UNIVERSITY OF TORONTO
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INTERNATIONAL HUMAN RIGHTS PROGRAM

PRESUMED INNOCENT, BEHIND BARS:

THE PROBLEM OF LENGTHY PRE-TRIAL DETENTION IN UGANDA

Avocats Sans Frontières

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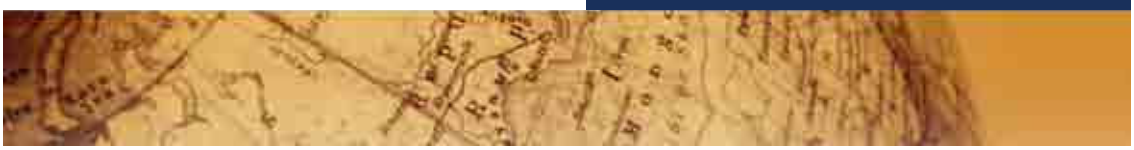

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Acknowledgments

This report is the result of collaboration between Avocats Sans Frontières' Uganda field mission and the International Human Rights Program (IHRP) at the University of Toronto, Canada. It has been undertaken with the kind cooperation of the Uganda Prisons Service. IHRP and ASF would like to thank the many people who made this report possible, including but not limited to those mentioned below.

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Cover photo by Ben Miller: Grey Crowned Crane, national bird of Uganda

Table of Contents

TERMINOLOGY

Capital Offence: A crime for which the death penalty may be imposed.

Committal: Proceedings held by a magistrate's court for the purpose of committing a person accused of a capital offence for trial before the High Court. The Director of Public Prosecutions (DPP) is required to file the indictment and summary of the case in a Magistrates Court[1] and this should give the accused person reasonable information as to the nature of the offence with which he or she is charged[2]. The committal proceedings are an indication that investigations of the case by the Police and DPP have been concluded and trial can henceforth commence in the High Court.

Date of Remand: The date upon which the detainee is first taken into custody.

Detainee: An accused person who is detained in custody awaiting disposition of his or her charges.

Detention upon Committal: The time spent in custody after the case is "committed" to the High Court by a lower court. There are currently no constitutional or legal limits on the length of detention after committal.

Hearing: The term hearing is used in this report to refer to the trial of non-capital offences by Magistrates Courts in Uganda.

Illegal detention: Time spent in custody that contravenes the Ugandan Constitution or any other relevant domestic laws. In this report, the term has been used to refer to the period spent by an accused person in custody before the trial of his or her case, in excess of 60 days in relation to non-capital offences and in excess of 180 days for capital offences, without being granted bail by the court.

Lengthy detention: Excessively long periods of detention, whether or not they contravene the Ugandan Constitution or law.

Non-capital offence: Any crime for which the death penalty is not one of the possible penalties that can be imposed under the law, including but not limited to minor offences and misdemeanours.

Pre-Trial Detention: The time spent in custody prior to the commencement of trial.

Remand Warrant: The legal authorization for the detention of an accused prior to disposition of criminal charges.

Time on Remand or Total Remand Period: The total time spent in custody before the ultimate disposition of the criminal charges at issue.

Unlawful detention: The arrest or holding of a person in custody in violation of the law, that is, confinement of a person when such an act has not been authorized by law. In the case of *Ocircan Yitzhack Marley vs. Attorney General – UHRC No. 387 of 1998,* it was held that any delay to present any arrested and detained person before a judge or other officer authorized by law to exercise judicial power within forty eight hours from the time of arrest constitutes unlawful detention and is a violation of the right to personal liberty contrary to the provisions of Article 23(4) of the Constitution of Uganda.

[1] Section 168(1) Magistrates Courts Act Cap. 16
[2] *Ibid* Section 168(2)

EXECUTIVE SUMMARY

This report focuses on the problem of lengthy detention of accused persons in Uganda and aims to propose specific legal solutions to ameliorate this longstanding issue. Although the problem of lengthy detention usually concerns the time spent in detention before the trial, that is, pre-trial detention, this report also takes a broader view and addresses the entire period of detention before a person is either acquitted or convicted, which is referred to as "time on remand".

Through a rigorous empirical analysis of over 2000 detainee records, this report documents the excessively long remand periods for Ugandan prisoners awaiting criminal prosecution. It exposes the human rights violations arising in the implementation of Ugandan law and those inherent in the law itself. The large number of prisoners who remain on remand for inordinate periods of time awaiting committal, trial, or sentencing, show that Uganda is breaching its domestic and international obligations to protect individuals' fundamental right to liberty. The rights outlined in the Constitution of Uganda regarding a speedy hearing and maximum pre-trial detention periods are not being upheld. Though resource constraints are an inevitable challenge, the problem of lengthy detention can be ameliorated.

We offer the following recommendations as a concrete basis for initiatives to end excessive and illegal remand of detainees:

- *End Illegal Detention: Enforce constitutional limits on maximum detention periods*

Thirty-two percent of all detainees in the dataset were being detained illegally, well past the limits prescribed by the Ugandan Constitution. Special attention should be focused on those charged with capital offences, since they have some of the longest periods of remand. Since the Ugandan Constitution provides that a person charged with a capital offence has to be released on bail after 180 days, these cases should be addressed urgently.

- *Increase levels of awareness about legal limits on pre trial detention*

Prison and court personnel of all jurisdictions should have better knowledge of the laws of Uganda, and a greater will to enforce them. ASF's experience to date has shown that there is a high level of interest among prison authorities and personnel to learn about the laws that apply to their facilities and to improve their levels of compliance. In fact, the Uganda Prison Service has made considerable efforts to ensure respect for human rights and the law among prison staff.

Judges and magistrates also need to be sensitised and monitored to ensure that they take the time served on remand into account when passing down sentences at trial. Prisoners themselves need to be informed of the laws related to pre-trial detention in a consistent and easily understandable manner.

- *Ensure the proper administration of remand warrants.*

All remand warrants should include a fixed court date. There should be no information missing since this delays the court process and can leave detainees forgotten in the system. This could be improved by clerical training, hiring more staff, and putting in place processes that ensure proper and complete filling out of remand warrants.

- *Adhere to court dates set on remand warrants.*

Our analysis establishes that the majority of invalid warrants in the General Court Martial were due to lack of adherence to court dates set. It is essential that when a judge sets a court date, the prison and the court staff ensure that the detainee is brought before the

court on that date and that any adjournments or delays are authorized and recorded. Subsequent court dates must always be scheduled.

- *Review detention of selected detainees*

A systematic review of records of all prison inmates on remand and those who have been detained beyond the constitutional limits should be undertaken in order to determine whether their continued detention is justified by law, whether their cases should be dismissed for want of prosecution, or whether they can be released on suitable bail conditions pending disposition of their cases.

- *Monitor General Court Martial and associated prisons.*

The General Court Martial has disproportionally high average days on remand. In fact, the majority of detainees under the jurisdiction over the Court Martial have been detained over the constitutional limit. There should be increased scrutiny and reform of processes that lead to these delays and rights violations. Moreover, the jurisdiction of the Court Martial should be further restricted to individuals actively involved with the military[3]; this would reduce the backlog of cases and excessively lengthy detentions. Since the GCM is not part of the JLOS Sector, it does not benefit from the programs that have been mentioned in the report. Therefore, different strategies should be considered to alleviate these problems.

- *Improve effectiveness of legal representation for detainees.*

The constitutional right to state-funded legal representation for those accused of offences which carry a sentence of death or life imprisonment should not be limited to the trial process but should also be available at the time of detention. It is important for individuals to be represented by counsel for bail hearings, court date adherence, and other such processes during which their legal interests need to be protected.

- *Limit the amount of time a person can be detained upon committal.*

The current provisions of the Constitution, albeit providing for a maximum period of detention prior to committal, in excess of which an accused person should be released on bail, do not limit the period of detention between committal and trial of a person accused of a capital offence. It is essential that more attention be paid to detainees on committal as these periods tend to be very lengthy. A new provision should be introduced in the Constitution to set out the period which an accused person should spend on remand between his committal date and the date of his trial. Alternatively, in the absence of an amendment to the Constitution, a clear legal precedent should be set to interpret the current provision as inclusive of the time after committal.

- *Limit the total time a person can remain on remand.*

The right to an expeditious trial must be interpreted to include the entire time from arrest or detention to sentencing or acquittal. The right to be tried without undue delay should be interpreted to include the period of time it takes to carry out a trial.

- *Expand the jurisdiction of the Magistrates Court.*

The data shows that detainees under the jurisdiction of the High Court are likely to be illegally detained for longer periods than those under the jurisdiction of the Magistrates Court. This corroborates the finding by other human rights organizations that the High

[3] Human Rights Watch, "State of Pain: Torture in Uganda" March, 2004, Vol. 16, No.4(A), *Executive Summary Recommendations*. Available at http://www.hrw.org/en/reports/2004/03/28/state-pain-0.

Court experiences a greater backlog in its caseload.[4] Thus, there should be legislative reform to redistribute cases between the courts, giving the Magistrates Court jurisdiction over more types of cases. Where legislative changes have already been made, that is, following the enactment of the *Magistrates Courts (Amendment) Act NO. 7 of* 2007, greater emphasis needs to be placed on their implementation.

- *Increase the capacity of the High Courts.*

For the reasons discussed above, more resources should be provided to allow the High Court to deal with its high case load by meeting more often and creating more branches distributed throughout the country.

[4] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, p. 35. Available at http://www.fhri.or.ug/country-human-rights.html.

INTRODUCTION

Avocats Sans Frontières (ASF) has been working to support access to justice for vulnerable persons in the Great Lakes Region of Africa for the past 20 years. Most recently in late 2007 ASF opened a field office in Uganda from where it coordinated a regional program against torture. As part of this program, ASF sent lawyers into Ugandan prisons to provide free legal advice and representation to victims of torture. Through this program, ASF uncovered a large number of prisoners who were being held for inordinately long periods of time, many of whom were still awaiting trial. Researched and drafted in partnership with the International Human Rights Program (IHRP) at the University of Toronto, Faculty of Law, and undertaken with the support of the Ugandan Prisons Services, this Report provides an empirical analysis of lengthy remand within selected Ugandan prisons, identifies factors that have contributed to excessive durations of remand, and puts forward recommendations to assist the Ugandan government to respect the constitutional and international human rights of detainees.

OBJECTIVE

The objective of the research leading to this report was to have a better understanding of the causes of illegal and lengthy detention in Uganda and to identify institutional and legal reforms that could ameliorate this problem.[5]

BACKGROUND

Political Context

Uganda stands at a critical point in its history. It is emerging from a legacy of civil war, systematic human rights violations, political unrest, corruption, and exploitation.[6] After decades of economic instability, the country's economy has been growing, largely as a result of economic reform. Uganda's population, too, has grown substantially, from 4.8 million people in 1950 to 30 million by 2007.[7] In the last two decades, Uganda has made remarkable strides towards peace and development of its political, economic, and health systems.

The possibility of meaningful progress in Uganda was powerfully illustrated in its successful strategy in the fight against HIV-AIDS, which has been referred to as a model of effective health development.[8] Bordered by Sudan, the Democratic Republic of Congo, and Rwanda, Uganda has hosted a large population of refugees and asylum seekers[9] and

[5] Although unlawful arrests by rebel groups, incommunicado detention in "safe houses", and torture are all issues closely related to lengthy detention, this report focuses on the more narrow issue of excessive pre-disposition detention periods in gazetted Government prisons; see Amnesty International, UA 111/09 Incommunicado detention/ Torture and other ill-treatment, April 2009, AFR 59/002/2009. Available at http://www.amnesty.org/en/library/asset/AFR59/002/2009/en/ee898830-8672-440a-b134-c95f5ea9c08d/afr590022009en.pdf. Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 5; Article 23 (2) of the *Constitution of the Republic of Uganda* 1995 states: "A person arrested, restricted or detained shall be kept in a place authorized by law.)

[6] "Uganda Report 2003" (2003) 1 East African Journal for Human Rights & Democracy 73, p. 73.

[7] Population Secretariat, "National Population Policy for Social Transformation and Sustainable Development" (2008)

[8] United Nations Development Programme, "The challenge of HIV/AIDS: Maintaining the Momentum of success", Human Development Reports. Available at http://hdr.undp.org/en/reports/national/africa/uganda/name,3128,en.html.

[9] United States Committee for Refugees and Immigrants, "World Refugee Survey 2008 – Uganda". Available at http://www.unhcr.org/refworld/country,,USCRI,,UGA,456d621e2,485f50d88a,0.html.

has the potential to serve as a model to its neighbours of positive transition from widespread conflict to peace and development.

Nonetheless, the country still struggles with the remnants of its turbulent past. After years of dictatorship and war, the National Resistance Movement (NRM) under President Yoweri Museveni came to power in 1986, with hopes of reconstructing the country and a motto of "breaking with the past."[10] Since then, the observance of human rights has improved significantly compared to preceding regimes.[11] The NRM has attempted to rehabilitate the rule of law by establishing a Ugandan Human Rights Commission and redrafting the national Constitution. Individual ministerial departments have also adopted measures to promote the fundamental rights and freedoms enshrined in the Constitution.[12] Aside from some occasional disturbances caused by remnants of certain rebel groups in Uganda[13], the country is generally politically stable and the citizens tend to live in peace.[14]

Despite the NRM's strong beginning and its positive perception in the eyes of the international community, by 2003 the regime was still far from achieving its goal of promoting and establishing a "just, free, democratic society."[15] The elections of 1989, 1992, 1996 and 2001 were held on a "no party" basis, where candidates would run for office backed by personal merit as opposed to party affiliation.[16] President Museveni introduced this "Movement" system of Government in place of a multiparty system, alleging that it would help to avoid the violence and sectarianism of the past.[17] Instead, this system of politics was used by the NRM to curtail civil and political rights of those opposed to Government policies.[18]

In August 2005, a peaceful referendum was held on the question of multi-party politics and 92% of voters were in favour of this system of governance.[19] Multi-party democracy was consequently reinstated after a 20 year ban and was used in the 2006 and 2011 elections.[20]

These political changes have inherently opened the door to enhancing the democratic process in Uganda. However, there are still challenges to overcome. For instance, a 2007 report found that political parties other than Museveni's NRM were not well-known and had difficulty carrying out many of their planned activities due to lack of funding.[21] Inter-party conflict and unequal distribution of political resources also make it difficult for other parties to build social capital and establish supportive institutions.[22] Police

[10] "Uganda Report 2003" supra at p. 75.
[11] Samson James Opolot, "The Impact of International Human Rights Assistance on the Transition to Democracy in Uganda under the NRM" (2004) 2 East African Journal for Human Rights & Democracy 23, p. 23.
[12] "Uganda Report 2003" supra at p. 75.
[13] For example, the Lord's Resistance Army is currently operating from the Central African Republic, and the People's Redemption Army which is reported to have its operational base in the DRC and has on several occasions attacked people in western Uganda.
[14] Avocats Sans Frontières, "Context Intervention Analysis Sheet: UGANDA", March, 2010 , pp. 5-6
[15] "Uganda Report 2003" supra at p. 73; see also *Constitution of the Republic of Uganda* 1995, Preamble.
[16] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 13.
[17] Opolot, supra at p. 24
[18] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 13.
19 Blattman, Chris, From Violence to Voting: War and Political Participation in Uganda (January 2008). Center for Global Development Working Paper No. 138. p. 9. Available at SSRN: http://ssrn.com/abstract=1100110
[20] *Ibid.*
[21] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 60.
[22] Kakuba Sultan Juma, "Multiparty politics dynamics in Uganda", African Journal of Political Science and International Relations Vol. 4(3), p. 114, March 2010. Available at http://www.academicjournals.org/ajpsir

restrictions on political rallies and demonstrations have limited the development of party campaigns and membership recruitment.[23]

With regard to the 2011 election, despite apparent steps forward in the democratic process, voter percentages fell from 70.3% in 2001 and 69.2% in 2006 to 59.9% in 2011.[24] Allegations of corruption and a lack of confidence in the Electoral Commission are considered to be major contributory factors to the increasing levels of voter apathy.[25] Nevertheless, representatives of the European Union celebrated the restoration of multi-party democracy in Uganda and welcomed the peaceful conduct of the 2011 election.[26] Events in the months following the elections have demonstrated popular dissatisfaction with the election outcome, with demonstrations spurred by high inflation rates being violently suppressed by the government.

