



Policy Brief 010

Brutal arrests, illegal detention and torture: A failed test for rule of law in Uganda



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Authors

Nannozi Susanie Ggoobi

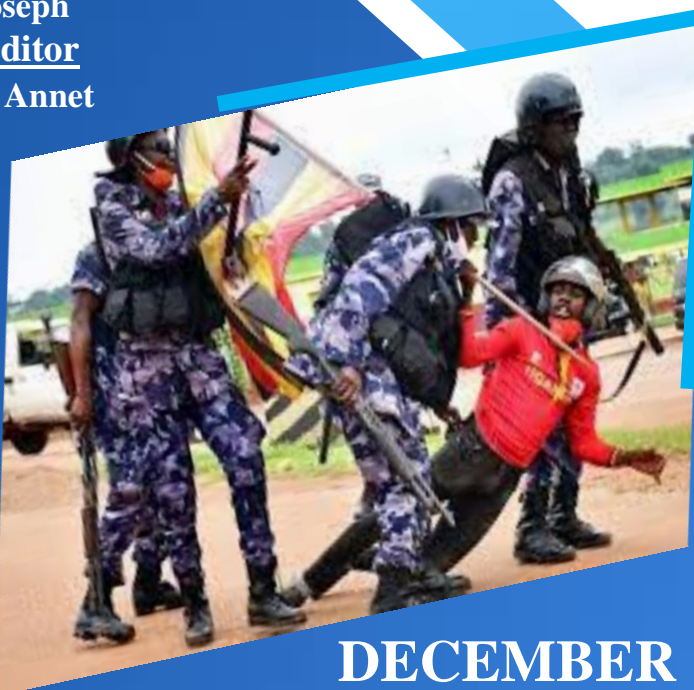
Kibira Vicent

Kiberu Jonah

Kayemba Joseph

Language editor

Namuganga Annet



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Human rights and rule of law violations have been evidenced in various incidences for instance: arbitrary killings, abductions, alleged torture and arrest, unlawful detention, violation of rights of journalists, censorship of press etc. Such acts are allegedly largely committed by government security agents that brutally arrest and detain suspects in unidentified places and safe houses. Many people have been unlawfully arrested, detained for more than 48hours without trial, and allegedly tortured, and this counteracts the law. Reports have come out pinning several government security agencies (CID, SFC etc) and operatives (police officers, military) on committing atrocities during arresting of suspects (enforcing law and order). Some officers go beyond their geographical jurisdictions while others remain

unidentified or hide their names and this stops the tortured from seeking justice. The Prevention and Prohibition of Torture Act (2012) stipulates that any person convicted of torture is liable to a 15 year's imprisonment or a fine of sixty currency points or both. Despite the existence of such laws, torture allegedly appears to be escalating in Uganda.

This brief recommends that arrests of suspects by security operatives should be executed within the law.

There is a need to redefine the role of the Army and Police in order to reduce the militarization by the police (excessive brutality) during arrests. This, combined with other law enforcement reforms, will also restore the reputation and public trust for Uganda's security personnel.

Background and Introduction

The right to freedom against torture is preserved in many human rights instruments and it protects all citizens from being deliberately subjected to severe psychological or physical distress by government security agents. The Constitution of the Republic of Uganda offers mandate to every citizen to exercise his or her right in respect of others.

Torture is prohibited under the International Law (1948), the International Covenant on Civil and Political Rights (1966) and the African Charter on Human and People's Rights (1981) prohibit acts of arbitrary detention. The Ugandan law, too, protects the right to freedom from torture i.e. Article 24 of the Constitution stipulates that No person shall be subjected to any form of torture, cruelty, inhuman

or degrading treatment or punishment. The law thus prohibits acts of unlawful arrest, torture, and illegal detention of suspected criminals.

Excessive torture by Uganda's security agencies dates as far back as 2002 with the unpopular 'Operations Wembley' whose activities involved extrajudicial killings, illegal detention, forced confessions from criminal suspects among others. It was disbanded and replaced with the Violent Crime Crack Unit (VCCU), and this was also replaced with Rapid Response Unit (RRU), a security body to handle criminal investigations.

The Prevention and Prohibition of Torture Act (Sect.3) stipulates that if any person is convicted of an act of torture, he or she is liable to be sentenced to 15 years' imprisonment, a fine of sixty currency points or both. In addition, the penalty for conviction of aggravated torture is life imprisonment.

