



Pre-Trial Detention in Uganda

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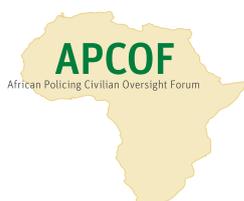
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1. Introduction

Pre-trial detention refers to the locking up of a suspect or an accused person on criminal charges in police and prison before the completion of their trial. Although detention pending trial should be the exception rather than the rule, the use of pre-trial detention is prevalent in Uganda. Indeed, pre-trial detainees constitute a large proportion of the inmates causing overcrowding at police stations and prisons. Currently, more than half of the prisoners in prisons are on remand awaiting trial.¹

The high number of detainees on remand is caused by slow investigations, corruption, backlog of cases in courts and few judges, among others.² Delays on remand have adverse effects on the rights of detainees to a fair and speedy trial. At police stations suspects are detained beyond the constitutionally prescribed 48 hours without being granted police bond. It is still a practice for police to arrest perceived suspects before concluding investigations and to carry on investigations whilst the suspect is in police detention.³ Detainees are often held in overcrowded facilities which may have an impact on their health and increases their risk of being subjected to torture and other cruel, inhuman and degrading treatment or punishment.

In May 2014 the African Commission on Human and Peoples' Rights adopted the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa. This study discusses the status of implementation of the Guidelines within the Ugandan context and makes appropriate recommendations.

2. Methodology

The research methodology for this study included an extensive literature review of relevant materials and documents available on pre-trial detention in Uganda. These included laws such as the Constitution of the Republic of Uganda and other relevant domestic legislation and ratified international instruments. Other documents that were reviewed comprised documents from the UN, including the UN Universal Periodic Review, relevant UN treaty bodies and Special Procedures Reports; documents from the African Commission on Human and Peoples' Rights; reports of the Uganda Human Rights Commission; reports produced by national and international civil society organisations; and media reports.

3. Legislative Framework

Uganda is subject to various laws at the international, regional and national level in relation to pre-trial detention. At the international level the law applicable includes the universal human rights treaties which Uganda has ratified. This is in addition to the regional instruments, including the African Charter on Human and People's rights. Uganda is also subject to human rights standard contained in such instruments as: the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), UN Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disability and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), among others. At the African regional level, Uganda is subject to the African Charter on Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Protocol to the African Charter establishing the African Court on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child (ACRWC), among others.

1 See Justice Law and Order Sector Annual Performance Report 2014/2015.

2 Justice Law and Order Sector Annual Performance Report 2014/2015.

3 See UHRC, *17th Annual Report*, 2014 (19).

At the National level, the law applicable includes the Constitution of the Republic of Uganda which has a bill of rights under its chapter four. The Constitution further provides that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms go beyond those specifically included in chapter four, to include rights which are not specifically mentioned⁴ in the Constitution, and these could include rights in ratified international and regional human rights instruments. Other relevant legislation includes the Penal Code Act, Trial on Indictments Act, Criminal Procedure Code, Police Act, Prisons Act, Uganda Peoples Defence Forces Act, Prevention and Prohibition of Torture Act and the Children’s Act, among others. These all prescribe the rules for the treatment of detainees.

4. Luanda Guidelines and their implementation in Uganda

The Guidelines consider the criminal justice process, right from the moment of arrest until the conclusion of the trial process, focusing on the actions and decisions of the arresting offices such as the police, correctional services such as prison authorities and other criminal justice professionals such as the prosecutors, magistrates and judges. The Guidelines also contain eight key sections covering the framework for arrest and custody, important safeguards, measures to ensure transparency and accountability and ways to improve coordination between criminal justice institutions. The Guide further provides useful guidance on issues of legal assistance; data collection; complaints and oversight mechanisms; and treatment of vulnerable groups. Below is an analysis of Uganda’s context in relation to the Luanda Guidelines.

4.1 Arrest

In Uganda, arrests can be made by the Uganda Police Force (UPF),⁵ Uganda Peoples Defence Forces (UPDF)⁶ and a private person.⁷ The UPDF handles military personnel and other individuals who are subject to the UPDF Act, for example, those found in illegal possession of fire arms.⁸ The law allows the UPDF to assist and collaborate with the Police in case of riots or disturbances of peace which they cannot suppress or prevent.⁹

The 1995 Constitution of the Republic of Uganda (Constitution) provides that ‘no person shall be deprived of personal liberty’ except for certain cases such as: execution of a sentence or order of court, preventing the spread of an infectious or contagious disease, the case of a person of unsound mind, for purposes of preventing unlawful entry into the country, upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, among others.¹⁰

An arrested person can be searched by a police officer who is required to place all articles, other than the clothes worn by the detainee, in custody.¹¹ A police officer is allowed to take possession of any article that will be used as evidence in criminal proceedings.¹² Women under arrest have to be searched by another woman with strict regard to decency.¹³ If a person being arrested resists arrest, the arresting officer may use all the means necessary to effect the rest.¹⁴ However, the force used must not be greater than was reasonable or necessary for the apprehension of the person in the particular circumstances.¹⁵

4 Article 45.

5 Articles 211 and 212 of the Constitution and the Criminal Procedure Code 1950. Also see Section 23 of the Police Act.

6 Article 208 and 209 of the Constitution and Sections 185 and 161 (2) UPDF Act 2005.

7 Section 15 of the Criminal Procedure Code 1950 and Section 185 (3) of the UPDF Act 2005.

8 Generally see Section 119 of the UPDF Act 2005 and specifically Section 119 (1) (h).

9 Sections 42 and 43 of the UPD Act 2005. Police Act.

10 Article 23 of the Constitution.

11 Section 6 of the Criminal Procedure Code.

12 Section 6 of the Criminal Procedure Code.

13 Section 8 of the Criminal Procedure Code. Also see Section 23 of the Police Act.

14 Section 2 (2) of the Criminal Procedure Code.

15 Section 2 (3) of the Criminal Procedure Code. Also Section 28 of the Police Act on the use of firearms.

A person arrested under Ugandan law has the following rights and where they are violated redress can be sought from courts of law or the Uganda Human Rights Commission (UHRC).¹⁶

1. Right to be kept in a place authorised by law.¹⁷
2. Right to be informed in a language they understand the reasons for the arrest, restriction or detention and of their right to a lawyer of their choice.¹⁸
3. Right to be brought to court as soon as possible but not later than 48 hours.¹⁹
4. Right to have their next of kin informed, at their request, as soon as practicable, of the restriction or detention.²⁰
5. Right to access the next-of-kin, lawyer and personal doctor.²¹
6. Right to access to medical treatment, including, at the request and at the cost of that person, access to private medical treatment.²²
7. Right to bail.²³
8. Right to compensation for unlawful arrest, restriction or detention.²⁴
9. Right to deduct from their sentence days spent in custody before the completion of the trial.²⁵
10. Right of Habeas Corpus.²⁶
11. Right to protection from torture and other cruel, inhuman or degrading treatment or punishment.²⁷
12. Right to a fair trial.²⁸
13. Right to a lawyer at the expense of the State for offenses that carry the death penalty or life imprisonment.²⁹

The Ugandan law on arrest by and large complies with the Luanda Guidelines with some exceptions which are discussed below.

a) Arrests must be a measure of last resort

Unlike the Ugandan law, the Guidelines also specifically emphasise that: arrests must be a measure of last resort;³⁰ minor crimes should be diverted away from the criminal justice system;³¹ alternatives to arrest should be promoted with reasonable accommodation for persons with disability and the best interests of children in conflict with the law.³² Arrests have not been specifically provided as a measure of last resort in Ugandan law and practice except for children in conflict with the law³³ and even then the law is not as specific and is not implemented as there is still a large number of children caught up in the criminal justice system who could have been diverted away from it.³⁴ The Guidelines assert that minor crimes and not just those committed by children should be diverted from the criminal justice system.

b) Searches

With regard to searches, the Guidelines go further than Ugandan law by requiring that: searches must be lawful and done in a manner consistent with the inherent dignity of the person and the right to privacy;³⁵ done after informing suspects of the reason for the search;³⁶ followed by a record and receipt of items confiscated during the search which is accessible to the suspect, their lawyer, family members

16 Articles 50-55 of the Constitution.

17 Article 23 (2) of the Constitution.

18 Article 23 (3) of the Constitution.

19 Article 23 (4) of the Constitution and S.25 (1) of the Police Act.

20 Article 23 (5) (a) of the Constitution.

21 Article 23 (5) (b) of the Constitution.

22 Article 23 (5) (c) of the Constitution.

23 Article 23 (6) and S76 Magistrates Courts Act.

24 Article 23 (7) of the Constitution.

25 Article 23 (8) of the Constitution.

26 Article 23 (9) of the Constitution.

27 Article 24 of the Constitution and the Prevention and Prohibition of Torture Act.

28 Article 28 of the Constitution.

29 Article 28 (3) (e) of the Constitution.

30 Article 1 (b).

31 Article 1 (c).

32 Article 1 (c).

33 Sections 89 and 91 (9) of the Children's Act.

34 See Penal Reform International, *A review of law and policy to prevent and remedy violence against children in police and pre-trial Detention in Uganda*, 2012 (10).

