

**BALANCING BETWEEN LAW ENFORCEMENT AND HUMAN RIGHTS OF
DETAINEES**

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DECLARATION

I hereby declare that except for references to other peoples work, which have been duly acknowledged, this dissertation presented here was written by me. It has not previously been presented in any form whatsoever in any application for a degree elsewhere. All sources of information collected and used have been acknowledged in the reference section.

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APPROVAL

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DEDICATION

I would love to dedicate this dissertation to all those whose voices have been silenced behind bars, and to the defenders of justice who continue to speak for them. I would also love to dedicate it to my family for the unwavering love and encouragement.

CHAPTER ONE

1.0 INTRODUCTION

The protection of human rights is a fundamental principle enshrined in both international and national legal frameworks. In Uganda, the rights of detainees are safeguarded under the 1995 Constitution, particularly in chapter four, which outlines the protection of personal liberty, freedom from torture, inhuman and degrading treatment, and the right to a fair trial.¹ Despite these legal provisions, numerous reports and studies have highlighted persistent violations of detainees rights within Uganda's criminal justice system.² These violations manifest in various forms, including unlawful arrests, prolonged detention without trial, torture, overcrowded detention facilities, and denial of access to legal representation.³

This research work aims to critically analyze existing research on the violation of detainees rights in Uganda, identifying key patterns, legal gaps, and systemic challenges that contribute to these abuses. By analyzing scholarly articles, human rights report and legal documentation, the study seeks to provide a comprehensive understanding of the factors driving these violations and to explore potential reforms within Uganda's legal and institutional framework. This review not only highlights the current state of detainee rights in Uganda but also underscores the urgent need for stronger enforcement mechanisms, judicial oversight, and adherence to both national and international human rights standards.

1.1 BACKGROUND

In previous and recent scenarios, there have been various discussions on whether the different law enforcement agencies in Uganda recognize the human rights of the citizens in the country.⁴ The modes and methods of law enforcement operations especially in the police sector have raised various questions both domestically and globally on whether the enforcers seek only or mostly to execute their duty of maintaining law and order; neglecting the obligations to respect, protect and

¹ The 1995 Constitution of the republic of Uganda. Articles 23,24&28

² Laspenet(2014) "combating prolonged pretrial detention in Uganda", www.laspnet.org, [accessed on 24th January 2025]

³ Amnesty International, (1997) Gross Human Rights Violations Amid Secrecy and Isolation, MDE www.refworld.org, [accessed on 24th January 2025]

⁴ Civil Rights Defenders (2017) Human Rights in Uganda, Stockholm. <https://crd.org>, [accessed 25th January 2025]

fulfill the rights of those living under their trust.⁵ Unfortunately, these questions have been regarded as rhetorical questions over the years despite the urgent need for response from the victims of human rights violations. One of the most ignored rights by the police are the rights of the suspects and accused people they detain.

In a report released by the Human Rights Watch on 22nd March, 2022, it is stated that since at least 2018 Ugandan security forces have unlawfully detained and tortured many people including government critics, suspects and opposition supporters, often in unauthorized places of detention. Some of these locations ironically termed as “safe houses” to be used for witness protection used as detention centers under the authority of the Internal Security Organization (ISO), Uganda’s domestic intelligence body.⁶ A research carried out among prisoners where 164 prisoners and 30 prison officers were interviewed from 16 prisons around the country indicated that many prisons are operating under dangerous unhealthy conditions, ripe for the spread of Tuberculosis and HIV.⁷

1.2 STATEMENT OF THE PROBLEM

Chapter four of the 1995 Constitution of the Republic of Uganda contains the bill of rights which provides for the Human Rights to be enjoyed by the citizens of Uganda.⁸ It is the obligation of the state to respect, protect and fulfill these rights under the doctrine of social contract.⁹ In order to accomplish this, the state has established various law enforcement agencies that work with the existing laws governing the country in order to not only maintain a peaceful environment but most importantly to ensure that enjoyment of the rights provided for in the constitution.

One of the agencies is the Uganda Police Force which is established by Article 212 of the constitution that states that the Uganda Police Force shall be organized and administered in such a manner and shall have functions as parliament may by law prescribe.¹⁰ Consequently, on 8th June, 2006, the parliament enacted the Police Act that governs the operation of the Uganda Police

⁵ International Committee of the Red Cross (2023) The use of force in law enforcement operations, <https://www.icrc.org> accessed on 25th January 2025

⁶ Oryem Nyeko. (2022) I Only Need Justice, Human Rights Watch, Washington DC, www.hrw.org [visited on 27th January, 2025]

⁷ Amon Joseph. (2011) Hard Life in Ugandan Prisons, Human Rights Watch, New York, www.hrw.org [visited on 27th January, 2025]

⁸ The 1995 Constitution of the Republic of Uganda (as amended)

⁹ Jean-Jacques, R (1762) The Social Contract, France

¹⁰ Supra 3, Article 212

Force.¹¹ The Act lays out the functions of the police which include among others; to protect the life, property and other rights of individuals in Section 4.¹² Article 215 establishes another law enforcement agency which is the Uganda Prisons Service governed by The Prisons Act.¹³ This Act provides for the mandate of the Uganda Prisons Service and spells out its duties as to protect, promote and fulfill the rights of those incarcerated.¹⁴

It is clearly laid out by the laws governing the Uganda Police Force and the Uganda Prisons Service that these agencies have the duty to respect and ensure fulfilment of the rights of the citizens in their different areas of operation. Despite the existing legal frameworks, the violation of the rights still happens and there are many reports and complaints in relation to the state violating the rights of detainees through the negligence of the police and prisons officers.¹⁵ A number of these rights have been violated in the guise of law enforcement despite the fact that some of them are non-derogable rights as provided under the constitution;¹⁶ such as the right to a fair hearing and freedom from torture.¹⁷ These practices have been regarded as the new normal in arrests and detentions but this does not change the fact that they are unlawful. Therefore, there is a need to address this issue to ensure the enjoyment of rights even by those in detention.

1.3 OBJECTIVES OF THE STUDY

1.3.1 General Objective

The general objective of this research is to identify the most commonly violated rights of detainees in Uganda and assess the role of the law enforcement agencies in ensuring the enjoyment of these rights.

1.3.2 Specific Objectives

- To discuss the responsibility of the agencies in charge of detainees.
- To identify the frequently violated rights of detainees

¹¹ Police Act Cap. 324

¹² Ibid, Section 4

¹³ Prisons Act Cap. 325

¹⁴ Ibid

¹⁵ Supra 6

¹⁶ Supra 3, Article 44

¹⁷ Supra 3, Article 28

-To assess whether these agencies have recognized the rights of the detainees during detention operations.

-To recommend lawful methods of detention that ensure effective law enforcement and respecting of the rights of detainees.

1.4 RESEARCH QUESTIONS

-What is the role of the Uganda Police Force and the Uganda Prisons Service in ensuring enjoyment of human rights?

-What Human Rights have been violated most due to unlawful detention practices?

-What measures can be taken to ensure effective law enforcement and realization of the rights of detainees.

-What measures should be taken by authorities to ensure lawful arrest and detention of suspects in Uganda?

1.5 SIGNIFICANCE OF THE STUDY

This study will create awareness of the general rights and freedoms of detainees all over the country. In so doing, it will highlight the lawful and unlawful detention practices that have been employed by law enforcers in past and recent times. Citing the Constitution, Acts of Parliament, cases and other authorities, this research will recommend effective, peaceful and acceptable methods of detention to be used in the process of law enforcement.

1.6 JUSTIFICATION OF THE STUDY

Human Rights have been defined to mean basic entitlements enjoyed by individuals by virtue of the fact that they are Human Beings.¹⁸ In the current day world, suspects and convicts have been treated as less of human beings with punishments and treatment going beyond that which is legally required, just because they have been in one way or the other linked to a criminal activity. The Bill of Rights contains human rights enjoyable by both criminals and non-criminals despite the fact that some rights are derogable in certain circumstances.¹⁹ However, some non-derogable rights have been violated too; for example, the presumption of innocence and the right to a fair hearing

¹⁸ United Nations Human Rights, what are human rights? <https://www.ohchr.org> [visited on 1st February 2025]

¹⁹ The 1995 Constitution of the Republic of Uganda (as amended), Chapter 4

have been barely accorded to suspects. It is therefore vital and reasonable that a research on the violated human rights of detainees in Uganda be carried out.

