

Joint NGO Submission by;

- **African Centre for Treatment and Rehabilitation of Torture Victims**
- **Kumi Human Rights Initiative**
- **Human Rights Centre Uganda**
- **Peace and Security Institute of Africa**
- **Foundations for Human Rights Initiative**
- **Uganda Media Development Foundation**
- **Life Concern - Zombo**

1. Introduction

This is a joint submission report of the above-mentioned organizations. The focus of this submission is civil and political rights focusing on the *protection of the right to life, personal liberty, and freedom from torture cruel inhuman and degrading treatment and punishment, right to a fair hearing, freedom of conscience expression, association, assembly, civic rights, and access to information as well as the status of human rights defenders*. Each part is accompanied with recommendations to the Government of Uganda.

2. Over view of ACTV – Lead Organisation

The African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) is a unique African organisation that was created in June 1993 in Kampala, Uganda by African professionals drawn from different walks of life under the guidance of the International Rehabilitation Council for Torture Victims (IRCT). ACTV is registered as a non-political and non-governmental organisation. The organisation is dedicated to the promotion and protection of human rights with emphasis on the treatment and rehabilitation of victims of torture by security agencies and organised armed groups. Its main activities include; Legal Aid, Advocacy against torture, inspection of detention places, medical treatment, nursing care, physiotherapy, social and trauma counselling, awareness education, networking with like minded national and international organisations.

3. Protection of the right to life¹

States are under an obligation not only to protect its citizens against arbitrary deprivation of life² but are obliged to take measures not only to prevent and punish deprivation of life

¹ Article 22 constitution of the republic of Uganda, 1995, Article 6 International Covenant on Civil and Political Rights which guarantee the inherent right to life.

² General Comment No. 6 of the UN HRC article 6(1)

by criminal acts, but also to prevent arbitrary killing by their own security forces. The major violations of the right to life in Uganda remain extra-judicial killings by members of the security forces and killings of suspected criminals by mob-referred to as 'mob-justice.'³

4. According to the Police Annual Crime Report 2009, 332 cases of mob justice were recorded and or investigated compared to 368 cases in 2008 and 184 cases in 2007⁴. The resurgence in the incidents of mob killings is partly attributed to the fact that perpetrators of 'mob justice' are rarely identified and prosecuted as they often involve whole villages or communities who rarely cooperate with the police making investigations of such incidents difficult⁵.
5. The lack of respect for the right to life by the security forces and its agents can also be seen in the excessive use of force in situations of public disorder. The Police and Army have been accused of using excessive force in quelling riots which force has led to many civilians injured or to death. In September 2009 at least 27 people were killed during riots in central Uganda⁶.

6. Death Penalty:

Article 6 of the ICCPR does not prohibit the death penalty. However, States parties are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes." Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes." On 21st January 2009, the Supreme Court of Uganda in *Susan Kigula v. Attorney General* abolished mandatory death sentence and several penal provisions that carried mandatory death sentences were nullified. However, the laws are yet to be amended to bring them inline with the court ruling. Further, the interpretation of the court's decision in *Susan Kigula v. Attorney General* has raised contention in the Judiciary. In its ruling, the court held that death sentences that had not been implemented for more than 3 years after confirmation by the highest appellate court would be automatically commuted to life imprisonment. The contention is whether those serving commuted sentences of death are entitled to remission after serving twenty years in prison.

7. Recommendations

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (1966) that aims to abolish the death penalty.
- Adhere to article 221 of the 1995 Uganda Constitution which requires security agencies to respect human rights in the execution of their duties.
- Investigate and prosecute extra-judicial killings perpetrated by members of the armed forces and other security agencies.
- Amend the constitution to scrap the constitutional provisions that provide for the death penalty.

³ US Department of State 2008 Human Rights Report: Uganda released February 2009

⁴ Annex 1

⁵ US Department of State 2008 Human Rights Report: Uganda released February 2009

⁶ Counting the cost of the September riots- Human rights Network.

8. Protection of personal liberty

Article 9 of the ICCPR guarantees the right to liberty and security of person. The Article prohibits arbitrary arrest or detention and stipulates that arrests are to be made in accordance with the procedures established by law. These provisions are echoed in Article 23 of the 1995 Constitution of Uganda. The Criminal Procedure Code Act of Uganda sets out the procedure for effecting arrests of suspects. A person arrested or detained should, if not released earlier, be brought to court as soon as possible and not later than 48 hours from the time of his or her arrest. However, the police have and repeatedly continue to hold suspects for more than the mandated period. The suspects are kept in ungazetted places separating them from their family and lawyers, a notion that is in contradiction with the Constitution. The operation of “safe houses” and the numerous paramilitary groups carrying out civilian policing affects the enjoyment of this right⁷.

