



A CITIZENS HANDBOOK ON

THE LAW GOVERNING BAIL IN UGANDA

**A publication of
Foundation for Human
Rights Initiative (FHRI)
UGANDA**



**Foundation
for
Human Rights
Initiative**



What is FHRI?

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

Vision

To build a strong and democratic human rights culture as a foundation for peace, stability, social justice and sustainable development in Uganda.

Mission

FHRI seeks to enhance the knowledge, respect, and observance of human rights, promote exchange of information and best practices through training, research, advocacy, lobbying and strategic partnerships.

Rationale

1. To educate Ugandans about their fundamental human rights and to provide them with the tools to secure and defend their rights.
2. To advocate for just and humane laws that guarantee human rights respect and observance; and
3. To encourage the sharing of information and experiences among human rights workers and related agencies.

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First published June 2011

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Foreword

'The right to bail is a fundamental right guaranteed by Article 23 (6) of the 1995 Constitution of the Republic of Uganda. Its basis is found in Article 28 of the same Constitution which states that an accused person is to be presumed innocent until he/she is proved or he/she pleads guilty. It also provides that an accused is entitled to a fair and speedy trial before an independent and impartial court or tribunal established by law.

These two principles are part of the right to a fair hearing which is declared to be inviolable by Article 44 of the Constitution. The idea is that a person presumed to be innocent and who is entitled to a speedy trial should not be kept behind the bars unnecessarily long before trial. This is the rationale of Article 23 (6) of the Constitution.' [Justice Twinomujuni: 2004].

The right to bail in Uganda has remained controversial since 2005. While the Constitution recognises the right of an accused person to be released on bail, and the powers to release conferred on the Courts of Judicature, this power has many times been challenged or questioned by different stakeholders. There is therefore a need to create awareness and enhance shared understanding of this right in order to ensure that the rights of pre-trial detainees are not in any way compromised.

The Foundation for Human Rights Initiative (FHRI) is committed to contributing to standard setting and hopes that this Handbook will contribute to filling this gap and facilitate a common understanding on what the right to Bail means and how it should be applied. In doing this we seek to share some best practices within our own jurisdiction and the Commonwealth.

Apart from being a resource to the Justice Law and Order Sector and the legal profession, this Handbook will also be a useful guide to the general public on the application of Bail within the Courts of Judicature in Uganda.

The Handbook is made possible with the kind support of the Legal Aid Basket Fund managed by the DANIDA Human Rights and Good Governance Liaison Office, Kampala to whom we are indebted.



Livingstone Sewanyana
EXECUTIVE DIRECTOR

Acknowledgements

The Foundation for Human Rights Initiative expresses gratitude to DANIDA-LABF for the financial and technical support extended to this project and the publication of this Handbook.

Our appreciation goes to the Project team comprising of Kabugo & Co Advocates, Kakuru & Co. Advocates and Lukwago & Co. Advocates for the legal expertise extended to this undertaking. Special thanks go to Mr. Wycliffe Birungi, Hon. Medard Lubega Segona and our legal aid staff (Angela Mwanje, Alice Nassaka, Cynthia Mukasa, George Musisi, Haawa Birungi Nyenje, Loy Kyomuhendo, Lydia Nakamalira Tamale and Night Nora) for the support extended to the project team in the research, compilation and publication of this Handbook.

To the Uganda Prisons Service and pre-trial detainees interviewed, we dedicate this Handbook.

List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights.
ADR	Alternative Dispute Resolution.
CADER	Centre for Alternative Dispute Resolution.
CRB	Criminal Record Book.
DANIDA	Danish International Development Agency.
DPP	Director of Public Prosecutions.
FHRI	Foundation for Human Rights Initiative.
FIDA	Association of Women Lawyers.
HURINET	Human Rights Network (Uganda).
LABF	Legal Aid Basket Fund.
ICCPR	International Covenant on Civil and Political Rights
JLOS	Justice Law and Order Sector.
LAP	Legal Aid Project.
L.C	Local Council.
M.C.A	Magistrates Court Act.
PAS	Paralegal Advisory Service.
PDAU	Public Defenders Association of Uganda.
T.I.A	Trial on Indictment Act.
UDHR	Universal Declaration of Human Rights.
UPDF	Uganda People's Defence Forces.

Background

Pre-trial Detention is the stage in the criminal justice system when a person accused of committing an offence is arrested and detained as he/she awaits trial and the decision of court. It is the duty of the State to bring the accused person to justice without delay. This is in accordance with the Constitutional right to a fair, speedy and impartial trial provided for in the bill of rights, Chapter IV, Uganda Constitution 1995 (as amended).

In spite of these constitutional provisions the rights of pre-trial detainees are often overlooked. This is due to a number of factors including a lack of awareness of the rights of detainees and the laws that provide for protection of those rights. This leads to overstay in detention resulting into overcrowding in prisons and its related problems.

In a concerted effort to remedy the situation, the Justice, Law and Order Sector, local non-governmental organizations, development partners as well as individual human rights defenders have devised various means to improve the conditions of pre-trial detainees in addition to improving access to justice.

One such step was undertaken by the Foundation for Human Rights Initiative in 2006 with support of the Legal Aid Basket Fund. FHRI undertook a project entitled 'Enhancing Access to Justice for Pre-trial Detainees through Creation of Awareness and Enforcement of their Constitutional Right to Bail'. The main objective of the project is to create awareness among the public of the problem and its effect on the judicial system in the country. This activity entails public education and publication of a Handbook on rights of pre-trial detainees.

Introduction

This handbook presents a simplified version of the law and procedures governing the rights of pre-trial detainees. It is divided into three main chapters and appendices which provide the reader with a list of Legal Aid service providers and the forms used when applying for bail.

Chapter One examines Pre-Trial Detention in Uganda, how one becomes a detainee and whether the pre-trial detainee has any rights or freedoms. The Chapter enumerates the rights of Pre-Trial detainees as stipulated in the 1995 Constitution of Uganda plus the International Instruments that provide for rights of pre-trial detainees and how they are protected and promoted as ratified by Uganda.

Chapter Two covers the meaning of bail, common bail terms and the Laws relating to bail.

Chapter Three covers Court's interpretation of the Law on bail. It also looks at the steps one can follow in order to apply for bail in different Court's of Judicature.

The purpose of this handbook is to act as a user's guide or manual for the detainees, detainees' relatives, legal aid service providers, paralegals, prison officers and all manner of people who relate with pre-detainees on a regular basis. It is meant to educate this category of people on the rights of pre-trial detainees and what they can do to secure these rights.

Key Definitions

- **Acquittal** is the discharge from prosecution upon a verdict of not guilty or on a successful plea of pardon.
- **Bail Bond** is the form signed at court when executing bond to guarantee that the accused person will return until the conclusion of investigations.
- **Committal proceedings** are when a person is charged in a magistrate's court with an offence triable by the High Court; the case is eventually referred to the High Court for plea taking and hearing.
- **Conviction** is the finding of a person guilty of an offence after trial.
- **Ratification** is a formal ceremony whereby some time after the signing of a treaty, the parties to it exchange solemn confirmations of it so as to make it binding to them.
- **Plea taking** is when the substance of the charge is read out and explained and the accused is called upon to state whether he admits the truth of the charge.
- **Police bond** is the temporary release of an accused person from police custody as investigations go on. Police bond is free of charge.
- **Recognizance** is an obligation or bond, with or without sureties, acknowledged before a court or authorized officer, and enrolled in a court record. Its purpose is to secure the performance of some act by the person bound, such as to appear in court.
- **Remand** This is when on adjournment of a hearing to a future date, court orders that the defendant is kept in custody in the meantime.
- **Summons** is a document issued from the office of a court of justice, calling upon the person to whom it is directed to attend before a judge or officer of the court.
- **Surety** is a person who binds or guarantees himself/ herself, to satisfy the obligation of another if he/ she fails to do so.
- **Sanctioning** is when the DPP peruses a police file to determine whether there is enough evidence to institute criminal proceedings against the accused.

CHAPTER ONE

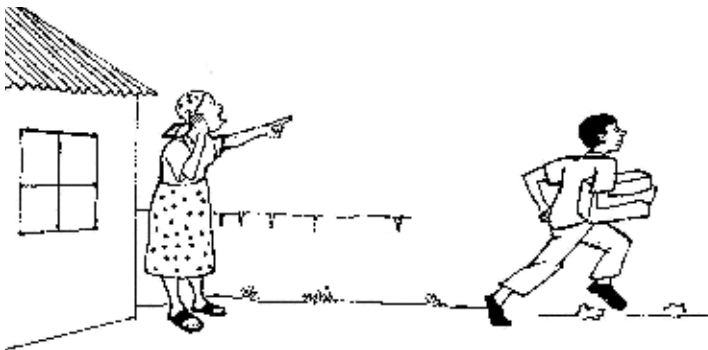
1.0 PRE-TRIAL DETENTION IN UGANDA

Pre-trial detention is broadly defined as the holding of an accused person on criminal charges in custody (whether prison or police) before trial and decision of court.¹ Once arrested and detained in lawful custody, the accused person is referred to as a “detainee”. A person who is detained before trial or before court makes a decision on his/her case is classified as a person on remand.

1.1 Reasons for arresting and detaining a person

A person would be arrested for any of the following reasons:²

- If he/she is accused of having committed an offence or a crime,
- If he/she has committed a crime,
- If he/she has to be presented in court to answer charges against him or her,
- If the police is carrying out investigations against him/her in relation to an offence he/she allegedly committed,
- If he/she attempts to commit a crime,
- If he/she is planning to commit an offence.



¹ A Palalegal Reference Hand book, FHRI, 2002, pg 70.