1.6 SCOPE OF STUDY

1.7.1 Geographical Scope

This study will cover laws applicable within the territorial boundaries of the Republic of Uganda.

1.7.2 Temporal Scope

This is a research on events between the enactment of the current Constitution of the Republic of Uganda (1995) to date (2025)

1.7.3 Subject Scope

This study seeks to analyze the detention practices of the Uganda Police Force and the Uganda Prisons Service as law enforcement bodies in the country; identifying the rights of detainees that have regularly been violated during detention.

1.8 LITERATURE REVIEW

Various scholars have conducted various researches on the existing lawful and unlawful detention practices in Uganda and mainly examining the role of the police and prison officers in both realizing and violating the rights of detainees. This section will review existing research on the various reports, articles and other writings of authors on similar topics and highlight the gap in the study that will be addressed by this research paper.

In a report by Avocats Sans Frontieres, the author discusses in chapter six the challenges encountered by detainees while in detention.²⁰ These include; torture while in police custody and prisons, congestion in prison cells, lack of communication to friends and family and various skin diseases brought about by congestion and poor hygiene. The researcher focuses more on addressing the challenges faced by detainees other than the rights of detainees being violated in that the only right the research work looks at is the right to bail. This research however is aimed at exploring majorly the most violated rights of detainees in Uganda while discussing the challenges faces by detainees therein. It will therefore provide solutions for the challenges being faced and a

²⁰ Avocats Sans Frontieres (2023) “protecting constitutional and procedural rights of pre-trial detainees through access to justice in Uganda” 32-34. www.asf.be accessed on 1st February 2025

way forward on how to practice lawful detention methods. The authors research also presents numerous statistical data in regards to the subject and not the law itself. My research will mainly refer to existing laws provided in the constitution, Acts of parliament and case law. The discussions in the report are limited to only pre-trial detainees and does not include convicts. This research intends to encompass all kinds of persons in detention, considering the rights of both the pre-trial detainees and convicts.

Kyeghekas research paper focuses on the rights of prisoners, looking at only the laws applicable to persons in prison.²¹ His research therefore covers only the challenges and human rights violated in prisons and does not extend to people detained outside the prison walls. This then creates an urgent need to recognize other types of detainees such as those in police cells and those in unauthorized places of detention.

In a research carried out, the author, Nangayi states that prison overcrowding in Uganda has become out of control, leading to terrible living conditions, an increase in violence and major health risks. Non-custodial sentencing according to human rights groups, might successfully lower traffic while encouraging non-violent offenders to undergo rehabilitation.²² His report is centered around the rights of prisoners that have been violated through overcrowding of the prisons in the country. This case study is also going to discuss the rights of prisoners violated through unlawful detention.

According to Baluku, the role of the police in human rights protection was highlighted in a 1999 report by the Independent Commission on Policing for Northern Ireland in which it was stated that the role of the police is to help achieve the social and international order, they must uphold the law safeguarding the lives of citizens. He also goes ahead to state that “there should be no conflict between policing and human rights because policing in itself includes protection of human rights.” In his research work, Baluku broadly analyses the balance between law enforcement and human rights protection in that he looks at the role of Kampala Metropolitan Police Force in recognizing and protecting the rights of the Ugandan citizens.²³ His research discusses the various rights that

²¹ Kyegheka Rabison (2011) Human Rights Violations in Uganda Prisons Case Study: Jinja Government Prisons, KIU, Kampala. <https://ir.kiu.ac.ug> visited on 2nd February 2025

²² Nangayi Guyson (2024) “Uganda’s overcrowded prisons trigger human rights violations; activists call for reforms”, development aid. <https://www.developmentaid.org> accessed on 3rd February 2025

²³ Baluku Richard, (2022) Law enforcement and human rights abuse in Uganda: a case of Kampala Metropolitan Police Force, Makerere University, <https://makir.mak.ac.ug:8080>. Visited on 3rd February 2025

have been violated by the Uganda Police Force in carrying out law enforcement operations in the country. For example, in the abstract he states that “Uganda’s post-independence history is characterized by several incidents of human rights violations for example unlawful or arbitrary killings by government forces, including extrajudicial killings forced disappearance, torture and cases of cruel, inhuman or degrading treatment or punishment by government agencies, harsh and life-threatening prison conditions and arbitrary arrest perpetrated by both state and non-state actors.

The research focuses on the illegalities with in the police force that have led to violation of human rights in the shadows of executing their legal duties. Despite the fact that it covers a wide area of human rights issues in Uganda, his research provides limited information on the rights of detainees; completely ignoring most of them. Richards work is similar in that it also analyses the role of the police in protecting human rights. However, there is a gap in addressing the rights of detainees particularly and analyzing the role of the prison officers together with the police in recognizing these rights that this research seeks to fill.

A report by Amnesty International states that “it is easy sometimes to think that the rights of prisoners have little to do with us; that they have somehow exchanged their rights for a life of crime. This is wrong on two counts. Firstly, everyone has the same rights and they can never be taken away, no matter where you are, or what you may have done. Secondly, just because you are in prison, it does not mean you are guilty of a crime; if you were lucky enough to have a trial, it may not have been a fair one.”²⁴ The report then goes ahead to discuss seven main problems faced by detainees in prisons which are; some people are prisoners of conscience (imprisoned because of who they are or what they believe), arbitrary detention, incommunicado, secret detention, inadequate prison conditions, unfair trial and torture. It then suggests steps to be taken in order to address these problems, however, this report does not expound on the violated rights of detainees and therefore leaves questions of how and why these rights are violated. My research seeks to address these questions by giving an elaborate analysis of the frequently violated rights of detainees.

²⁴ Amnesty International, (2024) Detention and Imprisonment <https://www.amnesty.org> (accessed on 5th March,2025)

Another report where the survey was carried out in four different areas, namely, Gulu, Arua, Lamwo and Kampala, specific categories of people were interviewed on the issue of practices during pre-trial detention. These include community members, police officers, prisoners, and officials from Justice Law and Order Sector, some institutions and legal aid service providers were interviewed too using both qualitative and quantitative methods.²⁵ The report highlights the underlying causes of procedural and constitutional rights violations and based on the evidence collected, it offers recommendations for action and reforms to improve pre-trial detention in the country. The report states that many individuals who go through the criminal justice system face significant violations of their fundamental human rights. These violations often begin with arbitrary and unlawful arrests, where law enforcement officers detain individuals without proper legal justification. In some cases, suspects are held in police custody for extended periods beyond the legally permitted duration, depriving them of their right to timely legal proceedings.

Additionally, access to police bond, a right meant to prevent unnecessary detention before trial is frequently denied, leaving suspects in custody without due process. Similarly, the right to mandatory bail, which ensures that individuals are not held indefinitely without trial, is often disregarded. Such violations not only undermine the principles of justice but also contribute to overcrowded detention facilities, prolonged legal uncertainty, and emotional and financial distress for detainees and their families. It is then suggested that addressing these issues requires systemic reforms, including stricter adherence to legal safeguards, better oversight of law enforcement practices, and improved access to legal representation for detainees.

The report proceeds to layout the key challenges which lead to continued violation of rights during detention and the attitudes and perceptions of the different stakeholders in detention practices. Despite the fact that the report is well detailed, properly highlighting and vividly explaining the rights of detainees, it focuses only on the rights of pre-trial detainees hence leaving out those that have already been subjected to judicial process and have been sentenced in prisons. The report also does not provide possible effective methods of detention to ensure respect for the rights of the detained persons. My research intends to cover the rights of both pre-trial and post-trial detainees,

²⁵ Avocats San Frontieres (2024) Uganda-Knowledge and Attitudes, Practices on Pre-trial Detention, Brussels Belgium. <https://asf.be> [accessed on 7th March,2025]

suggesting better modes of dealing with detainees to remedy the issues of Human Rights violations by law enforcers.

