

FROM ARREST TO RELEASE: THE INSIDE STORY OF UGANDA'S PENAL SYSTEM

Brooke J. Oppenheimer*

Prior to becoming an independent state in 1962, Uganda's justice system was a model for its neighbors; at that time, the police force was strong, respected, and appreciated by the public; judicial hearings were fair and well-regarded; and the military did not abuse its power.¹ Unfortunately, after many decades of political upheaval, this same system has become an example of a corrupt and inefficient justice system.² Although improvements have been made since President Museveni came into power, unrealistic laws, corruption, and public fear of the justice system have prevented any notable progress. This paper will address the recurring problems in Uganda's criminal justice system and provide recommendations on how to address the barriers encumbering the system.

This paper will start by addressing the concerns with criminal investigations, arrests, and police detentions followed by an analysis of pre and post-trial detentions. It will consider the corruption within the penal stages, the legal ambiguities, and the logistical inefficiencies of the system.

I. ARREST, INVESTIGATION, AND POLICE CUSTODY

A. *The Composition of the Police Force*

Article 211 of the Constitution of Uganda provides for a Ugandan Police Force.³ When Museveni and his National Resistance Movement (NRM) government took control over the police, the police force consisted of 10,000 officers, but was quickly reduced to 3,000 officers after Museveni removed his opposition.⁴ After sifting for "good" officers, the police force was quickly

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1. UGANDA JUDICIAL COMM'N OF INQUIRY, REPORT OF THE JUDICIAL COMMISSION OF INQUIRY INTO CORRUPTION IN THE UGANDA POLICE FORCE: MAIN REPORT, 10 (1999-2000) [hereinafter REPORT OF THE JUDICIAL COMMISSION].

2. *Id.*

3. UGANDA CONST. ch. 12, § 211.

4. REPORT OF THE JUDICIAL COMMISSION, *supra* note 1, at 12.

rebuilt to its original size.⁵ The Uganda Police are required "(a) to protect life and property; (b) to preserve law and order; (c) to prevent and detect crime; and (d) to co-operate with the civilian authority and other security organs established under this Constitution and with the population in general."⁶ The Constitution also allows for an intelligence agency⁷ and a military, which generally share many of the roles of the police.⁸ The Constitution, however, does not provide a legal mandate for paramilitary forces, even though at least four paramilitary forces are acting as law enforcers. Please refer to Table 1 for the functions of all security agencies.

Table 1: Uganda law enforcement entities, including their legal mandates and roles in the justice system.

Security Unit	Legal Mandate	Functions and Responsibilities
Uganda Police Force	CONST. ART. 211: Uganda Police Force	<ul style="list-style-type: none"> • (a) to protect life and property; (b) to preserve law and order; (c) to prevent and detect crime; and (d) to co-operate with the civilian authority and other security organs established under this Constitution and with the population general.⁹ • Has the power of arrest and detention¹⁰
Uganda Peoples' Defence Forces (UPDF)	CONST. ART. 208: Uganda Peoples' Defence Forces	<ul style="list-style-type: none"> • (a) to preserve and defend the sovereignty and territorial integrity of Uganda; (b) to co-operate with the civilian authority in emergency situations and in cases of natural disasters; (c) to foster harmony and understanding between the Defence Forces and civilians; and (d) to engage in productive activities for the development of Uganda.¹¹

5. *Id.*

6. UGANDA CONST. ch. 12, § 212.

7. *Id.* at ch. 12, § 218.

8. *Id.* at ch. 12, § 208-209.

9. *Id.* at ch. 12, § 212.

10. Jemera Rone and Julianne Kippenberg, *State of Pain: Torture in Uganda*, HUMAN RIGHTS WATCH, Vol. 16, No. 4(a), Mar. 2004, at 19.

11. UGANDA CONST. ch. 12, § 209.

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

		<ul style="list-style-type: none"> Has the power of arrest but no legal power of detention except for violations of military code by its personnel. Arrested suspects must be released to the custody of the police.¹²
The Chieftaincy of Military Intelligence (CMI)	CONST. ART. 218: Intelligence Services	<ul style="list-style-type: none"> Responsible for investigation of terrorism and political opposition¹³ Common power to arrest; no power of detention¹⁴
The Internal Security Organization (ISO) / The External Security Organization (ESO)	NO LEGAL MANDATE	<ul style="list-style-type: none"> Responsible for security and security abroad¹⁵ Common power of arrest; no power of detention¹⁶
The Joint Anti -Terrorist Task Force (JATF)	NO LEGAL MANDATE	<ul style="list-style-type: none"> Created after the enactment of the Anti-terrorism Act in 2002 to assess terrorist activities in the country¹⁷ Common power of arrest; no power of detention¹⁸
The Kalangala Action Plan (KAP)	NO LEGAL MANDATE	<ul style="list-style-type: none"> Created as part of Museveni's election strategy to target members of the opposition¹⁹ Common power of arrest; no power of detention²⁰
Operation Wembley (presently Violent Crime Crack Unit (VCCU))	NO LEGAL MANDATE	<ul style="list-style-type: none"> Crime fighting entity designed to address the high levels of crime in the urban area²¹ Common power of arrest; no power of detention²²

The aforementioned paramilitary forces are allowed under the "State of Emergency" power provided for in Article 110 of the Constitution.²³ Here, the

13. Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, UGANDA: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 2002 (March 31, 2003), at <http://www.state.gov/g/drl/rls/hrrpt/2002/18232.htm>.

14. Rone & Kippenberg, *supra* note 10, at 20.

15. *Id.*

16. *Id.*

17. *Id.*

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

19. *Id.*

20. *Id.*

21. *Id.* at 19, 21.

22. *Id.* at 21.

President has the power to take "measures which are required for securing the public safety, the defense of Uganda and the maintenance of public order and supplies and services essential to the life of the community."²⁴ Since these paramilitary forces are allegedly necessary to protect the public's safety, they are not illegal. However, Article 110(2) only allows for these forces to be in power for ninety days.²⁵

B. *Summary of the Laws*

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.²⁶

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.²⁷ Within forty-eight hours of arrest, the suspect must be presented in court or released on bond.²⁸ 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.²⁹ At the end of this period, the suspect must be tried by a court of law or released from the charges.³⁰

C. *Arrest Without Probable Cause*

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."³¹ 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."³² 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 cause.³³ 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

23. UGANDA CONST. ch. 7, § 110(1)(c).

24. *Id.*

25. *Id.* at § 110(2).

26. UGANDA CONST. ch. 4, § 23(4)(b).

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

28. UGANDA CONST. ch. 4, § 23(4)(b).

29. *Id.* at ch. 4, § 23(6)(b)-(c).

30. *Id.*

31. *Id.* at ch. 4, § 23(4)(b).

32. *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).