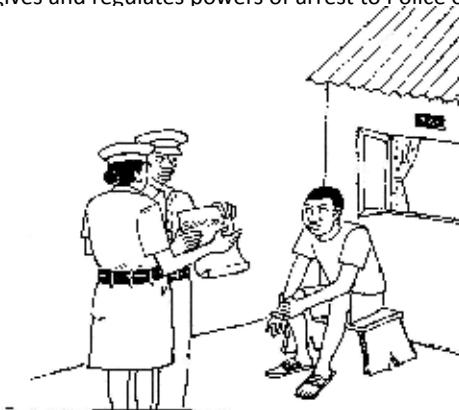
² Section 21 of the Police Act, Cap 303



1.2 Power to arrest

The power to arrest a person is contained in the following laws;

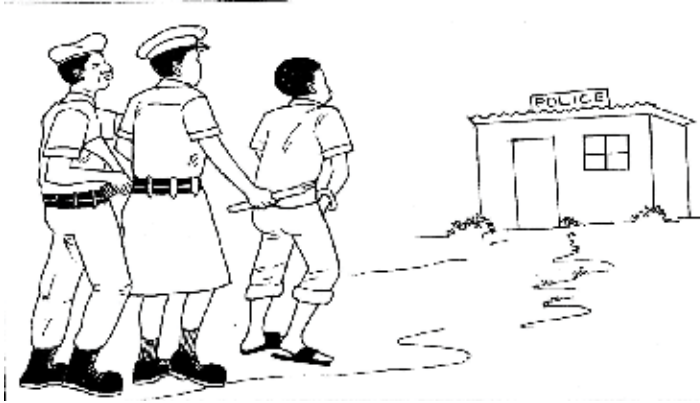
- The Criminal Procedure Code Act³ which is the major body of law regulating treatment of accused persons. It gives powers of arrest to;
 - i. Police officers,
 - ii. Any Magistrate to arrest or direct the arrest of a person who commits a crime in his/her presence within the local limits of his her area of control.
 - iii. Any private person to arrest a person who commits an offence, or arrest a person he/she reasonably suspects of having committed a felony or major offence.
- The Police Act⁴ gives and regulates powers of arrest to Police officers.



³ Criminal Procedure Code Act, Cap 116.

⁴ The Police Act, Cap.303 No. 21 of 2000

- The Local Government Act⁵ gives powers of arrest to chiefs.
- Uganda People's Defence Forces Act gives powers to the public or member of the army to arrest any member of the armed forces committing an offence or who is wanted to answer to charges, or who is accused of being about to commit a crime.⁶



1.3 Procedure of arrest and detention

A person becomes a detainee when he or she is either lawfully arrested and is detained in custody or is summoned by Police while conducting investigations into a case. Formal or lawful arrest and detention follows the following procedure;

- Upon receiving a report that an offence has been committed, the Police opens a file and registers the case by giving it a Criminal Register Book number (CRB).
- Police starts investigating the case by taking the statement of the complainant, summoning witnesses to the commission of the offence and the accused person and records their statements.
- If the accused person does not answer to the summons, the Police forward the file to a Magistrate who issues a warrant of arrest. This is a document which instructs the Police to look for the person named therein and arrest him forthwith. The purpose of the warrant of arrest is to ensure that the accused person answers to the charges brought against him or her.

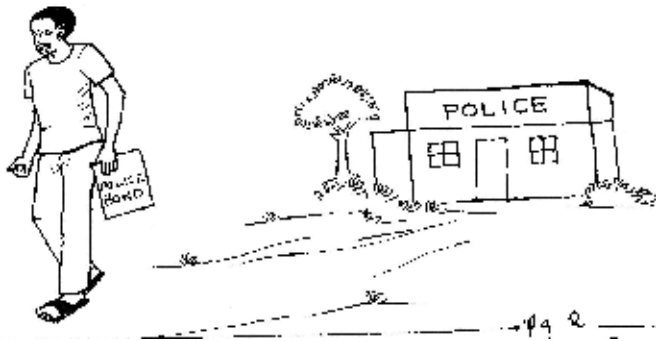
⁵ The Local Government Act, Cap. 243 No.69 of 2000

⁶ UPDF Act, No 7 of 2005 in Section 185.

- Upon arrest, the accused person is interrogated or asked questions, produced in court for charging and trial. Police should do this within forty eight (48) hours.



- If by the time of arresting the Police have not finalised their investigations and the offence with which the accused person is charged is a minor offence, the Police can release the accused person on Police Bond pending conclusion of the investigation process. The Police has a discretion to grant or deny an accused person bond if he or she is accused of committing a major offence, but nevertheless, they must produce that person in court within 48 hours of arrest.



- The Police sends the file to the State Attorney to sanction the charges against the accused person. Sanctioning is an administrative measure by which the Director of Public Prosecutions assesses whether evidence collected by Police is sufficient to sustain the charges brought against an accused person.



- If on perusal of the file it is established that evidence is insufficient, the Director of Public Prosecutions sends the file back to Police to gather more evidence.
- The accused person is produced in Court, where the Magistrate reads out the offence which the accused person is alleged to have committed and asks him or her to plead. The accused person should tell court whether he/she pleads guilty or not guilty. On doing this the Magistrate remands him/her unless he/she applies for bail and sets a date for hearing the case.
- If the accused person pleads not guilty, the Magistrate informs him or her of his right to apply for bail. The accused person can apply for bail there and then or be remanded and instruct a lawyer or any other person knowledgeable about the procedure to apply for bail on his/her behalf.



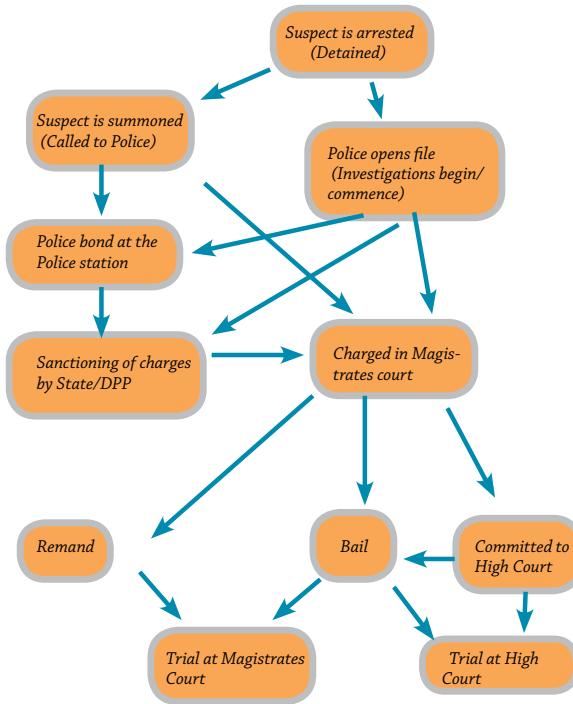
- For offences which are only triable by the High Court, the accused is charged in a Magistrate's court, but he or she is not allowed to plead to the charges. The Magistrate informs him/her about the right to apply for bail in the High Court and remands him/her. The detainee can then file an application for bail at High Court

where the Judge hears it and takes a decision on whether to grant or deny him/her bail. When the prosecution finalises its investigations, the accused person is committed to the High Court for trial.



- For cases which are triable by the Magistrates court but are not bailable by them for example embezzlement, when the accused person is presented in Court, he/she takes a plea and is remanded. He/She is informed of his/her right to apply for bail in the High Court which he/she can exercise anytime before the trial process is completed.

This procedure is illustrated as follows



1.4 Rights of pre-trial detainees

One may ask whether pre-trial detainees have rights. **YES**, Pre -trial detainees have rights and freedoms or human rights.

Human rights can be defined as entitlements or legal claims possessed by all persons by virtue of belonging to the human race or by virtue of their common humanity to live a life of freedom and dignity.⁷

It is important to note that human rights have three major characteristics;

⁷ HURINET comprehensive training manual,pg 10.

They are⁸;

- Inherent (inborn and not granted by the State or Government),
- Inalienable (cannot be taken away) and
- Universal (they apply to everyone in the world).

Therefore, every person by virtue of his or her being human is entitled to personal liberty without any discrimination. It is a fundamental human right. However, rights go hand in hand with duties. This means that every individual human being has a duty or obligation to enjoy his or her right to liberty or any other right with due regard to other human beings or within the limits of the law.⁹

Illustration;

much as a person has liberty to do whatever he or she wants, if a man takes another's property without that other person's permission, the one who has taken the property shall be arrested, charged with theft and detained, thereby restricting his/her right to personal liberty.

The rights of pre-trial detainees are provided for in the Constitution of the Republic of Uganda, 1995 (as amended) Chapter four and other international instruments which have variously been ratified by Uganda. These include the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The African Charter on Human and Peoples Rights among others. The rights of pre-trial detainees include the following;

1.4.1 The right to liberty

The right to liberty is the foundation from which all the freedoms originate. This right connotes Freedom from arbitrary or undue restraint, especially by a government.¹⁰ It is guaranteed by Article 23 of the Constitution which provides that;

“No person shall be deprived of personal liberty except in any of the cases below...”

- In execution of a sentence or order of court punishing a person convicted of a criminal offence;
- In execution of a court order made for fulfillment of an obligation imposed on that person by law;

⁸ Art. 20 of Uganda's Constitution.

⁹ Human rights training manual, for Police officers, published by Uganda Police, 1999, pg16

¹⁰ *ibid*

- For purposes of bringing a person before Court on reasonable suspicion that he/she has committed or is about to commit an offence;
- To prevent the spread of a contagious disease;
- For a person below eighteen years of age, for the purpose of the education or welfare of that person;
- For a person of unsound mind, for the purpose of care or treatment of that person and the protection of the community;
- For the purpose of deportation of an illegal immigrant or the purpose of restricting a person's escape from Uganda;
- For circumstances similar to these and specified by law.

This effectively means that it is a cardinal principle of justice not to tamper with the person's right to liberty unless he/she falls within the bounds of the exceptions enumerated above. Thus Personal Liberty is one's freedom to do as one pleases. It is however important to note that one's right to personal liberty should only be taken away lawfully but not arbitrarily or illegally and where this is done, the illegally detained person has a right to contest his/her illegal detention.

Likewise, where a person's right to liberty is taken away in accordance with the law, he/she must be detained in a gazetted detention center or prison and should be informed of his/her right to apply for bail and be presented to Court for that purpose without delay.

