

EXAMINATION OF THE RIGHTS OF A SUSPECT: A CASE STUDY OF UGANDA

BY
KHALAYI LEAH
REG NO: 1153-01032-02793


**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DIPLOMA IN
LAW OF KAMPALA INTERNATIONAL
UNIVERSITY**

SEPTEMBER, 2016

DECLARATION

I **KHALAYI LEAH**, hereby declare that this dissertation is my original work as a result of my own efforts and has never been submitted before to any other university or institution of higher learning for any award

Signature.....

Date.....

DEDICATION

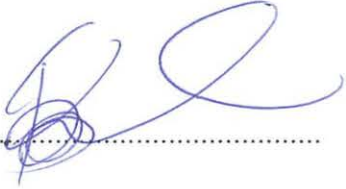
I dedicate this book to my beloved mother **Nanzala Magdalene** and my brother **Musamali Antony** for their tireless effort towards my completion of a diploma in law

APPROVAL

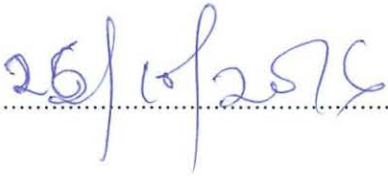
This is to certify that this research has been done under my supervision and submitted to the school of law, Kampala International University, in Partial Fulfilment of the requirements for the award of a Diploma in Law with my approval as the candidate's University Supervisor.

Supervisors' Name: KAKONA JOEL

Signature:.....



Date:.....



ACKNOWLEDGEMENT

First and foremost I would like to thank God for enabling me reach this level. I would also like to express my gratitude to my family members not forgetting my lecturers who have been there for me and rendered me their endless support. May God Bless you.

LIST OF ABBREVIATIONS

UHRC	Uganda Human Rights Commission
UPF	Uganda Police force
SPCS	Special Police Constables
JATT	joint Anti- Terrorism Task force
PSCI	Professional Standard Unit
IGP	Inspectorate of Government
CSOs	Civil Society Organisation
ACHPR	African Commission on Human and people's Rights
ICRC	International Committee of Redcross
UPR	Universal Periodic Review
HRC	Human Rights Committee
ACERWC	African Committee of Experts on the Rights and Welfare of the Child

TABLE OF CONTENTS

DECLARATION	i
DEDICATION	ii
APPROVAL.....	iii
ACKNOWLEDGEMENT	iv
LIST OF ABBREVIATIONS	v
TABLE OF CONTENTS.....	vi
LIST OF TABLES.....	viii
 CHAPTER ONE	 1
INTRODUCTION.....	1
1.0 Introduction	1
1.1 Background of the study	1
1.2 Problem Statement	3
1.3 Purpose of the study	4
1.4 Objectives.....	5
1.5 Research Questions	5
1.6 Definition of key terms	6
 CHAPTER TWO.....	 7
LITERATURE REVIEW.....	7
2.0 Introduction	7
2.1 What Human Rights are	8
2.2 Legal Safeguards for Pre-trial Detainees and Review of Practices.....	8
2.3 Conditions under which human rights can be limited.....	10
2.4 Human rights which must not be limited	10
 CHAPTER THREE	 11
METHODOLOGY.....	11
3.1 Introduction	11
3.2 Research Design.....	11
3.3 Population of the Study	11
3.3.1 Population size	11
3.3.2 Sampling size and composition.....	12

3.3.2 Sampling design	12
3.4 Sources of Data Collection.....	12
3.4.1 Primary data	12
3.4.2 Secondary data	12
3.5 Data Collection Tools	12
3.5.1 Questionnaires.....	12
3.5.2 Interviews.....	12
3.6 Data Presentation and Analysis.....	13
3.7 Data Analysis	13
3.8 Limitations of the Study.....	13
3.8.1 Limited source of information.....	13
3.8.2 Scarcity of time	13
3.8.3 Limited Finance	13
CHAPTER FOUR.....	14
CONDITIONS OF PRE-TRIAL DETENTION	14
4.0 Introduction.....	14
4.1 Legal Safeguards for Pre-trial Detainees and Review of Practices.....	15
4.1.1 Right to be kept in a place authorised by law.....	17
4.1.2 Right to be brought to court as soon as possible but not later than 48 hours	17
4.1 Legal Safeguards for Pre-trial Detainees and Review of Practices.....	18
4.1.1 Right to be kept in a place authorised by law.....	19
4.1.2 Right to be brought to court as soon as possible but not later than 48 hours	20
CHAPTER FIVE	22
OVERSIGHT AND ACCOUNTABILITY SYSTEMS	22
5.0 Introduction	22
5.1 Internal Oversight and Accountability Mechanisms	22
5.1.1 Uganda Police Force	22
5.1.2 Uganda Prison Service	23
5.2 External Oversight and Accountability Mechanisms.....	23
5.2.1 National mechanisms	23
REFERENCE.....	33

LIST OF TABLES

Table 1: Sample size and composition.....	12
---	----

CHAPTER ONE

INTRODUCTION

1.0 Introduction

1.1 Background of the study

In order to guarantee that the rights of a suspect are respected throughout the criminal proceedings, he or she should have the right to counsel from the very early stages of the proceedings, at least immediately upon arrest. ¹Nevertheless, as soon as this principle is recognised, several questions arise. First, should this right be interpreted in such a way that the suspect has a right to counsel not only before procedural acts that involve him or her but also during these acts? Secondly, should the right be absolute in nature? In this article, it is suggested that the answer to the first question is ‘yes’, and the arguments supporting this perspective are brought out. Additionally, it is discussed that this right is subject to restrictions if the suspect him- or herself agrees therewith or there are compelling reasons for this. For us to answer the two questions mentioned above, firstly, the sources of the right of suspects to counsel in pre-trial proceedings are explicated. Here legal acts and judicial practice from both Europe and the United States (US) are used as examples, the latter being a state in which the principles of the right to counsel have been well under development for a long time. Next, the advantages and disadvantages of guaranteeing the right to counsel during pre-trial proceedings without any restrictions are analysed. Finally, warranted justifications for restriction of the right to counsel in pre-trial proceedings are discussed, with mindfulness of the judicial practice of the European Court of Human Rights (ECtHR), the Constitution of the Republic of Estonia², the (draft) legislation of the European Union (EU), and the experience of the US.

In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (the ‘Convention’) constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings, which for the purposes of this Resolution includes the pre-trial and trial stages. Furthermore, the Convention, as interpreted

¹ Green Paper from the Commission—Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union (19.2.2003, COM(2003) 75 final), Sections 4.1 and 4.3 (a).