35 Article 3 (d).

36 Article 3 (d) (ii).

or other organisations with an oversight mandate on the treatment of persons in places of detention;³⁷ should be done in private if it is a strip or internal body search;³⁸ and internal body searches should only be conducted by a medical professional and only upon informed consent or by a court order.³⁹ In practice, searches are often conducted without much regard to the dignity of the person and the right to privacy and suspects are never informed of the reason for the search. Furthermore, even though there may be a record of items confiscated this is not readily accessible to the suspect, his lawyer, family or other organisations.

c) Register

The Guidelines also require all the arresting authorities to maintain, and provide access to, an official custody register.⁴⁰ Although this is a practice in most places of detention, it is not specifically provided for except in the Prisons Act.⁴¹ However, even then, the law only requires the keeping of a register without emphasising that it should be made accessible as required by the guidelines, except for the register on punishments.⁴² Although, the UHRC has access to these registers,⁴³ it is important that this access be legislated. This would require the amendment of laws such as the Criminal Procedure Code and the Police Act to comply with the Guidelines.

d) Rights of arrested persons

The Guidelines provide that all arrested persons should be informed of all their rights orally and in writing, and in a language and format that is accessible and is understood by them and that authorities shall provide them with the necessary facilities to exercise their rights.⁴⁴ Furthermore, the Guidelines have additional specific rights to the ones in Ugandan law, such as: the right to silence and freedom from self-incrimination;⁴⁵ the right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody;⁴⁶ and the right to reasonable accommodation which ensures equal access to substantive and procedural rights for persons with disabilities⁴⁷ which are not specifically provided particularly for those in Police custody.

Although the right to humane and hygienic conditions, including adequate water, food, sanitation, reasonable accommodation which caters for vulnerable persons, and rest is provided for under the Prisons Act,⁴⁸ its implementation is still a challenge due to the limited resources available to the Uganda Prison Service.⁴⁹ 54-55% of the population of prisoners in Uganda comprises pre-trial detainees, who are on remand awaiting the completion of their trials.⁵⁰ The occupancy level of the prison based on official capacity as of August 2015 was at 237%.⁵¹

4.2 Police Custody

According to the Luanda Guidelines, detention in police custody should be an exceptional measure and the use of alternatives, including court summons or police bail or bond is encouraged.⁵² States are required to promote transparency with regard to police custody, including inspections by: judicial authorities; an independent body; local community representatives; and legal and health personnel.⁵³

37 Article 3 (d) (iii).

38 Article 3 (d) (v).

39 Article 3 (d) (vi).

40 Article 3 (e).

41 Sections 61 and 62 of the Prisons Act.

42 Section 98 of the Prisons Act.

43 See UHRC, 17th Annual Report, 2014 (54).

44 Article 5.

45 Article 4 (c).

46 Article 4 (e).

47 Article 4 (l).

48 These rights can be implied in Sections 57, 59 and 69, among others of the Prisons Act 2006.

49 See UHRC, 17th Annual Report, 2014.

50 World Prison Brief, Uganda available at <http://www.prisonstudies.org> last accessed on 2 June 2016.

51 World Prison Brief, Uganda, above.

52 Article 6 (a).

53 Article 6 (b).

The Guidelines specifically require that all persons detained in police custody have a presumptive right to police bail or bond.⁵⁴ Furthermore, that if detention in police custody is determined to be absolutely necessary: all persons arrested and detained have the right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond;⁵⁵ the maximum duration of police custody is no more than 48 hours which can only be extended only in certain circumstances by a competent judicial authority;⁵⁶ and that persons in police custody shall have access to confidential and independent complaints mechanisms while in custody.⁵⁷

The Constitution, which is in line with the Luanda Guidelines,⁵⁸ provides that suspects, if not earlier released, must be brought to court within 48 hours.⁵⁹ However, this is often ignored, deliberately circumvented or difficult to fulfil because of the inadequacies and limitations of the Uganda Police Force. Violation of the right to liberty, particularly pre-trial detention by Police beyond 48 hours without suspects being taken to court, often topples the list of complaints received by the Uganda Human Rights Commission.⁶⁰ In 2014, almost 35% of the complaints that were received by the Uganda Human Rights Commission were violations relating to detention in police custody for more than 48 hours.⁶¹ Apart from the slow investigations caused by lack of training in professional investigative procedures, inadequate facilitation with equipment for efficient and quick investigations, the overreliance on confessions, delays by the Resident State Attorneys, corruption, backlog of cases in courts, few judges, inadequate legal aid services, the detention of suspects beyond 48 hours is also compounded by the common practice by police of arresting perceived suspects before concluding investigations.⁶²

In several cases, the UHRC has found the Attorney General liable for violation of the right to liberty where suspects have stayed longer than 48 hours and has ordered compensation for the victims.⁶³ Courts have affirmed the right to liberty and to be brought to court within 48 hours. For example, in the case of *Kidega Alfonso v Attorney General*,⁶⁴ the court found that detention of the plaintiff for 9 days before being produced in court on a murder charge was unlawful. Suspects of terrorism and other capital offences are the common victims of detention longer than the requisite 48 hours before being brought to court. However, there are cases where suspects of minor cases are detained for long periods without being brought to court. Such long detention often creates an environment where torture and other ill-treatment are likely to occur. Moreover, the police detention facilities are not suitable for long stays and the suspects often face challenges in provision of food, water and other basic necessities such as hygiene, sanitation and bedding.⁶⁵

Accused persons are also entitled to apply to court to be released on bail and the court may grant bail on such conditions as it considers reasonable.⁶⁶ The Constitution further provides that persons shall be released on bail for cases which are tried by the High Court, as well as other subordinate courts if they have been remanded in custody for 60 days,⁶⁷ and for cases which are tried by the High Court only if they have been remanded in custody for 180 days.⁶⁸ However, in practice there are many cases of persons remaining in detention for long periods before trial.⁶⁹ If bail was used the number of pre-trial detainees in Uganda would be significantly reduced.

54 Article 7 (a).

55 Article 7 (b) (i).

56 Article 7 (b) (ii).

57 Article 7 (c).

58 Article 7 (b) (ii).

59 Article 23 (4) of the Constitution and S.25 (1) of the Police Act.

60 See UHRC Annual Reports available at <http://www.uhrc.ug>.

61 See UHRC, *17 Annual Report, 2014* (18).

62 See JLOS, *Annual Performance Report 2010/2011* 84 and 85. Also see UHRC, *17th Annual Report, 2014* (19).

63 See UHRC Annual Reports available at <http://www.uhrc.ug>.

64 High Court Civil Suit No.4 of 2000 [2008] UGHC 86 (27 June 2008).

65 See UHRC above.

66 Article 23(6) of the Constitution.

67 Article 23(6) (b) of the Constitution.

68 Article 23(6) (c) of the Constitution.

69 See UHRC Annual Reports 2008-2014 available at <http://www.uhrc.ug>.

Nevertheless, there are challenges regarding bail in Uganda. These challenges include lack of acceptability by the public who often prefer incarceration of suspects and accused persons until the trial is over, political interference, individuals failing to turn up for the trial after their release and the difficult bail requirements for some individuals, e.g. sureties (persons who will ensure that the suspect does not abscond from court proceedings) and money which has to be paid for security.⁷⁰ Furthermore, the Constitutional Court has refused to acknowledge bail as an automatic right. In *Foundation for Human Rights Initiative v Attorney General*,⁷¹ the Constitutional Court held that the objective and effect of bail are well settled. They are to ensure that an accused person appears to stand trial without the necessity of being detained in custody. The Court further noted that an accused person charged with a criminal offence is presumed innocent until proved guilty or pleads guilty and that if an accused person is remanded in custody but subsequently acquitted they could suffer gross injustice. According to the Court, however, this does not make bail automatic; its effect is merely to release the accused from physical custody while he remains under the jurisdiction of the law and is bound to appear at the appointed place and time to answer the charge or charges against him.

Although the Luanda Guidelines can be implied in the current Ugandan law relating to police custody, the law and practice has not yet sufficiently adopted them. In particular, the law and practice has not adequately adopted: police bail or bond as a presumptive right; the prompt access to a judicial authority to review, renew and appeal decisions on police bail or bond; and the maximum of 48 hours' duration in police custody which can only be extended by a competent authority in line with international law. Moreover, persons in custody do not have adequate access to confidential and independent complaint mechanisms while in custody.

4.3 Legal Assistance Services

The Guidelines require States to establish a legal aid service framework through which legal services for persons in police custody and pre-trial detention are guaranteed.⁷² Furthermore, that legal services may be provided by a number of service providers, including lawyers, paralegals and legal clinics, depending on the nature of the work and the requisite skills and qualifications and that States should take steps to ensure sufficient access to quality legal services and, in particular, that sufficient lawyers are trained and available.⁷³ The Guidelines also provide that all persons detained in police custody enjoy the following rights in relation to legal assistance: access to lawyers and legal service providers prior to and during any questioning by an authority and throughout the criminal justice process;⁷⁴ confidentiality of communication and if that is broken any information obtained is inadmissible as evidence;⁷⁵ access to State legal assistance where the detainee does not have sufficient means or in the interest of justice given the gravity, urgency and complexity of the case and severity of the potential penalty and the status of detainee who is vulnerable;⁷⁶ access to case files and have adequate time and facilities to prepare a defence;⁷⁷ remedies where access to legal services is delayed or denied;⁷⁸ and that legal service providers should possess the requisite skills and training as required under national law for the provision of legal assistance and services.⁷⁹

With regard to questioning and confessions the guidelines require that prior to the commencement of each questioning session, all persons detained in police custody, and other persons subject to police questioning, shall be afforded the following rights: the right to be informed of the right to the presence and assistance of a lawyer or other legal service provider during questioning;⁸⁰ presence and assistance of a lawyer or other legal service provider during questioning;⁸¹ the right to medical examination and

70 Also See FHRI 'A Citizen's Handbook on The Law Governing Bail in Uganda' June 2011 available at: <http://ppja.org/countries/uganda/Bail%20Handbook.pdf> last accessed on 2 June 2016.

