



Foundation
for
Human Rights
Initiative
(FHRI)



UGANDA: THE RIGHT TO A FAIR TRIAL - NEXT STEPS

REPORT FOR THE PERIOD 30th JUNE 2011 – JUNE 2012



WHAT IS FHRI?

The Foundation for Human Rights Initiative (FHRI) is an independent, non-governmental, non-partisan and not-for-profit human rights advocacy organization.

VISION

A human rights and civic culture as a foundation for peace, stability, democracy, social justice and sustainable development in Uganda.

MISSION

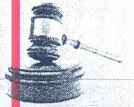
To enhance respect and observance of human rights practices and civic values, promote best practices through training education, research, advocacy, ICTs and strategic partnerships.

MANDATE

- To promote respect for human rights and civic values
- To empower citizens with human rights knowledge and skills to demand defend their rights
- To advocate for human rights-friendly policy and legislative framework that can foster respect for human dignity.

CORE VALUES

- Equal opportunity
- Result-oriented
- Team work
- Excellence
- Timeliness



ACKNOWLEDGEMENTS

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INTRODUCTION

1.1 Research Objective

The aim of this research is to interrogate the obstacles facing the delivery of criminal justice in Uganda. Understanding these challenges is important due to the growing lack of confidence in the judicial system. There seems to be a growing concern within the population that neither due diligence nor justice is dispensed. This report therefore examines the underlying issues that underpin this public concern and the general challenges facing the criminal justice system.

‘The criminal justice system in Uganda has two defining characteristics: first, that it is a mutually reinforcing system; there is a symbiotic relationship between the government’s duty to provide a service (the supply side), and the justice claimants’ right to demand justice (the demand side). Second, the actors and structures of the criminal justice system are mutually dependant: every actor and structure has to play its rightful role for the system to function smoothly.’¹

The *Constitution of the Republic of Uganda, 1995* provides the main underlying principle of the right to a fair trial that includes a fair, speedy, and public hearing before an independent and impartial court.² This report therefore covers the trial process and examines the underlying challenges during arrest, before trial, during trial and the sentencing process.

1.2 Methodology

In order to ensure a comprehensive coverage of the criminal justice system, interviews were conducted with key stakeholders within the Justice Law and Order Sector (JLOS), academia, civil society groups, offenders at police stations, and inmates in prisons. Fifteen focus group discussions were held with members of the general public in hard to reach areas namely Nakapiripirit, Kotido, Moroto, Kasese and Fort portal districts in order to enrich the report findings with practical experiences.

¹ *Handbook on Improving Access to Legal Aid in Africa*, Criminal Justice Handbook Series UNODOC, 41.

² Art. 28 (1) of the *Constitution of the Republic of Uganda, 1995*



EXECUTIVE SUMMARY

This report presents the findings from a one year research project carried out by the Foundation for Human Rights Initiative (FHRI) on the right to a fair trial in Uganda. The study examines the current level of compliance with the constitutional requirement that suspects, accused persons and inmates are entitled to a fair, speedy and public hearing before an independent and impartial tribunal. The report takes into account other fair trial guarantees relating to the presumption of innocence, right to be informed promptly of the charge, right to legal representation and the right to an interpreter among others. The second part of the report gives an overview of the general human rights situation in the country during the period 1st June 2011 to 30th June 2012.

Uganda has ratified a number of key international and regional human rights instruments that underscore the right to a fair trial and has domesticated these treaty provisions in the *Constitution of the Republic of Uganda, 1995* notably under Article 28 which guarantees various fair trial standards. Seemingly, the legal framework as it currently stands guarantees a fair trial to persons in determination of any criminal charge against them. However, major bottlenecks hamper its full realisation in practice.

SECTION ONE: FINDINGS ON THE RIGHT TO FAIR TRIAL

- The Uganda Police Force (UPF) is primarily mandated to effect arrest although the law also permits any other person to carry out an arrest if anyone is suspected to have committed an offence. Consequently, this has resulted in the practice of unidentified personnel effecting arrests who sometimes deny suspects the right to be informed promptly of the charge against them and being detained in unauthorized places prior to being taken into police custody.
- The Uganda Police Force does not have capacity to conduct prompt and adequate investigations. This is mainly due to the limited and inadequate manpower and financial resources at their disposal. Currently there are 40,000 police officers in Uganda and only 20 gazetted forensic experts to an estimated population of 34.5 million; an estimated ratio of 1:825 contrary to the internationally accepted ratio of 1:450.
- The right to bail is in tandem with the presumption of innocence and the right to liberty as provided for by the *Constitution*. However, considering that 35% of Uganda's population lives below the poverty line, many suspects do not have a fixed place of abode, which is a prerequisite for the grant of bail. In the course of this research, the majority of the inmates in prison that were denied bail alleged not to have a fixed place of abode or substantial sureties and as a consequence thereof they were denied bail.³
- Access to quality legal representation in Uganda remains a challenge. The *Constitution* only guarantees legal representation to capital offenders, the rationale being that in such



cases the punishment is so severe that it necessitates the provision of legal representation. Notwithstanding this legal requirement, many of the inmates interviewed complained about the quality of legal representation accorded to them and alleged to have met the lawyers assigned to them in court with no prior or further interaction. This poor quality brief can be attributed to the poor pay given to counsel assigned to state briefs.

