

**A CRITICAL ANALYSIS OF THE LAWS RELATING TO PROTECTION OF THE
RIGHTS OF SUSPECTS IN UGANDA**

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**A RESEARCH PROPOSAL SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
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DECLARATION

I **OGWOK DANIEL** do hereby declare to the best of my knowledge and belief that this is my original piece of work and that it has never been submitted for the award of any credentials to any university or college or published as a whole or part.

I further declare that all materials cited in this proposal which are not my own have been fully acknowledged.

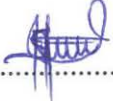
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APPROVAL

This dissertation titled “**A Critical Analysis of the Laws relating to protection of the rights of suspects in Uganda,**” has been submitted under my supervision and approval.

Signed.....
Muyinga Samuel

Date 11-07-2019

DEDICATION

I dedicate this research to my parents and my family at large, Thank you for all the support rendered to me throughout the entire course. I pray that the almighty God blesses u all

ACKNOWLEDGEMENT

First and foremost, I would like to thank my Creator God for breathing life into me and for entrusting me with the will, strength and wisdom to work on this research.

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I would not have done justice to this research without recognizing the support both financially and spiritually i got from my father the late Mr. Moses Okada Ogowok, my Mother Mrs. Rose Okada Ogowok, My family members especially Margaret, Betty, Douglas, Cissy, Jackson and, Lindah, for the support they gave me during my study period.

Above all, i express my heartfelt gratitude to all friends, relatives and course mates who cannot be mentioned individually by name due to limited space. I acknowledge and appreciate all of you.

LIST OF STATUTES

NATIONAL

The 1995 Constitution of the Republic of Uganda.

The Magistrates Courts Act, Cap 16.

The Trial on Indictments Act, Cap 23.

Uganda People's Defence Forces Act, Act No. 17 of 2005.

Police Act. Cap 303.

The Criminal Procedure Code Act Cap 116 Section 17

INTERNATIONAL

Universal Declaration of Human Rights, 1948.

International Covenant on Civil and Political Rights, 1966.

International Covenant on Economic, Social and Cultural Rights, 1966.

African Charter on Peoples' Rights, 1981.

The Convention on the Rights of a Child, 1989.

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ABSTRACT

The study critically analyzed the laws relating to protection of the rights of suspects in Uganda. It was guided by the following objectives to examine the various rights of the suspects in Uganda, to identify the legal framework governing the protection of the rights of suspects in Uganda, to examine the gaps identified in the laws relating to the protection of the rights of suspects in Uganda and to identify the possible solutions to violations of suspects' rights. The study inclined to follow the combination of Doctrinal and Non-Doctrinal Research Method for collecting data in the present research. The study concluded that although the Ugandan justice system has come a long way and to that effect Uganda has Various Laws and Legislations that provides for the protection of the rights of criminal suspects, it is still ineffective and barbaric in nature. Yet, as the existing problems receive greater exposure; more pressure will be applied to make changes in the system. The Constitutional right of an accused person to apply for bail flows from the presumption of innocence as provided for in Article 28(3) (a) of the 1995 Constitution which states that; "An accused person is presumed to be innocent until proved guilty or until that person has accepted guilt". In other words, once an accused person is arrested he or she should be charged, tried and either convicted or acquitted within the shortest time possible. This is because if a speedy trial is not conducted, evidence in support of the accused could be distorted, and this person's freedom will be restricted yet he might actually be innocent. Remember that the person's right to liberty is a fundamental human right which should only be restricted upon conviction of that person. The study recommends that the entire Ugandan penal system needs to be revamped in order to address the concerns discussed above. Unfortunately, the laws are not the only factor playing into the inefficacy of the justice system. Torture and corruption in the justice system have become so common and expected that few people are willing to address the situation until they too fall victim to its shortcomings. Though the restoration will be a long and difficult process, there are solid steps that can be taken to improve the system and restore suspects and prisoners with their fundamental human rights. Article 23(4)(b) of the Ugandan Constitution needs to be rewritten to allow for an arrest only when there is probable cause, and not when it is merely thought that someone has or might commit a crime. This would require that investigations be completed prior to the arrest and detention of the suspect.

CHAPTER ONE

1.1 Introduction

Article 21 (1)¹ requires that all persons are equal before and under the law and shall enjoy equal protection of the law.

Police custody is a restriction to liberty and range of movement of a person who is suspected of having committed a crime/an offence or is about to commit a criminal offence under the laws of Uganda.²

It refers to the time a person arrested is confined in the police station for processing (between arresting a person and bringing that person before a court).

Under Ugandan law the arrest of a person leads to her/his police custody, thus the grounds to place a person in custody are the same as judicial arrest. The purpose of the custody is to conduct an inquiry and a police interrogation³.

A magistrate – before whom a person arrested is sent – may detain that person in custody⁴:

- when she/he has reason to believe that person is likely to commit a breach of the peace or disturb the public tranquillity and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining that person in custody;
- when a offence is committed in her/his presence within the local limits of her/his jurisdiction.

An officer in charge of a police station may discharge a person arrested without warrant on any charge – after due police inquiry – when insufficient evidence is disclosed on which to proceed with a charge. On the other hand where it appears to the police officer in charge of the police station that the inquiry into the case cannot be completed, she/he may release that person on executing a bond to appear at a place and time named in the bond⁵.

1.2 Background of the study

Rights of the accused person in law, are the rights and privileges of a person accused of a crime, guaranteeing him a fair trial. These rights were initially (generally from the 18th century on)

¹ The 1995 Constitution of the Republic of Uganda

² Article 23(4) of the Constitution

³ Section 19 of the Criminal procedure code Act Cap 116

⁴ Section 12 of the Magistrates courts act Cap 16

⁵ Section 17 of the Criminal procedure code act Cap 116

confined primarily to the actual trial itself, but in the second half of the 20th century many countries began to extend them to the periods before and after the trial⁶.

All legal systems provide, at least on paper, guarantees that ensure certain basic rights of the accused. These include right to trial by jury (unless jury trial is waived), to representation by counsel (at least when he is accused of a serious crime), to present witnesses and evidence that will enable him to prove his innocence, and to confront that is to say cross-examine) his accusers, as well as freedom from unreasonable searches and seizures and freedom from double jeopardy⁷.

Certain very general rights are attached to the process. An accused person must not be allowed to languish indefinitely in jail but must be given a speedy trial. Involved with this issue are the rights to a reasonable bail and prohibitions against being detained for more than a specified time without bail⁸.

The most important right has been the right to be represented by counsel. During the second half of the 20th century this right was extended to cover the time when a person is arrested until final appeal. Different countries set different times at which an accused must be provided with counsel as well as different types of crimes for which counsel must be provided if the accused is indigent. The United States has made the most far-reaching changes in this area and has set a pattern that other nations have begun to emulate⁹. Essentially, the U.S. system stipulates that the accused has the right to counsel from the time that he is taken into custody until all appeal is exhausted. The Supreme Court has ruled, moreover, that where the accused is indigent, the right to counsel must

⁶ Brussels, "The Stockholm Programme – An open and secure Europe serving and protecting the citizens", document No. 17024/09, DO EUR 3, JAI 896, POLGEN 229.

⁷ At the moment only a Green Paper has been presented by the Commission; see European Commission (2006), Green Paper on the presumption of innocence, COM 2006 (174) final, 26.4.2006.

⁸ M. Jimeno-Bulnes (2008), "The Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union", in E. Guild and F. Geyer (eds), *Security versus Justice? Police and judicial cooperation in the European Union*, Aldershot/Burlington: Ashgate, pp. 171-202

⁹ F. Irurzun Montoro (2007), "Negotiating the Framework Decision on procedural safeguards in the European Council", in C. Arangüena Fanego (ed.), *Procedural safeguards in criminal proceedings throughout the European Union*, Valladolid: Lex Nova, pp. 25-45.

be implemented by the provision of a court-appointed lawyer in the case of all crimes for which punishment may be imprisonment¹⁰.

The Uganda Human Rights Commission (UHRC) as the National Human Rights Institution has a very progressive partnership with the Uganda Police Force (UPF) dating from the late 90s. This is because we share the goal of safeguarding and ensuring respect for human dignity in all that we do. The UPF mandate of keeping law and order, protecting life and property, preventing and detecting crime, facilitating access to and delivery of justice keeps police officers in constant interaction with members of the public¹¹.

This raises the potential for situations of human rights violations. Nonetheless, no matter how challenging their role might get, police officers have a constitutional obligation to respect and promote human rights.

Over the years we have built the capacity of Police to fulfill their mandate without violating the rights of the people they are meant to serve and protect.

Several human rights training and awareness creation programmes have been implemented for the Police so that together we can prevent human rights violations. The fact that some of the violations occurred out of ignorance or due to inadequate awareness of the police officers about issues of human rights and the obligations to respect them prompted the inclusion of a human rights module in the initial training of officers joining the force as well as refresher training for those in service.¹²

In 2009, in conjunction with Uganda Police Force, Uganda developed a Police Human Rights Training Manual to help build a force that complies with human rights standards provided for in the Constitution of Uganda and other instruments.

¹⁰ Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings, COM (2009) 338 final, 8.7.2009.

¹¹ R. Löff (2006), "Shooting from the hip: Proposed minimum rights in criminal proceedings throughout the EU", *European Law Journal*, Vol. 12, No. 3, pp. 422-30, as well as C. Arangüena Fanego (2008)

¹² S. Peers (2008), "EU Criminal Law and the Treaty of Lisbon", *European Law Review*, Vol. 33, No. 4, pp. 507-529, p. 513

Uganda has signed many international and regional treaties on human rights. These make it a requirement for Uganda to include human rights in the national laws. In line with this, Uganda has included human rights in the Constitution of the Republic of Uganda, 1995, as well as established institutions to protect and promote human rights, like the Uganda Human Rights Commission (UHRC) and the Uganda Police Force (UPF). The Constitution makes it an obligation for all organs, agencies of government, all security agencies, including police and all persons to respect, uphold and promote human rights.

The Uganda Human Rights Commission is mandated to, among other functions, implement programmes of continuous awareness creation on rights and responsibilities in order to enhance respect for human rights. In order to fulfill this mandate, the Uganda Human Rights Commission designs several programmes for various sections of people in Uganda. In view of this, Uganda Human Rights Commission has over the years been training members of security agencies, including UPF to enhance their capacity in the protection and promotion of human rights¹³.