71 Constitutional Petition No. 20 of 2006 [2008] UGCC 1 (26 March 2008).

72 Article 8 (a).

73 Articles 8 (b) and (c) and Article 14 (c).

74 Article 8 (d) (i).

75 Article 8 (d) (ii).

76 Article 8 (d) (iii).

77 Article 8 (d) (iv).

78 Article 8 (d) (v).

79 Article 8 (d) (vi).

80 Article 9 (a) (i).

81 Article 9 (a) (ii).

confidentiality;⁸² the presence and services of an interpreter and access to accessible formats of information where necessary;⁸³ the right to silence;⁸⁴ freedom from torture and ill treatment;⁸⁵ confession before a judicial officer or other officer of the court and in the case of a child it should also include a parent, guardian or independent advocate, lawyer or other legal services provider.⁸⁶

The Guidelines also require that information on every questioning session shall be recorded by those in charge, including: duration;⁸⁷ intervals;⁸⁸ identity of officials who conducted the questioning and of any other persons present;⁸⁹ confirmation that the detained person was availed the opportunity to seek legal services prior to the questioning, was provided with a medical examination, and had access to an interpreter during questioning and that necessary accommodations were made to ensure that the detainee understood and participated in the process;⁹⁰ and details of any statements provided by the detained person, with verification from the detained person that the record accurately recounts the statement he or she provided.⁹¹ Furthermore, the guidelines require that: detaining authorities shall maintain, and provide access to, an official custody register⁹² and that States shall make provision for the audio and audio-visual recording of questioning sessions and the provision of confessions.⁹³

Access to legal services in accordance with the guidelines has not yet been attained in Uganda. Although legal aid service provision, especially by civil society organisations, has increased in Uganda, legal services are not guaranteed to all pre-trial detainees. Currently legal aid in Uganda is still limited and inadequate.⁹⁴ The majority of the suspects on pre-trial detention are usually illiterate and poor which affects their ability to defend themselves even when they have interpretation. Moreover, courts often use alien and unusual language, even for those who speak and understand the English language.

Suspect often cannot afford to hire lawyers because they are very expensive and are not guaranteed state legal representation except for cases that carry the death penalty or life imprisonment.⁹⁵ Despite the provisions of the Poor Persons Defence Act, the legal aid services provided by the State do not match the needs of the citizenry and exclude the majority especially the poor and the vulnerable.⁹⁶ Legal services are mainly limited to urban areas with only a few lawyers in the rural areas. Moreover, even in cases of capital nature and life imprisonment where legal representation is provided the service remains wanting.⁹⁷ The Guidelines require a State to have a comprehensive system for provision of legal services for all pre-trial detainees. This would have budgetary implications for the state but would be necessary in order to effectively implement not only the right to legal representation for offenders who are likely to face the death penalty but for the right to a fair trial, in general for all detainees. Fortunately, the National Legal Aid Policy which is pending approval by cabinet recognises legal aid as a right for every Ugandan citizen especially for the poor and vulnerable.⁹⁸ It is expected that once the Policy is approved, a bill shall be tabled before Parliament which establishes an independent legal aid body with a mandate to provide Legal Aid across all areas of the Law.

The practice is such that: detainees are rarely informed of their rights and do not have legal representation during questioning;⁹⁹ for those who can afford or have legal aid, access to lawyers is sometimes denied to detainees during questioning;¹⁰⁰ it is difficult to keep confidentiality of

82 Article 9 (a) (iii).

83 Article 9 (a) (iv).

84 Article 9 (b).

85 Article 9 (c).

86 Article 9 (d).

87 Article 9 (e) (i).

88 Article 9 (e) (ii).

89 Article 9 (e) (iii).

90 Article 9 (e) (iv).

91 Article 9 (e) (v).

92 Articles 9 (f) and 14 (d).

93 Article 9 (g).

94 See Report of the National Legal Aid Conference: Emerging Issues and Recommendations, October 2011 available at www.jlos.org last accessed on 3 June 2016. Also see the National Legal Aid Policy 2012 (4).

95 Article 28 (3) (e) of the Constitution.

96 See Report of the National Legal Aid Conference above.

97 See Report of the National Legal Aid Conference above.

98 National Legal Aid Policy above.

99 See US State Department, *Uganda 2014 Human Rights Report*, 8 available at: <http://www.state.gov/documents/organization/236630.pdf> accessed on 3 June 2016.

100 See US State Department, above.

communication because of the small and closed spaces in the police stations;¹⁰¹ and access to case files and facilities to prepare a defence is often not available for most pre-trial detainees.¹⁰² Notably the right to silence is often not observed especially during investigations and the silence of detainees could lead to their torture and ill treatment as illustrated by the large number of cases of torture especially during pre-trial detention.¹⁰³ For confessions to be admitted in court they should have been made in the presence of a police officer of or above the rank of Assistant Inspector or a magistrate.¹⁰⁴ In this regard, contrary to the guidelines, the law allows confessions to be made in the absence of a judicial officer. Although records are kept, these are usually written statements of detainees who must state that they were voluntarily made and the names of the officers who took the statements, and may not contain information on the opportunities given to seek legal services. Furthermore, audio and audio visual recording is not a common practice. Most police stations record their statements in writing. Access to an official custody register is also limited.

4.4 Pre-Trial Detention

The Guidelines emphasise that detention can only be ordered by judicial authority as a measure of last resort¹⁰⁵ which has not yet been well articulated in Ugandan law. The Guidelines affirm the right to trial as provided in the Constitution and international instruments but also further require information on court sessions to be made available.¹⁰⁶ The Guidelines prohibit detention in unauthorised places just like the Ugandan law.¹⁰⁷ They also emphasise the need for detention to be proximity with community of the arrested person with due regard to their caretaking or other responsibilities which is not necessarily considered during arrests.¹⁰⁸

Notably, detention in unauthorised place was an issue some years ago. Since 2012 there have not been many complaints of detention in unauthorised places. Previously, there were reports of the use of “safe houses” or unauthorised places of detention.¹⁰⁹ Victims of safe houses included terror and treason suspects, civil debtors and persons picked because of purely personal wrangles.¹¹⁰ Detention of suspects in unauthorised places of detention exposed them to torture and other cruel, inhuman and degrading treatment and punishment.¹¹¹ Moreover, most detainees in such unauthorised places were often not brought to court within the requisite 48 hours. The UHRC received 9 complaints of people detained in unauthorised places or “safe houses” in 2010.¹¹² Concerns of detention in unofficial places of detention were also raised during Uganda’s Periodic Review in October 2011 although these allegations were denied by the Ugandan State representatives.¹¹³ Detention in unauthorised places of detention was especially used by the JATT.¹¹⁴

Under the Guidelines, judicial authority can only order pre-trial detention on legal grounds which are not motivated by discrimination of any kind¹¹⁵ where there is danger that the accused person will abscond, commit further serious offences or their release may not be in the interests of justice.¹¹⁶ Where pre-trial detention is ordered judicial authorities must ensure that: the least restrictive conditions are imposed to ensure the appearance of the accused in all court proceedings and protect victims, witnesses, the community and any other person; that they have considered the alternatives; and provide written reasons for their decisions.¹¹⁷ Under Ugandan law, judicial officers execute their

101 See BJ Oppenheimer, From arrest to release: the inside story of Uganda’s Penal System, *Indiana International and Comparative Law Review*, (2005) Vol.16:1 117 at 133.

102 See *Uganda Law Society & Another Vs Attorney General Constitutional Petitions No.2 & 8 of 2002* [2009] UGCC 1 (5 February 2009).

103 See UHRC, *17th Annual Report*, 2014 (61).

104 Section 23 of the Evidence Act.

105 Article 10.

106 Article 10 (d) and (e) and Article 13 (a).

107 Article 23 (2) of the Constitution.

108 Article 10 (g).

109 A/HRC/19/16, §92 and A/HRC/WG.6/UGA/3, §30.

110 See Amnesty International, *Annual Report: Uganda 2007* available at: <http://www.amnestyusa.org> last accessed on 4 June 2016.

111 See HRW *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda, 2007*. Also see Redress Trust *Torture in Uganda: A Baseline Study on the Situation of Torture Survivors in Uganda, 2007*.

112 See UHRC 13th Annual Report, 2010 p.12.

113 A/HRC/19/16, p.12, §92, p.13, §105.

114 See HRW, *Open Secret: Illegal Detention and Torture by the Joint Anti-Terrorism Task Force in Uganda, 2007*.

115 Articles 11 (a) (i) and 14 (a).

116 Article 11 (a) (i) and (ii).

117 Article 11 (b), (c) and (d).

mandate without discrimination to ensure justice and to protect the victims, witnesses and the community and their decisions are written. However, they would have to have an explanation that the alternatives to detention were considered and justify their decisions.