1.4.2 The right to Access Information by persons in custody

This is provided for by Article 23(3), Article 28(3) (f) of the Constitution and Article 9(2) of the ICCPR which states that; *"A person arrested or detained shall be informed immediately, in a language that the person understands, the reason for arrest or detention, the charges against him/her and of his or her right to a lawyer of his or her choice. The person shall also be accorded an interpreter if he doesn't understand the language used."*

This right entails the following;

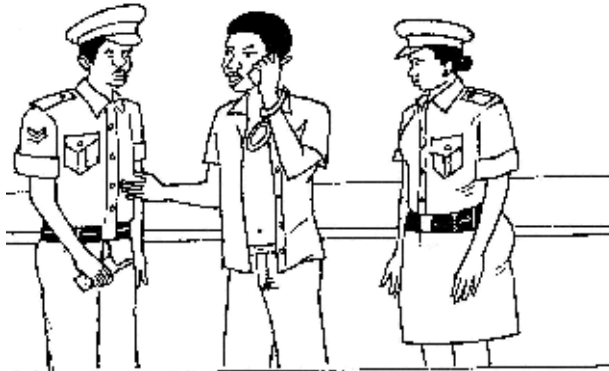
- When a person is arrested he/she must be informed immediately of the reason why that person is being denied his or her liberty and the charges against them.
- Upon arrest an accused person should be informed of the rights he/she as a suspect or detainee has and how he or she can enforce them.

- The right to inform the accused person's next of kin, lawyer and personal doctor and to be allowed reasonable access to them. For the accused person to enjoy this right, he or she must request for it.
- If the accused person is a foreigner, in addition to the above rights, he or she must be promptly informed of their right to communicate with his or her embassy.
- The right to be informed in the language that the accused person understands, the charges brought against him or her.

Illustration: If Opio is arrested for stealing a bicycle and the only language he speaks is Luo, this right requires that he should be informed of the reason for arrest and the charges brought against him and other rights in Luo or be availed an interpreter who speaks Luo.

1.4.3 The rights of detainees to have access to the outside world

Article 23 (5) (a), (b), (c) of the Constitution provides for the right of the detainee to inform the next of kin about his detention, to access his/her next of kin, or access his lawyer for legal representation and doctor for any medical assistance.



This means that the detainee must be allowed to:

- Communicate and receive visitors,
- Inform the family of the arrest and place of confinement,
- Access or talk to the family;

- Access a doctor and/or a lawyer,
- Access the Consular or embassy if the detainee is a foreigner.



1.4.4 The right to Legal Representation

This right is enshrined in the Constitution of the Republic of Uganda and also other international instruments.¹¹ This means that the accused person has a right to;

- Get a lawyer to represent him at his/her own expense, regularly access him or her, and confidentially talk to him or her.



11

Article 28(3) and Article 9 (3) of the International Covenant on Civil and Political Rights.

- If the offence is of a capital nature i.e if the sentence the accused has committed would on conviction be a death sentence or life imprisonment, the accused person is entitled to a lawyer at the expense of the State.
- Be permitted to appear before the court in person or at their expense, by a lawyer of their choice.
- Be given adequate time and facilities for the preparation of his or her defense. Adequate time relates to giving the accused person reasonable notice of the offence committed as well as when the trial will begin.
- Be afforded without payment the services of an interpreter, if he/she cannot understand the language used at the trial. The need for interpretation in the language the accused person understands is because the official language of the court is English¹² yet the majority of the population in Uganda does not understand or speak English. As regards deaf-mute accused persons, attempts must be made to obtain a person who can communicate to the accused by way of signs.
- Be afforded facilities to examine the witnesses and obtain the attendance of others before court. This is very fundamental and should at least be done by the accused or his/her Counsel. Cross examination is important for testing the veracity and reliability of a witness and it is useful in helping the court arrive at the truth.

1.4.5 The right not to be compelled/ forced to testify or confess to guilt

According to Article 14(3) (g) ICCPR, in a criminal trial everyone shall be entitled not to be compelled to testify against him/herself or to confess guilt. This is further echoed by Article 28(11) of the 1995 Constitution which provides that no person who is tried for a criminal offence shall be compelled to give evidence at his trial. It is referred to as the “Right to Silence”.

This means that the accused person has a right to plead not guilty even if he was caught red handed committing the offence and no one should force him or her to accept that he or she committed the offence. The accused may on his own volition confess or admit guilt. Likewise a spouse of an accused person cannot be compelled to testify against him or her.

1.4.6 The presumption of innocence

According to Article (28) (3) (a) of the Constitution, Article 11 of the UDHR and Article 14(2) of the ICCPR, “Every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until the person has pleaded guilty”.

This right involves;

- i) **The presumption of innocence,**
 - ii) **The burden of proof.**
- **The presumption of innocence** means that an accused person is by law presumed innocent, and treated as such, until he/she is pronounced guilty by a competent court of law or unless he or she pleads guilty. This principle forms the basis for the right to bail.
 - Thus the presumption of innocence requires that the police should thoroughly investigate the cases reported to them and prosecutors should successfully lead all evidence incriminating the accused person so as to enable Court to apply the evidence to the law to come to a conclusion of either guilty or not guilty.
 - **The prosecution bears the burden of proof.** This means that the prosecution has to prove an accused person's guilt beyond reasonable doubt. Thus if at the end of the hearing of a case against the accused, there is any reasonable doubt as to the guilt of the accused, the benefit should be given to the accused because it would be harsh to the accused if there was a presumption of guilt as it would have been the duty of the accused to prove his innocence.
 - As a result, Magistrates and Judges have a duty to conduct trials with fairness and impartially so as to reach an informed decision on charges brought against an accused person.¹³

1.4.7 Right to a fair and impartial trial.

The 1995 **Constitution in Article 28(1), Article 10 of the UDHR and Article 14 (1) of the ICCPR** provide for a *fair, speedy and public hearing before an independent and impartial court or tribunal established by law.*

This means that the accused person should be brought before a neutral Judge or Magistrate who will not take sides or favor the other party and the court proceedings should be conducted in open court to ensure impartiality.¹⁴

This provision embodies the “principle of Natural Justice”, namely that no one shall be a judge in his own cause or be condemned unheard. As regards the right to be heard the accused person must be present while he is being tried and must be given the opportunity to cross examine all prosecution witnesses who testify against him/her as well as give evidence in his defence if he/she so wishes.

¹³ Fair trials Manual Amnesty International ,1998,pg88

¹⁴ Sometimes the judge may decide to hear the case in camera where it is reasonable to do so, and usually where matters in court are to do with children to protect the children from intense public scrutiny.

Independence of the Court is enshrined in Article 128 of the Constitution which provides that in the exercise of judicial powers, the court shall be independent and shall not be subject to the control or direction of any person or authority.

1.4.8 The right to be tried within reasonable time.

This right is also embedded in Article 28(1) of the 1995 Constitution and it imposes a duty on the prosecutor and the Magistrate or Judge to try the accused person within reasonable time or without delay. The Constitution requires the Police to produce a suspect arrested and detained in court within forty eight (48) hours. Where this is not done amounts to unlawful imprisonment which is a civil wrong for which the victim may sue for damages.¹⁵

Likewise, **Article 126(2)(b)** of the Constitution provides that “justice shall not be delayed”. This is in line with the Equity maxim “justice delayed is justice denied.” In essence, a fair trial is one which is conducted without delay and prejudice to the accused persons’ other rights. Where the circumstances do not favour trial within reasonable time, for example, where the investigation process is too lengthy, the accused person should be released on bail.

1.4.9 The right to bail

bail is the release of an accused person from detention pending trial or until Court takes a decision on his/her case. It is granted for short periods and renewed regularly by Court. It may however be cancelled if the conditions set are not complied with. It is provided for in Article 23(6) of the Constitution and is discussed in detail in the subsequent chapters.

All courts have power to grant bail depending on their jurisdiction. bail in serious cases is granted by the High Court and in other minor cases by the Magistrates court.

1.4.10 Right to copy of proceedings and judgment.

Article 28 (6) of the Constitution provides that, a person tried for any criminal offence or any person authorized by him or her shall after the judgment in respect of that offence be entitled to a copy of the proceedings upon payment of a fee prescribed by Law.

This right is essential especially where the accused intends to file an appeal against his conviction or sentence. The record and judgment enables the accused or his advocates prepare a sound memorandum of appeal.

1.4.11 Right to public trial

Article 28(1) provides that in the determination of civil rights and obligations or a criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

The requirement for a public trial is based on the principle that justice must not only be done but it must be seen to be done. All criminal trials must be held in open court except where the interest of justice, public safety, public order and public morality dictate otherwise as it may be necessary in a free and democratic society. Open court means where the trial takes place provided the public have access to it.



1.4.12 Freedom from torture or inhuman treatment.

Article 24 of the Constitution provides that no person shall be subject to any form of torture or cruel, inhuman or degrading treatment or punishment.

It is therefore illegal to torture a person to extract evidence or as a form of revenge. Where a person is tortured he can make a complaint to court upon which an investigation into the allegation is made and if proved to be true the person responsible for torture shall be charged.



1.4.12.1 The rule against retrospective penal laws

Article 28(7) of the Constitution provides that no person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence.

Therefore no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at that time when it was committed.

It's a fundamental rule of our law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act. It's also a fundamental rule of statutory construction that penal statutes must be strictly construed; therefore the principle applied in interpreting a penal Act is that if there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt it.

However, it should be noted that the presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts.

1.4.12.2 The rule against double jeopardy

Article 28(9) of the Constitution provides that no person who shows that he has been tried by a competent court for a criminal offence of which he/she could have been convicted at the trial for that offence save upon the order of a superior court in the court of appeal or review proceedings relating to the conviction or acquittal be subject to the same offence.

This provision lays out the doctrine of "utrofois convict and autrefois acquit". The rationale being that a person should not be put in peril twice for the same offence or for that offence which he could have been tried at the previous trial.

