

**A CRITICAL ANALYSIS OF THE RIGHT TO EXPEDITIOUS TRIAL OF DETAINEES  
IN UGANDA – A SOCIO- LEGAL APPROACH.**

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**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR  
THE AWARD OF THE BACHERORS OF LAWS OF  
KAMPALA INTERNATIONAL  
UNIVERSITY**

**JULY, 2018**

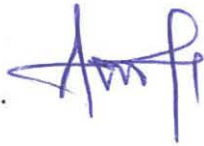
## DECLARATION

I AKUGIZIBWE ADOLF declare that this dissertation is an original work and has not been presented to any institution before for any award of a degree.

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Date.....23rd/10/2018.....



APPROVAL

This dissertation has been submitted with my consent

Supervisor:

Dr. Hanafi A. Hammed.

DATE.....23rd October, 2018.....



## DEDICATION

This piece of work is dedicated to the families of Mrs. Penninah Kasozi, Muzeeyi Kaheeru and family, the Ugandan Judiciary, police, and all other stakeholders concerned with the administration of justice in Uganda. It is also dedicated to those whose rights have been violated due to lengthy pre-trial detention in Uganda.

I also dedicate this research to my friends with whom I have gone through the law school.

## ACKNOWLEDGMENTS

Writing this dissertation has been a treacherous journey for so long that its accomplishment was far too unimaginable to anyone so close to me; from time of imagination of the topic to free writing, from field work to corrections and finally to completion. A long walk dotted with pits and huddles, sicknesses and despair; but with a combination of patience, immense resolve and great principle of commitment, and finally able to walk to the completion of this dissertation.

The researcher is deeply thankful without reservation to his supervisor Dr. Hannafi A. Hammed, without whose support and guidance this work would not have been possible and therefore he sincerely thank him for his time and dedication to his work.

His sincere appreciations also go to the Dean of school of Law Dr. Valentine and his fellow staff at Kampala International University School of Law for the invaluable time and assistance they gave him during his consultations.

To his immediate family the family of Mrs. Kasozi and Mr. Kaheeru, Mike, Miko, Joan, Agnes, Musa, Kato, Jesca, John, Eddie, Betty, Mega, Charles, Cate, Connie, Claire, Irene, Matovu, Innocent; My friends Emmy, Andrew, Arnold, Janetx2, Joel and Pamela, he has never been more thankful to them than he is now for the enormous support they gave him during the times of his weakness in the course of his dissertation. Your prayers and encouragement to him must surely not pass unappreciated.

Lastly, to his parents Mrs. Kasozi Peninah, Mr. VFK, Uncle Augustine, Dr. Sekimpi Deogratius, Uncle John Bahemuka, Dr. Angela Nagujja, Uncle Robert, your immeasurable sacrifices and great investment in his education, your endless care and nurturing with strict discipline from his childhood to date and your efforts and unwavering support to him through thick and thin have been very central to the fruition of his research work and school life in general. He's deeply thankful to you.

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## **ABBREVIATIONS.**

1. ACRWC -African Charter on the Rights and Welfare of the Child
2. APCOF- African Policing Civilian Oversight Forum
3. CEDAW- Convention on the Elimination of All Forms of Discrimination against Women
4. CRDP - the Convention on the Rights of Persons with Disabilities
5. ICCPR- International Convention On Civil and Political Rights
6. ICSECR- International Convention on Social, Economic and Cultural Rights.
7. UN- United Nations
8. UNCAT- United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
9. UNCRC- The United Nations Convention on the Rights of the Child
10. UNDHR — Universal Declaration of Human Rights

## ABSTRACT

*This research paper analyses pre-trial detention (remand) in Uganda. It digs deep into the causes and effects of lengthy pre-trial detention and provides suggestions to end it. The paper gives appropriate history of the wider context of pre-trial detentions in Uganda that spans from the immediate post-colonial times of Uganda to the recent, highlighting major historical events that have shaped the law on pre-trial detention. It goes ahead to provide an analysis of the literature both local and international and compares it while giving a critic of it. The paper goes further to investigate the existence of the laws relating to pre-trial detention at the national, regional and international level highlighting the particular provisions of law that state the confines within this kind of detention should take place and be dealt with. With the central region as its geographical scope, the research paper entails a field work report of the findings from the study. The main method of research used here is the quantitative method where data is extracted from the case study with the guide of information from the target group. The findings from the field study relating to pre-trial detention are circumstantial of the country's level of development, economic status and the social- political state of affairs in the country. In a conclusion, the paper is comprehensive in analysis, investigation and reporting of pre-trial detention in Uganda and is rich in comparison of the present with the past of Uganda in relation to the topic; local legal framework with international and concludes with recommendations from the author to various stakeholders in this country towards ending lengthy pre-trial detention in Uganda.*

## CHAPTER ONE

### 1.0 HISTORICAL BACKGROUND TO THE STUDY

The performance of the judicial process at least in part depends on its timelines. Slow and inefficient case processing prevent the timely receipt of court ordered services and sanctions for the offenders and unless courts intervene shortly after the occurrence of the offences, many Awaiting Trial Persons become recidivists before the courts have had the opportunity to respond to their prior offences.

Such delays as well interfere with the ability to achieve its stated goals of early interventions and rehabilitation. Pre-trial delays may as well prevent the effective use of punishments which the economists refer to as the discounting of punishment phenomenon, in that effect therefore, let all parties play their role effectively to achieve expeditious trials. For instance, In all criminal prosecutions, the prosecutor for instance in Uganda the Director of Public Prosecution, a police prosecutor, statutory prosecutors like Uganda Revenue Authority or private person are assigned with the duty to have criminal offences prosecuted as early as possible.<sup>1</sup> In theory the main objective of the adversarial system is to seek the truth, as to determine whether that given by the other side is sufficient to prove or disprove a case/ charge. The judge will therefore act as an impartial arbiter in the procedure to ensuring that neither side violates the rules of trial and conduct. However, it would be nice if our courts were totally infallible, but unfortunately that cannot be the case. They should at all times be very cautious though, taking in all the necessary evidence whenever making such a judgment to avoid convicting innocent persons. An example is of Edmary Mpagi and his cousin Fred Masembe for instance who were convicted by a Ugandan court and sentenced to death for the murder of a man who was later found.<sup>2</sup>

Masembe died in prison before he could face the gallows while Mpagi spent 18 years waiting to be executed by the state. Mpagi said his conviction was based on fabricated evidence by the state.<sup>3</sup> He claims a pathologist was bribed to falsely testify that he had carried out a post-mortem

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<sup>1</sup>Section 40; Criminal Procedure Code Act Uganda.

<sup>2</sup>Wambi Michael, Uganda: so many innocent People are Dying," (Inter Press Service News Agency, Saturday ,June 3,2018) <<http://www.ipsnews.net/2011/06/uganda-Isquoso-many-innocent-people-are-dyingrsquo/>> accessed 9 June 2018.

<sup>3</sup> ibid

on the body of William George Wandyaka, the man Mpagi and Masembe were accused of murdering.<sup>4</sup>

The legal burden is always on the prosecution<sup>5</sup> which shall collect and present compelling evidence to the trier of fact and such trier shall be ordered by law to consider only actors' evidence and testimonials evidence presented in court.<sup>6</sup> A number of suspects (accused) even those formally on capital punishments have been proved to be innocent in courts and most of them after spending a very long period on remand and yet no mechanism has been put in place to compensate such victims as already discussed in Edmary Mpanji's case and therefore courts should invite themselves to be expeditious but also not making misdirected judgments.

The need for a speedy trial can be traced back in a provision of the Magna Carta Libertatum also known as the Great Charter of the Liberties<sup>7</sup> and it was a right interpreted by Coke and much the same language was incorporated in our municipal laws particularly the constitution.<sup>8</sup> The understanding is therefore to safeguard suspects from undue and oppressive incarceration prior to trials, minimize anxiety and concern accompanying public accusation and also limit the possibility that long delays will impair the accused to defend himself/herself.

The Director of Public Prosecution (D.P.P) Uganda Michael Justice, while raising this concern, reinstating the fact that some witnesses for example victims of defilement, by the time such cases come back for hearing, most of them are already married and they do not want their husbands to know about such information and they will never present themselves again in court to give evidence against such a case. This explains why the right to a fair hearing is one of those rights preserved in our Bill of Rights (chapter 4) and the courts of judicature have consistently applied this rule.<sup>9</sup>

In his appeal for an amendment of Article. 23(4), Kibiita Justice, contend that the period of 48 hours accorded to them (office of the Director of Public Prosecutor) are not practical especially

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<sup>4</sup> Ibid  
<sup>5</sup> Evidence Act Cap 6 1985 (as Amended), Section 101  
<sup>6</sup> Evidence Act Cap 6 1985 (as Amended), Section 103.  
<sup>7</sup> Magna Carta, 1215, 2<sup>nd</sup> July, 2018. <[https://en.wikipedia.org/wiki/Magna\\_Carta](https://en.wikipedia.org/wiki/Magna_Carta)>  
<sup>8</sup> Constitution of the Republic of Uganda 1995, Article 2.  
<sup>9</sup> Constitution of the Republic of Uganda 1995, Art.28(1).

putting into consideration the inadequacy of the personnel, the apparatus to use in acquiring the evidence given the advancement of the crimes committed.

Even that said, a number of attempts have been made to accord a fair and just space to the prosecution but at the same time not to abuse those detained most especially on remand. To appreciate this therefore we need to understand the historical growth of the law of trial in comparison with the current system.

From the time the colonialists declared Uganda a British protectorate in 1894 and in 1902, the Order in Council adopted the Foreign Jurisdiction Act, which incorporated the British Laws to be adopted in Foreign Jurisdictions,<sup>10</sup> the country started registering remarkable strides in the development of its Judicial systems.