The Justice, Law and Order Sector (JLOS) in Uganda

Following almost two decades (1966-1986) of political, civil and economic regression in Uganda, there was an extensive breakdown of functions of the state including the maintenance of law and order. Governments of the time failed to provide the requisite infrastructure, logistics, personnel, legal and policy direction for legitimate state institutions to effectively execute their mandate. This period was characterized by: chronic systemic constraints that delayed and hampered access to justice and service delivery, effective planning and budgeting; antiquated methods and tools of investigations and prosecution; the high cost of justice due to corrupt practices and limited proximity to the justice delivery agencies by end-users; case backlogs and high prison populations; inefficiencies and lack of effective procedural guidelines and performance standard in justice delivery institutions as well as significant gender-based discrimination.[27]

The Justice Law and Order Sector, or "JLOS" as it is commonly known, was created to deal with the above mentioned constraints in the justice delivery chain. JLOS is a sector wide approach adopted by Government bringing together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision, policy framework, unified on objectives and plan over the medium term.

It focuses on a holistic approach to improving access to and administration of justice through the sector wide approach to planning, budgeting, programme implementation, monitoring and evaluation. The sector comprises: The Ministry of Justice and Constitutional Affairs (MOJCA); The Ministry of Internal Affairs (MIA); The Judiciary; Uganda Police Force (UPF); Uganda Prison Service (UPS); Directorate of Public Prosecutions (DPP); Judicial Service Commission (JSC); The Ministry of Local Government (Local Council Courts); The Ministry of Gender, Labour and Social Development (Probation and Juvenile Justice); The Uganda Law Reform Commission (ULRC); The Uganda Human Rights Commission (UHRC); The Law Development Centre (LDC); The Tax Appeals Tribunal (TAT); The Uganda Law Society (ULS); Centre for Arbitration and Dispute Resolution (CADER) and The Uganda Registration Services Bureau (URSB).[28]

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[23] Foundation for Human Rights Initiative (FHRI), supra at p. 61.
[24] Yasiin Mugerwa, "Why 5 million Ugandans stayed away from polls". Daily Monitor 6 March 2011. Available at http://www.monitor.co.ug/News/National/-/688334/1119542/-/c4hajlz/-/index.html
[25] Robert Mwanje and Sheila Naturinda, "Mayoral candidates call for demo over elections". Daily Monitor 7 March 2011. Available at http://www.monitor.co.ug/SpecialReports/Elections/-/859108/1120374/-/k3lbf2/-/index.html
[26] "EU representative declares Uganda 2011 elections peaceful". Daily Monitor 21 February 2011. Available at http://www.monitor.co.ug/News/National/-/688334/1111788/-/c4msfcz/-/
[27] Available at http://www.jlos.go.ug/page.php?p=about
[28] *Ibid*

JLOS started off with a Strategic Investment Plan (SIP I 2001/01 – 2005/06) to address the constraints and at its lapse introduced the JLOS (SIP II 2006/07 – 2010/11). The sector reform programme under SIP II was based on the following objectives and/ or key result areas: To promote the rule of law and due process; to foster a human rights culture across the JLOS institutions; to enhance access to justice for all especially the marginalized and the poor; to reduce incidence of crime and promote safety of the person and security of property; and to enhance JLOS contribution to economic development.[29]

The sector has over the years prioritized and placed focus on land, family, criminal and commercial justice reform. Under criminal justice, efforts have been directed at enhancing institutional response to crime by engaging in crime prevention, legislative reform, case backlog reduction programs, human resource development, and increasing the geographical spread of key institutions with specific attention to conflict areas. The sector has also taken positive steps to address prisoner welfare, promote prisoner rehabilitation and community re-integration among others.[30]

DOMESTIC LEGAL INSTRUMENTS

Constitutional Protections

The Uganda Constitution states that "the rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons."[31] One of the fundamental freedoms protected by the Constitution is personal liberty, which may only be derogated in accordance with the law set out in Article 23 (discussed in detail below).

The Constitution also protects an accused person's right to a "fair, speedy, and public hearing" [32], which includes the presumption of innocence until guilt is proved[33]. Article 23 also sets out the right to apply for the writ of *habeas corpus* and declares that such an order shall be inviolable.[34] Article 43(2) (b) of the Ugandan Constitution explicitly prohibits detention without trial.[35] The *Uganda People's Defence Forces Act* makes it a punishable offence for military personnel to unlawfully detain a person or unnecessarily detain a person without bringing him to trial.[36]

The Constitution sets out a requirement for state-funded legal representation for persons charged with an offence that carries a sentence of death or life imprisonment.[37] However, this right is only engaged at the time of trial, as opposed to while the accused person is first detained.[38] For all other cases, the accused has the right to retain a lawyer at his or her personal expense. The Constitution also provides that all persons are equal before the law and shall not be discriminated against on the ground of sex, race, colour,

[29] *Ibid*
[30] *Ibid*
[31] *The Constitution of the Republic of Uganda* 1995, Article 20(2).
[32] *Ibid,* at Article 28(1).
[33] *Ibid,* at Article28(3)(a).
[34] *Ibid,* at Article 23(9).
[35] *Ibid,* at Article 43(1) (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.
[36] *Uganda Peoples Defence Forces Act*, s.46
[37] *Constitution of the Republic of Uganda* 1995, Article 28(2)(e)
[38] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 64.

ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.[39]

The Ugandan Constitution sets out robust enforcement mechanisms. Any person who asserts that a right or freedom guaranteed under the Constitution has been infringed or threatened is entitled to apply to a competent court for redress, which may include compensation.[40] Furthermore, any person or organisation can bring an action claiming the violation of another person's or group's human rights.[41] The Constitution also provides for an appeal process in case a person is aggrieved by any decision of a lower court in the adjudication of a matter involving the enforcement of his rights and freedoms[42] and the creation of laws by Parliament for the enforcement of the protected rights and freedoms.[43]

Finally, the Constitution establishes the Uganda Human Rights Commission, whose function, among others, is "to visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations."[44]

Jurisdiction of the Courts

Whether a case is ultimately heard by the High Court, Chief Magistrates Court or the lower Magistrates Court depends upon the maximum sentence for the crime.[45] In Uganda, all offences that carry the death penalty (capital offences) fall within the jurisdiction of the High Court and the General Court Martial. Cases tried by the High Court are subject to a slightly different process than offences within the jurisdiction of the Magistrates Court[46].

The Magistrates Court has the legal jurisdiction to bring before it any person who is alleged to have committed a crime within its geographic jurisdiction[47], and the ordinary place of trial is at the Court within the jurisdiction where the offence was committed.[48] The Chief Magistrates Court has jurisdiction to try all offences that carry a sentence of up to a maximum of life imprisonment (i.e. non-capital offences). [49] The Magistrates Grade I courts have jurisdiction to try all non-capital offences.[50] Even if a person is charged before a Magistrates Court, the Director of Public Prosecutions has the discretion to remand the accused to appear before the appropriate superior court at any stage of the proceedings.[51] Thus, offences within the jurisdiction of the Magistrates Court are at times tried by the High Court. This is because the Director of Public Prosecutions in

[39] *Constitution of the Republic of Uganda* 1995, Article 21(2).
[40] *Ibid,* at Article 50(1)
[41] *Ibid,* at Article 50(2)
[42] *Ibid,* at Article 50(3)
[43] *Ibid,* at Article 50(4)
[44] *Ibid,* at Article 52(b)
[45] See the amended *Magistrates Courts Act Cap. 16* , the *Trial on Indictment Act Cap.25*, the amended *Judicature Act Cap. 13* and the *Uganda Peoples' Defence Force Act NO. 7 of 2005* for more detailed information.
[46] Note: The High Court has jurisdiction to try any offence under criminal law. See the *Trial on Indictment Act Cap. 25* s. 1. However it must be committed to the High Court by the Magistrates Court. The Director of Public Prosecutions has the discretion to determine whether a case that ordinarily tried by the Magistrates Court should in a particular instance be tried by the High Court instead. See the *Magistrates Court Act Cap. 16* s. 169.
[47] See *Magistrates Courts Act Cap. 16,* s. 31
[48] *Ibid*, at s. 32
[49] *Ibid*, at s. 161.
[50] *Ibid*, at s. 161(b)
[51] *Ibid*, at s.167.

Uganda has the discretion to determine which cases should be committed to the High Court for trial.[52]

The High Court has general powers of supervision over the Magistrates Courts[53] and must, both with regards to its own procedures and those of the Magistrates Courts, work to "prevent abuse of the process of the court by limiting delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice".[54] The *Judicature Act* guarantees the continuous sitting of the High Court, with such number of judges as is needed given the work to be done "so far as is reasonably practicable and subject to vacations".[55] The High Court also has the power to grant the writ of *habeas corpus*, as outlined in Sections 34 and 35 of the *Judicature Act*. In some instances, where the offence is punishable by death, the case can be appealed to the Supreme Court.[56]

Criminal Court Process

The *Criminal Procedure Code Act* provides that where a person is arrested without a warrant, the police officer must bring him or her before a Magistrate or an officer in charge of a police station "without unnecessary delay" and subject to the requirements related to bail.[57] If it is "not practicable" to bring the person before the Magistrates Court within twenty-four hours, he or she must be released on a bond, unless the offence appears to be "of a serious nature."[58] This provision therefore does not apply to persons charged with murder, treason, or rape, as these are crimes of utmost seriousness. Such persons can only be granted bail by the High Court. If the person is retained in custody, he or she must be brought before a Magistrates Court "as soon as practicable."[59] The Constitution of Uganda specifies that the accused detainee must be brought before a Court no later than forty-eight hours from the time of his or her arrest (the 48-hour rule). [60] Any time in excess of 48 hours that the accused spends in custody without being charged constitutes unlawful arrest and detention.

An accused person is entitled to apply to the Court to be released on bail, and the Court may grant the person bail on conditions it considers "reasonable".[61] Where bail is not granted, an accused person is remanded to prison. The right to bail is set out in Article 23(6) of the Constitution, which specifies the time after which a detainee awaiting trial *must* be released on bail.

Articles 23(6) (b) and (c) as interpreted by the Court limit the maximum lawful period of detention for cases within the jurisdiction of the Magistrate's Court and High Court, respectively. [62] For cases triable by the High Court as well as other subordinate courts, the entire period of detention up until the commencement of trial is limited to 60 days. Therefore, any detention beyond this period is considered illegal. For cases triable only

[52] *Ibid*, at s.169.
[53] *Judicature Act C ap. 13*, s. 17(1)
[54] *Magistrates Courts Act* Cap. 16 s. 168 17(2)
[55] *Judicature Act*, s. 18
[56] *Ibid*, at s. 5.
[57] *Criminal Procedure Code Act Cap. 116*, s.14
[58] *Ibid,* at, s.17; Please see sections 25(1) and 25(2) of the Police Act, Articles 23(4)(b) and 23(6) (b) &6) (c) of the *Constitution of the Republic of Uganda* 1995.
[59] *Criminal Procedure Code Act*, s.17
[60] *Constitution of the Republic of Uganda,* Article 23(4)(b)
[61] *Ibid*, Article 23 (6) (a)
[62] In *Foundation for Human Rights Initiatives* v. *AG, 2006,* the *Magistrates Court Act*'s restriction on period of pre-trial remand (240 days for non-capital offences and 480 for capital offences) was read down to be consistent with the Constitution. Similarly, ss.219, 231, and 248 of the *Uganda People's Defence Forces Act No. 7 of 2005* and s. 16 of the *Trial on Indictments Act* were held to be null and void to the extent of inconsistency with the Constitution.

by the High Court, the time spent in custody *before the case is "committed" to the High Court* for trial is limited to 180 days.

The above provisions mean that the time spent in custody after the case is committed but in advance of the trial is not subject to any legal limits. Thus, the amount of time a prisoner has been detained *on* committal but prior to his or her trial must be addressed as a separate issue. The fact that this time period is not constitutionally restrained is problematic because the High Court has the power to postpone or adjourn proceedings "from time to time" at its discretion if it considers it "necessary or reasonable".[63] The *Trial on Indictments Act* does not specify all the "reasonable cause[s]" that may warrant the postponement of a trial by the court, but merely gives the example of the absence of witnesses.[64] In the case of *Ssewajjwa Abdu* v. *Uganda* [1999] KALR 183 the court was proactive and held that the applicant who was held in custody for inordinately long periods after his case had been committed to the High Court for trial was entitled to bail.

In cases where a person is being tried by a Military Court for a service offence and has been in custody for seven days without trial, there is a requirement for the commanding officer to make a report to the convening authority stating the reasons for delaying the trial. A similar report shall be made after every seven days until trial.[65] The General Court Martial is one of the courts established under the Uganda Peoples' Defence Forces Act. The General Court Martial has both original and appellate jurisdiction to try all offences and persons under the Act[66]. At Kigo prison, it was discovered that most of the pre-trial detainees whose files were reviewed by ASF during this study were charged with capital offences. A majority of the prisoners at Kigo prison are members of the Ugandan army while a few others are civilians who have been made subject to military law by committing certain offences under circumstances that are covered by the Uganda Peoples' Defence Forces Act[67].

INTERNATIONAL LEGAL INSTRUMENTS

The right to a fair trial and the right to be free from lengthy detention are both protected under numerous international treaties. Most broadly, the *Universal Declaration of Human Rights"* (hereinafter referred to as *"The Declaration"),* asserts that "everyone has the right to life, liberty and security of person."[68] This is considered to be one of the most important and inalienable human rights, upon which others are based. Article 9 of the Declaration states that: "no one shall be subjected to arbitrary arrest, detention or exile". [69] The Declaration also includes the right to an effective remedy by the competent national tribunal. Finally, the Declaration specifies fundamental rights held by criminally accused persons, that is, the right to a fair and public hearing by an independent and impartial tribunal,[70] and the right to be presumed innocent until proven guilty.[71] The robust protection of the rights of the accused in the Declaration illustrates their importance to the bedrock of democracy and the rule of law.

The most relevant international legal instrument to pre-trial detention is the *International Covenant on Civil and Political Rights (*hereinafter referred to as the ICCPR). Uganda has ratified the ICCPR with no reservations, and thus is obliged under international law to comply with all of its provisions, unconditionally. The ICCPR affirms

[63] *Trial on Indictments Act,* s. 53(1)
[64] *Ibid.*
[65] *Uganda Peoples Defence Forces Act,* s.75
[66] *Ibid*, s. 81
[67] *Ibid*, s.15
[68] *Universal Declaration of Human Rights*, Article 3
[69] *Ibid,* Article 9
[70] *Ibid,* Article 10
[71] *Ibid,* Article 11 (1)

the right to liberty and declares that "no one shall be subjected to arbitrary arrest or detention".[72] A person can only be deprived of his or her liberty "on such grounds and in accordance with such procedure as are established by law". Anyone arrested or detained on criminal charges is entitled to trial "within a reasonable time or to release."[73] According to the same article, the default position or preferred option should be to release to the community (subject to guarantees to appear in Court) rather than detention awaiting trial. Article 9(4) speaks specifically to people detained and affirms their right to have their case heard before a Court in order to determine "without delay... the lawfulness of his detention and order his release if the detention is not lawful."[74] If it is found that someone has been the victim of unlawful arrest or detention, he or she has an enforceable right to compensation.[75]

The ICCPR also guarantees the right to a fair and public trial[76], presumption of innocence until proven guilty[77], and the right to be tried "without undue delay"[78]. The latter is explicitly stated to be a *minimum* guarantee. In more extreme circumstances of detention, Article 7 of the ICCPR may be applicable as well, which states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment... "[79] The ICCPR also provides for the right to an effective remedy if any rights are violated.[80]

The ICCPR establishes the Human Rights Committee (HRC) which monitors and reports on ICCPR observance by member states.[81] The HRC has refrained from defining what constitutes undue delay but has opted for a case-by-case approach taking into account individual circumstances. The reasonableness of delay takes into account factors such as: the seriousness of the offence, the complexity of the case, the accused's contribution to the delay, the length of time it takes a Court to reach a final decision, and the inability of the state to give compelling reasons to justify delay.[82] In one case, the Committee implied that Yemen's domestic legislation, which included a six-month limit on pre-trial detention, was too long a period to be compatible with Article 9(3) of the ICCPR.[83]

Under the Optional Protocol to the ICCPR, there is an individual complaints mechanism for cases to be heard by the Human Rights Committee. Uganda has ratified the Optional Protocol, with reservation on Article 5, which provides as follows:

> 1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
>
> 2. The Committee shall not consider any communication from an individual unless it has ascertained that:

[72] *ICCPR*, Article 9 (1)
[73] *Ibid,*, Article 9(3)
[74] *Ibid,*, Article 9(4)
[75] *Ibid,* Article 9(5)
[76] *Ibid,*, Article 14(1)
[77] *Ibid,,* Article 14(2)
[78] *Ibid,,* Article 14(3)(c)
[79] *Ibid,*, Article 7
[80] *Ibid,*, Article 2(3)(a)
[81] *Ibid,*, Article 29
[82] General Comment No. 08: Right to liberty and security of persons (Art. 9): 06/30/1982. CCPR General Comment No. 8. (General Comments) Office of the United Nations High Commissioner for Human Rights. Available at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f4253f9572cd4700c12563ed00483bec?Opendocument.
[83] Centre for Human Rights, Geneva: Crime Prevention and Criminal Justice Branch, Vienna. Professional Training Series No. 3: Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention. United Nations, New York and Geneva, 1994. Footnote 44.