The doctrine applies to the court which first tried the accused and it must have had the jurisdiction to try the offence which the accused was subsequently charged. The rule is not a bar to "appeals".

1.4.13 Respect of the legal status of juveniles (child offenders)

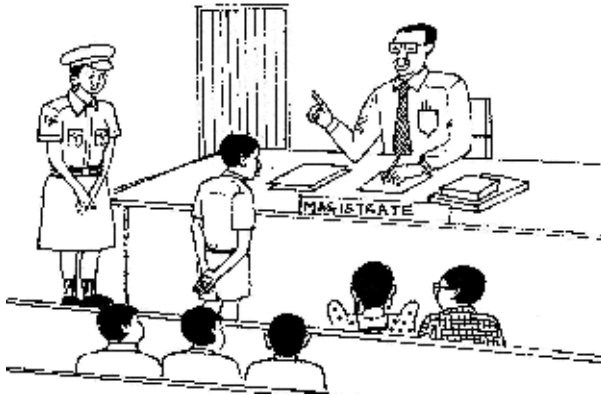
Article 34 (6) of the Constitution provides that, a child offender who is kept in the lawful custody or detention shall be kept separately from adult offenders. A child is a person below the age of 18 years.¹⁶

16

Article 257 of the 1995 Constitution

Thus once a child offender is arrested for commission of an offence, he/she enjoys the following rights;

- Be present at the time of his or her trial,
- Ask questions to witnesses testifying against him or her,
- Have parents or guardians present at the trial,
- Be treated in a humane way,
- Be released on bail by court. bail to a child is free of charge.¹⁷



The Children’s Act, Cap 59 further provides that when hearing cases against child offenders, strict rules of procedure followed in ordinary courts ought not to be followed, and most preferably, these cases should be heard in camera or restricted from the general public.

In light of the rights of pre-trial detainees elaborated above, it only remains to educate the public and the detainees about their existence, the various laws which specifically provide for them and the procedure one can take to enjoy them. That is what the chapters that follow attempt to address.

2.0 BAIL

2.1 What is bail?

bail is the release from custody by a court of law of a person accused of a criminal offence after such person has entered a recognizance consisting of a bond with or without sureties, for a reasonable sum of money to the effect that he or she would appear before court for his or her trial.¹⁸

In simple terms, bail is the release of an accused person from detention pending trial or until Court takes a decision on his/her case

When a person is arrested and detained or remanded, court is supposed to inform him or her of his/her right to apply to be released pending trial. In order for the accused person to be granted bail he/she must fulfill certain legal requirements and conditions which guarantee that he or she will appear in court for trial to answer charges against him or her.

2.2 The laws applicable to bail

The major laws relating to bail are:

- The 1995 Constitution of Uganda (as amended)
- The Magistrates Court Act (M.C.A.), Cap 16
- The Trial on Indictment Act (T.I.A), Cap 23.
- The Police Act, Cap 303.
- The Uganda People's Defense Forces Act (UPDF Act), Act No. 7 of 2005.
- The Criminal Procedure Code Act, Cap 116.

2.2.1 The Constitution

The 1995 Constitution of the Republic of Uganda is the Supreme law of Uganda. All other laws must conform to the Constitution. In the event that any law is inconsistent with the Constitution, that law is void to the extent of the inconsistency with the Constitution. This means that where there is a conflict between the Constitution and any other law, the provisions of the Constitution must be followed¹⁹. Below is what the 1995 Constitution of Uganda provides on bail;

18 *Aliphusadi Matovu Vs Uganda Criminal Miscellaneous Application No 15 of 2005.*

19 *Law and Administration of Justice in Uganda, The Judicial Service Commission, 2007, pg2*

- ★ **Article 23 (6)(a)** provides for the right of an accused person to apply to court to be released on bail subject to the legal requirements and conditions which must be fulfilled before court grants bail.
- ★ **Article 23(6)(b)** gives the accused person the right to be released on bail, if the person has been on remand for sixty(60) days before trial, in respect of an offence that is triable by the High Court or subordinate court (Magistrate's court).
- ★ **Article 23(6) (c)** gives the accused person the right to be released on bail if he or she has spent one hundred and eighty days (180) on remand in respect of an offence only triable by High Court. But the accused person must fulfil legal requirements and conditions set by court.

2.2.2 The Magistrates Court Act (M.C.A)

The Magistrates Court Act, Cap 16 (MCA) is the law governing the procedure applicable in Magistrate Courts. Magistrate courts are also referred to as lower courts or subordinate courts and they consist of;

- The Chief Magistrates Court,
- Magistrate Grade I Court, and
- Magistrates Grade II Courts.

These courts have authority to try criminal matters. The M.C.A gives powers to the Magistrate to grant bail to accused persons who have committed offences which are triable and bailable by them. However, there are offences which can be tried by Magistrates for which they cannot grant bail and also cases which are neither triable nor bailable by them. In these cases, the Magistrate's duty is to inform the accused person of his/her right to bail and also advise him or her to apply for bail in the High Court.

- ★ **The MCA provides for situations and circumstances when a pre-trial detainee may be granted bail.**²⁰ These are;
 - Where the accused is not being charged of any of the following offences:
 - Acts of terrorism,
 - Cattle rustling,
 - Abuse of office,

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Section 75 (1) of the Magistrates Court Act.

- Rape,
- Embezzlement,
- Causing financial loss,
- Defilement,
- Offences under The Fire arm's Act²¹ punishable by at least ten years imprisonment or more,
- Offences triable by only the High Court,
- Corruption,
- Bribery and
- Any other offences for which the Magistrate Courts have no jurisdiction to grant bail.

To note here is that the Magistrate has power to grant bail for any other offences triable by him/her that are not included in the above list.

★ **The powers of a Chief Magistrate in relation to bail include;**

- Power to direct that an accused person be released on bail if bail was denied by a lower Court within his/her area of jurisdiction where the accused is charged with an offence triable by a Magistrate.
- Reduction of bail bond where in the Chief Magistrate's opinion, the amount set by the lower court is excessive or is intended to deny the accused bail if it was set by the lower courts.

★ **The MCA provides for the following powers of the High Court in relation to bail;**

- Where an accused person is charged with an offence triable by the Magistrates Court but is denied bail, the High Court can order that the person be released on bail.
- The High Court can also order that the amount for bail bond be reduced.
- If the accused person is charged with an offence triable by the Magistrates Court but not bailable by him/her, the High Court has power to direct that the accused person be granted bail.
- If the High Court is not content with the bail bond (security) that the Magistrate set in order to release the accused person on bail, it can increase the bail bond and order for the arrest of the person released on bail until he/she pays the new increased amount of bail bond.
- If the accused person fails to pay the new bail money the High Court may order for his/her imprisonment.

★ Mandatory bail.

Where an accused person is remanded in detention before his or her trial starts for a continuous period exceeding 180 days for major offences, and 60 days for minor offences,²² the Constitution and the MCA authorizes the Magistrate before whom that accused person first appears to release him or her on mandatory bail.

However, the Magistrate may refuse to grant bail to an accused person even if he/she has completed the mandatory days on remand if;

- The accused person is committed or referred to High Court for trial.
- The Magistrate thinks that the release of the accused person is a threat to the public.

★ Factors to consider before the Magistrate grants bail to an accused person.²³

- The nature of the offence or accusation against the accused. If it is a minor offence, there are high chances of granting that person bail.
- The severity of the punishment which conviction might entail. If the offence attracts a light punishment, then the court will be more likely to grant the application.
- The antecedents (background and character) of the accused. Court will consider the general character and past conduct of the accused person. Where the accused person is a first offender, he/she stands higher chances of being granted bail.
- Whether the accused has a fixed place of abode, which is a permanent residence or home within the jurisdiction of the court.
- Whether the accused is likely to interfere with state witnesses when released.
- The age and health status of the accused person.
- Whether the accused person has sureties or not.

In the event that bail is not granted, the Magistrate gives reasons for his/her decision and informs the accused person of his/her right to apply for bail in a higher Court.

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Article 23 Constitutional Amendment Act No. 11 of 2005.
Supra, Note27, Section 77.

2.2.3 Trial on Indictment Act (T.I.A)

The Trial on Indictment Act, Cap 23 (TIA) is the law governing the trial procedure of criminal cases in High Court.

- The High Court has unlimited power to hear criminal matters and appeals from the lower courts. The TIA gives High Court unlimited power to grant or deny accused persons bail and provides for the procedure adopted by Court in doing so. bail may be granted by the High Court at any stage of the proceedings.

★ **Circumstances when a detainee may be released on bail by the High Court.²⁴**

The High Court may grant bail to an accused upon the accused proving exceptional circumstances that entitle him/her to be granted bail and also showing that he or she will not abscond when released.

Exceptional circumstances include;

- i. That the accused is suffering from a grave or serious illness which has been approved by a medical officer of the prison or other institution where the accused is detained as being incapable of being adequately treated while in custody or detention.
- ii. When the accused produces a Certificate of No objection signed by the Director of Public Prosecutions (DPP).The Director of Public Prosecutions is the head of the Directorate of Public Prosecution which institution is responsible for the prosecution of all criminal cases in the country. The DPP has offices in many districts of Uganda and these offices are referred to as offices of the Resident State Attorney.
- iii. When the accused shows that he or she is either an infant, or of advanced age.

In determining whether the accused will not abscond when released court will consider the following factors;

- i. Whether the accused has a place of abode within the court's jurisdiction,
- ii. Whether the accused has sound sureties within the court's jurisdiction, to undertake that the accused shall comply with the conditions of his or her bail;
- iii. Whether the accused has on previous occasions when released on bail failed to comply with the conditions of his or her bail; and
- iv. Whether there are other charges pending against the accused.

When will an accused be entitled to Mandatory bail under the T.I .A?

If an accused person has been remanded in custody before the commencement of his or her trial;

- a) In respect of any offence punishable by death and life imprisonment, for a continuous period exceeding 180 days and,
- b) In respect of any other offence, for a continuous period exceeding 60 days, the judge before whom he or she first appears after the expiration of the relevant period shall release him or her on mandatory bail.