9. Detention for the wrong reasons, in the wrong places for longer periods than mandated by law all amount to arbitrary detention. 93% of respondents in a baseline survey carried out by ACTV in both police stations and prisons stated that they had been kept in detention longer than the mandated 48hours⁸.

10. Recommendations:

- Un gazetted places of detention should be abolished
- Access to justice guarantees including the 48 hour rule, legal aid for the poor, right to bail and police bond should be promoted by all state agencies.

11. Torture cruel inhuman and degrading treatment and punishment⁹

In the period under review, Torture at the hands of security agencies continues unabated in Uganda. Surveys done by NGOs and records of the UHRC, show an increase in torture cases. The number of clients registered at the African Centre for the Treatment and Rehabilitation of Torture Victims is increasing steadily¹⁰

Many people detained in “safe houses¹¹” and in military centre have faced torture. Many suspected criminals are arrested and tortured by members of the Uganda Police, the Army and other paramilitary groups¹². Since 2007 the Uganda Human Rights Commission (UHRC) has ranked torture as the leading human rights violation among the cases reported to the commission. The state has also failed to honor compensation orders made by the human rights commission for victims of torture¹³.

12. Prison conditions remain quite harsh. Congestion in prisons caused by high populations of remandees continues to pose a problem for the prison administrators. According to the available statistics, a census of the prison population indicated excess of 9, 721(103%)

⁷ Paramilitary groups such as Chieftaincy of Military Intelligence (CMI), Joint Anti Terrorism Task Force (JATT), Rapid Response Unit (RRU) among others continue to detain people in ungazetted places. See Human Rights Watch (2009) Open Secrete available on <http://www.hrw.org/en/node/82072/section/6> accessed on 24th May, 2010

⁸ This is a constitutional provision ACTV Baseline survey report on the trends and nature of torture in Uganda, Kenya and Ethiopia October, 2008 Pg 21 Pg 33

⁹ Article 24 constitution of the Republic of Uganda, 1995

¹⁰ Annex 3

¹¹ Open secret- human rights watch

¹² Annex 2 Torture Trends, Perpetrators and cases.

¹³ The right to health Report – FHRI Pg 36

beyond their capacity with some prisons carrying over four times their capacity¹⁴. Consequently the Uganda Prisons Services struggles to meet minimum standards of detention under national and international human rights norms. Serious problems in prisons included congestion, inadequate staff, and lack of food, water, medical care, and bedding.

13. Recommendations:

- Pass the prevention and Prohibition of Torture Bill, 2009 into law which seeks to domesticate the UN CAT and criminalize torture in Uganda.
- Ratify the optional protocol to the United Nations Convention Against Torture (OPCAT)
- Investigate allegations of Torture and inhumane treatment by its forces and hold those responsible accountable
- Do away with the need for the Uganda Human rights commission to give notice to military to inspect detention in military barracks.
- Provide rehabilitation services to victims of torture to address the effects of torture and integration into society which civil society organizations such as African Centre for Treatment and Rehabilitation of Torture Victims has been doing.
- Ensure that victims of torture are paid the damages that are awarded to them by the Uganda Human Rights Commission Tribunal in a timely manner.
- Establish a victims compensation fund to cater specifically for compensating victims of human rights violations

14. Right to a fair hearing¹⁵

The right to a fair hearing is a non derogable right¹⁶. However, an inadequate system of judicial administration and a lack of resources contributed to a serious backlog in cases and thus limited the right to a fair hearing by not granting suspects a fair and speedy trial. Suspects brought before military courts who include civilians allegedly found in possession of a firearm are tried before the court martial¹⁷. In this court, although the accused has a right to legal counsel, some military defense attorneys are unqualified¹⁸. The Military courts were without a Chairperson for such a long time causing a delay in justice for many inmates who spent up to seven years on remand in detention¹⁹.

15. Independence of the Judiciary;

In previous years, threats to the independence of the Judiciary included failure by the government to honor court decisions and other overt threats like the siege on the High Court.²⁰ However, the introduction of the Public Order Management Bill 2009 which seeks among others to reintroduce the provisions of the Police Act, Cap 303 which were nullified by the Constitutional Court in the case of *Muwanga Kivumbi v. The Attorney*

¹⁴ JLOS mid term evaluation final report June 2010. The consulting house, office of GLR Nairobi pg 49

¹⁵ Article 28 constitution of the republic of Uganda, 1995, Article 14 & 15 International Covenant on civil and political rights

¹⁶ Article 23 1995 constitution republic of Uganda

¹⁷ The Court Martial established under the UPDF Act is essentially for the trial of members of the military for service offences. In July 2008 the Supreme Court of Uganda ruled that the trial of civilians by the General Court Martial (GCM) is unconstitutional. However, the military has not complied with the judgment and civilians continue to be subjected to the court which often operates without observing the basic guarantees to a fair trial.

