

A CRITICAL ANALYSIS OF PRE-TRIAL DETENTION IN UGANDA

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DECLARATION

I **GUKIINA PAUL** 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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..........

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Date ...5th JUNE 1.18.....

APPROVAL

This dissertation has been submitted with my consent;



.....
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Supervisor:

DATE: 5-6-2018

DEDICATION

This piece of work is dedicated to my Parents and friends, 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 law school.

ACKNOWLEDGMENT

Writing this paper has been a trajectory 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, but with a combination of patience, immense resolve and great principle of commitment, I have been able to walk to the completion of this paper.

I am deeply thankful without reservation to my supervisor, Dr. Magnus Chima without whose support and guidance this research would not have been possible. I sincerely thank you for your time and dedication to my research.

To my sisters and brothers; I have never been more thankful to you than I am now for the enormous support you gave me during the times my sickness in the course of my dissertation. Your prayers and encouragement to me must surely not pass unappreciated.

Lastly to my parents, your immeasurable sacrifices and great investment in my education, your endless care and nurturing with strict discipline from my childhood to date and your efforts and unwavering support to me through thick and thin have been very central to the fruition of my research work. I am deeply thankful to you.

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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.

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ABBREVIATIONS.

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

CHAPTER ONE

1.0 INTRODUCTION.

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 in this research I will give a historical background of Pre-trial Detention in Uganda, review the scholarly work on this topic, analyse 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 I will end giving recommendations on how Pre-trial detention can be reduced or eliminated.

1.1 Historical Background of the study.

Uganda was declared 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.¹

The first independence Constitution did little to address 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.²

The 1967 Constitution also thought less in addressing this problem. For example article 10(5), (8)³ 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

¹ G.W. Kanyehamba. Constitutional and Political History of Uganda, Centenary Publishing House Ltd. Kampala, 2002, page 33.

² Ibid, page 73.

³ The 1967 Constitution of Uganda

of the reasons of their arrest. They were released after application for *Habeas Corpus* but they were rearrested where the Emergency Regulations were in force.⁴

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 ex parte Matovu*.⁵

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.⁶ The enactment of Decree No. 13 of 1971 gave the army power to arrest and detain people. With this enactment, many Ugandans would be detained for longer than 48 hours, tortured and some murdered.

In 1986, the National Resistance Movement led by His Excellency Y.K Museveni took over power and led to promulgation of the 1995 Constitution of Republic of Uganda⁷ that has been influential in promoting of the Universal Declaration of Human Rights (UNDHR)⁸.

Chapter four of the Uganda Constitution⁹ generally, and in particular Article 23, regulates and protects a person's right to liberty and therefore guards against pre-trial detentions under Article 23(4) (b).¹⁰

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.

4 *Ibingira and others v Uganda*[1966] EA 306

5 [1966]EA 514

6 G.W. Kanyeihamba. *Constitutional and Political History of Uganda*, Centenary Publishing House Ltd. Kampala 2002, page 123

7 Chapter 4

8 1948

9 1995

10 1995 Constitution of The Republic of Uganda

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.

1.2 Problem statement

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 speedy hearing for the arrested that is; the right for an arrested person to be produced before court for trial within the shortest time possible (48 hours). 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.

1.3 Objectives of the study.

1.3.1 General Objective

The general objective of the study is to critically analyse the causes and effects of lengthy pre-trial detention in Uganda and to suggest possible recommendations to end it.

1.3.2 Specific objectives.

1. To examine the causes of prolonged pre-trial detentions in Uganda.
2. To identify the effects of lengthy pre-trial detention.
3. To recommend possible solutions to lengthy pre-trial detentions in Uganda.

1.3.4 Research questions

1. What are the causes of lengthy pre-trial detention?
2. What are the effects of lengthy pre-trial detention?
3. What are the possible solutions to lengthy pre-trial detention in Uganda?

1.4. Significance of the study

Due to increased number of detainees on remand in the prisons of Uganda, questions have been rising 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;

1. Will increase the available literature on the subject matter.
2. 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.
3. Also the research shall be useful to other researchers like students, police, lawyers, judicial officers and the civil society on the subject of Pre-trial detention in Uganda.

1.5 Justification of the Study.

The study on Pre-trial detention is justified considering the fact this subject has not been adequately written about and therefore not given much attention in the country. There hasn't 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

The study is intended to cover Uganda Prisons so as explore the causes and effects of lengthy 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 prolonged remand has.