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

The *Convention against Torture (CAT)* is another powerful international legal instrument by which Uganda is bound. In particular, Article 16 relates to other cruel, inhuman or degrading treatment or punishment. The prohibition against torture as set out in this Convention has been adopted in article 24 of the Ugandan Constitution.[84]Uganda has not ratified the Optional Protocol, which sets up country visits and reports, though individual complaints are explicitly referred to within the CAT.

Another international treatise of relevance is the Convention on the Rights of the Child (CRC), which Uganda has ratified. The CRC requires the interests of the child to be considered when making determinations about separating the child from his or her parent(s).[85] In the case of mothers who are detained for a prolonged period, there may be no other alternative than for the child to be in custody with the mother. This is particularly the case with babies or young children, who sometimes remain with their mothers in prison for months or years. In these scenarios, not only are the mother's rights under international law affected when they are unlawfully and/or illegally detained, but so are the rights of the children, which as the CRC emphasizes require "special care and assistance".[86]

Article 37 of the CRC lists the rights of children who are charged with a crime. Although we did not use data from children's penitentiaries for our study, it is still important to note that international law is particularly protective of child prisoners. For example, capital punishment and life imprisonment without possibility of release cannot be imposed for offences committed by people below eighteen years old.[87] Moreover, the arrest, detention or imprisonment of a child "shall be used only as a measure of last resort and for the shortest appropriate period of time."[88]

The prohibition against arbitrary arrest and detention is also enshrined in the *International Convention on the Protection of the Rights of all Migrant Workers and Members* of their family[89] and the *Convention on the Rights of Persons with Disabilities*[90], both of which have been ratified by Uganda.

Finally, similar provisions prohibiting arbitrary arrest, protecting the right to liberty of all people[91], and the right to be tried within a reasonable time[92] are included in the *African Charter on Human and Peoples' Rights,* which has also been ratified by Uganda.

[84] However, Uganda has made reservations on Article 17(7) and 18(5) of *CAT*, both which relate to state parties being responsible for certain expenses incurred by the Committee's work.
[85] *Convention on the Rights of the Child*, (20 November 1989), 1577 UNTS 3, Article 9(1)
[86] *Ibid*, Preamble
[87] *Ibid*, Article 37(a)
[88] *Ibid*, Article 37(b)
[89] Article 16(4)
[90] Article 14(1)(b)
[91] Article 6
[92] Article 7(d)

In addition to these numerous, binding international conventions, customary international law is expressed in various General Assembly Resolutions which reflect state practice and the general consensus in the international community. For instance, in *The Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*, the General Assembly states that "arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law..." [93] and that "[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority..."[94] The Resolution further declares that the authorities that arrest, detain, or investigate accused persons, "shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority."[95] Finally, the resolution also declares a detained person's entitlement to the assistance of legal counsel as one of the principles. [96]

In the *Rules for the Protection of Juveniles Deprived of their Liberty* (1990), the General Assembly declares that:

"Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. *Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances*. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles."[97]

As well, echoing the CRC, it affirms that putting a juvenile in an institution should always be a last resort measure and for the minimum necessary period.[98] It also stresses their vulnerability and recognizes that they require "special attention and protection" when deprived of their liberty.[99]

Thus, in addition to many multilateral treaties to which Uganda is bound, there is also a clear international consensus against illegal detention and the importance of the right to a fair and timely trial.

STATEMENT OF THE PROBLEM

Illegal and lengthy Detention

Illegal detention, as used in this report, refers to periods and instances of detention that contravene Article 23(6) provisions of the Ugandan Constitution or any other relevant domestic laws. Lengthy detention refers to excessively long periods of detention more generally, whether they contravene specific Ugandan law or not.

Lengthy detention is a long-standing and prevalent problem throughout Uganda. Accused individuals are generally detained in poorly maintained, overcrowded prisons, and they often have no faith in the Government or police force and no idea when they will regain their liberty. Historically, the practice of lengthy detention was closely related to unlawful arrests by rebel groups, incommunicado detention, and torture, as will be set

[93] Principle 2
[94] Principle 11
[95] Principle 9
[96] Principle 17
[97] Annex 17, emphasis added.
[98] Clause 1, Rules for the protection of juveniles.
[99] Clause 2, Rules for the protection of juveniles.

out later in this report. Therefore, illegal detention has constituted a contributory factor to serious violations of domestic and internationally recognized human rights.[100]

A large percentage of prisoners in Uganda are currently awaiting trial and have long since over-stayed the Constitutional limits noted above. For instance, between 2006 and 2008, accused persons made up approximately 60% of the prison population, with convicted criminals making up the minority of prisoners.[101] In August 2006, it was reported that there were 18,250 prisoners across the country, and that more than half of these (10,590 individuals) were still awaiting trial.[102] A few months earlier, a February 2006 report found that there were 4,700 persons accused of capital offences awaiting trial while on committal.[103] At least 375 of these individuals had been in prison for over four years.[104]

More recently, a March 2010 report from the *Uganda Prison Service* showed that the population of the Ugandan prison systems had risen to 30,585, out of which 17,015 are accused persons.[105] Most of the prisons included in this study are extremely overcrowded: between 200-350% over capacity.[106] Although amendments to the Constitution were made in 2005 to decrease the maximum periods of detention prior to commencement of trial, these changes have not resulted in any significant improvement in prison over-crowding.[107] These were some of the conditions that led ASF to undertake this research in 2010.

Prison Conditions

Prison conditions in Uganda are extremely problematic which compounds the issues faced by prisoners awaiting trial: not only are they imprisoned for excessive periods of time while presumed innocent, the conditions in which they are kept generally do not meet basic standards and relevant requirements.[108] In some cases, prison conditions in Uganda are so poor that maintaining prisoners in certain detention centres is tantamount to inhuman and degrading treatment in contravention of domestic and international law.[109] Serious overcrowding in cells, especially in urban areas like Kampala, is the norm; some facilities are 200% over capacity.[110] The buildings are dilapidated, haphazardly erected and not properly maintained.[111] Many police cells are noisy and dark with little ventilation while some prisons keep cell lights on all day and night, making it

[100] Amnesty International, UA 111/09 Incommunicado detention/ Torture and other ill-treatment, April 2009, AFR 59/002/2009. Available at http://www.amnesty.org/en/library/asset/AFR59/002/2009/en/ee898830-8672-440a-b134-c95f5ea9c08d/afr590022009en.pdf.; see also Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007,supra at p. 18.

[101] Uganda Prison Service, **"**Summary of Uganda Prisons Service Statistics" (2011). Available at http://www.prisons.go.ug/reports.html.

[102] Foundation for Human Rights Initiative (FHRI), "UGANDA:HUMAN RIGHTS STATUS REPORT 2006", p. 61. Available at http://www.fhri.or.ug/2006-country-report.html.

[103] "On committal" refers to the status of having been committed to the High Court, but not yet had a trial.

[104] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2008.

[105] Uganda Prison Service, supra**.**

[106] *Ibid.*

[107] http://www.prisons.go.ug/reports/0310.pdf; see also Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 27.

[108] Foundation for Human Rights Initiative (FHRI), "The Human Rights Status Report", 2007, supra at p. 39.

[109] "Uganda Report 2003" (2003) 1 E African J Hum Rts & Democracy 73, p. 87.

[110] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 40.

[111] "Uganda Report 2003" supra at p. 88.

difficult for the inmates to ascertain the time of day.[112] Often prisoners are not provided with mattresses or bedding so they must sleep on the bare floor.[113]

Sometimes there is no water or electricity and conditions are often unhygienic; in some instances smoking is permitted in cells and prisoners are also frequently forced to relieve themselves from within their main cell.[114] There is a severe lack of space and privacy; some women even give birth to children while serving or awaiting trial, and young children between the ages of 1-3 are often held in prison with their mothers.[115]

Many individuals contract skin and fungal diseases, common cold and flu, diarrhoea and malaria and there is a shortage of drugs and lack of medical care available at the detention centres.[116]

Prisoners are generally sleep-deprived, overworked, and subject to beating.[117] Meals are of poor quality and quantity; for instance, at the Kigo centre, prisoners have one meal a day at 3:00 pm that serves as lunch and dinner.[118] Prisoners commonly work for affluent individuals or local organizations in exchange for food or money, but these places are often located far from the prison and transportation is not provided.[119] It has been reported that prison staff are known to inflict punishment on prisoners, on top of the verbal harassment many of them must endure from fellow prisoners.[120] Punishments depend on the severity of the act and can include solitary confinement where detainees have reported denial of food, assault and torture.[121] Torture and inhuman and degrading treatment are also common techniques to extract information from prisoners.[122]

The detention centres where soldiers are kept are generally where the most serious human rights violations are committed.[123] These centres are commonly staffed by the Chieftaincy of Military intelligence and the Uganda Peoples' Defence Force has resisted granting the Uganda Human Rights Commission (UHRC) access to the police cells where the soldiers reside.[124]. However, in recent years the UHRC has been able to visit some military detention centres in Uganda. For example in 2009, they visited Kigo prison, Mbuya Military Quarter Guard, Makindye Military Barracks, Gulu Army Barracks and Mbale Army Barracks, among others. In their visits, the UHRC found that the problem of long remands/illegal detention was most pronounced in Kigo prison.

The problem there was compounded by the presence of inmates who had been arrested by the Rapid Response Unit (RRU) of police for alleged illegal possession of firearms, and whose cases were to be heard by the General Court Martial.[125] The Uganda Prisons Service is aware of the issue of lengthy detention under the General Court Martial's jurisdiction, and periodically notifies them about the problem.

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[112] *Ibid.*
[113] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 39.
[114] "Uganda Report 2003" (2003) supra at p. 88.
[115] Foundation for Human Rights Initiative (FHRI), "Juvenile Justice in Uganda", 2009.
[116] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 41.
[117] "Uganda Report 2003" supra at p. 88.
[118] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 43.
[119] "Uganda Report 2003" supra at p. 88.
[120] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 20.
[121] *Ibid.*
[122] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p.66.
[123] "Uganda Report 2003" supra at p. 89.
[124] *Ibid.*
[125] Uganda Human Rights Commission, 12th Annual Report 2009, page xx

On the other hand, the problem of prolonged detentions found at Makindye Military Barracks was attributed to the irregular sessions of the General Court Martial and the Division Court Martial.[126]

FACTORS CONTRIBUTING TO LENGTHY DETENTION OF ACCUSED PERSONS

Overlap of Police Force, Military and Rebel Groups

In the past, the shared roles and responsibilities of the police force, military and rebel groups in Uganda confused the chain of justice, allowing unauthorized groups to enforce laws as they chose without being able to effectively hold any individual accountable.[127] This intermixing of forces led to increased instances of violence and human rights abuses, including illegal detention.[128] However, rebel groups are no longer active in Uganda.

The police force in Uganda is known for corruption and abuse.[129] This phenomenon may be partly due to the fact that police and prison staff work in environments of inadequate resources, low wages, and poor housing conditions.[130] Citizens are not attracted to positions in these areas in the first place, and reports indicate that those who do take on police roles find it difficult to maintain high morale.[131] The improper conduct and negative reputation of the police in Uganda may stem from the fact that security agencies were historically comprised of a mix of police, military and intelligence personnel.[132]

Ugandan law dictates that the police are the only authorities granted the power to routinely arrest and investigate crimes, and the only authorized civilian detention centres are police and prison facilities.[133] The police, however, are not the only agency discharging law enforcement responsibilities. According to Human Rights Watch (HRW) in its 2009 report, *Open Secret*, "in the past decade, there has been a proliferation of *ad hoc* security organizations working within the law enforcement and intelligence communities without mandates codified in law, some comprised of multiple organs of the state."[134]

Examples of these organizations include the Joint Anti-Terrorism Task Force (JATT), the Popular Intelligence Network (PIN), the Kalangala Action Plan (KAP), and the Black Mambas. Furthermore, Operation Wembley, a joint endeavour involving the police, the Internal Security Organization (ISO), and the military intelligence was established in 2002 to combat violent crime in urban regions. This operation was reported to raise serious concerns regarding its methods of arrest, illegal detention, and the abuse of the doctrine of presumption of innocence. Operation Wembley was later renamed the Violent

[126] *Ibid*, p.xxi
[127] Opolot, supra at p. 32
[128] Human Rights Watch, "Open Secret Illegal Detention and Torture by the Joint Anti-terrorism Task Force in Uganda" April, 2009, p.15-16. Available at http://www.hrw.org/en/node/82072/section/1.
[129] *Ibid,* at pp. 15-17; see also Opolot, supra at p. 32
[130] Opolot, supra at p. 32
[131] *Ibid.*
[132] *Ibid.*
[133] "Concerns regarding Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Uganda", Human Rights Watch and Foundation for Human Rights Initiative submission to the U.N. Committee against Torture, MAY 17, 2005
[134] Human Rights Watch, "Open Secret Illegal Detention and Torture by the Joint Anti-terrorism Task Force in Uganda" April, 2009, p.15. Available at http://www.hrw.org/en/node/82072/section/1 .

Crime Crack Unit (VCCU), and then the Rapid Response Unit (RRU), which is still operating.[135]

These groups have all been frequently accused of human rights abuses, unlawful arrests, and detention for periods exceeding constitutional maximums, torture, and other human rights abuses.[136] The overlap in function between the police and these taskforces in the past may have decreased citizen confidence in the integrity of the police force, its independence from the military and its ability to effectively enforce the law.[137] They also demonstrated the Ugandan government's tendency to ignore constitutional and statutory direction in the face of security problems. When the police had to report to military actors, and the military to the police, the chain of reporting and arrests would become confused. Furthermore, the lack of clearly established roles, organization and oversight led to major accountability issues—particularly when abuse was prevalent.

In 2005, the UN Committee against Torture devised a set of recommendations for the Ugandan government. One of the major recommendations was to "minimize the number of security forces and agencies with the power to arrest, detain and investigate and ensure that the police remains the primary law enforcement agency."[138] By limiting the number of individuals with arrest, detention and investigation authorities, the chain of justice would be more direct and less convoluted, leading to higher transparency and accountability and decreasing human rights abuses such as illegal detention.

If this recommendation had been followed, only individuals with constitutional authority would be involved in arrests, investigations and detention and this would lead to a more direct and efficient chain of justice and greater accountability of the authorized personnel. However, the proliferation of security agencies persists to date in Uganda.