Uganda Human Rights Commission has since inception trained thousands of police officers in human rights. In addition, between July 2011 and June 2012, the Uganda Human Rights Commission through its Regional Offices trained 300 police officers in different sub region under the Peace Building through Justice for all and Human Rights Project. Through such trainings and Uganda Human Rights Commission work in general, it has been established that the majority of the police officers deployed in other Sub-region were Special Police Constables (SPCs) who had never been trained on the basic concept of human rights. Such inadequate knowledge is partly responsible for the violations of human rights by police officers¹⁴.

In order to enhance the observance of human rights in the work of police, the Commission deemed it necessary to produce a user friendly pocket book that can be used as a quick reference for police officers.

¹³ . Carrera and F. Geyer (2008), "The Reform Treaty and Justice and Home Affairs: Implications for the Common Area of Freedom, Security and Justice", in E. Guild and F. Geyer, op. cit., pp. 289-307, p. 303

¹⁴ E. Guild (2004), "Crime and the EU's constitutional future in an area of freedom, security and justice", European Law Journal, Vol. 10, No. 2, pp. 218-234.

The Constitution under Chapter 4¹⁵ provides for human rights and freedoms and some of these are:

- i. Right to life
- ii. Right to personal liberty
- iii. Freedom from torture and cruel, inhuman or degrading treatment or punishment
- iv. Freedom from slavery, servitude and forced labour
- v. Right to privacy of person, home and other property
- vi. Right to fair hearing

However, these are not the only existing rights, and the Constitution of Uganda duly recognizes the additional rights that are not mentioned but are in other human rights treaties, instruments and standards.

1.3 Statement of the problem

The Constitution of Uganda permits any person to arrest an individual who has allegedly committed a crime or is thought to have committed a crime.¹⁶ Once an arrest has been made, the suspect must be turned over to the police because the police are the only entity with the power to detain.¹⁷ Within forty-eight hours of arrest, the suspect must be presented in court or released on bond.¹⁸ The court then has the opportunity to remand the suspect for 120 days or¹⁹ 360 days, depending on the severity of the crime, until the commencement of the trial. At the end of this period, the suspect must be tried by a court of law or released from the charges.

1.3 General objective of the study

Therefore, the main purpose of this study is to critically analyze the law relating to protection of the rights of suspects in Uganda .

¹⁵ The 1995 Constitution of the Republic Of Uganda

¹⁶ Article. 23(4)(b). of the 1995 Constitution of the Republic of Uganda

¹⁷ Rone & Kippenberg, *supra* note 10, at 19.

¹⁸ Article. 23(4)(b). of the 1995 Constitution of the Republic of Uganda

¹⁹ *Id.* at Article. 4, Sec 23(6)(b)-(c).

1.4 Specific objectives of the study

- a) To examine the various rights of the suspects in Uganda
- b) To analyze the legal framework governing the protection of the rights of suspects in Uganda
- c) To Identify the gaps identified in the laws relating to the protection of the rights of suspects in Uganda
- d) To identify the possible solutions to violations of suspects' rights

1.6 Research questions

The questions that this research hopes to answer are:

- a) What are the various rights of the suspects in Uganda?
- b) What is the legal framework governing the protection of the rights of suspects in Uganda?
- c) What are the gaps identified in the laws relating to the protection of the rights of suspects in Uganda?
- d) What are possible solutions to violation of suspect's rights?

1.8 Scope of the study

The study will look at the different legislations that are in place in Uganda that pertain the rights of suspects in Uganda.

The study will look at a time period from 1995 up to today because this is the very period when they legal framework was put in place to guide the relevant authorities on how to handle suspects

1.9 Significance of the Study

The study will benefit the Uganda Police Force in such a way that it will highlight the way the violations occasioned by the Police as Stakeholders

The study will benefit the Judiciary in that it will the violations occasioned by the Police as Stakeholders

The study will also benefit the suspects in general because it will highlight observation of their rights as citizens of Uganda before and during the trial in Courts of law.

1.11 Methodology

The researcher has inclined to follow the combination of Doctrinal and Non-Doctrinal Research Method for collecting data in the present research. In the Doctrinal Research the various statutory provisions, relevant Case Laws, Commentaries, Encyclopedias, Reports of National and International Journals, Articles in Law Journals, Speeches and Writings of various luminaries, Periodicals, Newspapers, Web sites, reports of various surveys conducted, Articles published in Workshops and Seminars among others will be perused for examination, analysis, evaluation and critical study of the present research problem. The researcher has collected the data by group discussion and questionnaires of the Advocates of Uganda High Court and Supreme Court to collect data through Non-doctrinal research

1.12 Literature review

The integration of the victim into adversarial systems of justice has tended to occur at the periphery of criminal law and procedure. Most common law jurisdictions began the process of integration in the 1960s and 1970s, in so far as broad-based compensation was made available for injuries caused by a range of criminal offences²⁰. Support services followed, providing victims with a range of welfare-based options largely supported by executive government or rights-based, not-for-profit movements, or later as combined by agency agreements. Access to counselling, medical treatment and workplace support tended to be provided by the not-for-profits while court and witness support tended to be provided by the state. The dynamics of who provided these services changed in the 1980s and 1990s as most governments were keen to utilise not-for-profits to provide services otherwise funded by the state²¹. The 1985 *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* also provided impetus for the staging of crime victims which influenced the emergence of declarations or charters of victim rights on a local level (see Sumner 1987). While these tended to be declaratory and not enforceable, such charters did lead to the reconsideration of the plight of victims and placed them in a firmer public policy context.

Indeed, by the advent of the twenty-first century, governments were addressing victims as the priority group²². Arguably, boundaries which once separated the victim from substantive participation in adversarial systems of justice are now being eroded and dismantled in favour of rights and powers that can be enforced against the state or the accused, albeit in an unconventional, fragmented and at times controversial way.

Elias (1985)²³ argued that the expression of the rights of victims as ‘third wave’ human rights would emerge out of a history of the treatment of the victim as a welfare subject. *R v Killick* demonstrates how pre-trial rights to justice may be informed by international and regional

²⁰ Miers D (1985) Compensation and support for victims of crime. *British Journal of Criminology* 25(4): 382-389.

²¹ Meirs D (2007) Looking beyond Great Britain: The development of criminal injuries compensation. In Walklate S (ed.) *Handbook of Victims and Victimology*: 337-379. Cullompton, Devon: Willan Publishing.

²² Doak J (2008) *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*. Oxford: Hart Publishing.

²³ Elias R (1985) Transcending our social reality of victimization: Toward a new victimology of human rights. *Victimology: An International Journal* 10: 6-25.

frameworks that borrow from inquisitorial systems that empower the victim to act alongside the state prosecution²⁴.

The Framework Directives of the Council of Europe allow for the integration of victim rights into the domestic laws of member states through policy transfer and law reform. International and regional frameworks therefore provide a basis for the modification of criminal law and procedure as including the victim under an adversarial model of justice, as influenced by alternative justice traditions. The pre-trial phase of the adversarial trial has been substantially reformed by reference to such international norms and standards. These reforms have sought to include new rights, including the victim's right to review, alongside existing pre-trial rights. Including the right to private prosecution and to counsel for pre-trial discovery.

Francesco De Santis (2011): in there journal principle of subsidiary and embeddedness in regard to human rights. The right of every individual has to get fast and fair trial in the administration of justice and judiciary also under the obligation to deliver fast and fair justice to render the fair justice to who knock the door the court²⁵.

Rajiv Kumar Singh et.all (2015):- the author stated in international journal of applied research that of speedy and fair trial of accused under part 3rd of Indian constitution which comes preview for fundamental right and while accused facing criminal charge against him and state is under bounded to provide speedy and fair trial as contain in Indian constitution delay justice is not rendering justice towards the accused and disposal of cases report the court because serious problem it be resolved by rendering justice by speed ways and fair trial²⁶.

Gifty Oomen (2014):- the author explain his view under the title of privacy as a human rights and media trial in India that after the independent national declaration and human rights come to

²⁴ van Dijk J and Groenhuijsen M (2007) Benchmarking victim policies in the framework of European Union law. In Walklate S (ed.) *Handbook of Victims and Victimology*: 363-379. Cullompton, Devon: Willan Publishing.

Verdun-Jones SN and Yijerino AA (2002) *Victim*

²⁵ Francesco De Santis (2011):

²⁶ Rajiv Kumar Singh et.all (2015):-

exists and freedom of speech and expression in the context of public interest is the press that is print media and broadcast media²⁷.

J.P. Rai (2014):- The author specify exercise of pardoning power in India emerging that pardoning is an act of mercy to the wrongdoer that is accused which power of mercy goes to precedent of Indian and governor of state respective the concept enshrined in continue of democratic state.²⁸

FhamedoQudder (2015):- the author in his article under title crime victims right to compensation right to compensation scheme provide under criminal procedure code and active has to get compensation by accused with the permission of the court either party has remedy needs application for the purpose of plea bargaining has prescribe form as per law²⁹.

Sandeep Menon (2005):- sound in his paper publications on rights and waiver that the coterie of waivers comes under the preview of fundamental rights enriched part IIIrd constitution and the law of be done what law and what the law ought to be³⁰.

Aneeda Jan (2015):- Explain that it is settle that and unreasonable delay in the administration of justice the constitution the deny the justice and which is violation of fundamental rights and every accuse has in title to get speedy trial fair trial by the court³¹.

Kai Ambos, Annika Maleen Poschadel (2013) :- The author has his article published in Utrecht law review that however terrorist are the enemy of the state but the being individual of the state as arrest alleged terrorist has detained in jail but they shall produced before the court without the delay within twenty four hours including journey without delay and they have right to defend

²⁷ Gifty Oomen (2014)

²⁸ J.P. Rai (2014):-

²⁹ FhamedoQudder (2015):-

³⁰ Sandeep Menon (2005):-

³¹ Aneeda Jan (2015):-

before the court in person or through counsel and to seek justice and common citizen in India³².

1.10 Definition of terms

A *suspect* is an accused person.

‘Human rights violation’

Basic rights that fundamentally and inherently belong to each individual.

Human rights are freedoms established by custom or international agreement that impose standards of conduct on all nations. Human rights are distinct from civil liberties, which are freedoms established by the law of a particular state and applied by that state in its own jurisdiction.

‘Trial by ordeal’ The trial of a criminal or civil action

1.12 Chapterisation

This research comprises of five chapters.

Chapter one has provided the context for the research by considering a brief historical background, problem statement, objectives, hypothesis significance of the study.

Chapter Two consists of a review of the Rights of suspects.

Chapter Three identifies the legal framework on which rights of the suspects can be analyzed.

