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PERMANENT MISSION OF THE REPUBLIC OF UGANDA

TO THE UNITED NATIONS, GENEVA



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The Permanent Mission of the Republic of Uganda to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and has the honour to forward herewith the enclosed fully filled questionnaire of the Working Group on Arbitrary Detention.

Any further information you may require can always be furnished as humanly possible.

The Permanent Mission of the Republic of Uganda to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

GENEVA: 23 October



United Nations
Office of the United Nations High
Commissioner for Human Rights
Geneva

QUESTIONNAIRE RELATED TO THE RIGHT OF EVERYONE DEPRIVED OF HIS OR HER LIBERTY BY ARREST OR DETENTION TO BRING PROCEEDINGS BEFORE COURT. IN ORDER THAT THE COURT MAY DECIDE WITHOUT DELAY ON THE LAWFULNESS OF HIS OR HER DETENTION AND ORDER HIS OR HER RELEASE IF THE DETENTION IS NOT LAWFUL

QUESTION ONE

1(a) If your state is a party to the International Covenant on Civil and Political Rights, how is Article 9(4) of the Covenant incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption.

YES, Uganda is a state party to the International Covenant on Civil and Political Rights to which it acceded on the 21 June 1995.

Article 9(4) of the International Covenant on Civil and Political Rights is indeed incorporated in the country's domestic legislation as follows;

(i) **Article 23 (4) of the Constitution of the Republic of Uganda 1995 as amended;**(Commencement 8 October 1995) provides;

A person arrested or detained for the purpose of bringing him or her before a court in execution of an order of a court; or upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

(ii) **Article 43(2) (b) prohibits detention without trial and provides;**

Article 43

(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

(2) Public interest under this article shall not permit— ... (b) detention without trial.

iii) **Section 24 (4) of the Police Act Cap 303 Laws of Uganda 2000 as amended** (Commencement 14 October 1994) provides;

Any person arrested or any other person on his or her behalf who has reason to believe that any person is being unlawfully detained under this section may apply to a magistrate to have such person released with or without security.

(iv) **Section 25 (1) and (2) of the Police Act Cap 303 Laws of Uganda 2000** provides;

A police officer on arresting a suspect without a warrant shall produce the suspect so arrested before a magistrate's court within forty-eight hours unless earlier released on bond.

(v) **Section 14 of the Criminal Procedure Code Act Cap 116 (Commencement 15 June 1950)** provides;

A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions of this Code as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station.

(vi) **Section 15(1) of the Criminal Procedure Code Act Cap 116 Laws of Uganda 2000** provides that a private person may arrest any person who in his view has committed a cognizable offence or whom he reasonably suspects of having committed a felony.

(vii) **Section 17 of the Criminal Procedure Code Act Cap 116 Laws of Uganda 2000** provides;

When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which the person is brought may in any case and shall, if it does not appear practicable to bring the person before an appropriate magistrate's court within twenty-four hours after he or she was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his or her executing a bond, with or without sureties, for a reasonable amount to appear before a magistrate's court at a time and place to be named in the bond; but where any person is retained in custody, he or she shall be brought before a magistrate's court as soon as practicable.

(viii) **Section 188(1) of the UPDF Act NO. 7 of 2005 (Commencement date 2 September 2005)** provides;

A person effecting an arrest under this Act shall immediately commit the person arrested to civil custody or service custody or take him or her to the unit or formation with which he or she is serving or to any other unit or formation of the defence forces and shall, at the time of committal or as soon as is practicable after that but in any case not later than twenty four hours, deliver to the officer or the militant in whose custody that person is committed a statement in writing signed by himself or herself stating the nature of the crime the person is alleged to have committed and particulars of the offence.

QUESTION 2

Does the mechanism apply to all forms of deprivation of liberty, such as administrative detention, including detention for security reasons, involuntary hospitalization, immigration detention, or any other reason?

If yes, please provide the list of the forms of detention to which the mechanism is applicable.