1.6.1 Time scope.

This research will cover a time frame between the years 2010 to 2017.

1.6.2 Geographical scope

This research shall be conducted in the central region in Uganda with the case study at Luzira Maximum Security Prison. The importance of identifying the central region is that it constitutes the biggest population in Uganda and is nearer to me which eases my research work.

1.7. Research methodology

In this research, I used quantitative method of research. I used Questionnaires as a tool of data collection. My target group was the Prisons Officers who filled the Questionnaires as respondents. The Prisons Officers were the best target group I could opt for because they manage the Prisons where charged persons are remanded, therefore have wide knowledge of causes of lengthy pre-trial detention and the effects that these detentions have and they were able to give me first-hand information regarding the research questions.

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

The advantage of using the quantitative method is that I was 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 me in analysis of the topic and presentation of data in my research work.

1.8 Literature Review

It is important to note that Pre-trial Detention is a globally discussed subject especially in the developing countries since it is an area of key concern in the judicial system of various countries. Many scholars, academicians, lawyers, researchers, judicial officers, Non-governmental Organisations and very many other agencies have written about and also possibly reported about pre-trial detention in the world. I wish therefore to acknowledge their scholarly works in this area.

However I must note with concern that whereas this topic has been widely written about by many scholars, this has only 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's my exact inspiration to write this paper particularly focusing on Uganda.

According to Blackstones Criminal Practice,¹¹ it is 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 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 lengthy 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.

According to the United Nations Human Rights Committee, detention before trial should be used only where it is lawful, reasonable, and necessary. They state 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.*”¹²

This report 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 doesn't clearly explain or give examples of circumstances that constitute a clear threat to

¹¹ Mr. Peter Murphy (Chief Editor) Blackstones Criminal Practice 2001. Public and Printed by Blackstones Press Limited. 11th Edition

¹² *Human Rights and Pre-Trial Detention. A Handbook of International Standards relating to Pre-Trial Detention*, Professional Training Series No. 3 (New York: United Nations, 1994), 14–15.

society which cannot be contained in any manner that justify pre-trial detention. 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 Avocats Sans Frontiers brief.¹³ *“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.

According to APCOF Policy Brief note¹⁴, detainees are entitled to certain rights. *“They must be detained in adequate facilities, treated in a humane and respectful manner, and given access to outside contacts. Both international and Ugandan law provide for these rights, but practice frequently deviates from the law. Pre-trial detainees in Uganda are held in both police and prison facilities.”*

I appreciate 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.

¹³ AVOCATS SANS FRONTIERS, BEHIND THE BARS: The problem of Lengthy Pretrial Detention in Uganda page 7.

¹⁴ PRETRIAL DETENTION IN UGANDA, Roselyn Karugonjo Segawa (Author) APCOF POLICY BRIEF No. 4 of 2012Page 10.

Talking about the outcomes of Pre-trial Detention, Mark Shaw in his book Pre-trial Detention¹⁵ argues many bad outcomes stem from the global over-use of pre-trial detention. He states *“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 Publication¹⁶ the rule of law is fundamental to all open societies. It is also an important aspect of socioeconomic development. *“Excessive pre-trial detention undermines the rule of law by debasing the presumption of innocence, furthering corruption, and even promoting criminality”* 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.

Limitations of the Research

In my research, I have been limited by the available literature about pre-trial detention since there are not so many scholars that have written about this subject. I have also limited my research field work to one region (central) which may not present a representational picture of all regions in Uganda about pre-trial detention. However, I 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

¹⁵ A publication of the Open Society Justice Initiative, Spring 2008 Mark Shaw (author) page 23

¹⁶ [16] OPEN SOCIETY, JUSTICE INITIATIVE, The Socio Economic Impact of Pretrial Detention 2014 page

identified case study so as to be able to harmonise my research. I will also ensure to diversify the framework especially laws, reports and other literature available to reach a balanced research study.

1.9 Chapter Synopsis

1.9.1 Chapter two covers the causes and effects of lengthy pre-trial detention in Uganda using the data from the field.

1.9.2 Chapter three analyses the national, regional and international legal framework relating to pre-trial detention.

1.9.3 Chapter four covers

1.9.4 Chapter five covers the necessary recommendations towards ending Pre-trial detention in Uganda and the conclusion.

Conclusion

Under this Chapter the exploration of the historical background of pre-trial detention in Uganda, the research methodology and the and the analysis of literature on the subject give an understanding of what this research paper is all about.