² Eesti Vabariigi põhiseadus. – RT 1992, 26, 349; RT I, 27.4.2011, 2 (in Estonian). The Constitution of the Republic of Estonia. Unofficial translation available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=p%F5hiseadus> (most recently accessed on 16.8.2012).

by the European Court of Human Rights, is an important foundation for Member States to have trust in each other's criminal justice systems and to strengthen such trust. At the same time, there is room for further action on the part of the European Union to ensure full implementation and respect of Convention standards, and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards. The European Union has successfully established an area of freedom of movement and residence, which citizens benefit from by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have, as an inevitable consequence, led to an increase in the number of people becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected or accused persons are particularly important in order to safeguard the right to a fair trial. Indeed, whilst various measures have been taken at European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is suspected or accused in criminal proceedings. This calls for specific action on procedural rights, in order to ensure the fairness of the criminal proceedings. Such action, which can comprise legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights. The 1999 Tampere European Council concluded that, in the context of implementing the principle of mutual recognition, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States (Conclusion 37). Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions (point III 3.3.1). EN 4.12.2009 Official Journal of the European Union C 295/1

Pre-trial detention refers to the locking up of a suspect or an accused person on criminal charges in police stations and prisons before the completion of their trial. Although detention pending trial should be the exception rather than the rule, its use is prevalent in Uganda. Indeed, pre-trial detainees constitute a large proportion of the inmates causing overcrowding at police stations and prisons. Currently, more than half of the inmates in prisons are on

remand awaiting trial. Recent data indicate that the total number of detainees in Ugandan prisons (both pre-trial and sentenced detainees) is 34 000, with an estimated 32% of these being pre-trial detainees³. The high number of detainees on remand is the result of a number of factors, including slow investigations by police, corruption, a backlog of cases in courts due to limited resources including judicial personnel, among other factors. Delays on remand have adverse effects on the rights of detainees to a fair and speedy trial. At police stations in some cases suspects are detained beyond the prescribed 48 hours without being granted police bond. It is indeed a practice for police to arrest suspects before concluding investigations and to continue investigations whilst the suspect is in police detention. Detainees are often held in overcrowded facilities (it is estimated that prison occupancy is 213.8%), which impacts on health and safety, and increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment. This study describes the extent and nature of pre-trial detention in Uganda and assesses the extent to which Uganda's law and practice comply with the international standards for the use and conditions of pre-trial detention. The study in particular highlights the challenges faced by pre-trial detainees in Uganda and makes appropriate recommendations

1.2 Problem Statement

Despite a legal framework that is, on the whole, compliant with international human rights standards, implementation of the procedural safeguards for arrest and detention is weak in Uganda. Most pre-trial detainees are victims of arbitrary arrests and do not enjoy the rights that accrue to them during their arrest and detention. Sometimes this is based on inadequate police training and capacity for criminal investigations, discrimination, political interference and corruption, among others. Detainees who are poor and cannot afford legal services often remain in custody for a longer time⁴. Prolonged pre-trial detention has adverse effects on the rights of detainees to a fair and speedy trial. Detainees are often held in overcrowded facilities, which may have an impact on their health and which increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment. Most

³ Ugandan Human Rights Commission. 2011. Annual Report 2010 . Kampala: Uganda Human Rights Commission; Human Rights Watch. 2011. 'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons . New York: Human Rights Watch. p.23

⁴ Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>

detention facilities in Uganda are not suitable for housing detainees, and there are frequent challenges in providing food, water and other basic necessities such as hygiene, sanitation and bedding. Moreover, many of these facilities are dilapidated, overcrowded and have inadequate space, lighting and ventilation. Most inmates do not have access to adequate food and water especially in police cells. Inmates often lack clothing and bedding, access to health services, facilities for personal hygiene and access to opportunities for exercise. There are oversight and accountability mechanisms at the national and international level⁵. National mechanisms include both the internal and external mechanisms, but these are weak and need to be strengthened if they are to contribute to improved accountability. The mechanisms at the regional and international level also provide such opportunities, but cannot work in isolation, and need to be understood as complementing national measures. Therefore, for the regional and international mechanisms to work, it is important for them to work in cooperation with the state, and other national mechanisms.

1.3 Purpose of the study

The present contribution explores the ‘effectiveness of international criminal justice’, the title of this volume, in terms of the tribunals’ commitment to the protection of the human rights of the suspect or accused appearing before them. Our objectives are twofold. First, we seek to identify the challenges arising from the tension between the prosecution of some of the most heinous crimes and the duty to respect the rights of suspects and the accused. Secondly, we aim to evaluate how international criminal tribunals handle these challenges.

The contribution starts out with the normative framework of human rights protection before international criminal tribunals. This is followed by an inquiry into issues of implementation, whereby the focus is on several examples selected for their topical and challenging nature. Lastly, the controversial subject of an effective remedy in cases of violations of the rights of suspects and accused persons is discussed.

There is an interesting dilemma faced by the justice system and, more specifically, the whole society, where the right to have counsel present during interrogations is concerned. It could be summarised as follows: ‘The human craving for justice is evident from public reaction whenever a criminal evades capture and punishment—and whenever an innocent is

⁵ *Et al*

wrongfully convicted and sent to prison.’⁶ The more serious the charges the suspect faces, the more society is interested in him or her being caught and punished, which means that the best option would be to interrogate him or her without the presence of counsel, as counsel’s assistance may prevent him or her from speaking. But, at the same time, the more serious the charges, the more society is interested in excluding the chance of an innocent person being convicted, which means that the assistance of counsel should be guaranteed to the suspect from the very beginning.

Before addressing the normative framework, some reflections on the meaning and operationalization of ‘effectiveness’ in the context of the protection of the rights of the suspect and accused person are imperative so as to give this contribution a proper place in the present volume.

1.4 Objectives

- i. To find out the rights that a suspect has according to the Ugandan Constitution
- ii. To establish the conditions of pre-trial detention in Uganda
- iii. To examine the oversight and accountability systems in Uganda

1.5 Research Questions

- i. What are the rights that a suspect has according to the Ugandan Constitution?
- ii. What are the conditions of pre-trial detention in Uganda?
- iii. What are the the oversight and accountability systems in Uganda?

⁶ Kassim *et al.* Police-induced confessions: Risk factors and recommendations. – Law and Human Behavior 2010 (34)/3, pp. 14–15.

1.6 Definition of key terms

Inhuman treatment : There is a close relationship between torture and acts that are regarded as cruel or inhuman. The main difference lies in the severity of the pain inflicted and the pertaining circumstances. Different circumstances determine whether an act of cruel or inhuman treatment may amount to torture. Cruel or inhuman treatment includes acts which cause physical, emotional and mental pain or suffering to a person but which are less severe or intense than acts of torture. An example of cruel or inhuman treatment is corporal punishment.

Degrading treatment: Degrading treatment or punishment constitutes acts which cause a person to lose his/her dignity and self-respect or which are humiliating to the person. Examples of such acts include undressing a person in public; slapping or kicking or caning a person in front of his/her family or neighbours or friends; and forcing a person to eat or carry food which is a taboo to his/her cultural or religious beliefs.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Uganda has signed many international and regional treaties on human rights. These make it a requirement for Uganda to include human rights in the national laws. In line with this, Uganda has included human rights in the Constitution of the Republic of Uganda, 1995, as well as established institutions to protect and promote human rights, like the Uganda Human Rights Commission (UHRC) and the Uganda Police Force (UPF). The Constitution makes it an obligation for all organs, agencies of government, all security agencies, including police and all persons to respect, uphold and promote human rights. The UHRC is mandated to, among other functions, implement programmes of continuous awareness creation on rights and responsibilities in order to enhance respect for human rights. In order to fulfil this mandate, the UHRC designs several programmes for various sections of people in Uganda. In view of this, UHRC has over the years been training members of security agencies, including UPF to enhance their capacity in the protection and promotion of human rights.

UHRC has since inception trained thousands of police officers in human rights. In addition, between July 2011 and June 2012, the UHRC through its Gulu Regional Office trained 300 police officers in Acholi sub region under the Peace Building through Justice for all and Human Rights Project. Through such trainings and UHRC work in general, it has been established that the majority of the police officers deployed in Acholi Sub-region were Special Police Constables (SPCs) who had never been trained on the basic concept of human rights. Such inadequate knowledge is partly responsible for the violations of human rights by police officers.