Victims of Torture and Unlawful Detention

In 2017, the then IGP Andrew Felix Kaweesi, together with his bodyguard, Kenneth Erau, and driver, Godfrey Wambewo, were reportedly gunned down by an unknown criminal gang (Otine Andrew, 2018). Security investigations identified 22 people who were suspected to have had a hand in the killing of Andrew Felix Kaweesi. These were allegedly subjected to brutality by police operatives during their arrest and while in detention centers. The suspects included Abdul Rashid Mbaziira who was arrested and taken to Jinja

Road police station. His wives and children were also ruthlessly arrested and remanded at Naggalama police station where they were reportedly subjected to a series of brutalities and forced to confess on criminal charges (Daily Monitor, 20th May, 2017). Many of the families of the suspected criminals had to suffer due to arrest of their loved ones as some couldn't afford school fees for their children, food, and many were rendered homeless after being evicted for rent arrears.

Several other people were arrested due to the murder of Maj.Kiggundu, who was shot dead along with his bodyguard, Sgt Steven Mukasa, by unknown assailants on motorcycles at Masanafu; a Kampala suburb, near the Northern bypass on Saturday November 26th, 2016 (Uganda's Judiciary, 2016).

However, in February 2021, after they had been subjected to all sorts of unlawful torture, the Deputy Registrar of the International Crimes Division of the High Court, Stella Beatrice Atingu, concluded that court was then left with no option but to release the suspects. This was after the state prosecutors lost interest in the case due to failure to present evidence. In a similar instance, reports indicate that the Joint Security Team has recently arrested and tortured at least 5 people suspected to have been behind the attack on Gen. Katumba Wamala, in which his daughter,

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Brenda Nantongo, and driver, Haruna Kayondo were gunned down on June 1, 2021 (BBC,2021). The then Deputy Inspector General of Police Late Maj Gen Paul Lokech revealed that the identified suspects in detention included Muhammad Kagugube alias Bafumoya, Kisambira Siriman alias Mukwasi, Walusimbi Kamada alias Mudinka, and Mustafa Kawawa Ramadan alias Amin (UPF,2021). These were reportedly tortured during arrest and in the process, one of the alleged ring leaders Lutwama Hussein alias Master was killed by security officers.

On August 13th, 2018, the Special Forces Command (SFC) arrested Members of Parliament, Hon.Kyagulanyi aka Bobi Wine (Kyaddondo East) and Hon. Francis Zaake (Mityana Municipality) among others (Country report on Human Rights Practices for 2018). On August 15th, 2018, local media houses published images of Zaake taken from a health facility in Arua, where he had been arrested during campaigns (HRP,2018). The images showed a swollen face, bruises, and gross wounds and cuts on the legs, hands, and ears, a manifestation that he had been tortured. All these are reported to have been experienced while in military detention (HRP,2018). On August 16th, 2019, when UPDF brought Kyagulanyi to the Military Court, his lawyers reported that he had swellings and bruises on the face, and it was clearly seen that he couldn't stand on his own, and could walk and

talk with difficulty (HRP,2018). Kyagulanyi went abroad for further medical treatment in The US (Washington Post, September 6th,2018). *'The orders were clear to brutalize me,' Ugandan pop star turned opposition leader said. 'I was tortured by soldiers', Kyagulanyi said with painful blisters.*

During the 2020 general elections campaigns, supporters of Kyagulanyi, a presidential aspirant, were brutally arrested while in Kalangala District and later transferred to Masaka Prison, where they were detained beyond 48 hours without trial. (Constitution, 1995) states that a person arrested shall be brought to court not later than 48 hours from the time of his/her arrest.

In July 2020, the African Center for Treatment and Rehabilitation of Torture Victims had registered 63 allegations of torture championed by the Uganda Police Force, 7 committed by the Flying Squad Unit while 12 by the Uganda People's Defense Force (UPDF-the National Army). Almost all the detainees suffered acts of violence during their arrest. They were punched, kicked, and some hit with guns during arrest or while at detention centers. Such atrocities were committed while trying to extract more information from the suspects about specific cases. The torture and beatings allegedly happened during transportation between locations at RRU headquarters in Kireka and in other unknown detention centers (Human Rights Watch, 2011). From the

interviews conducted by Human Rights Watch on 77 respondents arrested by RRU, 60 responded that officers used to punch, beat and subject them to all sorts of torture while in unknown detention centers. Tortured victims revealed difficulty in walking or lifting heavy objects, and this took quite some time. One detainee who had been beaten three months earlier said, “They hit me in the chest, and I still have pain even in my joints. At RRU [Rapid Response Unit] station ... they don’t want to listen. They want you to accept that you’ve stolen something. With the pain of beating, you accept”.

