istanbul protocol manual of the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment 2004 unlawful combatant" to emerge as possible unprotected persons. Similarly, while Common Article 3 of the Geneva Conventions provides minimum protections to all persons, it is supposed to be applicable to "conflicts not of international character" that the war on terror was not interpreted to be. Parry does acknowledge the argument of other commentators that the combination of additional Protocols to the Geneva Conventions could be used to apply Common Article 3 to all persons; he notes nonetheless that these protections are lower than those provided by the Geneva Conventions as a whole. Furthermore, he suggests that for almost all relevant international laws including the UN Convention against Torture, there is a lack of clarity on the definition of torture and CIDT that greatly restricts the ambit of these laws.

In Parry's analysis of the U.S. law, He explains how the entire process of ratification of the International Convention on Civil and Political Rights (ICCPR) and the UN Convention against torture and CIDT was so fraught that it ultimately ended up undermining the significance of international law in the U.S. legal system. He points to how the impact of these laws was limited to practices outside the United States, that these were not self executing and bound by pre existing constitutional safeguards thereby making them primarily "rhetorical acts." Thus, he writes, "Both documents are 'the supreme law of the land' ... yet as ratified, they can hardly be called law, they are defined as redundant as a kind of non law or at least as needless law".

Parry points here both to the definitional ambivalences within the laws but also to the limits placed by the scope of the laws. This in my opinion explains why there are still acts of torture being committed by U.S either secretly or publicly.

Here he puts forward the understanding that unlike a natural law based, Kantian, or liberal notion of rights, he considers rights to be based on positive law, emerging from sovereign authority, and, he argues that these rights are constitutive of the relationship between the state/sovereign and its subjects. "Rights thus have a double edge, for they

confine even as they liberate, expose even as they protect, and confirm the power of states and other institutions every time they are invoked”

Analyzing a range of philosophers from Michael Walzer and Carl Schmitt to Giorgio Agamben, Parry notes that for each of them, there are limits to abstract rights whether in terms of distributive justice, in the economic sphere, or in terms of inscribing state power on bodies of citizens. Here, he makes the provocative argument that “liberal, critical, and authoritarian theorizing inevitably converge in contemporary political discourse”. For him, consequently, a critique of rights theory explains the crucial argument that the use of torture and state violence is actually consistent with the rule of law and the rights discourse, not constrained by them.

Colonial and Imperial imperatives also play a constitutive role in this torture narrative, a less explored aspect of torture studies. Utilizing post colonial sites such as India, Algeria, and Kenya, Parry points to the continuities between the colonial and the post colonial in modern democracies such as Britain and France both in terms of acts of torture but also the imperatives behind the violence that of controlling the natives. Thus, he makes the very important point that torture in democracies has existed both in the past and the present and often the practices are hidden or performed outside and thereby termed as exceptional³⁵ He then uses that framing to understand the U.S. and its imperial past and present. The main argument is not just that there is an exception that gets created in the colonial context due to the imperative of state control but such a &amewo gets re created in post colonial or non colonial contexts as well such that they are a part and parcel of the modern state’s power” Gambian” and are generally seen in all kinds of governments that’s to say liberal and Non Liberal Governments. But most of all, the subjects of such violence are often the colonial subjects but in other non colonial and post colonial contexts, they include all marginalized others. In the U.S., the affected encompasses internally the Native Americans, the blacks, the inmates at the maximum security prisons, the detainees and the immigrants, and on the outside were the Filipinos, the Latin Americans, and the Vietnamese. Hence, Parry notes that “bare life” aka Agamben becomes extendable to all. Here the relationship between law

and exception is also notable. For Parry, although torture usually appears in a "met discourse of exception" associated with "states of emergency," since the exception is also a part and parcel of routine laws, that helps annualize the former and is often upheld by judicial decisions or legislations.

Parry's biggest contribution is that he challenges a central myth regarding torture, of torture being an aberration, and an exception in modern states; instead he points to the centrality of torture in liberal governance. Torture, for Parry "sits on a continuum of violent state practices, where the use of these focus of violence by modern states as a way of regulating populations is far more significant than whether 'torture' is the particular form of violence used. While democracies focus on the hidden aspect to make torture appear exceptional, the techniques, the defences, and ambiguities in law actually point to the pervasiveness of the acts. Absolute rights against torture and laws regarding torture that are often assumed to be adequate are exposed by Parry as being limited. His arguments are persuasive at many levels. However, some questions do emerge from his provocative formulations and I note a few of these below in the spirit of carrying forward a conversation that has continued with Parry over the years.

First, Parry notes and critiques the rhetorical quality of certain laws, and treaties, and I wonder whether those rhetorical aspects do have a more serious role to play than Parry acknowledges, namely that it forces the state to constantly negotiate the parameters of violence and innovate and justify forms of violence in response to internal and external critiques. Thus, the state is violent but also has to find ways of taming that violence such that egregious acts and justifications have to be withdrawn, thereby, implying that rhetorical acts play a role of ensuring some forms of accountability.

My second concern is regarding his provocative point about the adequacy of laws and rights. About laws, I share Parry's critiques regarding ambiguities within laws and the challenges concerning their ability to serve as protections against torture. However, often times, Parry comes close to saying that law is entirely incapable of playing that role. For instance, at one point, he writes, "... I doubt that law provides a meaningful

language for talking about torture at all” however i can not dispute the fact parry notes instances where law has the possibilities of providing ones protections.³⁸

However, in a context where laws and rights have been considered as the final protections against torture, such that democracies claimed themselves to be free of such violence, Parry’s book is a reminder of the flaws of this perspective and while conversations regarding the particular questions noted above will continue, his provocative work is undoubtedly an outstanding contribution to the understanding of torture.¹²

Also this report acts as a source of literature review to this research paper, Moldova report on torture, Discrimination and Impunity Amnesty International submission to the UN Universal