Shortage of Judges and Magistrates

Another potential cause of lengthy pre-disposition detention is the deficit of Judges and Magistrates in Uganda. With a deficit of Courts and competent Judges, it is difficult for the justice system to deal with each case expeditiously and this leaves many prisoners awaiting trial while on remand. In a 2006 Human Rights Status Report by the Foundation for Human Rights Initiative (FHRI), a Principal Judge Justice James Munange Ogoola was quoted as saying: 'we have a very dire personnel constraint.' The report went on to explain that many Judges are on leave at any given time: many serve on committees or commissions, while others instruct or participate in training programs in Uganda or abroad.[139] The report states that "the Judiciary has also been experiencing budget cuts over the last three years" and this has contributed to its inadequacy.[140]

Here it is important to note that only the High Court in Uganda can grant bail for capital cases, and due to a deficit of Judges, there are also a limited number of High Courts.[141] The results of this research by ASF and University of Toronto show that the longest periods of time on remand and the longest mean remand periods are for capital cases – the majority of which fall within the jurisdiction of the High Court, which indicates that personnel shortages may be most acute at that level. However, long detention periods are even more prevalent among capital cases under the General Court Martial (64% had

[135] *Ibid.*
[136] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 17-18.
[137] Opolot, supra at p. 32.
[138] Human Rights Watch, "Open Secret Illegal Detention and Torture by the Joint Anti-terrorism Task Force in Uganda" supra at p.16.
[139] Foundation for Human Rights Initiative (FHRI), "UGANDA:HUMAN RIGHTS STATUS REPORT 2006", supra at p. 61.
[140] *Ibid*.
[141] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p.63.

been on remand over a year), which suggests that the human resource capacity of that court is not sufficient to handle the range of offences that fall within its jurisdiction.

Lack of Accessible and Effective Legal Representation

Inadequate legal representation often means that detainees have no one to advocate for a speedy trial and no one to fairly and effectively represent them once their trial date is finally set. According to a 2008 Human Rights Status Report by the FHRI, a number of prisoner complaints received during 2007 were in regards to the quality of legal services provided by state appointed lawyers.[142]

Not only are there major delays in appointing defence advocates, there is also a significant shortage of defence lawyers in the country.[143] This shortage is especially acute in almost all areas outside the capital of Kampala.

Furthermore, the right to state-funded counsel only arises in capital cases, and is only engaged at the time of trial, as opposed to the time of detention.[144] This means that any legal representative available to an inmate will in most cases not have communicated with the prisoner prior to the trial and will show up unprepared to properly defend his or her client.

The right to counsel at the actual time of detention (Article 28(3) of the Constitution) is available to all accused, but this right to counsel is at the accused person's own expense. Applications for bail and *habeas corpus* (and even dismissal for want of prosecution in cases of long delay) are available but they often depend on the accused having a lawyer to represent him or her. These circumstances lead to discrimination based on socio-economic status because those who cannot afford a lawyer are more likely to remain in custody beyond constitutional limits.[145] Prisoners allege that those who have access to private lawyers or other means of influence are more likely to be paid attention to by the authorities, while those court files without representation are often delayed or lost entirely.[146] Our research could neither confirm nor deny that statement.

Procedural and Administrative Issues

The aforementioned lack of lawyers and Judges exacerbates already existing procedural and administrative causes of illegal detention.

The right to a fair and expeditious hearing does not only refer to the time by which a trial should commence; it also relates to the time by which a trial should end and judgment be delivered.[147] All stages of the criminal justice chain should be carried out without undue delay; however, this is not the case.[148] Instead, trial administration is extremely slow, due to lack of funds to facilitate court sessions, disorganized delegation of duties, and increasing difficulty to produce expert witnesses.[149]

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[142] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2008.
[143] See "Lengthy Pre-Trial Detention: Law, Practice and Challenges", a paper presented by Roy Byaruhanga, Registrar Research and Training, during a Training program for Magistrates, Advocates, and Civil Society organized by Avocats Sans Frontières and JSI held at Pan Africa Hotel Gulu from 28th January to 30th January 2009 at p. 8;
see also Human Rights Watch, "State of Pain: Torture in Uganda" supra at pp. 63-64.
[144] *Constitution of the Republic of Uganda* 1995, Article 28 (3); see also Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 64.
[145] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 64.
[146] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2008.
[147] Foundation for Human Rights Initiative (FHRI), "UGANDA: HUMAN RIGHTS STATUS REPORT 2006", supra at p. 60.
[148] *Ibid*, at pp. 60-61.
[149] *Ibid*, at p. 61.

The findings of this study show that almost 22% of detainees are recorded as either on trial or on hearing (for lesser offences), which when taken together with other data suggests that trials and hearings are often dragged out for long periods of time before a final disposition of the case.

The trial administration process suffers from poor coordination between Court and relevant actors, poor case management, and cumbersome file handling of transferred and withdrawn cases.[150] Cases are frequently delayed, making the ratio between completed cases and newly registered cases very low. This leads to substantial backlog in the Court system. In many instances, the accused is given few or no details regarding the charges against him or her, even if he or she is facing the death penalty, and reports of charges are even less detailed for cases under the jurisdiction of the General Court Martial.[151] Even inadequate transportation for witnesses and prisoners to Court has been cited as a major challenge impeding the trial process.[152] In order for there to be fair and expeditious handling of cases leading to shorter pre-trial detention periods, there first needs to be serious organizational and managerial improvements in the trial administrative process.

Ineffective Investigation Practices

Court proceedings undoubtedly depend on associated criminal investigations. Therefore, when investigations are not carried out properly, trials cannot commence and prisoners are left on remand. A lack of funds for investigations, slow criminal investigations, and investigations that do not adhere to established investigation procedures have been reported in Uganda.[153]

Specialized investigations that require ballistics, chemicals, documents or cyber fraud tools are especially difficult because there are few experts in these areas and there is only one Government Analytical Laboratory in the country (which is based in Kampala).[154] There is also a lack of communication between the police and the state attorney; Resident State Attorneys often have heavy caseloads and police investigators wait long periods of time before receiving investigatory instructions.[155] Finally, the inaccessibility of witnesses also presents a number of challenges, especially as there is no witness protection program in place in Uganda.

Sometimes complainants do not follow up on the reports made to the police, which leads to accused persons remaining on remand for long periods of time as the investigators attempt to gather facts without witness assistance.[156]

Sentence Uncertainty

Unresolved issues pertaining to appropriate sentences for certain offences may be related to illegal detention and prison over-crowding. Over the past few years there has been much discourse with respect to life imprisonment sentences and the mandatory death penalty in Uganda. In the 2009 case *Attorney General* v. *Susan Kigul*a *and Ors*, the Ugandan Supreme Court unanimously upheld a Constitutional Court decision that the

[150] See "Lengthy Pre-Trial Detention: Law, Practice and Challenges", a paper presented by Roy Byaruhanga Registrar Research and Training during a Training program for Magistrates, Advocates, and Civil Society organised by Avocats Sans Frontières and JSI held at Pan Africa Hotel Gulu from 28th to 30th January 2009, p. 8.
[151] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 61
[152] *Supra*, note 137 at p. 7.
[153] Foundation for Human Rights Initiative (FHRI), "UGANDA: HUMAN RIGHTS STATUS REPORT 2006",supra at pp. 36, 38, 56, 61.
[154] See "Lengthy Pre-Trial Detention: Law, Practice and Challenges", a paper presented by Roy Byaruhanga, supra at pp. 8-9
[155] *Ibid*, at p. 9.
[156] *Ibid*, at p. 8.

death penalty was constitutional but that a mandatory death sentence violated the Constitution.[157] The Court referred to international human rights treaties and foreign jurisprudence as interpretive tools to come to this decision.[158] This decision has left the status of the death penalty in Uganda in some doubt.

Furthermore, over the past decade or so, Ugandan courts have been grappling with the meaning of "life imprisonment" and whether it should be interpreted as 18-20 years or one's natural life. In the 2003 case *Wanaba* v*. Uganda*, the Court of Appeal held that "life imprisonment" was equivalent to 20 years of imprisonment.[159]

On the other hand, in 2005, the Constitutional Court held that "life imprisonment" should refer to the offender's natural life.[160] In May 2011, the Justices of the Supreme Court declared that life imprisonment means imprisonment for the natural life term of a convict, which should bring debate of this issue to an end. The actual period of imprisonment may stand reduced on account of remissions earned.[161]

Ugandan courts argue that they should have the discretion to decide the length of a life sentence for any given individual—especially if the mandatory death penalty is abolished. Others argue that the meaning should not be on an *ad hoc* basis and that the executive branch input should be considered in the decision. All branches of the government play a functional role in the criminal justice system.

Furthermore, the executive has a significant interest in sentencing policy and decisions concerning correctional institutions as they are the main players in the Ugandan Prisons Service. It is, after all, the executive branch of the government that builds prisons, cares for inmates, maintains detention centre conditions, and manages rehabilitation programs.[162] If Courts are left with full discretion to interpret the length of life sentence in each case, it may lead to further discrepancies and discriminations in sentences for the same offences depending on the judge and the offender.[163]

Coerced Confessions

Occasionally prisoners are tortured and thereby coerced into confessing to acts that they did not actually commit.[164] Torturers then use these confessions to justify prolonged detention, thus allowing otherwise illegal detention to go undetected. This practice is often augmented by denial of the accused's right to access family members, presumably because those without support are more likely to fall victim to the pressure to confess crimes they may not have committed.[165]

Invalid Warrants/Failure to Adhere to Court Dates

Warrants were invalidated by two causes in the data examined by the research team – the most common being that the court date set was not adhered to and the other option

[157] Andrew Novak, "Decline of the Mandatory Death Penalty in Common Law Africa: Constitutional Challenges and Comparative Jurisprudence in Malawi and Uganda" (2009-2010) 11 Loy. J. Pub. Int. L. 20, p. 22.
[158] Jamil Ddamulira Mujuzi, "International Human Rights Law and Foreign Case Law in Interpreting Constitutional Rights: The Supreme Court of Uganda and the Death Penalty Question" (2009) 9 Afr. Hum. Rts. L.J. 576
[159] Jamil Ddamulira Mujuzi, "Why the Supreme Court of Uganda Should Reject the Constitutional Court's Understanding of Imprisonment for Life" (2008) 8 Afr. Hum. Rts. L.J. 163
[160] *Susan Kigula and 416 Others v The Attorney-General - Constitutional Court Const. Petit. No. 6 of 2003*
[161] Stephen Tigo v. Uganda-Reported in the New Vision Newspaper of 22nd May 2011
[162] Jamil Ddamulira Mujuzi, "Why the Supreme Court of Uganda Should Reject the Constitutional Court's Understanding of Imprisonment for Life" (2008) 8 Afr. Hum. Rts. L.J. 163
[163] *Ibid.*
[164] Human Rights Watch, "State of Pain: Torture in Uganda" supra at p. 64.
[165] *Ibid*, at p. 65.

being that no court date was ever stated. The data gathered by this study indicated that 88 detainees were being held pursuant to invalid warrants – the majority of which were issued by the General Court Martial and the remainder by the Magistrates Court. The mean number of days on remand was over three times as long for such detainees (615 days) as for those held under valid warrants (202 days), which demonstrates a clear pattern of remand overstay in these cases.

Political Climate

The past and current political climates have certainly exacerbated illegal detention issues. Considering the country's history of intolerance to political opposition, it is common for criminal defence attorneys to refuse to take on any case with a political tone due to fear and threats from the ruling party.[166] This fear of reprisals leaves prisoners residing for long periods in detention or struggling through trial without representation. Finally, the general impunity for illegal or arbitrary detention and regularity of prisoner deaths in custody means that these issues are not confronted with urgency or concern.[167] Events of the first months of 2011 have indicated the willingness of certain factions within the government to use detention as a means of repression of political dissent, including proposals to disallow bail for all those accused of rioting and other offences.

Lack of knowledge on the right to a fair and speedy trial

In a recent two year survey (2009-2011) carried out among 832 respondents drawn from all the four regions of Uganda by the Human Rights Awareness and Promotion Forum (HRAPF), it was established that the right to a fair and speedy trial is among the least known human rights in Uganda. Only 0.3% of the respondents interviewed during their study knew about this particular right. As such, the general lack of knowledge on the right to a fair and speedy trial among the people of Uganda (including remand prisoners) is among the key factors that have contributed to the problem of lengthy/illegal detention in Uganda. Clearly, if prisoners do not know about their right to a fair and speedy trial, then they cannot be in position to demand its enforcement.[168]

RECENT POSITIVE DEVELOPMENTS

Some positive developments have been recorded in recent years, although often with associated challenges. For instance, according to an article in the East African Journal of Human Rights and Democracy, recent efforts to improve prison conditions have been somewhat successful, especially in central prisons like Kampala. However, rural detention centers are not receiving the same attention and overcrowding is still a widespread issue.[169] Incidents of mistreatment and abuse by prison staff have also become less frequent.[170]

In order to promote the rule of law and improve the administration of justice in Uganda, in March 2010 the Justice, Law and Order Sector (JLOS) launched the Case Backlog Quick Wins programme to clear 12,000 cases which were more than two years old, and at the same time to stem the growth of new case backlog. Reports indicate that 28,000 cases were cleared through regular sessions and weeding out unmeritorious cases. The sector is still continuing to clear the remaining backlog cases with a target of eliminating

[166] *Ibid*, at p. 64.
[167] *Ibid*, at p. 7.
[168] Human Rights Awareness and Promotion Forum (HRAPF), "The State Of Human Rights Awareness And Promotion In Uganda", April 2011, p.10
[169] Opolot, supra at p. 32.
[170] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 38.

all pre December 2008 criminal cases in magistrates and High Courts in the next six months[171].

By clearing the high case backlog filed before 2009, JLOS is also helping to reduce prison congestion in Uganda. According to a recent speech by Chief Justice Odoki, Ugandan prisons are holding 2.4 times their intended capacity. This view is supported by the findings made by Uganda Human Rights Commission, hereinafter referred to as "UHRC", during their prison visits[172]. The UHRC noted that in 2009 55% of the inmates were pre-trial detainees and only 45% of them were convicts. This means that cases of only 14,850 prisoners had been concluded, while the remaining 18,150 were inmates on remand.[173] Some of the overcrowding in prisons could be reduced if pre-trial detainees were not held beyond their lawful period of remand. There is a need for lawyers to respond to this problem and provide pre-trial detainees with legal advice and representation when they are subjected to illegal detention in the prisons. A number of civil society organizations such as ASF and the Uganda Law Society are working to reach out to detainees to provide such advice and assistance, but more needs to be done.

International donors have granted funding to the Ugandan Human Rights Commission and other human rights organizations for the purpose of encouraging and enabling regular inspections of Ugandan prisons and other places of detention. Despite this funding and the UHRC's constitutional mandate, some detention centres are still inaccessible to the organization.[174] In some cases, advance notice is required of their intended visits, which can negatively affect the relevance of findings.

More recently, international attention has been directed to the police and steps have been taken to reduce torture and cruel, degrading and inhuman treatment of prisoners by the police.[175] For instance, the police force now has a human rights desk to field complaints, and they have also introduced a human rights course in the police curriculum.[176] As mentioned above, the Ugandan Human Rights Commission should have access to all places of detention without notice, which should act as a motivation for the relevant authorities to properly conduct themselves.

Finally, some of the 2005 Constitutional amendments that reduced the maximum periods of detention reflect a response to the concerns of human rights organizations. Before the 2005 Constitutional amendment, the maximum period of detention for suspects accused of non-capital offences was 120 days and that for suspects on remand for capital offences (before they could qualify for bail at the discretion of the court) was 360 days; the limits are now 60 and 180 days respectively.