Chapter Four provides the core discussion of the gaps and loopholes in the legal framework to the rights of suspects in Uganda and what can be done

Chapter Five proposes alternative remedies to the rights of suspects and then sums up the recommendations on how to fill the gaps in the legislation in an effort to improve the protection of rights of suspects in Uganda.

³² Kai Ambos, Annika Maleen Poschadel (2013)

CHAPTER TWO

THE RIGHTS OF SUSPECTS

2.0 Introduction

An accused person is one who is charged with an offence¹ whereas rights on the other hand is an interest recognised and protected by the law, respect for which is a duty and disregard of which is wrong (salmond). Also a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.

Now although an accused person may have committed, an offence, this however does not necessarily mean that he is no longer a full human being with equal rights just as others who may not have committed a crime and in my view I believe that certain the rights of an accused person are absolute³³.

2.1 The rights of the accused

Rights are inherent just like any other human being and are constitutionally provided for although he/ she may be subjected to certain disciplinary action like punishment, imprisonment or confinement. This should not be interpreted to mean loss of rights but whatever he/she is subjected to must be within the periphery of law and therefore prescribed by a certain law i.e. penal code, Ministry of Corporate Affairs, breach of which law leads to the commission of an offence.

It should be first noted that Article 23 of the 1995 constitution of Uganda guarantees right to liberty as well as provides procedural and remedial recourse to courts for realisation of the rights to personal liberty. And, Article 23 (1) of the 1995 constitution provides instances in which the right to personality may be taken away or deprived and these are;

1. *In respect of administration of Justice of law and order concerns with execution of a sentence of imprisonment, arrest for purposes of bringing persons before court on grounds of commission or suspicion of commission of criminal offence. Article 23 (1) (c) of the 1995 constitution of uganda is subjected to provisions, Article 23 (4) of the*

³³ Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, pg. 161

*1995 constitution of Uganda which requires such a person arrested for commission or reasonable suspicion of commission of an offence to be proved before court within 48 hours.*³⁴

2. *Purposes of preventing spread of an infections or contagious disease, Article 23 (1) (d) of the 1995 constitution of Uganda*
3. *In respect to certain categories of persons at 23 (1) paragraphs, e, f, g, h.*

Article 23 (11) of the 1995 constitution of Uganda provides for specified, gazetted area for detainees, authorized by law, accessible by the public, for example traditional places, are, police cells, government prisons, minors, children houses, these excludes military detention centres in barracks for civilians and safe houses.

Article 23 (11) of the 1995 constitution of Uganda closely related with Article 23 (5) right to be visited by next of kin, lawyer, personal doctor; it caters for the security of the person and individual.

Article 23 (3), of the 1995 constitution of Uganda stipulates that the detained persons should be informed the reason of his being detained or restricted, to consult legal counsel of his or her choice. It also includes, a must police caution of informing the accused of right to consult lawyer, a sentence read without accused right of being informed to consult a lawyer can amount to a violation of 23 (3)³⁵.

Article 23 (6) of the 1995 constitution of Uganda guarantees the right to grant of bail, this is a balance between the right to personal liberty and administration to criminal justice, that is to say the right of an accused to be free, while at same time attending his / her trial. The question for courts is whether or not to grant bail and what conditions. The criminal justice system is based on the principle of presumption of innocence of an accused and therefore a grant of bail protects this principle.³⁶

³⁴ Ocheng Vs. Uganda (1969) E.A at pg. 1

³⁵ The Queen Vs. Feeney (1997) 3 LRC pg 37, The Queen Vs. Therens (1986) LRC pg 445

³⁶ See OBBO & another Vs. Uganda, crimm. Misc. Appn. 145/1997

There are instances where laws are passed to exclude grant of bail in respect of certain offences. For example the trial on indictment amendment statute of 1985 excluded grant of bail in respect of terrorism, cattle rustling and possession of fire arms. A case in point is one of *OKOT Vs. UGANDA*³⁷ appellate sought to challenge the constitutionality of the 1985, statute as infringing in the right to grant of bail by the courts the high court held, that the accused rights were limited by that statute in public interest. Also in *NGUI Vs. REPUBLIC*³⁸, and *DPP Vs. PETE s/o DAUDI*³⁹, in both cases the high court of Kenya and Tanzania declared legislation, that sought to exclude grant of bail, in respect of certain offences as unconstitutional as it interfered with the Judicial discretion of courts for example separation of powers.

An accused has also a right to automatic grant of bail where an individual has been on remand for 120 days in respect of offences triable by the High court, and other subordinate court and 360 days in respect of offences triable only by the High court. The presumption is that the judicial process isn't functioning and the individual should be allowed to gain his/ her personal liberty. In *JOSEPH LUSSE Vs. UGANDA*⁴⁰, the appellant had been on remand for treason and misprison of treason for 365 days. Justice Taboro held that, the appellant was entitled to automatic grant of bail under Article 23 (6) (c).

Article 23 (7) of the 1995 Constitution of the Republic of Uganda provides for right of an individual who has been unlawfully deprived of his personal liberty to compensation, whereas *Article 23(8)*⁴¹ provides for the right of an individual sentenced to a term of imprisonment to have the period spent in lawful custody considered during the passing of the lawful sentence to imprisonment.

Further still *Article 23 (9)* of the 1995 Constitution of the Republic of Uganda provides for an order of Habeas corpus this right cannot be suspended by any law or otherwise and in fact, is

³⁷ 1987 HCB, Pg. 4

³⁸ LRC Pg. 308 (KY)

³⁹ LRC (1991) Pg. 553 (TZ)

⁴⁰ Misc CRIMM APP 73/ 1997

⁴¹ The 1995 Constitution of the Republic of Uganda

non-derogable under *Article 44 (d)* of the 1995 Constitution of the Republic of Uganda in essence, an order of Habeas corpus is a remedial guarantee with a right to personal liberty⁴².

Article 24 of the 1995 constitution of Uganda, provides rights of freedom from torture, cruel, inhuman degrading punishment or treatment, not only does it protect the dignity of the individual but also extends to physical and psychological integrity of the individual, this freedom is non-derogable by virtue of *Article 44 (a), of the Magistrate Court Act* a case in place is one of **SIMON KYAMANYWA Vs. UGANDA**⁴³ where the constitutionality of corporal punishment as part of the sentencing by courts in effect of provision of *sec. 274 of Magistrate Court Act*. The point I wish to make here is that although **KYAMANYWA** was accused, he still had his rights by virtue of *Article 24 of the 1995 Constitution of Uganda*.

Article 28 of the 1995 Constitution of Uganda., guarantees the right to fair trial, under *clause (1)* an individual is entitled to a fair and quick public hearing before and an independent and impartial court. The trial must take place in a public place as a guarantee towards its fairness as the member of the public will be able to observe the proceedings. However this right is not absolute as *under 28 (11) of the 1995 Constitution of Uganda*. the public may be excluded for reasons of morality, public order or national security. Further under *Article 28 (1 of the 1995 Constitution of Uganda)*., the court must be independent and impartial guarantee a fair hearing, therefore the court shouldn't be controlled by another person /organ of government, and there should not be likely hood of bias in the country or any member of the court.⁴⁴

Article 28 (3 of the 1995 Constitution of Uganda) provides for guarantees for a fair trial in what is referred to as the criminal justice system, the 1st guarantee is the right to be presumed innocent until proved guilty. This therefore pre – supposes that the prosecution has a burden of proof to prove an accused beyond reasonable doubt, the exception to the burden proof as an aspect of the

⁴² *Ibingira & Others Vs. Uganda* (1960) E.A. Pg. 305, and, also see *Re Sherkh Abdul Ssentamu case*, C/Ref 7 1998

⁴³ crim App, 16/1998.

⁴⁴ *Pinnochet's case* – where one of the judges was asked to disqualify himself from the trial because his wife was a member of Amnesty International which was prosecuting and was likely to be influenced by his wife. Also, the case of professor Isaac Newton Ojok Vs. Uganda (1991) where one of the Judges was asked to disqualify himself because of his close ties with government and was likely to be biased towards the accused, cross reference, this with a case in which Kanyeihamba, J. refused to disqualify himself, arguing that he swore an oath to be fair impartial without ill will or favour.

right to innocence is provided for under *Article 28 (4) of the 1995 Constitution of Uganda*, which contains what is referred to as ‘reverse onus’ of proof

The second guarantee is the right to be informed immediately in the language an individual understands of the nature of the offence he is charged with; this right is closely related to the right to an interpreter where the individual doesn’t understand the language of the trial⁴⁵.

The 3rd guarantee is the right to preparation of legal defence and legal representation in court under *Article 28 (3) c, d, e of the 1995 Constitution of Uganda*,⁴⁶. In cases of offences carrying death sentence or life imprisonment, the individual has a right to legal representation at the expense of the state a case in place is *STATE Vs. VERMAAS*⁴⁷ where the South African constitutional court remarked, on the fact that 2 years after the constitution it hadn’t been demonstrated that financial and administrative measures had been put in place to ensure the realisation and enjoyment of the right to legal representation at the state’s expense. It’s also necessary that the accused have to be brought before a judiciary officer within 24 hours of his arrest. It’s unfortunate however that most accused are detained as suspects for over 24 hours, without appealing in a court of law, this unlawful imprisonment and is a sue able tort with damages if the victim decides to sue.

Further still Article 28(c) of the 1995 Constitution of Uganda. provides that “*be given adequate time and facilities for the preparation of his or her defence*” usually this in case of Uganda should entail reasonable notice of the offence the accused has committed plus when on is likely in trial. It’s then after this that one prepares his defence, witnesses, evidences etc. Also, 28 (d) “*be permitted to appear before the court in person or at that person’s own expense, by a lawyer of his or her choice*”. The purpose of this is to hire an advocate to defend the accused, and also give the advocate sufficient time for his defence submission. Section 53 of the trial and indictment piece says “*any person accused of an offence before the high court be defended by an*

⁴⁵ Andrea Vs. R (1970) E.A., 26, also Article 28 (3) (a).

⁴⁶ Muyiimba and others Vs. Uganda (1969) E.A. Pg. 533, and Katatryeba and others Vs. Uganda (1996) HCB Pg. 16.

⁴⁷ South African Constitutional Court (1995)

advocate, at his own expense” and Magistrate Court Act Cap 16 sec. 154, “any person accused of an offence before the magistrate’s court may of right be defended by an advocate.”