The first independence Constitution did little though in addressing the issue of detentions. Thus, the period between 1962 and 1986 witnessed a political unrest in the country where arbitrary arrests and detentions were at their peak.<sup>11</sup>

The 1967 Constitution also thought less in addressing this problem. For example article 10(5), (8)<sup>12</sup> allowed persons to be arrested and detained for 48 hours without being informed of the reasons for their arrest until the Public Order and Security Act of 1967 was enacted to address this issue. Prior to this, most cabinet ministers were arrested and detained without being informed of the reasons of their arrest. They were released after application for Habeas Corpus but they were rearrested where the Emergence Regulations were in force.<sup>13</sup>

This led to the enacting of the 1967 Constitution that limited the writ of Habeas Corpus which had been outlawed by the court in **Uganda v Commissioner of Prisoners exparte Matovu**.<sup>14</sup>

In January 1971, the Uganda Army led by Idi Amin overthrew the government of Dr. Milton Obote and for eight years, Amin presided over the most dictatorial regime in the post-independence Africa, under which there was no rule of law by the ordinary courts of the land<sup>15</sup> An example was the enactment of Decree No. 13 of 1971 that gave the then army the power to arrest and detain people beyond the reasonable detention period. With this enactment, many

<sup>10</sup> G.W. Kanyeihamba. Constitutional and Political History of Uganda, (Centenary Publishing House Ltd. Kampala, 2002)

<sup>11</sup> Ibid

<sup>12</sup> Constitution of Uganda Art 1967 Art Kanyeihamba (n.1) 68

<sup>13</sup> Ibingira and others v Uganda [1966] EA 306

<sup>14</sup> [1966]EA 514

<sup>15</sup> G.W. Kanyeihamba. (n.10) P.123

Ugandans would be detained for longer than 48 hours, tortured and some were extra judicially killed. In 1986, the National Resistance Movement (NRM) led by His Excellency Yoweri Kaguta Museveni took over power and led to the promulgation of the 1995 Constitution of Republic of Uganda<sup>16</sup> that has been influential in promoting the Universal Declaration of Human Rights (UNDHR).<sup>17</sup>

Chapter four of the Uganda Constitution<sup>18</sup> generally, and in particular, Article 23, regulates and protects a person's right to liberty and therefore guards against prolonged pre-trial detentions.<sup>19</sup>

It is clear from the above background that the promulgation of the 1995 Constitution was intended to heal the wounds caused prior to its enactment.

The question that still remains is whether Article 23 of the Constitution serves the purpose for which it was intended in relation to detentions, in other words, whether it has achieved its objective. This research is intended to address these questions and put into consideration whether or not Article 23 is adhered to in its strict sense in Uganda.

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<sup>16</sup> Chapter 4

<sup>17</sup> 1948

<sup>18</sup> 1995

<sup>19</sup> 1995 Constitution of the Republic of Uganda Art 23 (4) (b) 1995

## 1.2 STATEMENT OF PROBLEM

The 1995 Constitution of the Republic of Uganda and other legislation both Local and international on human rights provide for minimum standards on detention of arrested persons. They emphasize on speedy trial of cases, that is, the right for an arrested person to be produced before court for trial within the shortest time possible (48 hours)<sup>20</sup>. However, many of these laws have either remained on paper or the responsible persons or officers in effecting these laws have overlooked or deliberately failed to ensure these rights and liberties. Arrests can be made by the Uganda Police Force, Uganda Peoples' Defense Forces and ordinary citizens, who would have to hand over the arrested person to the appropriate authorities depending on the crime. The Uganda Peoples' Defense Forces handle military personnel and other individuals who are subject to the Ugandan Peoples' Defense 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) and most times these agencies have violated the detention laws and arresting guidelines.

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 others.

On the whole, the Ugandan law, especially the Constitution, complies with international human rights standards relating to arrest. This work vies that, it would be imperative to state that the 48 hours accorded to prosecution is enough to find all the necessary evidence especially in complicated cases and therefore the researcher seek to associate himself with the Inspector General of Police (IGP) Okoth Ochola's view that in certain cases it is not practical to produce suspects such as those of terrorism in 2 days, since it requires much time to carry out forensic evaluations, especially in a country like Uganda where we don't have enough laboratories and equipment to test for bomb exhibits for example.<sup>21</sup>

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<sup>20</sup> Article 23(4) of the Constitution of the Republic of Uganda.

<sup>21</sup> New Vision, Monday, July 02, 2018, Paul Kiwuuwa. Police Demand the Amendment of the 48 hours Detention Rule. <[https://www.newvision.co.ug/new\\_vision/news/1477851/police-demand-amendment-48-hours-detention-rule](https://www.newvision.co.ug/new_vision/news/1477851/police-demand-amendment-48-hours-detention-rule)>

It shall as well be noted that where the file is sent to the Director of public prosecution (or where he delegates the State's Attorney) and it does not disclose a prima facie case, such file shall be sent back to police for more evidence.

### **1.3 GENERAL OBJECTIVE**

The general objective of the study is to critically analyze the right to expeditious trial of detainees in Uganda.

#### **1.3.1 Specific Objectives**

- i. To discuss the causes of prolonged pre-trial detentions in Uganda;
- ii. To examine the legal frame work for prevention of long pre-trial detention; and
- iii) To highlight the effects of prolonged pre-trial detention.

### **1.4 RESEARCH QUESTIONS**

- i. What are the causes of prolonged pre-trial detention?
- ii. What are the legal frameworks for the prevention of long pre-trial detention?
- iii. What are the effects of prolonged pre-trial detention?

### **1.5. SIGNIFICANCE OF THE STUDY**

Due to increased number of detainees in the prisons of Uganda, questions have been raised as to the cause. It becomes necessary to dig deep into the root causes of this perennial problem and proffer solutions to it. In addition to this, the research will increase the available literature on the subject matter.

The recommendations to the Law Reform Commission, Parliament, Judicial services commission and the office of the Chief Justice, will help in persuading the above mentioned offices to make laws to stringently deter the prolonged pre-trial detentions in Uganda.

In addition, the research will be useful to other researchers like students, police, lawyers, judicial officers and the civil society on the subject of Pre-trial detention in Uganda.

The study will contribute considerable awareness on the loopholes in the law of prosecution to concerned actors as well as the legislating bodies in issues pertaining detentions.

The research is expected to contribute on the justification for the improvement of the welfare of judicial officials and increase of their numbers.

The study on Pre-trial detention is justified considering the fact there are scanty literature on the subject and not given much attention in the country. There has not been a comprehensive research paper that has extensively covered the causes and effects of lengthy pre-trial detention in Uganda hence making this paper very important. The study on pre-trial detention is justified since such information can guide the legislators, the judiciary, police, prisons department and the civil society on identifying strategies that can help in ending prolonged pre-trial detention in Uganda.

#### **1.6 SCOPE OF THE STUDY.**

In this work, the researcher has been limited by the available literature about pre-trial detention since there are not so many scholars that have written about this subject. The researcher has also limited his research field work to one region (central) which may not present a representational picture of all regions in Uganda about pre-trial detention. However, the researcher will be able to use the available literature in the regions of Uganda and other jurisdictions to compare with the field work done at the identified case study so as to be able to harmonize his research. The researcher will also ensure to diversify the framework especially laws, reports and other literature available to reach a balanced research study.

This research will cover a time frame between the years 2006 to 2017.

This research shall be conducted in Uganda as the case study. The importance of identifying Uganda is because it is nearer to me which eases my research work.

The study is intended to cover Ugandan Prisons so as explore the causes and effects of prolonged pre-trial detention in Uganda. This is because the prisons officers manage the prisons and therefore have a wide knowledge on the number of inmates on remand, the causes of prolonged remand and the effects of prolonged remand of the detainees in Uganda.

## 1.7. RESEARCH METHODOLOGY

In this research, the researcher used both qualitative and quantitative methods of research. The researcher used textbooks, journals, newspapers, online sources and any other credible sources as tools of data collection. The research target group has been the security organs, judicial officers and public servants who provided him with firsthand information since they are in charge of these Pre-Trial processes, and therefore have wide knowledge of causes of lengthy pre-trial detention and the effects that these detentions have and they were able to give first-hand information regarding the research questions.

The researcher formulated open ended questions in the Questionnaire so as to have the information regarding the research questions directly from the officers in charge of inmates. Some of the questions were; what are the causes of prolonged pre-trial (remand) detention in Uganda? What are the effects of prolonged pre-trial detentions in Luzira Prison/ Uganda?

The advantage of using the quantitative method is that to be able to get first-hand information from the field on the causes and effects of lengthy pre-trial detentions in Uganda and that has been useful to the work in analyzing the topic and presentation of data in his research.

## 1.8 LITERATURE REVIEW

This brings us to what Court means, a court is a tribunal constituted to administer justice; especially a governmental body constituting of one or more judges who sit to adjudicate disputes. The judge or judges who sit on such a tribunal or a place where often as a government institution, with the authority to adjudicate legal disputes between parties and carry out the administration of justice in civil, criminal, and administrative matters in accordance with the rule of law<sup>22</sup>. In both common law and civil law legal systems, courts are the central means for dispute resolution, and it is generally understood that all persons have an ability to bring their claims before a court.<sup>23</sup> Similarly, the rights of those accused of a crime include the right to present a defense before a court.<sup>24</sup> A court is also defined as an organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. Courts of law are

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<sup>22</sup> Bryan A Garner, *Black's law dictionary* (5<sup>th</sup> edn) Thomson Reuters, P 189

<sup>23</sup> Civil Procedure Code Act, Order 4

<sup>24</sup> Civil Procedure Code act, Order 8.

actively instituted organs of the government that administers justice, whether on the basis of “legislation” previous court decisions or other authoritative services.