Collectively, these studies concentrate on addressing the issue of balancing between law enforcement and human rights and have recognized the duty of the state through the different agencies especially the Police Force to protect, respect and fulfill the human rights of the citizens. My research work will focus on the violated rights of the detainees in different lawful and unlawful detention centers; most of which have not been addressed by the different pieces of research reviewed above.

1.9 RESEARCH METHODOLOGY

The qualitative method will be used to make findings and analysis on this research. The type of data to be used is secondary data such as articles, textbooks, online sources, journals, decided case, basically desk review of different primary data already collected by researchers. A qualitative approach is appropriate as it allows for an in-depth understanding of the lived experiences of detainees, the systemic factors contributing to rights violations, and the perspectives of key stakeholders such as legal practitioners, human rights activists and policymakers.

1.9.1 CHAPTER SYNOPSIS

Chapter one has the introduction and background of the research, the statement of the problem, the objectives of the research, research questions, significance of the research, justification of the research, scope of the study, literature review and methodology to be used in the research.

Chapter two will contain the non-legal aspects in relation to the research topic being discussed.

Chapter three will be about the legal aspects governing law enforcement and the rights of detainees in Uganda.

Chapter four will summarize the findings of the research, conclude the research, and make recommendations for better detention methods and how to go about unlawful detention practices and violation of human rights.

CHAPTER TWO: NON-LEGAL ASPECTS

2.0 INTRODUCTION

While the legal framework plays a crucial role in regulating law enforcement practices and protecting the rights of detainees, non-legal factors significantly influence the balance between security and Human Rights. These factors include social, economic, political, cultural considerations that affect detention, and the treatment of detainees in Uganda. This chapter explores the non-legal dimensions that impact the relationship between law enforcement agencies and detainees. It examines the role of law enforcement culture, governance and political influences, as well as psychosocial considerations of detention in Uganda. Understanding these aspects provides a broader perspective on the challenges faced in upholding detainees' rights while maintaining public security. By analyzing these non-legal factors, this chapter underscores the necessity of holistic approaches that extend beyond legal reforms to ensure a fair and humane law enforcement system.

The information provided in this chapter is acquired from extensive desktop research and the examination of available literature on the subject. Information collected for this chapter is from both domestic jurisdictions, specifically Uganda, and internationally, regarding the data provided on the subject matter.

2.1 LAW ENFORCEMENT CULTURE AND PRACTICES

Before British colonial rule, Ugandan societies had well-established Indigenous justice systems well-established Indigenous justice systems based on customary laws. Different ethnic groups had their own ways of maintaining order, with elders, clan leaders, and kings (such as the Kabaka in Buganda, the Omukama in Bunyoro and the Kyabazinga in Busoga) playing crucial roles in dispute resolution and social policing.²⁶ These systems relied on mediation, reconciliation, and restorative justice rather than punitive measure. Elders resolved conflicts within communities, often through communal discussions, compensation or traditional punishments. In some cases, spiritual and religious beliefs reinforced social norms, ensuring compliance with customary laws. Uganda had

²⁶ Ogwari.M Achieng (October 2015) "The role of traditional leaders in conflict management in Africa"

diverse legal systems in pre-colonial times, encompassing areas from governance to trade. These indigenous systems were deeply rooted in the cultural and societal norms of various communities²⁷

However, British colonial rule introduced a formal legal system based on English common law, sidelining many indigenous justice mechanisms. Today, The Uganda Police Force (UPF) is the country's lead law enforcement agency, a creature of British colonial architecture that was established in 1899. The UPF traces its roots to the establishment of the Uganda Armed Constabulary in 1899 by the British colonial administration. This force was primarily tasked with maintaining public order and suppressing resistance against colonial policies. Modeled after the Royal Irish Constabulary, recruitment emphasized physical prowess and loyalty, often prioritizing aggressive tendencies over formal education. In 1906, the force was restructured and renamed the Protectorate Police Force, marking the beginning of a more organized policing system in Uganda.²⁸ Following independence in 1962 the UPF faced the challenge of transitioning from a colonial force to a national institution. It then changed to the contemporary post-independence police force.²⁹ It was created in response to crime and administrative requirements of the colonial government.

The Uganda Police is responsible for maintaining law and order and enforcing regulations.³⁰ The mandate of the Uganda Police Force is provided for in the Constitution of the Republic of Uganda³¹ and The Uganda Police Force Act³². The police is generally responsible for protection of life and property, prevention and detection of crime, keeping law and order, and maintenance of overall security and public safety in Uganda.³³

Briefly, the practice of law enforcement in Uganda usually begins with the police arresting who has allegedly committed a crime with or without a warrant if there is reasonable cause to believe that the person has committed an arrest-able offence.³⁴ After the arresting stage comes the pre-trial detention which basically refers to “locking up of a suspected person on criminal charges in police

²⁷ Oloka Onyango (2015) “An overview of the legal system in Uganda”

²⁸ Erinayo Wilson, O (2006) “Uganda Police History”

²⁹ Otine Andrew (5th December, 2020) Taking Stalk of the Use of Force and Firearms during Police Operations in Uganda. <https://ssrn.com/abstract=3743334>. (Accessed on 18th February, 2025)

³⁰ Uganda Police Force, “History of Uganda Police Force”. <https://upf.go.ug>. (Accessed on 18th February, 2025)

³¹ 1995 (as amended)

³² Cap 303

³³ Supra 26

³⁴ Brooke J. Oppenheimer “From Arrest to Release: The Inside Story of Uganda’s Penal System” <https://mckinneylaw.iu.edu> (20th March, 2025)

and/or prison before the completion of their trial.” This could happen in police cells, in prisons or any other authorized detention facility. During this time, the police are conducting investigations to build a strong case against the suspect.³⁵ The next stage is supposed to be the trial process, where the accused person is now brought before the court to attain a fair hearing; it’s at this point when the court will decide whether the person is guilty and should be sentenced or remains innocent and is to be released and acquitted of the charges against him.³⁶ Lastly, in case the accused person is found guilty, among other remedies, the court may sentence the offender to serve a specified period of time in prison as a punishment for breaking the law.³⁷

2.2 POLITICAL CONSIDERATIONS

2.2.1 Governance and political influences

The police serve as the primary law enforcement agency responsible for upholding the rule of law and ensuring public safety. Their core duties include enforcing legal statutes, preventing crime through proactive measures, and maintaining public order by managing civil disturbances and ensuring peaceful coexistence. Additionally, the police play a critical role in safeguarding lives and property, responding to emergencies, and investigating criminal activities to bring offenders to justice. Their responsibilities extend to community engagement, where they foster trust between law enforcement and the public through initiatives like community policing.³⁸

The police and other law enforcement agencies play a crucial role in the governance of a country by ensuring that laws and regulations are effectively enforced. Their duty goes beyond mere law enforcement; they contribute to the stability, security, and proper functioning of the state. By working closely with legislators, the police help uphold the legal framework by ensuring that laws are not only enacted but also implemented and adhered to by citizens. This collaboration between law enforcement and the legislative arm of government strengthens governance by promoting the rule of law, deterring criminal activities, and fostering a sense of justice and order in society. Additionally, law enforcement agencies support government institutions by maintaining peace,

³⁵ Avocats Sans Frontieres (2016) “what is pre-trial detention under Ugandan law?” Brussels Belgium <https://asf.be> (20th March, 2025)

³⁶ Supra 37

³⁷ Ibid

³⁸ Makanga Ronald Kakumba and Matthias Krönke (2023) “Brutality and Corruption Undermine Trust in Uganda” Afro barometer

preventing civil unrest, and ensuring the protection of citizens' rights and freedoms. Without effective policing, governance would be weakened, as laws alone are insufficient without proper enforcement mechanisms.³⁹

2.3 SOCIAL CONSIDERATIONS

2.3.1 THE PSYCHOSOCIAL CONSIDERATIONS OF DETENTION

Psychosocial considerations basically mean the society's attitude and perception of detention juxtaposed with the mind of the law enforcers in maintaining law and order. It is important to consider the social and individual thought of detention when trying to balance between law enforcement and rights of detainees. This subtopic, therefore, covers majorly the positive and negative effects of detention on detainees and the society at large, looking at long-term and short-term, temporary and permanent consequences.