It is also a right for the accused to cross-examine prosecution witnesses and right to call and examine his own witnesses; this is stipulated in Article 28 (3) (g) of the 1995 Constitution of Uganda. *“be afforded facilities to examine witnesses before the court”*. This implies that every person charged with a criminal offence is entitled to facilities to examine personally or by his legal representative; the witnesses called by the prosecution before the court and to obtain the attendance and examine witness to testify on his behalf before the court on the same conditions just as those applying to witness called by the prosecution.

Cross examination as a right is very necessary and the accused or his counsel must be given an opportunity to do so on the prosecution witnesses this helps to test the veracity and reliability of a witness and also helps the court to amicably arrive at the truth. This aspect is so important if witnesses refuse to come to court when properly served, they can be arrested as stipulated in sec. 93 of Magistrate Court Act Cap 16 *“if without sufficient excuse, a witness doesn’t appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time be for, May issue a warrant to bring him before the court at such time and place as shall be therein specified:”*⁴⁸ A witness who refuses to be sworn, give evidence or produce any document then required to do so, is considered a refractory witness.⁴⁹

Another important absolute right for an accused is the right to be present during trial and have assistance of interpreter, its incumbent upon the court to ensure that the accused as a right is present while he is on trial, unless absent with his own consent, or his conduct affects the procession of the trial this is stipulated in Article 28 (5) of the 1995 Constitution of Uganda. *“Except with his or her consent, the trial of any person shall not take place in the absence of that person unless the person conducts himself or herself as to render the continuance of the proceedings in the presence of that person impracticable and the court makes an order for the person to be removed from the trial and proceed in the absence of that person.”*. The accused’s

⁴⁸ Sec. 93 Magistrate Court Act Cap 16.

⁴⁹ sec. 100 Magistrate Court Act Cap 16. Refractory witnesses.

presence at the trial, helps him /her to exercise his right to cross – examine and also defend him/herself⁵⁰. This right to be present during the trial can be further, stipulated, by sec. 135 of Magistrate Court Act Cap 16, which says that evidence must be taken in presence of accused. *“Except as otherwise expressly provided, as evidence taken in any proceedings under his act shall be taken to the presence of the accused, or when his personal attendance has been dispensed with, in the presence of his advocate, if any an accused person, has a right to be afforded without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial⁵¹ clarity of language helps the accused to cross – examine and present his defence.*

Uganda being a multi ethnic country, many languages exist and yet constitutionally and even in law, the official language of courts is English, its not common to find the majority of witnesses, and accused person using the vernaculars, this entails, the need for interpreter in courts, and the need for interpretation can further be seen in Trial on Indictment Act Cap 116. sec 54,

“(1). Whenever the evidence is given in a language not understood by the accused person. It shall be interpreted to him in open court in a language understood by him.

*(2). If the accused appears by an advocate and the evidence is given in a language other than English and not understood by the advocate, it shall be interpreted to such advocate in English”.*⁵² This can further be emphasised in the Magistrate Court Act Cap 16 sec. 137 *“(1). Where by evidence is given in a language not understood by the accused and he is present in person. It shall be interpreted to him to open court in a language understood by him”*

“(2) If he appears by an advocate and the evidence is given in a language other than English, and not understood by the advocate, it shall be interpreted to such advocates in English”.

Also 138 of Magistrate Court Act Cap 16 *“when documents are put in for the purpose a formal proof, it shall be in the discretion of the court to interpret as much there of as appears necessary”.* It can further be argued that, an accused deaf-mute, should be accorded, a sign reader in order to understand the proceedings. If the accused cannot be made to understand, the

⁵⁰ See Esau Namanda & others Vs. Uganda (1991)

⁵¹ See Article. 28, 3 (f) cost of Rep. Of Uganda, also see Andrea Vs. Uganda (1970) E.A. 26. A case where a Mozambiquean national was later released having been convicted at first trial and yet he did understand the language at the trial.

⁵² See 54, T.I.D, see also sec. 56

proceedings then provisions 116 of Magistrate Court Act Cap 16, and sec. 47 of Trial on Indictment's Act Cap 116 will apply.

It can be noted further that an accused person has a right to copy of proceedings and judgement if he so requires however this is subject to some fee as may be prescribed by law to be given with a reasonable time after judgement, i.e. *"Article 6 of constitution a person tried by any criminal offence, or any person authorised by him or her, shall after the judgement in respect of that offence, be entitled to a copy of the proceedings upon payment of a fee prescribed by law"*.

This becomes necessary when the accused wishes to file an appeal, and helps the advocate to prepare his memorandum of appeal against the conviction or sentence.

An absolute right for an accused, that no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence. This is stipulated in *Article 28 (7)* of the 1995 Constitution of Uganda *"No person shall be charged with or convicted of a criminal offence which is founded on act or a mission that did not at time it took place constitute a criminal offence"*. The Court of Appeal in the case of *Ssenoga Jafari V Uganda*⁵³ stated that in carrying out the parade, the rules in *Sentale V Uganda* must be observed as much as possible depending on the circumstances of the case. However, failure to observe one or two of them does not render the identification a nullity"

Its also provided in Article 28 (9) of the 1995 constitution of Uganda which raises the rule against double jeopardy. *"A person who shows that he or she has been tried by a competent court for a criminal offence and convict or acquitted of that offence, shall not again be tried for the offence in for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal"*.

Here the point to note is the doctrine of *Res Judicata*, whose aim is to protect the accused rights being violated, the doctrine also brings an end to litigation and hence promotes the respect of judicial decision. *Res Judicata pro veritate accipitur*, means the matter has been adjudicated or

⁵³ Crim Appl No. 34 2005

decided upon by a competent court. The only option in this case would be appeal, revision or review in case of nugatory decision or other incidental remedies such as injunctions or restraining orders. The basis of this doctrine of Res Judicata which supports the rights of the accused, can also be further found in statutory provisions, specially, sec. 7 of civil procedure Act. There is also pleas found in sec. 87 of the Magistrates Court Act Cap 16, "*A person who has been once tried by a court of competent jurisdiction for an offence and convicted of acquitted of such offence shall, while such conviction or acquittal has not been revealed or set aside, not be liable to be tried again on the same facts for the same offence*".

This provision lays down what are generally known as the doctrines of autre fois, convict, autre fois acquit and autre fois pardon⁵⁴. Also the Residence Council (Judicial Powers) statute 1988, under section 18, the doctrine of Res Judicata is highlighted. This fact greatly contributes to the right of an accused.

Another important right is embedded in Article 28 (12) of the 1995 constitution of Uganda, which says, "*except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law*". Here the issue to note is the rule against unwritten criminal offences, the only exception to this principal of legality is that the courts are permitted to punish any person for contempt of court even if the act constituting the contempt is not defined in a written penal law. This rule helps to give a degree of predictability and certainty to the criminal law.

2.3 Conclusion

In conclusion therefore, it can be noted that there at times when the rights of an accused person, are indeed not absolute for example, although, an accused may have a right to legal representation, this is not absolute, a trial cannot be held up definitely to allow an advocate to find his own suitable time to appear and represent the accused. This implies that courts cannot sit at the convenience of advocates⁵⁵.

⁵⁴ See Article 28 (10) of Constitution Republic of Uganda (1995) as Amended

⁵⁵ B Odoki, *Criminal Procedure in Uganda*,. Pg. 85

Secondly although the law emphasises presumption of innocence especially criminal offences, there seem to be certain offences, which are of strict liability offences such that, once one is caught in the breach of it there is no way out. Here the rights of the accused are not absolute in such cases of strict liability, there is no presumption of innocence or proof beyond reasonable doubt. Strict liability offences usually fall under statutory offences for example failure to observe the conditions of a public service licence is an offence of strict liability. Prof. Gastavus Semyonga & Anor v Uganda (Cr. Application No.12 of 1999) UGCA 16 (24 November 1999). It was held among others that the appointment of accounting officers who are not financial experts into position of financial accountability and strict liability on them causes matters of great public concern and general importance.

Further more, although it's a right for an accused to get bail this right is not absolute, sec 78 (1) Magistrates court Act Cap 16 points out that where any person appears before a magistrate's court charged with an offence for which bail may be granted, the court shall inform him of his right to apply for bail. Although it's a right for an accused to get bail, this right is however not absolute because firstly not all offences can lead to bail being granted. Secondly, sec 75 (2) of the Magistrates Court Act Cap 16 stipulates circumstance to be justified for one to be granted bail.

CHAPTER THREE

THE POLICY AND LEGAL FRAMEWORK ON RIGHTS OF THE SUSPECTS

3.1 Introduction

This chapter discussed the policy and legal framework on the rights of suspects in Uganda

3.2 The legal framework

3.2.1 The 1995 Constitution of the Republic Uganda

The Constitution of Uganda permits any person to arrest an individual who has allegedly committed a crime or is thought to have committed a crime.⁵⁶

Once an arrest has been made, the suspect must be turned over to the police because the police are the only entity with the power to detain.⁵⁷ Within forty eight hours of arrest, the suspect must be presented in court or released on bond.⁵⁸ The court then has the opportunity to remand the suspect for 120 days or 360 days, depending on the severity of the crime, until the commencement of the trial. ⁵⁹At the end of this period, the suspect must be tried by a court of law or released from the charges.⁶⁰

The Constitution of Uganda gives police officers the power to investigate, search, arrest and detain persons suspected to have committed or are planning to commit an offence. Such persons are referred to as suspects. Like any other human being, a suspect has rights and freedoms some of which may be legally limited because of his/ her circumstances. As a matter of principle, every suspect shall be presumed innocent until proven guilty by a competent court or until the person pleads guilty before court⁶¹.

Uganda domesticated its obligations under the various International and Regional human rights instruments it ratified by incorporating them into the Constitution and specifically under Chapter

⁵⁶ The Constitution of Uganda 1995 . Article. 4, Article 23(4)(b).

⁵⁷ Rone & Kippenberg, *supra* note 10, at 19.

⁵⁸ The Constitution of Uganda 1995 . Article 4, Article 23(4)(b). *of the 1995 Constitution of Uganda*

⁵⁹ *Id.* at Article. 4, Article 23(6)(b)-(c). *of the 1995 Constitution of Uganda*

⁶⁰ *Ibid*

⁶¹ *Article 23(4) of the 1995 Constitution of Uganda*

Four which is commonly referred to as the Bill of Rights. As the supreme law of the land, the Constitution, particularly in Chapter Four, is a testament of Uganda's commitment to ensure that its citizens enjoy their human rights and freedoms. The Constitution provides for the right to a fair and public hearing by an independent and impartial tribunal in the determination of criminal charges against any person.⁶² The Constitution further provides for the right to a fair hearing as a non-derogable right meaning that the State must ensure that this right is not violated under any circumstances.