There are key words in all these definitions,

- (a) Organ of government. This position was John Austin’s role of the supreme and command.
- (b) To administer justice. Courts should be looked at as safeguard against private and government agencies’ abuse of other’s rights. This therefore meant in the administration of the judicial powers, courts must accord a fair and just trial to all persons irrespective their tribes, size, political affiliation, economic status etc. and this position was accommodated in the Ugandan constitution under Art 21(1) and Art.28. A number of cases both Uganda and common law positions have upheld this position and this has proved to be good practice.

To that effect therefore, it is important to note that Pre-trial Detention is a globally tropical issue subject especially in the developing countries like Uganda since it is an area of key concern in the judicial system of various countries. Many scholars, academicians, lawyers, researchers, judicial officers, Non-governmental Organizations and many other agencies have written about, and also possibly reported about pre-trial detention in the world. The researcher therefore would wish to acknowledge their scholarly works in this area.

It should however be noted that even though this topic has been widely written about by many scholars, this has mostly been on the general global scene and thus giving less emphasis on particular countries or Jurisdictions like Uganda. This has left many gaps that need to be filled in those scholarly writings and that is my exact inspiration to write this paper particularly focusing on Uganda.

Murphy<sup>25</sup> stated that “the act and decision to validate the use of detention of arrested person as an aid to interrogation or whatever purpose, should be in line with the leading principle that all persons in detention must be expeditiously released as soon as the need for detention has ceased to apply”.

The Author presents a good proposition that the detained persons should be released immediately after interrogation has ended. However, the Author does not envisage circumstances in

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<sup>25</sup>P. Murphy, Blackstones Criminal Practice, (11<sup>th</sup> edn), Blackstones Press Ltd, (2001).

developing countries where the process of interrogation and investigation by the police usually takes a long time in developing countries and if a person was to be kept for long till the end of the interrogation in these countries, it would lead to prolonged pre-trial detention. Therefore, the Author should have clearly identified the time limit in which a charged person should be released other than conditioning the release only upon the completion of the interrogation of that person. The United Nations Human Rights Committee, detention before trial should be used only where it is lawful, reasonable, and necessary.

It states that Pre-trial Detention may be necessary to prevent flight, interference with evidence or the recurrence of crime, or where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner.<sup>26</sup>

This report however presents a good position in which pre-trial detention should be used as only for the special cases mentioned above for this detention to be reasonable and necessary. However, this report does not clearly explain or give examples of circumstances that constitute a clear threat to society which cannot be contained in any manner. This would leave one questioning which offenders ought not to be detained in police cells or prisons.

There are very many prisoners on remand in the prisons of Uganda according to Advocates Sans Frontiers brief.<sup>27</sup> “This has caused congestion in these prisons. Despite this problem, little has been done to rectify the problem. The government has failed to establish the causes of these pre-trial detentions so as to find possible solutions for this. There is no respect for the constitutionally provided right to a speedy and fair hearing”. This report furnishes us with data regarding the state of pre-trial detention in Uganda. It points out the fact that government has failed to have concern about the alarming pre-trial detentions in Uganda. However, the report does not put into consideration of the causes of pre-trial detention generated by other factors like detainees’ inability to apply for bail due to neglect by their families which the present work intends to examine.

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<sup>26</sup> A Handbook of International Standards relating to Pre-Trial Detention, Professional Training Series No. 3 (New York: United Nations, 1994), pg14-15

<sup>27</sup>AVOCATS SANS FRONTIERS, BEHIND THE BARS: The problem of Lengthy Pretrial Detention in Uganda P. 7.

In the policy brief, it was stated that<sup>28</sup>, detainees are entitled to certain rights. “They should be detained in adequate facilities, treated in a humane and respectful manner, and given access to outside contacts. Both international and Ugandan law provides for these rights, but practice frequently deviates from the law. Pre-trial detainees in Uganda are held in both police and prison facilities.”

The researcher appreciates the research by the above mentioned organization and it has informed my discussion regarding the treatment of detainees. However, the research does not extensively explore the various causes of pre-trial detention in Uganda. It rather focuses more on the welfare of the detainees in Prisons of Uganda.

Talking about the outcomes of Pre-trial Detention, Shaw<sup>29</sup> argues that many bad outcomes stem from the global over-use of pre-trial detention. He states that “excessive pre-trial detention shatters individual lives, destroys families and degrades communities. It also undermines the rule of law by fostering corruption and encouraging criminality and exposes people presumed innocent to torture, disease and overcrowding in conditions worse than most sentenced prisoners experience.”

Mark’s scholarly writing about the effects of pre-trial detention is informative and so rich in exploration of this subject. However, his generality of the effects on detainees of pre-trial detention seem to incline more to the developed Criminal Justice Systems in Europe than Africa where Uganda is. Effects of pre-trial detention like degrading communities as he mentions are not so significant in Uganda.

In digest of pre-trial detention, according to Open Society, Justice Initiative in their Publication<sup>30</sup> the rule of law is fundamental to all open societies. It is also an important aspect of socioeconomic development. “Excessive pretrial detention undermines the rule of law by debasing the presumption of innocence, furthering corruption, and even promoting criminality”

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<sup>28</sup>, Roselyn Karugonjo Segawa, PRETRIAL DETENTION IN UGANDA, APCOF POLICY BRIEF No. 4 of 2012 P. 10.

<sup>29</sup> Open Society, Justice Initiative, ‘The Socio Economic Impact of Pretrial Detention’ 2014 P. 11

The Publication by open society Justice Initiative is rich in relating pre-trial detention to rule of law in Uganda and it has helped in informing my arguments in the later Chapters. The publication however doesn't clearly explain how pre-trial detention promotes criminality.

## **1.9 ORGANIZATION LAY OUT**

Chapter one covers historical background, statement of problem, objectives of the study, research questions, significance of the study, research methodology, literature review and limitations of the study. Chapter two examines the causes and effects of lengthy pre-trial detention in Uganda. Chapter three analyses the international, regional and national legal frameworks relating to pre-trial detention. Chapter four makes necessary recommendations toward ending Pre-trial detention in Uganda and the conclusion.

## **1.10 CONCLUSION**

This Chapter discusses the exploration of the historical background of pre-trial detention in Uganda, appreciating the procurement and development of the current legal framework. It is well stated that unless we understood the ancient, we cannot understand the present, and therefore that is why the work discussed the history of the study. The research methodology and the analysis of literature on the subject give an understanding of what this research paper is all about.

## CHAPTER TWO

### PRE-TRIAL DETENTION IN UGANDA

#### 2.0 INTRODUCTION

This chapter examines the causes and effects of lengthy pre-trial detention in Uganda using the data collected from the field study to examine the above mentioned topic. Then after the research proceed to present the results of the field and scholarly findings that conducted on the causes and effects of lengthy pre-trial detention in Uganda.

While in the field, five Prison officers at Luzira Murchison Bay Prison who volunteered to help in giving information regarding the topic by filling the questionnaires.

Below are the views that all the respondents gave about the causes and effects of lengthy pre-trial detention in Uganda.

#### 2.1 CAUSES OF LENGTHY PRE-TRIAL DETENTION IN UGANDA.

Schonteich<sup>31</sup> discusses a nearly universal reason for the excessive use of pre-trial detention as a lack of coherence over how the presumption of innocence should be balanced against the need to protect the public. Even in places with a strong legislative and jurisprudential basis for protecting the presumption of innocence, it is more a principle than a reality. Often, there is little clarity as to what the concept means, or how it should be applied. This is aggravated by imprecise and restrictive laws in many places. Such laws are not produced in a vacuum; public pressure and populist politicians are often responsible for laws which limit the right to pre-trial release.<sup>32</sup> In Uganda for instance the 48 hours<sup>33</sup> rule is not feasible given the logistical inadequacy of our investigational institutions and just an example of the populist and politically motivated laws.

On the other hand Martin also relates prolonged pretrial detentions to the fact that the vast majority of arrestees and defendants lack the education, knowledge or skills necessary to protect their right to be presumed innocent.<sup>34</sup> They typically cannot adequately mount an application for pre-trial release as they are ignorant of the (often vague) legal and factual criteria courts use in their pre-trial decision making process. Notwithstanding that most defendants are too poor to

<sup>31</sup> M Schonteich, 'The Over use of Pre-trial Detention : Causes and Consequences,' 18 <https://www.crimeandjustice.org.uk/site.....>, accessed 6 June 2018.

<sup>32</sup> [Crime and justice.org.uk/files/uk](https://www.crimeandjustice.org.uk/files/uk)

<sup>33</sup> Article 23(4) the Constitution of the Republic of Uganda

<sup>34</sup> *ibid*

afford a private lawyer, in Uganda for instance offences triable by the magistrates courts, the accused are not offered free legal services by government. However even those offered in the High court by government, the commitment is not as high as a private lawyer. There have been a number of civil society organizations with legal aid clinics offering pro bono services even though they haven't been as extensive enough as it would necessitate, especially at the pre-trial stage of the criminal process. In many less developed countries like Uganda, there are few if any, lawyers available outside of major towns and cities, so that even defendants with some means are unable to procure private counsel. Unrepresented defendants have great difficulty preparing their criminal case. Those detained awaiting trial do not have the liberty that would enable them to trace and interview witnesses, scrutinize the evidence against them, study the relevant law, and prepare their defense.<sup>35</sup> The work therefore discusses some of the causes of the prolonged trials and these include:

▪ *Delayed Completion of Police Investigations*

It is a principal objective of criminal law to protect the society from crime by punishing the offenders. However justice and fair play requires no one can be punished without a fair trial.<sup>36</sup> A person can be under a thick cloud of suspicion of guilty, he might even be caught red handed and yet he is not to be punished unless and until he is tried and adjudged guilty by a competent court<sup>37</sup> and the legal burden is put on the prosecution to prove its case against the accused<sup>38</sup> and the standard is beyond reasonable doubt.<sup>39</sup>

Investigations in Uganda are most times performed haphazardly, leading to lengthy detentions, arbitrary arrests, and violations of fundamental human rights. Investigations are impeded by archaic ways of obtaining information, negligence, corruption and logistical barriers. This therefore necessitates proper investigations so that reliable evidence is accrued and suspects are provided with a fair and impartial trial. Ad hoc security agencies use renowned torture chambers, so-called "safe houses," to perform barbaric investigations to obtain confessions or other desired information. Notwithstanding the lack of reliability of evidence retrieved under these nefarious

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<sup>36</sup> Constitution of the Republic of Uganda, Art.28, 1995 (as amended).