It is important to note that if court is of the opinion that the sureties are not substantial or reliable, the person released may be re-arrested and ordered to produce more sureties and if the accused fails totally he/she will be imprisoned.²⁵

2.2.4 The Police Act

The Police Act Cap. 303 is the law which governs the structure, organisation, discipline and functions of Police. This Act gives police officers the duty of keeping law and order by arresting offenders and bringing them to justice, preventing people from committing offences and making sure that people obey orders issued by the authorities. The following provisions are very important;

- A person arrested by the Police is supposed to be produced before the Magistrate's court within forty eight (48) hours of his or her arrest.
- The provisions of the Act²⁶ which allowed for a seven day transfer period for someone arrested by police from a different area than where he committed the offence were held to be inconsistent with the constitution by the Constitutional Court.
- If a person is detained in police custody beyond forty eight hours without being charged in court, then he or she can apply to a Magistrate within twenty four hours who will then order for his or her release.
- If a person is tortured while in police custody, he or she can state his complaint to the Chief Magistrate who shall order for his or her examination and medical treatment at the expense of the State and the person responsible for the torture will be charged.
- No money should be paid to police in order to be released on police bond.

²⁵ Ibid Section 17.

²⁶ Ibid Section 25 (3)

2.2.5 Uganda People's Defence Forces Act (UPDF ACT)

The Uganda People's Defence Forces, Act No. 7 of 2005, is the main law governing the establishment and regulation of the army. The Act provides that a military court may grant bail to a person charged before it on the same considerations that govern bail in civil or ordinary courts.²⁷

Note:

Courts have interpreted most of the above provisions and pronounced them null and void for being inconsistent with the Constitution and thereby ordered Parliament to amend the subordinate laws so as to bring them in conformity with the Constitution. This is the major focus of Chapter three of this Handbook²⁸.

2.3 Object of bail

The object or purpose of bail is to ensure that the accused person will attend his/her trial without being detained in prison on remand.

2.4 Effect of bail

The effect of granting bail is not to set the accused free but to release him/her from custody. This helps the accused person to prepare his/her defence, contact witnesses to testify in his/her favour and gives the Police ample time within which to effectively investigate and prosecute the case against the accused person. The sureties make an undertaking to court or enter recognisance that the accused person will appear in court on a date and time set by Court.

It should be noted that bail is not a punishment. It should therefore not be excessive and Magistrates or Judges should whenever possible grant bail to the accused person. Likewise, the amount to be paid as security should not be excessive as to defeat the whole purpose of granting bail. In determining the amount to be paid, Court should put into consideration the nature and gravity of the charges brought against the accused person and the sentence to be given to the accused person in case of a conviction.

- **What is the effect of bail?**

Upon the grant of bail, the accused is set free forthwith from prison, unless held on any other lawful charge. The accused is to enjoy all the benefits that accrue to a free person, subject to the bail terms set by court. This does not however mean that the accused is

²⁷ Section 219 UPDF Act.

²⁸ Foundation for Human Rights Initiative V Attorney General, Constitutional Petition No. 20 of 2006.

set free from the charges levelled against him or her. He/she continues to attend court and to answer to the charges until the Judge or Magistrate delivers his/her judgement.

2.5 To grant or deny bail

The law as explained above gives the accused person a right to apply for bail. However, it should be noted that the decision to grant or deny bail lies with the magistrate or Judge before whom the accused person is appearing. Once the accused person exercises his/her right by applying for bail, the presiding judge or Magistrate must weigh the arguments for and against the application and apply the law before he/she grants the accused person bail. This discretion has in the recent past been interpreted to be restricted to set conditions to ensure the accused person's return to attend court when the trial commences. However, where the Magistrate or Judge is not convinced that the accused person will abide by the bail conditions, he/she has discretion not to grant bail.

3.0 LAW AND BAIL

3.1 Courts' interpretation of the law on bail

- The Constitutional right of an accused person to apply for bail flows from the presumption of innocence as provided for in Article 28(3) (a) of the 1995 Constitution which states that; *“An accused person is presumed to be innocent until proved guilty or until that person has accepted guilt”*.
- The Constitution in this Article recognizes the common law presumption as a fundamental human right or an inherent human right. This therefore means that a person should only lose his or her freedom after he or she has been convicted. Thus in granting bail, courts slightly move away from the strict requirements in the law, and instead are driven more by the need to give maximum effect to the constitutional provisions.
- While interpreting the constitutional provisions on bail, Justice Lugayizi observed²⁹ that *“In a case where court is considering whether one has a constitutional right to bail, since one is to be presumed innocent until proven guilty, then it would necessarily follow that any court which denies such an accused person bail would be acting unconstitutionally”*.
- The court therefore settled for the view that bail is a constitutional right which flows from the presumption of innocence under Article 28(3) (c) of the Constitution. This decision has since been followed by similar decisions in agreement.³⁰
- Likewise, Article 23(6) (a) of the Constitution provides that *“A person is entitled to apply for bail and court may grant that person bail on such conditions as it considers reasonable”*.
- This article has sometimes been interpreted by Courts to mean that Court has discretion (power) to refuse the grant of bail to a person accused of a criminal offence. Some other courts have however argued that this should not be the case and that when court is considering an application for bail, it must keep in mind the fact that the applicant has a Constitutional right to bail.

²⁹ In the case of *Lahan Yahaya V Uganda*. Miscellaneous Application No. 96 of 2005.

³⁰ Similar decisions like *Aliphusadi Matovu V Uganda – Criminal Application No. 15 of 2005*; and *Dennis Obua V Uganda – Miscellaneous Application No. 18 of 2005*.

- In balancing both views, the Constitutional Court³¹ held that *“When interpreting the Constitution, all the provisions must be read together. Thus if all the provisions of the Constitution are interpreted rightly and not separately, that leaves court with one alternative and that is to release the accused person on bail”*.
- However this release should be on conditions court considers reasonable, which in essence means that the conditions should guarantee the accused person’s return to court to answer charges against him or her.
- In addition, Article 28(1) of the Constitution provides for an accused person’s right to a fair and speedy trial. This is in line with Article 14(1) of the United Nations Covenant on Civil and Political Rights, and Articles 7 and 14 of the African Charter on Human and Peoples Rights of 1981. These articles are in line with the legal maxim that *“Justice delayed is Justice denied”*.
- In other words, once an accused person is arrested he or she should be charged, tried and either convicted or acquitted within the shortest time possible. This is because if a speedy trial is not conducted, evidence in support of the accused could be distorted, and this person’s freedom will be restricted yet he might actually be innocent. Remember that the person’s right to liberty is a fundamental human right which should only be restricted upon conviction of that person.
- It is also for this reason that Article 23(6) (b) and(c) of the Constitution provides that *“if a person is remanded for an offence triable by High Court or a lower court for sixty days or more, or for 180 days or more for a case triable only by High court, then that person shall be released by court on conditions it considers reasonable”*.
- This provision is meant to allow the Police to thoroughly investigate the accusations brought against the accused person and is in line with the provision for a fair and speedy trial. It should however not be misunderstood to mean that all accused persons **MUST** first be remanded for those days before they are granted bail. **NO**. The right to apply for bail commences as soon as the accused person is charged with an offence and the presiding Magistrate or Judge’s duty then is to set conditions that will ensure that person’s return to attend trial.
- However, there seems to be other interpretations as to whether bail is a constitutional right. The contention was settled by the Constitutional Court,³² when it decided that, *“The right to apply for bail is a constitutional one vested in everyone, although it does not necessarily follow that one is entitled to bail automatically. The court will then have to judiciously exercise its discretion as to whether to grant the accused bail or not”*.

31 In the petition of Joseph Tumushabe V Attorney General – Constitutional Petition No. 6 of 2004.

32 Uganda Law Society V Attorney General, 2005.

- The law at the moment therefore is such that whereas all accused persons have a constitutional right to apply for bail, it will be at the discretion of the court to grant the bail or not. More recent decisions seem to suggest that “*The test as to whether to grant bail or not should be whether the accused will turn up for trial or not.*”³³
- It should be remembered that one of the considerations of court before granting bail is whether the accused will not interfere with the witnesses. Before denying bail to an accused on grounds of interference with the prosecution case however, it has been decided by court that the prosecution has to specifically prove that, and court should not act on mere suspicions.³⁴ If the prosecution fails to prove this, then court should go ahead and grant the accused person bail since bail should not be denied as some form of punishment.
- It is also important to note that if court is to set bail terms for the grant of bail, for example, payment of money by the accused, then the money should not be so high as to make it virtually impossible for the accused to pay, nor should it be so low so as to defeat the purpose for which it was asked. Therefore it can be concluded that in exercising its discretion regarding bail, court should always act judiciously and reasonably.
- As it has been emphasized by some of the decisions passed by judges in some courts, the Constitution is the Supreme law of Uganda and all other laws must conform to its requirements.
- Foundation for Human Rights Initiative has also been at the forefront of challenging some of the provisions to do with the constitutionality of pre-trial bail. In its petition to the Constitutional Court, the court ruled that the provisions of the Trial on Indictments³⁵ Act which called for more days for an accused to spend on pre-trial remand were inconsistent with the constitution³⁶ which calls for lesser days and thus were nullified. Similarly provisions of the Magistrates Courts Act³⁷ which called for more days for pre-trial remand were also nullified on similar grounds.
- An appeal was made to the Supreme Court challenging other provisions to do with the grant of bail, which did not succeed in the Constitutional court petition.³⁸ The appeal argues, among others that making an accused wait for the lapse of the statutory period before the grant of bail is unconstitutional. It also questions the validity of S.76 of the Magistrates Courts Act which provides for the lapse of bail upon committal and Section 75(2) of the Magistrates courts Act which prohibits the grant of bail by Magistrate courts in some instances. The outcome of this appeal will be crucial in further streamlining this area of bail.