Moldova has made progress towards improving the protection of human rights by ratifying a number of International Human Rights Conventions, and by making changes to some of its legislation to bring it closer in line with International Human Rights Standards. An article criminalizing torture in line with the Convention Against Torture was added to the Criminal Code in 2005. In 2008 a progressive new Law on Assemblies came into force. The law, drafted after extensive consultation with civil society, requires organizers of public events only to inform local authorities of the event, but no longer seek permission, and assemblies of fewer than 50 individuals can meet spontaneously without notification. In June 2008 a draft Law on Preventing properly understood as “drug detention centers” in China, Cambodia, Vietnam, and Lao pdr 443. More than 350,000 people identified as drug users in these countries are estimated to be currently detained for periods of months or years in the name of drug “treatment” and “rehabilitation.”⁴ In addition to people who use drugs, homeless people including street children, people with psychosocial disabilities, and sex workers are also held in such centers. Detention in government centers in the name of “treatment” and “rehabilitation” also takes place in other countries. According to the Thai Ministry of

¹² Periodic Review, October 2011.

Foreign Affairs, from October 2008 to June 2009, there were an estimated 9,287 people in compulsory drug detention centers in Thailand. As of 2007, the Malaysian government reportedly operated 28 compulsory drug centers across the country with an average occupancy of between 600 and 1,500 residents.⁶ In Indonesia injecting drug users can be legally detained for up to nine months before sentencing,⁷ and in Singapore people who use page this proves the fact that torture is almost in all countries Amnesty International bring out the torture being promoted under the disguise of treatment and rehabilitation in Countries mentioned here in before.

In an effort to fight torture the United Nations special Rapporteurs on torture 11 and health 12 have also spoken out against abuses in drug detention centers. The director of the Drug Policy Coordination Unit of the European Commission, said, "I believe that these types of centers are an abomination."¹³ In March 2012, 12 UN agencies issued a joint statement unequivocally calling for the closure of drug detention centers and the release of detained individuals "without delay. Among the agencies that issued the statement were the World Health Organization (WHO), the United Nations Program on HIV/AIDS (UNAIDS), the UN Children's Fund (UNICEF) the International Labor Organization (ILO), and the United Nations Office on Drugs and Crime (UNODC). The statement was an important step that should be followed by concrete measures on the part of the United Nations, international donors, and the governments operating these centers. If the issue of torture is to be resolved.

In spite of such calls for closure, little practical progress has been made towards ending the arbitrary detention of drug users and expanding effective, community based, voluntary drug dependency treatment. Many international donors continue to fund activities inside drug detention centers, effectively helping to build the capacity of the centers, reducing operating costs, and maximizing centers' profits.

Human Rights Watch continues to call on the governments of China, Cambodia, Vietnam, and Lao pdr to close down these centers permanently and to conduct an

¹³ In March 2012, 12 UN agencies

immediate, thorough, and independent investigation into torture, ill treatment, arbitrary detention, and other abuses in drug detention centers. UN agencies and international donors should echo this call and support efforts to close drug detention centers and work with these national governments to expand access to community-based, voluntary drug dependency treatment.

¹⁴In March 2012 UN agencies issued a joint statement unequivocally calling for the closure of drug detention centers and 'the release of detained individuals "without delay." The statement is an important step that should be matched by concrete measures on the part of the United Nations, international donors, and the governments operating these centers.

For international donors, the need to insist on tangible and time bound steps towards closure is particularly . Page Torture In The Name of Treatment, human rights abuses in vietnait. China, Cambodia, and Lao pdr by human rights watch pressing in those countries such as Vietnam and Lao pdr where International funds continue to support programs and activities in drug detention centers 'following this report the Human Rights Watch Organisation gave the following suggestions to the governments of China, Cambodia, Vietnam and Lao pdr ¹⁵:- Release current detainees in drug detention centers, as their continued detention cannot be justified on legal or health grounds, Penitently close drug detention centers,

Carry out prompt, independent, and thorough investigations into the use of torture, cruel, inhuman or degrading treatment or punishment, and other human rights abuses and criminal acts. Such reports play fundamental role in bringing to light the evil of torture, the perpetrators and also possible recommendations .There for acting as a source of literature.

REDRESS In Its Report Torture in Uganda a Baseline Study On The Situation Of Torture Survivors In Uganda contributed as a source of literature as examined below: REDRESS

¹⁴ In March 2012, 12 UN agencies

¹⁵ Rights Watch Organisation gave the following suggestions to the governments of China, Cambodia, Vietnam and Lao pdr ¹⁵:-

49 an Organization which works internationally to obtain justice for survivors of torture and related crimes and end impunity for governments and individuals who perpetrate it, and to develop and ensure compliance with international standards. The Organization provides specialized legal assistance to Page 20 Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by human rights watch Page 21 Torture In The Name of Treatment, human rights abuses in Vietnam, China, Cambodia, and Lao pdr by human rights watch.

Individuals and communities in securing their rights, conducts advocacy with governments, parliament International Organizations and the media and works in partnership with like- minded Organizations around the world.

Basing on the report Uganda ratified the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment in 1986 and is party to a number of other regional and international treaties that outlaw torture and other forms of ill-treatment. Despite this, reports of torture in Uganda continue. When the United Nations Committee on Torture, the body which oversees States' compliance with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment considered the initial report of Uganda in May 2005, amongst its conclusions and recommendations it noted "the continued allegations of widespread torture and ill-treatment by the State's security forces and agencies, together with the apparent impunity enjoyed by its perpetrators" ... and recommended that the Ugandan Government "Take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims. This helped a lot in exposing the situation of torture in Uganda and as a result lead to the passing of the anti torture bill hence contributing to the development of torture law in Uganda victims, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment does not contain this provision, although the earlier prohibition against torture in article 7 of the International Covenant on Civil and Political Rights stipulates

that "no one shall be subject without his free consent to medical or scientific experimentation." The human experiments conducted by the Nazis during World War II would fall under this category.