Just like the Constitution,¹¹⁸ the guidelines give arrested persons, including those under pre-trial detention the right to challenge the lawfulness of their detention at any time and to seek immediate release in the case of unlawful or arbitrary detention, and compensation and/or other remedies.¹¹⁹ The Guidelines also require that at all hearings to determine the legality of an initial detention order, or of an order extending or renewing pre-trial detention, detainees have the right: to be present; to the assistance of a lawyer or other legal service provider; to access all relevant documents; to be heard; and to reasonable accommodation to ensure equal enjoyment of rights by persons with disabilities.¹²⁰ Furthermore, the guidelines provide that the burden of proof on the lawfulness of initial detention orders, and the lawfulness and necessity of extended or continued pre-trial detention, lies with the State.¹²¹

Judicial authorities, according to the Guidelines, are also required to investigate any delay in the completion of proceedings and whether any delay is reasonable by considering the following factors: the duration of the delay; reasons advanced for the delay; whether any person or authority is responsible for the delay; the effect of the delay on the personal circumstances of the detained person and witnesses; the effect of the delay on the administration of justice; the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued; and any other factor that ought to be taken into account in their opinion.¹²² If the judicial authority finds that the completion of the proceedings is being unreasonably delayed they may issue any such order as it deems fit.¹²³

The Guidelines just like Uganda law give the State the responsibility to account for death and serious injury in police custody and pre-trial detention.¹²⁴ Furthermore, torture and ill treatment are prohibited and detainees have the right to lodge complaints for redress from independent authorities and to have a prompt investigation.¹²⁵ The Guidelines go beyond Ugandan law to affirm that persons deprived of their liberty shall enjoy all fundamental rights and freedoms except for limitations which are demonstrably necessary by the fact of detention itself.¹²⁶ The Guidelines further prescribe that in all pre-detention facilities States have the obligation to: reduce overcrowding;¹²⁷ limit the use of force¹²⁸ and firearms;¹²⁹ limit the use of restraints;¹³⁰ and set out the use of disciplinary measures, including the use of solitary confinement.¹³¹ Most of these are already covered in Ugandan law¹³² save for the obligation to reduce overcrowding.

Unlike Ugandan law, the Guidelines specifically require States to provide budgetary and other measures for the provision of adequate standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental healthcare, contact with the community, religious observance, reading and other educational facilities, support services, and reasonable accommodation, in accordance with international law and standards for pre-trial detainees, including those in police custody.¹³³ States are also required to put in place measures: for health assessments; transfer of detainees; and adequate staffing¹³⁴ which are not adequately covered in Ugandan law.

118 Article 50-55.

119 Article 11 (e) and Article 35.

120 Article 11 (f).

121 Article 11 (g).

122 Article 13 (b).

123 Article 13 (c).

124 Articles 20 and 21. Also see Inquests Act 1935.

125 Article 22 and 24. Also see articles 24 and 50-55 of the 1995 Constitution of the Republic of Uganda.

126 Article 23.

127 Article 25 (a).

128 Article 25 (b).

129 Article 25 (c).

130 Article 25 (d).

131 Article 25 (e) and (f).

132 See Police Act and Prisons Act.

133 Article 25 (g).

134 Article 25 (h), (i) and (j).

Most of the detention facilities in Police and Prisons are dilapidated, overcrowded and have inadequate space, lighting and ventilation.¹³⁵ Most inmates do not have access to adequate food and water.¹³⁶ They also lack clothing and bedding.¹³⁷ Moreover access to health services, facilities for personal hygiene and exercise is a challenge.¹³⁸

The Guidelines, like Ugandan law, provide that detainees must be separated according to categories, including: pre-trial from convicts; male and female; children from adults; and provide for the special needs of the vulnerable groups.¹³⁹ However, this is largely not complied with. Most suspects are detained with convicts in the Ugandan Prisons.¹⁴⁰ There is not much distinction, if any, between the suspects and those who have been convicted as they all live in the same deplorable conditions. Usually males are separated from females and children are separated from adults. However, there have been cases documented by the UHRC where children were detained with adults even in the recent past.¹⁴¹

Detainees in police custody and pre-trial detention have to be provided with appropriate facilities to communicate with, and receive visits from, their families at regular intervals and such contact should not be denied for more than a few days.¹⁴² States have to ensure that persons in police custody and pre-trial detainees have access to adequate recreational, vocational, rehabilitation and treatment services.¹⁴³ Generally, in practice the inmates are given access to outside world especially in terms of access to visitors. However, some detainees are denied access to family especially in military detention facilities.¹⁴⁴ Moreover, most places of detention in Uganda do not have adequate recreational, vocational, rehabilitation and treatment services. Such services are varied across the various places of detention with some central prisons doing better than the upcountry ones.¹⁴⁵ Usually police units do not have recreational, vocational and rehabilitation services.

4.5 Data Collection

The Guidelines require States to establish processes for the systematic collection of disaggregated data on the use of arrest, police custody and pre-trial detention to identify and address the over-use or inadequate conditions of police custody and pre-trial detention.¹⁴⁶ Furthermore, States are also required to establish, and make known, systems and processes to guarantee the right of access to information for persons in police custody and pre-trial detention, their families, lawyers and other legal service providers. These are particularly new obligations requiring the collection of data and making it accessible and will require sensitisation and training and the provision of resources to implement as they have not specifically been done before.

4.6 Complaints and Oversight

States have the duty to establish, and make known, internal and independent complaints mechanisms for persons in police custody and pre-trial detention¹⁴⁷ and access to and facilities to consult freely with such mechanisms should be guaranteed for all persons in police custody and pre-trial detention, without fear of reprisals or punishment.¹⁴⁸ The Guidelines require thorough, prompt and impartial investigations of all complaints and appropriate remedial action taken without delay.¹⁴⁹ Victims of violations, of illegal or arbitrary arrest and detention, or torture and ill-treatment during police custody or pre-trial detention, and their immediate family or dependants have the right to seek and obtain

135 See UHRC Annual Reports available at www.uhrc.ug. Also see HRW, *'Even Dead Bodies Must Work: Health, Hard Labor and Abuse in Ugandan Prisons'* 2011.

136 See HRW above 16.

137 See UHRC, 13th Annual Report, 2010 37 and HRW *'Even Dead Bodies Must Work: Health, Hard Labor and Abuse in Ugandan Prisons'*, above p.15.

138 See HRW above 19.

139 Article 26.

140 See HRW above p.14.

141 See UHRC, 17th Annual Report, 2014 (56).

142 Article 27.

143 Article 28.

144 See 12th Annual Report of the UHRC 2009, p.47-48.

145 See UHRC Annual Reports 1997- 2014.

146 Article 39.

147 Article 37 (a)

148 Article 37 (b) and (c).

149 Article 37 (d).

effective remedies such as restitution; compensation; rehabilitation; and satisfaction and guarantees of non-repetition.¹⁵⁰

States also have the duty to establish, and make known, oversight mechanisms for authorities responsible for arrest and detention with the legal mandate, independence, resources and safeguards to ensure transparency and reporting, to ensure the thorough, prompt, impartial and fair exercise of their mandate.¹⁵¹ Moreover, States are also supposed to ensure access to detainees and places of detention for: independent monitoring bodies or other neutral independent humanitarian organisations; lawyers and other legal service providers, judicial authorities and National Human Rights Institutions.¹⁵² Detained persons have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment.¹⁵³ States have to establish mechanisms, including within existing independent oversight and monitoring mechanisms, for the prompt, impartial and independent inquiry of disappearances, extra-judicial executions, deaths in custody, torture and other cruel, inhuman or degrading treatment or punishment, and other serious violations of their human rights.¹⁵⁴

In the context of Uganda, there are both internal and external oversight and accountability mechanisms. The external oversight and accountability mechanisms are available at both the National and International level and are discussed below.

Internal Oversight and Accountability Mechanisms

The internal oversight and accountability mechanisms are provided in the Uganda Police Force, Uganda Prison Service and the Uganda Peoples Defence Forces.

Uganda Police Force

The Uganda Police Force has disciplinary courts which hear complaints against officers. The disciplinary court is instituted by the Inspector General of Police and has the power to decide whether perpetrators are to be discharged, dismissed, cautioned, fined or demoted in rank. The sentence is confirmed by the disciplinary committee before execution. Furthermore, there is a provision for a public complaints system where individuals can make a written complaint relating to police misconduct to the District Police Commander or the Inspector General of Police.¹⁵⁵

The police also have the Directorate of Human Rights and Legal Services which is headed by Assistant Inspector General of Police Erasmus Twarukuhwa. The Department is responsible for advising Police Management and other officers on legal issues, initiating Police related legislations, guiding the Police disciplinary process and assists in drafting bills and other statutory instruments for the UPF which are forwarded to the Solicitor General. The Directorate recently initiated the process for drafting a Human Rights Policy that will guide police operations.

The police also have a Professional Standards Unit which investigates all complaints against the police especially relating to unprofessional conduct and violations of human rights. The Professional Standards Unit is based in Kampala and has a few regional offices in Mbale, Masaka, Hoima, Gulu, Arua, Jinja and Mbarara. They intend to open up more offices in Kabale and Fort Portal in the near future. It is composed of about 94 staff. The appointment is made on the basis of criteria such as a good professional record. The Professional Standards Unit (PSU), Headquarters is based in Bukoto, Kampala in a residential environment out of ordinary police premises which may make it more accessible to the public. However, in the regions they are based at the police stations and posts. Since 2007 the PSU has received over 10,000 complaints. Although the Unit has powers of access to detainees, it is not immune to the challenges faced by Police such as funding and logistics.

150 Article 38.

151 Article 41.

152 Article 42 (a) and (c).

153 Article 42 (b).

154 Article 43.

155 Article 70 (1) Police Act.

The internal oversight and accountability mechanisms of the Police, including the disciplinary courts, directorate of human rights and legal services and the professional standards unit need to be strengthened. Human rights violations by police have remained rife¹⁵⁶ and it is necessary to strengthen the internal oversight and accountability mechanisms to effectively fulfil their mandate and improve the police human rights record.