In order to enhance the observance of human rights in the work of police, the Commission deemed it necessary to produce a user friendly pocket book that can be used as a quick reference for police officers. This pocket book should therefore be used by all police officers to enhance the protection and promotion of human rights in their work as required by the Constitution of Uganda, 1995. This pocket book highlights what a police officer needs to know about human rights; the rights of suspects with particular focus on freedom from torture and cruel, inhuman and degrading treatment or punishment; and what is expected of him or

her in the protection and promotion of human rights. This chapter concludes with basic information about UHRC.

2.1 What Human Rights are

Human rights are entitlements people are born with. They are not given by the state, bought, earned or inherited. Human rights are protected by the law. This means that individuals or groups can claim them when they are interfered with or abused. Human rights are universal and non discriminative. This means that they are for all people regardless of race, sex, religion, tribe, political belief, social or economic status. Human rights are inalienable. This means no one can separate or remove them from a human being. Human rights are indivisible. This means that all human rights are equally important and cannot be ranked. Human rights are interdependent and interrelated. This means all rights support each other for human dignity. The fulfillment of one right depends on the fulfillment of other rights. Likewise, the violation of one right leads to the violation of the other rights.

- Human rights go hand in hand with duties and responsibilities.

2.2 Legal Safeguards for Pre-trial Detainees and Review of Practices

There are procedural safeguards provided in both international, regional and international law relating to the arrest, conditions of detention, right to a fair trial and protection from torture and other cruel, inhuman and degrading treatment or punishment, among others. The discussion below reviews these safeguards, and then reflects on evidence relating to actual practice in Uganda.

Arrests can be made by the Uganda Police Force, Uganda Peoples' Defence Forces and ordinary citizens, who would have to hand over the arrested person to the appropriate authorities depending on the crime. The Uganda Peoples' Defence Forces handle military personnel and other individuals who are subject to the Ugandan Peoples' Defence Forces Act, for example, those found in illegal possession of firearms. It is important to note that there have been special agencies which combine the Police and the Military such as the Joint Anti-Terrorism Taskforce (JATT) and the recently disbanded Rapid Response Unit (which is

notorious for human rights violations⁷). Ugandan law provides for the right to personal liberty. ⁸The Constitution provides that ‘no person shall be deprived of personal liberty’ except for certain cases such as the execution of a sentence or a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others. A person arrested under Ugandan law has the following rights:

- ✓ Right to be kept in a place authorised by law
- ✓ Right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice
- ✓ Right to be brought to court as soon as possible but not later than 48 hours
- ✓ Right to have their next of kin informed, at their request and as soon as practicable, of the restriction or detention
- ✓ Right to access the next-of-kin, lawyer and personal doctor
- ✓ Right to access medical treatment including, at the request and at the cost of that person, access to private medical treatment
- ✓ Right to bail
- ✓ Right to compensation for unlawful arrest, restriction or detention
- ✓ Right to deduct from their sentence days spent in custody before the completion of the trial
- ✓ Right of habeas corpus
- ✓ Right to protection from torture and other cruel, inhuman or degrading treatment or punishment
- ✓ Right to a fair trial
- ✓ Right to a lawyer at the expense of the state for offences that carry the death penalty or life imprisonment
- ✓ On the whole, Ugandan law, especially the Constitution, complies with international human rights standards relating to arrest. The Constitution provides for protection against arbitrary arrest and detention; however,

⁷ Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda’s Rapid Response Unit . New York: Human Rights Watch. [http:// www.hrw.org/reports/2011/03/23/violence-instead-vigilance](http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance). See also Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.ug

⁸ Provisions are similar to the International Covenant on Civil and Political Rights, article 9(1) and the African Charter, articles 6 and 7

challenges are often found in the implementation of the law, which inevitably affects the enjoyment of those rights.

2.3 Conditions under which human rights can be limited

Although human rights are inborn, they can be limited under the law on the following grounds:

- ✓ To protect the human rights and freedoms of others
- ✓ Protect and safeguard public interest i.e. public order, public security, public health and public morality.

However, such limitations should be acceptable and obviously justifiable in a democratic society and should be necessary, proportional and provided for in the law.

2.4 Human rights which must not be limited

Despite the limitations mentioned above, the following rights and freedoms provided for in Article 44 of the Constitution of Uganda ***MUST*** never be limited:

- ✓ Freedom from torture and cruel, inhuman, degrading treatment or punishment;
- ✓ Freedom from slavery or servitude;
- ✓ The right to fair hearing; and
- ✓ The right to an order of habeas corpus, which means a court order to produce a detained person before court.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

This Chapter presents the research designs, techniques, method of data collection, study population, sampling and procedures of data collection, data presentation and analysis and the limitations.

3.2 Research Design

The researcher will use a descriptive and analytical research design. The study is will be based on a single case study to enable a broad cross section of researchers in order to facilitate the great understanding of the phenomenon and apply a series of statistical tests to help in the presentation of the data to the researcher.

3.3 Population of the Study

The study population will consist of mainly employees who use the computerized accounting software.

3.3.1 Population size

The study population will be about 30 members mainly employees who use computerized accounting software and these include sales department team, accounting team and procurement team.

3.3.2 Sampling size and composition

Table 1: Sample size and composition

Respondent	Population size	Sample
Top level management	5	3
Police officers	10	5
Lawyers	15	10

Source: Researcher computation

3.3.2 Sampling design

The study will be carried out using purposive sampling. It is the sampling method will be used to carry out research for data for a specific purpose and this was applied by selecting top level and lower level management.

3.4 Sources of Data Collection

The researcher will use both primary and secondary sources of data.

3.4.1 Primary data

This will be obtained from the respondents who included the above mentioned levels of management representatives.

3.4.2 Secondary data

This will be obtained from periodical reports and company profile, book reviews and other publications and surfacing internet on specific websites.

3.5 DATA COLLECTION TOOLS

The researcher will use questionnaires, and interviews to obtain up-to-date information.

3.5.1 Questionnaires

The researcher set questions and devices to respondents to fill and the researcher will use responses to make conclusion.

3.5.2 Interviews

These will involve face-to-face interactions with the respondents where the interviewer asked questions that respondents answered.

3.6 Data Presentation and Analysis

The researcher will analyze and made complete interpretation of results. The data will be collected together, compared and this enabled the researcher to develop new ideas of other sources. The data presented in a report will be documented and was in form of tables, graphs and SSPS. The questionnaire will be edited to remove inconsistency.

3.7 DATA ANALYSIS

After the collection of raw data, it will be presented using frequency tables in raw figures and percentages of the results will then be calculated using tools like SPSS and Spearman's Correlation were used to analyze data.

3.8 Limitations of the Study

3.8.1 Limited source of information

The research in this area is few therefore it is anticipated that the information on the study/research topic will be limited, however the researcher used internet to get information.

3.8.2 Scarcity of time

The limitation of time factor to complete the research, however the researcher tried to budget time properly to see that the report was finished in time.

3.8.3 Limited Finance

To facilitate conduct of research in terms of printing and looking for information, however the researcher tried to solicit for funds to enable a successful compilation of the research report or work.

CHAPTER FOUR

CONDITIONS OF PRE-TRIAL DETENTION

4.0 Introduction

Most pre-trial detainees are victims of arbitrary arrests and do not enjoy the rights that accrue to them during their arrest and detention. Sometimes this is based on inadequate police training and capacity for criminal investigations, discrimination, political interference and corruption, among others. Detainees who are poor and cannot afford legal services often remain in custody for a longer time. Prolonged pre-trial detention has adverse effects on the rights of detainees to a fair and speedy trial. Detainees are often held in overcrowded facilities, which may have an impact on their health and which increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment. Most detention facilities in Uganda are not suitable for housing detainees, and there are frequent challenges in providing food, water and other basic necessities such as hygiene, sanitation and bedding. Moreover, many of these facilities are dilapidated, overcrowded and have inadequate space, lighting and ventilation. Most inmates do not have access to adequate food and water especially in police cells. Inmates often lack clothing and bedding, access to health services, facilities for personal hygiene and access to opportunities for exercise. There are oversight and accountability mechanisms at the national and international level. National mechanisms include both the internal and external mechanisms, but these are weak and need to be strengthened if they are to contribute to improved accountability. The mechanisms at the regional and international level also provide such opportunities, but cannot work in isolation, and need to be understood as complementing national measures. Therefore, for the regional and international mechanisms to work, it is important for them to work in cooperation with the state, and other national mechanisms.