Whether the definition of torture encompasses judicial corporal punishment, amputation, branding and various forms of flogging, including whipping and caning or the death penalty, is a contested issue. Article I of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, often referred to as the UN Convention against Torture, excludes "pain or suffering arising only from, inherent in or incidental to lawful sanctions".

Some states have used this provision to argue that legally authorized criminal penalties resulting in physical pain do not constitute torture. Moreover, they claim that this wording by its very existence legitimizes the use of the death penalty or corporal punishment. Opponents disagree saying these provisions are without prejudice to other International Treaties which safeguard the right to life and the security of a person. In fact, in some cases, International and Regional Institutions have found that certain forms of corporal punishment do amount to torture or inhuman and degrading treatment.

This means that every person, including an accused person, has human rights, no matter who he is, where he lives or his class, race, sex, age, social status, etc. Some of the rights are inalienable meaning that they cannot be taken away from a person. However some of these rights are not absolute and can suffer derogation⁴. This means that the enjoyment of human rights may be restricted or limited in certain circumstances. For example, all people have the right to liberty, the right to practice any profession, occupation, trade or business, the right to freedom of movement, etc. But these rights are restricted when one goes to custody. Such restrictions or limitations are lawful and in line with the Ugandan Constitution and the application of international human rights law. Accused persons or people who have been sentenced lose some of

their rights, such as freedom of movement, but they keep other rights such as the right to dignity.

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

Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or she understands, of the nature and cause of the charge against him or her. **Under the Constitution of the Republic of Uganda 1995, Article 28(3)b**

The information includes details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused. The accused must be informed in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release. Under the Constitution of the Republic of Uganda 1995, Article 28(3)c.

An accused person also has a right to remain silent after arrest. under www.wikipedia.org (accessed on September 2011). This doesn't mean that he or she should not cooperate with the police. An accused person should allow the necessary investigations to be conducted. It is a noble obligation of every citizen to facilitate ends of justice. An accused person should permit fingerprints, hair samples, photographs, DNA etc. when necessary. An accused person ought to allow the police to conduct a search on his premises.

However, during court proceedings an accused person has a right to object to such search where the search is illegal for want of a warrant of arrest. In the determination of any criminal charge against a person, or of a person's rights and obligations,

everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

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

These rights ought to be enjoyed without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status^o. It is of paramount importance to examine whether these rights are adhered to or not in Uganda. This is because justice must not only be done to the victim but also to the accused person.

1.7 Methodology

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

1.8 Sample

Sample refers to those persons who were selected from the target/study population to be interviewed by the researcher to generate the relevant information to be used as an input and analyzed to come up with the study findings. Accordingly, a total of 40 persons, i.e. ten suspects, ten investigators and five human rights activists and 15 members of the public were selected to represent the target population as the respondents of the study.

1.9 Data Collection Techniques

The study was based on primary data and data collection techniques involving use of interviews as main instruments to enhance and give quality to the findings. Interviews were a useful tool through which data was acquired by reading the perceptions and

feelings while collecting data. The researcher ensured that interviews were impressive to eliminate bias.

1.9.1 Interviews

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

1.9.2 Questionnaires

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

1.9.3 Observation

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

1.10 Targeted Population

Target population is a population that was sampled from whom information was gathered to conduct the research. The target population was ordinarily citizens resident of Kampala district, suspects, convicts, prison wardens, police officers, accused at police station and prisons.

1.11 Research Approach

The research approach followed in this study was a qualitative one. Qualitative research is multi method in focus, involving an interpretive, naturalistic approach to its subject matter. The qualitative researcher herein studied aspects in their natural settings,

attempting to make sense of or interpret the whole phenomenon by collecting a variety of empirical materials- case study, personal experience, introspection, life stories and interviews, observational, historical, interactional and visual texts.

1.12 Ethical Considerations

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

Conclusion

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

CHAPTER TWO

FOUNDING OF THE INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS (IRCT)

2.0 Introduction

In response to the growing need for global support and assistance in the rehabilitation of torture victims, the International Rehabilitation Council for Torture Victims (IRCT) was founded in 1985 initially as the International as an independent organization. Of IRCT but since 1987 as an independent organization¹⁶. Today the IRCT promotes and supports the rehabilitation of torture¹⁷ victims and the prevention of torture through nearly 200 rehabilitation centers and programs around the world. In addition, the IRCT works closely with health professionals' organizations

Torture victims were not aware of their rights at this stage and most of them shifted away www.mrct.org worldwide including the WMA, WCPT, WPA and the ICN. The IRCT recognizes the critical role and responsibility of medical and health professionals in the rehabilitation of torture victims and prevention of torture.

2.1 The concept of torture in the modern times.

Modern sensibilities have been shaped by a profound reaction to the man crimes and crimes against humanity committed by the axis powers in the second world war, which have led to a sweeping international rejection of most if not all aspects of the practice even as many states engage in torture, a few wish to be described as doing so either to their own citizens on the international community. Anxiety of devices bridge this gap including state denial, secret police, need to know a denial that given treatments are torturous in nature, appeal to various laws national or international throughout history and today many states have engaged in torture, albeit un officially.

¹⁶ the international rehabilitation council for Torture victims (IRCT) Was founded in 1985

2.2 Forms of torture used in the modern days.

Psychological torture. The number one criterion for American torture is that it must have no physical marks and psychological torture. Certainly qualifies whether U.S.A officials are threatening to execute a prisoner's family or just falsely claiming that the leader of his terror cell is dead hard to its imagine a form of torture that is more effective or easier to get away with than a steady diet of missing- information and threats.

Article use of torture in rent times Wikipedia the free encyclopedia. America torture techniques by Torn head about.com guide

Sensory deprivation. Is a forms of torture were a victim is locked up in a room for a long time When your locked up in a cell it's already remarkably easy to lose track of time eliminate all noise and light sources or, as was done to the Guantanamo prisoners at one point, simply bind, blindfold and eanual a prisoner into temporary oblivion and life becomes a hellish, sanity- destroying expensive. Whether prisoners subjected to long term sensory deprivation can still tell fiction from reality is of course, another question.