In a number of areas visited by the FHRI, it was even found that prison authorities were frequently drawing the Courts' attention to illegal detention of prisoners, in order to ensure compliance with the amendments.[177]

[171] http://www.jlos.go.ug/page.php?p=achieve
[172] Uganda Human Rights Commission Annual Report, 2009
[173] The New Vision, 6th April, 2010
[174] Opolot, supra at p. 32.
[175] "Uganda Report 2003" (2003) 1 E African J Hum Rts & Democracy 73, p. 89.
[176] *Ibid.*
[177] Foundation for Human Rights Initiative (FHRI), "UGANDA:HUMAN RIGHTS STATUS REPORT 2006", supra at p. 61

CURRENT STUDY

Methodology

Overall Approach

The research team adopted three main approaches in terms of gathering information for purposes of this study, as follows:

- A comprehensive documentary review of studies, reports and other publications produced about pre trial detention and overstay of prisoners on remand in Uganda;
- A critical review of all national and international legal instruments regarding pre trial detention that focus on illegal/unlawful detentions and an analysis of all relevant court precedents in Uganda; and
- A complete review of all the prison files of remand prisoners from eight selected detention facilities in the Kampala area, including one detention facility in the remote district of Soroti in North Eastern Uganda.

The third methodology is described in more detail in the following sections.

Data Collection in Prisons

In July 2010, ASF obtained permission from the Ugandan Prisons Service to collect data from prisons for the purpose of making a comprehensive assessment of people being held on remand. ASF collected data from eight detention facilities, seven in the Kampala area and one detention facility in the district of Soroti in North Eastern Uganda. The eight prisons from which data was collected are as follows:

- Kampala Remand
- Kasangati
- Kigo
- Lugazi
- Luzira Women's Prison
- Sentema
- Butuntumula
- Soroti

ASF focused exclusively on detainees, i.e. accused persons being held in custody awaiting disposition of their charges. Although each of these detention facilities house both detainees and convicted criminals, they are generally kept in separate quarters. The data was collected from June 15th to September 22nd, 2010. The total number of entries examined for all prisons was 2,242. The prisons were visited and data was collected as follows.

Table 1: Number of records examined and date of visits to each prison

Prison	Dates of Visit (2010)	# of Entries for Male Detainees	# of Entries for Female Detainees
Kampala Remand	July 30; August 2, 5	832	0
Kasangati	August 9, 10	98	13
Kigo*	July 15, 16, 19, 20, 21	664	0
Lugazi	August 16, 17	50	1
Luzira Women's Prison	July 27, 28	0	164
Kigo Women's Prison	August 20	0	48 + 2 infants
Sentema	August 12, 13	177	4
Butuntumula	September 13, 14	128	4 + 2 infants
Soroti	September 20, 22	368	22

*Kigo prison admits mostly detainees charged with capital offences, many awaiting trial before the General Court Martial for illegal possession of a firearm and ammunition, aggravated robbery, and murder. The prison also houses detainees on committal.

The data collection process involved visiting each of the prisons and reviewing the files of each prisoner being held in detention.[178] As the ASF data collector reviewed each individual file, the salient information was entered into a database. No interviews were conducted and the information contained in the database has not been verified by follow-up visits to the respective Courts.

The information recorded and included in the database is as follows:

- First and last name of prisoner
- Gender
- Crime charged with + provision in the Criminal Code
- Maximum sentence + whether capital/non-capital offence
- Court with jurisdiction (i.e. Court handling the case)
- Court that issued the warrant
- Date of remand
- Date of trial
- Validity of the remand warrant

[178] Note: The data collected covers all detainees in these prisons who had not yet been tried and sentenced.

The "Validity of the Remand Warrant" was determined by looking at whether the remand warrant met technical requirements such as being signed by the Magistrate, having the next date for appearance recorded, etc.

Also, in the database a distinction is made between capital and non-capital offences. Capital offences are those that can carry the death penalty and are thus triable only by the High Court.[179] Non-capital offences are all other offences, which carry sentences less than or equal to life imprisonment and are usually triable by the Magistrates Court or the General Court Martial, depending on the offence.

The "Total Number of Days on Committal" applies only to cases that will be heard by the High Court. It is the length of time from the date the Magistrates Court committed the case to High Court for trial to the date of ASF's visit for data collection. It is important to remember that this column *does not* include the additional days that were spent on pre-committal detention.

Database Clean-Up

Once the data was collected, it was "cleaned" extensively. Where data was omitted or blatantly incorrect, changes were made to the database to make it complete and accurately reflect Ugandan law. Where the data was inconsistent but it was unclear whether it was an input error or not, judgment calls were made by the analysts and statistician based on careful reasoning.

Variables

The following variables were available in the database:

- Gender
- Type of offence
- Capital Offences vs. Non-Capital Offences
- Petty Offences (penalty of 2 years or less) vs. Mid-Level Offences vs. Capital Offences (scale of all 3)
- Court with jurisdiction
- Level of Court that issued warrant
- Place of detention
- Status of remand
- Whether bail conditions have been set but not met
- Date of arrest
- Validity of remand warrant

It was hypothesized that all of these variables could play a role in contributing to lengthy detention.

Data Analysis

Lastly, the data was analyzed by Dr. Jerry Brunner, an Associate Professor in the Department of Statistics at the University of Toronto. There were 2,242 individuals on remand as of the date of data collection. Sometimes, there were multiple entries for the

[179] Except for when the General Court Martial (Uganda's military court) has jurisdiction. See *the Uganda Peoples Defence Force Act* for more details.

same individual if that person had been charged with multiple offences. For these people charged with multiple offences, the charge that the person has been on remand for the longest period of time was used in the overall analyses.

The following analyses were conducted on the dataset.

Illegal Detention

First, it was critical to assess the proportion of detainees that were being held past the constitutional limit, i.e. in illegal detention. As noted above, the Constitution specifies two categories of limitations on length of detention:

- For capital cases within the jurisdiction of the High Court, the period from when the detainee was taken into custody until committal may not exceed 180 days.
- For non-capital cases, the period from when the detainee was taken into custody until the commencement of trial may not exceed 60 days.

In our analysis, for non-capital offences, the constitutional limit was applied to the date when the detainee was first taken into custody to the date of data collection, since the date when the trial or hearing commenced was not available. As such, all cases whose status was "Trial" or "Hearing" (i.e. where prisoners were in the midst of their trials or hearings) were excluded from the analysis of constitutional limits since it was impossible to determine when their trial had commenced, and thus, whether they were detained over the constitutional limit. This, unfortunately, results in a significant understatement of the number of detainees who were illegally detained.

Total Remand Period

Total remand period refers to the entire time spent in custody before being either acquitted or convicted of the criminal charges at issue. This period of detention is important since it reflects the actual amount of time that an individual is waiting in prison and can be judged against international standards of undue delay.

In this dataset, "total remand period" extends from the date of initial imprisonment to the date of data collection because date of sentencing or acquittal is not available given the nature of the data set. Thus, for every single detainee in the data set, the analysis is an understatement of actual length on remand. This analysis includes all 2,239 detainees for whom both the date of remand and the date of data collection are available.

The total remand period was tested against a number of variables, including type of offence, court with jurisdiction, gender, validity of warrant and place of detention. For a full description of all of the analyses that were conducted, see Appendix 1 (Statistician's Report).

Time on Committal

When the High Court has jurisdiction over a case, there is a constitutional limit on the period between remand and committal to the High Court (pre-committal delay). However, there is no explicit limit in the Ugandan Constitution on how long a detainee may wait for disposition of his case once on committal. This is problematic since the time spent on committal significantly affects the total pre-disposition delay.

The time since committal was calculated from the date of committal to the date of data collection. This resulted in a very conservative estimate of the period in detention since committal, since detention was ongoing for an undetermined time after data collection.

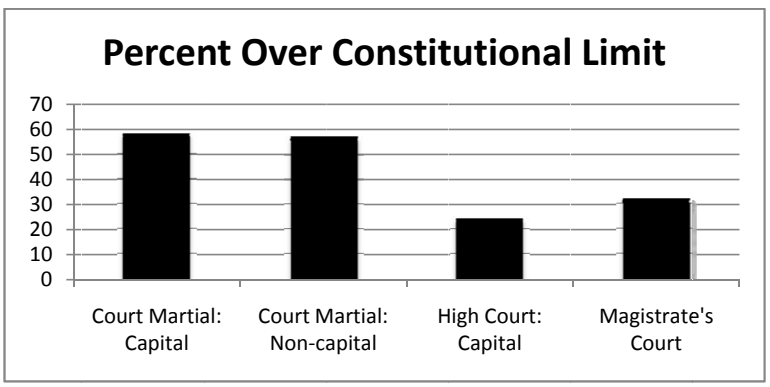
RESULTS AND ANALYSIS

Illegal Detention

Of those cases where it was possible to determine whether a violation had occurred, 572 detainees (or 32% of cases with valid data) were found to be illegally detained (i.e. had been held in detention for a period exceeding limits specified by the Constitution). Because the date when the trial or hearing commenced was not available, all cases whose status was recorded as "Trial" or "Hearing" were excluded from the analysis of illegal detention. This in effect results in an understatement of the number of detainees who are being held illegally.

Figure 1 shows the percentages subdivided by capital versus lesser offences, and by court with jurisdiction.

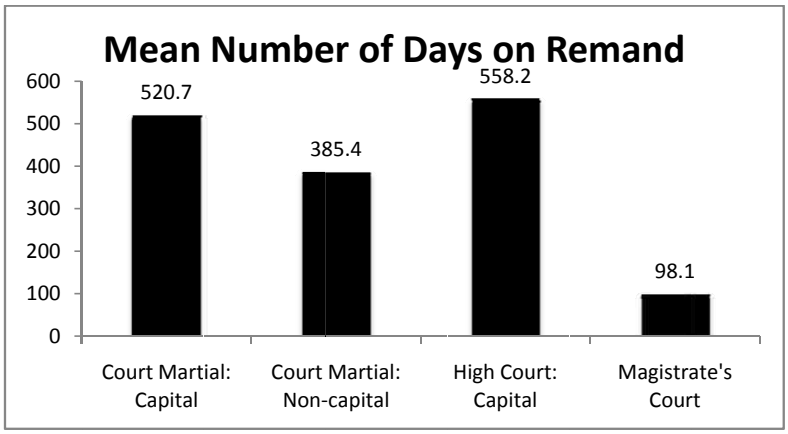
Figure 1



The likelihood of being illegally detained is greater for detainees within the jurisdiction of the General Court Martial than for the High Court or Magistrates Court. Approximately 58% of both capital and non-capital detainees within the jurisdiction of the Court Martial have been detained for periods exceeding the constitutional limits (see Table 1 in the Appendix).

The mean number of days on remand for the Court Martial and the High Court are extremely high. Figure 2 shows the average number of days spent in custody just for detainees who are illegally detained. Detainees who are illegally detained within the jurisdiction of the Magistrates Court had the lowest mean number of days spent in custody for those who were in detention over the constitutional limit.

Figure 2



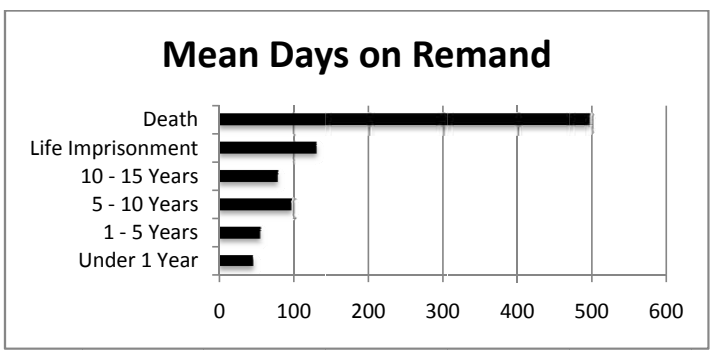
Total Remand Period

Since, with this data set, the total time on remand could only be found by looking at the date of initial custody until the date of data collection (and not until actual date of disposition of the case), the findings are in fact a great understatement of actual time on remand.

Type of Offence

Table 2 in the appendix shows that the longest periods of time on remand tend to relate to detainees charged with offences where the maximum penalty is death, though there are some surprisingly long periods on remand where the penalty is 5-10 years. Overall, 384 detainees (17%) had been on remand for over a year at the time of data collection. Strikingly, there were 25 detainees who had been on remand for 5-10 years. Figure 3 shows the correlation between the average time on remand and the maximum penalty for the offence. Again, detainees charged with capital cases experience the longest mean remand periods; the average was well over 1 year.

Figure 3



Court with Jurisdiction

The General Court Martial and the High Court have jurisdiction over capital cases (maximum penalty of death), while the Magistrates Courts hear most non-capital cases. For this reason, it is preferable to examine Court with Jurisdiction in conjunction with the level of offence.

Certain comparisons could not be made because of the small numbers of cases in the data sub-sets. For example, there are 16 detainees charged with non-capital offences whose matters are being heard by the High Court. Although the High Court technically has jurisdiction to hear non-capital cases, it is very rare for it to exercise this jurisdiction.

The meaningful comparisons that could be made regarding the mean time on remand were the following:

- Court Martial versus Magistrates Court for cases with a maximum penalty of 5-10 years;
- Court Martial versus High Court for capital cases.

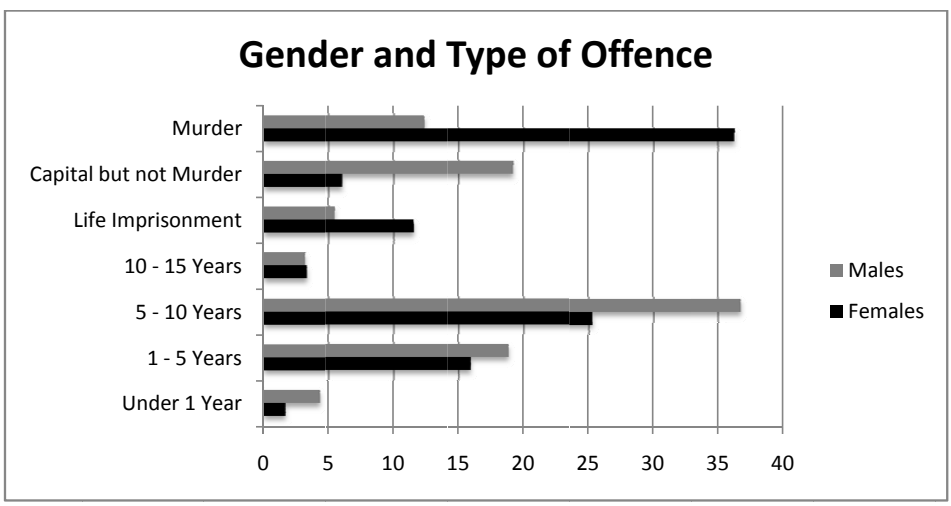
For detainees facing a maximum penalty of 5-10 years, the mean time on remand is much greater for the Court Martial than for the Magistrates Court (331 days as compared to 74). Table 5 in the Appendix shows the distributions. For capital cases, the Court Martial had higher average days on remand than the High Court (679 for the Military Court versus 394 for the High Court). See Table 6 in the Appendix for the distributions.

Notably, 64% (166 out of 261) of the capital cases before the Court Martial had been on remand for over a year, compared to 37% (170 out of 464) for the High Court.

Gender

The vast majority (92%) of detainees were men. Relative to their numbers, women are more likely to be accused of murder, while men are more likely to be accused of crimes (particularly capital crimes) other than murder (see Figure 4). Only one female detainee was under the jurisdiction of the Court Martial (see Table 8 in the Appendix)

Figure 4



In order to account for the contributory effects of maximum penalty, the gender comparison of mean time on remand was limited to murder cases only under the jurisdiction of the High Court.

For those detainees, the 66 female detainees had a mean remand time of 477 days, while the mean remand time for the 187 males was 396 days. This difference is small relative to the variation in the data, and could have easily arisen by chance. A similar conclusion holds for capital cases (of which the murder cases are a large subset). Thus, these data show no convincing evidence that male and female detainees charged with comparable crimes have substantially differing average times on remand.

Place of Detention

Some prisons had a disproportionate number of detainees with capital offences. Table 13 shows the connection between place of detention and type of offence. Note that none of the detainees facing life imprisonment are at Lugazi, and all 192 detainees under the jurisdiction of the High Court at Soroti are facing a potential death penalty. Kigo also has a large number of detainees facing a potential death penalty.