Article 23(4)(b) of the Constitution allows a person to be arrested "upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda.",⁶³ Ultimately, this allows for an arrest prior to the actual execution of the crime. The United Nations defines arrest as the "act of apprehending a person for the alleged commission of an offence or by the action of an authority,"⁶⁴ under this definition it is necessary for an alleged offense to have been committed. However, the Uganda Constitution allows for an arrest when a law enforcement agent thinks the individual might partake in a criminal activity, even in the absence of any probable cause⁶⁵. Typically, an arrest is made prior to any substantive investigation. As the Chief Justice observed in *Kalanima v. Uganda*, "the policemen arrest people before they have evidence to support the arrest and

Article 23(4) of the Ugandan Constitution reads, "A person arrested or detained ...shall, if not earlier released, be brought to court as soon as possible, but in any case not later than forty-eight hours from the time of his or her arrest.",⁶⁶ A majority of suspects, even suspects of petty crimes, are detained in the police stations for longer than forty-eight hours as a result of a variety of factors, including (1) lack of control over the suspect, (2) lack of ample transportation, (3) backlog at the Directorate of Public Prosecution's office, and (4) corruption.⁶⁷

⁶² Article 28(1) of the 1995 Constitution of Uganda

⁶³ *Id.* at Article 4, Section 23(4)(b).

⁶⁴ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, G.A. Res. 43/173, U.N. GAOR, 76th plen. Mtg., at Annex (a), U.N. Doc. A/43/173 (1988).

⁶⁵ The Constitution of Uganda 1995 Article. 4, § 23(4)(b).

⁶⁶ The Constitution of Uganda 1995. Article 4, § 23(4)(b).

⁶⁷ Interviews with O/Cs, at Old Kampala Police Station, Jinja Road Police Station, Katwe Police Station, Naggalama Police Station, Lugazi Police Station, and Mukono Police Station, in Uganda (May 24, 2019 - June 10, 2019).

3.2.2 The Criminal Procedure Code Act, Cap 116

The Criminal Procedure Code Act provides for all criminal offences in Uganda including those committed through acts of criminality. These may be threatening violence⁶⁸, manslaughter⁶⁹, murder⁷⁰, attempted murder⁷¹, causing grievous harm⁷², assault causing actual bodily harm⁷³, criminal trespass⁷⁴, and arson⁷⁵ among others.

This means that the Uganda Police Force (UPF) has the duty to arrest and charge persons involved in acts of criminality under the Criminal Procedure Code Act; the Director of Public Prosecutions (DPP) has the duty to prosecute cases of persons alleged to have been involved in acts of criminality; and the courts of law have the duty to convict and sentence perpetrators of acts of criminality under the Criminal Procedure Code Act when the evidence supports the charges against them.

The Criminal Procedure Code Act Cap 16 provides that where any person is detained in custody without a warrant for an offence other than murder, treason or rape, he shall be brought before a Magistrate's court within twenty-four hours after he or she was taken into custody.⁷⁶ This is an important safeguard against arbitrary detention at this stage and the police are obliged to bring the person arrested promptly before court. The Court before whom the detainee is brought has the power to release him or her on court bond or bail if all the necessary legal requirements are fulfilled.

Article 23 (4) of the Constitution of the Republic of Uganda provides that: *A person arrested or detained:*

⁶⁸ Section 81 The Criminal Procedure Code Act, Cap 116

⁶⁹ Section 187 The Criminal Procedure Code Act, Cap 116

⁷⁰ Section 188 The Criminal Procedure Code Act, Cap 116

⁷¹ Section 204 The Criminal Procedure Code Act, Cap 116

⁷² Section 219 The Criminal Procedure Code Act, Cap 116

⁷³ Section 236 The Criminal Procedure Code Act, Cap 116

⁷⁴ Section 302 The Criminal Procedure Code Act, Cap 116

⁷⁵ Section 327 The Criminal Procedure Code Act, Cap 116

⁷⁶ Section 17 The criminal procedure code Act, Cap. 116

(a) for the purpose of bringing him or her before a court in execution of an order of a court;

or

(b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, Shall, if not earlier released, be brought to court as soon as possible but in case not later than forty-eight hours from the time of his or her arrest.

The constitutional right to be brought to court within 48 hours is subject to limitations under the Police Act. Section 25 of the Police Act provides that a police officer on arresting a suspect without a warrant shall produce the suspect so arrested before a magistrate court within forty eight hours unless released on bond.

Sub section (2) further provides that subsection (1) shall not apply to a person who is arrested in one police area and is not to be questioned within the area in which he or she was arrested until he or she is transferred to the area where the offence was committed within seven days.

The constitutionality of the above provision has come to test and was overruled in the constitutional case of **Foundation for Human Rights Initiative V Attorney General**⁷⁷ (4) was unconstitutional. the Constitutional Court unanimously held that section 25 (2) of the Police Act contravenes Article 23 (4) of the constitution because it provides for longer period before an accused person is produced in court hence it is null and void. The court reasoned that the power given to the police to detain a suspect for a longer period than that provided under Article 23 of constitution

In Uganda, the 48-hour mandatory period within which a suspect should be produced in court has frequently been exceeded even though as earlier stated the Criminal Procedure Code Act¹⁸ provides that a police officer in charge of a police station, to which a person is brought may bring the person before a magistrates court within 24 hours unless the offence is of a serious nature.

⁷⁷ Constitutional Petition No. 20 of 2006

Detention for the wrong reasons, in the wrong places for longer periods than mandated by law all amount to arbitrary detention. 93% of respondents in a baseline survey carried out by ACTV in both police stations and prisons stated that they had been kept in detention longer than the mandated 48 hours⁷⁸

The Criminal Procedure Code Act Cap. 116 does not require the medical examination of the arrested persons and the manner it should be conducted. This adversely affects prosecution of cases where such medical examination is crucial. Most criminal cases are lost in courts of law simply because crucial preliminary steps were not taken or were mishandled by the relevant authorities.

Section 24(i) of the police Act Cap 303 states that (1) A police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person—from causing physical injury to himself or herself or to any other person; from suffering physical injury; from causing loss or damage to property; from committing an offence against public decency in a public place; from causing unlawful obstruction on a highway; from inflicting harm or undue suffering to a child or other vulnerable person, may arrest and detain that person.

Medical examination of suspects at the time of arrests is important. The Court of Appeal in **Kiiza Samuel V Uganda**²² faced with determining the age of the appellant at the time of commission of the offence stated that the age and mental status of every accused person at the time the alleged offence was committed is necessary because the age and or mental status of an accused at the time of the commission of the offence have a vital bearing on the whole trial, including the conviction and or sentencing process.”

3.2.3 Magistrates Courts Act, Cap. 16

Under section 32⁷⁹ it provides that Where a person accused of having committed an offence within Uganda has escaped or is removed from the area within which the offence was committed

⁷⁸ Universal Periodic Review (UPR) for Uganda Joint NGO Submission by; African Centre for Treatment and Rehabilitation of Torture Victims, Kumi Human Rights Initiative, Human Rights Centre Uganda, Peace and Security Institute of Africa, Foundations for Human Rights Initiative, Uganda Media Development Foundation and Life Concern - Zombo

⁷⁹ Magistrates Courts Act, Cap. 16

and is found within another area, the magistrate's court within whose jurisdiction the person is found shall cause him or her to be brought before it and shall, unless authorised to proceed in the case, send the person in custody to the court within whose jurisdiction the offence is alleged to have been committed, or require the person to give security for his or her surrender to that court there to answer the charge and to be dealt with according to law.

The Magistrates Court Act, Cap 16 (MCA) is the law governing the procedure applicable in Magistrate Courts. Magistrate courts are also referred to as lower courts or subordinate courts and they consist of; The Chief Magistrates Court, Magistrate Grade I Court, and Magistrates Grade II Courts.

These courts have authority to try criminal matters. The Magistrates Court Act Cap 16 gives powers to the Magistrate to grant bail to accused persons who have committed offences which are triable and bailable by them. However, there are offences which can be tried by Magistrates for which they cannot grant bail and also cases which are neither triable nor bailable by them. In these cases, the Magistrate's duty is to inform the accused person of his/her right to bail and also advise him or her to apply for bail in the High Court. 'The Magistrates Court Act Cap 16 provides for situations and circumstances when a pre-trial detainee may be granted bail.⁸⁰ These are; Where the accused is not being charged of any of the following offences: • Acts of terrorism, Cattle rustling, Abuse of office

3.2.4 Trial on Indictment Act, Cap.23

Section 10 provides that **Person arrested to be brought before the court without delay.**

The police officer or other person executing a warrant of arrest shall, without unnecessary delay, bring the person arrested before the High Court.

The Trial on Indictment Act, Cap 23 (TIA) is the law governing the trial procedure of criminal cases in High Court.

⁸⁰ Section 75 (1) of the Magistrates Court Act Cap 16

The High Court has unlimited power to hear criminal matters and appeals from the lower courts. The Trial on Indictment Act Cap 23 gives High Court unlimited power to grant or deny accused persons bail and provides for the procedure adopted by Court in doing so. bail may be granted by the High Court at any stage of the proceedings. 'Circumstances when a detainee may be released on bail by the High Court.'⁸¹ The High Court may grant bail to an accused upon the accused proving exceptional circumstances that entitle him/her to be granted bail and also showing that he or she will not abscond when released.

Exceptional circumstances include;

- i. That the accused is suffering from a grave or serious illness which has been approved by a medical officer of the prison or other institution where the accused is detained as being incapable of being adequately treated while in custody or detention.
- ii. When the accused produces a Certificate of No objection signed by the Director of Public Prosecutions (DPP).The Director of Public Prosecutions is the head of the Directorate of Public Prosecution which institution is responsible for the prosecution of all criminal cases in the country. The DIRECTORATE OF PUBLIC PROSECUTION has offices in many districts of Uganda and these offices are referred to as offices of the Resident State Attorney.
- iii. When the accused shows that he or she is either an infant, or of advanced age.

In determining whether the accused will not abscond when released court will consider the following factors;

- i. Whether the accused has a place of abode within the court's jurisdiction,
- ii. Whether the accused has sound sureties within the court's jurisdiction, to undertake that the accused shall comply with the conditions of his or her bail;
- iii. Whether the accused has on previous occasions when released on bail failed to comply with the conditions of his or her bail; and
- iv. Whether there are other charges pending against the accused.