The torture could not leave out female detainees. A woman detained in Kireka for five months without charge informed Human Rights Watch (2010) that she witnessed eight women being tortured by RRU agents, who also forced needles under her fingernails during interrogations. She showed Human Rights Watch multiple black pin-like scars on her fingertips. “I cannot recall the number of times they pierced my nails My nails were destroyed. They were black, swollen, and painful. The needles were inserted under the nail, on both my hands and feet. They pierced every nail” One of the suspects said.

Conditions in Prisons and Detention Centers

In 2016, Nalufenya in Jinja was one of the most notorious torture centers for suspects especially politicians and activists.

The prevailing conditions in prisons and detention centers have remained poor and a menace to human lives. They are characterized by overcrowding, excessive torture by security personnel, physical and psychological abuse by fellow detainees, and to top it all, malnutrition. Accommodation too is poor and many prisons made no considerations whatsoever, for people living with disabilities. Many prisons house twice the number of inmates allocated during construction, and sometimes even more.

The Uganda Prisons Service (UPS) reported, it held 49,322 inmates yet the prisons were designed to cater for 22,000 inmates (*US Mission on the World Human Rights Day in 2018*). The Uganda Human Rights Commission during its visit in Arua Prison, found 840 inmates instead of the 250 capacity that was planned (*Country Report on Human Rights Practices for 2018*). The Kamwenge Police Station, particularly men’s cell, was found housing 30 detainees instead of eight. This overcrowding in police cells and prisons has mainly been attributed to the delays in the judicial system, sometimes due to the limited number of magistrates (HRP, 2018). The Uganda Prisons Service laments that overcrowding has increased the spread of diseases, mostly communicable diseases such as the resistant tuberculosis.

The Foundation for Human Rights Initiative (2018) and the Uganda Prison Service noted

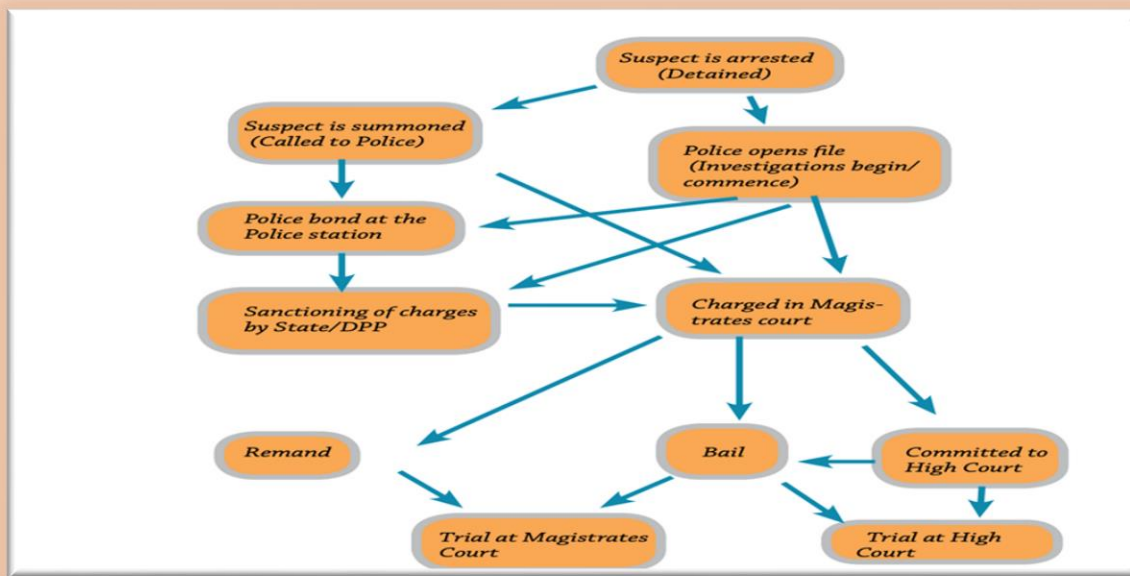
that there were reports of food shortages in prisons. This propelled some inmates to engage in illegal activities like petty theft, and sex trades with fellow inmates or prison staff in order to obtain food. The Parliament in

2020 discussed the state of prisons and detention centers to see how they could allocate more funding to improve the state of such facilities.