CHAPTER TWO

2.0 NON LEGAL ASPECTS OF PRE-TRIAL DETENTION IN UGANDA

This chapter examines the causes and effects of lengthy pre-trial detention in Uganda. I will use the data collected from the field study to examine the above mentioned topic. I will proceed to present the results of the field that I conducted on the causes and effects of lengthy pre-trial detention in Uganda.

While in the field, I was able to access five Prisons officers at Luzira Maximum Security Prison who volunteered to help me 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. The causes of lengthy pre-trial detention in Uganda.

Delayed completion of Police investigations. The respondents stated that this is due to lack of enough resources and man power to enable efficient and expeditious investigation of the cases reported at the police stations. They stated that whereas there is a reasonable number of police investigation officers, the number of criminal offenders is high and has overwhelmed the investigation departments. They further stated that 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.

Missing of files both in investigation and prosecution offices. The respondents raised this view as a cause of prolonged pre-trial detention in Uganda. They stated that at times 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.

Inadequate number of trial judges/magistrates to cover all High Court Circuits and magisterial areas. It was noted by the respondents 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 awaiting the High court circuit sessions. This causes delay in the trial of some of inmates charged with capital offences.

Political influence most especially on the side of political detainees. It was stated that at times there is always delay in the trial of political detainees due to the influence of some officers in government. 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. 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.

Inadequate funds to ensure continuity of High Court Sessions. There was a concern about the inadequate funds to ensure frequent High Court Sessions. This has resulted into infrequent sessions and has therefore led to case backlog at these courts. The case backlog at these courts tends to increase the period of time a charged person will spend in detention and it has been a prolonged problem in Uganda.

Unnecessary adjournments of sessions and cases. The respondents also noted that 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. They highlighted that 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.

Unnecessary delay in passing on judgments. The respondents noted that many times judges and magistrates take a long time to pass judgments and this results into the detainees awaiting the judgment staying longer on remand than necessary. 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. The respondents stated that cases that have delays in the coming of witness to court to testify always take longer to be decided. They noted that 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., 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.

Corruption in offices. It was noted that corruption is also among the causes of lengthy pre-trial detention in Uganda. The respondents 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.

Inadequate Magistrate's and High Courts. The respondents stated that there is still a challenge of effective distribution of Magistrate's and High Courts in Uganda. They noted that current courts have been overwhelmed by the number of cases brought before them and this has resulted into case backlog in these Courts. They stated that case backlog has greatly contributed to lengthy pre-trial detentions.

2.3. Effects of lengthy Pre-trial detention in Uganda.

Congestion in Police and Prisons detention centers. The respondents stated that prolonged pre-trial detention of persons charged with offences has caused congestion in prisons in Uganda. Citing the example of Luzira Maximum Security Prison, they stated 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. They further stated that congestion in prisons like Luzira Maximum Security Prison has severe consequences to the detainees such as reduced

rations of food, poor hygiene, easy spread of diseases especially airborne diseases and occasional fights due to competition for space in the cells.

Public loss of trust in the courts and judicial system. The respondents noted that lengthy pre-trial detention causes loss of confidence and trust in the courts and the police among the public. This usually 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. The respondents noted that lengthy pre-trial detention results into infringement of the rights of the pre-trial detainees. They noted that since the 1995 Constitution of The Republic of Uganda provides for a speedy trial of the persons charged with offences, it would be abuse of their rights to be detained for more than a year or two years awaiting trial in courts of law.

They further noted that the police many times violates the rights of persons charged with criminal offences by detaining them in the police cells longer than the constitutionally set time of forty eight hours provided for under Article 23(4).

Mental disorders among the detainees/inmates. The respondents noted that due to the long time on remand, most detainees end up getting mental disorders due to frustration. Some of them are always worried of losing their jobs, property, being detached from their family members or missing important flights abroad due to detention. With all 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 has been noted at Luzira Maximum Security Prison and some of these have been people on remand.

Loss of prime witnesses. It was noted that 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 (defence) who compared to the prosecution do not maintain touch with some of their witnesses because of being in incarceration.