- A shortage of judicial officers and state attorneys in the country has been singled out as a major hindrance to effective access to justice in Uganda. Uganda has 354 judicial officers and 172 state attorneys.⁴ The required number of state attorneys is 209, thus a gap of 37 state attorneys. With the creation of new districts numbering 112, the judicial system has been constrained even further. In the course of this research many respondents interviewed complained about the frequent court adjournments due to the unavailability of judicial officers or state attorneys.
- Independence of the judiciary is far from being a reality. Judicial decisions are not made in a timely manner and neither enforced as required. Inadequate funding and poor remuneration of judicial officers has hindered the timely disposal of cases within the judiciary and increased incidences of corruption among judicial officers particularly among the lower ranks.

SECTION ONE: RECOMMENDATIONS

To the Uganda Police Force:

1. An arresting officer should be identifiable—uniform, rank and where possible have an arrest warrant to minimise cases of arbitrary arrest.
2. The right to be informed of the charge on arrest should be respected.
3. Prioritise investment in police training, welfare and most especially in the Criminal Investigations Department and the Professional Standards Unit.
4. Monitor the application of legal safeguards particularly the grant of police bond which is reportedly abused.

To the Uganda Law Reform Commission:

5. Recommend the amendment of S. 15 (4) of the *Trial on Indictments Act*, Cap. 23 to provide special consideration for persons without a fixed place of abode or security in bail applications.
6. Recommend the amendment of the *Criminal Procedure Code Act* Cap. 116 to clarify the scope of preventive arrest.
7. Whereas the Uganda Constitution (as amended) 1995 provides for a mandatory period of 180 days in capital offences and 60 days in petty crimes, S. 16 (c) of the *Trial on Indictments Act* as well as S.76(c) of the *Magistrates Courts Act* prescribe periods beyond the constitutional limit, necessitating amendment of the latter.

⁴ FHRI interview with Ms. Damalie Lwanga, Deputy Director Public Prosecution on 1st November 2011.



To the Judiciary:

8. The system of state briefs should attract a more competitive reward system to attract more senior lawyers.

To the Judicial Service Commission:

9. Expedite the nomination and appointment thereafter of more judicial officers as a measure to reduce the current case backlog.

To the Director Public Prosecution:

10. Appoint more state attorneys to ensure timely disposal of cases.

To Parliament:

11. Enforcement of judicial decisions in politically sensitive cases has not always been forthcoming. Practice directions are hardly issued. A pro-active approach to legal reform is necessary to give effect to such court decisions. Amendment of relevant laws affected by judicial decisions would enhance the democratic reform process.



SECTION TWO: FINDINGS ON THE HUMAN RIGHTS SITUATION

In section Two, we report on the human rights situation in the country for the period 1st June 2011 – 30th June 2012. Key research findings are:

- Despite the enactment of the *Prohibition of Female Genital Mutilation (FGM) Act, 2009*, the practice of FGM persists in Uganda.
- Notwithstanding the enactment of the *Domestic Violence Act 2010*, many women continue to suffer acts of brutality at the hands of their partners without any redress, as many cases are investigated but few are prosecuted in court.
- Mob justice (injustice) remains a significant threat to the right to life for most ordinary Ugandans.
- Detention conditions at most police stations are life threatening. Most of the police stations are dilapidated, badly in need of repair and congested.
- Media freedom continues to be under threat. Media practitioners have on several occasions been subject to abuse, physical violence and malicious prosecution.
- In 2011 and 2012, peaceful assemblies and protests continued to be disrupted by security personnel. Use of disproportionate force in dispersing demonstrations was recorded. The proposed Public Order Management Bill, 2011 which is before Parliament unless modified to meet internationally accepted standards may impose unwarranted restrictions on the freedom of association and assembly.

SECTION TWO: RECOMMENDATIONS:

To Government:

1. Provide specialised support to victims of gender-based violence including legal, health, safety and shelter support services.
2. Build the institutional capacity of the Uganda Police to investigate gender-based violence cases.
3. Ratify the second optional protocol to the *International Covenant on Civil and Political Rights* that aims at abolishing the death penalty.
4. Use established media regulatory bodies to settle disputes with the media and foster a better working relationship with the media to promote media freedom.

To Uganda Police Force:

5. Limit the use of force in handling protests and demonstrations and respect freedoms of expression, association and assembly.