<sup>37</sup> R.V.Kelker; India Criminal Procedure Code: 4<sup>th</sup> edition, 2004;p30

<sup>38</sup> Evidence Act Cap 6, S.101,1909.

<sup>39</sup> Ibid, S.102.

methods, officers of these ad hoc agencies put extreme pressure on suspects to confess or concede through the use of physical and emotional torture. Some of their common torture methods include with batons and electric wires, shocking with electrical devices, hanging rocks from the prisoners' testicles or twisting their penises and many others of which all these take a lot of time.<sup>40</sup>

▪ *Lack of Enough Resources and Manpower to Enable Efficient and Expeditious Investigations*

The institution and other ad hoc security agencies have resorted to these rude mechanisms even though such confessions are not admitted in courts of Uganda.<sup>41</sup> Whereas there are a reasonable number of police investigation officers, the number of criminal offenders is high and has overwhelmed the investigation departments.<sup>42</sup> It is therefore unfair to give a single cabin to a police station to handle a population of over a million people to transport suspects, witnesses and patrol operations.<sup>43</sup> Some of the offences nowadays are too sophisticated in nature that it takes the police investigation department too long to trace the evidence. They cited examples of several recent murders of Moslem clerics, Joan Kagezi (the former Acting Deputy Director of Public Prosecution) and Andrew Felix Kaweesi, former Assistant inspector general of Police as some of the cases that were too sophisticated in nature. They concluded saying that delayed Police investigations as stated above greatly result into suspects staying for a very long time on remand and some in the police stations.

<sup>40</sup> B.J. Oppenheimer ' From Arrest to Release: The Inside Story of Uganda's Penal System 215

<<http://www.mckinneylaw.iu.edu/iiclr/pdf/vol164> > accessed 6 June 2018

<sup>41</sup> Daniel D. Ntanda Nsereko, The Nsereko, The poised Tree: Responses to involuntary Confessions in Criminal Proceedings in Botswana, Uganda and Zambia, 5 AFR. J. INT'L & COMP. L 609, 618 (1993) (Citing Uganda Evidence Act §25. Laws of Uganda, Cap 43

<sup>42</sup> Interview with a Police Officer 41 Years old from Bulenga Name Withheld for security, at Kampala Central Police Station, in Kampala (April 14<sup>th</sup> 2018)

<sup>43</sup> Interviews with O/C's, at Old Kampala Police Station, Jinja Police Station, Katwe Police Station, Vaggalama Police station and Mukono Police Station in Uganda (April 15 2018- May 15 2018)

▪ *Missing of Files both in Investigation and Prosecution Offices*

The Magistrate Courts Act for instance gives powers to the Chief Magistrate to call and examine records of the lower Courts. There is also a provision to reserve questions of law for interpretation by the higher courts. If this power is not exercised judiciously, the trial would inevitably be delayed. An example is in Bundibujjo in western Uganda where a party will have to travel a distance of over 75 kilometers to Fort Portal High Court if he or she is to trace for his file and such files are most times lost<sup>44</sup> because of poor storage facilities, negligence or deliberate action both at the police stations and prosecution registries, most files of the charged persons usually end up getting misplaced, lost or stolen from the stores. This delays the trial of a charged person since the searching of it and the processing of a new one usually takes long. An example is Mr. Freeman who won a small claims case, in 2011 and since then he could not collect the judgment because the case file had gone missing. He felt that the file was intentionally lost because he had complained about the judge who handled the case, and he was removed, by the presiding judge. He tried to create a shadow file, but it never worked and therefore the question remains, how can a case file just disappear? <sup>45</sup>

▪ *Inadequate Number of Trial Judges/Magistrates*

To cover all High Courts Circuits and magisterial areas, it has been clear from all the courts I have visited that Uganda still has a challenge of few judges and magistrates that are not proportionate to the number of cases brought before court. Due to the inadequate number of judges, there is always backlog of cases waiting the High court circuit sessions. This causes delay in the trial of some of inmates charged with capital offences. In the meeting with the legal and parliamentary committee at the High Court, the Chief Justice reported that Uganda with a population of over 33 million people then had a total of 255 judicial officers and therefore more were required to clear the backlog in the courts.<sup>46</sup> The number was too low and therefore was not up to the task of handling the different cases that are on the increase. With this number is therefore important to note that the recommended ratio of judicial officers to the public is

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<sup>4</sup> ibid

<sup>5</sup> Freeman, CA: June 30 2012, Avvo Inc. <<https://avvo.com/legal-answers/the-superior-court-lost-my-case-file---08766.html>> 15<sup>th</sup> July 2018.

<sup>6</sup> S.Kasule "The Backlog has a lot of Cases,3. <<http://www.academia.edu/8372940/The-backlog-has-a-lot-of-Cases>> Daniel D.NtandaNsereko, The Poised Tree: Responses to Involuntary Confessions in Criminal Proceedings in

1:16582.05 and yet in Uganda its 1:300000.<sup>47</sup> This therefore means it is not a surprise that there has been this backlog in almost all courts in Uganda.

#### ▪ *Political Influence*

Even though the Uganda police force is the officially mandated institution to initiate prosecution, it most times has no say over suspects brought into their detentions by other Ad hoc security agencies.<sup>48</sup> And there is always delay in the trial of political detainees due to the influence of some officers in government. This was a common feature of the early regimes, however it has not changed with the regime of President Yoweri Museveni.<sup>49</sup> The respondents stated that most of these victims are opposition members of the government and the process of investigation of their cases by the police is usually deliberately delayed.<sup>50</sup> Sometimes the Magistrates! Judges also deliberately keep on unnecessarily adjourning their trial with a view of keeping them long in prison. They also noted that such political detainees are always deliberately denied bail even after a long period on remand.

#### ▪ *Unnecessary Adjournments of Sessions and Cases*

One of the major causes of prolonged pre-trial detention in Uganda is the fact that judges and magistrates unnecessarily adjourn the court sessions which causes delay in the determination of the matters and therefore resulting into prolonged pre-trial detention.<sup>51</sup> The commonest causes of adjournments are usually the prosecution side who usually ask for unnecessary adjournments, the many cases to be handled by the judges or magistrates in a day and also big numbers of witnesses from either side that have to be cross examined.<sup>52</sup> In a report prepared from an interview of over 70,000 respondents, it was discovered that the increasing judges could perhaps not be the complete remedy. It was stated that it was as well important we address the

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<sup>47</sup> S. Kasule "The Backlog has a lot of Cases, 3. [http://www.academia.edu/8372940/The backlog has a lot of Cases](http://www.academia.edu/8372940/The_backlog_has_a_lot_of_Cases) 14<sup>th</sup> July 2018

<sup>48</sup> Daniel D. Ntanda Nsereko, *The Poised Tree: Responses to Involuntary Confessions in Criminal Proceedings in Botswana, Uganda and Zambia*, 5 AFR.J. INT'L & COMP. L 130. Vol.16:1 (1993)

<sup>49</sup> John D. Rusk, *Uganda: Breaking Out of the Mold?*, Africa Rights Monitor Report, 33 Africa Today, 91, 100, (2<sup>nd</sup>, 3<sup>rd</sup> Quarters, 1986.

<sup>50</sup> Interview with a Thirty-Five year old from Kireka, Names withheld for Security, at Murchison Bay Prisons Luzira, Kampala (April 15 2018)

<sup>51</sup> Interview with a state attorney 46 years at Buganda road court from Muyenga in kampala, name withheld for security, 10<sup>th</sup> April 2018.

<sup>52</sup> Ibid

procedural reform like unnecessary adjournments in administration of justice. In this study, it was also stated that we needed to move away from just looking at macro pendency statistics, and actually go through the entire process of these cases. In this report, it was indicated that over 46% of the adjournments were caused by the adjournments prayed for by the debtors to have sometimes to clear the debts, 36% by the creditors and then the lawyers who keep on asking for time to file the pleadings.<sup>53</sup> The unnecessary adjournments should be restricted if as a country we are to address this challenge.

#### ▪ *Unnecessary Delay in Passing on Judgments*

In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.<sup>54</sup> Many times judges and magistrates take a long time to pass judgments and this results into detainees awaiting judgment to stay longer on remand than it would be necessary.<sup>55</sup> They noted that this has been a prevalent matter and it has persisted for a very long time in the judiciary.

#### *Delay of Witnesses to Come to Court to Testify*

Delays in the coming of witness to court to testify always take longer to be decided and because witnesses are crucial in criminal matters, it takes a long time for the judges and magistrates to study and examine the other form of evidence in sensitive cases like murder, treason, rape etc.,<sup>56</sup> than it would have been if there witnesses. It is the delay of witnesses coming to court to testify that delays trial and in turn causes lengthy pre-trial remand.