¹⁸ U.S Department of state Human Rights Report: Uganda. 2008 country reports on Human Rights practices, February 25, 2009

¹⁹ In Mbarara Prison, there are sixty two civilians awaiting trial before the court martial-they have spent periods ranging from one and half to eight years on remand. FHRI report- disability is not inability July- December 2009

²⁰ November 2005 and March 2007 when the High Court was besieged by the military and PRA suspects who had been granted bail re-arrested.

General of Uganda (Constitutional Petition No. 9/05); by restoring to the Inspector General of Police the power to permit or disallow an assembly/rally is another clear indication of disregard of the independence of the judiciary.

16. In February 2008 and July 2009, several new appointments were made at all levels of the bench. However some of the appointees to the higher levels of the bench were persons politically linked to the Movement government- ‘movement cadres.’ These appointments were made in anticipation of the 2011 elections and also raised questions on the legitimacy of the judicial appointment process and the integrity of the Judicial Service Commission.

According to the report of the African Peer Review Mechanism (APRM) July 2009, the Uganda executive also uses its control of and disbursement of resources to the Judiciary and the Legislature as a veiled method of exerting influence. The report also notes that while the judiciary is administratively independent, judicial autonomy was relative.

17. In Uganda, the local council courts which have been mandated to settle civil disputes, including land ownership debt cases and criminal cases concerning children often are the only courts available to villagers. The decisions made by these courts can be appealed to magistrate’s courts, but more often than not there are no records of the proceedings and some defendants are not aware of their right of appeal.

18. Recommendations:

- Carry out sensitizations for the community on the mandate of the local council courts.
- Strengthen local council court
- Ensure that Military courts don’t have the authority to try civilians for any offence committed
- Government should respect the presumption of innocence. Accused persons do not lose this right unless they plead guilty or are convicted by a court of competent jurisdiction.
- Ensure respect for judicial decisions.

19. Freedom of conscience, expression, association, assembly²¹

Currently, there is the proposed Public Order Management Bill, 2009 which poses serious challenges to Ugandans in the exercise of their fundamental freedoms and human rights guaranteed by the 1995 Constitution and in several regional and international human rights instruments²². The proposed Bill raises grave concern about the situation of human rights and the rule of law in Uganda insofar as it seeks to reintroduce the provisions of the Police Act, Cap 303 which were nullified by the Constitutional Court,²³ is contrary to Article 92 of the 1995 Constitution of Uganda which prohibits the enactment of legislation designed to defeat or overturn a judicial ruling; Grants the Inspector General of Police (IGP) and the Minister of Internal Affairs wide discretionary and unjustifiable powers over the management of public meetings, places numerous extensive and impractical obligations on the organizers of public meetings, which are impossible to satisfy, and seeks not only to regulate the conduct of public meetings but extends to the

²¹ Article 29 constitution of the Republic of Uganda, 1995

²² the African Charter on Human & Peoples Rights, the International Covenant on Civil & Political Rights, and the Universal Declaration of Human Rights

²³ *Murwanga Kivumbi v. The Attorney General of Uganda* (Constitutional Petition No. 9/05);

regulation of the content of the discussion of issues at such meetings, in contravention of the right to freedom of speech.

20. This goal is contrary to Paragraph of the II National Objectives and Directive Principles of State Policy of the Constitution²⁴. Finally, the Bill ignores previous attempts by the Uganda Human Rights Commission—involving the Uganda Police—to provide guidelines for public assemblies, and fails to incorporate international best practice in the area.
21. If passed in its current form the implications of this Bill for the ordinary Ugandan would be far reaching. Furthermore, the Bill would impact not only on the operation of political parties and organizations but also on Civil Society Organizations, human rights defenders, academic and professional institutions and on individuals.