Table 2: Place of Detention and Type of Offence

	Lesser Penalty	Life Imprisonment	Death Penalty
Butuntumula	82	17	25
Kampala Remand	634	10	5
Kasangati	101	0	0
Kigo	236	22	433
Lugazi	56	0	0
Luzira Women's Prison	60	12	51
Sentema	150	16	20
Soroti	63	56	192

In summary, there is no strong relationship between the place of detention and average days on remand. For maximum penalties less than life imprisonment (see Table 14 in the Appendix) and for those of life imprisonment (see Table 15 in the Appendix), there were no substantial differences in remand times between places of detention. However, for capital offences, there were quite sizable differences between remand times, though the differences were not significant enough to meet our very stringent criterion (see Table 16 in the Appendix).

Validity of Remand Warrant

As noted above, the validity of remand warrants is an important factor in terms of time on remand. For detainees with valid warrants, the mean number of days on remand was 201.6, while for the 88 with invalid warrants the mean number of days on remand was 614.8 (See Table 19 in the Appendix). Thus, detainees with invalid remand warrants tend to spend much longer periods on remand.

Interestingly, in every one of these cases where the invalid warrant was issued by the General Court Martial, the detainee was in custody over the constitutional time limit (See Table 20 in the Appendix). The conclusion is that invalid warrants may be a source of unduly long periods of detention, particularly when issued by the General Court Martial.

Of the 88 invalid warrants, the reason for invalidity was recorded for 87 (See Table 21 in the Appendix). When the Chief Magistrate issues an invalid warrant, it is usually because no court date is set, but when the General Court Martial issues an invalid warrant, it is usually because the court date is set but not adhered to. None of the invalid warrants emanated from the High Court, which rarely issues warrants.

Time on Committal

In this section, the focus is on 240 detainees under the jurisdiction of the High Court, all of whom were facing capital charges. For these individuals, the average number of days spent on committal was 488.4, measured from the date of committal to the date of data collection. Remarkably, 97 of the 199 detainees on committal whose trials had not yet begun (48.7%) had been waiting for over one year, and two detainees had been waiting for over seven years (See Table 22 in the Appendix).

There was no significant correlation between days on committal and other variables (such as gender, time of offence, place of detention, etc).

Individual Detainees

There were some cases that were exceptionally striking. For instance, the 10 longest periods on remand range from almost 8 to 9 years (See Table 24 in the Appendix). Notice that the first detainee in the chart (ID 227) was *not* over the constitutional time limit since the lengthy delay at issue was post-committal – a dramatic example of the need for the entire time spent on remand until disposition of the case to be considered when assessing the legality of detention, including the period on committal.

RIGHTS VIOLATED

The key freedom affected by lengthy detention is personal liberty, which is protected under the Ugandan Constitution and may only be derogated in accordance with Article 23.

Our analysis clearly illustrates that this key freedom is most certainly being breached by excessive periods of remand. Our analysis further establishes that people are routinely deprived of their personal liberty contrary to Article 23(6) of the Constitution, which sets a limit on pre-trial detention and/or pre-committal detention (depending on the offence). In total, 32% of all detainees in the dataset were being held illegally, past the constitutional limits set out in Article 23(6) (b) and (c). This percentage is likely a significant underestimate of the actual number of detainees whose constitutional rights are being breached due to noted limitations of the study.

Moreover, our analysis shows that another right that is consistently breached is the right to a fair, speedy, and public hearing, which is protected in Article 28(1) of the Ugandan Constitution. For some of the detainees whose status was "on trial" or "on hearing", the inordinate lengths of time on remand suggest significant breaches of this constitutional right. Our analysis shows a significant number of detainees who have been detained for very long periods of time without being tried. . This may also be in violation of Article 43(2)(b) of the Ugandan Constitution, whose provisions prohibit detention without

trial.[180] When detention without trial is excessively lengthy, it could be argued that the individual has *effectively* been deprived of trial. Trial in this context refers to disposition of a case in accordance with due process.

An issue of great concern is the number of prisoners who were found to have been detained for very long periods of time on committal (i.e. prisoners that have been committed and are awaiting trial). These detainees, who are under the jurisdiction of the High Court, are particularly vulnerable since the Constitution does not explicitly protect them; the limit applies to the period of detention only up until the date of committal. There should be a clearly defined restriction on the length of this period on committal given Ugandan common law, the spirit of the Ugandan Constitution, and international legal standards.

This period was considered by the High Court in the case of *Ssewajjwa Abdu* v. *Uganda* [1999] KALR 183 where it was held that detention during committal should not be prolonged for an inordinate period of time. The data showed that the average number of days in detention on committal was 488.4, which is almost 3 times the maximum time a person can be detained for capital offences. Moreover, there were many prisoners who had been detained on committal without trial for 4 to 8 years. These periods inarguably constitute an "inordinate period of time" and thus breach Ugandan law.

Furthermore, the nature of the right to liberty and the constitutional limits in Article 23 are premised on the idea that people should not be detained in prison for long periods of time without having a trial. Committing someone to the High Court should not be a permissible way for courts to evade the constitutional protection and hold detainees without trial. Reading Article 23(6)(c) of the Constitution literally would lead to an irrational outcome: individuals could be detained on committal indefinitely. Thus, a reasonable time limit on this period of detention on committal should be read into the Constitution.

Finally, international law requires that individuals not be detained for an unreasonable time without trial. The ICCPR requires that anyone detained on a criminal charge be entitled to trial "within a reasonable time or to release".[181] Article 14(3) and (6) of the ICCPR also guarantee the right to be tried without undue delay. The *African Charter on Human and Peoples' Rights* also protects the right to be tried within a reasonable time.[182] All of these restrictions on detention length would apply to the period before trial, regardless of whether this time is spent pre- or post-committal.

In extreme cases, lengthy detention may also breach Article 24 of the Ugandan Constitution, which prohibits cruel, inhuman or degrading treatment or punishment. In many detention centres, physical conditions and medical facilities are extremely poor, and detainees are subjected to abuse on part of the prison staff. The longer a detainee spends on remand in these conditions, the more likely the treatment will amount to cruel, inhuman or degrading treatment. Length of detention is thus a compounding factor in each prisoner's case, potentially leading to violations of Article 24 of the Ugandan Constitution.

Finally, a controversial topic in Uganda is the death penalty and related human rights violations. Uganda has been criticized by human rights organizations for its use of capital punishment in general. The right to life is protected by Article 6 of the ICCPR, and it is arguable that Uganda's Constitution, which allows for the death penalty[183], is

[180] Article 43(1) (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.
[181] *ICCPR*, article 9(3).
[182] *Ibid,* Article 7(d)
[183] *Constitution of the Republic of Uganda* 1995, Article 22

inconsistent with international law. While that is a topic for another report, it is worth noting that emerging jurisprudence suggests that simply waiting on death row for a long period of time could constitute inhuman and degrading treatment or even torture. In Uganda, courts have ruled that long periods spent on death row by condemned prisoners amounts to torture.[184]

The European Court of Human Rights has also held that being kept several years on death row, without knowing whether or not one would be executed, constituted inhuman and degrading treatment. [185] This is important to the issue of detention in Uganda because our analysis shows that capital offences have the longest average remand periods: the average time an individual charged with a capital offence is detained is almost 500 days.

RECOMMENDATIONS

There are many different strategies that could be used effectively to tackle the problem of illegally lengthy detention in Uganda; some of those methods are already being attempted by JLOS and other actors. The following represents a non-exhaustive set of recommendations arising out of this study, which we hope will help to guide future initiatives.

- *End Illegal Detention: Enforce constitutional limits on maximum detention periods*

Thirty-two percent of all detainees in the dataset were being detained illegally, well past the limits prescribed by the Ugandan Constitution. Special attention should be focused on those charged with capital offences, since they have some of the longest periods of remand. Since the Ugandan Constitution provides that a person charged with a capital offence has to be released on bail after 180 days, these cases should be addressed urgently.

- *Increase levels of awareness about legal limits on pre trial detention*

Prison and court personnel of all jurisdictions should have better knowledge of the laws of Uganda, and a greater will to enforce them. ASF's experience to date has shown that there is a high level of interest among prison authorities and personnel to learn about the laws that apply to their facilities and to improve their levels of compliance. In fact, the Uganda Prison Service has made considerable efforts to ensure respect for human rights and the law among prison staff.

Judges and magistrates also need to be sensitised and monitored to ensure that they take the time served on remand into account when passing down sentences at trial. Prisoners themselves need to be informed of the laws related to pre-trial detention in a consistent and easily understandable manner.

- *Ensure the proper administration of remand warrants.*

All remand warrants should include a fixed court date. There should be no information missing since this delays the court process and can leave detainees forgotten in the system. This could be improved by clerical training, hiring more staff, and putting in place processes that ensure proper and complete filling out of remand warrants.

- *Adhere to court dates set on remand warrants.*

[184] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, supra at p. 17.
[185] European Court of Human Rights, Soering v. United Kingdom (7 July 1989)

Our analysis establishes that the majority of invalid warrants in the General Court Martial were due to lack of adherence to court dates set. It is essential that when a judge sets a court date, the prison and the court staff ensure that the detainee is brought before the court on that date and that any adjournments or delays are authorized and recorded. Subsequent court dates must always be scheduled.

- *Review detention of selected detainees*

A systematic review of records of all prison inmates on remand and those who have been detained beyond the constitutional limits should be undertaken in order to determine whether their continued detention is justified by law, whether their cases should be dismissed for want of prosecution, or whether they can be released on suitable bail conditions pending disposition of their cases.

- *Monitor General Court Martial and associated prisons.*

The General Court Martial has disproportionally high average days on remand. In fact, the majority of detainees under the jurisdiction over the Court Martial have been detained over the constitutional limit. There should be increased scrutiny and reform of processes that lead to these delays and rights violations. Moreover, the jurisdiction of the Court Martial should be further restricted to individuals actively involved with the military[186]; this would reduce the backlog of cases and excessively lengthy detentions. Since the GCM is not part of the JLOS Sector, it does not benefit from the programs that have been mentioned in the report. Therefore, different strategies should be considered to alleviate these problems.

- *Improve effectiveness of legal representation for detainees.*

The constitutional right to state-funded legal representation for those accused of offences which carry a sentence of death or life imprisonment should not be limited to the trial process but should also be available at the time of detention. It is important for individuals to be represented by counsel for bail hearings, court date adherence, and other such processes during which their legal interests need to be protected.

- *Limit the amount of time a person can be detained upon committal.*

The current provisions of the Constitution, albeit providing for a maximum period of detention prior to committal, in excess of which an accused person should be released on bail, do not limit the period of detention between committal and trial of a person accused of a capital offence. It is essential that more attention be paid to detainees on committal as these periods tend to be very lengthy. A new provision should be introduced in the Constitution to set out the period which an accused person should spend on remand between his committal date and the date of his trial. Alternatively, in the absence of an amendment to the Constitution, a clear legal precedent should be set to interpret the current provision as inclusive of the time after committal.

- *Limit the total time a person can remain on remand.*

The right to an expeditious trial must be interpreted to include the entire time from arrest or detention to sentencing or acquittal. The right to be tried without undue delay should be interpreted to include the period of time it takes to carry out a trial.

- *Expand the jurisdiction of the Magistrates Court.*

[186] Human Rights Watch, "State of Pain: Torture in Uganda" March, 2004, Vol. 16, No.4(A), *Executive Summary Recommendations*. Available at http://www.hrw.org/en/reports/2004/03/28/state-pain-0.

The data shows that detainees under the jurisdiction of the High Court are likely to be illegally detained for longer periods than those under the jurisdiction of the Magistrates Court. This corroborates the finding by other human rights organizations that the High Court experiences a greater backlog in its caseload.[187] Thus, there should be legislative reform to redistribute cases between the courts, giving the Magistrates Court jurisdiction over more types of cases. Where legislative changes have already been made, that is, following the enactment of the *Magistrates Courts (Amendment) Act NO. 7 of* 2007, greater emphasis needs to be placed on their implementation.

- *Increase the capacity of the High Courts.*

For the reasons discussed above, more resources should be provided to allow the High Court to deal with its high case load by meeting more often and creating more branches distributed throughout the country.

CONCLUSION

This report documents the excessively long remand periods of prisoners in Uganda awaiting completion of their criminal prosecution. It exposes the human rights violations arising in the implementation of Ugandan law and those inherent in the law itself. The large number of prisoners who remain on remand for inordinate periods of time awaiting committal, trial, or sentencing, show that Uganda is violating its domestic and international obligations to protect its citizens' fundamental right to liberty. The rights outlined in the Constitution of Uganda regarding a speedy hearing and maximum pre-trial detention times are not being respected.

Though resource constraints are an inevitable challenge, the problem of lengthy detention can be ameliorated by streamlining court processes, distributing case loads more equitably, ensuring legal representation, and training staff more effectively, among other measures. Moreover, there needs to be a general increase of government will to uphold Ugandan and international law in this area. A fair and functioning justice system is one of the most critical components of a free democratic society, and Uganda has made important strides in this direction, but higher priority needs to be given to consistently protecting the rights of the most vulnerable – especially those hidden from public view in places of detention – in order to ensure that the right to be presumed innocent is universally respected, both in law and in deed.

[187] Foundation for Human Rights Initiative (FHRI),"The Human Rights Status Report", 2007, p. 35. Available at http://www.fhri.or.ug/country-human-rights.html.

APPENDIX: STATISTICAL ANALYSIS

By Jerry Brunner, Department of Statistics, University of Toronto

Although this report makes no explicit mention of statistical hypothesis tests, a great many were performed, and the statements in this Appendix are closely tied to the results. Here are the rules. Statements referring to specific numbers of detainees (for example, that the High Court issued 10 warrants) are descriptive statements about the sample, and no formal conclusion is implied about the mechanism that generated the data. Similarly, means and percentages are sample statistics, and statements giving specific numerical values refer to the particular data set in hand.

On the other hand, any time a comparison is made -- for example the statement that average remand time for capital cases is greater for the Military Court than for the High Court -- that comparison is supported by a likelihood ratio test in which a null hypothesis of no difference is rejected at the extremely conservative $\alpha = 0.0001$ significance level. Every statement that a difference is "negligible," or "not notable," or "small enough to be attributed to chance" or some such phrase, means that the null hypothesis of no difference was not rejected at the 0.0001 level of significance.

The use of hypothesis tests is justified even though the data represent all the detainees at a particular moment in time and in that sense constitute an entire population rather than a random sample. Inference is being made not about a population, but about the *mechanism* that generated the data. Technically, the numbers of detainees in various categories may be viewed as arising from independent Poisson processes. Thus, conditionally upon the total number of detainees at that moment, the set of observed frequencies follow a multinomial distribution, and standard tools of inference for multinomial data apply.[188]

Overview

This Appendix is based on data from 2,242 individuals on remand as of the date of data collection. Of these, 357 had been on remand for over one year.

Of those cases where it was possible to determine whether a violation had occurred, 572 (or 32% of cases with valid data) had been in detention for a period exceeding limits specified by the constitution.

Not surprisingly, those accused of capital crimes tend to be on remand for longer average times. Less expected is that detainees under the jurisdiction of the General Court Martial tended to be on remand for longer periods than those under the jurisdiction of other courts. This was true even when allowing for the level of penalty attached to the offence.

Other findings of note are:

Detainees with invalid warrants tend to spend the longest times on remand, especially when the invalid warrant was issued by the General Court Martial.

There was no finding of a gender difference in remand time, but it was surprising to find that women tend to be charged with murder more than men in the data set.

Long remand periods for those listed as on trial suggest that trials might sometimes be very lengthy, and detainees might be spending a great deal of time in prison while "on trial" when in fact very little is happening.

[188] For full details see Bishop, Y.M., Feinberg, S.E. and Holland, P.W. (1975) *Discrete multivariate analysis: Theory and practice*. Cambridge, Massachusetts: MIT Press.

There are indications that the times after committal (for capital cases before the High Court) are excessive. Ninety-seven of the 199 detainees whose trials had not begun (48.7%) had been waiting for over one year, and two detainees had been waiting for over seven years after committal.