2.4 Conclusion.

In conclusion, it was noted by the respondents that the major causes of lengthy pre-trial detention are inadequate number of judges and magistrates and the delayed investigations by the police. They further noted that lengthy pre-trial detention has 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 Uganda¹⁷, Penal Code Act¹⁸, Trial on Indictments Act,¹⁹ Criminal Procedure Code Act²⁰, Police Act²¹, Prisons Act²² Uganda Peoples' Defence Forces Act²³ and the Children Act²⁴ 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' Rights²⁵, the Protocol to the African Charter on the Rights of Women in Africa²⁶, the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights²⁷ and the African Charter on the Rights and Welfare of the Child (ACRWC)²⁸ among others.

¹⁷ The Constitution of The Republic of Uganda 1995 as Amended in 2000 and 2005

¹⁸ The Penal Code of Uganda, Cap 120, Laws of Uganda.

¹⁹ Trial on Indictment Act, Cap 23, Laws of Uganda.

²⁰ Criminal Procedure Act, Cap 116, Laws of Uganda.

²¹ The Police Act, 2012, Laws of Uganda

²² Prisons Act, 2006, Laws of Uganda

²³ Uganda Peoples Defence Act, 2005, Laws of Uganda

²⁴ The Children Act, Cap 59, Laws of Uganda

²⁵ Uganda ratified the African Charter on 10 May 1986

²⁶ Uganda ratified the Protocol to the African Charter on the Rights of Women on 22 July 2010

²⁷ Uganda ratified the Protocol to the African Charter establishing the Court on 16 February 2001

²⁸ Uganda ratified the ACRWC on 17 August 1994

At the international level, Uganda is also subject to the human rights standards contained in instruments such as the International Covenant on Civil and Political rights (ICCPR)²⁹, the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁰, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)³¹, the United Nations Convention on the Rights of the Child (CRC)³², the Convention on the Rights of Persons with Disabilities³³ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³⁴ among others. These provide guidelines on pre-trial detention and impose certain obligations in relation to pre-trial detention to the member states.

3.1 NATIONAL LEGAL FRAMEWORK.

3.1.1. The Constitution of the Republic of Uganda 1995 as amended in 2000 and 2005

The Constitution of Uganda is the supreme law where all laws in Uganda derive their authority³⁵. 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 hearing³⁶. This means that persons charged with criminal offences should be tried speedily without being subjected to lengthy remand in prisons.

Furthermore, according to the Constitution, any person arrested or detained for the purpose of bringing him/her to court should be brought to court not later than 48 (forty eight hours)³⁷. 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

²⁹ Uganda ratified the ICCPR on 21 June 1995

³⁰ Uganda ratified the ICESCR on 21 January 1987

³¹ Uganda ratified the UNCAT on 3 November 1986

³² Uganda ratified the CRC on 7 August 1990

³³ Uganda ratified the CRPD on 25 September 2008

³⁴ Uganda ratified the CEDAW on 22 July 1985

³⁵ Article 2 of The Constitution of Republic of Uganda 1995

³⁶ Ibid, Article 28

³⁷ Article 23(4) of The Constitution of the Republic of Uganda 1995

cannot be derogated from under this constitution³⁸. 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 law³⁹ and any that any persons produced before court are entitled to apply for bail⁴⁰.

In 2010, 42% of the complaints that were reported to the UHRC were against the Uganda Police Force involving detention beyond the stipulated 48-hour period.⁴¹ For example, in the case of *Kidega Alfonsio v. Attorney General*⁴², 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 victims⁴³

3.1.2 The Penal Code Act, Cap 120

The Penal Code Act⁴⁴ 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 law⁴⁵. 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

38 Ibid, Article 44(3)

39 Ibid, Article 23(2)

40 Ibid, Article 23(6)(a),(b) and (c)

41 Uganda Human Rights Commission. 2011. *Annual Report 2010*. Kampala: Uganda Human Rights Commission. [http: www.uhrc.ug](http://www.uhrc.ug), accessed on 12th May 2017, page 17

42 High Court Civil Suit No. 4 of 2000 [2008] UGHC 86, 27 June 2008

43 Uganda Human Rights Commission, Annual Reports, [http: www.uhrc.ug](http://www.uhrc.ug), accessed on 15th May 2017

44 1950

45 Section 248 of the Penal Code, Cap 120

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 2011⁴⁶ 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.”