2.3.2 Psychological Effects of Detention

2.3.3 Post-Traumatic Stress Disorder (PTSD)

Post-Traumatic Stress Disorder is a severe psychological condition that arises after exposure to traumatic events including physical abuse and torture. A study found that 38% of former detainees in Uganda exhibited PTSD symptoms due to mistreatment in detention centers.⁴⁰ Additionally, a report documented PTSD rates of 40-50% among Ugandan war detainees, particularly those who were subjected to forced labor and physical abuse.⁴¹ Detainees subjected to violence such as torture, inhumane and cruel treatment, prolonged detention often tend to experience flashbacks and emotional distress from their past experiences in prison or police cells. This is usually as a result of physical, mental and psychological abuse of their human rights while serving their sentence. It is therefore true that the nature of incarceration of offenders determines whether they are at a high risk of developing PTSD after being discharged.⁴² In Uganda, the detention practices and the environment surrounding the detention facilities alone makes detainees very potential victims of PTSD. The prison cells are overcrowded, there is poor sanitation, food deprivation, and

³⁹ MARIO J. AGUJA AND HANS BORN (EDS.) "The Role of Parliament in Police Governance"

⁴⁰ Ovuga. E. (2017) "Mental Health Outcomes of Detainees in Uganda: The Prevalence of PTSD and Depression" African Journal of Psychiatry

⁴¹ Amone-P Olak, K (2019) "PTSD among former Ugandan detainees: the role of detention experiences" journal of Traumatic Stress.

⁴² Supra 43

exposure to violence, which further leads to mental health deterioration.⁴³ Those under pre-trial detention live with uncertainty and fear as they are held for long periods in prison without trial, leading to a state of chronic anxiety and helplessness. Without proper intervention and rehabilitation, the long-term consequences of PTSD among detainees could lead to suicidal thoughts and self-harm, substance abuse and difficulties with social reintegration.⁴⁴

2.3.4 Social Impact on Detainees and Their Families

The detention of individuals has profound social consequences, not only for detainees themselves but also for their families and communities. These effects are both psychological and social, often leading to long-term hardship.

Former detainees often struggle with reintegration into society due to stigmatization and social exclusion. According to the United Nations Office on Drugs and Crime (UNODC), released prisoners face significant discrimination, affecting their ability to secure housing, employment, and social acceptance due to their criminal record and social biases.⁴⁵ The stigma and segregation does not only apply to the detainees but also to their families in that the communities have developed habits of isolation and discrimination of the relatives of a convict leading to loss of their previous social life.⁴⁶

Detention, particularly under punitive or prolonged conditions, inflicts profound psychological harm on incarcerated individuals. Research demonstrates that confinement, whether in prisons, immigration detention centers, or other detention facilities, frequently leads to debilitating mental health outcomes, including chronic anxiety, clinical depression, and Post-Traumatic Stress disorder. These effects stem not only from the loss of liberty but also from systemic stressors such as overcrowding, institutional neglect, and the pervasive uncertainty surrounding legal proceedings or release dates.⁴⁷

One of the most severe and cruel practices is solitary confinement, which involves the isolation of an individual from other detainees with no access to a social life even while in prison, which has often been equated to psychological torture. Isolated prisoners often endure extreme sensory

⁴³ Mollica.R. F (2014) “mental health in post-conflict settings: PTSD among refugees and detainees.”

⁴⁴ Ibid

⁴⁵ Pager, D. (2003). The mark of a criminal record. *American journal of sociology*, 108(5), 937-975.

⁴⁶ Comfort.M. (2007) “Punishment beyond the legal offender” *Annu. Rev. law soc. Sci.*, 3(1), 271-296

⁴⁷ Wildeman.c, Andersen L.H, & Lee H (2018) “Parental incarceration and child mortality in Denmark”

deprivation, social exclusion, and relentless idleness, resulting in heightened risks of self-mutilation, suicidal thoughts, and irreversible cognitive deterioration. This is why Human Rights organizations, including the United Nations condemn prolonged solitary confinement as a violation of freedom from cruel, inhuman or degrading treatment.⁴⁸

In addition, the repeated mistreatment, such as verbal abuse, denial of medical care, or arbitrary punishment, causes not only trauma but also the accumulative effect of these conditions, undermines any prospect of rehabilitation, aggravating the harm even after release.⁴⁹

In regards to the effects on family members, children witnessing a parent's arrest or experiencing their incarceration often experience behavioral issues, low self-esteem, depression, and academic struggles. It can also impose adult responsibilities on children, such as caregiving or earning income.⁵⁰ The separation of a convict from his family members creates boundary uncertainty, where families struggle to define roles within the family system.⁵¹ As for spouses and parents, anxiety, depression, stigma, and feelings of humiliation are common among partners and parents of detainees. Women visiting convicted partners often face additional fear and stigma from how society views them.⁵² Generally, families may experience social stigma and alienation from their communities. This stigma often discourages them from seeking support or openly discussing their experiences.⁵³

2.4 ECONOMIC CONSIDERATIONS

Detention has an economic burden that goes beyond legal considerations. The true economic cost of detention extends far beyond the direct expenditures on correctional facilities and administration. This comprehensive analysis reveals that detention particularly pretrial detention imposes enormous economic burdens on individuals, families, communities, and society at large. These costs manifest through lost productivity, reduced lifetime earnings, family destabilization, and intergenerational effects that perpetuate cycles of economic disadvantage. In Uganda, the

⁴⁸ Shalev.S. (2017) "solitary confinement: Effects, practices and pathways towards reform" Oxford University Press

⁴⁹ Ibid

⁵⁰ [Betterhelp.com \(24th March, 2025\)](#)

⁵¹ National Library of Medicine (2022) "Witnessing parental arrest as a predictor of child internalizing and externalizing symptoms during and after parental incarceration" (Rockville)

⁵² Ana Gascon (2023) "How are families affected by incarceration" [goodrx.com](#) (24th March, 2025)

⁵³ Ibid

economic considerations of detention, particularly pretrial detention, have significant non-legal impacts.

2.4.1 ECONOMIC IMPACT ON DETAINEES

Prolonged pre-trial detention disproportionately affects the underprivileged, who often cannot afford legal services, leading to extended stays in custody. This disproportionately impacts underprivileged individuals, primary because they lack the financial resources to afford legal representation or to pay bail.⁵⁴ Without access to competent legal counsel, many of these individuals are unable to navigate the complex legal system or advocate effectively for their release. As a result, they remain in custody for extended periods, sometimes for years, without a formal conviction.

This situation not only infringes on their right to a fair and speedy trial but also has profound ripple effects on their families and communities. For many low-income households, the detention of a breadwinner or caretaker can lead to increased financial strain, disrupted education for children, and deteriorating mental among family members. Communities are also affected, as prolonged detentions reduce the labor force and erode thrust in the justice system.⁵⁵ In essence, pre-trial detention becomes a form of punishment for poverty, perpetuating cycles of disadvantage and marginalization.