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<sup>3</sup>P. Regy and S. Roy, National Institute of Public Finance and Policy (NIPFP) and R. Sane of the Indian Statistical Institute: Analysis of 22 Complete Cases of Debt Recovery Tribunal, 2014: <https://www.livemint.com/Politics/LGY70eZcoCWnqpW1HiMvBN/Unnecessary-adjournments-delay-debt-recovery-proceedings-re.html> 14th July 2018

<sup>4</sup>The 1995 Constitution of the Republic of Uganda, Art. 28 (1).

<sup>5</sup> Interview with the O/C CID Central Police Station Oryembernad 47 years from Kireka, 10<sup>th</sup> May 2017.

### ▪ *Corruption in Offices*

Corruption is also among the causes of lengthy pre-trial detention in Uganda and it was at 50% as early as 1996.<sup>57</sup> The Anti-Corruption Act is the principal law in charge of all the corruption tendencies. This together with the Penal Code Act creates offences such as Embezzlement, Bribery, Causing Financial loss, Abuse of Office and false accounting. The legal regime as well creates the offices of the Criminal Investigations Department with officers at every station in Uganda; the other is the office of the Inspector General of Government with its headquarters at Parliamentary Avenue opposite the Parliament main gate and selected districts (to prosecute public servants' related offences).<sup>58</sup> However, it's unfortunate that even the officers in charge of the offices are corrupt themselves and therefore it becomes hard for them to prosecute similar cases. stated that many times some relatives of the offended families in cases such as defilement, theft and some of the misdemeanors usually bribe the police officers, judges and other judicial officers to have the charged persons stay longer in prison.

## **2.3. EFFECTS OF LENGTHY PRE-TRIAL DETENTION IN UGANDA**

Cut off from society and residing in prison for relatively long periods constrains the life engagements of inmates. Beyond the physical deprivations, Awaiting Trial Persons repeatedly discuss the mental burden of their situation. They describe an unending expectation, preoccupations, and ruminations running through their minds, fostered by the uncertainty of their prison status. Perhaps this is the first somewhat unique experience reported by the Awaiting Trial Persons and it appears to resonate in other reported experiences. Most participants described finding themselves in frequent circular ruminations, occupied with thoughts of when and how they will exit the prison. Often they report this worry as a top concern and also as constituting enormous burden on their psyche. That said, a number of other consequences of delayed pre-trials have been discussed below and among these;

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<sup>57</sup> Global Programs Against Corruption Conferences :Judicial Integrity and its Capacity to Enhance the Public Interests: 2 [https://www.unodc.org/documents/nigeria/publication/other\\_publications/judicial-integrity-and-its-capacity-to-enhance-the-public-intrest-2002-pdf](https://www.unodc.org/documents/nigeria/publication/other_publications/judicial-integrity-and-its-capacity-to-enhance-the-public-intrest-2002-pdf) 14th July 2018

<sup>58</sup>V.Wagona: Present Situation, Problems and Solutions in the Legal System Related to Corruption Control in Uganda; 2 <https://www.unafei.or.jp/english/pdf/RS-No71/No71-22PA-Wagona.pdf> June 6th, 2018.

▪ ***Congestion in Police and Prisons Detention Centers***

Citing the example of Luzira Murchison Bay Prison, the detainees have increased beyond the capacity of the prison and that majority of the detainees are on remand awaiting determination of the cases against them.<sup>59</sup> This Congestion in prisons like Luzira Murchison Bay Prison has severe consequences to the detainees such as reduced rations of food, poor hygiene, occasional fights due to competition for space in the cells and several infections. It was reported in reference to a World Prison brief , Uganda's prisons are 293.2% occupied revealing a severe overcrowding that needs to be quickly fixed to avoid a catastrophe and as of October 2017, there were 54,059 people in Uganda's Prison, implying there are 129 prisoners for every 100,000 Ugandans.<sup>60</sup> Dr. James Kisambu, the head of Prisons Health Services stated said overcrowding had led to spike in diseases, including MDR-TB a deadly drug resistant strain of Tuberculosis and over 50% of cases of MDR-TB in Uganda come from the prison system.<sup>61</sup>

▪ ***Loss of Confidence and Trust in the Courts and the Police among the Public***

There is a striking de-emphasis on the offences for which inmates were originally detained when raised in the discussion. In the socio-demographic questionnaire, inmates were specific about the offences for which they were detained and in addition indicated innocence regarding their charges. However, inmates discussed reasons for their detention in ways unrelated to offences. Incarceration for the ATPs, was viewed not in the scope of being accused offenders, rather they seem to consider themselves to be incarcerated because they are powerless; they consider themselves victims- victims of a dysfunctional, oppressive and corrupt Judicial System. In her response, she says

*"I am only here because I don't have anybody. It is unlawful to keep people here this long." ...as you see me I carry a court bail [have been granted bail], I do not know why they have still kept me here...all that is left is that I don't have any leg [influential/willing*

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<sup>59</sup>V.Wagona: Present Situation, Problems and Solutions in the Legal System Related to Corruption Control in Jganda; 2 <https://www.unafei.or.jp/english/pdf/RS-No71/No71-22PA-Wagona.pdf> June 6th, 2018.

<sup>60</sup>Newvision, Wendsday June 06 2018, 15:03: Uganda has the Second Most Overcrowded Jails in Africa.

[https://www.newvision.co.ug/new\\_vision/news/1470269/uganda-overcrowded-jails-africa](https://www.newvision.co.ug/new_vision/news/1470269/uganda-overcrowded-jails-africa). 7<sup>th</sup> June 2018.

<sup>61</sup> ibid

*person] to go and inquire what is happening... I have paid the charge and bail [lawyer], but they are just keeping me here for nothing.”<sup>62</sup>*

Inmates saw their prolonged detention not just as being unjust but also as an outcome of not having enough resources and “connection” to facilitate their leaving the prison. Awaiting Trial Persons view their incarceration to be more of oppression than relating to accused offences reflecting the frustration and feeling of not having a person to seek out her issue; they feel the judiciary has not done enough to secure their release.

This also happens especially when the police arrest and detains mere suspects of misdemeanors for long in the police cells who are latter found innocent of the offences charged against them. Such acts provoke concern and anger among the public about lives of such detainees. This therefore leads to loss of confidence in the criminal justice system in the country.

#### ▪ *Abuse of Rights of the Pre-Trial Detainees*

Lengthy pre-trial detention results into infringement of the rights of the pre-trial detainees. Since the 1995 Constitution of The Republic of Uganda provides for a speedy trial of the persons charged with offences,<sup>63</sup> it would be abuse of their rights to be detained for more than a year or two years awaiting trial in courts of law. Incommunicado detentions most times results in the failure to bring a detainee before a court promptly (generally within 48 hours) following the deprivation of their liberty,<sup>64</sup> and is inconsistent with Guideline 27 of the Robben Island Guidelines and the right to be brought promptly before a judge.<sup>65</sup> Prolonged incommunicado detention, meaning incommunicado detention beyond a very short period, necessarily violates the right to liberty and is generally regarded as a violation of the prohibition of torture and other ill treatment.<sup>66</sup> WGAD held that detaining an individual for 10 days without bringing him to a court or allowing him access to a lawyer, and, during this time, denying his detention to his family, amounted to a violation of the right to liberty. In an

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<sup>2</sup> Interview with an inmate, Names withheld for security, 56 years old :Luzira Murchison Bay Prison; 17<sup>th</sup> April 2018.

<sup>3</sup> See Art. 28 of the Constitution of the Republic of Uganda.

<sup>4</sup> Article 9(3) of the International Covenant on Civil and Political Rights.

<sup>5</sup> Section M (3) of the Principles on the Right to Fair Trial

<sup>6</sup> International Commission of Jurists; Pretrial Rights in Africa: A Guide to International Human Rights Standards; September 2016: <[https:// www.refworld.org/pdfid/586e6ec34.pdf](https://www.refworld.org/pdfid/586e6ec34.pdf).>

interview with one of the inmates, he in a very sad tone says, “My only worry is just how I will get my feet out of this place... you know, it is heart-breaking. You wake up you start worrying, the same things...you just sit and think and think, it can make you mad.” Incommunicado detention is altogether prohibited in Guideline 24 of the Robben Island. This does not only violate international human rights but also the Ugandan municipal laws such as the constitution.<sup>67</sup>

#### ▪ *Mental Disorders among the Detainees/Inmates*

This study has adopted the quantitative approach in pinpointing the presence and prevalence of health-related morbidities among Awaiting Trial Persons (ATP's), signaling their experience of distress. But the qualitative approach to research, especially phenomenology, has offered an immersion in the life-world of a person/group in focus; examining experiences and meaning constructions made from daily living. The outcome is usually an in-depth idiographic account reflecting contexts and lively depictions of the range and depth of experience. Due to the long time on remand, for instance; most detainees end up getting mental disorders like severe psychiatric morbidities such as post-traumatic stress disorder (PTSD) reported to be common in prisoners as a result of experiences of anxiety, loneliness and frustration. Some of them are always worried of losing their jobs, property, being detached from their family members or a high incidence of debilitating forms of anxiety among detainees held in a detention jail in Africa.<sup>68</sup> These anxieties were explained to possibly arise from the uncertain expectation of the outcome of inmates' court hearings or prison conditions or even the welfare of one's close relatives or dependents while incarcerated. It was found that pre-trial prisoners have a tendency to be depressed, especially during early periods of incarceration.<sup>69</sup> Armiya'u, Audu, Obembe, Adole, and Umar found significant psychiatric morbidity (46%) and physical illness (18%) among both ATPs and convicted prisoners. Important flights abroad due to detention.<sup>70</sup> With all

<sup>67</sup>See Art.23(4) Constitution of the Republic of Uganda

<sup>68</sup>Oleski M. S. (1977). The effect of indefinite pre-trial incarceration on the anxiety level of an urban jail population. *Journal of Clinical Psychology*, 33(4), 1006–1008. doi:10.1002/(ISSN)1097-4679 [PubMed] [Cross Ref]