Pre-trial detention refers to the locking up of a suspect or an accused person on criminal charges in police stations and prisons before the completion of their trial. Although detention pending trial should be the exception rather than the rule, its use is prevalent in Uganda. Indeed, pre-trial detainees constitute a large proportion of the inmates causing overcrowding at police stations and prisons. Currently, more than half of the inmates in prisons are on remand awaiting trial.⁹ Recent data indicate that the total number of detainees in Ugandan

⁹ Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>

prisons (both pre-trial and sentenced detainees) is 34 000, with an estimated 32% of these being pre-trial detainees.

The high number of detainees on remand is the result of a number of factors, including slow investigations by police, corruption, a backlog of cases in courts due to limited resources including judicial personnel, among other factors¹⁰. Delays on remand have adverse effects on the rights of detainees to a fair and speedy trial. At police stations in some cases suspects are detained beyond the prescribed 48 hours without being granted police bond. It is indeed a practice for police to arrest suspects before concluding investigations and to continue investigations whilst the suspect is in police detention. 4 Detainees are often held in overcrowded facilities (it is estimated that prison occupancy is 213.8%),¹¹ which impacts on health and safety, and increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment. This study describes the extent and nature of pre-trial detention in Uganda and assesses the extent to which Uganda's law and practice comply with the international standards for the use and conditions of pre-trial detention. The study in particular highlights the challenges faced by pre-trial detainees in Uganda and makes appropriate recommendations.

4.1 Legal Safeguards for Pre-trial Detainees and Review of Practices

There are procedural safeguards provided in both international, regional and international law relating to the arrest, conditions of detention, right to a fair trial and protection from torture and other cruel, inhuman and degrading treatment or punishment, among others. The discussion below reviews these safeguards, and then reflects on evidence relating to actual practice in Uganda.

Arrest Arrests can be made by the Uganda Police Force, Uganda Peoples' Defence Forces and ordinary citizens, who would have to hand over the arrested person to the appropriate authorities depending on the crime. The Uganda Peoples' Defence Forces handle military personnel and other individuals who are subject to the Ugandan Peoples' Defence Forces Act, for example, those found in illegal possession of firearms. It is important to note that there have been special agencies which combine the Police and the Military such as the Joint Anti-Terrorism Taskforce (JATT) and the recently disbanded Rapid Response Unit (which is

¹⁰ Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit. New York: Human Rights Watch. [http:// www.hrw.org/reports/2011/03/23/violence-instead-vigilance](http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance)

¹¹ International Centre for Prison Studies, http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=51, accessed 28 October 2016

notorious for human rights violations)¹². Ugandan law provides for the right to personal liberty¹³. The Constitution provides that ‘no person shall be deprived of personal liberty’ except for certain cases such as the execution of a sentence or a court order; preventing the spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others¹⁴. A person arrested under Ugandan law has the following rights:

- ✓ Right to be kept in a place authorised by law
- ✓ Right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice
- ✓ Right to have their next of kin informed, at their request and as soon as practicable, of the restriction or detention
- ✓ Right to access the next-of-kin, lawyer and personal doctor
- ✓ Right to access medical treatment including, at the request and at the cost of that person, access to private medical treatment
- ✓ Right to bail
- ✓ Right to compensation for unlawful arrest, restriction or detention
- ✓ Right to deduct from their sentence days spent in custody before the completion of the trial
- ✓ Right of habeas corpus
- ✓ Right to protection from torture and other cruel, inhuman or degrading treatment or punishment
- ✓ Right to a fair trial
- ✓ Right to a lawyer at the expense of the state for offences that carry the death penalty or life imprisonment

On the whole, Ugandan law, especially the Constitution, complies with international human rights standards relating to arrest. The Constitution provides for protection against arbitrary

¹² Uganda Peoples’ Defence Forces Act, 2005 23 Children’s Act, 1996 24 Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda’s Rapid Response Unit. New York: Human Rights Watch. [http:// www.hrw.org/reports/2011/03/23/violence-instead-vigilance](http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance).

¹³ Report of the Working Group on the Universal Periodic Review: Uganda, A/HRC/19/16, §92 and Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 – Uganda, A/HRC/WG.6/UGA/3, §30

¹⁴ Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.ug 25 Provisions are similar to the International Covenant on Civil and Political Rights, article 9(1) and the African Charter, articles 6 and 7

arrest and detention; however, challenges are often found in the implementation of the law, which inevitably affects the enjoyment of those rights

4.1.1 Right to be kept in a place authorised by law

Ugandan law explicitly prohibits keeping individuals in unauthorised places of detention, i.e. those that have not been officially gazetted by the Minister of Internal Affairs. In spite of the law, there are reports of the use of ‘safe houses’ or unauthorised places of detention. Those placed in safe houses have included terrorism and treason suspects, civil debtors and persons selected for such detention due to personal disputes¹⁵. Detention of suspects in unauthorised places of detention exposes them to torture and other cruel, inhuman and degrading treatment and punishment. Moreover, most detainees in such unauthorised places are often not brought to court within the requisite 48 hours. The Uganda Human Rights Commission (UHRC), the national human rights institution, has received a few complaints of people detained in unauthorised places referred to as ‘safe houses’.

Most suspects are not informed about the reasons for arrest, restriction or detention and of their right to a lawyer of their choice. Information regarding the arrest and the reasons for the restriction and detention are often provided after they have been taken to the police stations or police posts when they have to make their statements. There have also been incidents where suspects detained in police cells alleged that they did not know why they were arrested, restricted or detained. Most suspects and detainees are poor and do not know about their rights including the right to a lawyer and even if they did, most cannot afford their services.

4.1.2 Right to be brought to court as soon as possible but not later than 48 hours

The Constitution provides that suspects, if not released earlier, must be brought to court within 48 hours. However, this is often ignored or deliberately circumvented. The bulk of the complaints received by the UHRC are allegations of torture and other cruel, inhuman and degrading treatment or punishment, and detention beyond 48 hours before being brought to court¹⁶. In 2010, 42% of the complaints that were reported to the UHRC were against the Uganda Police Force involving detention beyond the stipulated 48-hour period. 50 In several cases, the UHRC has found the Attorney General liable for the violation of the right to liberty where suspects have stayed longer than 48 hours in custody, and has ordered compensation

¹⁵ Amnesty International. 2007. Uganda. <http://www.amnesty.org/en/region/uganda/report-2007>

¹⁶ Chief Justice Benjamin Odoki, Keynote Address at the Opening of the National Legal Aid Conference, October 2011, <http://www.jlos.go.ug>

for these victims. 51 The courts have affirmed this. For example, in the case of *Kidega Alfonsio v. Attorney General*, the court found that Mr Alfonsio's detention for nine days before appearing in court on a murder charge was unlawful¹⁷. Failure to bring suspects to court within 48 hours is often the result of a lack of training in professional investigative procedures, inadequate facilitation with equipment for efficient and quick investigations, the overreliance on confessions and corruption in the judiciary, among others¹⁸. Suspects of terrorism and other capital offences are commonly victims of detention for periods longer than the requisite 48 hours. Such detention often creates an environment where torture and other ill treatment are likely to occur. The police detention facilities are not suitable for long stays and the suspects often face challenges with the provision of food, water and other basic necessities such as hygiene, sanitation and bedding.