33. UGANDA CONST. ch. 4, § 23(4)(b).

then, after arresting, they go out and find evidence to justify the arrest.”³⁴ This is what happened to a sixty-year-old man from the village of Bulungu, whom I will refer to as Wilson.³⁵ Wilson was arrested on charges of defilement, based on an accusation made by a mother who had suspicions that he was intimately involved with his daughter. Without any evidence to substantiate the claim, the police arrested Wilson and then proceeded to investigate the case. The police discovered through medical examination that the girl had not been defiled. The officers clearly lacked enough evidence to substantiate a claim, particularly after the mother conceded that she had made a false allegation. However, Wilson suffered four days in detention despite the lack of any substantiated allegation. Ideally, the investigation, including the medical examination of the child, would have been performed *before* the arrest. Investigation prior to the arrest would have prevented undue cost and prevented Wilson’s fundamental rights from being violated.

Under the laws of Uganda everyone has the right to make an arrest, including civilians.³⁶ This leads to further problems because, in Uganda, arrests lead to detention, and when an arrest is made by an unqualified law enforcer, arbitrary arrests and unreasonable detentions become far too common, and in turn overwhelm the penal institutions. The right to make an arrest also gives paramilitary agencies without any legal mandates the power to act as enforcement agents and make arrests at will.³⁷ However, only the police force has the right to detain.³⁸ Others, including civilians, the military, and paramilitary officers must release a suspect to the police immediately upon arrest.³⁹ Unfortunately, immediate release to police is rarely followed because most suspects arrested by ad hoc security groups are detained in illicit “safe houses” or unauthorized military detention centers for significant periods of time prior to being handed over to the police.⁴⁰ As Human Rights Watch observed, “These unacknowledged places of detention are not visited by outsiders nor by government officials charged with inspecting conditions inside detention cells. The government is provided ‘deniability’ by holding the

34. Benjamin J. Odoki, *Reducing Delay in the Administration of Justice: The Case of Uganda*, 5 CRIM. L. F. 57, 78–79 (1994) (citing *Kulanima v. Uganda*, 1971 High Ct. Bull. 210, 211 (Uganda High Ct.)).

35. Interview with suspect, name changed for security, at Naggalama Police Station, Naggalama, Uganda (June 10, 2004). Interviews throughout this paper were done by the author as a representative for the Foundation Human Rights Initiative (FHRI), in Kampala, Uganda.

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

37. Since paramilitary forces are acting without any legal mandate, they are acting as an unauthorized civilian group, and therefore would have the right to make a civilian arrest. This would not allow them to detain suspects however; it would merely provide them the opportunity to bring the suspect to proper authorities.

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

39. *Id.*

40. In this paper, ad hoc agencies or security groups refer to paramilitary forces, the Ugandan military, and the Chieftaincy of Military Intelligence.

detainees in secret, and this creates a feeling of impunity among security and intelligence officers.”⁴¹ Consider the following actual cases that were revealed:

- ♦ Man in early thirties arrested for alleged robbery and detained in a “safe house” at Makindye military barracks for thirty-one months prior to being released to police custody.⁴²
- ♦ Man in mid-thirties arrested for alleged robbery, was detained for two years in a “safe house” at Makindye military barracks and Kireka, the VCCU’s headquarters.⁴³

This stage of the criminal process is also inhabited by corruption in the police force.⁴⁴ Corruption at this stage occurs in many forms: police officers accepting bribes to make arrests, making arrests as favors for friends, reducing charges for a “fee,” ignoring crimes for a trivial fee, and making arbitrary arrests for political reasons.⁴⁵

Police officers are paid the pitiful salary of 75,591 shillings (approx. \$44.00) a month⁴⁶ and, therefore, are vulnerable to accept bribes from third parties to arrest innocent civilians or refrain from making arrests when a crime has clearly been committed. The following examples illustrate the problems related to such low pay:

- ♦ Assistant Commissioner of Police-Crime Division accepted ten million shillings from suspect, Mohammed Zakey, for reducing murder charges to manslaughter.⁴⁷
- ♦ In exchange for an unknown sum of money from the mother of a sixteen-year-old girl, officers arrested and detained girl for being pregnant, which is not a crime under Uganda’s penal system.⁴⁸
- ♦ Pakistani charged with being a “whistleblower” was offered the opportunity to escape all charges in return for one million shillings.⁴⁹

41. Rone & Kippenberg, *supra* note 10, at 59.

42. Interview with suspect, name withheld for security, at Old Kampala Police Station, in Old Kampala, Uganda (May 26, 2004).

43. Interview with suspect, name withheld for security, at Old Kampala Police Station, in Old Kampala, Uganda (May 26, 2004).

44. See REPORT OF THE JUDICIAL COMMISSION, *supra* note 1, at 45-49, 261; See also Anne Mugisa, *Combating Corruption in the Judiciary: The Role of the Press*, African Judicial Network Conference, Bamako, Mali (Feb 18-20, 2003), available at <http://ajn.rti.org/index.cfm?fuseaction=countries&countryID=11&l=eng>.

45. *Id.*

46. This is the salary for an officer at the rank of Constable. A constable is a police officer with no command responsibility. Constables perform general police duties including traffic and population control, and other minor duties. REPORT OF THE JUDICIAL COMMISSION, *supra* note 1, at 261.

47. REPORT OF THE JUDICIAL COMMISSION, *supra* note 1, at 22.

48. Interview with suspect, name withheld for security, at Old Kampala Police Station, in Kampala, Uganda (May 26, 2004).

49. Interview with suspect, name withheld for security, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

Political arrests are customary and commonplace especially during times of elections and mayhem. Since its independence, Uganda has had a long history of distrust of opposition groups and arbitrary arrests and detainments of opposition members. This hasn't changed under President Museveni's rule.⁵⁰ According to Human Rights Watch (HRW), many of the present-day political arrests concern supporters of the 2001 presidential candidate Kizza Besigye and his People's Redemption Army.⁵¹ Other arrests concern the supporters of the Allied Democratic Forces and the National Democratic Army, which are considered to be rebel groups by the present government.⁵² HRW noted that these political arrests are made regardless of whether the person was supporting these opposition forces or only acquainted with opposition members:

These people have been captured in their homes or fields in rural areas, often their workplaces, quite apart from any hostilities. In many cases, suspects believe they were detained only because they personally knew those alleged to be fomenting rebellion, whether from place of origin, school, living abroad, marriage, or other relationship.⁵³

One detainee at Luzira Prison was arrested and detained in relation to his alleged involvement in an armed rebellion merely because he was a classmate of Kizza Besigye's, and coincidentally, his late wife was also a classmate of Besigye's wife.⁵⁴ The customary practice of arbitrarily detaining a suspect for his political beliefs is customary and expected by Ugandan leaders. However, arbitrarily detaining a suspect is done in clear violation of Uganda's Constitution; Article 23(4) requires that an individual at least be suspected of a crime, yet these "suspects" are merely suspected of associating with particular political groups and are not suspected of any crime.⁵⁵

Still, financial and political incentives are not the only reasons for the corruption. Many of the arbitrary arrests are made merely for the benefit of a friend or family member. Consider the situation of Sulaiman, a thirty-five-year-old man from Mukono.⁵⁶ Sulaiman separated from his wife due to her extra-marital relations, leaving Sulaiman with eight children to mind. After many years, the family even believed the wife to be dead since they did not know her

50. See Rone & Kippenberg, *supra* note 10. See also John D. Rusk, *Uganda: Breaking Out of the Mold?*, Africa Rights Monitor Report, 33 AFRICA TODAY, 91, 100 (2nd, 3rd Quarters, 1986).