2.5 CULTURAL FACTORS

Cultural factors significantly influence the rights of detainees in Uganda, often intersecting with legal frameworks and societal norms. These influences can lead to both the protection and violation of detainees rights. Uganda’s legal system acknowledges customary law, defined as “the rule of conduct established by custom and long usage having the force of law and not forming part of the common law nor formally enacted in any legislation”.⁵⁶ While the 1995 Constitution prohibits discriminatory and degrading customs, certain traditional practices persist, sometimes conflicting with constitutional rights. For instance, traditional authorities may detain individuals without

⁵⁴ APCOF Policy Paper (2012) “Pre-trial Detention in Uganda”

⁵⁵ ASF (2023) “Protecting constitutional rights of pre-trial detainees through access to justice in Uganda”

⁵⁶ Achan j & Nalubega T (2023) Customary justice and human rights in Uganda.

adhering to formal legal procedures, potentially infringing on rights such as due process and freedom from arbitrary detention.⁵⁷

Cultural beliefs about gender roles can adversely affect the treatment of women in detention. Female detainees may face challenges such as inadequate access to sanitary products, lack of privacy, and increased vulnerability to abuse. Moreover, societal stigma can lead to the marginalization of LGBTQ+ detainees, resulting in targeted abuse or denial of rights.⁵⁸

Certain ethnic or social groups may be culturally marginalized, leading to discriminatory detention practices. Detainees from minority tribes or lower social castes might be denied fair trials or subjected to harsher treatment. Additionally, societal stigma can hinder reintegration into community post-detention, exacerbating the challenges faced by former detainees.⁵⁹

In some Ugandan communities, corporal punishment is culturally accepted as a legitimate form of discipline. This belief can normalize torture or inhumane treatment in detention centers, conflicting with constitutional protections against cruel, inhuman, or degrading treatment.⁶⁰

Ugandan culture places significant emphasis on family and community connections. Detention can sever these ties, leading to social isolation and mental health challenges for detainees. While prisoners have the right to maintain contact with family members, practical barriers such as distance, cost, and stigma can impede visitation.⁶¹

Uganda's linguistic diversity can create challenges in the legal system. Detainees who speak minority languages may struggle to understand legal proceedings or communicate effectively with authorities, infringing on their right to a fair trial. Language barriers can also lead to misunderstandings or wrongful detentions.⁶²

Prolonged pre-trial detention is a significant issue in Uganda, often exacerbated by cultural factors. Many detainees are held for extended periods without trial, sometimes due to societal acceptance

⁵⁷ Jamil Ddamulira Mujuzi (2020) Reconciling Customary Law and Cultural Practices with Human Rights in Uganda

⁵⁸ Penal Reforms International (2017) Women in detention: Needs, vulnerabilities and good practices.

⁵⁹ Human Rights Watch (2022) Discrimination and exclusion of indigenous communities.

⁶⁰ African Center for Treatment and Rehabilitation of Torture Victims (ACTV) (2020) Torture and cruel treatment in Uganda's detention facilities.

⁶¹ Justice Centers Uganda (2023) What are the rights of a prisoner?

⁶² Foundation for Human Rights Initiative (FHRI) (2021) Access to justice for pretrial detainees in Uganda.

of such practices or lack of awareness about legal practices or lack of awareness about legal rights. Access to legal representation is limited, particularly for marginalized groups, further for marginalized groups, further comprising detainee’s rights.⁶³

In some Ugandan communities, local or cultural courts are preferred over formal legal institutions. While these systems can provide accessible justice, they may lack adherence to constitutional protections, leading to potential rights violations. For example, mob justice, acknowledged by about 89% of community respondents in certain areas, reflects a reliance on community-based enforcement that can bypass legal safeguards.⁶⁴

2.6 DETENTION FACILITIES

Detention facilities in many regions, particularly in low-resource settings, are frequently in a state of disrepair and suffer from severe overcrowding. These conditions are compounded by the lack of essential resources such as adequate food, clean drinking water, and basic sanitation and hygiene facilities. Inmates are often subjected to inhumane living conditions that fall far short of international human rights standards. Addressing these issues requires substantial financial investment to renovate infrastructure, increase capacity, and ensure consistent provision of basic needs. However, such investments pose a significant economic challenge for governments, especially in counties with limited budgets and competing national priorities. As a result, improving detention conditions remains a persistent and complex issues that requires not only financial commitment but also strong political will and systemic reform.⁶⁵

2.6.1 UNAUTHORISED DETENTION CENTERS

Uganda as a nation faces persistent allegations of unauthorized detention centers, with conflicting official and civil society accounts. Human Rights Watch and parliamentary investigations confirm the existence of “safe houses” operated by security agencies like The International Security Organization (ISO) and The Uganda Peoples Defense Force (UPDF), where detainees have reported torture and enforced disappearances.⁶⁶ A parliamentary report confirmed over 400 unlawful detentions by ISO officials, including enforced disappearances and torture in facilities

⁶³ Supra 33

⁶⁴ Ibid

⁶⁵ Supra 32

⁶⁶ Human Rights Watch (2022) “I Only Need Justice; unlawful detention and abuse in unauthorized places of detention in Uganda” New York [hrw.org](https://www.hrw.org) (accessed on 26th March, 2025)

like Kyengera. Detainees described being held in military tents and vehicles disguised as civilian homes, with no access to legal representatives.⁶⁷ Human Rights Watch spoke with 10 individuals detained between 2018 and 2019 in temporary detention facilities run by ISO before being transferred to an ISO-guarded island in Lake Victoria. The former detainees reported regular physical abuse, such as beatings, being shackled, sexual assaults, forced injections with unidentified drugs, and electric shocks. They also described being denied legal representation or contact with their families.⁶⁸

In 2023, the court awarded damages to a man tortured for 17 months by ISO operatives, marking rare accountability for state-sanctioned abuse.⁶⁹ A 2020 parliamentary report documented over 400 cases of unlawful detention in such facilities, but subsequently government claims to deny their existence. A 2024 Human Rights Committee report asserts no “safe houses” exist and that all detainees are kept in legally recognized facilities, contrary to the earlier findings.⁷⁰ Groups like the Uganda Law Society have advocated for the closure of these illegal centers and the provision of accountability for officials and persons arrested by law enforcers.⁷¹ The United Nations Committee Against Torture, in recognition of the despicable treatment of detainees in these facilities, raised concerns about uninvestigated abuses in “safe houses,” where it highlighted 33 torture victims in 2019.⁷²

Despite the fact that there have been reported abuses of Human Rights in these unauthorized detention facilities, no meaningful investigations or prosecutions have occurred. Detainees still face prolonged pretrial detention without access to counsel or fair hearing. During the election process in 2021, security forces abducted opposition supporters, including Bukenya Ali, who was known as a musician and an ally of one of the presidential candidates, Bobi Wine. Ali reported that he was detained without trial and later that year released after a military court martial.⁷³

⁶⁷ Ibid

⁶⁸ Supra 57

⁶⁹ Carmel Rickard (2023) “Tortured Ugandan wins award against intelligence operatives” Open Law Africa africanlii.org (accessed on 26th March, 2025)

⁷⁰ Brighten Abaho (2022) “there are no safe houses in Uganda, says parliament.” parliamentwatch.ug (accessed on 26th March, 2025)

⁷¹ uls.or.ug (accessed on 26th March, 2025)

⁷² ohchr.org (accessed on 26th March, 2025)

⁷³ Halima Athumani (2022) “Uganda’s security agencies accused of torture, disappearances of civilians” voanews.com (accessed on 26th March, 2025)

2.6.2 CONDITIONS OF DETENTION FACILITIES

Detention facilities in Uganda are currently facing significant challenges, primarily due to severe overcrowding. As of December 2023, the Uganda Prisons Service reported a total inmate population of 76,467, vastly exceeding the official capacity of 20,996. This results in an occupancy rate of approximately 364%, with some prisons operating at even higher capacities; for instance, Isingiro prison is at 802% capacity, Yumbe at 768%, Hoima at 618% and Fort Portal at 573%.⁷⁴ Despite recent infrastructure improvements in some prisons, overcrowding remains severe with occupancy rates exceeding 200% capacity in many facilities, contributing to poor sanitation and health risks like TB and HIV.⁷⁵ Food and water shortages persist, with prisoners often relying on family support for sustenance, and healthcare access is limited while forced labor practices continue in some facilities.⁷⁶ Moreover, over 55% of prisoners in Uganda are pretrial detainees, often held for years before their cases are heard. This contributes to overcrowding, with prisons operating at 200-250% capacity.⁷⁷ As a result of overcrowding in prisons and police cells, various rights, such as the right to a clean and healthy environment, the right to security, and the right to water and food, are violated.