22. Freedom of Expression

Despite the constitutional guarantees of freedom of the press and enactment of legislation that expands this right; requirements for journalists to register with the Media Council have been resisted in practice, since it is regarded as being very restrictive. Legislative hindrances to the free access of information and the media include the Penal Code Act, which still criminalizes materials alleged to be seditious²⁵, sectarian and defamatory, and the Anti-Terrorism Act 2002, which prohibits “promoting” terrorism²⁶ but does not expressly define what acts constitute promotion of terrorism. Journalists who report for the Electronic Media or present opposing political views in talk shows in Uganda are at a higher risk according to Mid-Year Press Freedom Index report

23. The Human Rights Network for Journalists-Uganda Report (HRNJ-Uganda) revealed that more than 30 journalists were subjected to different abuses and violations with a bigger number of the victims from the Electronic Media²⁷. The year 2010 has seen two media practitioners killed in course of their duties.²⁸ Although there are 21 cases committed against Electronic Media practitioners, photo journalism is also increasingly becoming risky with 9 cases of attacks against journalists in course of their duties. HRNJ-Uganda has registered an increase in crimes committed against journalists in a period under review²⁹ “The space under which citizens or the media exercise their fundamental rights to freedom of expression has been narrowed and it’s under attack to say the least. The Report³⁰ ranks the Police as one of the worst enemies of the right to freedom of expression and the media in Uganda with 12 cases committed against journalists, followed by individual members of the public with 7 cases, individuals in public offices

²⁴ It provides that: ‘*The state shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.*’

²⁵ The Constitutional Court of Uganda declared the law on sedition unconstitutional on 25th August 2010

²⁶ Section 8(b) makes it an offence to disseminate and publish news or materials that promote terrorism

²⁷ Mid Year Press Freedom Index Report released on 04th/August/2010. The report covered the period between January and June 2010.

²⁸ Paul Kiggundu (Top radio) and Dickson Ssentongo (Prime radio).

²⁹ With 30 cases compared to 35 registered in the entire 2009.

³⁰ Mid Year Press Freedom Index Report released on 04th/August/2010. The report covered the period between January and June 2010.

with 5 cases, Para-military groups with 3 cases, the Uganda Peoples' Defense Force (UPDF) with 2 cases, the State with 2 cases and Regulatory bodies with one case.

24. Unfortunately all these cases continue to be committed against journalists with impunity as only one case involving Sgt. Muntu Muhammad was taken to court by the state after assaulting the Daily Monitor photo journalist Yusuf Muziransa, leaving others walking scot-free. The number of journalists battling with cases in the courts has increased from 21 last year to 27 in between January and June 2010.

25. **Recommendations**

- The public order and management Bill should be withdrawn because it violates Articles 29, 38 and 43 of the 1995 Constitution of Uganda and adopt the Guidelines on Public Demonstrations which were drafted by the Uganda Human Rights Commission in consultation with a larger number of stakeholders.
- The government of Uganda and its agencies should respect freedom of speech and expression which include freedom of press and other media as provided for in the Uganda constitution and other international human rights instruments.
- The government of Uganda should recognize and respect its duties and obligations imposed upon it by Article 20(2) of the Constitution: "The rights and freedoms of the individual and groups enshrined in the Constitution are to be respected, upheld and promoted by all groups and agencies of government..."
- We remind the state of its responsibility to protect, uphold and ensure that such fundamental rights and freedoms are enjoyed fully
- The government of Uganda should respect the autonomy of the media practitioners and institutions as this forms the basis of an open society which is pertinent in fostering a democratic society.

26. **Access to information**³¹

The access to information Act which came into force in 2005 to give effect to Article 41 of the Constitution is aimed at enabling an information seeker receive accurate and timely information that can be used to his or her benefit. This was a mile stone for private individuals who wanted to access information from the state. However, citizens are still denied information³² further still, even though the act is in force; the minister has never made regulations to the Act which would operationalise various sections of the Act. There is no body within government that is mandated to monitor and report on the implementation of the Act, there is no public education on the functioning of the act, there is no maintenance of record or management system and there is no clarity on the relationship between the act and other secrecy laws.³³ The act leaves in place obsolete laws like the official secrets Act of 1964 that sets rules on the classification and protection of secret information.

³¹ Article 41

³² Charles Mwanguhya and Angelo Izama v. AG Uganda's Chief Magistrate's court **dismissed a landmark case** which was introduced by the journalists as an attempt to use Uganda's [Access to Information Act](#) to force the Ugandan government to release the details of five oil Production Sharing Agreements that it has signed with oil companies. The government and the oil companies has resisted pressure to divulge even the smallest details to the public -- both attempting to deflect criticism by citing the other's insistence in maintaining secrecy over the deals.