YES, the mechanism in question (1) above applies to various forms of detention such as;

- (i) Preventive arrest and detention (Under the Police Act Cap 303 Laws of Uganda as amended)
- (ii) Detention of Persons reasonably suspected to be of unsound mind, or addicted to drugs or alcohol (Under the Mental Treatment Act Cap 279, Laws of Uganda 2000)
- (iii) Detention of a minor for purposes of his or her welfare
- (iv) Removal to hospital of persons infected with infectious diseases (Under the Public Health Act Cap 281 Laws of Uganda 2000)
- (v) Arrest of persons suspected of contravention of the Uganda Citizenship and Control of Immigration Act (Under the Uganda Citizenship and Immigration Control Act Cap 66 Laws of Uganda 2000 as amended)

QUESTION 3

Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?

YES, the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court is available for individual's subjects to preventive detention. Hereunder are some of the provisions under the legal framework;

- (i) **Article 23(4) (b)** of the Constitution of the Republic of Uganda 1995, provides;

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

(ii) **Section 24 (1) and (4) of the Police Act Cap 303 Laws of Uganda 2000** provides;

(1) *A police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person—*

- (a) from causing physical injury to himself or herself or to any other person;*
- (b) from suffering physical injury;*
- (c) from causing loss or damage to property;*
- (d) from committing an offence against public decency in a public place;*
- (e) from causing unlawful obstruction on a highway;*
- (f) from inflicting harm or undue suffering to a child or other vulnerable person, may arrest and detain that person.*

(4) *Any person arrested or any other person on his or her behalf who has reason to believe that any person is being unlawfully detained under this section may apply to a magistrate to have such person released with or without security.*

(iii) **Section 26 of the Criminal Procedure Code Act Cap 116 Laws of Uganda 2000** provides;

A police officer knowing of a design to commit any cognisable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to the officer that the commission of the offence cannot otherwise be prevented.

Note:

Persons arrested by a police officer without a warrant of arrest must be taken before a magistrate or officer in charge of a police station as soon as possible. Where the officer is of the opinion that it is not possible to take the arrested person before a magistrate within the constitutionally required 48 hours, he must inquire into the case and release the prisoner on bond with or without sureties, if he is satisfied that the offence is not of a serious nature (murder, treason, rape). If however, a police is satisfied that there is not sufficient evidence against the prisoner, he may set him or her free altogether.

(iv) **Section 14 of the Criminal Procedure Code Act Cap 116 Laws of Uganda 2000** provides;

A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions of this Code as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station.

(v) **Section 17 of the Criminal Procedure Code Act Cap 116 Laws of Uganda 2000** provides;

When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which the person is brought may in any case and shall, if it does not appear practicable to bring the person before an appropriate magistrate's court within twenty-four hours after he or she was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his or her executing a bond, with or without sureties, for a reasonable amount to appear before a magistrate's court at a time and place to be named in the bond; but where any person is retained in custody, he or she shall be brought before a magistrate's court as soon as practicable.

Part III of the Magistrates Courts Act Cap 16 Laws of Uganda as amended on prevention of offences.

QUESTION 4

Does this mechanism provide for any particular remedies? In particular does the mechanism provide for release and compensation for unlawful detention?

If yes, please state and explain the relevant remedies.

YES, the mechanism provides for different remedies for persons illegally arrested and arbitrarily detained including compensation for unlawful detention as follows;

(i) Compensation

Article 23 (7) of the Constitution of the 1995 Constitution of the Republic of Uganda as amended provides;

A person unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that person or authority whether it is the state or an agency of the state or other person or authority. The Civil Procedure and Limitation (Miscellaneous) Provisions Act, 1969 requires that if any person intends to commence an action against Government, that person must give Government 45 days notice.

Further **Article 50 (1)** of the Constitution provides;

Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

Also under Section 3 and 10 of the Government Proceedings Act, Cap 77 Laws of Uganda 2000, Subject to this Act and section 4 of the Law Reform (Miscellaneous Provisions) Act, the Government shall be subject to all those liabilities in tort to which, if it were a private person

of full age and capacity, it would be subject—(a) in respect of torts committed by its servants or agents. In this case, proceedings for compensation are instituted against the Attorney General.