2.7 CONCLUSION

The law enforcement agencies have played a very vital role in maintaining law and order in the country by investigating, arresting and detaining offenders hence promoting peace and rule of law in the country to some degree. This has been possible through cooperation of The Uganda Police Force, The Prison Services and The Uganda Peoples Defense Force working hand in hand with one another while executing their various roles in maintaining security in Uganda. However, there have been short comings in performing their duties especially when it comes to detention methods and practices. Incarceration of suspects in unauthorized detention centers, employing cruel means of interrogation including torture and mistreatment and denying them a fair hearing is a violation for the rights of the detainees. It is also important to note that these rights have not only been violated by the law enforcement agencies but also the government has a key role to play in recognizing these rights. Expanding the prisons, improving the judicial system, and ensuring a

⁷⁴ New Vision (January 10th, 2024) newvision.co.ug (accessed on 26th March, 2025)

⁷⁵ Human Rights Watch “Hard life in Ugandan Prisons”

⁷⁶ Ibid

⁷⁷ Supra 38

speedy trial would reduce the issues of overcrowded prisons, which in most cases lead to poor sanitation, inadequate food, and other basic needs in prisons.

CHAPTER THREE: LEGAL ASPECTS

3.0 INTRODUCTION

This chapter will cover the various legal frameworks that exist in support of the topic at hand. The legal framework governing the rights of detainees in Uganda is grounded in domestic, regional and international law. Domestically, there are some Acts besides the constitution that provide for the rights of detainees in Uganda as a nation; such as the Prevention and Prohibition of Torture Act, the Penal Code Act, the Criminal Procedure Code Act, among others, which are to be discussed. Regionally, the chapter will discuss other laws outside Uganda but within the African continent that govern the human rights of detainees. Last but not least, the chapter will also delve into international instruments such as conventions and treaties that specifically impose binding obligations on Uganda as a state to uphold the Human Rights of detainees, the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT). In discussing the framework, the chapter will highlight whether Uganda has complied with the provisions of these laws or not and in what ways the rights have been violated. It will therefore critically examine these legal provisions and the extent to which they are effectively implemented and enforced in the protection of detainees' rights in Uganda.

3.1 DOMESTIC FRAMEWORK

3.1.1 The Constitution of the Republic of Uganda

The constitution is the supreme law of the land and therefore plays a vital role in the governance of the country.⁷⁸ Chapter four of the Uganda constitution consists of a comprehensive Bill of Rights that provides for the fundamental rights of the citizens of Uganda; it includes the rights of detainees. These provisions reflect both national and international human rights norms. Key constitutional guarantees include;

(i) the right to a fair hearing⁷⁹

(ii) right to personal liberty⁸⁰

⁷⁸ The 1995 Constitution of the Republic of Uganda, Article 2

⁷⁹ Article 28

⁸⁰ Article 23

(iii) protection from torture, and cruel, inhuman or degrading treatment⁸¹

(iv) right to health⁸²

(v) the right to habeas corpus⁸³

(vi) and the right to bail⁸⁴

Some of these rights are absolute and should not be suspended under any circumstances.⁸⁵ While the constitution provides strong protections for the rights of detainees, there is widespread concern regarding the state's failure practice. Reports from human rights organizations, newspaper articles, and cases point to persistent violations.

One of the most commonly reported issues is the routine breach of the right to a fair trial provided under Article 28. Suspects have been held in police custody, and some have even been taken to prisons to be brought before a court of law to hear their matter. There are continued challenges, including delays in the judicial process, inadequate legal representation, which often undermine the right to a speedy and fair trial.

In the case of *Okeny v Uganda*, the appellant argued that his right to a fair trial had been violated because he was convicted without being given sufficient opportunity to present his defense and without proper legal representation. The court emphasized that the accused was entitled to a fair hearing under Article 28 of the constitution, which also incorporates the presumption of innocence. The court reiterated that:

“The conviction secured without full observation of fair trial rights was against the principle of natural justice and a violation of the presumption of innocence...”⁸⁶

Another provision often breached is the 48-hour rule that states that a person arrested is supposed to be produced in court within 48 hours to justify his detention.⁸⁷ Many detainees are held for

⁸¹ Article 24

⁸² Article 39

⁸³ Article 23(9)

⁸⁴ Article 23(6)

⁸⁵ Article 44

⁸⁶ *Okeny v Uganda* [2008] UGCA 5 (Uganda Court of Appeal)

⁸⁷ Article 23(4)

prolonged periods, at times weeks or even months without being brought before a court, particularly in cases involving political opposition, protests or national security

3.1.2 The Prevention and Prohibition of Torture Act

This Act broadly provided for acts of torture and is complementary to Article 24 on the freedom from torture or cruel, inhuman and degrading treatment or punishment.⁸⁸ It defines torture to include physical or mental pain inflicted for the purpose of obtaining information or punishment.⁸⁹ The act also prohibits the justification of torture, including orders from a superior or public emergency.⁹⁰ This is because the right to freedom from torture is a non-derogable right. However, there are still cases of torture and cruel treatment of detainees within the country.

In *Suzan Kigula v Attorney General*, the Constitutional Court recognized this right when it passed judgment in favor of the applicant, who was a detainee at Luzira prison and had been convicted and sentenced to death for the murder of her husband. The court held that long delays in execution could be considered cruel and inhumane treatment. If prisoners are kept on death row for many years without knowing when their execution will happen, that's a psychological toll. So, the court ruled that prolonged detention on death row is unconstitutional, leading to commutation of sentences for some inmates. The court also required that execution be carried out humanely with little or no pain suffered by the victims. A time frame for the execution of a convict was then introduced; which is a maximum of 3 years between the time of sentencing and the time of execution to prevent the psychological torture of the persons sentenced to death. This case marked a pivotal shift towards the judicial discretion and humane treatment of detainees in Uganda's criminal justice system and also challenged mandatory death penalty laws, contributing to broader human rights reforms.⁹¹

3.1.3 The Criminal Procedure Code Act

The Act lays down the legal procedure for the arrest, detention, trial, and treatment of persons accused of criminal offences.⁹² It serves as a key legislative instrument for enhancing constitutional rights related to criminal justice, particularly those of detainees. The Act provides

⁸⁸The Prevention and Prohibition of Torture Act, Cap 130 of 2012

⁸⁹ Ibid, Section 2

⁹⁰ Section 3

⁹¹ *Attorney General v Suzan Kigula & 417 ors* [2009] UGSC 6 (21 January 2009)

⁹² Criminal Procedure Code Act, Cap 116

guidelines for lawful arrest with or without a warrant. It requires that an arrested person be informed of the reason for their arrest unless the reason is obvious.⁹³ This aligns with Article 23(3) of the Constitution. It also provides that detainees must be brought before a magistrate “as soon as practicable” after arrest.⁹⁴ Section 14 also reflects the constitutional 48-hour rule by limiting police detention without court authorization. Under Section 77, the magistrate has the power to grant bail, providing an avenue for release pending trial.⁹⁵

However, the right to bail has often been infringed upon. In the black mamba incident, shortly after the High Court in Kampala granted bail to 14 suspected members of the rebel group, PRA, a heavily armed and masked military unit popularly referred to as the “Black Mamba” surrounded and stormed the High Court premises. The unit prevented the accused from leaving the court after being granted bail by re-arresting the suspects within the court premises in defiance of the court order.⁹⁶ This violated the right to bail after it was legally granted, hence undermining constitutional rights and judicial independence. A similar incident occurred in *Hon. Ssegirinya v Uganda*, where the accused was re-arrested outside the prison gates despite having been granted bail.⁹⁷

3.2 REGIONAL FRAMEWORK

3.2.1 The African Charter on Human and Peoples Rights (ACHPR)

Also known as the Banjul Charter, this foundational human rights treaty is binding on all African Union member states⁹⁸, including Uganda. Article 5 of the charter provides for the right to dignity and prohibition of torture. It states that “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” Article 6 also encourages states to respect the people’s right to personal liberty and protection from arbitrary arrest. It also provides for the right to fair trial under Article 7. This includes the right to an appeal, presumption of

⁹³ Sections 2-24

⁹⁴ Section 14

⁹⁵ Section 77

⁹⁶ *Uganda v Kiiiza Byesigye*, Constitutional Reference N0.20 of 2005, [2006] UGCA 42

⁹⁷ *Ssegirinya v Uganda* (Criminal Appeal 549 of 2016) [2024] UGCA 204 (9 August 2024)

⁹⁸ African Charter on Human and Peoples Rights (1986)

innocence until proven guilty, the right to defense, including legal representation and the right to be tried within a reasonable time by an impartial court.