51. Rone & Kippenberg, *supra* note 10, at 23-24.

52. *Id.* at 24.

53. *Id.*

54. Rone & Kippenberg, *supra* note 10, at 24 n. 35 (citing, *Human Right Watch Interview*, Luzira Prison, Uganda, June 19, 2003).

55. This is also in violation of the Constitution for discriminatory reasons. See UGANDA CONST. ch. 4. § 21(2).

56. Interview with thirty-five-year-old from Mukono, name withheld for security, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

whereabouts. When one of his eight children passed away in medical facilities after having fallen ill with something resembling measles, the wife returned with her boyfriend, who happened to be a VCCU officer. Although it is documented that the child passed away due to a serious illness, the VCCU arrested Sulaiman for murder at the request of the officer's girlfriend.

Other arrests appear to be made solely because the officer has the power to do so. Consider Geoffrey's case:⁵⁷ Geoffrey was having lunch at a restaurant when officers came and arrested the stranger sitting across from him. Geoffrey mistakenly asked where the officers were taking the man and the officers became angry and chopped off Geoffrey's pinky finger, arrested him, and detained him absent any charges against him.

The period of arrest is crucial to the effectiveness of the entire justice system. Yet, regularly in Uganda, suspects are arrested arbitrarily or without sufficient evidence. This leads to long stays in police stations prior to being brought to court, long delays on remand, and fundamental human rights being taken away from "innocent" civilians.⁵⁸

D. Forced Confessions and Questionable Investigative Techniques

Investigations in Uganda are performed haphazardly, leading to lengthy detentions, arbitrary arrests, and violations of fundamental human rights. Investigations are impeded by archaic ways of obtaining information, negligence, corruption and logistical barriers. Proper investigations are needed so that reliable evidence is accrued and suspects are provided with a fair and impartial trial.

Ad hoc security agencies use renowned torture chambers, so-called "safe houses," to perform barbaric investigations to obtain confessions or other desired information.⁵⁹ Notwithstanding the lack of reliability of evidence retrieved under these nefarious methods, officers of these ad hoc agencies put extreme pressure on suspects to confess or concede through the use of physical and emotional torture.⁶⁰ Some of their common torture methods include caning with batons and electric wires,⁶¹ shocking with electrical devices,⁶² hanging rocks from the prisoners' testicles or twisting their penises,⁶³ physical

57. Interview with suspect, name changed for security, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

58. Under the Ugandan Constitution, ch. 4 § 28(3)(a), a suspect is innocent until proven guilty by a court of law.

59. See Rone & Kippenberg, *supra* note 10, at 7.

60. Interviews with suspects, names withheld for security purposes, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 – August 10, 2004).

61. *Id.*

62. *Id.*

63. *Id.*

mutilation,⁶⁴ kandoya,⁶⁵ "Liverpool" water torture,⁶⁶ showing of corpses,⁶⁷ exposure to poisonous snakes,⁶⁸ injecting hypodermic needles into the prisoners' genitals,⁶⁹ strangulation,⁷⁰ and kicking the prisoners' abdomens.⁷¹ Aside from the physical torture, suspects undergo strenuous mental abuse as they are typically isolated from other suspects and held underground with no access to sunlight, and repeatedly humiliated and mocked by their commanding officers.⁷² In the eyes of the paramilitary, torture is a necessary mechanism to retrieve information from its suspects.⁷³ This notion was clearly endorsed to the public by Col. Noble Mayombo of the Chieftaincy of Military Intelligence (CMI).⁷⁴ The following documented examples demonstrate the use of torture to compel a confession:

- ♦ Thirty-five-year-old male was forced to confess by VCCU officers to charges of theft by hanging bricks from his genital area.⁷⁵
- ♦ Thirty-year-old male was beaten by VCCU officers with electric wires and batons until he confessed to stealing a parcel.⁷⁶
- ♦ Twenty-seven-year-old male was threatened by CMI officers that if he did not confess to stealing a motorcycle they would press his genitals so hard that he would never be capable of having children.⁷⁷

Though torture is a common mechanism to elicit confessions, the laws of Uganda prohibit the use and admissibility of such forced confessions.⁷⁸ Section 25 of the Ugandan Evidence Act imparts that:

64. *Id.*

65. Kantoya is the process of tying the suspect's hands and feet together behind the suspect's back. Rone & Kippenberg, *supra* note 10, at 4.

66. Liverpool water torture is a method where a suspect is forced to lie face up with his mouth open under a water spigot. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 23.

70. *Id.* at 4.

71. Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

72. *Id.*

73. See FHRI Talk Show: *Manya Eddembe Lyo* (Central Broadcasting Services radio broadcast May 2004) (Col. Noble Mayombo appearing on talk show).

74. Col. Noble Mayombo appearing on FHRI talk show "*Manya Eddembe Lyo*" on Central Broadcasting Services May 2004. *The Reporter*, FHRI 2004.

75. Interview with suspect, name withheld for security, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

76. Interview with suspect, name withheld for security, at Jinja Road Police Station, in Kampala, Uganda (May 24, 2004).

77. Interview with suspect, name withheld for security, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

78. Daniel D. Ntanda Nsereko, *The Poisoned Tree: Responses to Involuntary Confessions*

A confession made by an accused person is not admissible in criminal proceedings if the making of the confession appears to the court to have been caused by inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil or a temporal nature in reference to the proceeding against him.⁷⁹

Unfortunately, in contrast to forced confessions, admissions are admissible even if made as a result of torture.⁸⁰ An admission is an acknowledgment of the existence of facts which are usually favorable to an adversary but that do not amount to a confession.⁸¹ Generally speaking, a confession admits guilt of a particular offense while an admission concedes only to a particular point which may or may not result in a conviction. Since admissions are admissible in court proceedings, torture is an effective way to guarantee a conviction; an officer can torture a suspect until the suspect concedes to certain facts, making the prosecutor's case plausible and compelling.

Upon receiving a suspect's confession, the aforementioned ad hoc security agencies transfer the suspects to police stations.⁸² Though it is required that they transfer a suspect immediately upon arrest, it could be several weeks or months until security agencies deliver the suspect to a police station.⁸³ Kampala Central Police Station (CPS) is a favorite police station of ad hoc security units.⁸⁴ Although the security agencies use other urban police stations to house their suspects, the majority of detained suspects are found at CPS. Table 2 lists every documented suspect detained at CPS on May 27, 2004 by ad

in *Criminal Proceedings in Botswana, Uganda and Zambia*, 5 AFR. J. INT'L & COMP. L. 609, 618 (1993) (citing Uganda Evidence Act, §25, Laws of Uganda, cap. 43).