Uganda Prison Service

The Uganda Prison Service has established Human Rights Committees to ensure compliance with human rights obligations. Although the Committees are a recent development they have been acclaimed as playing an important role in the protection of the rights of the inmates as they address human rights complaints in prisons. The Human Rights Committees undertake human rights education, peer reviews and monitoring compliance with human rights standards in prisons.¹⁵⁷ Nevertheless, these committees need to be strengthened because the conditions in prison are still deplorable.¹⁵⁸

Uganda Peoples Defence Forces

The Uganda Peoples Defence Forces has a Directorate of Human Rights whose aim is enhance adherence to human rights within the forces. Furthermore, there is a human rights desk of the Chieftaincy of Military Intelligence. The Directorate and the desk plays an important role in resolving human rights complaints against the UPDF. Nevertheless, both the Directorate and the desk need strengthening.

External Oversight and Accountability Mechanisms

These comprise both national and international mechanisms. External oversight and accountability mechanisms are important because they complement the internal mechanisms. Both external and internal mechanisms are crucial in improving the conditions of detention.

National Mechanisms

At the National level, the mechanisms include the Inspectorate of government, Uganda Human Rights Commission, Judiciary, Parliament and Civil Society Organisations.

Inspectorate of Government

The Inspectorate of Government (IGG) which is the Ombudsman of Uganda is engaged in investigations of corruption and abuse of office and can provide some form of accountability for those in detention.¹⁵⁹ The Inspectorate has independence guarantees under the Constitution and investigates various cases of corruption and abuse of office. However, the IGG does not appear to have dealt with many, or any, cases involving accountability in places of detention or cases of torture or other ill-treatment. Nevertheless, the Inspectorate has noted that corruption is rampant among the Police.¹⁶⁰

Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) is the main external body with a mandate to investigate complaints of human rights violations, including those on pre-trial detention. The UHRC was established under the Constitution as an independent body with a mandate to promote and protect human rights, including investigating complaints of torture and other ill-treatment.¹⁶¹ The UHRC is currently composed of six members, including the Chairperson who are appointed by the President with the approval of Parliament. Staff of the UHRC is appointed by the members of the UHRC in consultation with the Ministry of Public Service. Currently the UHRC has about 208 Staff spread out in 10 regional offices, 10 field offices and at the Kampala Headquarters.¹⁶² The UHRC has a broad investigatory mandate and does not require a complaint to be submitted and can instigate

156 See UHRC, 17th UHRC Annual Report, 2014 (19).

157 See UHRC, 14th Annual Report 2011 (22).

158 See UHRC, 17th UHRC Annual Report, 2014 (49-63).

159 See Article 225 of the Constitution.

160 See IGG, *Report to Parliament January to June 2015* (7 and 13).

161 See Article 51(1) of the Constitution.

162 See UHRC, 14th Annual Report 2011 (50).

investigations itself.¹⁶³ The UHRC also has broad powers with a quasi-judicial function.¹⁶⁴ If satisfied that there has been an infringement of a human right the UHRC may order the release of a detained or restricted person; the payment of compensation; or any other legal remedy or redress. A person or authority dissatisfied with an order made by the Commission has a right to appeal to the High Court.

The process of complaints investigation can take on average between one to four years to complete depending on the particular circumstances of the case.¹⁶⁵ There have been cases which have delayed for even longer than four years because there were no commissioners to hear cases.¹⁶⁶ From April 2015 to February 2016, the Commission did not have enough members to hear cases because the contracts of some of the serving members had expired.¹⁶⁷ The UHRC is fairly accessible as the services offered are free and it has established ten regional offices across the country, namely in Arua, Central Kampala, Fort Portal, Gulu, Hoima, Jinja, Masaka, Mbarara, Moroto and Soroti together with ten field offices in the Districts of Kapchorwa, Kaberamaido, Kalangala, Kitigum, Kotido, Lira, Moyo, Nakapiripirit, Pader and Buvuma Islands. Since its inception the UHRC has handled thousands of complaints and some victims have been awarded compensation.

However, the UHRC cannot investigate any matter which is pending before a court or judicial tribunal; a matter involving the relations or dealings between the Government and the Government of any foreign State or international organisation; or a matter relating to the exercise of the prerogative of mercy.¹⁶⁸ The UHRC faces a number of challenges, including the lack of compliance with its orders, such as the payment of the UHRC tribunal awards especially by the Attorney General; limited capacity and resources; and the lack of a victim and witness protection law which deters some victims from following their cases.¹⁶⁹

In spite of the challenges, the UHRC has been accredited with an A status by the International Coordinating Committee of National Human Rights Institutions which monitors national institutions compliance with the Paris Principles which means that on the whole it is perceived as effective. Moreover, UHRC also won an award as the best National Human Rights Institution in Africa in 2013.

Judiciary

The judiciary plays an important role as an oversight and accountability mechanism for pre-trial detainees. Courts have an oversight role while hearing cases both criminal and civil. Pre-trial detainees have an opportunity to complain of long detention, torture and ill treatment or any other human rights violation to courts. Indeed a few detainees have used the court as a channel of redress for long detention, torture and ill treatment while in custody. An example of this is the case of CPL *Opio Mark v Attorney General*,¹⁷⁰ in case in which the Plaintiff sought redress for detention in a police cell for 11 days without being produced in court. The Plaintiff was awarded damages of up to UG SHS 6,000,000. In another case, *Martin Edeku v Attorney General*¹⁷¹ the plaintiff was award damages for a violent arrest, detention beyond 48 hours and torture while in detention. However, the courts face challenges of case backlogs, corruption and inadequate logistics among others.¹⁷² As a result, only a few cases make it the courts and are heard to completion within a reasonable period of time.

Parliament

Parliament also has an oversight role to play with respect to places of detention. Members of Parliament have many routine opportunities for oversight through question time, annual reviews of performance especially at budget allocation time. Parliamentarians have raised concerns relating to

163 See Article 52 (1) (a) of the Constitution.

164 See Article 53 of the Constitution.

165 See UHRC Complaints Handling Manual.

166 See UHRC, 14th Annual Report 2011 (13 and 149).

167 See Uganda Radio Network, *UHRC Stuck With Cases Due to Expiry of Commissioner's Contracts*, 8 October 2015 available at: <http://ugandaradionetwork.com/story/cases-piling-up-at-uhrc-as-commission-grounds-to-a-halt-over-expired-contracts-#ixzz4AmRqHUhZ> last accessed on 6 June 2016.

168 See Article 53 (4) of the Constitution.

169 UHRC, 13th Annual Report, 2010 (27).

170 Civil Suit No. 611 of 2006, High Court of Uganda.

171 HCCS 93A/89, High Court of Uganda.

172 See JLOS Annual Performance Report 2014/2015.

conditions of detention especially torture and other ill-treatment and a few Members of Parliament have also condemned excessive use of force by security agencies. Parliament also played an important role in passing the Prevention and Prohibition of Torture Act 2012 following the strong and collaborative advocacy efforts of the UHRC and the Coalition against Torture. Unfortunately, torture is still prevalent. Since the Act was passed in 2012 the complaints received by the UHRC only dropped slightly from 303 to 273 in 2013 and then increased to 357 in 2014.¹⁷³

Visiting Justices

The Prison Act makes provision for what it describes as “Visiting Justices”. These are persons who are allowed to visit and inspect prisons on a regular basis and shall be appointed by the Minister. Nonetheless, the Act recognises some people as ex-officio Visiting Justices. These include Chairperson and members of Uganda Human Rights Commission; a Judge of the High Court, Court of Appeal and Supreme Court; the Minister responsible for internal affairs; the Minister responsible for justice; all Cabinet Ministers; a Chief Magistrate and resident magistrates in any area in which the prison is situated; the Chief Administrative Officer of the District in which a prison is situated; the Permanent Secretary in the Ministry responsible for internal affairs; the Inspector General of Government.¹⁷⁴ The functions of the Visiting Justices are detailed in section 110 to include: inspect every part of the prison and visit every prisoner in the prison where practicable especially those in confinement; inspect and test the quality and quantity of food ordinarily served to prisoners; inquire into any complaints or requests made by a prisoner; ascertain as far as possible whether the rules, administrative instructions, standing orders issued to the prisoner and the prisoner’s rights are brought to their attention and are observed; inspect any book, document or record relating to the management, discipline and treatment of prisoners; and perform such other functions as may be prescribed. Other persons allowed to inspect prisons include cabinet ministers and judges.¹⁷⁵ This is in addition to the African Commission Special Rapporteur on Prison Conditions.¹⁷⁶

Civil Society Organisations

Some NGOs visit places of detention but at times their access may be limited and/or they have to give advance notice. The Prisons Act provides that they require the permission of the Commissioner General of Prisons to inspect places of detention.¹⁷⁷ Information regarding the frequency and methodology of the visits to places of detention by NGOs is limited. Some of the civil society organisations that visit include the African Centre for Rehabilitation of Torture Victims; Uganda Prisoners Aid Foundation, the Foundation for Human Rights Initiative; the Avocat Sans Frontières; and Human Rights Network Uganda, among others.

Regional Mechanisms

At the Regional level, African Commission on Human and Peoples’ Rights (African Commission), Special Rapporteur on Prisons and Conditions of Detention in Africa, African Court on Human and Peoples’ Rights, Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice, among others. These also contribute to the mechanism for oversight and accountability on pre-trial detention.