A final section identifies a few individuals whose cases might be especially worthy of further investigation.

Constitutional limits

The Constitution specifies two limits on detention time:

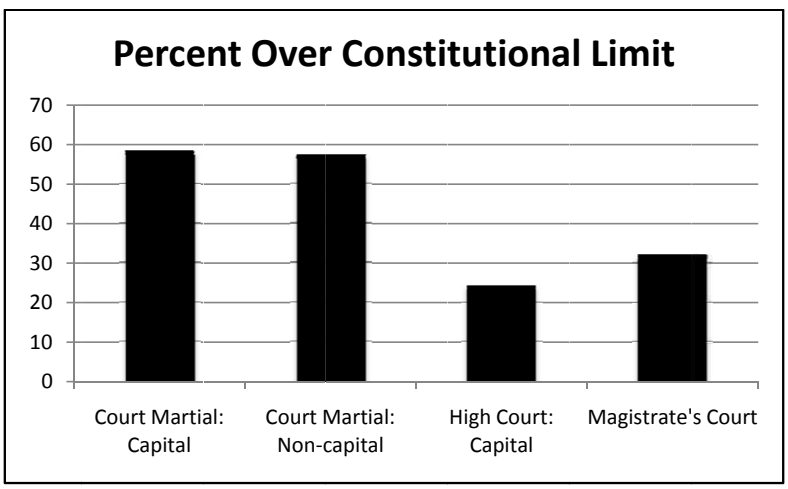
- For capital cases under the jurisdiction of the High Court, the period from Remand to Committal may not exceed 180 days.
- For non-capital cases, the period from Remand until the commencement of Hearing may not exceed 60 days.

Because the date when the trial or hearing commenced was not available, all cases whose status was "Trial" or "Hearing" were excluded from the analysis of limits 2 and 3 above. This results in an understatement of the number of detainees who were in detention over the constitutional limit.

Even with the understatement of violations, 32% or 572 out of 1775 prisoners with valid data were in detention over the constitutional limit.

Figure 1 shows the percentages subdivided by capital versus lesser offences, and by court with jurisdiction.

Figure 1



The likelihood of being in detention for an illegally long period is greater for the General Court Martial than for the High Court or Magistrate's Court. For reference, Table 1 shows the exact numbers.

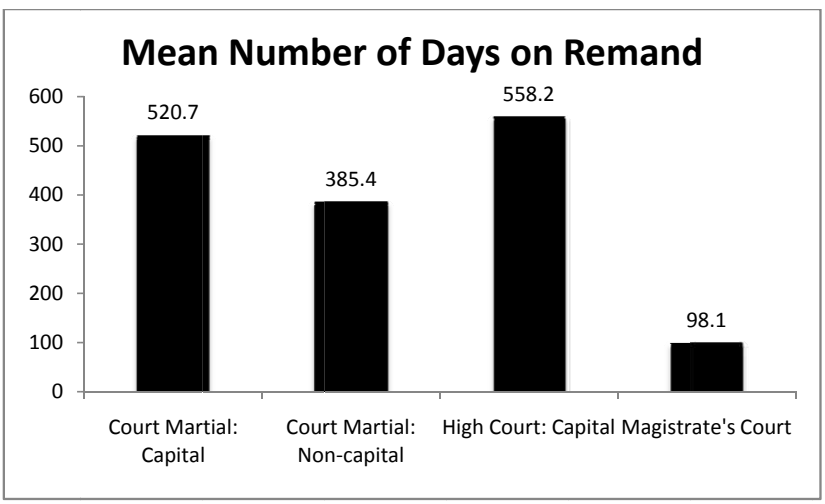
Table 1: Percentages in Detention over the Constitutional Limit

	Total Number of Detainees*	Number over limit	Percent Over Limit
Court Martial: Capital	84	49	58.33
Court Martial: Non-Capital	61	35	57.38
High Court: Capital	464	113	24.35
Magistrate's Court	1166	375	32.16

* Excluding those not under the jurisdiction of the High Court, whose status was "Hearing" or "Trial"

Figure 2 shows the average number of days on remand, just for the detainees from Table 1 who were in detention over the constitutional limit.

Figure 2



Those who were in detention over the constitutional limit under the jurisdiction of the Magistrate's Court had the lowest mean number of days on remand, compared to those under other courts.

Total Remand Period

Actual time on remand extends from the time of remand until the end of trial or hearing. In these data, "Total Remand Period" extends from the time of remand to the time of data collection. Thus for every single detainee in the data set, it is an understatement of actual total time on remand (because at the time of data collection they were still in detention and would remain so for an undetermined period thereafter). While Figure 2 is limited in scope to those detainees who were verifiably in detention over the constitutional limit, this section of data includes all 2,239 detainees for whom both the date of remand and the date of data collection are available (out of 2,242 total studied).

Of course for some tables the number of observations will be less because of missing data.

Type of Offence

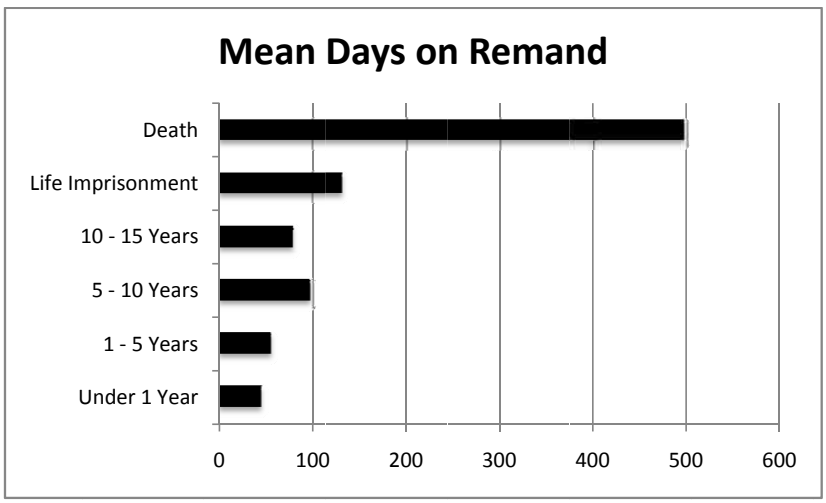
Table 2 shows that the longest periods of time on remand tend to be for cases where the maximum penalty is death, though there are some very long periods on remand when the penalty is 5-10 years. Overall, 384 detainees (17%) had been on remand for over a year at the time of data collection.

Table 2: Time on Remand and Maximum Penalty

	Maximum Penalty						
Time On Remand	0-1 yrs	1-5 yrs	5-10 yrs	10-15yrs	Life	Death	Total
0-60 Days	74	285	434	33	35	83	944
61-180 Days	18	114	296	33	78	163	702
181 Days - 1 yr	0	17	36	5	7	143	208
1-2 yrs	0	0	26	0	10	158	194
2-3 yrs	0	0	4	0	3	87	94
3-4 yrs	0	0	2	0	0	69	71
4-5 yrs	0	0	1	0	0	14	15
6-7 yrs	0	0	0	0	0	3	3
7-8 yrs	0	0	1	0	0	3	4
8-9 yrs	0	0	1	0	0	1	2
9-10 yrs	0	0	0	0	0	1	1
Total	92	416	801	71	133	725	2238

Figure 3 shows how the average time on remand depends upon maximum penalty for the offence. Again, capital cases have the longest mean remand periods; the average was over 1 year.

Figure 3



Court with Jurisdiction

The General Court Martial and the High Court have jurisdiction over capital cases (maximum penalty of death), while the Magistrates Courts hear most non-capital cases. For this reason, it is preferable to examine Court with Jurisdiction in conjunction with level of offence. Table 3 shows the numbers of cases.

Table 3: Court with Jurisdiction and Maximum Penalty – Number of Cases

Maximum Penalty	Court with Jurisdiction			
	Court Martial	High Court	Magistrates Court	Total
0-1 yrs	0	0	92	92
1-5 yrs	2	0	415	417
5-10 yrs	73	1	728	802
10-15 yrs	0	2	69	71
Life	12	13	108	133
Death	261	465	0	726
Total	348	481	1412	2241

Table 3 shows that certain comparisons are not advisable, because of the small numbers of cases in some data sets. It makes statistical sense to compare mean time on remand for the following:

- Court Martial versus Magistrates Court for cases with a maximum penalty of 5-10 years
- Court Martial versus High Court for capital cases.

Table 4 shows mean times on remand for the combinations of maximum penalty and court with jurisdiction of Table 3. When there are fewer than 20 cases the comparisons are of questionable value, and thus they are not displayed.

Table 4: Mean Days on Remand by Court with Jurisdiction and Maximum Penalty

	Court with Jurisdiction		
Maximum Penalty	Court Martial	High Court	Magistrates Court
0-1 yrs			44.93
1-5 yrs			54.47
5-10 yrs	330.92		73.79
10-15 yrs			75.57
Life			98.41
Death	678.7	394.01	

For detainees facing a maximum penalty of 5-10 years, the mean time on remand is much greater for the Court Martial than for the Magistrate's Court (331 days as compared to 74). Table 5 shows the distributions. The Court Martial has detainees on remand for the longest time periods on average, but the very longest (in terms of days) was for a person under the jurisdiction of the Magistrate's Court.

Table 5: Number of days on Remand with maximum penalty 5-10 years

General Court Martial Compared to Magistrates Court

Time on Remand	Court Martial	Magistrates Court	Total
0-60 Days	25	409	434
61-180 Days	13	282	295
181 Days - 1 yr	7	29	36
1-2 yrs	19	7	26
2-3 yrs	4	0	4

3-4 yrs	2	0	2
4-5 yrs	1	0	1
6-7 yrs	0	0	0
7-8 yrs	1	0	1
8-9 yrs	0	1	1
9-10 yrs	0	0	0
Total	72	728	800

For capital cases, the comparison of the High Court to the General Court Martial is of great interest. In Figure 2, which was limited to those verifiably over the constitutional limit, the difference was small enough to be attributed to chance. But here, with a larger and more diverse sample, the difference between 679 average days on remand for the Court Martial and 394 for the High Court cannot be attributed to chance.

Table 6 shows the distributions. It can be seen that although the Military Court has a much longer average time on remand, the very longest remand periods (isolated cases of 8-10 years in detention) occur when the High Court has jurisdiction.

Table 6: Number of days on Remand for Capital Cases – Court Martial Compared to High Court

Time On Remand	Court Martial	High Court	Total
0-60 Days	14	69	83
61-180 Days	23	140	163
181 Days - 1 yr	58	85	143
1-2 yrs	63	95	158
2-3 yrs	48	39	87
3-4 yrs	43	26	69
4-5 yrs	9	5	14
6-7 yrs	2	1	3
7-8 yrs	1	2	3
8-9 yrs	0	1	1
9-10 yrs	0	1	1
Total	261	464	725

Even though the very longest periods on remand are associated with the High Court, still 64% (166 out of 261) of the capital cases before the Court Martial had been on remand for over a year, compared to 37% (170 out of 464) for the High Court.

Gender

Detainees were 92% men. There were 183 women and 2,059 men. It might be expected that men and women tend to be detained for different types of crime; Table 7 shows numbers of detainees, and Figure 4 shows percentages. Relative to their numbers, women are more likely to be accused of murder, while men are more likely to be accused of crimes (particularly capital crimes) other than murder.

Table 7: Gender and Type of Offence

Type of Offence or Max Penalty	Gender		Total
	Female	Male	
0-1 yrs	3	89	92
1-5 yrs	29	388	417
5-10 yrs	46	756	802
10-15 yrs	6	65	71
Life Imprisonment	21	112	133
Capital (not murder)	11	395	406
Capital (murder)	66	254	320
Total	182	2059	2241

Notice that one woman was missing from this table because her type of crime could not be determined.

Figure 4

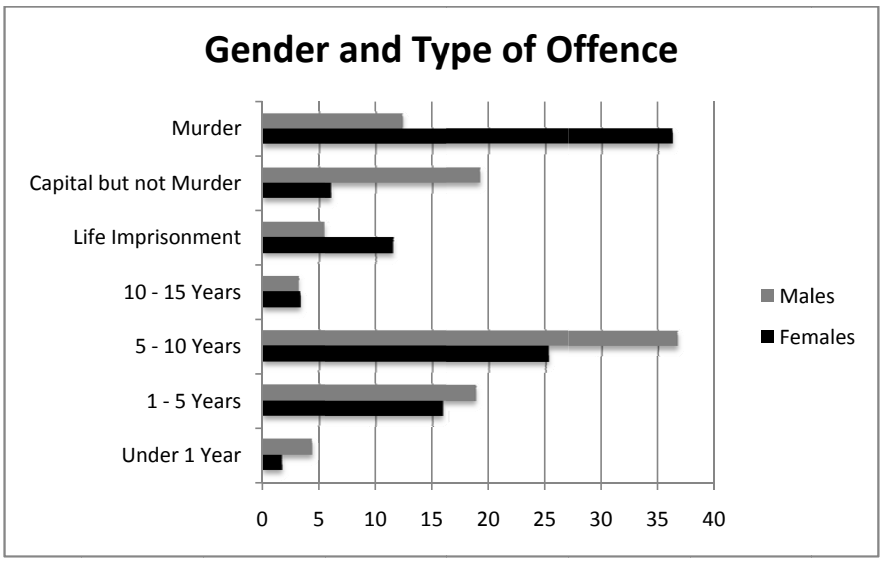


Table 8: Gender and Court with Jurisdiction

Court with Jurisdiction	Gender		Total
	Female	Male	
Court Martial	1	347	348
High Court	86	395	481
Magistrates	95	1317	1412
Total	182	2059	2241

Table 8 shows that only one female detainee was under the jurisdiction of the Court Martial. Since the sample size was larger, we examined gender difference in mean time on remand just for murder cases under the jurisdiction of the High Court. For those detainees, the 66 female detainees had a mean remand time of 477 days, while the mean remand time for the 187 males was 396 days. This difference is small relative to the variation in the data, and could have easily arisen by chance. A similar conclusion holds for capital cases in general (of which the murder cases are a large subset).

Comparing mean days on remand for cases where the Magistrates Court has jurisdiction, the 95 women had an average of 61.7 days on remand, compared to an average of 68.7 for the 1,317 men. This difference is negligible, and could easily be due to chance.

To summarize, these data show no convincing evidence that average times on remand are different for male and female detainees charged with comparable crimes.

Level of Court That Issued Warrant

Table 9: Court Issuing Warrant and Court with Jurisdiction

Court that Issued Warrant	Court with Jurisdiction		
	Court Martial	High Court	Magistrates Court
Chief Magistrate	0	344	634
General Court Martial	348	0	0
High Court	0	10	0
Magistrate Grade I	0	88	659
Magistrate Grade II	0	39	119

The Court Martial issues warrants if and only if it has jurisdiction, and cases where the Court Martial has jurisdiction have already been explored. Also, the High Court issues very few warrants, and only in cases over which it has jurisdiction. Recalling that the High Court has jurisdiction mostly over capital cases, while the Magistrates Court has jurisdiction exclusively over non-capital cases, two comparisons are of interest.

The first comparison is shown in Table 10. This table is restricted to capital cases under the jurisdiction of the High Court. It shows mean number of days on remand, classified by whether the warrant was issued by the Chief Magistrate, Magistrate Grade I or Magistrate Grade II

Table 10: Court Issuing Warrant and Days on Remand: Capital Cases Under High Court Jurisdiction

Court issuing Warrant	Number of Detainees	Mean Days On Remand
Chief Magistrate	332	376.69
Magistrate Grade 1	84	336.44
Magistrate Grade 2	38	547.03

Because of the relatively small numbers of cases, differences among these values may be attributed to chance.

The second comparison is shown in Table 11. This table is restricted to cases under the jurisdiction of the Magistrates Court, all of which are non-capital.

Table 11: Court Issuing Warrant and Mean Days on Remand:

Non-Capital Cases Under Jurisdiction of the Magistrate

Court issuing Warrant	Number of Detainees	Mean Days on Remand
Chief Magistrate	634	69.75
Magistrate Grade 1	659	61.06
Magistrate Grade 2	118	99.88

Again, in spite of the healthy sample sizes, the apparent differences are small enough to be attributed to chance. The reason is the large standard deviation of remand times when the court issuing the warrant was Magistrate Grade 2.