⁸¹ Section 15 of the Trial Indictment Act Cap 23

3.2.5 The Criminal Procedure Code Act Cap 116

The Criminal Procedure Code Act⁸² which is the major body of law regulating treatment of accused persons. It gives powers of arrest to; Police officers, Any Magistrate to arrest or direct the arrest of a person who commits a crime in his/her presence within the local limits of his her area of control.iii. Any private person to arrest a person who commits an offence, or arrest a person he/she reasonably suspects of having committed a felony or major offence.

3.2.6 The Police Act Cap 303.

The Police Act Cap. 303 is the law which governs the structure, organisation, discipline and functions of Police. This Act gives police officers the duty of keeping law and order by arresting offenders and bringing them to justice, preventing people from committing offences and making sure that people obey orders issued by the authorities.

The following provisions are very important;

- i) A person arrested by the Police is supposed to be produced before the Magistrate's court within forty eight (48) hours of his or her arrest.
- ii) The provisions of the Act⁸³ which allowed for a seven day transfer period for someone arrested by police from a different area than where he committed the offence were held to be inconsistent with the constitution by the Constitutional Court.
- iii) If a person is detained in police custody beyond forty eight hours without being charged in court, then he or she can apply to a Magistrate within twenty four hours who will then order for his or her release.
- iv) If a person is tortured while in police custody, he or she can state his complaint to the Chief Magistrate who shall order for his or her examination and medical treatment at the expense of the State and the person responsible for the torture will be charged.

No money should be paid to police in order to be released on police bond.

⁸² Criminal Procedure Code Act, Cap 11

⁸³ Ibid Section 25 (3)

3.3 Institutional framework

In Uganda there are several institutions that are crucial to the fight against the accused by virtue of their mandates. These include government institutions, constitutional commissions and civil society organisations as elaborated below:

3.3.1. The Uganda Human Rights Commission (UHRC)

Article 52(1) of the Constitution mandates the Uganda Human Rights Commission to investigate complaints of alleged human rights violations; to establish a continuing programme of research, education and information to enhance respect of human rights and to recommend to Parliament effective measures to promote human rights.

Uganda Human Rights Commission is therefore mandated to receive and investigate complaints from victims of alleged human rights violations including acts of criminality. In addition, the Uganda Human Rights Commission can conduct research in an area of human rights concern such as this research on criminality in Uganda.

Through this, the Uganda Human Rights Commission will make recommendations to the Parliament of Uganda on how best the problem of criminality in Uganda can effectively be handled. Finally the Uganda Human Rights Commission is mandated to conduct civic education for the public on their rights, duties and responsibilities as citizens of Uganda. This includes dissuading the public from engaging in acts of criminality.

3.3.2. The Uganda Police Force (UPF)

The Uganda Police Force is mandated to protect life and property; to preserve law and order; to prevent and detect crime.⁸⁴ The Police Act specifically mandates Uganda Police Force to detect and bring offenders to justice and apprehend all persons where sufficient grounds exist.⁸⁵ The Uganda Police Force is therefore expected to detect and prevent acts of criminality, expeditiously investigate them when they occur and ensure the apprehension of perpetrators of acts of

⁸⁴ Article 212 of the 1995 Constitution of Uganda

⁸⁵ Article 21(1)(h)&(i) of the 1995 Constitution of Uganda

criminality. The Police through the community policing initiative also plays a very important role in coordinating with communities to ensure crime prevention.

3.3.3. The Directorate of Public Prosecutions (DPP)

The Directorate of Public Prosecution is charged with directing police to investigate any information of a criminal nature. The Directorate of Public Prosecution is further mandated to institute criminal proceedings against any person or authority in any court with competent jurisdiction.⁸⁶ The Directorate of Public Prosecution therefore handles the prosecution of cases of criminality as per the evidence collected by the police.

3.3.4 The Judiciary

Article 126 of the Constitution provides for the courts of judicature and that in adjudicating cases of both civil and criminal nature, the courts must, subject to the law, apply the set out principles. These include that justice shall be done to all irrespective of their social or economic status; justice shall not be delayed and adequate compensation shall be awarded to victims of wrongs. The criminal cases handled by the Judiciary include cases that resulted from acts of criminality. Under the Constitution the Judiciary has to ensure expeditious justice for victims of that have been arrested regardless of their economic or social standing.

⁸⁶ Article 120 (3) of the 1995 Constitution of Uganda

CHAPTER FOUR

THE GAPS AND LOOPHOLES IN THE LEGAL FRAME WORK TO THE RIGHTS OF SUSPECTS IN UGANDA

4.1 Introduction

This chapter discussed the gaps and loopholes in the legal framework to the rights of suspects in Uganda

4.2 Gaps in the legal system

Public opinion

The general public has a mentality that when a person is arrested for commission of an offence, he/she should be locked away indefinitely or at least until his case is tried and concluded. Anything short of this amounts to bribery or corruption on the Police or judicial officers' part to ensure the accused person's release. This has led to loss of confidence in the judicial system and accounts for most of the mob justice cases. Thus there is a dire need for sensitisation of the public on the law of bail, its application and implications.

Political pressure

The law on bail has equally been misunderstood by politicians who use it as a tool for oppressing their opponents. Often times when a suspect is arrested on charges which have political connotations, his/her right to bail is clouded with political tension and threats to judicial officers. A case in point is when the black mamba usurped the powers of court, re-arrested and detained a presidential aspirant upon release on bail by the High Court. The public however needs to understand that rights are inherent and not granted by the state, they cannot just be wished away by the government of the day. That is why the Magistrates and Judges before whom the accused persons appear must always exercise their discretion judiciously and grant these people bail on conditions that ensure their return to court contrary to any executive guidelines that they may receive.

This report analyzes the government's failure to close legal loopholes and ensure that laws are not written or interpreted to insulate political appointees from accountability. It documents why

Uganda has failed to hold the highest members of its government accountable for theft of public funds, despite its stated commitment to eradicating corruption and much good work from investigators and prosecutors at the technical level. It also shows how lack of political will has crippled Uganda's anti-corruption institutions, undermining their efforts through political interference, underfunding, harassment, and threats. The lack of a clear system to protect witnesses and insulate prosecutors from bribery and intimidation means that anti-corruption institutions in Uganda have ended up focusing on low-level corruption involving small sums of money, while the "big fish" have continued to accumulate wealth and power.

The *Constitution* is silent on the issue of dealing with evidence obtained through human rights violations. It provides that:

- (1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.
- (2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.⁸⁷

This Article guarantees rights for all individuals in Uganda by virtue of their nature as human beings. In addition, any person who claims that a fundamental or other right or freedom has been infringed or threatened may apply to a competent court for redress.⁸⁸ While these provisions guarantee rights and offer enforcement, they do not provide a directive on how to deal with evidence obtained through human rights violations. It would be desirable that constitutional rights which are violated in the course of gathering evidence should be subjected to a directive on how to deal with evidence so gathered. Some of these rights include the right to a fair trial,⁸⁹ the presumption of innocence until proven guilty,⁹⁰ and the right to be charged in accordance with the law.

Other rights are the rights to privacy, personal liberty,⁹¹ and against self-incrimination. Some of the pre-trial guarantees for an accused person include a presumption of innocence until he or she is proved or pleads guilty; the right to be informed immediately in a language that the person understands of the nature of the offence; and the provision of adequate time and facilities to

⁸⁷ Article 20 of the *Constitution of the Republic of Uganda, 1995* (the *Constitution*).

⁸⁸ Article 20 of the 1995 *Constitution of Uganda*

⁸⁹ Article 28 of the 1995 *Constitution of Uganda*

⁹⁰ Article 28(3)(a) of the 1995 *Constitution of Uganda*

⁹¹ Article 23 of the 1995 *Constitution of Uganda*

prepare his or her defence. These pre-trial guarantees do not, however, provide for a remedy where evidence has been obtained through human rights violations. The relief provided by the *Constitution* relates to an application for redress for the infringement of a human right and not evidence obtained through human rights violations.⁹²

In *Uganda v Kalawudio Wamala (Kalawudio)*⁹³ the accused was indicted for the offence of rape. The prosecution sought to tender an exculpatory statement made by the accused person. Just as in *Namulobi*, the statement in *Kalawudio* was made after the accused had been in custody beyond the mandatory 48 hours. The High Court declined to admit the statement because it was made after the accused had been in custody for 10 days, which exceeded the statutory 48 hours. Secondly, the statement was recorded contrary to the rules in the Evidence (Statement to Police Officers) Rules.⁹⁴ The rule referred to states:

If a police officer decides that the statement of any person should be taken down in writing and is likely to be tendered in evidence in any proceedings, then - (a) if there is present any police officer literate in the language being used by such person, the police officer literate in such language shall write down the statement as nearly possible in the actual words used by the person making the statement.⁹⁵

The Court noted that while the accused could speak the Luganda dialect, the police officer recorded the confession in English. The Court stated that the conduct of the police officer was contrary to this Rule. The other reasons that the court gave for not admitting the exculpatory statement were that it protected the accused, that the court had to uphold the public interest, and that it had to deter persons and organs of government from condoning a breach of human rights. In addition, the admission of the confession would be against the tenets of the right to a fair trial.⁹⁶ This was instructive of the Court's willingness to develop case law on the exclusionary rule. It must be noted that the Court declined to admit the evidence because the statement had not been recorded in accordance with the Evidence (Statements to Police Officer's) Rules. These

⁹² Article 50(1) of the *Constitution* provides that "Any person who claims that a fundamental or other right or freedom guaranteed under this *Constitution* has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation".

⁹³ *Uganda v Kalawudio Wamala* (unreported) case number 442/1996 of 6 November 1996 (*Kalawudio*).

⁹⁴ *Kalawudio* paras 22-24. These Rules were declared annulled by the repeal of s 24 of the *Evidence Act, Cap 6*

⁹⁵ *Kalawudio* paras 22-24. These Rules were declared annulled by the repeal of s 24 of the *Evidence Act, Cap 6*

⁹⁶ *Kalawudio* paras 31-33.