33 [Uganda V Hussein Akbar Godi – Miscellaneous Application No. 20 of 2009.](#)

34 [Uganda V Nadiope and 5 others.](#)

35 [Section 16 of the TIA](#)

36 [Article 23 \(6\) of the Constitution.](#)

37 [Section 76 of the MCA.](#)

38 [Like Sections 14 \(2\) and 15 of the TIA.](#)

3.2 Procedure for applying for bail

3.2.1. Bail in Magistrates Court

- **How does one apply for bail in a Magistrate's court**

An application for bail can be made orally by an accused or his or her lawyer/advocate in court. Alternatively it can be made in writing and should be supported by an affidavit. An affidavit is a sworn statement made by someone, setting forth the reasons as to why court should consider granting their application and could be used against him/ her in the courts of law. (*See format of application and affidavit in the appendix*)

- **What does a Magistrate's court consider in order to grant bail?**

When an application for bail is made by the accused or his lawyer in a Magistrates' court, certain factors shall be put into consideration by the court on whether or not to grant bail. These include;

- The nature of the offence the accused is charged of.
- The seriousness of the offence and how severe the likely punishment for the offence is.
- The character of the accused, in particular whether the accused is likely to report to Court whenever required.
- Whether the accused has a fixed place of abode (home) within the courts jurisdiction (area of operation or control)
- Whether the accused is likely to interfere with State witnesses.

- **What does court require of an accused asking for bail?**

- Sureties
- Security

- **Who is a surety?**

A surety is a person who guarantees to court upon the grant of bail to an accused that the accused will return to court every time he is required.

- **What should a substantial surety possess?**

For a person to be a surety in court, they should possess the following

- An introduction letter from the LC 1 Chairman of the area where they reside.

- A valid identity card indicating their place of work, business or residence, and in the alternative;
- A passport or driving permit can also be used for identification.

(See samples of L.C. letter, identity card, driving permit, and passport in the appendix)

- **What is the role and duty of a surety?**

A surety has the principal duty of ensuring that the accused does not abscond from justice. The surety therefore has to ensure that the accused regularly appears in court till the conclusion of the case.

- **What happens if a surety wants to be discharged?**

It should be noted that sureties have a right to apply to court to discharge their bond. If this is done, court will order for the arrest of the accused so that he/she can find other sureties.

- **What happens if a surety dies?**

If a surety dies, their estate is no longer liable and the accused is required to find another surety.

- **What is Security?**

Security is the amount of money paid or property pledged to court by the accused or his/ her surety as a guarantee that person will appear for trial.

- **What happens if the accused deposits the security required?**

Security maybe in form of cash or some other property and court will require this when it is satisfied with the accused's sureties. A receipt called a "General receipt" should always be issued on payment and the accused will use this when claiming a refund of his/ her bail money. This money can only be refunded when the case is completed and if the accused has fully complied with the bail terms. The accused may also be required to deposit his/ her passport in court as part of the bail terms.

- **What happens when the accused fulfils the bail terms?**

After complying with the terms of bail, the accused and his sureties will fill and sign the bail form which the Magistrate will sign and seal. These forms are then presented to the Prison warders for release of the accused from the court cells immediately, unless held on some other lawful charge.

- **What happens when the accused fails to fulfil the bail terms?**

If bail is granted but the accused fails to comply with the terms, he/ she is remanded till a specified date or until he/ she complies with the terms.

The accused can however be produced in court, before a specified date for purposes of being released on bail if they, their relatives or their lawyer apply for a production warrant.

- **What happens when a Magistrate's court refuses to grant bail?**

If a lower court denies an accused bail because of the fact that it has no powers to grant bail to such a person, then it shall record its reasons and inform the accused of his right to apply for bail to the High Court.

On application by the accused to the High Court, it can order grant of bail for those offences that a Magistrate court is excluded from. The High Court can also order the reduction or increase of bail granted under a Magistrate court. Failure of an accused to comply with an order for increased bail can lead to his or her arrest and subsequent committal to prison.

3.2.2 Bail in the High Court

- **Under what circumstances will High Court grant bail?**

The High Court has the power to grant bail to a person accused of the offences mentioned earlier above that a Magistrate court is excluded from granting bail, or if the accused is tried before it, if he/ she does not prove to court that;

- a) Exceptional circumstances justify his or her release on bail.
- b) That the accused will not abscond when released on bail.

- **What amounts to exceptional circumstances?**

- Grave illness of the accused certified by a medical officer of the prison or other institution or place where accused is detained, as being incapable of adequate medical treatment while in custody.
- A certificate of No Objection to the grant of bail signed by the Director of Public Prosecutions.
- The infancy or advanced age of the accused.

- **What is considered in determining whether the accused will not abscond?**

- Whether the accused has a fixed abode (home) within the jurisdiction (area of control) of court or is ordinarily resident outside Uganda?

- Whether the accused has sound securities within the jurisdiction to undertake that he/ she shall comply with conditions of their bail?
- Whether the accused has on previous occasions when released on bail failed to comply with the conditions of his/ her bail?
- Whether there are other charges pending against the accused?

• **How does one apply for bail in the High Court?**

The procedure for applying for bail in the High Court is not very different from that mentioned in the Magistrate courts. Applications to the High Court should strictly be in writing, by Notice of Motion and should be supported by an affidavit. **(See format of application and affidavit in the appendix)**

The High Court will require substantial sureties, sometimes deposit of a specified sum of money or deposit of important documents like land titles etc. If these conditions are not met then court will refuse to grant bail. It is however advisable for an accused to reapply for bail before the same court he/ she applied the first time, after lapse of some time or if the conditions under which bail was refused have changed.

• **What is the procedure if an accused has been remanded for a longer period than is required by law?**

If an accused person has been remanded in custody before commencement of his/ her trial for 180 days or more in respect of any offence punishable by death or 60 days or more in respect of any other offence, a judge or Magistrate before whom an accused is brought shall release him/ her on bail on their recognizance. At the lapse of this statutory period, the accused or his advocate is supposed to inform the court to which he first appears about his status, and thereafter, the court has no discretion on whether or not to grant the bail, but to just set the terms for the bail.

• **What happens where the accused has been committed to the High Court?**

Committal takes place when an accused who is going to be tried in the High Court is sent for trial by a Magistrate's court. Where an accused that is on bail is committed for trial to the High Court, the bail automatically lapses and he or she is supposed to make a fresh application to the High Court.

• **Can an accused apply for bail when appealing his case?**

bail can be granted to a convicted person at any time pending the determination of his/ her appeal. The High Court, Court of Appeal and Supreme Court have powers to grant bail to an appellant except where he/she is sentenced to death. It is however a necessary requirement that the accused should file an appeal in a competent court before he/ she can apply for bail pending appeal.

- **When will bail pending appeal be considered?**

bail pending appeal will be granted after court has taken into regard exceptional circumstances. These include;

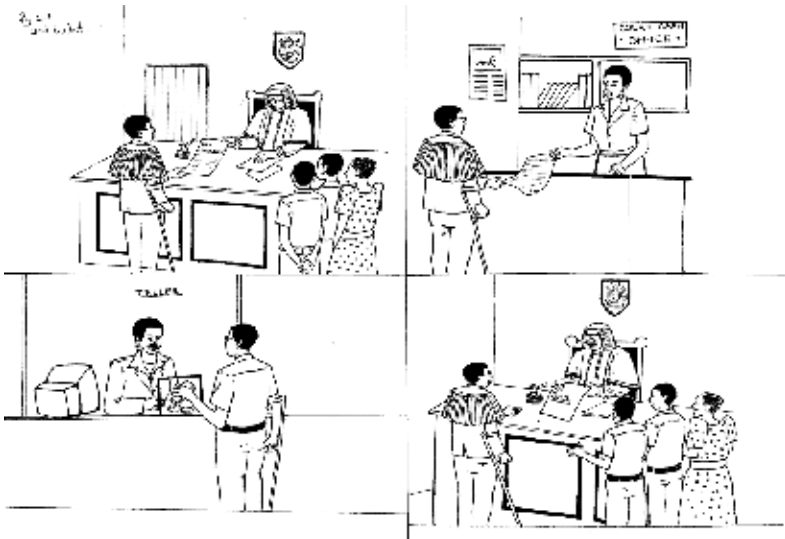
- The likelihood of success of the appeal.
- The likelihood of a delay in hearing the appeal.
- The length of the sentence imposed.
- The complexity of the case.

- **What are the responsibilities of sureties upon the grant of bail?**

- To sign the bail papers.
- To ensure that the accused honours the bail terms.
- To ensure that the accused returns to court whenever called upon to do so.
- To inform court whenever there is a variance or unreasonable conduct on the part of the accused so as to request for a discharge.

- **What happens upon breach of the bail terms by the accused?**

Upon breach of the bail terms, the accused is liable to be arrested and sent to prison, unless he or she shows reasonable cause as to why he or she should not be.



3.2.3 Bail in the Court of Appeal

Court of appeal is an appellate Court (not court of original jurisdiction) and it hears appeals from the decisions of High Court. When a person is convicted and sentenced by the High Court that person is free to appeal against the decision of High Court in the Court of appeal. The procedure for application for bail is the same as in High Court.

3.2.4 Bail in the Supreme Court

The Supreme Court is the highest and final court of appeal. When a convicted person fails to secure bail in the Court of appeal he can lodge an appeal in the Supreme Court. The procedure for application is the same as in High Court.

3.3 Challenges posed by the law on bail

3.3.1 Public opinion

The general public has a mentality that when a person is arrested for commission of an offence, he/she should be locked away indefinitely or at least until his case is tried and concluded. Anything short of this amounts to bribery or corruption on the Police or judicial officers' part to ensure the accused person's release. This has led to loss of confidence in the judicial system and accounts for most of the mob justice cases. Thus there is a dire need for sensitisation of the public on the law of bail, its application and implications.