79. *Id.* at 618.

80. *Id.* at 630.

81. See BLACKS LAW DICTIONARY 48 (7th ed. 1999); see also Nsereko, *supra* note 78, at 630.

82. Interview with the Divisional Police Commander (DPC), Mr. Steven Munchara Kassiima, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

83. Interviews with suspects, names withheld for security purposes, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 – August 10, 2004).

84. Rural Police Stations conceded that they rarely hold other agencies' suspects. Kampala Central Police Station's Observer/Controller (O/C) conceded that there are at least ten suspects detained at any given time that are not under his control. Jinja Road Police Station, Katwe Police Station, and Old Kampala Police Station reported that they usually have around two suspects not under their control. Interview with Onencan J. Stevens, O/C, at Jinja Road Police Station, in Kampala, Uganda (May 24, 2004); Interview with Officer Ngobi, O/C, at Old Kampala Police Station, in Old Kampala, Uganda (May 26, 2004); Interview with O/C, Officer Doka, at Katwe Police Station, in Katwe, Uganda (June 1, 2004).

hoc security agencies. The table shows the length of time the suspect was detained in the "safe house" and the length of time each suspect spent in the police station as of May 27, 2004. It also includes a summary of the torturous methods used on these suspects in order to obtain a confession.

Table 2: All suspects detained by ad hoc security agencies at Kampala Central Police on May 27, 2004.⁸⁵

	Age (years)	Security Unit	Time in "Safe Houses"	Time in CPS	Torture suspects received at the Safe House
1	~30	JATF	3 weeks	42 days	Head shoved in toilet; boiling water burns; beaten with batons and wires
2	49	Unknown	1 day	2 days	Whipped and scourging resulting in massive scars; struck with unknown wooden objects; hit him with cane; suffers from swollen joints and chunks of skin missing.
3	22	VCCU	1 week	4 months	Finger chopped off; beaten with batons and wires resulting in visible scars
4	40	VCCU	3 weeks	4 months	Beaten with batons, wires, sticks resulting in massive scars on his back and deformed knees with little flexibility
5	20	VCCU	3 weeks	4 months	Paralyzed left side of body from beating with batons and wires; repeatedly kicked in the genital areas
6	35	VCCU	1 week	6 months	Beaten with baton below right knee resulting in fracture to the fibula
7	35	UPDF	41 months	1 ½ weeks	Bricks tied to his genitals; beaten with electric wires and batons; forced to wear only underpants in safe houses
8	47	VCCU	4 months	~ 2 weeks	Hit with baton on kneecaps and other joints; beaten with electric wires
9	34	VCCU	8 months	~2 ½ months	Beaten with electric wires and batons
10	30	UPDF	2 years	1 month	Bullet in the side of his torso; beaten with batons and electric wires.

85. Interviews with suspects, names withheld for security, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

11	37	VCCU	8 days	3 weeks	Beaten with electric wires and batons across knees and hands; hands tied between his legs; legs swollen from beating
12	34	CMI	1 month, 1 week	3 weeks	No torture mentioned
13	27	CMI	20 days	2 days	Beaten with metallic bar across knees; threatened that his genitals would be beaten so he would never have children
14	32	CMI	2 months, 3 weeks	~ 1 month	Beaten with batons on knees, back, and ankles; beaten in genitals so that urine came out in small drops

Investigations are also impeded by corruption, adding to the breakdown of the penal system. Similar to the corruption associated with arrest, investigations are misappropriated for a fee or for the benefit of a friend or relative, and for political incentives to intervene in investigations. Some examples of this include:

- ♦ Claver Byamugisha, Observer/Controller (O/C) Serious Crimes Department, received a bribe of one million shillings in order to foil an investigation against Medi Ssebagala arrested for the possession of counterfeit checks. Byamugisha shelved all evidence of the counterfeit checks and failed to pursue any further investigations.⁸⁶
- ♦ Chris John Bakiza, Director/Criminal Investigation Department (CID), received a bribe of 100 million shillings from Karim Hirji to misappropriate its investigations by failing to exhaust any leads implicating Hirji.⁸⁷

Some investigators attempt to obtain information by violating a third party's personal freedoms and liberties. Most investigations have drawbacks, including compromised or missing evidence, dead ends, and false leads.⁸⁸ Often, investigators avoid these problems by detaining third parties who "might" have some information.⁸⁹ These third parties include friends of suspects, people who were seen in the same area as a suspect prior to the

86. REPORT OF THE JUDICIAL COMMISSION, *supra* note 1, at 45-49.

87. *Id.* at 15-21.

88. 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, 2004 – June 10, 2004).

89. Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

commencement of the crime, and bystanders who innocently involved themselves in the criminal operation.⁹⁰ Investigators will typically charge this third party with the offense of the actual suspect with the hope that the person will break down and disclose evidence about the actual suspect.⁹¹ This leads to further arbitrary arrests when names are haphazardly given as a result of torture. There is usually at least one of these victims being detained at a police station at a given time.⁹² For example:

- ♦ A Sudanese man in his thirties had been detained for ten days at the time of his interview for knowing the whereabouts of his friend who eloped with an underage girl.⁹³
- ♦ A fifteen-year-old boy detained for over one week at the time of his interview because he allegedly knew the whereabouts of the boy who murdered a man. Investigators believed he knew this information because he had lent the boy his bicycle prior to the incident.⁹⁴

This is a haphazard method of investigation, which is not only cost ineffective, but a blatant violation of human rights.⁹⁵

E. The Forty-Eight Hour Provision

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."⁹⁶ 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.⁹⁷

90. *Id.*

91. *Id.*

92. Observational visits, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

93. Interview with suspect, name withheld for security, at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

94. Interview with suspect, name withheld for security, at Mukono Police Station, Mukono, in Uganda (June 10, 2004).

95. *Universal Declaration on Human Rights*, G.A. Res. 217A (III), U.N.GAOR, art.9 (1948); *African Charter on Human and Peoples' Rights*, Organization of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, art. 6 (1982) [hereinafter *African Charter*].

96. UGANDA CONST. ch. 4, § 23(4)(b).

97. 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, 2004 – June 10, 2004).