Arrest and Detention of Suspected Criminals in the Context of Ugandan laws

The law (chapter 16, Magistrates Courts Act) requires prosecutors to issue a warrant of arrest before an arrest is made unless it is made during commission of a crime or while in pursuit of a perpetrator. Nevertheless, authorities often arrest suspects without warrants (Chapter 303 of the Police Act). The procedure for arrest and detention is shown in figure 1 below;

Fig 1: Procedure for Arrest and Detention in Uganda



Extracted from: Foundation for Human Rights Initiative (2011)

The law (Uganda Constitution 1995) requires authorities to present suspects before court within 48 hours of arrest. However, this is not the practice as authorities often hold suspects for longer hours without trial. For cases of capital offenses, the Anti-terrorism law (Anti-terrorism Act 2002) stipulates that Authorities must try suspects within a period of 120 days. The law requires authorities to inform detainees or suspects immediately of the reasons for their detention. However, this is not implemented as stipulated by the law. ***The law provides for bail upon the will of the judge, but many detainees are not informed and some lack the financial ability to cover costs related to bonds.*** Many security forces have frequently held government critics incommunicado under unidentified safe houses, yet it is in order for the family members to know where their relatives are. Courts have

registered huge case backlogs, and this is attributed to an inefficient judiciary system which lacks staff and adequate funding from the government. There is also insufficient use of bail due to detainees' ignorance of the law, and absence of a time limit within which detainees who await trial should be kept in jail. In 2017, the FHRI reported that 20% of prisoners in Uganda had spent at least three years in pretrial detention. By June 2020, the case backlog had increased by 121.1%. The summary of case backlogs by June 2020 is shown in Table 1 below:

Table 1: Case backlog by 30th, June 2020

Court level	Brought forward	Registered	Completed	Pending	Case growth rate
Supreme Court	145	411	94	462	218.6% Increase
Court of Appeal	7,497	1,308	1258	7547	0.7% Increase
High Court	76,779	25,081	33,530	68330	-11.0 Decrease
Chief Magistrates Court	61,039	97,501	96,718	61,882	1.3% Increase
Magistrate Grade I	21,383	33,478	35,454	19,407	-9.2% Decrease
Magistrate Grade II	4,900	2,002	5,887	1,015	-79.3% Decrease
Grand Total	171,743	159,781	172,941	158,583	121.1% Increase

Source: The Judiciary Annual Court Performance Report 2019/2020

Currently, President Yoweri Kaguta Museveni is proposing the removal of bail particularly on criminal offenses as a way of reducing capital criminals among citizens. This is contrary to the Constitution of Uganda (1995).

Key policy Recommendations

- *Arrests should be undertaken within the law.* Security authorities are mandated to follow the law while exercising their duties of arresting suspects. Perpetrators of injustice during arrests should be tried and punished using mobile court sessions from the localities where brutal arrests are committed.



Redefine the role of the Army and Police.

This will reduce the militarization of the police which is one of the causes of brutality during arrests.

- *Bail charges should have maximum limits.* Courts of law should set a realistic fee depending on the case committed.
- *Restructure security forces by limiting the number of their departments*

through consolidation or combining them. This will create public awareness and ease identification of the various security officials unlike the current situation where these departments are difficult to differentiate.

- *Sensitizing the citizens about their rights to bail or bonds.* The law stipulates that everyone has a right to receive a bond or bail from courts of law or police. However, majority of the citizens are ignorant about their rights hence they are illegally detained for longer hours.
- *Authorities should desist from coercive confessions, especially to those suspects under torture.* This will reduce reliance on false evidence that increases the possibility of unrealistic court verdicts and unfair hearing.
- *There is need to bring all arrested suspects to administratively known places.* These should be well defined by law as detention centers fully recognized and monitored.
- *There is need to increase the number of magistrates to ensure timely court hearing to reduce the number of detainees in prisons.* Each district should have at least 4 Magistrate courts especially urban and semi-urban districts. This will reduce case

backlogs.

- *Security forces should identify themselves before arresting suspects and the destined detention centers should be clearly known to the detainees' next of kins.*
- *Prisons should house the designated capacity of detainees, and separate detention centers should be established for both males and females, juveniles, and adults, in order to curb moral decadence among detainees.*
- *Conditions in detention centers should be improved to allow inmates live a healthy life.* This should be on the quality of accommodation facilities, medical care, and nutrition.

Conclusion

Brutal Arrests, Torture, extra judicial killings, and illegal detention have become a widespread human rights violation challenge in Uganda. *It is a tool largely employed in suppression of government critics and enforcement against suspected criminals.* Thousands of criminal suspects suffer from physical injuries and psychological defects associated with torture. In the absence of effective access to justice, citizens have recently resorted to some level of violence, mob justice and illicit behavior.

The judicial system and security forces of Uganda require urgent retooling in human rights, rule of law and redefinition of roles between Police and Uganda People's Defense Forces

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