African Commission on Human and Peoples’ Rights

Under the African Charter, the African Commission has the mandate to promote and protect human rights.¹⁷⁸ Since Uganda is party to the African Charter it is subject to the African Commission. The African Commission, whose role has been greatly supported by NGOs, fulfils its mandate through the complaints mechanism, consideration of State Reports, interpretation, Special Rapporteurs, site visits and resolutions which contributes oversight and accountability.

173 See UHRC, 15, 16 and 17 Annual Reports, 2012, 2013 and 2014.

174 Section 109.

175 Section 111.

176 Section 112(1).

177 See S.112 (2) of the Uganda Prison Act 2006.

178 Article 45 (1) & (82).

The African Commission has received two communications relating to illegal arrest, arbitrary detention and torture. The case of *Nziwa Buyingo v Uganda*¹⁷⁹ involved a complaint of alleged illegal arrest, arbitrary detention, torture and extraction of money from the complainant by Ugandan soldiers in Kisoro contrary to Articles 5, 6, 12 and 14 of the African Charter. However, the complaint was dismissed by the African Commission as inadmissible because the complainant failed to show that he had exhausted local remedies. The other case was an inter-state communication namely the *Democratic Republic of Congo (DRC) v Burundi, Rwanda and Uganda*.¹⁸⁰ In this communication the DRC alleged numerous violations of the African Charter and other international obligations by the respondent States. In its decision the African Commission found that the respondent States had violated articles of the African Charter, including Article 5.

During the consideration of the State Reports from Uganda, the African Commission has specifically made recommendations for Uganda in relation to pre-trial detention in the following respects. It expressed concern that ordinary Ugandans cannot afford legal services to get compensation for human rights abuses.¹⁸¹ The African Commission has also been concerned about the fact that only 19% of prisoners have access to clean water and only 62% of prisoners are provided with meals on a daily basis.¹⁸²

The African Commission was also, among other things, concerned about the lack of legislative measures to criminalise torture and violence against children,¹⁸³ the trial of civilians by military courts,¹⁸⁴ lack of adequate legal aid¹⁸⁵ and the retention of the death penalty.¹⁸⁶

Special Rapporteur on Prisons and Conditions of Detention in Africa

The African Commission established the position of Special Rapporteur on Prisons and conditions of Detention in Africa. The current Special Rapporteur is Mr. Med Kaggwa. The Special Rapporteur has powers to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. The Special Rapporteur work entails; examining the state of prisons and conditions of detention and make recommendations to improve them, advocating for adherence to the African Charter and international human rights norms and if requested by the African Commission to make recommendations regarding communications by individuals who have been deprived of their liberty. The visits of the Special Rapporteur are only carried out after agreement of the state concerned. Reports are published after integration of comments and observations of state authorities concerned. Although, the Special Rapporteur has a potential to contribute to the oversight and accountability mechanisms, this opportunity has not yet been used in Uganda. Nevertheless, it is important to note that the Luanda Guidelines were passed under his watch.

African Court on Human and Peoples' Rights

The African Court complements the protective mandate of the African Commission. The added value of the Court is that it has powers to take final and binding decisions on human rights violations. Uganda is among the 26 countries that have so far ratified the Protocol establishing the Court and thus subject to its jurisdiction. However, the role of the African Court is limited because Uganda has not made a declaration to allow it to receive direct complaints of human rights violations from civil society organisations and individuals.¹⁸⁷ Although, the African Court has not yet handled any matter relating to Uganda, it has the potential to contribute to the process of oversight and accountability.

179 Available at: http://www.achpr.org/english/Decison_Communication/Uganda/Comm.8-88.pdf.

180 Available at: <http://www1.umn.edu/humanrts/africa/comcases/227-99.html>.

181 Concluding Observations of the African Commission, 3rd Periodic Report of the Republic of Uganda, para. 16.

182 Concluding Observations of the African Commission, 3rd Periodic Report of the Republic of Uganda, para. 32.

183 Concluding Observations of the African Commission, 3rd Periodic Report of the Republic of Uganda, para. 34.

184 Concluding Observations of the African Commission, 3rd Periodic Report of the Republic of Uganda, para. 37.

185 Concluding Observations of the African Commission, 3rd Periodic Report of the Republic of Uganda, para. 38.

186 Concluding Observations of the African Commission, 3rd Periodic Report of the Republic of Uganda, para. 38.

187 See Article 5(3) and Article 34 (6) of the Protocol Establishing the African Court.

Committee of Experts on the Rights and Welfare of the Child

When Uganda presented its initial report the Committee on the Rights and Welfare of the Child made several comments. The Committee of Experts commended Uganda for efforts made with regard to the establishment of Family and Juvenile Courts, a National Rehabilitation Centre and the possibilities to amicably solve cases concerning children in conflict with the law.¹⁸⁸ However, the Committee was concerned that several districts do not always have provisional detention centres for children and the number of functional re-education centres is limited.¹⁸⁹ The Committee was also concerned that children are held with adults in police detention centres.¹⁹⁰ Moreover, the Committee also observed that the Report didn't provide information pertaining to the treatment of mothers incarcerated with their children, pregnant women and young children.¹⁹¹

International Mechanisms

At the international level we have the Human Rights Committee which monitors the implementation of the International Covenant on Civil and Political Rights, the Committee against Torture and the Committee on the Rights of the Child. Furthermore, there are special procedures such as the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, there are various international organisations that are also involved in visiting places of detention such as the International Committee of the Red Cross.

Human Rights Committee

The Human Rights Committee (HRC) which is the monitoring mechanism for the implementation of the International Covenant on Civil and Political Rights is one of the mechanisms for oversight and accountability. During its consideration of the initial report of Uganda the HRC noted various important human rights concerns that demonstrate Uganda's lack of compliance with the ICCPR. The Committee noted the frequent lack of implementation by the government with UHRC decisions concerning both awards of compensation to victims of human rights violations and the prosecution of human rights offenders in cases which the UHRC had recommended such prosecution.¹⁹² It further noted that State agents continue arbitrarily to deprive persons of their liberty, including in unacknowledged places of detention.¹⁹³ It also noted the deplorable prison conditions such as overcrowding, scarcity of food, poor sanitary conditions and inadequate material, human and financial resources. The Committee was concerned about the treatment of prisoners' especially corporal punishment, solitary confinement, deprivation of food as disciplinary measures and the fact that juveniles and women are often not kept separate from adults and males.¹⁹⁴ The Committee noted the practice of imprisoning persons for contractual debts, which is incompatible with article 11 of the Covenant.¹⁹⁵ The Committee also noted with concern the shortcomings in the administration of justice, such as delays in the proceedings and in pre-trial detention, the lack of legal assistance provided to non-capital offenders and the conditions in which a confession may be secured.¹⁹⁶ Notably, all these challenges are still outstanding.

Committee against Torture

Article 20 of the UN Convention against Torture gives the mandate to the Committee against Torture to visit places of detention. However, there are requirements that the Committee can only visit States Parties to the Convention who have to authorise the visit. Visits are made only in the cases of "systematic torture" and the proceedings are confidential. No visits by the Committee against Torture have been made to Uganda. Nevertheless, during the presentation of State Reports, the Committee has noted various human rights concerns which are still relevant.

188 Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the Republic of Uganda on the African Charter of the Rights and Welfare of the Child available at: http://www.crin.org/docs/Uganda_COs.doc.

189 See Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child No. 131 above.

190 See Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child No. 131 above.

191 See Recommendations and Observations of the African Committee of Experts on the Rights and Welfare of the Child No. 131 above.

192 CCPR/CO/80/UGA, para. 7.

193 CCPR/CO/80/UGA, para. 17.

194 CCPR/CO/80/UGA, para. 18.

195 CCPR/CO/80/UGA, para. 19.

196 CCPR/CO/80/UGA, para. 21.

The HRC was concerned about the lack of incorporation of the Convention into Uganda's legislation such as the lack of a comprehensive definition of torture in the domestic law, the lack of an absolute prohibition of torture, the absence of universal jurisdiction for acts of torture in Ugandan law.¹⁹⁷ The Committee expressed concern over the widespread practice of torture and ill-treatment of persons detained by the military as well as by other law enforcement officials.¹⁹⁸ Furthermore, it was concerned about the length of pre-trial detention, including detention beyond 48 hours as stipulated by article 23, clause 4, of the Constitution and the possibility of detaining treason and terrorism suspects for 360 days without bail.¹⁹⁹

The Committee also expressed concern about the reported limited accessibility and effectiveness of habeas corpus²⁰⁰ and the continued allegations of widespread torture and ill-treatment by the State's security forces and agencies.²⁰¹ The Committee was also concerned about the wide array of security forces and agencies in Uganda with the power to arrest, detain and investigate.²⁰² The Committee noted the disproportion between the high number of reports of torture and ill-treatment and the very small number of convictions for such offences, as well as the unjustifiable delays in the investigation of cases of torture, both of which contribute to the impunity prevailing in this area.²⁰³ It further noted the alleged reprisals, intimidation and threats against persons reporting acts of torture and ill-treatment.²⁰⁴ The Committee also expressed concern about the frequent lack of implementation by of the Uganda Human Rights Commission's decisions concerning both awards of compensation to victims of torture and the prosecution of human rights offenders.²⁰⁵

Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other mechanisms

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Working Group on Forced or Involuntary Disappearances and the Working Group on Arbitrary Detention were established by Resolutions of the United Nations Commission on Human Rights. Their visits are often occasional and based on prior agreement by the State concerned in order to assess country situation. Their recommendations are issued on the basis of information communicated to the Rapporteur and verified, or following visits carried out in the country concerned. The recommendations are not binding character for States but provide guidance on how the situation can be improved. Public reports are presented at the session of the UN Human Rights Commission.