3.3.2 Political pressure

The law on bail has equally been misunderstood by politicians who use it as a tool for oppressing their opponents. Often times when a suspect is arrested on charges which have political connotations, his/her right to bail is clouded with political tension and threats to judicial officers. A case in point is when the black mamba usurped the powers of court, re-arrested and detained a presidential aspirant upon release on bail by the High Court. The public however needs to understand that rights are inherent and not granted by the state, they cannot just be wished away by the government of the day. That is why the Magistrates and Judges before whom the accused persons appear must always exercise their discretion judiciously and grant these people bail on conditions that ensure their return to court contrary to any executive guidelines that they may receive.

3.3.4 Jumping bail

In some cases accused persons released on bail fail to meet the conditions set by court to ensure their return to attend trial. This derails the efforts of the prosecutors and judicial officers and casts doubt on the character of the accused person. That is why the

law requires that as soon as the accused person jumps bail or fails to turn up for trial as required by Court, a warrant for his or her arrest is issued and once arrested he/she is detained never to be released on bail again. It is thus important for accused persons to understand that release on bail is not an acquittal and that they must turn up for trial, lead evidence in defence of their cases, receive the judgement and serve the sentence given.

3.3.5 Bail Conditions

The law on bail requires an accused person to fulfill several conditions before being granted bail, including, among others, taking a personal cognizance from him or her, admitting at least two substantial sureties who must know or have a close relationship with the accused person and are duly recommended by the local authorities where they live and are bonded in a sum of money determined by Court. This is to ensure that the accused person shall return to court whenever he or she is called upon to do so. On many occasions the cash bond cannot be raised by the accused especially when they are indigent. Therefore, whereas there is a need by courts to balance the interest of justice, many times these monetary conditions are restrictive on the right to bail for the poor persons.

APPENDIX 1

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.....OF 2010
(ARISING FROM HIGH COURT CRIMINAL CASE NO.....)
WASSWA JOHN.....APPLICANT/ ACCUSED
VERSUS
UGANDA.....RESPONDENT/PROSECUTOR

NOTICE OF MOTION

(Under S. 15 of the T.I.A Cap 23 and Article 23(6) of the Constitution of Uganda)

TAKE NOTICE that this honourable court will be moved on theday of May 2010 ato'clock in the forenoon or soon thereafter as counsel for the accused can be heard on an application for orders that;

The applicant/accused person presently detained at Luzira prison on the alleged commission of the offence of murder, contrary to Section of the Penal Code Act Cap 120, be released on Bail pending his trial and upon such terms and conditions as the honourable court shall deem fit.

THE GROUNDS of the application in brief are:

- That the accused is innocent and presumed so under the law until proven guilty.
That the offence with which he is charged is Bailable by this honourable court.
That the accused has infant children who he cares for and he is the sole bread winner of his family.
That the applicant suffers from a serious disease to which he cannot get adequate treatment in prison.
That the applicant has substantial sureties and confirms that he will not jump Bail but turn up in court and face his trial to the end as court will direct.
That it is just and equitable to release the accused on Bail.

TAKE FURTHER NOTICE that more elaborate grounds of this application are contained in the applicant's affidavit annexed hereto and marked "AB". It shall also be relied upon at the hearing of the application.

Dated at Kampala thisday of May 2010.

.....

FOR: DDK ADVOCATES

COUNSEL FOR THE APPLICANT/ACCUSED

Given under my hand and seal of this court this.....day of May 2010.

.....

REGISTRAR

TO BE SERVED ON:

Directorate of Public Prosecution

Worker's House – Kampala.

APPENDIX 2

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.....OF 2011
(ARISING FROM HIGH COURT CRIMINAL CASE NO.....)
WASSWA JOHN.....APPLICANT/ACCUSED
VERSUS
UGANDA.....RESPONDENT/PROSECUTOR.

AFFIDAVIT IN SUPPORT OF MOTION

I WASSWA JOHN of C/O DDK Associates, Plot 10 William Street, P.O.Box 110 Kampala, do hereby make oath and solemnly state as follows;

1. That I am a male adult Ugandan of sound mind and the applicant/accused in this matter and in such capacity I make this deposition.
2. That I am presently employed by Uganda Millennium Group Ltd as the Chief Accountant and I have a fixed place of abode in Kireka, Kampala district.
3. That on the 9th day of November 2009 while at home, I was arrested by police officers. I was detained at Central Police station, from where I was taken to court and remanded in Luzira Prison.
4. That on the 7th day of April 2010 I was committed to this court, where i took plea to the offence mentioned in the notice of motion.
5. That I was subsequently further remanded to Luzira Prison.
6. That I suffer from a reactive airway disease and the conditions of the prisons are harmful to my health since I am required to be on constant medication due to the unfavourable conditions of the prisons.
7. That I have a wife and dependants who include my two children aged 3 and 1 month respectively, and I am the sole provider for my family.
8. That I have never committed the offence with which I am charged.
9. That I am advised by my lawyers, and I truly believe their advice to be true that it is my constitutional right to be released on bail pending my trial.
10. That it is fair and just to release me on Bail pending my trial.
11. That I have substantial sureties who undertake to abide by the conditions of this court if the Bail is granted.

12. That I have never been convicted of any criminal offence in this or any other court and I undertake to abide by the conditions of Bail that may be set by the Honourable court.

That I make this deposition in support of my application for release on Bail in respect of the offence with which I am charged, pending my trial and conscientiously knowing and believing the contents thereof to be true and correct to the best of my knowledge and belief except for the paragraphs whose source of information has been disclosed.

Sworn at Luzira this.....day of May, 2010.

By the SAID

WASSWA JOHN

DEPONENT

BEFORE ME

.....

COMMISSIONER FOR OATHS

DRAWN AND FILED BY

DDK ADVOCATES

PLOT 10 WILLIAM STREET

P.O.BOX 110 KAMPALA.

APPENDIX 3

THE REPUBLIC OF UGANDA



Bail BOND

SEC. 122(1) PROC. CODE

U.C. FORM 112

NAK-CO-NO OF 20.....

I,..... being brought before the Chief Magistrate’s Court Nakawa to answer to the charge of.....

..... hereby bind myself to attend in the Chief Magistrate’s Court at Nakawa on the Day of At To answer to the said charge and to continue so that to attend until otherwise directed by the Court and in case of my making default herein, I bind myself to the sovereign State of Uganda the sum of Shillings vide receipt

Dated this day of 20.....

BEFORE ME:

.....

.....

CHIEF MAGISTRATE

ACCUSED

I/WE.....

.....

Do hereby declare ourselves sureties for the above named accused person that he shall attend before the Chief Magistrate’s Court of Nakawa at Nakawa on the day of 20..... at To answer to the charge on which he has been directed by this Honorable Court and in case of his making default therein, we bind ourselves to forfeit to the Sovereign State of Uganda the sum of Shillings

Dated this day of 20.....

..... **SURETY**

..... **SURETY**

BEFORE ME:..... CHIEF MAGISTRATE

APPENDICES

APPENDIX 4

UGANDA POLICE

POLICE FORM 18

RELEASE ON BOND

(Section 17(3) Cr. Pro. Code)

Being charged with offence of

O.B No and after enquired to appear before the

Do hereby bind myself to appear at

..... at on the day of 20

and continue to attend until otherwise directed by the Court, further to answer to the said charge and in case of making default herein I bind myself to forfeit to the Uganda Government the sum of Shillings

Dated this day of 20

.....
Signature

I hereby declare myself surety for the above named

We hereby declare ourselves and each of us sureties

..... that he shall attend as above stated and in case of making any default

I hereby bind myself to forfeit to the Uganda Government the sum of Shillings

We hereby bind ourselves

We hereby bind ourselves

Dated this day of 20

.....

Executed before me:-

.....
Signature

Printed by Police Quartermaster DM

APPENDIX 6



UGANDA REVENUE AUTHORITY

P.O. BOX 7279, KAMPALA

ORIGINAL RECEIPT (Tax Payer's Copy)



HGX 4105125

TIN Date 31/10/2008

VAT No. File/Entry No. KLA

DEPARTMENT: <u>Internal Revenue</u>	STATION: <u>DT-NTR DIAMOND TRUST</u>
-------------------------------------	--------------------------------------

Name: <u>OTAI JOHN PAUL</u>
Address: <u>KLA</u> Period

Code	Tax Head	Shillings
IR/725F	Cash Bail Deposit Fees	*****1,000,000
	***1,000,000/=	
	TOTAL	*****1,000,000

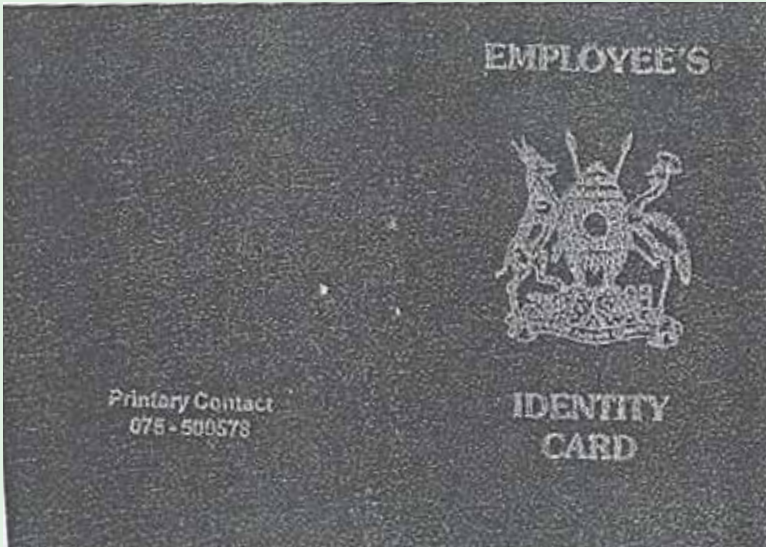
Amount in words ONE MILLION ONLY.