4.1 Legal Safeguards for Pre-trial Detainees and Review of Practices

There are procedural safeguards provided in both international, regional and international law relating to the arrest, conditions of detention, right to a fair trial and protection from torture and other cruel, inhuman and degrading treatment or punishment, among others. The discussion below reviews these safeguards, and then reflects on evidence relating to actual practice in Uganda.

Arrest Arrests can be made by the Uganda Police Force, Uganda Peoples' Defence Forces and ordinary citizens, who would have to hand over the arrested person to the appropriate authorities depending on the crime. The Uganda Peoples' Defence Forces handle military personnel and other individuals who are subject to the Ugandan Peoples' Defence Forces Act, for example, those found in illegal possession of firearms. It is important to note that there have been special agencies which combine the Police and the Military such as the Joint Anti-Terrorism Taskforce (JATT) and the recently disbanded Rapid Response Unit (which is notorious for human rights violations)¹⁹. Ugandan law provides for the right to personal liberty²⁰. The Constitution provides that 'no person shall be deprived of personal liberty' except for certain cases such as the execution of a sentence or a court order; preventing the

¹⁷ Uganda Human Rights Commission, Annual Reports, <http://www.uhrc.org>

¹⁸ Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>, pp.84-85

¹⁹ Uganda Peoples' Defence Forces Act, 2005 23 Children's Act, 1996 24 Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>.

²⁰ Report of the Working Group on the Universal Periodic Review: Uganda, A/HRC/19/16, §92 and Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 – Uganda, A/HRC/WG.6/UGA/3, §30

spread of an infectious or contagious disease; the case of a person of unsound mind; for purposes of preventing unlawful entry into the country, among others²¹. A person arrested under Ugandan law has the following rights:

- ✓ Right to be kept in a place authorised by law
- ✓ Right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice
- ✓ Right to have their next of kin informed, at their request and as soon as practicable, of the restriction or detention
- ✓ Right to access the next-of-kin, lawyer and personal doctor
- ✓ Right to access medical treatment including, at the request and at the cost of that person, access to private medical treatment
- ✓ Right to bail
- ✓ Right to compensation for unlawful arrest, restriction or detention
- ✓ Right to deduct from their sentence days spent in custody before the completion of the trial
- ✓ Right of habeas corpus
- ✓ Right to protection from torture and other cruel, inhuman or degrading treatment or punishment
- ✓ Right to a fair trial
- ✓ Right to a lawyer at the expense of the state for offences that carry the death penalty or life imprisonment

On the whole, Ugandan law, especially the Constitution, complies with international human rights standards relating to arrest. The Constitution provides for protection against arbitrary arrest and detention; however, challenges are often found in the implementation of the law, which inevitably affects the enjoyment of those rights

4.1.1 Right to be kept in a place authorised by law

Ugandan law explicitly prohibits keeping individuals in unauthorised places of detention, i.e. those that have not been officially gazetted by the Minister of Internal Affairs. In spite of the law, there are reports of the use of ‘safe houses’ or unauthorised places of detention. Those placed in safe houses have included terrorism and treason suspects, civil debtors and persons

²¹ Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.ug 25 Provisions are similar to the International Covenant on Civil and Political Rights, article 9(1) and the African Charter, articles 6 and 7

selected for such detention due to personal disputes²². Detention of suspects in unauthorised places of detention exposes them to torture and other cruel, inhuman and degrading treatment and punishment. Moreover, most detainees in such unauthorised places are often not brought to court within the requisite 48 hours. The Uganda Human Rights Commission (UHRC), the national human rights institution, has received a few complaints of people detained in unauthorised places referred to as 'safe houses'.

Most suspects are not informed about the reasons for arrest, restriction or detention and of their right to a lawyer of their choice. Information regarding the arrest and the reasons for the restriction and detention are often provided after they have been taken to the police stations or police posts when they have to make their statements. There have also been incidents where suspects detained in police cells alleged that they did not know why they were arrested, restricted or detained. Most suspects and detainees are poor and do not know about their rights including the right to a lawyer and even if they did, most cannot afford their services.

4.1.2 Right to be brought to court as soon as possible but not later than 48 hours

The Constitution provides that suspects, if not released earlier, must be brought to court within 48 hours. However, this is often ignored or deliberately circumvented. The bulk of the complaints received by the UHRC are allegations of torture and other cruel, inhuman and degrading treatment or punishment, and detention beyond 48 hours before being brought to court²³. In 2010, 42% of the complaints that were reported to the UHRC were against the Uganda Police Force involving detention beyond the stipulated 48-hour period. 50 In several cases, the UHRC has found the Attorney General liable for the violation of the right to liberty where suspects have stayed longer than 48 hours in custody, and has ordered compensation for these victims. 51 The courts have affirmed this. For example, in the case of *Kidega Alfonsio v. Attorney General*, the court found that Mr Alfonsio's detention for nine days before appearing in court on a murder charge was unlawful²⁴. Failure to bring suspects to court within 48 hours is often the result of a lack of training in professional investigative procedures, inadequate facilitation with equipment for efficient and quick investigations, the

²² Amnesty International. 2007. Uganda. <http://www.amnesty.org/en/region/uganda/report-2007>

²³ Chief Justice Benjamin Odoki, Keynote Address at the Opening of the National Legal Aid Conference, October 2011, <http://www.jlos.go.ug>

²⁴ Uganda Human Rights Commission, Annual Reports, <http://www.uhrc.ug>

overreliance on confessions and corruption in the judiciary, among others²⁵. Suspects of terrorism and other capital offences are commonly victims of detention for periods longer than the requisite 48 hours. Such detention often creates an environment where torture and other ill treatment are likely to occur. The police detention facilities are not suitable for long stays and the suspects often face challenges with the provision of food, water and other basic necessities such as hygiene, sanitation and bedding.

²⁵ Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>, pp.84-85

CHAPTER FIVE

OVERSIGHT AND ACCOUNTABILITY SYSTEMS

5.0 Introduction

National and international law establishes monitoring mechanisms for places of detention. There are both internal and external oversight and accountability mechanisms. The external oversight and accountability mechanisms are available at both national and international levels.

5.1 Internal Oversight and Accountability Mechanisms

The following internal oversight and accountability mechanisms are provided in the Uganda Police Force and the Uganda Prison Service.

5.1.1 Uganda Police Force

The Uganda Police Force has disciplinary courts which hear complaints against officers. The disciplinary court is instituted by the Inspector General of Police and has the power to decide whether perpetrators are to be discharged, dismissed, cautioned, fined or demoted in rank. The Disciplinary Committee confirms sentences before they are executed. Furthermore, there is provision for a public complaints system, where individuals can make a written complaint relating to police misconduct to the District Police Commander or the Inspector General of Police. The police also have a Professional Standards Unit (PSU), which replaced the Human Rights and Complaints Desk. The PSU is responsible for investigating complaints against the police. Complaints relate to unprofessional conduct as well as violations of human rights. Since 2007, the PSU has received over 8 000 complaints, with 232 received in 2011. Most of these relate to torture, arbitrary detention and the violation of the right to life²⁶. The PSU is based in Kampala and also has regional offices in Mbale, Masaka, Hoima, Gulu, Arua, Jinja and Mbarara. The intention is to establish two further offices in Kabale and Fort Portal in the near future. The Unit is composed of about 94 staff, and appointments are made on the basis of criteria such as a good professional record. The PSU headquarters is in Bukoto, Kampala, in a residential environment, which may facilitate access by the public. However, in the regions, offices are based at police stations and posts. Although the PSU has powers of access to pre-trial detainees, it is not immune to the resource problems faced by police. The internal oversight and accountability mechanisms of the police remain weak, as the police continue to

²⁶ Uganda Human Rights Commission. 2012. Annual Report 2011. Kampala: Uganda Human Rights Commission. p.18

remain at the top on the list of complaints made by the public to the UHRC about human rights violations²⁷.