Starvation and thirst. Maslow's hierarchy of needs identify basic physical needs as the most fundamental. More fundamental than religion, political ideology or community. A prisoner who is being given enough (unpleasant) food and water to survive, but only just can go as long as a week before looking physically thinner- but will soon find that his or her life revolves around the quest for food.

Sleep deprivation. Studies have shown that missing a night's sleep temporarily drains 10 points from a person consistent sleep deprivation through harassment exposure to bright rights and exposure to loud, jarring music and recordings can drastically impair judgment.

Water torture is one of the oldest and most common forms of torture, came to the U.S with the 1st colonialist and has cropped up many times since then. In the latest

incarnation water boding a prisoner is trapped down to a board and then drunken in water until nearly drowned, then brought back, gasping to the surface, the interrogation repeats the procedure until the desired result is obtained.

Palestinian Hanging (aka Palestinian crucifixion) this form of torture, referred to as "Palestinian hanging government against Palestinians, involves binding the prisoner's hands behind his/her back. Often fatigue sets in, the prisoner will inevitably fall forward putting full body weight on the shoulder and impairing breathing. If the prisoner is not released, death by crucifixion results such as the fate of us prisoner mandrel al-January in 2003.

Sweat boxes.

In this form of torture sometimes referred to as "hot box" or simply as "the box". The prisoner is locked up in a small, but room which due to lack of ventilation, essentially functions as an oven. 'When the prisoner cooperates, he or she is finally released, long used as a form of torture within the United States (most recently against one Alabama activist in 1998). It is particularly effective in the arid Middle East.

Sexual assault and humiliation.

Various forms of sexual assault and humiliation documents in U.S prisons as forms of torture included forced nudity, forcible smearing of menstrual" blood on prisoners faces, forced lap dances and forced homosexual acts on other prisoners.

Torture in Uganda.

Reports by civil society groups indicate torture in Uganda continues to be widespread. An example was the 20 year armed conflict in the north of the country and also as part of the regularly actions of the police and security forces. Although torture is practiced against people accused of ordinary crime, political opponents and terrorists suspects are said to be more at risk of torture than detainee. A number of cases reported to NGO's concern prisoner are sighted out for actual or alleged political activities, other cases

concern rebel groups and their supposed followed, but in many cases the individuals alleging torture are simply accused of treason or terrorism with no named, allegiance to particular group.

Reports by NGOs indicate a wide spread use of torture especially in "safe house" the name given to unauthorized place of detention. Detainees commonly report severe beatings during interrogation as well as use of physical torture including threats as well as showing live threats as well as showing them other persons who have been tortured and have visible marks to instill fear and / or a compliance.

Torture methods commonly used in Uganda include "Kandonya" this means tying the feet and hands behind the victim, suspension from the ceiling while tied up, "water torture" "Liverpool" this is done by forcing the victim of life face up, mouth open while the tap is turned on into the mouth. Severe beating with metal rods, pistols fists, sticks with nails, also death threats including.

2.3 The impact of torture on human rights.

Torture has very adverse effect to the victim both physically and mentally which effects in the long run violate fundamental and non derogable human rightness seen below; Torture can lead to serious Physical condition such as being sexually impotent or no libido weak; cannot lift heavy objects; loss of memory; lack of sleep. Besides that, it can also bring about Mental impact: bad-tempered; always worried and easily scared; life has been shortened disabled scared to go out at night because might be arrested again; feel sick and worried.

Incapacity to earn a living; loss of property; lack of financial security as a result of injuries and unable to earn as before; lack of capital to get back on feet; deterioration of life.

Social isolation: feel people know what happened to them but do not care; feel separated from their families; loss of employment because of what happened; feel they are outsiders stigmatized in village and don't fit in; still scared; avoid noisy places and

meetings; isolated; would like to live where not known; do not feel free in public places. This violates the right of freedom of association and movement.

Torture usually leads to Forced Confessions and Illegal Prosecutions in a report by the human rights watch several former detainees told Human Rights Watch that RRU personnel forced them to sign statements under duress, while the detainees were being beaten or threatened with further violence. None of those whom Human Rights Watch interviewed had been brought before a court within the constitutionally mandated 48 hours. In most cases, they were denied access to family or lawyers, in breach of the law.

People arrested by RRU are most often held in the unit's headquarters in Kireka, Kampala. They are usually then handed over to the military authorities to face trial before military courts. In 2009, the country's constitutional court held that military courts do not have jurisdiction over.

2.4 Effect of torture to human life

1. It brings wounds on accused persons which may result into death due to lack of proper treatment he/she may die due to tetanus.
2. The victims may lose their popularity in the society due to lack of respect.
3. Accused persons may also develop negative attitude towards their lives and this may lead to suicide.
4. The victims may persist to cause danger to the society even though they were innocent because they were tortured, thus making the country unstable in terms of security.
5. Torture may lead people to being disabled psychologically and physically, thus affecting their families.

Effect of torture on statement made by the suspects or accused at police station. The statement made by them under torture can be ejected, denied (nulled) which means that it will not be accepted by the court.

CHAPTER THREE

THE RIGHTS OF AN ACCUSED PERSON AND THE SUSPECTS IN UGANDA.

3.1 Introduction

They are provided under article 28, 23 and 44 in the constitution of Uganda 1995 as amended. Human rights derive from the inherent dignity of the human person. Every law enforcement official shall in the pursuit to fulfill the duty imposed on them at all times respect and obey the law by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Law enforcement officials shall not commit any act of corruption. They shall rigorously oppose and combat all such acts. All stakeholders shall respect and protect human dignity and maintain and uphold the human rights of all persons.