Bank PIS No. 39698 Dated 31/10/2008

Signature of Cashier  Cashier's Name (CAPITALS) SEMBERA HARRIET

APPENDICES

APPENDIX 7



APPENDICES

This is to Certify that
 Mrs. Atukunda Joy

is an Employee of
 PRO-LIFE NET WORK

Job Title Social Worker

P.O. Box 1111 Jinja

Tel: 073581485


Age 28 Sex FEMALE

District Jinja

Sub-County Kakira

Village/Town WABAKA

Nationality UGANDAN



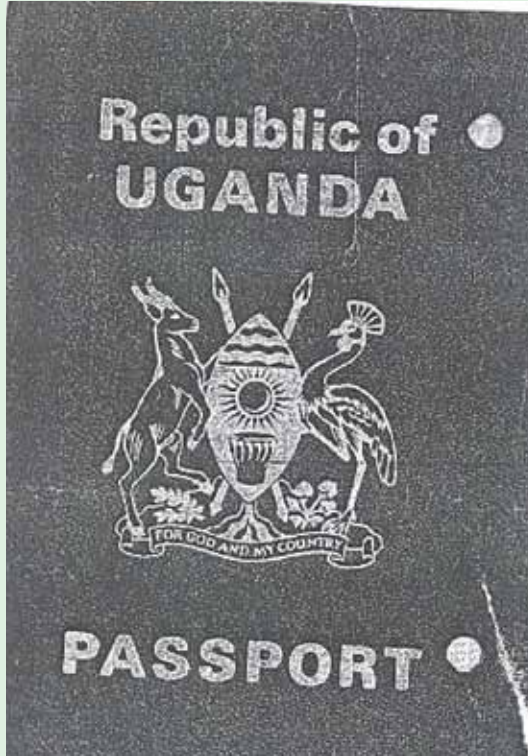
I certify that the above photo
 is of Miss Amending Gladys

Date of issue 21/1/08

[Signature]
 Holder's Signature

[Signature]
 Officer's Sign

APPENDIX 8



APPENDICES



APPENDIX 9



BAKERY ZONE L.C.I

**MULAGO II PARISH
KAWEMPE DIVISION
KAMPALA-DISTRICT**

P.O. Box
Tel: 0712 - 811678
Kampala, Uganda

Our Ref: _____

Your Ref: _____



BUGANDA ROAD COURT.

RE: MUKASA JONA

This is to certify that the above named person is our resident who wants to stand surety to OTI PAUL

any assistance rendered to her in this regard is highly appreciated
yours in service

[Signature] - Chairperson



APPENDIX 10

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CRIMINAL MISCELLANEOUS APPLICATION NO.....

(Arising from High Court Criminal Case No.....)

WASSWA JOHN.....APPLICANT

VERSUS

UGANDA.....RESPONDENT

I, WASSWA JOHN a resident of Kireka, Wakiso district, being brought before the High Court of Uganda on charges of murder, contrary to Section....of the Penal Code Act, bind myself to deposit my passport No. BO20111 with the Deputy Registrar (Criminal Division), to report to the trial court every month until the trial is completed or until further ordered and to forfeit to the sovereign state of Uganda – a cash bond of Shs. 1,000,000/= (one million shillings) on General Receipt No. 113 and a non cash bond of Shs. 3,000,000/= (three million shillings).

Dated at Kampala thisday of May 2011.

BEFORE ME:

.....

ACCUSED

.....

DEPUTY REGISTRAR (CRI)

REFERENCES

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2. A guide to Criminal procedure in Uganda by B.J.Odoki, Chief Justice of Uganda, 3rd Edition, published by L.D.C, in 2006.
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17. Handbook for Magistrates LDC Publications.

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Legal Instruments

NATIONAL

The 1995 Constitution of the Republic of Uganda.
 The Magistrates Courts Act, Cap 16.
 The Trial on Indictments Act, Cap 23.
 Uganda People's Defence Forces Act, Act No. 17 of 2005..
 Police Act. Cap 303.
 The Criminal Procedure Code Act Cap 116 Section 17

INTERNATIONAL

Universal Declaration of Human Rights, 1948.
 International Covenant on Civil and Political Rights, 1966.
 International Covenant on Economic, Social and Cultural Rights, 1966.
 African Charter on Peoples' Rights, 1981.
 The Convention on the Rights of a Child, 1989.

United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

INTERNATIONAL STANDARDS/GUIDELINES

UN Standard Minimum Rules for the Treatment of Prisoners, 1955.

UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990.

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Lahan Ahaya V Uganda, Misc. Application No. 96 of 2005.

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Attorney General V Joseph Tumushabe, (Constitutional Appeal No 3 of 2005) [2008] UGSC 9 (9 July 2008)

Uganda Law Society V Attorney General, 2005.

Uganda V Hussein Akbar Godi, Misc. Application No. 20 of 2009.

Foundation for Human Rights Initiative V Attorney General, Constitutional Petition No. 20 of 2006.

LEGAL AID PROVIDERS CONTACT LIST

The Legal Aid Clinic of the Law Development Centre. Plot 339, Kagugube Road, Makerere Hill,
PO Box 7117, Kampala
Tel: 0414 540127
Email: lac@infocom.co.ug

The Public Defender Association of Uganda, Suite 11, City Apartments ,Bombo Road P.O Box 27352
Tel : 0414 286467/+256 772933354 +256 414540770
Email: admin@pdefender.org

Avocats Sans Frontieres
Plot 49,Kanjokya Street,Kamwokya
P.O Box 36710,Kampala
Tel : 0312-265842,
Email : ug-hom@asf.be

Right to Improved Child Health
P.O Box 25238,Kampala
Tel : 0312 280387

Association of Women Lawyers in Uganda (FIDA) Plot 11,Kanjokya Street,
P.O Box 2157, Kampala.
Tel : 0414 530848
Email : fida@fidauganda.org

The Refugee Law Project,
Plot 9,Perry Gardens, Old Kampala
P.O Box 33903,
Tel : 33903,Kampala
TEL : 0414 343 556
Email : info@refugeelawproject.org

Legal Action for Persons with Disabilities (LAPD)
Kira road, Ntinda.
P.O Box 14166, Kampala.

International Refugee Rights Initiative
18A Kyadondo Rd, Nakasero Hill
P.O. Box 7785 Kampala
Phone: +256 41 4340274
Fax: +256 41 4340275

World Voice Uganda
Kyengaju House,Kagadi
P.O Box 32 Kagadi Kibaale
Tel : 0396 961664

Teso Legal Aid Project.
Plot,Eworu Close,Soroti,
P.O Box 464, Soroti.
Email: tesolegalaid@

Justice and Rights Associates
Plot 25,Ogwok Road ,Kitgum
P.O Box 58 ,Kitgum
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Email : jurists@yahoo.com

Facilitation for Peace and Development
Plot 2,Kyoga Road
P.O BOX 73 Lira
Tel : 0473427304

Mifumi Project
Plot 1,Masaba Road.
P.O Box 274,Tororo
Tel : 0392 966282
Email : mifumi@mifumi.org

Amaniaman Community Development Initiative,

Youth Justice Support- Uganda
Buyaya House ,Muteesa 1 road
P.O Box 3036,Clock Tower
Tel : 0772 442751
Email : contact@yjsuganda.org.uk

Uganda Network on Law, Ethics,and HIV/AIDS.

Plot 5A,Kimera Road,Ntinda
P.O Box 70269
Tel : 0414 532829
Email : uganet@yahoo.com

Uganda Christian Lawyers Fraternity.
Baptist House ,Wandegeya
P.O Box 42,Kampala
Tel: 0414 534 031
Email : ugclf@yahoo.co.uk

Platform for Labour Action
 Plot 66, Kanjokya Street, Kamwokya
 P.O Box 9714, Kampala
 Tel : 0414 253383
 Email : pla@utlonline.co.ug

The Legal Aid Project of the Uganda Law Society.
 Plot 5A, Acacia Avenue
 P.O Box 426, Kampala
 Tel : 0414 342 424
 Email : lap@uls.or.ug

Uganda Land Alliance
 Plot 1521, Mawanda Road, Kamwokya
 P.O Box 26990, Kampala
 Tel : 0414 540 048
 Email: ula@ulaorg.org

Uganda Youth Development Link
 2nd Floor , BIFRO House
 Sir Apollo Kagga road, Makerere
 P.O Box 12659 , Kampala
 Tel : 0414 530353

International Justice Mission
 P.O Box 70445 Kampala
 Email : Uganda@ijm.org

African Network for Prevention and Protection against Child Abuse & Neglect (ANPPCAN)
 Plot 1, Kira Road, Mulago
 Tel : 0414 254550
 Email: anppcan@anppcan.org

Anti Corruption Coalition Uganda
 Plot 243 Tufnell Drive, Mulago-Kamwokya Hill, Kampala
 Tele: +256-414-535659

Defence for Children International(DCI)
 ACFODE House, Plot 623/4, Bukoto.
 P.O Box 12137, Kampala
 Tel : 0414 533 811,
 Email : dcuug@yahoo.com

Land & Equity Movement Uganda (Lemu)

Law and Advocacy for Women in Uganda
 P.O.Box 25324, Kampala
 Tel: 041-235445
 Tel: 041-345605

Administrator General's office
 Amamu House ,Plot 5
 Tel : 0 41- 23 32 19
 Tel : 041- 23 59 15

FHRI Programmes:

The programme has six themes:

Civil participation, Access to justice; Freedom of expression, association, assembly including the media, Right to life, liberty and security of persons; judicial independence and integrity and leadership development of human rights defenders.

Activities

Research:

Monitors and documents human rights practices in order to promote dialogue and respect for human rights and democratic development.

Legal services:

Access to justice: Enhances protection of women and children against gender based violence and child rights abused through the provision of pro bono legal assistance and effective remedies.

Right to life Project:

Promotes limited use of the death penalty and its eventual abolition in Uganda.

Paralegal Advisory Services (PAS):

Improves understanding of the principles of the formal criminal justice system by both users and criminal justice agencies in Uganda.

Capacity Development:

Builds the civic competence of democratic structures and institutions for effective participation in governance.

Programme Development:

Designs, supervises and ensures appropriate system development for the effective and efficient programme implementation.

Communication and Information:

Promotes information flow and builds the corporate image of FHRI.

Internship Programme:

Provides placement for interns who contribute to programme development.

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