<sup>69</sup>Cassau J. S., & Goodwin D. E. (2012). The phenomenology and course of depressive syndromes in pre-trial detention. *International Journal of Law and Psychiatry*, 35(3), 231–235. doi:10.1016/j.ijlp.2012.02.013 [PubMed] [Cross Ref]

<sup>70</sup>Armiya'u A. Y., Audu M. D., Obembe A., Adole O., & Umar M. U. (2013). A study of psychiatry morbidity and co-morbid physical illness among convicted and awaiting trial inmates in Jos prison. *Journal of Forensic and Legal Medicine*, 20, 1048–1056. doi:10.1016/j.jflm.2013.08.002 [PubMed] [Cross Ref]

these worries, a person ends up getting mental disorders. They stated that a significant number of detainees suffering from mental disorders as a result of detention have been noted and most of these have been Awaiting Trial Persons. In our interview with one of the inmates, he says to us that, ...it [getting out] is always on my mind ...if you don't take it easy with thinking, you will just go mad...yes, it can make you mad...you just have to stop yourself from worrying ...people who have lost their minds are many here.” He continues, ...they are there [pointing towards the holding area for people with serious mental distress] ... they were not like this when they came in...when you think too much about what you are going through...their minds could not carry it...so their heads have gone bad...it is a fearful thing.” Psychiatric problems (of psychoses, neuroses, personality disorders etc) are reported to be proportionately higher among remanded prisoners;<sup>71</sup> and these mental health needs are largely unmet. Watching other inmates breakdown with serious mental illness and linking it with the effects of imprisonment brings anxiety as well as heightens the already culminated depressive feelings intensifying the mental burden of the inmates.<sup>72</sup>

#### ▪ *Loss of Prime Witnesses*

As a result of prolonged detention, some of the key witnesses of both sides lose interest in the case or sometimes forget to appear or others die. As a result, this weakens evidence of either party and thereby frustrates service of justice. The most affected side is always the detainees (defense) who compared to the prosecution do not maintain touch with some of their witnesses because of being in incarceration. In a televised interview with Kibiita J. the Director of Public Prosecution, raising this concern, reinstating the fact that some witnesses especially those of sexual offences like rape and defilement, the time such cases come back for hearing they are already married and they do not want their spouses to ever know of such experiences and they will never appear in court again that there are giving evidence against the accused which in the end frustrates the prosecution's case. This puts the public in such a danger whenever such offenders are not apprehended.<sup>73</sup>

<sup>1</sup>Birmingham L. (2003).The mental health of prisoners .Advances in Psychiatric Treatment, 9, 191–201.

doi:10.1192/apt.9.3.191 [Cross Ref]

<sup>2</sup>Singleton N., Meltzer H., & Gatward R. (1998).Psychiatric morbidity among prisoners in England and Wales. Office for National Statistics) London: Stationery Office.

<sup>3</sup>Mike Kibiita J. NBS Television. Morning Breeze, 9am-10am: 15<sup>th</sup> April 2018

**2.4 CONCLUSION**

In conclusion, the major causes of lengthy pre-trial detention are inadequate number of judges and magistrates, like earlier indicated the judicial officer to public ration is overwhelming. With this number of judges, it is not feasible in any way to believe the issue of backlog can be addressed in Uganda. Over time, the leaders of the judiciary have complained over this issue but no response has been received from Government. The other is the delayed investigations by the police where often time police and other ad hoc security agencies have arrested and charged people pre-maturely, kept them in cells for long as they conduct their investigations which most times take a lot of time and therefore this as well must be addressed. With all this, lengthy pretrial detention has procured severe consequences such as congestion in prisons, mental disorders and abuse of rights of the detainees.

## CHAPTER THREE

### LEGAL REGIME GOVERNING PRE-TRIAL DETENTION

#### 3.0 INTRODUCTION

This chapter analyzes the domestic, regional as well as international perspectives and legal provisions governing pre-trial detention. Since detention is governed by law, it is important to examine its parameters therein.

At the national level, the law relating to pre-trial detention includes the Constitution of the Republic of Uganda<sup>74</sup>, Penal Code Act<sup>75</sup>, Trial on Indictments Act,<sup>76</sup> Criminal Procedure Code Act<sup>77</sup>, Police Act<sup>78</sup>, Prisons Act<sup>79</sup> Uganda Peoples' Defence Forces Act<sup>80</sup> and the Children Act<sup>81</sup> among others. These prescribe the rules for the treatment of detainees.

Uganda is also subject to a range of African regional instruments including the African Charter on Human and Peoples' Rights<sup>82</sup>, the Protocol to the African Charter on the Rights of Women in Africa<sup>83</sup>, the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights<sup>84</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>85</sup> among others.

At the international level, Uganda is also subject to the human rights standards as contained in instruments. These instruments are examined below:

- a) The International Covenant on Civil and Political rights (ICCPR)<sup>86</sup>

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<sup>74</sup> The Constitution of The Republic of Uganda 1995 as Amended in 2000 and 2005

<sup>75</sup> The Penal Code of Uganda, Cap 120, Laws of Uganda.

<sup>76</sup> Trial on Indictment Act, Cap 23, Laws of Uganda.

<sup>77</sup> Criminal Procedure Act, Cap 116, Laws of Uganda.

<sup>78</sup> The Police Act, 2012, Laws of Uganda

<sup>79</sup> Prisons Act, 2006, Laws of Uganda

<sup>80</sup> Uganda Peoples Defence Act, 2005, Laws of Uganda

<sup>81</sup> The Children Act, Cap 59, Laws of Uganda

<sup>82</sup> Uganda ratified the African Charter on 10 May 1986

<sup>83</sup> Uganda ratified the Protocol to the African Charter on the Rights of Women on 22 July 2010

<sup>84</sup> Uganda ratified the Protocol to the African Charter establishing the Court on 16 February 2001

<sup>85</sup> Uganda ratified the ACRWC on 17 August 1994

<sup>86</sup> Uganda ratified the ICCPR on 21 June 1995

- b) The International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>87</sup>
- c) The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)<sup>88</sup>,
- d) The United Nations Convention on the Rights of the Child (CRC)<sup>89</sup>
- e) The Convention on the Rights of Persons with Disabilities<sup>90</sup>
- f) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>91</sup> among others.

### 3.1 INTERNATIONAL LEGAL FRAMEWORK.

There are many international legal frameworks on pre-trial detention. Some of them are as follows.

#### 3.1.1 The International Covenant on Civil and Political Rights (ICCPR). 1976

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

The Convention provides for the Right to Liberty and goes ahead to prohibit arbitrary detention of a person<sup>92</sup>. Under this Convention, anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release<sup>93</sup>. The Convention further provides that it should not be the general rule that persons awaiting trial shall be detained in custody but however cautions the charged person can be released on guarantee that they will appear before court for judgment.<sup>94</sup>

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

<sup>87</sup> Uganda ratified the ICESCR on 21 January 1987

<sup>88</sup> Uganda ratified the UNCAT on 3 November 1986

<sup>89</sup> Uganda ratified the CRC on 7 August 1990

<sup>90</sup> Uganda ratified the CRPD on 25 September 2008

<sup>91</sup> Uganda ratified the CEDAW on 22 July 1985

Article 17

Article 17(2)(a) and (c)(iv)

Ibid, Article 9(4)

Lastly, the Convention gives a person who is deprived of his liberty by detention to take proceedings before a court, for it (court) to decide without delay on the lawfulness of his detention and can order his release if the detention is not lawful<sup>95</sup>.

### **3.1.2 The United Nations Convention on the Rights of the Child (CRC)**

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

The Charter prohibits the unlawful or arbitrarily detention or imprisonment of a child<sup>96</sup>. It further makes it mandatory that child alleged as or accused of having committed any offence must have the matter determined without delay by a competent, independent and impartial authority or judicial body.<sup>97</sup>

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

### **3.1.3 The Convention on the Rights of Persons with Disabilities**

The purpose of this Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity<sup>98</sup>. The Convention imposes obligation to the state parties to ensure that persons with disabilities, on an equal basis with others: Enjoy the right to liberty and security of person; Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty<sup>99</sup>.

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

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<sup>95</sup> Ibid, Article 14(a)(b)

<sup>96</sup> Article 40(b)(1)

<sup>97</sup> Article 1 of the Convention on Persons with Disabilities

<sup>98</sup> Article 3 7(b) of the Article 9 (a) of the ICCPR, 1976

<sup>99</sup> Ibid, Article 9(3)

## **3.2 REGIONAL FRAMEWORK**

The following are some of the regional frameworks;

### **3.2.1 The African Charter on Human and Peoples' Rights, 1986.**

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

The Charter provides for the Right to Liberty<sup>100</sup>. It prohibits s the violation of this right and subjection of a person to arbitrarily detention<sup>101</sup>.

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

### **3.2.2 The African Charter on the Rights and Welfare of the Child (ACRWC)**

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

The Charter provides for the administration of Justice of Juveniles offenders<sup>102</sup>. It imposes obligations to the State Parties to the Charter to ensure that any child who is detained or imprisoned or otherwise deprived of his/her liberty to have the matter determined as speedily as possible by an impartial tribunal and if found guilty and shall not be subjected to torture and degrading treatment or punishment<sup>103</sup>.