Uganda has not had an official visit from the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Working Groups on Forced or Involuntary Disappearances and on Arbitrary Detention. Nevertheless, they have a potential to contribute to the process of oversight and accountability.

Universal Periodic Review

Uganda was considered under the Universal Periodic Review (UPR) process in October 2011. During the UPR consideration of Uganda's State report a number of issues related to pre-trial detention were raised by States and other stakeholders.²⁰⁶ In particular concerns were expressed regarding torture by security agents;²⁰⁷ reports of the use of "safe houses" or unofficial places of detention;²⁰⁸ regular use of

197 CAT/C/CR/34/UGA, para. 5.

198 CAT/C/CR/34/UGA, para. 6 (c).

199 CAT/C/CR/34/UGA, para. 6 (a).

200 CAT/C/CR/34/UGA, para. 6 (b).

201 CAT/C/CR/34/UGA, para. 6 (c).

202 CAT/C/CR/34/UGA, para. 6 (d).

203 CAT/C/CR/34/UGA, para. 6 (e).

204 CAT/C/CR/34/UGA, para. 6 (g).

205 CAT/C/CR/34/UGA, para. 8.

206 See the UN Summary of Stakeholders Information prepared for the UPR UN Doc A/HRC/WG.6/12/UGA, 20 July 2011.

207 A/HRC/19/16, §46 and A/HRC/W.G.6/UGA/3, §24;44.

208 A/HRC/19/16, §92 and A/HRC/WG.6/UGA/3, §30.

torture as a method of interrogation by the police;²⁰⁹ the arbitrary arrest and torture of journalists;²¹⁰ a penitentiary system plagued by poor treatment of detainees, overcrowding, inadequate feeding, poor medical care and sanitary conditions, forced labour, and inadequate rehabilitation programmes.²¹¹

International Committee of the Red Cross

Visits from the International Committee of the Red Cross are based on the 1949 Geneva Conventions²¹² for situations of conflict and on the basis of an agreement with the State for other situations. Monitoring of conditions of detention is targeted at persons arrested and detained in relation to a situation of conflict or internal strife. In certain situations, monitoring extends to other categories of persons deprived of their liberty. In the situation of an international conflict, the States Parties to the conflict are obliged to authorise visits to military internees and civilian nationals of the foreign power involved in the conflict. In other situations, visits are subject to prior agreement by the authorities. The ICRC visits are often permanent and regular visits during a situation of conflict or strife or its direct consequences. The ICRC often provides relief or rehabilitation activities with the agreement of the authorities and helps to restore family links. The ICRC procedures and reports are confidential. The ICRC has been working in Uganda for the last 33 years. The ICRC has been monitoring the treatment of detainees in both civilian and military places of detention and working with the authorities to improve conditions of detention.

4.7 Vulnerable Groups

The Guidelines provide for special measures and protection of persons such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/AIDS, refugees, sex workers, on the basis of gender identity, refugees and asylum seekers, non-citizens, stateless persons, racial or religious minorities, or other categories of persons with special needs.²¹³ Special measures have to be applied and should be subjected to periodic review by a competent, independent and impartial authority.²¹⁴

Children

With regard to children their best interest is paramount both under Ugandan law and the Guidelines.²¹⁵ The Guidelines like the Ugandan law describe a child as one below the age of 18 but further provide that if there is uncertainty the person has to be treated as a child until the age is determined.²¹⁶ Just like the Ugandan law,²¹⁷ the Guidelines provide that children are only to be detained as a measure of last resort and for the shortest possible period.²¹⁸ A child deprived of their liberty has to be treated with humanity and respect taking into account their age.²¹⁹ The Guidelines just like Ugandan law²²⁰ encourage diversion and alternatives to pre-trial detention such as close supervision, intensive care or placement with a family, in an education setting or home, or other place of safety.²²¹ The Guidelines and Ugandan law provide that if the arrest of the child is absolutely necessary: their parents or guardians must be informed promptly, however the Guidelines further require that the children should be informed of their rights, including their rights to an interpreter, lawyer or other legal service provider.²²²

Furthermore, the Guidelines and Ugandan law provide that an arrested child must be given access to a lawyer or other legal services provider and the opportunity to consult freely and confidentially with him or her.²²³ Children have the right to the presence of lawyer, or other legal services provider, of their

209 A/HRC/WG.6/UGA/3, §25.

210 Ibid, §29.

211 A/HRC/WG.6/UGA/3, §31.

212 Uganda ratified the Geneva Conventions on 18 May 1964.

213 Article 29 and 30.

214 Article 30 (b).

215 Article 31 (a) (i).

216 Article 31 (a) (ii) and (iii).

217 See Section 94 (4) Children's Act.

218 Articles 31 (a) (iv) and 31 (d) (i).

219 Article 31 (a) (v).

220 Sections 89 (1) and (2) and 91 (9) of the Children's Act.

221 Article 31 (b) and (f).

222 Article 31 (c) (i) and (ii) and Section 89 (3) of the Children's Act.

223 Article 31 (c) (iii).

choice and, where required, access to free legal services, from the moment of arrest and at all subsequent stages of the criminal justice process.²²⁴ However, the guidelines further require that legal assistance shall be accessible, age appropriate and responsive to the specific needs of the child.²²⁵ Unless it is their best interest to stay with family members who have been detained: children have to be detained separately from adults and females must be separate from males.²²⁶ Children also have the right to the presence of a parent or guardian at all stages of the proceedings unless it is not in their best interest.²²⁷ Children in custody have to receive care, protection and the necessary social, educational, vocational, psychological, medical and physical assistance they may require.²²⁸ During the judicial proceedings, the child must have an opportunity to be heard either directly or through a representative of their choice and their views must be taken into account by the relevant authority.²²⁹ The conduct of law enforcement officials towards child suspects must respect their legal status and promote their wellbeing and ensure the child's privacy, and avoid harm to the child.²³⁰ The Guidelines encourage the creation of specialised units to deal with children in conflict with the law.²³¹ Children in detention must have reasonable access to parents, guardians or statutory authorities responsible for the care and protection of the child.²³²

The Uganda Police Force has created Family and Child Protection Units but this has not yet yielded the expected results. Although the law requires that children should only be detained as a matter of last resort, children are often incarcerated instead of being diverted away from the criminal justice system.²³³ Also contrary to the law, children have been detained with adults. The UHRC found 91 children who were detained with adults in police stations and prisons.²³⁴ Children's parents are often not informed of the arrest and they have no access to legal assistance or representation which frustrates their bail applications making them stay longer in pre-trial detention.²³⁵ Furthermore, a review of the Remand Homes and the National Rehabilitation Centre found that the children were not given adequate care, protection and the necessary social, educational, vocational, psychological, medical and physical assistance.²³⁶ The study also found that the number of girls in conflict with the law was very small compared to boys at a ratio of 1 or 2 girls to 20 or 30 boys.²³⁷ It was noted that the girls were not only likely to miss other female company but also were potentially vulnerable to sexual exploitation given that defilement is such a prevalent offence.²³⁸

Women

States have the obligation under the Guidelines to protect the rights and special status and distinct needs of women and girls who are subject to arrest, police custody or pre-trial detention.²³⁹ Women and girls should: only be searched by female law enforcement officials in a manner that accords their dignity; be held separately from male detainees; be permitted, if they have caretaking responsibilities for children, to make arrangements for their children or have suspension of detention in the best interest of the children; be provided with the facilities necessary to contact their families and legal representatives; be provided with gender specific hygiene facilities and materials and health screening and care with the rights to dignity and privacy; and the right to be seen by a female medical practitioner.²⁴⁰ Furthermore, women and girls should not be subject to close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants and must have access to obstetric

224 Article 31 (g) and Section 16 (5) of the Children's Act.

225 Article 31 (g).

226 Article 31 (d) (ii). Also see Article 34 (6) of the Constitution and Section 89 (3) of the Children's Act.

227 Article 31 (d) (iii).

228 Article 31 (d) (iv).

229 Article 31 (e).

230 Article 31 (e).

231 Article 31 (i).

232 Article 31 (j).

233 See UHRC, *13th Annual Report*, 2010 (40-41).

234 See UHRC, *14th Annual Report*, 2014 (56).

235 Also see Penal Reform International, *A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Uganda*, 2012 (16).

236 M Moore, 'Review of Ugandan Remand Homes and the National Rehabilitation Centre', October 2010 available at: <http://www.africanprisons.org/documents/Juvenile-Detention-in-Uganda-October-2010.pdf> last accessed on 5 June 2016.