5.1.2 Uganda Prison Service

The Uganda Prison Service has established Human Rights Committees to ensure compliance with human rights obligations. Although the Committees are a recent development, they have been acclaimed as playing an important role in the protection of the rights of inmates as they address human rights complaints in prisons. The Human Rights Committees undertake human rights education, peer reviews and compliance monitoring of human rights standards in prisons²⁸. Nonetheless, the UHRC noted in its Annual Report for 2011 that in spite of the presence of the Committees, the conditions in places of detention are still deplorable.

5.2 External Oversight and Accountability Mechanisms

Both national and international mechanisms serve external oversight and accountability functions.

5.2.1 National mechanisms

At the national level, mechanisms include the Inspectorate of Government, the UHRC, the judiciary, Parliament and civil society organisations.

a Inspectorate of Government

The Inspectorate of Government (IG), which is the Ombudsman of Uganda, engages in investigations of corruption and abuse of office and can provide some form of oversight for those in detention. The IG is guaranteed independence under the Constitution and investigates various cases of corruption and abuse of office. However, it does not appear to have dealt with many, if any, cases involving accountability in places of detention or cases of torture or other ill treatment. Nevertheless, the Inspectorate has noted that corruption is rampant among the police²⁹.

b Uganda Human Rights Commission

²⁷ Uganda Human Rights Commission. 2012. Annual Report 2011 . Kampala: Uganda Human Rights Commission; Uganda Human Rights Commission. 2011. Annual Report 2010 . Kampala: Uganda Human Rights Commission

²⁸ Uganda Human Rights Commission. 2012. Annual Report 2011 . Kampala: Uganda Human Rights Commission. p.22

²⁹ Inspectorate of Government. 2011. Second Annual Report on Corruption Trends in Uganda 2011. <http://www.igg.go.ug/static/files/publications/ig-report-corruption.pdf>. Also see The Observer. 21 November 2011. IGG Report Pins Police, Judiciary on Corruption. http://www.observer.ug/index.php?option=com_content&task=view&id=15971&Itemid=59 , accessed 29 October 2012

The Uganda Human Rights Commission (UHRC) is the main external body with a mandate to investigate complaints of human rights violations including those relating to pre-trial detention. The UHRC was established under the Constitution as an independent body with a mandate to promote and protect human rights, including investigating complaints of torture and other ill treatment. The Commission is currently composed of five members, including the Chairperson, who are appointed by the President with the approval of Parliament. Staff are appointed by the members of the Commission in consultation with the Ministry of Public Service. Currently the Commission has about 208 staff members in nine regional offices and at the Kampala headquarters³⁰.

The UHRC has a broad investigative mandate and does not require a complaint to be submitted, and may institute investigations itself. The UHRC also has broad powers with a quasi-judicial function. If satisfied that there has been an infringement of a right, the UHRC may order the release of a detained or restricted person, the payment of compensation, or any other legal remedy or redress. A person or authority dissatisfied with an order made by the Commission has the right to appeal to the High Court. The process of the investigation of complaints can take between one to four years to complete, depending on the particular circumstances of the case³¹.

There have been cases that have been delayed for even longer than four years because there are currently only four members who are hearing cases. The Uganda Human Rights Commission is fairly accessible as the services offered are free and there are regional offices in Kampala, Masaka, Fort Portal, Mbarara, Jinja, Soroti, Moroto, Gulu and Arua. Since its inception, the UHRC has handled thousands of complaints and some victims have been awarded compensation. The UHRC is not allowed to investigate any matter which is pending before a court or judicial tribunal; a matter involving the relations or dealings between the government and the government of any foreign state or international organisation; or a matter relating to the exercise of the prerogative of mercy. The UHRC faces a number of challenges including the lack of compliance with its orders, such as the payment of the UHRC tribunal

³⁰ P.34

³¹ Uganda Human Rights Commission, Complaints Handling Manual

awards, especially by the Attorney General; limited capacity and resources; and the lack of a victim and witness protection law, which deters some victims from continuing with cases³².

Despite these challenges, the UHRC has been accredited with 'A' status by the International Coordinating Committee of National Human Rights Institutions, which monitors national institutions' compliance with the Paris Principles. This means that, on the whole, it is perceived as effective. The African Commission on Human and Peoples' Rights also recognised the UHRC as the best National Human Rights Institution in 2012.

c The judiciary

The judiciary has the power to play an important role as an oversight and accountability mechanism for pre-trial detainees. Courts have an oversight role while hearing both criminal and civil cases. Pre-trial detainees have an opportunity to complain about long detention periods, torture and ill treatment or any other human rights violation to courts. Indeed a few detainees have used the courts as a channel of redress for these sorts of violations. An example of this is the case of CPL Opio Mark v. Attorney General, where the plaintiff sought redress for detention in a police cell for 11 days without appearing in court. The plaintiff was awarded damages of up to UGX 6000000 (approx. USD 1800). In another case, Martin Edeku v. Attorney General, the plaintiff was awarded damages for a violent arrest, detention beyond 48 hours and torture while in detention³³. The courts, however, face problems such as case backlogs, corruption and inadequate resources, among others. As a result, only a few cases make it to court and are heard to completion within a reasonable period of time.

d Parliament

Parliament also has an oversight role to play with respect to places of detention. Members of Parliament have many routine opportunities for oversight during question time and annual reviews of performance, especially at budget allocation time. Parliamentarians have raised concerns relating to conditions of detention especially torture and other ill treatment, and a few Members of Parliament have also condemned the excessive use of force by security agencies³⁴.

e Visiting justices

³² Uganda Human Rights Commission. 2011. Annual Report 2010. Kampala: Uganda Human Rights Commission. p.27

³³ HCCS 93A/89, High Court of Uganda

³⁴ WeInformers. 9 May 2011. Workers MP warns security agents against violence on people working. <http://www.weinformers.net/2011/05/19/workers-mp-warns-security-agents-against-violence-on-people-working/>

The Prison Act makes provision for what is described as ‘visiting justices’. These are persons who are allowed to visit and inspect prisons on a regular basis and are appointed by the Minister. Nonetheless, the Act recognises some people as ex-officio visiting justices. These include the Chairperson and members of the UHRC; a judge of the High Court, Court of Appeal and Supreme Court; the minister responsible for internal affairs; the minister responsible for justice; all cabinet ministers; a Chief Magistrate and resident magistrates in any area in which the prison is situated; the Chief Administrative Officer of the District in which a prison is situated; the Permanent Secretary in the ministry responsible for internal affairs; and the Inspector General of Government³⁵.