Place of Detention

Table 12 shows that all detainees under the jurisdiction of the General Court Martial are held in Kigo, while none of those under the jurisdiction of the High Court are held in Kasangati or Lugazi.

This means there are no capital cases at Kasangati or Lugazi. Thus, an overall comparison of the prisons would show longer remand periods at Kigo and shorter periods for Kasangati and Lugazi, -- but this would be misleading, because what is really involved is the death penalty rather than location. So as usual, it is preferable to seek meaningful comparisons for carefully chosen subsets of the data.

Table 12: Place of Detention and Court with Jurisdiction

	Court with Jurisdiction		
Place of Detention	Court Martial	High Court	Magistrates Court
Butuntumula	0	25	99
Kampala Remand	0	6	643
Kasangati	0	0	101
Kigo	348	177	166
Lugazi	0	0	56
Luzira Women's	0	61	62
Sentema	0	20	166
Soroti	0	192	119

Table 13 shows the connection between place of detention and type of offence. The main new information it conveys is that none of the detainees facing life imprisonment are at Lugazi, and all 192 detainees under the jurisdiction of the High Court at Soroti are facing a potential death penalty.

Table 13: Place of Detention and Type of Offence

Place of Detention	Offence Level		
	Lesser Penalty	Life Imprisonment	Death Penalty
Butuntumula	82	17	25
Kampala Remand	634	10	5
Kasangati	101	0	0
Kigo	236	22	433
Lugazi	56	0	0
Luzira Women's	60	12	51
Sentema	150	16	20
Soroti	63	56	192

For detainees facing a penalty less than life imprisonment and under the Magistrate's jurisdiction, Table 14 shows the mean remand times separated by Place of Detention. These are based on cases in the first column of Table 13, but limited to the Magistrates Court jurisdiction (otherwise Kigo would look worse because it houses detainees under the jurisdiction of the Court Martial).

Table 14: Place of Detention and Remand Time:

Maximum Penalty Less than Life Imprisonment under jurisdiction of Magistrate's Court

Prison	Number of Detainees	Mean Time On Remand (days)
Butuntumula	82	80.13
Kampala	632	73.16
Kasangati	101	58.59
Kigo	161	58.49
Lugazi	56	62.91
Luzira Women's	58	58.71
Sentema	150	50.75

Prison	Number of Detainees	Mean Time On Remand (days)
Soroti	63	46.62

Any apparent differences among the prisons shown in Table 14 are small enough to be attributed to chance, so no conclusions can be drawn.

Turning to the second column of Table 13 (Life Imprisonment), it should be noted that 108 of the 133 detainees are under the Magistrate's Court jurisdiction. Limiting the analysis to this subset reduces the number held at Kigo to 4, making Soroti versus all other locations pooled the only feasible comparison. The numbers are shown in Table 15.

Table 15: Place of Detention and Days on Remand when Maximum Penalty is Life Imprisonment under Magistrates Jurisdiction

Prison	Time On Remand	
	N	Mean
Other	52	120.92
Soroti	56	77.50

Although Soroti apparently has lower average remand times, the difference was not large enough to meet the stringent criterion used in this report. So, no firm conclusion can be drawn.

For the third column in Table 13 (capital cases), analysis is limited to those over which the High Court has jurisdiction, because all the detainees over whom the Court Martial has jurisdiction are located at Kigo, and this would make Kigo appear to have an unusually long average remand time. The numbers are shown in Table 16.

Table 16: Place of Detention and Mean Days on Remand when Maximum Penalty is Death and Jurisdiction is High Court

Prison	Time On Remand	
	N	Mean
Butuntumula	25	175.92
Kampala	4	9.75
Kigo	172	387.47
Luzira Women's	51	521.14
Sentema	20	105.75
Soroti	192	432.54

Even though some of the apparent differences between means are sizable, again the differences were not large enough to meet the stringent criterion used in this report. So it must be concluded that the differences in Table 16 could be due to chance.

In summary, there is no convincing evidence that length of remand is linked to the place of detention.

Status of Remand

Remand status in our data is classified as either awaiting committal, awaiting hearing, awaiting trial, hearing in progress or trial in progress. Table 17 shows how time on remand is connected to remand status. Almost 22% of detainees are listed in prison records as either on trial or hearing (a form of trial).

Table 17: Time on remand and Remand Status

Time On Remand	Remand Status					
	Awaiting Committal	Awaiting Hearing	Awaiting Trial	Hearing in progress	Trial in progress	Total
0-60 Days	68	706	123	48	0	945
61-180 Days	118	251	172	146	15	702
181 Days - 1 yr	31	9	69	44	53	206
1-2 yrs	6	14	99	12	63	194
2-3 yrs	0	1	43	3	47	94
3-4 yrs	0	0	25	2	44	71
4-5 yrs	0	0	4	1	10	15
6-7 yrs	0	0	0	0	3	3
7-8 yrs	0	0	1	1	2	4
8-9 yrs	0	0	0	1	1	2
9-10 yrs	0	0	1	0	0	1
Total	223	981	537	258	238	2237

The long remand periods and significant percentage of the total data set listed as "on trial" suggest that trials might sometimes be very lengthy or interrupted for long periods. This data set does not allow us to examine the issue here, but it might be that some trials begin but then are postponed one or more times.

Tables crossing remand status with other variables tend not to be very informative. For example, they reveal that almost no detainees are currently on trial for minor offences. This is because minor offences have hearings, and not trials. Such tables only reveal the vocabulary and structure of the justice system, thus they will not be included here.

Validity of Remand Warrant

Eighty-eight detainees had invalid warrants, 2,153 had valid warrants, and for one detainee the information was unavailable. That case is excluded from the analysis. Table 17 shows that among the five court levels examined, all the invalid warrants were issued by the General Court Martial and the Chief Magistrates Court, with a full 81% of the total emanating from the Court Martial.

Table 18: Court Issuing Remand Warrant and Validity of Warrant

Court that Issued Warrant	Valid Warrant	
	No	Yes
Chief Magistrate	17	962
General Court Martial	71	277
High Court	0	10
Magistrate Grade I	0	747
Magistrate Grade II	0	157

Of the 88 detainees with invalid warrants, 40 were currently listed as on trial or hearing.

Table 19: Validity of Remand Warrant and Time on Remand

Time On Remand	Valid Warrant	
	No	Yes
0-60 Days	1	978
61-180 Days	12	798
181 Days - 1 yr	20	205
1-2 yrs	39	68
2-3 yrs	10	46
3-4 yrs	3	42
4-5 yrs	1	10
5-6 yrs	2	1
6-7 yrs	0	2
7-8 yrs	0	1

For those with valid warrants, the mean number of days on remand was 201.6, while for the 88 with invalid warrants the mean number of days on remand was 614.8. This difference cannot be attributed to chance. It is safe to conclude that detainees with invalid remand warrants tend to spend longer periods on remand.

Limiting the analysis to just the invalid warrants, when the warrant was issued by the Chief Magistrate, the mean number of days on remand was 660.9. When the warrant was issued by the Military Court, the mean number of days on remand was 603.8; this difference is negligible.

Table 20 shows how the court that issued the warrant is related to remand status for cases with invalid warrants.

Table 20: Court Issuing Warrant and Remand Status for Cases with Invalid Warrants

Status on Remand	Court that Issued Warrant	
	Chief Magistrate	General Court Martial
Awaiting Committal	5	1
Awaiting Hearing	0	13
Awaiting Trial	8	21
Hearing	0	5
Trial	4	31

Table 20 shows that there were 35 detainees with invalid warrants issued by the General Court Martial who were not yet on trial or hearing. In every one of these cases, the detainee was in custody over the constitutional time limit. The conclusion is that invalid warrants may be a source of unduly long periods of detention, particularly when issued by the General Court Martial.

Of the 88 invalid warrants, the reason was recorded for 87. Table 21 shows the reasons given for these warrants being invalid.

Table 21: Court Issuing Warrant and Reason for Invalid Warrant

Court that Issued Warrant	Reason for Invalidity	
	Court Date not Adhered to	No Court Date Set
Chief Magistrate	2	15
General Court Martial	64	6

When the Chief Magistrate issues an invalid warrant, it is usually because no court date is set, but when the General Court Martial issues an invalid warrant, it is usually because the court date is net but not adhered to.

For 31 of the 2,242 detainees, bail was granted but the bail conditions were not met. The size of this sub-sample is too small for analysis.

Time since committal

When the High Court has jurisdiction over a case, there is a Constitutional limit on the period between remand and committal to the High Court usually by a lower court. But there is no explicit limit on how long a detainee may wait after committal for disposition of his/her case. In this section, the focus is upon 240 detainees under the jurisdiction of the High Court, all of whom were facing capital charges. For these individuals, the average number of days since committal was 488.4, measured from the date of committal to the date of data collection.

Table 22 shows number of days since committal separately for those whose trials had begun, and others. There is no meaningful difference between the two average times since committal.

Table 22: Trial Status and Number of Days since Committal

Days Since Committal	On Trial		
	No	Yes	Total
0-60 Days	27	1	28
61-180 Days	37	7	44
181 Days - 1 yr	28	7	35
1-2 yrs	56	19	75
2-3 yrs	30	5	35
3-4 yrs	16	0	16
4-5 yrs	3	0	3
5-6 yrs	0	1	1
6-7 yrs	0	1	1
7-8 yrs	1	0	1
8-9 yrs	1	0	1
Total	199	41	240

Remarkably, 97 of the 199 detainees whose trials had not begun (48.7%) had been waiting for over one year, and two detainees had been waiting for over seven years.

Attempts to find connections between Days since Committal and other variables were largely unsuccessful. The following potential predictors were checked, but in every case the differences between means or among means were small enough to attribute to chance:

- Gender
- Crime (Murder vs. other)
- Place of Detention

- Court that Issued Warrant
- Validity of Remand Warrant

Though there is no evidence of a connection between court issuing the remand warrant and time on remand since upon committal, warrants issued by the High Court itself are rare and of no interest. For the 10 cases in which the High Court issued the warrant, the numbers of days since committal are: 0, 25, 300, 396, 602, 811, 832, 832, 1016, and 1567.

Table 23 shows time on remand before committal compared to time since committal. Though there is one detainee who was on remand between 5 and 6 years and then held since committal between 1 and 2 years, extremely long times on both variables are not common.

Table 23: Days on Remand since Committal and before Committal

	Days Since Committal				
Days Before Committal	1 yr or less	1-2 yrs	2-3 yrs	3-4 yrs	4-9 yrs
0-60 Days	14	12	5	4	0
61-180 Days	47	42	25	11	3
181 Days - 1 yr	40	19	5	1	4
1-2 yrs	3	1	0	0	0
2-3 yrs	1	0	0	0	0
3-4 yrs	0	0	0	0	0
4-5 yrs	1	0	0	0	0
5-6 yrs	0	1	0	0	0
6-7 yrs	0	0	0	0	0
7-8 yrs	0	0	0	0	0

Individual Detainees

In the course of doing this data analysis, some individuals attracted attention by having very long times in detention, or illustrating some trend in the data.

The following three groups of detainees may warrant individual attention and/or legal action. In all the displays, ID is the identification code used in the data base; it will allow location of the details for any given individual in case of need for follow-up of the case.

The first group consists of those with the 10 longest periods on remand, the shortest being almost 8 years.

Table 24: Ten detainees with longest periods on remand

ID	Gender	Max Penalty	Court With Jurisdiction	Remand Status	Time On Remand	Over Remand	Valid Warrant	Days Since Committal
227	Male	Death	High Court	Awaiting Trial	2903	No	Yes	2770
306	Female	Death	High Court	Awaiting Trial	3304	Yes	No	3113
383	Female	Death	High Court	Trial	2227	Yes	Yes	1866
384	Female	Death	High Court	Trial	2829	Yes	Yes	2468
640	Male	Death	Court Martial	Trial	2194	Yes	No	
641	Male	Death	Court Martial	Trial	2194	Yes	No	
642	Male	Death	High Court	Trial	3009	Yes	Yes	575
1443	Male	5-10 yrs	Court Martial	Hearing	2709	Yes	Yes	
643	Male	Death	Court Martial	Trial	2852	Yes	Yes	
1108	Male	5-10 yrs	Magistrates	Hearing	3260	Yes	Yes	

The last 8 are finally on Trial or Hearing, but the first two are especially interesting. Notice that the woman was *not* over the constitutional time limit, but see how long she has been on committal.

The second highlighted group consists of detainees whose invalid remand warrant was issued by the General Court Martial. They are all over the constitutional time limit. Those awaiting hearing may be of particular interest, since everyone in that group has been waiting over a year.

Table 25: Detainees on invalid remand warrant issued by General Court Martial

ID	Gender	Max Penalty	Court with Jurisdiction	Remand Status	Time On Remand	Over Remand	Valid Warrant
780	Male	5-10 yrs	Court Martial	Awaiting Hearing	380	Yes	No
444	Male	Death	Court Martial	Awaiting Trial	421	Yes	No

ID	Gender	Max Penalty	Court with Jurisdiction	Remand Status	Time On Remand	Over Remand	Valid Warrant
445	Male	Death	Court Martial	Awaiting Trial	421	Yes	No
430	Male	Death	Court Martial	Awaiting Trial	425	Yes	No
450	Male	Life	Court Martial	Awaiting Trial	429	Yes	No
451	Male	Death	Court Martial	Awaiting Trial	429	Yes	No
782	Male	5-10 yrs	Court Martial	Awaiting Hearing	429	Yes	No
783	Male	5-10 yrs	Court Martial	Awaiting Hearing	429	Yes	No
432	Male	Life	Court Martial	Awaiting Trial	433	Yes	No
433	Male	Life	Court Martial	Awaiting Trial	433	Yes	No
774	Male	5-10 yrs	Court Martial	Awaiting Hearing	433	Yes	No
775	Male	5-10 yrs	Court Martial	Awaiting Hearing	433	Yes	No
776	Male	5-10 yrs	Court Martial	Awaiting Hearing	433	Yes	No
778	Male	5-10 yrs	Court Martial	Awaiting Hearing	433	Yes	No
779	Male	5-10 yrs	Court Martial	Awaiting Hearing	433	Yes	No
434	Male	Death	Court Martial	Awaiting Committal	446	Yes	No
781	Male	5-10 yrs	Court Martial	Awaiting Hearing	446	Yes	No
454	Male	Death	Court Martial	Awaiting Trial	498	Yes	No
455	Male	Death	Court Martial	Awaiting Trial	498	Yes	No
456	Male	Death	Court Martial	Awaiting Trial	498	Yes	No

ID	Gender	Max Penalty	Court with Jurisdiction	Remand Status	Time On Remand	Over Remand	Valid Warrant
469	Male	Death	Court Martial	Awaiting Trial	634	Yes	No
507	Male	Death	Court Martial	Awaiting Trial	658	Yes	No
508	Male	Death	Court Martial	Awaiting Trial	658	Yes	No
526	Male	Death	Court Martial	Awaiting Trial	729	Yes	No
788	Male	5-10 yrs	Court Martial	Awaiting Hearing	729	Yes	No
566	Male	Death	Court Martial	Awaiting Trial	918	Yes	No

The last group are those with long times on committal who are still awaiting trial. The woman from the first group (ID number 306) appears here, too.

Table 26: Detainees on committal for over four years, awaiting trial

ID	Gender	Max Penalty	Court with Jurisdiction	Remand Status	Time On Remand	Over Remand	Valid Warrant	Days Since Committal
2347	Male	Death	High Court	Awaiting Trial	1615	No	Yes	1489
301	Male	Death	High Court	Awaiting Trial	1750	Yes	Yes	1567
284	Male	Death	High Court	Awaiting Trial	1756	No	Yes	1582
227	Male	Death	High Court	Awaiting Trial	2903	No	Yes	2770
306	Female	Death	High Court	Awaiting Trial	3304	Yes	No	3113

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