(ii) **Release**

Section 25 (3) of the Police Act Cap 303 Laws of Uganda 2000, allows for unconditional release and provides;

If subsections (1) and (2) are not being complied with, any person may apply to the magistrate within twenty-four hours who shall order his or her release unless charged.

(iii) **Habeas corpus**

Under Article 23 (9) 1995 Constitution of the Republic of Uganda as amended, the right to habeas corpus is inviolable and shall not be suspended.

Further, Article 44 of the 1995 Constitution of the Republic of Uganda as amended provides;

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—

(d) the right to an order of habeas corpus

In that regard, Section 34 of the Judicature Act Cap 13 Laws of Uganda 2000 as amended provides;

The High Court—

*(a) may, at any time, where a person is deprived of his or her personal liberty otherwise than in execution of a lawful sentence (or order) imposed on that person by a competent court, upon complaint being made to the High Court by or on behalf of that person and if it appears by affidavit made in support of the complaint that there is a reasonable ground for the complaint, award under the seal of the court a writ of **habeas corpus ad subjiciendum** directed to the person in whose custody the person deprived of liberty is; and when the return is made, the judge before whom the writ is returnable shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires;*

*(b) may award a writ of **habeas corpus ad testificandum** or **habeas corpus ad respondendum** for bringing up any prisoner detained in any prison before any court, a court-martial, an official or special referee, an arbitrator or any commissioners acting under the authority of any commission from the President for trial or, as the case may be, to be examined touching any matter to be inquired into by or pending before a court, a court martial, an official or special referee, an arbitrator or the commissioners.*

- iv) *Under the Uganda Police Human Rights and Public Complaints Management System provided for under **Section 70 of the Police Act, Cap 303, Laws of Uganda 2000**, a person is entitled, without prejudice to any other legal means of redress available to him or her, to make a written complaint as to any instance of bribery, corruption, oppression or intimidation by a police officer or any other misconduct of a police officer.*

Furthermore the Directorate of Human Rights and Legal Services oversees investigations of human rights violations reported at different units.

- v) **The Uganda Human Rights Commission Complaints Mechanism**

***Article 52 (1) (a)** of the 1995 Constitution of the Republic of Uganda as amended clearly stipulates the functions of the Uganda Human Rights Commission and provides that the Uganda Human Rights Commission shall investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;*

*Further, **Section 7(3) of the Uganda Human Rights Act Cap Laws of Uganda 2000** provides that For the avoidance of doubt, the commission shall, in carrying out its functions, deal only with violations of human rights alleged to have taken place on or after the coming into force of the Constitution.*

As such any person claiming a violation of a fundamental right may bring a complaint before the Uganda Human Rights for redress.

QUESTION 5

Are there persons other than the detainee who can initiate the procedure on behalf of the detainee under your country's domestic law? If yes please state who?

YES. The Laws of Uganda allow for other persons besides the detainee to bring an application to have the detainee brought before court to have the lawfulness of his or her arrest and detention to be determined.

Under Article 50 (2) of the 1995 Constitution of the Republic of Uganda as amended

***"Any person or organization"** may bring an action against the violation of another person's or group's human rights.*

Under Article 23(5) (a) and (b) of the 1995 Constitution of the Republic of Uganda as amended

5) Where a person is restricted or detained—

*(a) the **"next-of-kin"** of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention;*

(a) the "next-of-kin" of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention;

(b) the "next-of-kin, lawyer and personal doctor" of that person shall be allowed reasonable access to that person;

Under Section 24(4) of the Police Act Cap 303 Laws of Uganda 2000, "Any person" so arrested or "any other person on his or her behalf" who has reason to believe that any person is being unlawfully detained under this section may apply to a magistrate to have such person released with or without security.

Under Section 34 (1) (a) of the Judicature Act Cap 13 as amended the High Court may, at any time, where a person is deprived of his or her personal liberty otherwise than in execution of a lawful sentence (or order) imposed on that person by a competent court, upon complaint being made to the High Court by or "on behalf of that person" and...