3.1.3. 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 Court⁴⁷.

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 inquiry⁴⁸.

3.1.4 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.

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 arrested⁴⁹.

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

47 Section 17(1) of Criminal Procedure Code Act, 1950

48 Ibid, Section 17(2)

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 offence⁵⁰ The Act goes ahead to specify the place of remand of a child charged with an offence as remand homes⁵¹ and also prohibits the remand of children in an adult prison⁵².

Furthermore, children are entitled bail when produced before court unless the grant of such bail will put him or her in danger⁵³. 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 court⁵⁴.

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.

3.1.5 The Uganda Peoples Defence Forces Act, 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 tried⁵⁵. 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 trial⁵⁶. Such a person commits an offence and is on conviction liable to imprisonment for a period not exceeding two⁵⁷.

49 Section 89(2) of The Children Act, Cap 59

50 Section 91(5)

51 Ibid, Section 91(1)

52 Ibid, Section 91(6)

53 Section 90(1) of the Children Act, Cap 59

54 Ibid, Section 90(2)

55 Sections 196, 197, 199 and 200 of the UPDF, 2005

56 Ibid, Section 170(1)

57 Ibid

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 detaining the person and shall release the person on conditional bond after 72 (seventy two) hours⁵⁸.

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 case⁵⁹.

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 authorised to sign or authenticate such warrant or order under the provision of any law⁶⁰. 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 food⁶¹, entitlement to exercise for the prisoners not deployed to outside work⁶², opportunity to make complaints to officers assigned to represent them⁶³, right to information⁶⁴.

⁵⁸ Ibid, Section 190(1)

⁵⁹ Ibid, Section 190(2)

⁶⁰ Section 58 of the Prisons Act, 2006

⁶¹ Section 69 of Prisons Act, 2006

⁶² Ibid, Section 70

3.1.7 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.

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 highways⁶⁵.

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 removed⁶⁶[66].

3.2 REGIONAL LEVEL

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 Liberty⁶⁷. It prohibits s the violation of this right and subjection of a person to arbitrarily detention⁶⁸.

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.

63 Section 71 Prisons Act, 2006

64 Ibid, Section 77

65 Section 25 of the Police Act, Cap 303

67 Ibid, Section 24(3)

68 Ibid

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 offenders⁶⁹. 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 punishment⁷⁰.

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 INTERNATIONAL LEVEL

3.3.1 The International Covenant on Civil and Political rights (ICCPR), 1976

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

The Convention provides for the Right to Liberty and goes ahead to prohibit arbitrary detention of a person⁷¹.

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 release⁷². The Convention further provides that it should not be the general rule that persons awaiting trial shall be detained in custody but

69 Article 17

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

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

72 Ibid, Article 9(3)

however cautions the charged person can be released on guarantee that they will appear before court for judgment.⁷³.

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.

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 lawful⁷⁴.

3.3.2 The United Nations Convention on the Rights of the Child (CRC)

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

The Charter prohibits the unlawful or arbitrarily detention or imprisonment of a child⁷⁵. 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 body⁷⁶.

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.

⁷³ Ibid

⁷⁴ Ibid, Article 9(4)

⁷⁵ Article 37(b) of the Convention on the Rights of Persons with Disabilities

⁷⁶ Article 40(b)(1)

3.3.3 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 dignity⁷⁷.

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 liberty⁷⁸.

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

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.

⁷⁷ Article 1 of the Convention on Persons with Disabilities

⁷⁸ Ibid, Article 14(a)(b)

CHAPTER FOUR

4.0 COMBATING PROLONGED PRE-TRIAL DETENTION IN UGANDA

4.1. INTRODUCTION

The Uganda Law Society (ULS) is the National Bar Association of Uganda established in 1956 by the Uganda Law Society Act, Chapter 276 of the Laws of Uganda. The Law Society with over 1955 paid up members works to maintain and improve the standards of conduct and learning of the legal profession in Uganda: to protect and assist the public in Uganda in all matters touching, ancillary or incidental to the law, and to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Uganda⁷⁹.

Avocats Sans Frontieres (ASF) is an independent international non-governmental organization whose mission is to contribute to the establishment of institutions and mechanisms that allow for access to independent and impartial justice and which are capable of guaranteeing the protection of fundamental rights, including the right to a fair trial.