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

Uganda is a party to a number of international and regional treaties that impose legal obligations on Uganda regarding the conduct of law enforcement personnel and treatment of detainees. These include the International Covenant on Civil and Political Rights (ICCPR),⁵ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, The GA. Res. 2200A (XX 1), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Uganda June 21, 1995. the United Nations Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment (Convention against Torture),⁶ 1(Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, GA. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987 ratified by Uganda, November, 3, 1986. and the African Charter on Human and People's Rights⁷.

(ACHPR).⁷ African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CABILEG/67/3 rev. 5, 21 I.L.M. 58(1982), entered into force October 21, 1986, ratified by Uganda May 10, 1986. The rights that these treaties protect include the absolute prohibition on use of torture or other forms of inhuman or degrading treatment on any detainee, the right of detainees to be held in humane conditions and treated with dignity, the right to liberty and security, which includes a prohibition on arbitrary detention, and the right to due process and a fair trial. Various instruments further elaborate the standards with which Uganda is expected to comply as a party to these treaties. These include the Standard Minimum Rules for the Treatment of,¹⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,⁹ African Commission on Human & Peoples' Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in these Trial en.html (accessed February 21, 2011).

Court decisions reinforce these core rights, which are also incorporated into, and reflected in, Uganda's Constitution. For example, under the constitution, a criminal suspect must be kept in a place that is authorized by law.¹⁹

The accused person is not to be subject to torture or cruel, inhuman or degrading treatment, although torture is not currently criminalized in law. There are references to the prohibition of torture in various laws, such as the Anti-Terrorism Act. However, despite evidence that torture has occurred during interrogations of terrorism suspects, there has never been a prosecution for torture under this provision.

¹⁸ *Prisoners' under standard minimum rules for the treatment of prisoners, adopted Aug. 30, 1955, by the first united nations congress on the prevention of crime and the treatment of offenders, u.n.*

¹⁹ In the constitution of the republic of Uganda, 1995, art. 23(2)

3.2 Rights of an accused person and the suspects in Uganda

Right to liberty and security

The Government of Uganda shall ensure that the right of everyone on its territory and under its jurisdiction to liberty and security of person is respected. The Government must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause. The government shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention. Uganda should likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms. Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, it must ensure that they are not kept in custody pending their trial. ***As it is provided under***²⁰. However, release may be subject to certain conditions or guarantees, including the payment of bail.

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

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her. The suspect is further entitled immediately upon arrest

²⁰ *Foundation For Human Rights Initiatives vs The Attorney General Constitutional Petition No. 20 of 2006*

to be informed in a language he or she understands, of the right to legal representation of his or her choice and the facilities available to exercise this right. A suspect has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place the person is kept in custody.

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

Right to be informed promptly of the offence charged

Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or she understands, of the nature and cause of the charge against him or her.²¹

The information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint

²¹ . Under the Constitution of the Republic of Uganda 1995 Article 28(3)b.

against the accused. The information should be in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release.

Right to humane treatment:

The State has an obligation to ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for the inherent dignity of the human being.²²

The state must ensure that no person, lawfully deprived of his or her liberty is subjected to torture or to cruel, inhuman or degrading treatment or punishment. Special measures ought to be taken to protect women detainees from ill-treatment, including making certain that their interrogation is conducted by women police or judicial officials. Women should at all times be detained separately from men and while in custody they shall receive care, protection and all necessary individual assistance — psychological, medical and physical, that they may require in view of their sex and gender. It is prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him or her to confess, to incriminate himself or herself or to testify against any other person.

A detainee while being interrogated shall not be subjected to violence, threats or methods of interrogation which impair his or her capacity of decision or his or her judgment.

A suspect or an accused person in custody should not even with his or her consent, be subjected to any medical or scientific experimentation which could be detrimental to his or her health

Right to be informed promptly of the offence charged

A person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or

²² The Constitution of the Republic of Uganda 1995 Article 24.

she understands, of the nature and cause of the charge against him or her²³. The information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused. The information should be in a manner that would allow him or her to prepare a defense and to take immediate steps to secure his or her release. present arguments and evidence and to challenge or respond to opposing arguments or evidence; an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings; an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body; an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the judicial body; an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions; and an entitlement to an appeal to a higher judicial body.

In the interest of effective delivery of justice, an accused person is entitled to be tried by before an independent tribunal. The independence of judicial bodies and judicial officers is guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities. Judicial bodies are established by law to have adjudicative functions to determine matters within their competence on the basis of the rule of law and in accordance with proceedings conducted in the prescribed manner. There ought not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law. In order to achieve independent tribunal, it is necessary to ensure that the process for appointments to judicial bodies is transparent and accountable. Any method of judicial selection should safeguard the independence and impartiality of the judiciary. This necessitates the criteria for appointment of judicial officers to be based on integrity, appropriate training or learning and ability.

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

An accused person to criminal proceedings before a judicial body is entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt. The impartiality of a judicial body can be determined on the basis of three relevant facts: (i) that the position of the judicial officer allows him or her to play a criminal role in the proceedings; (ii) the judicial officer may have expressed an opinion which would influence the decision making; (iii) the judicial official would have to rule on an action taken in a prior capacity.

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

Right to counsel

Accused has the right to defend him or herself in person or through legal assistance of his or her own choosing. ²³Legal representation is regarded as the best means of legal defense against infringements of human rights and fundamental freedoms. The accused even has the right to be informed, if he or she does not have legal assistance, of the right to defend him or herself through legal assistance of his or her own choosing.

²³ The constitution of Uganda 1995.