The functions of the visiting justices are detailed in the Act and include: inspect every part of the prison and visit every prisoner in the prison where practicable, especially those in confinement; inspect and test the quality and quantity of food ordinarily served to prisoners; inquire into any complaints or requests made by a prisoner; ascertain as far as possible whether the rules, administrative instructions, standing orders issued to the prisoner and the prisoner’s rights are brought to their attention and are observed; inspect any book, document or record relating to the management, discipline and treatment of prisoners; and perform such other functions as may be prescribed. Other persons allowed to inspect prisons include cabinet ministers and judges. This is in addition to the African Commission’s Special Rapporteur on Prison Conditions.

f Civil society organisations

Some civil society organisations (CSOs) visit places of detention, but at times their access may be limited, or they may be expected to give advance notice of their intention to visit. The Prisons Act provides that they require the permission of the Commissioner General of Prisons to inspect places of detention. Information regarding the frequency and methodology of the CSOs’ visits to places of detention is limited. Some of the CSOs that undertake visits include the African Centre for Treatment and Rehabilitation of Torture Victims, the Uganda Prisoners’ Aid Foundation, the Foundation for Human Rights Initiative, Avocat Sans Frontiers and the Human Rights Network Uganda³⁶.

5.2.2 Regional mechanisms

³⁵ Prisons Act, section 109

³⁶ Foundation for Human Rights Initiative. The Human Rights Status Reports, <http://www.beta.afronet.biz/~fhri/Uganda%20%202007%20Human%20Rights%20Status%20Report%20.pdf>

At the regional level, oversight and accountability mechanisms in relation to pre-trial detention (amongst other issues) include the African Commission on Human and Peoples' Rights, the Special Rapporteur on Prisons and Conditions of Detention in Africa, the African Court on Human and Peoples' Rights, the Committee of Experts on the Rights and Welfare of the Child, and the East African Court of Justice, among others.

a. African Commission on Human and Peoples' Rights

Under the African Charter, the African Commission on Human and Peoples' Rights (ACHPR) has the mandate to promote and protect human rights. Uganda is party to the African Charter and is therefore subject to the African Commission. The ACHPR, which has been greatly supported by NGOs, fulfils its mandate through a complaints mechanism, consideration of State Reports, Special Rapporteurs, site visits and resolutions which contribute to oversight and accountability. The ACHPR has received two communications relating to illegal arrest, arbitrary detention and torture relating to Uganda. The case of *Nziwa Buyingo v. Uganda* involved a complaint of alleged illegal arrest, arbitrary detention, torture and extraction of money from the complainant by Ugandan soldiers in Kisoro contrary to articles 5, 6, 12 and 14 of the African Charter³⁷. The ACHPR dismissed the complaint as inadmissible as the complainant failed to demonstrate that local remedies had been exhausted. The other case was an inter-state communication, namely the *Democratic Republic of the Congo (DRC) v. Burundi, Rwanda and Uganda*.

In this communication, the DRC alleged numerous violations of the African Charter and other international obligations by the respondent states. In its decision, the ACHPR found that the respondent states had violated articles of the African Charter, including article 5. During the consideration of the State Reports from Uganda, the ACHPR has made specific recommendations in respect of pre-trial detention. It expressed concern that ordinary Ugandans cannot afford legal services to litigate against the government and obtain compensation for human rights abuses. It has also expressed concern about the fact that only 19% of prisoners have access to clean water and only 62% are provided with meals on a daily basis. The ACHPR has also expressed concern about, among other things, the lack of legislative measures to criminalise torture and violence against children, the trial of civilians by military courts, the lack of adequate legal aid, and the retention of the death penalty.

³⁷ *Nziwa Buyingo v. Uganda*, http://www.achpr.org/english/Decison_Communication/Uganda/Comm.8-88.pdf

b. Special Rapporteur on Prisons and Conditions of Detention in Africa

The African Commission on Human and Peoples' Rights established the position of Special Rapporteur on Prisons and Conditions of Detention in Africa. The Special Rapporteur has powers to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. The Special Rapporteurs work entails: examining the state of prisons and conditions of detention and making recommendations to improve them; advocating for adherence to the African Charter and international human rights norms; and, if requested by the African Commission, making recommendations regarding communications by individuals who have been deprived of their liberty. The visits of the Special Rapporteur are only carried out after the agreement of the state concerned. Reports are published after the integration of comments from the state's participating authorities. Although, the Special Rapporteur has the potential to contribute to the oversight and accountability mechanisms, this opportunity has not yet been used in Uganda.

c. The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights complements the protective mandate of the ACHPR. The added value of the Court is that it has powers to take final and binding decisions on human rights violations. Uganda is among the 26 countries that have thus far ratified the Protocol establishing the Court, and is thus subject to its jurisdiction. The role of the African Court is however limited as Uganda has not made a declaration to allow it to receive direct complaints of human APCOF Policy Brief No. 4 rights violations from civil society organisations and individuals³⁸. Although, the African Court has yet to handle any matter relating to Uganda, it has the potential to contribute to the process of oversight and accountability.

d. The African Committee of Experts on the Rights and Welfare of the Child

When Uganda presented its initial report, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) made several comments. The ACERWC commended Uganda for efforts made with regard to the establishment of family and juvenile courts, a National Rehabilitation Centre and the possibilities for amicably resolving cases relating to children in conflict with the law. However, the Committee was concerned that several districts do not always have provisional detention centres for children and that the number of

³⁸ Protocol in the Statute of the African Court of Justice and Human Rights, article 5(3) and article 34(6)

functional re-education centres is limited³⁹. The Committee was also concerned that children are held with adults in police detention centres. The Committee also observed that the report did not provide information pertaining to the treatment of mothers incarcerated with their children, pregnant women and young children.

5.2.3 International mechanisms

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

a. United Nations Human Rights Committee

The Human Rights Committee (HRC), which is the monitoring mechanism for the implementation of the International Covenant on Civil and Political Rights (ICCPR), is one of the mechanisms for oversight and accountability. During its consideration of Uganda's initial report, the HRC noted various important human rights concerns that demonstrate Uganda's lack of compliance with the ICCPR. The Committee noted the frequent lack of implementation by the government of UHRC recommendations and decisions concerning awards of compensation to victims of human rights violations and the prosecution of human rights offenders. It further noted that state agents continue to arbitrarily deprive persons of their liberty, including in unacknowledged places of detention⁴⁰.

It also noted the deplorable prison conditions such as overcrowding, scarcity of food, poor sanitary conditions and inadequate material, human and financial resources. The Committee was concerned about the treatment of prisoners, especially the use of corporal punishment, solitary confinement and food deprivation as disciplinary measures, and the fact that juveniles

³⁹ Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child. http://www.crin.org/docs/Uganda_COs.doc

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

and women are often not kept separate from adults and males⁴¹. The Committee also noted the practice of imprisoning persons for financial debt, which is incompatible with article 11 of the Covenant.

The Committee noted with concern shortcomings in the administration of justice, such as delays in proceedings and in relation to pre-trial detention, the lack of legal assistance provided to non-capital suspects and the conditions under which a confession may be secured⁴². Notably, all these challenges remain.

b. Universal Periodic Review

Uganda was considered under the Universal Periodic Review (UPR) in October 2011, and states and other stakeholders raised a number of issues related to pre-trial detention. In particular concerns were expressed regarding torture by security agents; reports of the use of 'safe houses' or unofficial places of detention; the regular use of torture as a method of interrogation by the police; the arbitrary arrest and torture of journalists; and a penitentiary system plagued by the poor treatment of detainees, overcrowding, inadequate feeding, poor medical care and sanitary conditions, forced labour, and inadequate rehabilitation programmes⁴³.

c. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other mechanisms

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

⁴¹ Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at para. 18

⁴² Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at para. 21

⁴³ Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §31

Working Groups. Nevertheless, they have the potential to contribute to the process of oversight and accountability.

d. United Nations Committee against Torture

Article 20 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) gives the mandate to the Committee against Torture to visit places of detention. However, the Committee can only visit States Parties to the Convention, who must authorise the visit. Visits are made only in the cases of 'systematic torture' and the proceedings are confidential. No visits by the Committee against Torture have been made to Uganda. Nevertheless, during the presentation of State Reports, the Committee has noted various human rights concerns which are still relevant. The Committee was concerned about the lack of incorporation of the Convention into Uganda's legislation, such as the lack of a comprehensive definition of torture in domestic law, the lack of an absolute prohibition of torture, and the absence of universal jurisdiction for acts of torture in Ugandan law⁴⁴.