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

## **3.3 NATIONAL LEGAL FRAMEWORK.**

Some of the national legal frameworks are examined hereunder

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<sup>10</sup> Section 25 of the Police Act, Cap 303

<sup>11</sup> Ibid, Section 24(3)

<sup>12</sup> Article 6 of The African Charter on Human and People's Rights, 1986

<sup>3</sup> Ibid

3.3.1. The Constitution of the Republic of Uganda 1995 (as amended)

The Constitution of Uganda is the supreme law where all laws in Uganda derive their authority<sup>104</sup>. Chapter four of The Constitution provides for the individual rights of all citizens in Uganda including the rights of the detainees. Constitution provides that a person charged of any offence is entitled a fair, speedy and public hearing<sup>105</sup>. This means that persons charged with criminal offenders should tried speedily without being subjected to lengthy remand in prisons. Furthermore, according to the Constitution, any person arrested or detained for the purpose of bringing him/her to court should be brought to court not later than 48 (forty eight hours)<sup>106</sup>. Therefore the Constitution sets a clear time limit within which charged persons should be brought for trial before court. Production of a person before court is a fundamental right that cannot be derogated from under this constitution<sup>107</sup>.Therefore it is clear according to the law (the Constitution) that prolonged detentions before trial such as detention by the police in the police cells is unconstitutional.

The Constitution also demands that charged persons should be kept in a place authorized by law<sup>108</sup> and any that any persons produced before court are entitled to apply for bail<sup>109</sup>. In 2010, 42% of the complaints that were reported to the UI-IRC were against the Uganda Police Force involving detention beyond the stipulated 48-hour period.<sup>110</sup>For example, in the case of **Kidega Alfonsio v Attorney General**<sup>111</sup>, the High court of Uganda found that Mr. Alfonsio’s detention for nine days before appearing in court on a murder charge was unlawful. In several cases, the UHRC has found the Attorney General liable for the violation of the right to liberty where suspects have stayed longer than 48 hours in custody, and has ordered compensation for these victims<sup>112</sup>.

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<sup>10</sup>Uganda Human Rights Commission. 2011. Annual Report 2010. Kampala: Uganda Human Rights Commission.  
ttp: www.uhrc.ug, accessed on 12th May 2017, page 17

<sup>11</sup> High Court Civil Suit No. 4 of 2000 [2008] UGUC 86, 27 June 2008

<sup>12</sup> Uganda Human Rights Commission, Annual Reports, http: www.uhrc.ug, accessed on j5th May 2017

### 3.3.2 The Penal Code Act, Cap 120

The Penal Code Act<sup>113</sup> of Uganda is the law that provides for offences and their appropriate punishments in Uganda.

This Act prohibits wrongful detention and makes it a misdemeanor punishable by law<sup>114</sup>. This means that a person that wrongfully detains the other commits a misdemeanor. Quite often the police in Uganda has unlawfully/wrongfully detained individuals. This usually arises where the police detains suspects pending their investigation for a period beyond that within which they are supposed to be produced before court. This Acts clearly prohibits such an unlawful detention.

The Human Rights Watch report 2011<sup>115</sup> while condemning the actions of the police stated that “....it is indeed a practice for police to arrest suspects before concluding investigations and to continue investigations whilst the suspect is in police detention.”

### 3.3.3. Criminal Procedure Code Act. Cap 116

The Criminal Procedure Code Act provides for procedure to be followed in criminal cases. The Act provides for detention of persons arrested without warrant. The law requires that where any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which the person is brought should release the person on his or her executing a bond, if it appears impractical to take him to the Magistrates Court<sup>116</sup>.

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

Also the Act imposes an obligation on the police officers to discharge an arrested person on suspicion of any charge where evidence is insufficient in his or her opinion after due police inquiry<sup>117</sup>.

### 3.3.4 The Children Act. Cap 59

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

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<sup>13</sup> 1950

<sup>14</sup> Section 248 of the Penal Code, Cap 120

<sup>15</sup> Human Rights Watch, 2011. Violence instead of Vigilance: Torture and illegal Detention by Uganda’s Rapid

<sup>16</sup> Section 17(1) of Criminal Procedure Code Act, 1950.

<sup>17</sup> Ibid, Section 17(2)

In relation to detention of a child charged with any offence, the Act requires a child to be brought to court within a maximum period of 24 (twenty four) hours after he or she has been arrested.

The Act also sets the time that a child can spend on remand. A child charged with an offence should not exceed three months on remand in case of an offence punishable by death and forty five days months in case of any other offence<sup>118</sup> The Act goes ahead to specify the place of remand of a child charged with an offence as remand homes<sup>119</sup> and also prohibits the remand of children in an adult prison<sup>120</sup>.

Furthermore, children are entitled bail when produced before court unless the grant of such bail will put him or her in danger<sup>121</sup>. Where that bail is not granted the court should inform the applicant (child) of his/her right to apply for bail to Chief magistrate or to the High court<sup>122</sup>.

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

### **3.3.5 The Uganda Peoples Defense Forces Act (UPDF) 2005**

The UPDF Act regulates the armed forces of Uganda. Important to note is that this Act also provides for the military courts under which the military and persons subject to the military are tried<sup>123</sup>. It also provides for trial of military officers and their detention.

The Act penalizes any person subject to military who unlawfully detains another person in arrest or confinement or unnecessarily detains any other person without bringing him or her for trial<sup>124</sup>. Such a person commits an offence and is on conviction liable to imprisonment for a period not exceeding two<sup>125</sup>.

More to the above, the Act provides for reporting of delayed trial of a person under detention. Where a person triable under military court has been detained for 48 (forty eight) hours, his or her commanding officer must report to the Service Chief of Personnel stating reasons for

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<sup>118</sup> Section 89(2) of The Children Act, Cap 59

<sup>119</sup> Section 9 1(5)

<sup>120</sup> Ibid, Section 91(1)

<sup>121</sup> Ibid, Section 9 1(6)

<sup>122</sup> Section 90(1) of the Children Act, Cap 59

<sup>123</sup> Ibid, Section 90(2)

<sup>124</sup> Sections 196, 197, 199 and 200 of the UPDF, 2005

<sup>125</sup> Ibid, Section 170(1)

detaining the person and shall release the person on conditional bond after 72 (seventy two) hours<sup>126</sup>.

The Act also provides that a person detained for 28(twenty eight) days without commencement of his trial may at the expiry of the period petition the President or any such Authority as the President may appoint in writing for that purpose to be released from custody or for the disposal of the case.

From the above therefore, lengthy pre-trial detention is prohibited under the military and it is also regarded as an offence and punishable according to the Act for anyone that subjects any person to such kind of detention. 3.1.6 Prisons Act. 2006

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

Under this Act, for a person cannot be admitted or received into prison without a valid commitment or a remand warrant, order of detention, warrant of conviction or committal signed with a court seal or authenticated by a person authorized to sign or authenticate such warrant or order under the provision of any law<sup>127</sup>. This is intended to avoid any detention of persons before they appear before courts of law for trial.

This Act also provides for the prisoners' rights whilst in prison including entitlement to food<sup>128</sup>, entitlement to exercise for the prisoners not deployed to outside work<sup>129</sup>, opportunity to make complaints to officers assigned to represent them<sup>130</sup>, right to information<sup>131</sup>.

**3.3.7 The Police Act, 2012**

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

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<sup>6</sup> Ibid  
<sup>7</sup> Ibid, Section 190(1)  
<sup>8</sup> Ibid, Section 190(2)  
<sup>9</sup> Section 58 of the Prisons Act, 2006  
<sup>9</sup> Section 69 of Prisons Act, 2006  
<sup>1</sup> Ibid, Section 70

The Police under this Act has the powers to arrest and detain a person in order to prevent that person from causing damage and suffering to people and property or unlawfully causing obstruction on highways<sup>132</sup>.

From the above, the Act provides for circumstances where the police can detain a person under the above mentioned situations without bringing them for trial before courts. However, this doesn't warrant prolonged detention of the persons detained under such circumstances. The person detained should be released as immediately as possible after such risk of loss, damage or obstruction has been sufficiently removed<sup>133</sup>.

**3.4 CONCLUSION**

It is clear from the above analysis that there is an abundant legal framework at the national, regional and international level relation to pre-trial detention. This framework directly applies to Uganda. It is the obligation of the state to ensure that the obligations imposed by this framework in regard to conducting pre-trial detention is strictly adhered by the state agencies in the Criminal Justice System of Uganda.

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<sup>12</sup> Section 71 Prisons Act, 2006

<sup>13</sup> Ibid, Section 77

## CHAPTER FOUR

### RECOMMENDATIONS AND CONCLUSION

#### 4.0 INTRODUCTION

This chapter deals with recommendations based on the findings from the study and the conclusion of my research work.

#### 4.1 RECOMMENDATIONS

Arbitrary arrest, in which case people are arrested while police are still finalizing their investigation, must be reduced.<sup>134</sup> When the police do make an arrest, they must have enough evidence to present at the first hearing.<sup>135</sup> This will reduce the number of appearances and help to set earlier dates.<sup>136</sup>

##### i. **Governments Should Facilitate the Police Financially.**

In the financial year 2018-2019 for instance, government allocated the director of criminal investigations and intelligence only 9 billion out of the required 114 billion for investigations in the financial year to come. An average of 100,000 cases are reported and investigated annually. About 40,000 of these are capital offences.<sup>137</sup> On average, investigating a single capital offence costs Shs. 2.1 million while a misdemeanor investigation costs between Shs. 100,000 and Shs.500, 000.<sup>138</sup>

With the allocated Shs 9 billion, detectives can only investigate 4,286 cases at the cost of UGX 2.1million leaving a deficit of 35,714 capital offences and 60,000 cases of misdemeanor. While defending the budget request, the Inspector General of Police (IGP), Martin Okoth Ochola said, CID requires on average UGX 105 billion more to facilitate quality investigations."<sup>139</sup>

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<sup>134</sup> Wits Justice Project, op.cit.n, (fn 46) page 8.