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

Accused has the right to choose his or her own counsel freely. This right begins when the accused is first detained or charged. In capital cases, a judicial body may not assign²⁴ counsel for the accused if a qualified lawyer of the accused own choosi¹ ²⁵The Constitution of the Republic of Uganda 1995 ng is available. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer, without delay, interception or censorship and in full confidentiality is sufficiently proficient in the language of the judicial body. The right to an interpreter applies at all stages of the proceedings, including pre-trial proceedings. The right to an interpreter applies to written as well as oral proceedings. The right extends to translation or interpretation of all documents or statements necessary for the defendant to understand the proceedings or assist in the preparation of a defence. The interpretation or translation provided shall be adequate to permit the accused to understand the proceedings and for the judicial body to understand the testimony of the accused or defence witnesses. The right to interpretation or translation cannot be qualified by a requirement that the accused pay for the costs of an interpreter or translator. Even if the accused is convicted, he or she cannot be required to pay for the costs of interpretation or translation.

Right to trial without undue delay

Any person charged with a criminal offence has the right to a trial without undue delay. The right to a trial without undue delay means the right to a trial which produces a final judgment and, if appropriate a sentence without undue delay. Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties,

²⁵ The Constitution of the Republic of Uganda 1995

the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings.²⁶

The right to access court records and prosecution exhibits.

All information regarding judicial proceedings is supposed to be accessible to the accused and the general public, except limited information or documents that have been specifically determined by judicial officials not to be made public under **Juma and Others vs Attorney General (2003) AHRLR 179** ²⁷

The Right to be present at the hearing

Under criminal proceedings, accused has a right to be tried in his or her presence under article 28(5). The accused has the right to appear in person before the judicial body. The accused may not be tried in absentia. If an accused is tried in absentia, the accused shall have the right to petition for a reopening of the proceedings upon a showing that inadequate notice was given, that the notice was not personally served on the accused, or that his or her failure to appear was for exigent reasons beyond his or her control. If the petition is granted, the accused is entitled to a fresh determination of the merits of the charge. The accused may voluntarily waive the right to appear at a hearing, but such a waiver shall be established in an unequivocal manner and preferably in writing.

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

²⁶ The Constitution of the Republic of Uganda 1995

²⁷ juma and others vs attorney general (2003) ahrlr 179

The State has an obligation to ensure that: any person, whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body; any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities.²⁸

Right of civilians not to be tried by military courts:

The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel. While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines. Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts^{29, 30}

Right to be brought promptly before a judicial officer:

Anyone who is arrested or detained on a criminal charge has a right to be brought before a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. This is important in order to: assess whether sufficient legal reason African Commissions on Human Rights: Principles and guidelines on the right to a fair trial and legal assistance in Africa exists for the arrest; assess whether detention before trial is necessary; determine whether the detainee should be released from custody, and the conditions, if any, for such release; safeguard the well-being of the detainee; prevent violations of the detainee's fundamental rights; give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights. The accused person who is under arrest or detention has right to take proceedings before a judicial

²⁸ The 1995 Constitution of the Republic of Uganda

³⁰ According African Commissions on Human Rights: Principles and guidelines on the right to a fair trial and legal assistance in Africa

body in order that that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.³¹

The Right to Habeas Corpus

The right to habeas corpus though not usually invoked by the suspect or accused person, its exercised for the benefit of the suspect or accused person. In brief it a right on part of any persons concerned or interested in the well-being, safety or security of a person deprived of his or her liberty to demand knowing the whereabouts of the detainee. The interested persons have the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of such a person and/or identifying the authority ordering or carrying out the deprivation of liberty. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

Judicial bodies shall at all times hear and act upon petitions for habeas corpus, and no circumstances whatever must be invoked as a justification for denying the right to habeas corpus.

Right to be detained in a place recognized by law:

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

³¹ The Constitution of the Republic of Uganda 1995

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

The right to apply for bail

The Ugandan Constitution also provides for a right to bail under article 23(6). The Supreme Court affirmed a constitutional right to bail in 2009 for all civilians, whether before military or civilian courts.^{32, 33}

Ruled that the General Court Martial is not exempt from the constitutional requirement to comply with the provisions on entitlements to bail. The case was brought by 27 individuals suspected to be members of the Peoples Redemption Army (PRA), a Congo-based rebel group charged with treason by the general court martial. For more than two years, the military refused to obey High Court orders for the suspects to be granted bail and access to their lawyers or families. In practice, accused persons are rarely released on bail. Instead, in the civilian court system, defendants are detained for an indeterminate period of time until the case is committed to the High Court for trial. This delay is partly due to the huge backlog of cases in the courts, hut also gives the prosecution time to fully investigate the case against the accused. In practice defendants accused of serious crimes are prevented from exercising their right to bail during the investigative stage which usually lasts for at least six months—because they are brought periodically before a magistrate’s court, which does not have jurisdiction over the case, and so cannot hear a bail application.

³² The Constitution of the Republic of Uganda 1995

³³Attorney General v Tumushabe Constitutional Appeal Number 3 of 2005

The right not to be compelled to testify against himself or herself

The accused has the right not to be compelled to testify against him or herself or to confess guilt. Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or admission obtained during incommunicado detention shall be considered to have been obtained by coercion. Further, silence by the accused may not be used as evidence to prove guilt and no adverse consequences may be drawn from the exercise of the right to remain silent.

The right to cross-examine adverse witnesses

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

The prosecution shall provide the defense with the names of the witnesses it intends to call at trial within a reasonable time prior to trial which allows the defendant sufficient time to prepare his or her defense. The accused's right to examine witnesses may be limited to those witnesses whose testimony is relevant and likely to assist in ascertaining the truth.

The accused has the right to be present during the testimony of a witness. This right may be limited only in exceptional circumstances such as when a witness reasonably fears reprisal by the defendant, when the accused engages in a course of conduct seriously disruptive of the proceedings, or when the accused repeatedly fails to appear for trivial reasons and after having been duly notified.

The testimony of anonymous witnesses during a trial will be allowed only in exceptional circumstances, taking into consideration the nature and the circumstances of the offence and the protection of the security of the witness and if it is determined to be in

³⁴ her according to James Soawabiri and Anor vs Uganda Criminal Appeal No 5 of 1990 .

the interests of justice. Evidence obtained by illegal means constituting a serious violation of internationally protected human rights shall not be used as evidence against the accused or against any other person in any proceeding, except in the prosecution of the perpetrators of the violations.