In the case of *Kyagulanyi v Attorney general*, the plaintiff's lawyers brought a complaint before court for the unlawful home arrest of the plaintiff who was a presidential candidate in the 2016 presidential elections. They claimed that prevention of the plaintiff and his family from leaving their home by surrounding the house with police and army officers for no justifiable reason amounted to infringement on the plaintiff's enjoyment of the right to personal liberty. Nine days after the elections, court held that the confinement constituted detention and that as the candidate had not been brought to a police station or a magistrate was unlawful. It then ordered that the restrictions on his movement be lifted and his liberty be restored.⁹⁹

3.2.2 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa

These expand on Article 7 of the ACHPR and provide detailed protections for accused and detained persons. The guidelines include; access to legal aid, right to be informed of charges, prompt appearance before a judge, presumption of innocence and the right to challenge the lawfulness of detention which connects to the right to habeas corpus. Despite the existence of these laws, Uganda has still had reported cases on the violation of the right to habeas corpus.¹⁰⁰

In *Uganda v Commissioner of Prisons, EX Parte Matovu*, a Saza chief in the Buganda kingdom, was arrested under the deportation ordinance and detained in Luzira prison. Following a state of emergency declared in Buganda, he was re-arrested and detained after his release and detained under emergency powers laws. Matovu then filed an application for a writ of habeas corpus challenging the legality of his detention.¹⁰¹ Similarly, in *Kyagulanyi v Attorney General*, the plaintiff's lawyers brought an application for habeas corpus arguing that his right to personal liberty was being infringed by detaining the plaintiff and his family.¹⁰²

⁹⁹ *Robert Kyagulanyi Ssentamu v Attorney General*, Miscellaneous Cause N0.24 of 2021.

¹⁰⁰ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted in 2003, DOC/OS(XXX)247

¹⁰¹ *Uganda v Commissioner of Prisons, Ex parte Matovu* [1966] 1 EA 514

¹⁰² *Supra* 23

3.2.3 Kampala Declaration on Prison Conditions in Africa (1996)

Though this is not a treaty, Uganda hosted and supported this soft law instrument which calls on states to: improve prison conditions, reduce overcrowding, respect human dignity, ensure access to health, food, and legal assistance, and promote non-custodial sentencing alternatives.¹⁰³ Despite hosting a conference to promote better prison conditions, Uganda's prisons remain overcrowded and in a very bad condition, affecting the health of the detainees, hence infringing on their right to health.

3.2.4 The Robben Island Guidelines

The Robben Island Guidelines were adopted by the African Commission on Human and Peoples Rights in 2002 to provide comprehensive measures to prevent torture, cruel, inhuman or degrading treatment or punishment in Africa.¹⁰⁴ While they are not legally binding like a treaty, they serve as a key regional soft law instrument for the protection of the rights of detainees. The guidelines provide for the prohibition of torture, arrest and detention procedures, compliance of states with international and regional standards of detention facility conditions, and access to legal and medical assistance.

3.3 INTERNATIONAL FRAMEWORK

3.3.1 International Covenant on Civil and Political Rights (ICCPR, 1966)

The International Covenant on Civil and Political Rights is a key international treaty adopted by the United Nations General Assembly in 1966 and entered into force in 1976.¹⁰⁵ It is part of the International Bill of Human Rights and aims to promote and protect the civil and political rights of individuals around the world. Uganda ratified the ICCPR on 21 June 1995, making its provisions legally binding within the country. The ICCPR outlines several protections for individuals deprived of their liberty. Article 9 is to the effect that everyone has the right to freedom and security and no person shall be subjected to arbitrary arrest and detention. Humane treatment of detainees is provided under Article 10, and the right to a fair trial is under Article 14. As a state party, Uganda

¹⁰³ Kampala Declaration on Prison Conditions in Africa (1996)

¹⁰⁴ The Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, adopted in October 2002

¹⁰⁵ International Covenant on Civil and Political Rights, adopted 16 December 1999, 999 U.N.T.S

is obliged to align its domestic laws, policies, and practices with the provisions of the ICCPR, but this is not the case in practice.

3.3.2 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Covenant is a core international human rights treaty adopted by the United Nations General Assembly in 1966 and entered into force in 1976.¹⁰⁶ Uganda ratified the ICESCR on 21 January 1987. The covenant aims to ensure the enjoyment of economic, social, and cultural rights, including the rights to health, work, and an adequate standard of living. While the ICESCR is primarily focused on economic, social and cultural rights, it also includes provisions that are relevant to the rights and well-being of detainees. The most relatable one is the right to the highest attainable standard of physical and mental health.¹⁰⁷ Detainees are entitled to proper medical care and access to healthcare services. States must prevent conditions in prisons that endanger the health of detainees. Uganda has so far failed to fully comply with this provision given the fact that its prisons are in a terrible condition. There are also some reported cases of detainees being denied access to medical treatment.

In September 2021, Hon. Ssegirinya and fellow MP Allan Ssewanyana were arrested and charged with murder relating to the Masaka region Killings. During his incarceration, Ssegirinya's health deteriorated as he suffered from multiple ailments, including lung infections, skin cancer, and liver complications. He was, however, denied access to specialized medical care despite the demand by his legal team, parliamentary colleagues, and a court order permitting treatment by private doctors.¹⁰⁸ This action was also regarded as a violation of his constitutional right to freedom from torture and cruel, inhuman or degrading treatment and a violation of his right to health.

This right is enforceable by the state, and for one to fully enjoy this right, they must achieve other rights. The right has four basic elements which are;

- (i) availability
- (ii) accessibility
- (iii) acceptability and

¹⁰⁶ International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, 993 U.N.T.S.3

¹⁰⁷107 Article 12

¹⁰⁸ Supra 21

(iv) quality¹⁰⁹

This means that for this right to be realized in the country, all these elements must exist. There ought to be health services accessible and acceptable by all detainees and of a suitable quality to benefit those in need.

3.3.3 Convention Against Torture Act

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is a key international human rights treaty adopted by the UN general Assembly in 1984 and entered into force in 1987.¹¹⁰ Its main objective is to prevent acts of torture and other forms of ill-treatment around the world. Uganda being a signatory to the treaty, is obligated to uphold its provisions and integrate them into domestic law. The convention encourages states to take adequate measures to prevent acts of torture in any territory under their jurisdiction.¹¹¹ No exceptional circumstances, such as war, political instability, or public emergency, may be invoked to justify torture. States are also required to review interrogation methods, detention conditions and procedures to ensure they do not lead to torture or cruel treatment.¹¹²

As a response to these obligations, Uganda incorporated the right to freedom from torture and cruel, inhuman or degrading treatment or punishment in its bill of rights. It also further went on to list it among the absolute rights that should never be suspended whatsoever. However, even with these international and domestic laws, there have still been incidents of torture by law enforcers on detainees as a method of interrogation and punishment.

3.4 CONCLUSION

The domestic, regional, and international instruments collectively set clear legal standards for the humane treatment of detainees. These instruments emphasize safeguards against arbitrary detention, torture, and inhuman treatment, while affirming the rights to legal representation, fair trial, health, and dignity. Uganda's ratification of these instruments signifies a legal obligation to align its domestic laws and practices, such as those under the Criminal Procedure Code Act, with

¹⁰⁹ UN Economic and Social Council, General Comment N0.14: The right to the highest attainable standard of health (Article 12 of the Convention, E/C.12/2000/4.