The ULS and ASF are implementing a project titled “Mobilizing Lawyers for the Right of Ugandan”. The main objective of the project is to strengthen the capacity of Ugandan Lawyers to protect the rights of vulnerable people in Uganda. One of the project result areas is advocacy for the implementation of policy and legislative frameworks that protect rights of vulnerable persons. ASF and ULS have noted with concern the persistent violation of fundamental rights of vulnerable persons in prolonged pre-trial detention in the criminal justice system in Uganda. This is a grave violation of the right to liberty, fair and speedy trial and the presumption of innocence which rights are internationally and nationally recognized and entrenched in our constitution⁸⁰.

⁷⁹ Article 31 (d) (ii). Also see Article 34 (6) of the Constitution and Section 89 (3) of the Children’s Act.

⁸⁰ Also see Penal Reform International, *A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Uganda*, 2012 (16).

Pre-trial detention is a form of detention in which someone is kept detained in a government facility while she or he awaits legal proceedings such as a trial. People in detention are usually held in jails instead of prisons, or are held in specialized pretrial detention facilities. These prisoners are not guilty of any crime yet they are treated as offenders and deprived of their freedom and usually have their activities restricted while they are in detention.

The Universal Declaration of Human Rights states that everyone has the right to life, liberty and security of person. The Declaration further provides that no one shall be subjected to arbitrary arrest, detention or exile and that everyone has a right to be presumed innocent until proven guilty. Uganda also recognizes the International Convention on Civil and Political Rights; The African Charter on Human and Political Rights; The UN Convention on the Rights of the Child, to mention but a few⁸¹.

With regard to our national laws, Article 23 of the 1995 Constitution provides for the protection of personal liberty while Article 24 of the same provides for the respect for human dignity and protection from inhuman treatment. Other local legislation includes the Police Act; The Magistrate Court Act; The UPDF Act and the Children's Act which provides an elaborate framework for detention of juvenile etc.

4.2. SITUATION ANALYSIS:

The statistics on the number and percentage of persons formally accused of crime who are detained pending trial are not only problematic but also disturbing. A 2010 report from the Uganda Prisons Service showed an elevated national prison population of 30,585 of which 17,015 were suspects awaiting or on trial while statistics as at 30th June 2014 puts the general prison population at 41,516 of which 55.8% inmates are on remand, 43.6% convicted prisoners and 0.6% civil debtors. The prisons are overcrowded well above their carrying capacity by over

⁸¹ M Moore, Review of Ugandan Remand Homes and the National Rehabilitation Centre, October 2010 available at: <http://www.africanprisons.org/documents/Juvenile-Detention-in-Uganda-October-2010.pdf> last accessed on 5 June 2016.

200% to 350% and prisoners lack basic needs and adequate beddings, food, clothing and medical care.

With the said congestion and over-crowding in prisons and detention places, it is disappointing that in Uganda, persons continue to be arrested and detained on suspicion that they have committed a criminal offence; often held for weeks, months or even years before a court even hears their cases let alone pass judgment. Our police even take the liberty to parade some of these suspects in public and the media totally negating the principle of presumption of innocence. The suspects' legal status is undermined and they are also under enormous personal pressures such as loss of income for those who are employed, separation from family and community ties and most even face torturous conditions. The pre-trial stage (from arrest to trial) of the criminal justice process is also particularly prone to corruption. Unhindered by scrutiny or accountability, police, prosecutors and judges may arrest, detain and release individuals based on their ability to pay bribes. It has a hugely damaging impact on the accused, their families and communities. Even if a person is acquitted and released, they may still have lost their home and job. They face the stigma of having been in prison when they return to the community⁸².

Globally, pretrial detention is a very contentious issue. In some nations, Uganda inclusive, the number of people in detention awaiting legal proceedings is greater than the number of people who have actually been convicted and sentenced to prison. Pretrial detention contributes significantly to prison overcrowding and people can wait for years for legal proceedings to begin. Some governments- ours inclusive, have been accused of using pretrial detention to effectively imprison people indefinitely without trial.