The right to appeal

The right to appeal is not automatic but rather a creature of a statute. Everyone convicted in a criminal proceeding shall have the right to review of his or her conviction and sentence by a higher tribunal. The right to appeal shall provide a genuine and timely review of the case,³⁵ including the facts and the law. If exculpatory evidence is discovered after a person is tried and convicted, the right to appeal or some other post-conviction procedure shall permit the possibility of correcting the verdict if the new evidence would have been likely to change the verdict, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to the accused. A judicial body shall stay execution of any sentence while the case is on appeal to a higher tribunal.

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

³⁵Attorney General v Tumushabe Constitutional Appeal Number 3 of 2005³⁵ ³⁵

Right to seek pardon

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

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

CHAPTER FOUR

CAUSES OF TORTURE IN UGANDA

4.1 Political interference

Political interference in the judicial system occurs when those in political power use their influence (including military threat, intimidation or bribery) to force or induce a court official to act and rule according to their interests and not in accordance with the application of the law. Political interference also occurs when judicial appointments, salaries and conditions of service are manipulated, allowing those in political power to have leverage over judges, prosecutors and court staff, thereby creating a judicial system which is pliant and deferential. Judges can be forced to stand down or reassigned from sensitive positions; they may not be promoted or may be physically intimidated or harmed. Political interference also includes the application of immunity laws to judges. While corrupt judges can sometimes shelter behind outdated immunity laws, in the absence of an immunity law independent judges may become the target of vexatious cases mounted by the political authorities. Contempt laws can be used in a similar way to hound independent judges out of office, or protect corrupt ones unjustly.

However, it refers primarily to bribes that are demanded from, or given by, civil society actors, including vulnerable and low-income citizens who can ill afford to pay them. Every official in the system a judge, court administrator or police investigating officer can potentially solicit bribes for services that should be provided as a matter of normal duty.

Recently ,Honourable Bobi Wine Kyagulanyi and others were torture and injured by the police in Arua while coming from complaining for another person after the death of **Honorable Abiriga** with bullets it was alleged that they had to through stones on the one of the vehicles of the president.

Corruption

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

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

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

A country is responsible for a human rights violation when it can be shown that its actions (or failure to act) do not conform with the requirements of international or domestic human rights norms. To determine whether a particular corrupt practice violates a human right, therefore, it is first necessary to establish the scope and content of the human rights obligation in question and whether it derives from domestic law,

³⁶ according to oxford English dictionary, 1978, page 1024 to 1025

international treaty, custom, or general principles of law. Human rights obligations apply to all branches of government (executive, legislative and judicial) at all levels (national, regional and local).

The right to a fair trial is established in the constitution Republic of Uganda 1995³⁷ and several human rights treaties ratified a³⁸nd domesticated by the state. It is composed of a broad range of standards that provide for the fair, effective and efficient administration of justice. These standards address the administration of justice including the rights of the parties involved, the efficiency of procedure and the constitution of effectiveness. It should be noted that, when referring to the scope and content of the right to due process, we are applying standards that human rights supervisory bodies have developed on the basis of treaties that are binding on states that have ratified them. Some important "soft law" standards are also relevant — like the Bangalore Principles of Judicial Conduct established by the Judicial Integrity Group. "Soft law" standards do not have the same binding authority as treaties.

In the context of the judicial system, corruption may be defined as "acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain. "Private benefit" includes both financial or material gain, and non-material gain such as the furtherance of professional ambition. This definition of judicial corruption covers a wide range of acts carried out by actors at different points in the judicial system (the judiciary, the police and prosecutors). For example a prosecutor may be paid a bribe to manipulate evidence that would otherwise lead to the conviction of an innocent suspect. A court official may be paid a bribe to allocate a case to a harsh judge, to lose defense exhibits, or to delay the hearing of a case Police can be bribed to tamper with criminal evidence Prosecutors can be paid to bring a case forward or to assess the evidence in an unfair manner. Any actor within the judicial

³⁷ in the constitution Republic of Uganda 1995

³⁸ under section 78 of the magistrate court Act.

system is acting corruptly if he or she applies inappropriate influence affecting the impartiality of the judicial process. Such acts imply a direct violation of the right to due process against a suspect or an accused person.

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

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

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

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

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

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

Appointments should be based on personal qualifications, moral authority and competence; if they are influenced by corrupt interests, the judiciary is likely to become less able as well as less independent, and the rights of those who apply to the justice system will not be fully protected. In addition, corruption affects the administration of justice and the right to a fair trial when corrupt acts take place before a case reaches court, often at the investigation level. The police may manipulate evidence in favour of one of the parties, for example, or a prosecutor may alter the facts of a case. This is not a minor issue.

Military Interference

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

This personality was a presidential candidate in Uganda's presidential elections held in 2001 immediately after the election³⁹, allegations were made that he was collaborating with rebel movements operating in western Uganda at the time. Besigye was rendered a fugitive after going to South Africa for exile. Between the year 2003 and the beginning of 2005⁴⁰, a number of alleged rebels including 22 others who were subsequently charged along with Besigye, were caught in various places in the Democratic Republic of Congo (DRC) and Uganda. The Government alleged that they had linkages with the Peoples' Redemption Army (PRA), a rebel movement that had also been associated with Besigye. The 22 were detained in various military establishments around the country and were never charged or tried in any court of law until Besigye's return in late 2005. These 22 detainees were arbitrary and unlawfully deprived of their inherent rights probably for political reasons. It raises eyebrows of a reasonable man as to why the government would detain suspects for a period of 3 years for no good reason then charge them immediately after the return of an Opposition leader. By necessary implication this was a clear case of political manipulation intended to give Political results. Dr Besigye was charged with another offence of rape allegedly committed in 1997. However the High Court acquitted him and termed his prosecution as persecution. In his judgment, while quoting Lord Brougham's speech in support of Queen Caroline, **Justice Bosco Katutsi** held that "the evidence before court was inadequate even to prove a debt; impotent to deprive of a civil right; ridiculous for convicting of the pettiest offence; scandalous if brought forward to support a charge of any grave character; and monstrous if to ruin the honor of a man who offered himself as a candidate for the highest office of this country"⁴¹.