As previously mentioned, ad hoc security agencies often detain suspects in "safe houses" prior to releasing them to police custody.⁹⁸ Testimonials from suspects support the conclusion that suspects spend a minimum of one week at these unofficial detention centers.⁹⁹ Most spend months there, and some spend as long as two years.¹⁰⁰ Detaining the suspects in these safe houses for longer than the forty-eight hours is clearly in violation of the Constitution.¹⁰¹ Not only do these suspects spend considerable time in these illicit locations, they also remain in the police stations far longer than the mandated forty-eight hour maximum.¹⁰² The police have no control over suspects brought into the police stations by the ad hoc security agencies; the station merely becomes a "legal" place for these suspects to reside until their release.¹⁰³ As Commander Steven Munchara Kassiima reported, suspects detained in the stations by the paramilitary forces are not under police control.¹⁰⁴ Sometimes, they are even detained apart from the other suspects in the cells, and officers almost never know the charges against the suspects.¹⁰⁵

Corruption in the police system also leads to the persistent violation of the forty-eight hour provision.¹⁰⁶ At this stage of the judicial process, corruption occurs in abundance.¹⁰⁷ The corruption that impedes proper investigations and causes arbitrary arrests also affects the timely release of suspects.¹⁰⁸ Timely releases can be hampered by police demands for a fee in order to be released on bond. Ideally, bond is supposed to be granted to any suspect charged with a minor offense, such as petty theft or assault, or to any suspect, regardless of the

98. Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

99. UGANDA CONST. ch. 4, § 23(4)(b).

100. *Id.*

101. *Id.* at ch. 4, § 23(4). *See also id.* at ch. 4, § 23(2) (prohibiting the use of safe houses).

102. Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

103. Interview with Commander Steven Munchara Kassiima, District Police Commander (DPC), at Kampala Central Police Station, Kampala, in Uganda (May 27, 2004).

104. *Id.*

105. *Id.*

106. 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, Uganda (May 24, 2004 – June 10, 2004); Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

107. *See* REPORT OF THE JUDICIAL COMMISSION, *supra* note 1, at 45-49, 261.

108. Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

crime, who has been detained for forty-eight hours.¹⁰⁹ Regardless of the reason for releasing the suspect on bond, there is no charge associated.¹¹⁰ A suspect should not have to pay a fee in order to be released on bond.¹¹¹ Unfortunately, almost all suspects are asked to pay a fee to be released on bond.¹¹² Consider the following instances:

- ♦ A seventeen year-old boy was detained for charges of defilement and was offered bond in return for a payment of 500,000 shillings.¹¹³
- ♦ An eighteen year-old boy detained for defilement and was offered bond in exchange for three million shillings.¹¹⁴

Most suspects are unable to pay these exorbitant fees and, therefore, are forced to remain in the police cells until the officers decide to move the case forward to court.¹¹⁵ However, suspects typically have some petty cash available that they can bribe officers with to push their cases forward.¹¹⁶ This, however, is a double-edged sword. Why would an officer want to push a case forward when the suspect is paying him small sums of money each day? Hence, the officer might deceive the suspect so that he believes that the officer is helping to push his case forward.

Some of the reasons for violation of the forty-eight hour provision are not so purposeful. Many of the delays are due to logistical problems, such as lack of transportation, backlog at the Directorate of Public Prosecution's Office, and lengthy investigations. Most of the police stations are supplied with only one vehicle, which is to be used for investigations, to transport suspects and witnesses to court, and for stationing officers.¹¹⁷ Even though the vehicle is to be used for these purposes, many times a station's vehicles are used for personal errands of high ranking officers.¹¹⁸ In addition, investigations alone

109. Interview with Commander Steven Munchara Kassiima, District Police Commander (DPC), at Kampala Central Police Station, in Kampala, Uganda (May 27, 2004).

110. *Id.*

111. *Id.*

112. Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

113. Interview with suspect, name withheld for security, at Katwe Police Station, Katwe, Uganda (June 1, 2004).

114. Interview with suspect, name withheld for security, at Old Kampala Police Station, Old Kampala, Uganda (May 26, 2004).

115. Interviews with suspects, names withheld for security, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

116. *Id.*

117. 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, 2004 – June 10, 2004).

118. Interviews with O/Cs at Old Kampala Police Station, Jinja Road Police Station, Katwe

take a significant period of time. Since the infrastructure is lacking in Uganda, especially in the rural areas, following a lead can be difficult. In Uganda, it can take hours to perform even a simple task, such as finding a witnesses' home. Although, police budgets often include money for new vehicles, corruption in the Ministries often prevents vehicles from reaching their destinations.¹¹⁹ The Registrar of the High Court-Kampala, His Worship Lawrence Gidudu, expressed his concern regarding the issue of transportation.¹²⁰ He reported that vehicles that have been donated or budgeted to police stations and other detention facilities are often used for other matters, sometimes even for personal reasons, by Ministry officials.¹²¹ Also, money designated to supply fuel for transport is often frivolously spent, further adding to the problems with transporting suspects.¹²²

The backlog at the Directorate of Public Prosecution's office (DPP) also leads to a delay in bringing the suspect to court. This delay is likely a result of the large number of cases that the DPP's office handles and the lack of state prosecutors to handle cases.

Yet, even when there are no conditions hindering investigations, it is still unreasonable to expect that the police officers will finish their investigations within forty-eight hours. Since it is customary to make an arrest before any substantive investigations are performed, the police officers would have only forty-eight hours to gather enough evidence to put before a magistrate.¹²³ This is an unrealistic goal. The laws of Uganda provide a loophole to this problem, however, by allowing a suspect to be remanded while further investigations are being made.¹²⁴

Police Station, Naggalama Police Station, Lugazi Police Station, and Mukono Police Station, Uganda (May 24, 2004 – June 10, 2004).

119. Interview with His Worship Lawrence Gidudu, Registrar of Kampala High Court, in Kampala, Uganda. (June 10, 2004).

120. *Id.*

121. *Id.*

122. *Id.*

123. 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, 2004 – June 10, 2004).

124. This fact is also observed in the field. It seems that prosecutors do not have sufficient evidence to secure a conviction, so they send the suspect on remand until they can acquire this evidence. See Odoki, *supra* note 34, at 78 (citing *Kulanima v. Uganda*, 1971 High Ct. Bull. 210, 211 (Uganda High Ct.)). See also UGANDA CONST. ch. 4, §23(6)(b) (providing for bail if the person has been remanded for 120 days). Observational visits at Kawolo Local Administration Prison in Kawolo-Mukono, Uganda (June 11, 2004) and Mukono-Kauga Local Administration Prison, Kauga, Uganda (June 11, 2004).

F. Condition of Police Cells

Since suspects regularly spend considerable time in police cells before attending court, it would at least be comforting to know that the suspects' accommodations are decent. Unfortunately, accommodations are less than desirable. Cells are overcrowded, facilities unhygienic, and bathing and drinking water inaccessible.¹²⁵ Such conditions only make the long length of the stay that much worse.