³³ Analysis of the Access to Information Act , 2005 Human Rights Network Uganda, 2nd Edition, 2009 Pg34

Promoting access to information calls for increase in access to information by PWDs after being identified as one of the groups which have not benefited much. Although the government of Uganda has enacted laws and policies on access to information their applicability has been ineffective. Some of the challenges/ barriers PWDs face in accessing ICT include: Lack of computers with speech software such as jaws in offices, internet cafes and institutions essential for the visually impaired, difficulties in using ATM by the visually impaired and the physically disabled due to inaccessible machines, failure to access information and news on television by the deaf community with out interpretation services. These barriers and many more make it hard for PWDs to run business, study and conduct research hence denying them a chance to participate in the mainstream development programs.

27. Recommendations

- Set up a body to monitor implementation of the Access to information act / Give the Uganda Human rights Commission the mandate to monitor the act
- The public should be trained and educated on the functioning of the act.
- The access to information act should be amended to take precedence over all other legislations with regard to requests and release of information in possession of public bodies.
- Appoint relevant officers in public bodies who deal with practical issues of information management.
- Ensure access to information for persons with Disability.
- Government should draft Regulations to operationalise the Act

28. Status of Human Rights Defenders

The UN Declaration on Human Rights Defenders though not a legally binding instrument, contains principles and norms enshrined in other legally binding international instruments³⁴. The legal framework in Uganda particularly the 1995 Constitution provides reasonable safeguards to facilitate the work of HRDs. The major drawback arises from subordinate legislation which imposes extensive restrictions on HRDs while others create offences which have the impact of narrowing rights that HRDs require to fully execute their duties. Some of these legislations include The Access to Information Act 2005 which provides for issuing guidelines to facilitate the process of accessing information; however these have not been put in place yet. The NGO Registration (Amendment) Act 2006, which amended the NGO Registration Act of 1989, places a significant legislative hindrance on the exercise of the freedoms of assembly and association of CSOs by allowing the government to exercise considerable control over their operations. NGOs must register. Uganda's government-run National Board of Non-Governmental Organisations has the authority to monitor NGO operations and develop policy guidelines for community-based organisations (CBOs). In addition to the existing requirement that they register with the National Board, the Registration (Amendment) Act further requires NGOs to obtain a periodic permit in order to operate. The Act also expands the Ministry's power to regulate the dissolution of NGOs. Giving the

³⁴ Some of the rights include forming associations and non-governmental organisations, to meet or assemble peacefully, to make complaints about official policies and acts relating to human rights, to benefit from an effective remedy, to unhindered access to and communication with non-governmental organisations and intergovernmental organisations etc.

Government such expansive powers over the ability of non-governmental organisations to assemble significantly threatens their ability to exist and consistently carry out operations.

29. Recommendations

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- Government should adopt the UN Declaration on HRDS as binding national legislation to that ensure that HRDS are protected as they carry out their work.
- The NGO Registration (Amendment) Act must be assessed and revised so that the government does not have such expansive powers over civil society and the rights to assemble. In particular, **Parliament** must reassess the periodic permit requirement, as well as the extent of the Government's power over the dissolution of NGOs.
- Government should remove laws that have been declared unconstitutional from the statute books in order to curb instances of law enforcement officials using them to impede the work of HRDs.
- Setup a national plan of action to cover all issues of HRDs

30. General Elections 2011

The Electoral Commission established by article 60 of the Constitution³⁵ is mandated to carry out free and fair elections. February 18th, 2011 was the polling date for Presidential and Parliamentary elections and Ugandans decided on who their leaders would be for the next five years.

31. Despite a peaceful election (compared to the past elections) some irregularities marred the election like presence of armed forces around town, late arrival of election material, missing names on voter registers, unavailability to disperse voter cards on time. There were also incidents of security agencies blocking Presidential candidates from campaigning freely case inpoint was Nibert Mao.³⁶ According to the European Union Observers, the elections were "marred by avoidable and logistical failures, which led to an unacceptable number of Ugandan citizens being disenfranchised."³⁷

32. Recommendations

- The Government should desist from putting in place militaristic forces for surveillance during elections as these only curtail the conducive environment for people to freely and fairly participate in the electoral process because of intimidation
- The Government should facilitate the Electoral Commission atleast two years before general elections to carry out civic education, review the voter register, distribute voter cards amongst other to enable all the citizens to have free and fair elections
- All candidates should be accorded equal resources, time, conducive environment to campaign so as to freely and fairly compete

³⁵ Constitution of the Republic of Uganda, 1995

³⁶ Hudson Apunyo "Preidential guards block Mao," Thursday, December 9, 2010

³⁷ <http://www.bloomberg.com/news/2011-02-20/museveni-extends-25-year-rule-in-uganda-election-opponents-reject-result.html>