¹¹⁰ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

¹¹¹ Article 2

¹¹² Article 11

international human rights norms. However, the realization of these rights depends not only on legal frameworks but also on their effective enforcement, regular monitoring, and accountability mechanisms to address violations. Strengthening legal compliance and institutional oversight remains essential to ensure the protection of detainees' rights in Uganda.

CHAPTER FOUR

4.0 SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

4.1 INTRODUCTION

This final chapter presents a synthesis of the major finding of the study, along with practical recommendations and a conclusive overview of the research. The study set out to examine the violation of the rights of detainees in Uganda, with focused on the legal, institutional and practical challenges that contribute to these human rights abuses. By reviewing relevant literature, legal frameworks, and human rights reports, the research has uncovered critical insights into the systemic nature of these violations and the gaps in enforcement and accountability. The chapter begins by summarizing the key findings in relation to the research objectives. It then provides actionable recommendations aimed at addressing the identified issues and strengthening the protection of detainee rights in Uganda. Finally, the chapter concludes by reflecting on the overall implications of the research.

4.2 SUMMARY OF FINDINGS

4.2.1 Violations by the police

The police play a very important role in keeping peace in the country as the lead entity responsible for the maintenance of law and order.¹¹³ This is undoubtedly so, considering their constitutionally allocated functions.¹¹⁴ The Uganda police carries out arrests and detention of suspects and even goes on to investigate the crimes committed.¹¹⁵ One may put it that the police are regarded as the helper of those whose rights are being abused and the hand of the state that ensures that there is respect of the regulations governing the state. With this in mind, we ought to view the police as a symbol of peace and comfort and also as an assurance of justice and the guarantee of enjoyment of our constitutional rights.

However, even with the existence of a well-equipped police force, there are still instances of violation of human rights.¹¹⁶ The police are not to be blamed entirely for the violation of these

¹¹³ The Police Act cap 303, Section 4(1)

¹¹⁴ The Constitution of the Republic of Uganda (as amended), Article 211

¹¹⁵ Ibid, Article 212

¹¹⁶ Otine Andrew (5th December, 2020) Taking Stalk of the Use of Force and Firearms during Police Operations in Uganda.

rights but it we should also note that the police have played a significant role in the violation of the rights of the citizens of Uganda. In the attempt to strike a balance between law enforcement and promotion of the rights of detainees, the research has found and shows that it is true that when we talk about law enforcement, the first thing that comes to mind is the Uganda Police Force. And when we shift to the aspect of violation of the rights of detainees, it is almost impossible to remove liability from the police for the violation of the rights of the suspects and convicts with in police jails and prison cell.

There has been and is still rampant violation of the rights of detainees including; the right to fair hearing, the right to habeas corpus, the right to personal liberty, the right to bail, the right to health, freedom from torture among others.¹¹⁷ It is even worse that violation of these rights has turned out to become the new normal as it has been incorporated in the daily operation of the police in the bid to execute their peace keeping duties. It is ironic that the people we are supposed to put in our trust as citizens are the very ones betraying it. Peace and order has been substituted with fear and withdrawal of trust in the hearts of the citizens.

It is therefore fair to say that even if there ought to be, there is no clear balance between law enforcement and promotion of rights of detainees in Uganda. This because these rights are violated by the same people that should be protecting them in the guise of maintaining law and order.

4.3 RECOMMENDATIONS

4.3.1 Introduction of regulations

One of the principles of natural justice is the rule of law; that a state may only be governed by existing laws formulated by the legislature. Uganda as a nation may come up with its own laws that should be followed by all citizens through the parliament which derives its power from the constitution.¹¹⁸ As a result, various laws have been enacted, protecting the people's rights and freedoms for example the Prevention and Prohibition of Torture Act was enacted to mitigate the abuse and violation of the freedom from torture.

¹¹⁷ Avocats Sans Frontieres (2023) "protecting constitutional and procedural rights of pre-trial detainees through access to justice in Uganda" 32-34

¹¹⁸ Article 79

It is good and important that the nation has laws providing for the people's rights and regulations establishing the duties of the police as a law enforcement agency. However, in a similar way, it is vital that also regulations governing the detention of arrested persons be put into consideration to clearly spell out how a detainee may and may not be treated while in jail. This way it will be easy to impose liability on the abuser of the rights and it will also set a limit for law enforcers.

One may want to argue that the Constitution, the Police Act and the Prisons Act play a role in solving this. These only provide for the rights of citizens in general, establish the respective law enforcement agencies and point out their functions in law enforcement hence ignoring the guidelines on treatment of detainees.

Enactment of rules governing detention of suspects and criminals would therefore be a great step forward in the realization of the rights of detainees in Uganda since it will check the dealings of the law enforcers with the law breakers.

4.3.2 Improvement of the judicial system

The judiciary is a constitutionally established arm of government that administers justice in the country.¹¹⁹ It hears and determines civil, criminal and constitutional cases. It also ensures justice is administered fairly, impartially and without undue delay. Despite the fact that one of the elements of a fair hearing is a just and speedy trial, it is a bit impossible to administer a speedy trial due to the raising number cases filed per day in the courts of law hence failing to grant a fair hearing to detainees and leading to prolonged detention. In order to solve this, adjustments have to be made in the judicial sector. An increase in the number of the courts of law and the judicial officers all around the country would reduce on the case backlog in Uganda hence granting those in police cells and those in remand a faster trial and giving them a fair hearing and also decongesting prisons.

4.3.3 Improvement of detention facilities

One of the key recommendations arising from this study is the urgent need to improve the physical conditions and infrastructure of detention facilities across Uganda. Many detainees are held in overcrowded, unsanitary, and poorly ventilated environments, which violate both national standards and international human rights obligations, such as those outlined in the United Nations

¹¹⁹ Article 126

Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules). Since the prisons and police cells country wide are significantly small to accommodate the prisoners, it would be wise to construct more prisons with better facilities or to renovate the existing prisons, putting in place better facilities to avoid issues of congestion, spread of diseases, poor sanitation among others. The government, in collaboration with relevant stakeholders, should prioritize the renovation and expansion of existing detention centers to reduce overcrowding and ensure humane living conditions. This includes the provision of adequate bedding, access to clean water, proper sanitation, and sufficient nutrition. Detention facilities must also be equipped with appropriate medical care services and allow regular access to legal counsel and family visits. This will help realize the right to health.

4.3.4 Liability of police officers

Despite the fact that the police in general has violated the rights of detainees, it is important to note that not all police officers abuse the rights of those under their custody. With this being the case, it is therefore reasonable to hold each officer liable for his or her own contribution to the violation of a person's right. It is true that the doctrine of vicarious liability as discussed in *Muwonge v Attorney General* demands that the government be held liable for the negligent actions of a police officer because the police works under the supervision and control of the government hence making it an agent of the government.¹²⁰ However, the courts should also impose reasonable punishments on the offending officers in order to prevent more cases of human rights violations. These punishments may include demotion of the officer to a lower rank, imposing of a fine on the officer or even imprisonment depending on how grave the matter is.

4.4 CONCLUSION

This research has examined the persistent and systemic violations of detainees rights in Uganda, highlighting a range of abuses including unlawful arrests, prolonged pretrial detention, torture and denial of access to legal representation and medical care. Through a critical review of legal frameworks, reports from human rights organizations, and relevant case studies, it is evident that despite constitutional guarantees and international human rights obligations, enforcement remains weak and accountability mechanisms are limited. The findings underscore the urgent need for

¹²⁰ *Muwonge v Attorney General* [1967] 1 EA 17

comprehensive reform within Uganda's criminal justice system. Strengthening oversight institutions, training law enforcement personnel on human rights standards, and ensuring access to legal aid for all detainees are essential steps toward safeguarding detainee's rights. Additionally, the role of civil society and international bodies remain critical in advocating for transparency and justice.

While this study was limited to a literature based analysis, future research involving empirical fieldwork could provide deeper insights into the lived experiences of detainees and the effectiveness of current interventions. Ultimately, respect for the rights of detainees is not only a legal obligation but a reflection of a nation's commitment to justice, human dignity and the rule of law.

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