Overcrowding in the cells has become a problem due to the delay in bringing suspects to court. Ideally, there should be as many suspects leaving the cells as entering on any given day. The detention facilities in most of the cells are small; many of them are merely two ten-foot by ten-foot rooms connected by a hallway with a small bathing facility at the end.¹²⁶ Some facilities are fortunate enough to have a third room.¹²⁷ The newest facility in Kampala, the Kampala Central Police Station, has addressed the space issue.¹²⁸

This facility has an underground cell with at least a dozen rooms, two large foyers, and multiple bathing areas and toilet facilities.¹²⁹ Ideally, once at capacity, other police stations would transfer suspects to Kampala Central, which can adequately hold extra suspects. Officer Ngobi, the Officer-in-Charge of Old Kampala Police Station reported that he never allows his cells to become overcrowded, and that when cells reach capacity, he transfers suspects to Kampala Central or Jinja Road Police Stations.¹³⁰ While this is admirable, Jinja Road Police Station should not accept transfers, as it averages forty-five suspects per day and its capacity is only thirty!¹³¹

Health and sanitation is also a concern in many of Uganda's police stations. Most police stations in Uganda lack water, soap, and garbage

125. These issues are common at most police stations, though there are some that have dealt with this situation accordingly. Observations from visiting Kampala Central Police Station, Jinja Road Police Station, Naggalama Police Station, Mukono Police Station, Old Kampala Police Station, Lugazi Police Station and Katwe Police Station, in Uganda (May 19, 2004 through August 10, 2004).

126. Observation from visiting Kampala Central Police Station, Jinja Road Police Station, Naggalama Police Station, Mukono Police Station, Old Kampala Police Station, Lugazi Police Station and Katwe Police Station, in Uganda (May 19, 2004 through August 10, 2004).

127. Katwe Police Station is an example of a police station with a third room.

128. Kampala Central Police Station is the only station with a large detention facility. Observation from visiting Kampala Central Police Station, Jinja Road Police Station, Naggalama Police Station, Mukono Police Station, Old Kampala Police Station, Lugazi Police Station and Katwe Police Station, in Uganda (May 19, 2004 through August 10, 2004).

129. Observational visits Kampala Central Police Station, Kampala, Uganda (May 27, 2004 - August 10, 2004).

130. Interview with Officer Ngobi, O/C, at Old Kampala Police Station, in Old Kampala, Uganda (May 26, 2004).

131. Interview with Onencan J. Stevens, O/C, at Jinja Road Police Station, in Kampala, Uganda (May 24, 2004 & June 21, 2004).

depositories, which leads to a filthy and unhygienic facility for suspects.¹³² At Jinja Road Police Station, the toilet failed to flush and personal waste was left exposed and not removed for days, while windows were either blocked or lacking.¹³³ The result was an unventilated and stuffy area where mosquitoes were rampant due to the humid and filthy conditions.¹³⁴ Such problems are common in many Ugandan police stations. At Mukono Police Station, suspects were prevented from showering during their entire stay; some had not showered in over ten days, resulting in skin issues for many of the suspects.¹³⁵ The condition of detention facilities is an important issue that needs to be addressed so that suspects are not deprived of their fundamental human rights.

II. THE PROCESS OF REMAND

The process of remand is a per se violation of fundamental human rights and contradictory to Article 28(1) of the Ugandan Constitution, which provides for a speedy trial.¹³⁶ Article 23(6) of the Ugandan Constitution allows for a suspect to be detained pre-trial for 120 days or 360 days depending on whether the case is tried by a subordinate court or by the High Court.¹³⁷ Article 23(6) states:

(b) in the case of an offence which is triable by the High Court as well as by a subordinate court, the person shall be released on bail on such conditions as the court considers reasonable, if that person has been remanded in custody in respect of the offence before trial for one hundred and twenty days;¹³⁸

(c) in the case of an offence triable only by the High Court the person shall be released on bail on such conditions as the Court considers reasonable, if the person has been remanded

132. Observational visits, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station, in Uganda (May 19, 2004 through August 10, 2004).

133. Observational visit at Jinja Road Police Station, in Kampala, Uganda (May 24, 2004).

134. *Id.*

135. Observational visit at Mukono Police Station, Mukono, Uganda (June 10, 2004).

136. UGANDA CONST. ch. 4, § 28(1) ("In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.") See also *Universal Declaration of Human Rights*, *supra* note 95, at art. 10; *International Covenant on Civil and Political Rights*, article 9(3); *African Charter on Human Rights and People's Rights*, G.A. Res. 2200 A (XXI), 21 U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S., art. 9(3), entered into force March 23, 1976.; *African Charter*, *supra* note 95, at art. 7(1).

137. UGANDA CONST. ch. 4, § 23(6).

138. *Id.* at ch. 4, § 23(6)(b).

in custody for three hundred and sixty days before the case is committed to the High Court.¹³⁹

A speedy trial is a fundamental human right that is being impinged upon by Uganda's remand process.¹⁴⁰ Even when the law is followed, a suspect has an extensive wait before being tried by a court of law. After being brought to court within forty-eight hours of arrest (ideally), the court typically remands the suspect for either 120 or 360 days, depending on the severity of the case, prior to trial.¹⁴¹ Some courts have ruled that there must be probable cause to further detain the suspect.¹⁴² Regardless of whether probable cause is shown, however, the suspect has effectively been denied a speedy trial. And yet, in Uganda, a suspect would be lucky to only be detained for such a length of time prior to trial.

Similar to the situation in the police stations, suspects on remand often are deprived of their rights under the laws of Uganda. Article 28(3)(a) of Uganda's Constitution states, "Every person who is charged with a criminal offence shall-- be presumed to be innocent until proved guilty or until that person has pleaded guilty."¹⁴³ Therefore, a suspect being held on remand is innocent until his trial before the court. Ironically, suspects on remand are detained in the same detention centers, and sometimes even the same cells, as convicted offenders.¹⁴⁴ In Kawolo Local Administration Prison there were ninety-nine male detainees at the time of their interview, thirty-one of which were convicts and sixty-eight were suspects on remand.¹⁴⁵ Both the suspects and the prisoners were housed together and forced to work in strenuous conditions to grow their own food and to maintain their own facilities.¹⁴⁶ At Mukono-Kauga Local Administration Prison, where there were eighty-one convicts and 126 remanded suspects, suspects and prisoners alike were required to fetch water three times a day from a well located two miles from the facility.¹⁴⁷

The requirement that suspects be released from all charges if not brought to court within the specified remand period is often violated.¹⁴⁸ Table 3

139. *Id.* at ch. 4, § 23(6)(c).

140. See *Universal Declaration of Human Rights*, *supra* note 95, at art. 10; *African Charter*, *supra* note 95, at art. 7(1).

141. UGANDA CONST. ch. 4, § 23(6).

142. Rone & Kippenberg, *supra* note 10, at 60.

143. UGANDA CONST. ch. 4, § 28(3)(a).

144. Observational visits, at Old Kampala Police Station, Kampala Central Police Station, Jinja Road Police Station, Mukono Police Station, Lugazi Police Station, Katwe Police Station and Naggalama Police Station in Uganda. (May 19, 2004 through August 10, 2004).

145. Observational visit, at Kawolo Local Administration Prison, in Kawolo-Mukono, Uganda (June 11, 2004).

146. *Id.*

147. Observational visit, at Mukono-Kauga Local Administration Prison, Kauga, Uganda (June 11, 2004).

148. UGANDA CONST. ch. 4, § 23(6).

articulates this problem. These statistics only consider suspects remanded for capital offences that are triable by the High Court.