The Committee expressed concern over the widespread practice of torture and ill treatment of persons detained by the military as well as by other law enforcement officials. Furthermore, it was concerned about the length of pre-trial detention, including detention beyond 48 hours as stipulated by the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail⁴⁵.

The Committee also expressed concern about the reported limited accessibility and effectiveness of habeas corpus and the continued allegations of widespread torture and ill treatment by the state's security forces and agencies. The Committee was also concerned about the wide array of security forces and agencies in Uganda with the power to arrest detain and investigate.

The Committee noted the disproportion between the high number of reports of torture and ill treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, both of which contribute to the impunity prevailing in this area. It further noted the alleged reprisals, intimidation and threats

⁴⁴ Conclusions and recommendations of the Committee against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 5

⁴⁵ Conclusions and recommendations of the Committee against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(a)

against persons reporting acts of torture and ill treatment⁴⁶. The Committee also expressed concern about the frequent lack of implementation of the UHRC's decisions concerning both awards of compensation to victims of torture and the prosecution of human rights offenders.

e. International Committee of the Red Cross

Visits from the International Committee of the Red Cross (ICRC) are based on the 1949 Geneva Conventions for situations of conflict, and take place on the basis of an agreement with the state in other situations. Monitoring of conditions of detention is targeted at persons arrested and detained in relation to a situation of conflict or internal strife. In certain situations, monitoring extends to other categories of persons deprived of their liberty. In the situation of an international conflict, the States Parties to the conflict are obliged to authorise visits to military internees and civilian nationals of the foreign power involved in the conflict. In other situations, visits are subject to prior agreement by the authorities. The ICRC visits are often permanent and regular during times of conflict or strife (or its direct consequences). The ICRC often provides relief or rehabilitation activities with the agreement of the authorities and helps to restore family links. Their procedures and reports are confidential. The ICRC has been working in Uganda for the last 33 years, monitoring the treatment of detainees in both civilian and military places of detention and working with the authorities to improve conditions of detention.

⁴⁶ Conclusions and recommendations of the Committee against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(g)

REFERENCE

- Amnesty International. 2007. Uganda. <http://www.amnesty.org/en/region/uganda/report-2007>
- Amnesty International. 2007. Uganda. <http://www.amnesty.org/en/region/uganda/report-2007>
- Chief Justice Benjamin Odoki, Keynote Address at the Opening of the National Legal Aid Conference, October 2011, <http://www.jlos.go.ug>
- Chief Justice Benjamin Odoki, Keynote Address at the Opening of the National Legal Aid Conference, October 2011, <http://www.jlos.go.ug>
- Conclusions and recommendations of the Committee against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(g)
- Conclusions and recommendations of the Committee against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 5
- Conclusions and recommendations of the Committee against Torture, Uganda, 21 June 2005 CAT/C/CR/34/UGA at para. 6(a)
- Draft Report of the Working Group on the Universal Periodic Review – Uganda A/HRC/WG.6/UGA/3, §31
- Eesti Vabariigi põhiseadus. – RT 1992, 26, 349; RT I, 27.4.2011, 2 (in Estonian). The Constitution of the Republic of Estonia. Unofficial translation available at <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=p%F5hiseadus> (most recently accessed on 16.8.2012).
- Green Paper from the Commission—Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union (19.2.2003, COM(2003) 75 final), Sections 4.1 and 4.3 (a).
- HCCS 93A/89, High Court of Uganda
- <http://www.beta.afronet.biz/~fhri/Uganda%20%202007%20Human%20Rights%20Status%20Report%20.pdf>
- http://www.observer.ug/index.php?option=com_content&task=view&id=15971&Itemid=59 , accessed 29 October 2012
- Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at para. 21
- Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at para. 17

- Human Rights Committee. 2004. Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uganda CCPR/CO/80/UGA at para. 18
- Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit . New York: Human Rights Watch.
[http:// www.hrw.org/reports/2011/03/23/violence-instead-vigilance](http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance). See also Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.org
- Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>
- Inspectorate of Government. 2011. Second Annual Report on Corruption Trends in Uganda 2011. <http://www.igg.go.ug/static/files/publications/ig-report-corruption.pdf>. Also see The Observer. 21 November 2011. IGG Report Pins Police, Judiciary on Corruption.
- International Centre for Prison Studies,
http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=51, accessed 28 October 2016
- Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>, pp.84-85
- Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>, pp.84-85
- Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat. <http://www.jlos.go.ug/publications.php>
- Justice Law and Order Sector Secretariat. 2011. Annual Performance Report 2010/2011. Kampala: Justice Law and Order Sector Secretariat.
<http://www.jlos.go.ug/publications.php>
- Kassin *et al.* Police-induced confessions: Risk factors and recommendations. – Law and Human Behavior 2010 (34)/3, pp. 14–15.
- Nziwa Buyingo v. Uganda,
http://www.achpr.org/english/Decison_Communication/Uganda/Comm.8-88.pdf

Prisons Act, section 109

Protocol in the Statute of the African Court of Justice and Human Rights, article 5(3) and article 34(6)

Provisions are similar to the International Covenant on Civil and Political Rights, article 9(1) and the African Charter, articles 6 and 7

Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child.

http://www.crin.org/docs/Uganda_COs.doc

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

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

Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.ug 25
Provisions are similar to the International Covenant on Civil and Political Rights, article 9(1) and the African Charter, articles 6 and 7

Uganda Human Rights Commission, Annual Reports for 2010 and 2011, www.uhrc.ug 25
Provisions are similar to the International Covenant on Civil and Political Rights, article 9(1) and the African Charter, articles 6 and 7

Uganda Human Rights Commission, Annual Reports, <http://www.uhrc.ug>

Uganda Human Rights Commission, Annual Reports, <http://www.uhrc.ug>

Uganda Human Rights Commission, Complaints Handling Manual

Uganda Human Rights Commission. 2011. Annual Report 2010. Kampala: Uganda Human Rights Commission. p.27

Uganda Human Rights Commission. 2012. Annual Report 2011. Kampala: Uganda Human Rights Commission. p.18

¹Uganda Human Rights Commission. 2012. Annual Report 2011 . Kampala: Uganda Human Rights Commission. p.22

- Uganda Human Rights Commission. 2012. Annual Report 2011 . Kampala: Uganda Human Rights Commission; Uganda Human Rights Commission. 2011. Annual Report 2010 . Kampala: Uganda Human Rights Commission
- Uganda Peoples' Defence Forces Act, 2005 23 Children's Act, 1996 24 Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>.
- Uganda Peoples' Defence Forces Act, 2005 23 Children's Act, 1996 24 Human Rights Watch. 2011. Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit. New York: Human Rights Watch. <http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance>.
- Ugandan Human Rights Commission. 2011. Annual Report 2010 . Kampala: Uganda Human Rights Commission; Human Rights Watch. 2011. 'Even Dead Bodies Must Work': Health, Hard Labor, and Abuse in Ugandan Prisons . New York: Human Rights Watch. p.23
- WeInformers. 9 May 2011. Workers MP warns security agents against violence on people working. <http://www.weinformers.net/2011/05/19/workers-mp-warns-security-agents-against-violence-on-people-working/>