Rules had been declared by the Supreme Court in *Namulobi Hasadi v Uganda (Cr.Appeal)No.16 of 1997) (1998) UGSC 17 (13 July 1998)*, to have been annulled by the repeal of section 24 of the *Evidence Act*⁹⁷. Although the Court had not relied on Rule 7(a) to arrive at its decision, it made it clear that the statement was illegal because it had been recorded after the accused had been in police custody for more than the mandated 48 hours.⁹⁸

The illegal procuring of a statement from an accused for use against him at trial was found to be repugnant to the values and standards set out in the new *Constitution* (as it then was), and that the Court would not be complying with its duty if it admitted the statement and permitted the wrongful and unconstitutional conduct of the police or any other organ in its investigation of crime.⁹⁹ The Court took a cautious stand not to condone the improper excesses of the police, and used the protective theory to ensure that the accused did not suffer a disadvantage because of evidence obtained through human rights violations by the police.¹⁰⁰ This case illustrated a shift of the jurisprudence from the admission to the non-admission of evidence obtained through human rights violations.

The current pieces of legislation do not adequately provide for a mode of dealing with evidence obtained through human rights violations. The *Prohibition and Prevention of Torture Act*¹⁰¹ has a provision which is limited to evidence obtained through torture and cruel, inhuman or degrading treatment (CIDT). Section 14(1) thereof provides:

Any information, confession or admission obtained from a person by means of torture is inadmissible in evidence against that person in any proceedings.¹⁰²

This section limits its operation to evidence obtained through torture and CIDT.¹⁰³ Its effectiveness is also curtailed by the nature of the evidence that can be admitted under section 14. This evidence includes information, confessions or admissions. While confessions and

⁹⁷ *Namulobi Hasadi v Uganda (Cr.Appeal)No.16 of 1997) (1998) UGSC 17 (13 July 1998)*,

⁹⁸ *Kalawudio* paras 1, 19.

⁹⁹ *Kalawudio* para 26.

¹⁰⁰ John and Sarah *Internationalisation of Criminal Evidence* 154-155.

¹⁰¹ *Prohibition and Prevention of Torture Act* 3 of 2012.

¹⁰² Section 14 of the *Prohibition and Prevention of Torture Act* 3 of 2012.

¹⁰³ Sections 7, 14 of the *Prohibition and Prevention of Torture Act* 3 of 2012. Mujuzi 2012 *IHRLR* 389. While the wording is limited to torture, the law also covers cruel, inhuman and degrading treatment.

admissions are provided for in the *Evidence Act*, information is not provided for. This means that while evidence with regard to confessions and admissions may be dealt with under the *Evidence Act*, evidence with regard to information obtained as a result of torture and CIDT is not covered by the *Prevention and Prohibition of Torture Act*.

The *Evidence Act*¹⁰⁴ places emphasis on the admissibility of confessions, which is one form of evidence that is susceptible to human rights violations.¹⁰⁵ Other forms of evidence that may be susceptible to human rights violations include evidence arising from illegal searches, such as autoptic evidence and vigilante evidence, are not covered by the legislation. Autoptic evidence refers to passive evidence such as the suspect's complexion, stature, marks or features, which may be admitted as evidence that incriminates the accused. Vigilante evidence, on the other hand, refers to evidence that has been obtained by third parties, like private security officers¹⁰⁶ or private persons¹⁰⁷ other than the police.

The *Evidence Act* regulates the relevance and admissibility of evidence in courts and provides guidelines for the recording of confessions.¹⁰⁸ It provides that a confession which would otherwise be inadmissible may still be admitted in evidence, if in the view of the court the impression making it inadmissible is removed.¹⁰⁹ The court therefore exercises a discretion either to admit or not to admit the evidence.¹¹⁰ Section 24 of the *Evidence Act* provides:

A confession made by an accused person is irrelevant if the making of the confession appears to the court, having regard to the state of mind of the accused person and to all the circumstances, to have been caused by any violence, force, threat, inducement or promise calculated in the opinion of the court to cause an untrue confession to be made.¹¹¹

According to the section, if the judicial officer is of the view that the confession was not obtained voluntarily on account of the use of violence or force, a threat or any form of inducement, the

¹⁰⁴ *Evidence Act*, Cap 6 (Laws of Uganda).

¹⁰⁵ Sections 23-27 of the *Evidence Act* Cap 6

¹⁰⁶ *S v Songezo Mini* (unreported) case number 141178/2015 of 30 April 2015 paras 20, 21, 22.

¹⁰⁷ *S v Hena* 2006 2 SACR 33 (SE) 40i-41b.

¹⁰⁸ Sections 24-26 of the *Evidence Act*. Cap 6

¹⁰⁹ Section 25 of the *Evidence Act*. Cap 6

¹¹⁰ Section 25 of the *Evidence Act*. Cap 6

¹¹¹ Section 24 of the *Evidence Act*. Cap 6

confession shall no longer be relevant. Evidence which would otherwise have been inadmissible by the operation of section 24 becomes admissible only after the court has satisfied itself that the confession was obtained voluntarily.

The *Criminal Procedure Code Act*¹¹² provides for the mode of arrest and search of an accused person.¹¹³ This Act is also silent on how to deal with evidence obtained through human rights violations, such as illegal arrests and searches. The *Magistrates Courts Act*¹¹⁴ and the *Trial on Indictments Act*¹¹⁵ are equally silent on how to handle evidence obtained through human rights violations. The silence in all these laws shows that there is no statutory provision that adequately deals with evidence obtained through human rights violations.

The *Regulation of Interception of Communications Act*¹¹⁶ allows authorised persons from security organisations to obtain a warrant from a designated judge to intercept communications.¹¹⁷ In instances where the holder of the warrant exceeds the bounds of the warrant, the Act still sanctions the admission of such evidence obtained, with due regard to the circumstances in which the evidence was obtained. Some of the circumstances include the potential effect of its admission or exclusion on issues of national security, and the unfairness to the accused that may be occasioned by its admission or exclusion.¹¹⁸ This puts individuals at the mercy of state organs. The literal interpretation of the Act is that where there is a violation of the rights of an individual, the evidence may still be admitted on the grounds of national security.

While the *Constitution* is silent, legislation that governs criminal justice has done little to solve the issue of dealing with evidence obtained through human rights violations. Most of the legislation has not been amended since the passing of the *Constitution* in 1995.¹¹⁹ Therefore the silence of the *Constitution* is exacerbated by the inadequate ability of the existing legislation to complement it in dealing with evidence obtained through human rights violations.

¹¹² *Criminal Procedure Code Act*, Cap 116 (Laws of Uganda) (the *Criminal Procedure Code Act*).

¹¹³ Section 24 of the *Evidence Act* Cap 6

¹¹⁴ *Magistrates Courts Act*, Cap 16 (Laws of Uganda).

¹¹⁵ *Trial on Indictment Act*, Cap 23 (Laws of Uganda).

¹¹⁶ *Regulation of Interceptions of Communications Act* 18 of 2010 (the *Interceptions of Communications Act*).

¹¹⁷ Section 4 of the *Interceptions of Communications Act*.

¹¹⁸ Sections 7(a)-(c) of the *Interceptions of Communications Act*.

¹¹⁹ The *Criminal Procedure Code Act* Cap 116, *Magistrates Courts Act*, Cap 16 and *Trial on Indictment Act* Cap 23 do not contain any substantive amendments made since 1995 to deal with evidence obtained through human rights violations.

4.4 Solutions to the gaps and loopholes in the legal system

In the light of the three models of jurisprudence, it would be most appropriate for the courts to embrace the second model, which upholds the protection of the accused from the excesses of the investigative organs as much as possible. This model ensures fairness at a trial and that the administration of justice is not brought into disrepute.

To this end, therefore, the *Constitution* should be amended to provide for a directive on how to deal with evidence obtained through human rights violations. This should not be an instance of copying the contents of a *Constitution* from another jurisdiction. The Uganda Law Reform Commission in conjunction with other stakeholders should conduct a due diligence study to establish what the contents of the amendment should be. It is proposed that the amendment should at least provide for a dual test of fairness of the trial and of the administration of justice. The test of public opinion might conflict with the administration of justice.

The amendment could be placed after Article 50 of the 1995 *Constitution of Uganda*, which provides for a right of redress. The principles of the need for a causal link, standing, and evidence procured by third parties should be left to the courts to develop as the amendment is applied. The amendment should have clarity to compel the exclusion of illegally or improperly obtained evidence in the form of information, statements and confessions provided that they do not render a trial unfair or are detrimental to the administration of justice. Chapter eight of the *Constitution* provides for the Courts of Judicature. The courts of record in Uganda's legal system should be empowered to develop the common law in instances where there is an apparent problem with the law, which cannot be solved. Apart from confessions, one of the problems exacerbating the admission of evidence obtained through human rights violations is the lack of a law to subject this evidence to a trial-within-a-trial to establish whether or not it was obtained voluntarily. The courts' ability to develop the common law will enable them to subject all issues of admissibility of evidence to a trial-within-a-trial.

There should be the enactment of a Directorate Public Prosecution Act, to provide for the duties of a prosecutor to the accused, the victim and the court in instances where evidence is obtained through human rights violations. While the principles and guidelines on the right to a fair trial are applicable in Uganda, as a State Party to the *African Charter*, they are not reflected in any criminal procedure law. This diminishes the chances of their being used by conventional judicial officers who follow the law as it is written.

The police should be compelled to stop using procedures that taint the voluntariness of an accused and other individuals to provide evidence. The procedure from arrest to the production of a person in court for plea should be streamlined to avoid human rights violations. Amendments to the *Criminal Procedure Code Act* should provide for the limitation of using entrapments to acquire evidence and should provide guidelines for the use of entrapments. This would enhance professionalism in investigations, while at the same time upholding human rights in the process. The *Police Act* could also be amended to provide for the obligations of investigators in the course of gathering evidence. This legislation would play a significant role in preventing human rights violations and procedural irregularities in the process of collecting evidence.

The courts should be dynamic in making decisions which enhance the jurisprudence relating to evidence obtained through human rights violations. There should be a shift from reliance on a procedural approach to a human rights approach in making decisions. The decisions made should reflect the need to uphold human rights as the first priority. The procedural aspects of the chain of investigations should be used to enhance a fair trial. There is a heavy reliance on the reliability theory of evidence. A shift to the use of the deterrent and protective theories should also be made. This would deter the police from committing human rights violations and protect accused persons being placed at an unfair disadvantage due to the conduct of the police. The burden of proof should be on the prosecution to prove that evidence was obtained without the violation of any of the rights of the accused. This would serve to protect the integrity of the criminal justice system by ensuring the presumption of innocence, the principle of legality, the protection of the right not to self-incriminate, and the right to remain silent.

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.

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 hearing.

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

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.