QUESTION 6

What are the formal requirements and procedures for a detainee to invoke the right to bring proceedings before court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.

Article 23 (4) of the 1995 Constitution of the Republic of Uganda as amended provides that, "A person arrested or detained for the purpose of bringing him or her before a court in execution of an order of a court; or upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

Procedure

Rule 3 of the Judicature (Criminal Procedure) (Applications) Rules SI 13-8 provides that Applications to Magistrates court may be in writing by motion and where evidence is needed be supported by affidavit.

Under the Judicature (Habeas Corpus) Rules SI 13-6 the application for a writ of habeas corpus ad subjucendum must be made to the court in **Form 1** of the First Schedule to the Rules.

It must be made by **motion** subject to Rule 10 which allows for **affidavit** in case court is in vacation and presented *ex parte* by an advocate acting on behalf of the applicant or by some other person lawfully entitled to represent the applicant.

It must be supported by an **affidavit** in **Form 1** of the First Schedule to the Rules by the person restrained, or where that person is unable for any reason to make the affidavit, by

some other person on his or her behalf and must state that the person restrained is unable to make the affidavit himself or herself and for what reason.

It must further show that it is made at the instance of the applicant and set out the nature of the restraint. It must also mention the place, if known, where the applicant is restrained.

Under the Rule 3 of the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules SI 13-14 for applications to the High Court under Article 50 of the 1995 Constitution of the Republic of Uganda, are by Motion.

Note:

The hearsay rule is generally is not strictly enforced.

QUESTION 7

Does the legislation provide for a time limit for submitting such application to the court?

NO, the Ugandan laws do not stipulate any time limit within which such application must be made. As such at the expiration of 48 hours, the detainee or his or her agent or any person as provided in the laws may make the application.

QUESTION 8

Are there any major decisions of your country's Constitutional or Supreme Courts concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court?

If yes, please provide the date and the number of the decision(s) and if possible, a copy of the decisions.

YES. The Ugandan courts have made a number of decisions concerning the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court which include but are not limited to the following;

(1) JOSEPH TUMUSHABE V. ATTORNEY GENERAL CONSTITUTIONAL PETITION NO.6 OF 2004

An application was brought by petition before the constitutional court for a declaration that the detainees were entitled to be released on bail after completion of the 120 days in custody as stipulated in Article 23 (6) (b) of the Constitution.

The declaration was granted and the detainees were granted bail.

(2) IN THE MATTER OF AN APPLICATION FOR HABEAS CORPUS AND SUBJUCIENDUM (BY THE APPLICANT) HIGH COURT AT GULU FEBRUARY 17 2003

The High Court Judge citing Article 23(4) (b) of the constitution on the 48 hour rule said, "there is no other short cut to this Article. Whatever crime a person is suspected to have committed the constitution makes it imperative for her or him to be taken to court not later than 48 hours. Anytime beyond that becomes unlawful arrest or detention.

**(3) IN STEVEN GIDUDU VERSUS ATTORNEY GENERAL UHRC FEBRUARY 26 2003
CITING STEVEN SEMUGOMA VERSUS MAJIDU MAFUGE AND 5 OTHERS [1994] II
KALR 108**

"Reasonable" and "Probable" cause was defined as follows; "an honest belief in the guilt of the accused based upon full conviction founded upon reasonable grounds for the existence of a state of circumstances which assuming them to be true would reasonably lead any ordinary prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime implied."

The commission found that the suspect had been detained in the UPDF barracks and an ungazetted place and beaten for ninety three days and had been left impotent as a result.

Neither the UPDF nor the prosecutor showed reasonable cause for the detention which would have been required at the forty eight hour stage if that provision of the constitution was honoured. Instead they hid the long period of detention. When the case finally came before court the prosecution learned that the guilty party was somebody else.

The commission concluded that there was no honest belief in the guilt of the complainant as he was never taken to court and the arrest was based on mere guesswork and not upon any reasonable and probable cause that he had committed the crime.