237 M Moore above 13.

238 M Moore above.

239 Article 32 (a).

240 Article 32 (b) (i)-(v).

and paediatric care and never be subject to physical restraints.²⁴¹ States are also required to provide for the needs and physical, emotional, social and psychological development of babies and children who are allowed to remain in the place of detention.²⁴²

Women comprise about 4.5 % of the prison population in Uganda.²⁴³ More than half of the women are pre-trial detainees.²⁴⁴ The criminal justice system is generally not gender sensitive and specific to women's needs although the law provides for it. Ugandan law like the guidelines provides that women must be searched by female law enforcement officials and that they must be held separately from male detainees.²⁴⁵ By and large this law is observed. However, the law does not specifically provide that they should be permitted, if they have caretaking responsibilities for children, to make arrangements for their children or have suspension of detention in the best interest of the children. Some of the female detainees in Uganda are mothers and most often the primary or sole caretakers of their children and when they were arrested they had no opportunity to make arrangements for the care of the children who end up neglected and abused while the mothers are in detention.²⁴⁶ Furthermore, although the law allows them access to their families and legal representatives, their families especially their husbands abandon them when they are arrested and most of them cannot afford legal representation.²⁴⁷ Women in detention often do not have adequate food and other hygiene facilities such as soap and sanitary towels and their access to health care is limited.²⁴⁸ There are cases of pregnant women²⁴⁹ and women who are incarcerated with children who don't get adequate care.²⁵⁰ Although, mothers are allowed to keep babies or young children in prison with them up to a certain age, there is often no budgetary provision for them.

Persons with Disabilities

Persons with disabilities have the right to liberty and the provision of alternatives to detention and if they are detained have the right to reasonable accommodation and the right to informed consent with regard to treatment.²⁵¹ States have the obligation to take account of their disability in their disciplinary actions.²⁵² Persons with disability have the rights to: enjoy full legal capacity; access to justice; accessibility and reasonable accommodation while in detention.²⁵³

Although the rights of persons with disability are protected in the Constitution and the Persons with Disability Act, implementation is still weak. There are no sufficient measures to ensure that those inmates with disability are assisted to enjoy the same rights as the other suspects or inmates e.g. inmates with physical disability often find challenges in using the bathroom facilities.²⁵⁴ The treatment of persons with mental disability leaves a lot to be desired. The law²⁵⁵ requires that when they appear in the course of the trial after an inquiry that a person is incapable of making their defence the court orders for the detention of such person and the file sent to the Minister of Justice for certification. The provisions also allow for the detention of a person even when such person is acquitted of an offence, yet the period of detention is not defined. Unfortunately, such persons have been detained for long periods in prisons awaiting such certification.²⁵⁶ Given the deplorable conditions in prisons their detention therein only worsens their situation.

241 Article 32 (b) (vi) and (vii).

242 Article 32 (c).

243 World Prison Brief, Uganda above.

244 World Prison Brief, Uganda above.

245 Section 8 of the Criminal Procedure Code. Also see Section 23 of the Police Act and Section 29 of the Prisons Act.

246 Also generally see, Foundation for Human Rights Initiative and Penal Reform International, *Who are women Prisoners: Survey results from Uganda*, 2015 (16-17).

247 Foundation for Human Rights Initiative and Penal Reform International above.

248 Also see UHRC, *16th Annual Report*, 2013 (39).

249 See HRW above 18. Also see Foundation for Human Rights Initiative and Penal Reform International above 7-8.

250 See FOWODE, *Equal by Right, Uganda Women's Agenda 2010-2016*, (28).

251 Article 33 (a) (i)-(iv).

252 Article 33 (v).

253 Article 33 (b), (c), (d) (i) – (vi).

254 See UHRC, *14th Annual Report*, 2011 (32).

255 Section 113 of the Magistrates Courts Act and Section 45 of the Trial on Indictments Act.

256 See UHRC, *14th Annual Report*, 2011 (26).

Non-Nationals

Non-nationals such as refugees, migrants and non-citizens have to be informed of their right to contact consular officials and other relevant international organisations and be provided with the means of contacting those authorities without delay and hindrances if they so wish.²⁵⁷ Refugee children are entitled to the same rights as provided for other children in the Guidelines.²⁵⁸ Stateless persons also have the right to be informed of their right to contact a lawyer or other legal service provider who can address their needs, and relevant international organisations, and be provided with the means to contact them and facilities to meet them without delay, if they wish.

Foreigners in Uganda prisons constitute about 0.4% of the prison population.²⁵⁹ The Prison Act affirms the rights in the Guidelines, including the right to contact consular officials. Notably, prisoners have the same rights as the nationals and also include the right to also communicate with family, humanitarian organisations and to information on the prison regime and to assistance in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling.²⁶⁰ There have been a few complaints regarding access to lawyers and they also often face language barriers, discrimination and long stays in detention while awaiting deportation.

5. Strategies for implementation of the Luanda Guidelines

The study proposes some strategies for implementation of the Luanda Guidelines, including: advocacy and raising awareness; amendment of legislation; the role of national oversight and accountability mechanisms; the role of international regional mechanisms and coordinated efforts at all levels by all actors.

5.1 Advocacy and raising awareness

There is need for advocacy for the implementation of the Luanda Guidelines. Advocacy has to be preceded by raising awareness of the Luanda Guidelines. Since the Guidelines are relatively new it will be necessary to inform people about them and their importance in the lives of those in detention and why the government has to implement them. Raising awareness can help in increasing political commitment to their implementation at the national level especially for the Parliament, Uganda Police Force, Uganda Prison Service and the Uganda Peoples' Defence Forces.

5.2 Amendment and implementation of legislation

The Guidelines put up higher human rights standards in many respects. Generally, they require more transparency in terms of providing information to pre-trial detainees on their rights and availing oversight mechanisms with access to data that has not been previously specifically provided. More specifically there will be need for amendment of some laws especially the Police Act and Criminal Procedure Code Act in terms of: arrests, searches and the register, among other things. It will be necessary to expedite investigations and trials which will require resources. Furthermore, it will be necessary to provide legal aid services and adequately equip detention facilities so as to comply with the Guidelines. Implementation requires good political will and commitment.

5.3 Use of the Luanda Guidelines by national oversight and accountability mechanisms

In order to promote the implementation of the Guidelines, it will be necessary for the Guidelines to be used by the national oversight and accountability mechanisms in their monitoring work. If the Guidelines are included in the checklists for inspections and the monitoring reports indicated how far they are implemented with recommendations on how they can be implemented this will help to incrementally implement the guidelines which is a step in the right direction.

257 Articles 34 (a) (i) and (b).

258 Article 34 (a) (ii).

259 World Prison Brief above.

260 See Section 82 (1)-(7) of the Prisons Act.

5.4 Use of regional mechanisms to promote the Luanda Guidelines

African Commission can enhance its adoption and application of the Luanda Guidelines in examining state reports, handling individual communications and in its resolutions/guidelines or declarations. The Special Rapporteur on prisons and conditions of detention in Africa should promote them as they make recommendations on: the situation of persons deprived of their liberty; the state of prisons and conditions of detention after State visits; and promote them in adherence to the African Charter and international human rights norms. Furthermore, the African Court which complements the protective mandate of the African Commission can also take final and binding decisions on human rights violations using the Luanda Guidelines for those countries which have allowed its jurisdiction on individual complaints. Also, the Committee of Experts on the Rights and Welfare of the Child can use them during State reporting while examining reports and making recommendations or make statements and resolutions or decisions on communications using the Luanda Guidelines.

5.5 Coordinated efforts

There have to be coordinated efforts to improve the situation for all persons in detention at all levels. Efforts at the national, regional and international level to alleviate the human rights concerns surrounding pre-trial detention should be coordinated to ensure their effectiveness. Furthermore, it is also important to have coordinated efforts in improving the conditions for all detainees. For example, it is important, not only to raise awareness and sensitisation the Luanda Guidelines but also the Bangkok Rules and the Nelson Mandela Rules and other new developments so as to holistically improve the conditions of detention. If amendments are to be made it would be better to do it as a whole and not in part.

6. Conclusion and Recommendations

The Luanda Guidelines are ground breaking especially in terms of creating new obligations for States on the rights of pre-trial detainees and require specific action to be taken by various stakeholders in order to implement them fully.

African Commission on Human and People's Rights

African Commission should include the Luanda Guidelines:

- a) in examining state reports;
- b) handling individual communications;
- c) and in its resolutions/guidelines or declarations.

The Special Rapporteur on prisons and conditions of detention in Africa should promote the Luanda Guidelines as they make recommendations on:

- a) the situation of persons deprived of their liberty;
- b) the state of prisons and conditions of detention after State visits;
- c) adherence to the African Charter and international human rights norms on the treatment of persons deprived of their liberty.

African Committee of Experts on the Rights and Welfare of the Child

The Committee should use the Luanda Guidelines:

- a) While examining State Reports on the Rights and Welfare of the Child.
- b) To make recommendations or make statements and resolutions and guide their decisions on communications relating to children in detention.

African Court

The African Court should take final and binding decisions on human rights violations of pre-trial detainees using the Luanda Guidelines for those countries which have allowed its jurisdiction on individual complaints.

Uganda Government

Uganda Government should:

- a) Review, amend the laws to domesticate the Luanda Guidelines.
- b) Provide budgetary support and enhance adherence to the Luanda Guidelines.

Ugandan Security Agencies

Ugandan Security Agencies should include the Luanda Guidelines in their Standard Operating Procedures.

Uganda Human Rights Commission

The Uganda Human Rights Commission should:

- a) conduct human rights education on the Luanda Guidelines;
- b) conduct investigations of their violation;
- c) and continually monitor and document progress on their implementation.

Civil Society Organisations

Civil Society Organisations should:

- a) advocate for the implementation of the Luanda Guidelines;
- b) defend the rights of all detainees;
- c) and complement government in the provision of legal aid services and health care, among other things.

ABOUT APCOF

The African Policing and Civilian Oversight Forum (APCOF) is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF believes that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community.

APCOF achieves its goals through undertaking research and providing technical support and capacity building to state and non-state actors, including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004, and its Secretariat is based in Cape Town, South Africa.

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