Monitor General Court Martial and Associated Prisons: It was established that the General Court Martial (GCM) has disproportionally 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 General Court Martial is not part of the Justice Law and Order Sector, it falls out of the loop of the Justice Law and Order Sector programs that have helped clear some of the backlog of

cases. Therefore, different strategies should be considered to alleviate Pre Trial Detention in the General Court martial.

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.

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

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

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.

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.

4.5 Conclusion

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 practice.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Introduction

This chapter presented the conclusions, and recommendations of the study

5.2 Conclusion

The Ugandan justice system has come a long way and to that effect Uganda has various Laws and Legislations that provides for the protection of the rights of criminal suspects, it is still ineffective and barbaric in nature. Yet, as the existing problems receive greater exposure, more pressure will be applied to make changes in the system. Thus, although the system has been shown to have legal barriers, historical encumbrances, and economic hardships leading to corruption within the system, there is opportunity for change. Ugandan citizens are eager to have a just system, and with time such desire will hopefully lead to the much needed changes.

The Constitutional right of an accused person to apply for bail flows from the presumption of innocence as provided for in Article 28(3) (a) of the 1995 Constitution which states that; “An accused person is presumed to be innocent until proved guilty or until that person has accepted guilt”.

The Constitution in this Article recognizes the common law presumption as a fundamental human right or an inherent human right. This therefore means that a person should only lose his or her freedom after he or she has been convicted. Thus in granting bail, courts slightly move away from the strict requirements in the law, and instead are driven more by the need to give maximum effect to the constitutional provisions.

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While interpreting the constitutional provisions on bail, Justice Lugayizi observed¹²⁰ that “In a case where court is considering whether one has a constitutional right to bail, since one is to be presumed innocent until proven guilty, then it would necessarily follow that any court which denies such an accused person bail would be acting unconstitutionally”.

The court therefore settled for the view that bail is a constitutional right which flows from the presumption of innocence under Article 28(3) (c) of the Constitution. This decision has since been followed by similar decisions in agreement.¹²¹

Likewise, Article 23(6) (a) of the Constitution provides that “A person is entitled to apply for bail and court may grant that person bail on such conditions as it considers reasonable”.

This article has sometimes been interpreted by Courts to mean that Court has discretion (power) to refuse the grant of bail to a person accused of a criminal offence. Some other courts have however argued that this should not be the case and that when court is considering an application for bail, it must keep in mind the fact that the applicant has a Constitutional right to bail.

In balancing both views, the Constitutional Court¹²² held that “When interpreting the Constitution, all the provisions must be read together. Thus if all the provisions of the Constitution are interpreted rightly and not separately, that leaves court with one alternative and that is to release the accused person on bail”.

¹²⁰ In the case of Lahan Yahaya V Uganda. Miscellaneous Application No. 96 of 2005

¹²¹ Similar decisions like Aliphusadi Matovu V Uganda – Criminal Application No. 15 of 2005; and Dennis Obua V Uganda – Miscellaneous Application No. 18 of 2005.

¹²² In the petition of Joseph Tumushabe V Attorney General – Constitutional Petition No. 6 of 2004.

However this release should be on conditions court considers reasonable, which in essence means that the conditions should guarantee the accused person's return to court to answer charges against him or her.

In addition, Article 28(1) of the Constitution provides for an accused person's right to a fair and speedy trial. This is in line with Article 14(1) of the United Nations Covenant on Civil and Political Rights, and Articles 7 and 14 of the African Charter on Human and Peoples Rights of 1981. These articles are in line with the legal maxim that "Justice delayed is Justice denied".

In other words, once an accused person is arrested he or she should be charged, tried and either convicted or acquitted within the shortest time possible. This is because if a speedy trial is not conducted, evidence in support of the accused could be distorted, and this person's freedom will be restricted yet he might actually be innocent. Remember that the person's right to liberty is a fundamental human right which should only be restricted upon conviction of that person.

It is also for this reason that Article 23(6) (b) and(c) of the Constitution provides that "if a person is remanded for an offence triable by High Court or a lower court for sixty days or more, or for 180 days or more for a case triable only by High court, then that person shall be released by court on conditions it considers reasonable".

This provision is meant to allow the Police to thoroughly investigate the accusations brought against the accused person and is in line with the provision for a fair and speedy trial. It should however not be misunderstood to mean that all accused persons MUST first be remanded for those days before they are granted bail. NO. The right to apply for bail commences as soon as the accused person is charged with an offence and the presiding Magistrate or Judge's duty then is to set conditions that will ensure that person's return to attend trial.

However, there seems to be other interpretations as to whether bail is a constitutional right. The contention was settled by the Constitutional Court, when it decided that, "The right to apply for bail is a constitutional one vested in everyone, although it does not necessarily follow that one is

entitled to bail automatically. The court will then have to judiciously exercise its discretion as to whether to grant the accused bail or not”.

The law at the moment therefore is such that whereas all accused persons have a constitutional right to apply for bail, it will be at the discretion of the court to grant the bail or not. More recent decisions seem to suggest that” The test as to whether to grant bail or not should be whether the accused will turn up for trial or not.¹²³

It should be remembered that one of the considerations of court before granting bail is whether the accused will not interfere with the witnesses. Before denying bail to an accused on grounds of interference with the prosecution case however, it has been decided by court that the prosecution has to specifically prove that, and court should not act on mere suspicions.¹²⁴ If the prosecution fails to prove this, then court should go ahead and grant the accused person bail since bail should not be denied as some form of punishment.

It is also important to note that if court is to set bail terms for the grant of bail, for example, payment of money by the accused, then the money should not be so high as to make it virtually impossible for the accused to pay, nor should it be so low so as to defeat the purpose for which it was asked. Therefore it can be concluded that in exercising its discretion regarding bail, court should always act judiciously and reasonably.

As it has been emphasized by some of the decisions passed by judges in some courts, the Constitution is the Supreme law of Uganda and all other laws must conform to its requirements.

Foundation for Human Rights Initiative has also been at the forefront of challenging some of the provisions to do with the constitutionality of pre-trial bail. In its petition to the Constitutional Court, the court ruled that the provisions of the Trial on Indictments¹²⁵ Act which called for more days for an accused to spend on pre-trial remand were inconsistent with the constitution¹²⁶ which

¹²³ Uganda V Hussein Akbar Godi – Miscellaneous Application No. 20 of 2009.

¹²⁴ Uganda V Nadiope and 5 others

¹²⁵ Section 16 of the The Trial on Indictments Act, Cap 23.

¹²⁶ Article 23 (6) of the Constitution 1995

calls for lesser days and thus were nullified. Similarly provisions of the Magistrates Courts Act¹²⁷ which called for more days for pre-trial remand were also nullified on similar grounds.

An appeal was made to the Supreme Court challenging other provisions to do with the grant of bail, which did not succeed in the Constitutional court petition.¹²⁸ The appeal argues, among others that making an accused wait for the lapse of the statutory period before the grant of bail is unconstitutional. It also questions the validity of S.76 of the Magistrates Courts Act which provides for the lapse of bail upon committal and Section 75(2) of the Magistrates courts Act which prohibits the grant of bail by Magistrate courts in some instances. The outcome of this appeal will be crucial in further streamlining this area of bail

5.2 Recommendations

The entire Ugandan penal system needs to be revamped in order to address the concerns discussed above. Unfortunately, the laws are not the only factor playing into the inefficacy of the justice system. Torture and corruption in the justice system have become so common and expected that few people are willing to address the situation until they too fall victim to its shortcomings. Though the restoration will be a long and difficult process, there are solid steps that can be taken to improve the system and restore suspects and prisoners with their fundamental human rights.

. Recommendations for the Laws

Article 23(4)(b) of the Ugandan Constitution needs to be amended to allow for an arrest only when there is probable cause, and not when it is merely thought that someone has or might commit a crime. This would require that investigations be completed prior to the arrest and detention of the suspect. Clarification or revision of the forty-eight hour provision is also necessary. Either more time should be allowed for a suspect to remain in police custody, or it should be specified that "forty eight hours" means forty-eight business hours, since it is unrealistic to expect that a suspect detained on Friday will be brought to court on a Sunday.

¹²⁷ Section 76 of the MCA. Cap 16.

¹²⁸ Like Sections 14 (2) and 15 of The Trial on Indictments Act, Cap 23.

The process of remand, which allows for a suspect to be detained for 120 days or 360 days depending on whether it is triable by the High Court, should be abandoned or, in the alternative, limited. If it is to be limited, only capital cases should be remanded. The present suggestion for remand proceedings before Parliament is better, but even the recommended sixty days (for non-High Court cases) and 120 days (for High Court cases) is too lengthy. Regardless, these processes should be amended through the use of statutes so that they can be amended later to further reduce the remand period. Amending the Ugandan Constitution will make it more difficult to change in a few years.

A Constitutional provision should be added to restrict the formation of ad hoc security agencies. If the present government feels it needs officers to address a particular issue, such as terrorism, police officers who have earned their positions through training and experience should be appointed to the task.

Present ad hoc security agencies should be disbanded, and all suspects should be released to police custody. A law should be imposed that a confession or an admission is inadmissible against the defendant in court proceedings.

Police stations should be required to set up internal parameters on how to prevent corruption in their stations. The regulations and the results from the internal investigations should be transparent to the public.

Suspects should be allowed to complete an evaluation of their stay at the end of their time at every detention center. State attorneys should collect these statements when the suspect is brought to court. If the suspect is released, the suspect should have the right to complete an evaluation which should be sent to an outside tribunal such as the Uganda Human Rights Commission (UHRC). Evaluations should also be provided for court proceedings. Evaluations should not be seen by the place evaluated until they have been received and reviewed by an independent body. When an investigation reveals corruption, violators should be criminally prosecuted. Violators should not be granted the opportunity to simply replace the money extorted.

Salaries of police officers need to be raised so that they are not tempted to accept bribes. The government should also make an effort to improve the living conditions for police officers.

All detention facilities should be open to visits by human rights organizations, including local Non-Government Organizations (NGOs) registered in Uganda, the UHRC, and international organizations.

The right to free press should be maintained and its exercise encouraged in order to expose illegal activities and inefficiencies in the justice system.

Court reporters should be required in court proceedings so that recorded proceedings can later be reviewed to investigate unfair and deceptive activities.

The Uganda Police Force (UPF) should:

1. Intensify its community policing programmes to enhance appreciation of the mandate of police, processes and timeframes for reporting and investigating cases.
 2. Focus its community policing programmes on sensitising communities against engaging in mob action.
- I also recommend that more research needs to be done to address this critical rights of criminal suspects in Uganda.

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