Consultations and consensus building on the subject with key justice, law and order actors in the four regions of Uganda namely, central, eastern, northern and western Uganda have been held and the views and suggestions analyzed and presented here below to provide an insight into the problem for key policy makers, justice sector actors, human rights based organizations and the

⁸² Also generally see, Foundation for Human Rights Initiative and Penal Reform International, *Who are women Prisoners: Survey results from Uganda*, 2015 (16-17).

general public on the challenge of prolonged pre-trial detention in Uganda, the legal and constitutional context, its causes, implications and suggested interventions to alleviate the problem.

Due to its severe and often irreversible negative effects, international law states that pre-trial detention should be the exception rather than the rule and that if there is a risk, for example, of a person absconding, then the least intrusive measures possible should be applied. **A range of non-custodial measures are available and these include:-**

- a) Bail
- b) Confiscation of travel documents
- c) Reporting to police or other authorities
- d) Submitting to electronic monitoring or curfews in advanced countries.

Other suggestions from the research and consultations include the following:-

1. Enforce constitutional limits on maximum detention periods:

Aside from enforcing the 24-hour rule, a review should be carried out of all prison inmates on remand and those who have been detained beyond the constitutional limits in order to determine whether their cases should be dismissed for want of prosecution, or whether they can be released on suitable bail and bond conditions pending disposal of their cases.

2. Set time limitation non pre-trial detention, investigations and trial periods: a qualified detention, investigations and trial periods. The popular view during the regional consensus meetings suggested, with certain qualifications, a time limit of 3 months be set for investigations to be carried out and concluded, 6 months for the accused to be released unconditionally after committal if trial is not held; while 4 months were suggested for any criminal trial to be concluded from the start of the hearing⁸³.

3. Expand the jurisdiction of Registers and Chief Magistrates. To reduce backlog and long periods of Pre-Trial detention, there should be legislative reform giving registrars and chief

⁸³ Section 113 of the Magistrates Courts Act and Section 45 of the Trial on Indictments Act.

Magistrates increased jurisdiction over some cases expressly to handle situations where suspects want to plead guilty.

4. Increase the number and capacity of the High Courts, Chief and Magistrate's courts and state attorneys: For the above mentioned reasons, more resources should be provided to enable courts deal with their high case load e.g. appointing more judicial officers and prosecutors and increasing resources at all levels of the judiciary to increase efficiency. Disciplinary action should be taken against judicial officers who are habitually absent from their duty stations.

5. Monitor General Court Martial and Associated Prisons: It was established that the General Court Martial (GCM) has disproportionately high average days on remand. The majority of detainees under the jurisdiction of the court martial had been detained beyond the constitutional limit. There should be increased analysis and reform of the process that lead to these delays and rights violations. Further, the jurisdiction of the court martial should be restricted to military personnel. Since the GCM is not part of the JLOS sector, it falls out of the loop of the JLOS programs that have helped clear some of the backlog of cases. Therefore, different strategies should be considered to alleviate PTD in the GC.

6. Enhance communication and ensure the proper administration of transfer of prisoners, observance of remand and production warrants and adherence to set court dates. It is essential that when a judicial officer sets a court date, the prison and the court staff should ensure that the detainee is brought before the court on that date and that any adjournments or delays are authorized and recorded on the court file and on the remand warrants. Subsequent court dates must always be scheduled. Transfer of prisoners by the Uganda Prison Service should also be immediately communicated to stakeholders.

7. Improve effectiveness of legal representation for detainees by members of the legal profession and allow detainees access to lawyers and paralegals.

8. **Improve and increase on juvenile detention facilities, man power, resources and management.**

9. **Increase awareness sessions and community sensitizations on pre- trial detention and bail requirements and observance for police and prison staff as well as members of the general public.**

10. **Work with police to enforce the 48hr rule and avoid arbitrary arrests.** A case tracking system should be developed to monitor detention in police stations and posts charged with enforcing the 48 hour rule. Police should issue police bond and first complete investigations before arresting an individual. A police officer should personally face accountability for their actions in instances where a person has been held beyond the prescribed 48 hours or arbitrarily arrested. Lastly, a person should not be charged unless there are minimum investigations on file.

It is established that the excessively long remand periods of prisoners in Uganda awaiting commencement and completion of their criminal prosecution exposes them to gross human rights violations which contravenes Uganda's domestic and international obligations to protect its citizens' fundamental rights.