As the hearing was proceeding, armed security personnel dressed in black raided the court premises, and surrounded the holding cells in which the successful bail applicants were waiting to be released. As a result of this action, the bail papers could not be processed. The armed personnel who subsequently came to be dubbed "Black Mambas"

⁴¹ On November 16th, 2005. The accused were taken to the high court for a bail application before justice Lugayi fourteen of the accused were granted bail.

by the media entered into some of the offices and interrupted the court's normal duty of processing bail. The accused were thus returned to prison. While addressing Journalists during a weekly cabinet press briefing, **army spokesman, Major Felix Kulaigye, informed the public that the Black Mambas** had been deployed to re-arrest the suspects in case they had been granted bail by the High Court, in order to ensure that they faced new charges that had been brought against them in the General Court Martial.

Lack of trained security personnel who are able to handle suspects and accused persons in lawful manner can be also the cause of torture in Uganda.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

In conclusion therefore, it can be stated that there at times when the rights of an accused person are indeed not absolute for example although an accused may have a right to legal representation this is not absolute, a trial cannot be held up definitely to allow an advocate to find his own suitable time to appear and represent the accused. This implies that court cannot sit at the convenience of advocates.

Although the law emphasizes presumption of innocence especially criminal offence, there seem to be certain offenses, which are of a strict liability an offence such that, once one is caught in the breach of it there is no way out. Here the accused's rights are not absolute in such cases of strict liability; there is no presumption of innocence as proof beyond reasonable doubt. Strict liability falls under statutory offence.

Furthermore although these rights for an accused to get bail this right are not absolute.⁴²

The writer Freedom of torture, an examination of the law and enforcement of rights of suspects and detainees in Uganda Judicial system. The chapter also lays out the limitations to the law protecting the victims. Subsequently we intend to look at the prevailing circumstances which may demand for stronger legal protection of victims of torture through extending the legal protection and removing the existing barriers.

Therefore, it is imperative that Uganda obliges with the demands of international legislation advocating for the abolition of torture completely in the world hence the is need for more effort to be put toward the protection of individual's form torture inhuman, cruel and degrading treatment if human rights of the masses are to be upheld

⁴² under section 78 of the magistrate court Act.

the chapter also tries to put forward possible salutations that can be adopted to improve protection of individuals from torture in Uganda as examined below: -

5.2 Under Article 21 of the constitution of Uganda amended

In criminal offences, suspects and accused should be given legal representatives to guide them. This is because ⁴³under Article 21 of the constitution of Uganda provides for equality and freedom from discrimination: so, once suspect committed capital offences are given lawyers, then why is it that other suspects neglected from being given lawyers? This shows inequality while treating human beings. This also enable the suspects from being convicted due to ignorance because torture is not a defense.

The following are recommendations made by the researcher if put in place can be a great help in the fight against torture and as result improve on the situation of human rights in Uganda.

There is need to train personnel on the ways of handling suspects and victims of torture the fact that not all agencies have received training or have qualified personal when it comes to handling suspects without torturing them, with a particular need for more training for police special.

Constable and the violent crime crack unit, as well as for agencies responsible for the investigation of crime in order to create awareness of the dangers of torturing suspected criminals.

There is also great need for a stronger perspective on victims and their rights in the light of limited understanding of the consequences of torture for victims, their needs and wants, and how to ensure their rights in relevant proceedings this will encourage more people to report cases of torture and hence reduce or even help in the elimination of torture.

⁴³ Under Article 21 of the constitution of Uganda provides for equity and freedom from discrimination

There is a need to impart practical skills, such as investigation methods which avoid using torture and how to ensure victims' rights throughout legal proceedings. Local practices can benefit a lot from comparative and international experience, including the role of regional and international human rights bodies and foreign and international courts this will help reduce the violation of human rights and use of torture.

Capacity building of civil society and the legal profession should be enhanced and encouraged. This is both with regard to the number of lawyers working on torture cases and the expertise of lawyers currently assisting survivors particularly in respect to how to handle torture cases and how to use strategic litigation for the benefits of a potentially large number of victims. In addition to greater resources, targeted training is needed to enhance existing capacity in order to handle cases of torture effectively and hence redaction of human rights validation.

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

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

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

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

State and police should ensure that suspects and accused are there in court during the trial.

Police should stop beating the suspects while in prison in order to produce evidence (persuasive evidence).

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

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INTERNET

Right to appeal

www.hrlrc.org.au

Right to remain silent

www.wikipedia.org

APPENDICES

APPENDIX I: QUESTIONARE

I, Jamilah N. pursuing Diploma in law currently in my final year. I am carrying out a research on an examination of rights of accused persons in a trial process.

Precisely, your response will be treated with confidentiality and the information obtained will be strictly for educational purpose.

Tick one of write the relevant information in the space provided

SECTION A:

1. Age

- i). Below 20 years ☐ ii) 20-45 years ☐
iii). 30and above ☐

2. Sex

- i) Male ☐ ii) Female ☐

3. Level of education

- i). Diploma ☐ ii) A-Level certificate ☐
iii) Degree holder ☐ iv) others, (specify).....

INTERVIEW GUIDE TO SUSPECTS/ACCUSED PERSONS

- A. What offences are you suspected or charged with?
- B. Do you know your rights as a suspect/accused person?
- C. In your opinion, what are the major causes of violation of rights of accused persons?
- D. What recommendations can you give?