Table 3: High Court cases (capital offenses) that were on remand in January 1990.¹⁴⁹

	Remand Period	Number of Suspects (Total: 11,525)
	Below 6 months	767
	6 months – 1 year	3,575
Over Maximum Time →	1 year – 480 days	2,782
	480 days – 2 years	2,127
	2 years – 3 years	1,655
	3 years – 4 years	525
	4 years – 5 years	88
	Over 5 years	6

Few suspects, if any, should be detained over the mandatory period. However, Table 3 shows that 62% of all suspects sent on remand are being detained longer than the maximum period.¹⁵⁰ This is an alarming rate that should alert law enforcers and government officials that the present system of remand is flawed.

However, Article 23(6) of Uganda's constitution, which provides for remand of a suspect within 120 or 360 days, depending on the severity of the case, has improved the process of remand. Prior to implementation of the constitutional provision in 1995, the Magistrates' Court (Amendment) Statute § 74, provided that a suspect could remain on remand for 240 days or 480 days depending on the court trying the case.¹⁵¹ Presently, further plans are in place to improve this system. The government has proposed that Article 23(6) of the Constitution be amended so that suspects tried by the High Court are remanded only for 120 days and suspects tried by subordinate courts are remanded for only sixty days.¹⁵² To date, this proposed amendment is being considered by Parliament.¹⁵³ This is definitely an improvement, but there is plenty of room for further development. Even sixty days is a significant period of time to be detained *prior* to being found guilty by a court of law.

149. Odoki, *supra* note 34, at 76.

150. The sixty-two percent figure is derived from the figures presented in Table 3.

151. See Odoki, *supra* note 34, at 74 (quoting Magistrates' Court (Amendment) Statute, § 74 (1990)).

152. E-mail from Sheila Muwanga Nabachwa, Access to Justice Coordinator, Foundation for Human Rights Initiative (FHRI) (December 6, 2004) (on file with author).

153. *Id.*

III. THE COURT SYSTEM

The Ugandan court system should be a place where violators of the laws are punished; however, the court system also partakes in its own criminal activities.¹⁵⁴ A corrupt and inefficient judicial system only adds to the deprivation of a suspect's right to a fair and impartial trial.

After disposing of the dual court system that resulted from English colonialism, the Magistrates' Courts Act of 1964 established a unified court system.¹⁵⁵ This contemporary judicial system is composed of the Supreme Court of Uganda, the High Court, the Chief Magistrates' Court, the Magistrates' Courts of grades I through III, and the resistance committee courts.¹⁵⁶ Please refer to Table 4 for the roles and objectives of the different tiers in the unified court system.

Table 4: The different levels of courts in Uganda and their jurisdiction.

Supreme Court of Uganda	Appellate tribunal established in 1987 after the fall of the East African Court of Appeals. It hears first and second appeals from the High Court. ¹⁵⁷
High Court	Established in the Constitution. It has original and appellate jurisdiction. It hears capital cases including those crimes that carry the death penalty. It also has jurisdiction over matrimonial and probate issues, Constitutional questions, admiralty, and election petitions. ¹⁵⁸
Chief Magistrates' Court	This court has jurisdiction over criminal offenses except those that carry the death penalty. It also has appellate jurisdiction over cases heard at the Magistrates' Courts Grade I and II. ¹⁵⁹
Magistrates' Courts Grade I	Like the Chief Magistrates' Court, these courts have jurisdiction over cases not punishable by death. They, however, do not have jurisdiction over cases where the maximum sentence is life imprisonment. The maximum sentence is imprisonment for ten years. ¹⁶⁰
Magistrates' Courts Grade II	These courts have jurisdiction over minor offenses

154. Anne Mugisa, *Combating Corruption in the Judiciary: The Role of the Press*, African Judicial Network Conference, Bamako, Mali (Feb 18-20, 2003), available at <http://ajnl.rti.org/index.cfm?fuseaction=abstractsBamako2003&paper=Mugisa&l=eng>.

155. Odoki, *supra* note 34, at 59.

156. Republic of Uganda, Courts of Judicature, at <http://www.judicature.go.ug> (last visited December 19, 2005).

157. Odoki, *supra* note 34, at 60-61.

158. *Id.* at 61.

159. *Id.* at 62.

160. *Id.* (citing Magistrates' Courts (Amendment) Statute §158, No. 6/90 (1990) (Uganda)).

	with a maximum sentence of imprisonment for three years. ¹⁶¹
Magistrates' Courts Grade III	These courts have jurisdiction over minor offenses with a maximum sentence of imprisonment for one year. ¹⁶²
Resistance Committee Courts	These Courts are composed of village councils at the local level elected from their community by their peers. They have jurisdiction over minor disputes including debts, contracts, trespass, real estate transactions, and marital statuses. ¹⁶³

One would hope that the administrators of justice would not participate in corruptive practices. However, in Uganda, magistrates and their staff actively partake in coercive practices. The Inspector General of Government has suggested that at least half of the defendants are encouraged to pay a bribe.¹⁶⁴ As one woman from the Toro district said, "In courts of law, winning a case depends on whether one has money or not. Right from the messenger, you have to oil the system."¹⁶⁵ Another woman exemplified this statement regarding her experience with the court: "I went to the Magistrates [sic] court, I had a case with someone who had killed my cow. Every time, I was taking money to court. The magistrate used to ask me if I had brought something."¹⁶⁶ If a bribe is made to benefit one party, the vital documents may be plucked out of the file or the file may mysteriously disappear.¹⁶⁷ Other times, the judgment is just never made.¹⁶⁸ In one case, where government officials were indicted for embezzling 14,000,000 shillings (approximately \$8,250), the magistrate released the suspect and "forgot" to draft a judgment.¹⁶⁹ Upon inquiry by the inspector of courts, the magistrate claimed that the judgment was being typed and later tried to write a judgment which she back-dated.¹⁷⁰ She was caught when it was discovered that the date of the judgment was a Sunday, which is a day that courts are not in session.¹⁷¹

Sometimes the corruption has no effect on the judgment, but exhibit funds or bail money are not accounted for. A few years prior to 2003, the Judicial Commission of Inquiry discovered that 2.5 million shillings

161. *Id.* (citing, Magistrates' Courts (Amendment) Statute §157-158, No. 6/90 (1990) (Uganda)).

162. *Id.* (citing, Magistrates' Courts (Amendment) Statute §157-158, No. 6/90 (1990) (Uganda)).

163. *Id.* at 63-64 (citing Resistance Councils and Committees Statute, No. 9/87 (Uganda 1987)).

164. Anne Mugisa, *Combating Corruption in the Judiciary: The Role of the Press*, African Judicial Network Conference, Bamako, Mali (Feb 18-20, 2003), available at <http://ajn.rti.org/index.cfm?fuseaction=abstractsBamako2003&paper=Mugisa&l=eng>.

165. *Id.*

166. *Id.*

167. *See id.*

168. *See id.*

169. *Id.* at 3-4.