Although resource constraints remain an inevitable challenge, the problem of lengthy pre-trial detention can be ameliorated by streamlining court processes, distributing caseloads more equitably ensuring legal representation, recruiting and training staff more effectively, among other measures recommended above the most important of which is getting government buy-in to eradicate this vice.

A fair and functioning justice system is a critical component of a free and democratic society, and Uganda has made important strides in this direction. Priority also needs to be given to consistently protecting the rights of the most vulnerable-especially those hidden from public view in places of detention-in order to ensure that the right to be presumed innocent and to have a fair and speedy trial is universally respected, both in law and practice⁸⁴.

⁸⁴ Also generally see, Foundation for Human Rights Initiative and Penal Reform International, *Who are women Prisoners: Survey results from Uganda*, 2015 (16-17).

CHAPTER FIVE

5.0. RECOMMENDATIONS AND CONCLUSION

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

5.1 RECOMMENDATIONS

- . The Government should facilitate the Police to investigate cases to completion within the shortest time possible.
- . The judiciary needs to increase the number of judges so as to tally with the ever rising number of cases.
- . Establishing more Magisterial areas and High Court circuits to reduce case backlog and invariably decongest prisons.
- . The Government should allocate adequate funds so as to facilitate regular High Court sessions.
- . 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.

5.2 CONCLUSION

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 analysed 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 analysed.

BIBLIOGRAPHY

- G.W. Kanyeihamba. *Constitutional and Political History of Uganda*, Centenary Publishing House Ltd. Kampala 2002,
- Human Rights and Pre-Trial Detention. A Handbook of International Standards relating to Pre-Trial Detention*, Professional Training Series No. 3 (New York: United Nations, 1994), 14–15
- Mr. Ayume Francis: *Criminal Procedure in Uganda*. Longman Publishers 1986 Nairobi Kenya.
- Mr. Peter Murphy (Chief Editor) *Criminal Practice* 2001. Published and Printed by Blackstones Press Limited. 11th Edition
- Mark Shaw (author) *Pre-trial Detention* A publication of the Open Society Justice Initiative, Spring 2008
- Open Society, Justice Initiative (2014), *The Socio Economic Impact of Pretrial Detention*, A publication of the Open Society Justice Initiative, Spring 2014
- Roselyn Karugonjo Segawa (Author) *Pretrial Detention In Uganda*, African Policing Civilian Oversight Forum BRIEF No. 4 of 2012
- <http://www.uhrc.ug/> *Uganda Human Rights Commission. 2011. Annual Report 2010*. Kampala: Uganda Human Rights Commission, accessed on 12th May 2017.
- [http:// www.hrw.org/reports/2011/03/23/violence-instead-vigilance](http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance) Human Rights Watch. 2011. *Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit*. New York: Human Rights Watch. Accessed on 12th May 2017

REGIONAL AND INTERNATIONAL INSTRUMENTS

1. African Charter on Human and People's Rights 1986
2. African Charter on the Welfare and Rights of Children 1994
3. The Convention on Elimination of All Forms of Discrimination against Women 1979.
4. The Convention on the Rights of Children 1989.
5. The International Convention on Civil and Political Rights 1966
6. The Universal Declaration of Human Rights 1948.

APPENDICES

APPENDIX A: A questionnaire for the Prisons Officers at Luzira Maximum Prison, Kampala.

Topic: Examination of the causes and effects of lengthy pre-trial detentions in Uganda.

RESEARCH QUESTIONNAIRE

Research Topic: A critical analysis of pre-trial detention (remand) in Uganda.

Dear Respondent, I am from Uganda Kampala International University conducting a study on the above topic as a prerequisite for the award of a degree in Bachelors of Laws of Kampala International University. I kindly request for your cooperation by answering this questionnaire.

Your views will be used purely for academic purposes and handled with utmost confidentiality.

My Research paper focuses on Pre-trial detention or remand in Uganda.

In this field work, I will be examining the causes and effects of these prolonged Pre-trial detentions in Uganda.

QUESTIONNAIRE TEMPLATE

NAME:

TITLE/OFFICE:

AREA OF OPERATION:

NB: You are not limited to the space below .You can use any space that suits your response.

1) *What are the causes of lengthy pre-trial detentions (remand) in Uganda?*

b) What are some of the effects of lengthy Pre-trial detentions in Uganda?

c) What recommendations can you give towards ending lengthy remand (pre-trial detentions) in Uganda?

Thank you for your participation.