<sup>135</sup> *ibid*

<sup>136</sup> *ibid*

<sup>137</sup> Newvision, 30th April 2018; Government approves 8% required Of required investigations fund. 9th June 2018  
the Uganda Police Force policy statement, 38;< <http://www.monitor.co.ug/News/National/Government-approves-8--of-required-police-investigation-funds/688334-4536972-mtbbc7/index.html>>

<sup>138</sup> *ibid*

<sup>139</sup> *ibid*

In a relatively similarly manner, Government recently acquired a Genetic Analyzer Equipment to facilitate sensitive investigations and tracking culprits to ease administration of justice.<sup>140</sup> This could be a good move; however, this single machine stationed at Government Analytical Laboratory is to investigate crimes from all the investigations departments, that is, the office of the Inspectorate of Government, the Auditors General office, Immigration's office, Criminal Investigations Department, Uganda Bureau of Statistics, Uganda Revenue Authority etc. This is therefore overwhelming for a single machine considering at the time of its inception, there was a backlog of over 7200 cases already in court.<sup>141</sup> There is need to enhance crime response and invest in strategies to prevent the occurrence of the changing crime trends and proliferation of new crimes such as cybercrime, trafficking in persons, terrorism, white collar crime and other violent crime including sex and gender based violence which tests the preparedness of most crime fighting agencies.

**ii. Establishing more Magisterial Areas and High Court Circuits.**

Welfare of Judicial Officers, more specifically lack of transport, accommodation and low pay: The officers will at all times work with minimal morale since they had not been recommended for promotion or other alternative measures for career advancement hence a threat to independence of the Judiciary and the administration of justice and after such enhancements, then the Judicial Sector should have service delivery standards that facilitate effective and efficient operations and enhance productivity through pilot and eventual roll out of the Performance Enhancement Tool.

**iii. Justice to be Accessible to the Public.**

The poor and vulnerable especially those with land and family cases, were unable to access courts due to absence of a credible legal aid regime, unfair procedural process, poor case management, corruption And inefficiencies that resulted in protracted trials and high cost of

<sup>140</sup>Daily Monitor, Sunday December 17<sup>th</sup> 2017.New DNA Machine to Ease Investigations of Criminal Offences.< :tp://www.monitor.co.ug/News/National/New-DNA-machine-to-ease-investigation-of-criminal-offences/688334-?32144-yel9sjz/index.html> 9<sup>th</sup> 6 2018.

<sup>141</sup> Ibid

litigation.<sup>142</sup> According to the Hiil report, the Judiciary remained marginal to the administration of justice with only 5% of people with a justice need is able to access the courts. We should, therefore, simplify the legal system and establish a legal aid regime for the indigent to absorb 95% of Ugandans, who use the informal sector. In the alternative, we should streamline the informal justice system by recognizing their decisions and infusing human rights standards in them to ease the pressure on the courts. This is where the Local Council Courts should be strengthened to support the formal judicial system

**iv. The government should fasten the passing of the Bills that have been presented before it that are intended to review the pre-trial prosecutions. Among these include the,**

*a) Administrator General's (Amendment) Bill, 2014:*

Administrator General's Act was also found to be archaic with outdated fines and penalties which needed to be revised. The amendment is to enhance the protection of estates of deceased persons under the management of the Administrator General. No new progress has been registered and the sponsoring Ministry therefore urged to make the necessary follow up.

*b) The Administration of the Judiciary Bill, 2015,*

This bill was also laid before Cabinet and is awaiting transmission to Parliament for first reading. This Bill seeks to operationalize Chapter Eight of the Constitution; provide for the establishment of a Judiciary Advisory Council to advise the Chief Justice on the administration of justice and the courts; strengthen the independence of the Judiciary by streamlining the provision and management of funds for the Judiciary and establishing structures within the judiciary to improve its performance and related matters. The Minister of Justice has promised to table the Bill in Parliament in 2017. We await the tabling of the Bill in Parliament as promised by the Executive.

*c) The National Legal Aid Policy, 2014,*

This policy proposes Government funded delivery of legal aid services to all poor and vulnerable persons in order to enhance speedy processing of cases and promote fair and impartial trials. The Cabinet Memorandum for approval of the draft policy and the principles for the drafting of the

<sup>2</sup>The Annual Justice, Law and Order Sector Performance Report. The Republic of Uganda.(2016-2017).  
<http://www.jlos.go.ug/index.php/news-media-events/newsroom/latest-news/item/617-download-annual-jlos-performance-report-2016-2017>. 9<sup>th</sup> 6 2018.

Bill were submitted to Cabinet. The Attorney General is following up the approval process in Cabinet. The Sector has, in the interim, incorporated key strategies in the SDP IV to implement aspects of state funded legal aid, through existing institutions such as the Judiciary, Justice Centers Uganda, the Law Development Centre and the Legal Aid Project of the Uganda Law Society. These strategies are to be implemented within the medium term expenditure framework with some support from partners and are expected to lay the foundation for the full implementation of the Policy once adopted.

*d) Witness Protection Bill*

Witnesses play a key role in the criminal justice system. The Bill proposes extensive witness protection mechanisms. The Cabinet Memorandum for principles was prepared for submission to Cabinet. The Uganda Law Reform Commission carried out advocacy with different stakeholders for quick passage of the bill.

*e) Review of the Evidence Act:*

This study sought to amend section 132 of the Evidence Act, Cap.6 to make evidence of a child or a victim of a sexual offence admissible without corroboration so as to facilitate the prosecution of sexual offences. The reform of this Bill is aimed at improving timely disposal of matters so as to reduce backlog, efficient use of resources and admissibility of evidence in matters of technological crime and to allow for the broadening of the scope of admissible scientific evidence. The passage of this Bill is an important step to enhance the enforcement of the Penal code and sexual and gender based violence (SGBV) laws.

*f) Witness Protection:*

Witnesses play a key role in the criminal justice system. The Bill proposes extensive witness protection mechanisms. The Cabinet Memorandum for principles was prepared for submission to Cabinet. The ULRC carried out advocacy with different stakeholders for quick passage of the bill.

*g) Review of Amnesty Act:*

The Sector conducted a study as part of the review seeking to amend the Amnesty Act to provide for a conditional amnesty to Ugandans involved in acts associated with war or armed rebellion

against the Government of Uganda. The Study revealed the challenges faced in the implementation of the Amnesty Act 2000, ranging from application, implementation and status within the context of the existing international human rights frameworks. The study sought to amend the Amnesty Act to provide for the conditional amnesty to Ugandans involved in acts associated with war or armed rebellion against the Government of Uganda; to deny granting of amnesty for International crimes; and to confer certain powers on, assign certain functions to and impose certain duties upon the Amnesty Commission. The new law is also expected to create a holistic intervention on the award of amnesty and one that addresses the Constitutional Court decisions that have a consequential effect on Prisons Act.

*h) Local Governments (Amendment) Bill, 2016:*

The Bill amending the Local Government Act to pave way for voting of LCI and II officials was published and enacted into law during the reporting period. The elections have been scheduled for November 2018. Once elected it is hoped that cases that have been clogging the formal courts will now be handled by the Local Council I and II Courts as provided for in the law.

The Government should put in place measures to fight the corruption that has dented the Criminal Justice Agencies of Police, Director of Public Prosecution, and Courts.

## **1.2 CONCLUSION**

The research has considered the trial process of suspects (accused), concentrating on the time they stay on remand. The first chapter gives a highlight in the courts in Uganda, together with prisons. The research also provides the historical study of courts/ judicial practice, statements of the problem, objectives of the study, the methodology and a sociological view of the judicial system/ practice.

The focus of this paper is on Pre-trial detention (remand) in Uganda with a deeper look into causes and effects of lengthy pre-trial detention in Uganda and then recommendations to end it. Remand or otherwise pre-trial detention has remained a big issue in the court system, police and prisons authorities in Uganda but surprisingly it has had little discussion in Uganda. The current Criminal Justice system in Uganda has made pre-trial detention a real life fact that everyone believes it to be okay.

Thus the work gives a historical background of Pre-trial Detention in Uganda, review the scholarly work on this topic, analyze the laws and other instruments (both National and International) on Pre-trial detention, show the extent to which these laws have been complied with, examine the causes and effects of these detentions and the research ends giving recommendations on how Pre-trial detention can be reduced or eliminated.

Courts of judicature have been overtime an essential instrument of socio/ control. Society perceives them to be agencies of justice that help to prevent social harm by apprehending and punishing those who violate the law and in so doing deter those who may be contemplating future wrong doing.

Even with the establishment of courts, society maintains its informal social control organs such as schools, family, churches, mosques and cultural institutions which are most times concerned with moral but not legal misbehaviors.

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

Lengthy pre-trial detention in Uganda has had big effects on the Criminal Justice system such as; congestion in the prisons, abuse of rights of inmates and defilement of justice of these persons and other health related problems.

These have dented the image of criminal justice system in Uganda among the public.

The laws analyzed in chapter three have been able to lay down a range of legal framework that provides guidelines on how, when and why pre-trial detention of a charged person should be conducted. This analysis has been to give a deeper understanding of the pre-trial detention in Uganda through a comparison of what the legal framework provides and what actually is done on ground in the criminal justice system in the country.

It is important to note that due process of the law, rule of law and respect for human rights is vital in any free and democratic society and as such should be advocated for. This can be

achieved by finding practical solutions to lengthy pre-trial detention which frustrates timely access to justice.

With the historical background of pre-trial detention given, the thorough analysis of the legal framework relating to this detention and the results given from the field study, this research can be helpful to scholars, government agencies like courts of law, police and the Law Reform Commission in understanding the root cause of this problem (lengthy pre-trial detention), the effects this problem has and thereafter find possible solutions to end it with the help of the analysis of the legal framework analyzed.

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