170. *Id.* at 4.

171. *Id.*

(approximately \$2,500) of exhibit money was not accounted for.¹⁷² Testimony from a court clerk provided that the magistrate and his secretary were holding the money in "safe custody" in the secretary's millet (produce) business.¹⁷³ Later the magistrate purchased a car with his share.¹⁷⁴

Unfortunately, even when these activities are discovered, they are not adequately resolved. One magistrate, found to have stolen bail money, was merely required to pay the money back without ever facing criminal charges;¹⁷⁵ a meek punishment for such an offensive crime. In another case, a court clerk who accepted a bribe to make a file disappear had her salary docked in half for one year, but it was later reinstated prior to the conclusion of the year.¹⁷⁶

As Anne Mugisa, a journalist in Uganda, noted, "While there is public outcry, there seems to be sworn silence in the corridors of the judiciary or even outright denial that anything is happening."¹⁷⁷ Many of the magistrates deny the existence of corruption in the judiciary, and blame the associated problems on the communication between the DPP and the police.¹⁷⁸ As the corruption in the judicial system continues, the public becomes more wary of the system.¹⁷⁹

IV. THE UGANDAN PRISON SYSTEM

The Uganda Prison Service is under the control of the Ministry of Internal Affairs.¹⁸⁰ Though the prisons might have improved under Museveni's leadership, prisons in Uganda today still show a cause for concern. In 1999, the Prison Service was responsible for 13,000 inmates.¹⁸¹ The remainder of the convicts were detained at local administration prisons.¹⁸² However, there has been an indication that the two prison systems will merge together.¹⁸³

Convicts (and suspects on remand) suffer tremendously at many of the prisons throughout Uganda. Regardless of whether torture is being used on the detainees at these centers, the conditions of most Ugandan prisons are appalling. Cells are typically overcrowded, food is inadequate, clothing and bedding is insufficient, and the facilities are unsanitary.¹⁸⁴ Such conditions are blatant violations of international human rights standards.¹⁸⁵

172. *Id.* at 2.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.* at 3.

177. *Id.* at 2.

178. *See id.* at 3.

179. *See id.* at 1.

180. WSJ Coetzee & WJ Clark, *Uganda Prisons Adopt Open Policy and Reform*, CRIME & JUSTICE INT'L, July-Aug. 1999, vol. 15, 15.

181. *Id.* at 16.

182. Interview with O/C, Mary Tamale, at Mukono-Kauga Local Administration Prison in Kauga, Uganda (June 11, 2004).

183. *Id.*

184. Observational Visits, at Mukono-Kauga Local Administration Prison and Kawolo Local Administration Prison, in Uganda (June 11, 2004); *See also*, Coetzee & Clark, *supra* note

Overcrowding tends to be a common problem with all types of detention facilities and prisons in Uganda. In 1986, the Murchison Bay Prison detained approximately 10,000 people when the maximum capacity was 800.¹⁸⁶ In 1990, Masaka Central Prison housed 456 detainees when the capacity was 120.¹⁸⁷ More recent research shows that overcrowding continues to be a problem. In Kawolo Local Administration Prison, each twelve-foot by twelve-foot cell holds approximately thirty people.¹⁸⁸ The overcrowding problem is further elevated by the fact detainees are rarely allowed to leave the cells, since the facility lacks a fence surrounding the property.¹⁸⁹ Still, some detainees are allowed out of their cells to perform hard labor since this prison is responsible for growing its own food.¹⁹⁰ Other detainees are required to fetch water, sometimes from as far as two miles away.¹⁹¹ Most detainees admit they prefer being held all day in their cells to performing such rigorous labor.¹⁹²

Hard labor has become more of an issue due to inadequate amounts of food and water given to the detainees. Suspects are typically only fed cassava once a day.¹⁹³ Detainees in prisons run by the Uganda Prison Service are slightly more fortunate since they are not required to grow their own food; they are served posho¹⁹⁴ and beans one to three times a day.¹⁹⁵

In addition to the inadequate amounts of food and water, all prisons in Uganda have a shortage of blankets, clothing and mattresses.¹⁹⁶ The Uganda Prison Service has reported that the government can only supply blankets to twenty-five percent of the inmates and clothes to thirty percent of inmates.¹⁹⁷ These percentages do not incorporate the large numbers of detainees without adequate clothes or blankets at the local administration prisons. Some detainees are lucky enough to have papyrus mats to sleep on, but most sleep on bare floors.¹⁹⁸ The only prison known to have mattresses is Luzira Women's

142, at 16.

185. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment G.A. Res. 43/173 (Dec. 9, 1988); See also, Article 5, International Covenant on Civil and Political Rights, U.N. Doc A/6316 (1966).

186. FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS, UGANDA: A COUNTRY STUDY (Rita Byrnes ed., 1992).

187. *Id.*

188. Observational visit, Kawolo Local Administration Prison, Kawolo, Uganda (June 11, 2004).

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.* Cassava is a shrub with an edible root that is a staple food in many parts of Africa.

194. Posho is maize that is pounded into corn flour and then cooked. Also known as Ugali, it is a staple food of East Africa. See Mukwano Industries online cookbook, found at <http://www.mukwano.com/cookbook.asp>.

195. Coetzee & Clark, *supra* note 180, at 16.

196. *Id.*

197. *Id.*

198. Observational visit, Kawolo Local Administration Prison, in Kawolo, Uganda (June 11, 2004). See also Coetzee & Clark, *supra* note 180, at 16.

Prison.¹⁹⁹ These mattresses were donated by the International Red Cross in 1997.²⁰⁰

It has been suggested that 10% of inmates die while detained in Ugandan prisons.²⁰¹ It is believed the main reasons for this exorbitant death rate are AIDs and malnutrition.²⁰² Unfortunately, malnutrition is probably due to the prison lifestyle. In addition, detainees are also often deprived of medical care, so a treatable illness such as malaria can quickly turn into a cause of death.²⁰³ In one case, fifty-two-year-old Steven Egava was serving a sentence for a defilement conviction at Kawolo Local Administration Prison when he suffered a seriously broken arm.²⁰⁴ Egava was denied any pain medication or treatment for his injury.²⁰⁵

V. 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.

A. *Recommendations for the Laws*

- ♦ Article 23(4)(b) of the Ugandan Constitution needs to be re-written 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.

199. Coetzee & Clark, *supra* note 180, at 16.

200. *Id.*

201. *Id.*

202. *Id.*

203. *See id.*; Observational Visits, Mukono-Kauga Local Administration Prison and Kawolo Local Administration Prison, in Uganda (June 11, 2004).

204. Interview with convicted defiler, Steven Egava, at Kawolo Local Administration Prison, in Kawolo-Mukono, Uganda (June 11, 2004).

205. *Id.*

- ♦ 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.

B. Other Recommendations

- ♦ 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.

VI. CONCLUSION

Although the Ugandan justice system has come a long way, 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.

