

NOTES AND COMMENTS

HUMAN RIGHTS CONCERNS IN MUSEVENI'S UGANDA

I Introduction

UGANDA WAS and is still one of the biggest human rights disasters in the continent in terms of widespread use of arbitrary detention and torture (sometimes resulting into death) by security forces as instruments of political repression. Ugandans suffered under the repressive governments of Milton Obote (1963–71 and 1980-85) and the military dictator Idi Amin (1971-79).¹ Since 1986, the country has been under President Yoweri Museveni, the head of the National Resistance Army who assumed power through a military coup. In 1995, a democratic Constitution came into being under which Museveni became an elected President in 1996. He was re-elected in 2001 in a controversial election. In 2004, he retired from the army but remains in power as President of the country and thus Commander-in-Chief of the armed forces.

Although, Museveni was initially commended for his improvement of the human rights situation in Uganda, his regime became characterised by severe human rights violations, which became worse after the 2001 elections.² This paper looks at the reasons for the deteriorating human rights situation in Uganda under President Museveni together with the reasons why this has been so in spite of the human rights laws in that country.

II The Appalling Human Rights Situation

Three main factors are responsible for the poor human rights situation in Uganda. The first is the activities of several rebel forces which the government lists as including the Lord's Resistance Army (LRA), Allied

1. See historical background in Peter Bouckaert, *Hostile to Democracy – The Movement System and Political Repression in Uganda* chapter five (Human Rights Watch, New York, 1999).

2. See Amnesty International, *Uganda: Failure to Safeguard Human Rights* (Amnesty International, London, 1992) and “State of Pain: Torture in Uganda” in *Human Rights Watch*, March 2004, Vol. 16 No. 4 (A) available on the internet: [<http://www.hrw.org/reports/2004/uganda03047.pdf>]



Democratic Forces (ADF), National Democratic Alliance (NDA), Uganda National Rescue Front (UNRF), and West Nile Bank Front (WNBF).³ The LRA in particular have become perpetrators of gross violations of human rights in a campaign of terror among the rural populace - looting, raping and the abduction of children for purposes of child soldiery, sexual abuse and commercial slavery.⁴

The second factor arose out of the response of the Museveni regime to these rebels. The government created *ad hoc* security forces that illegally detain suspects although under the law, only the police can detain suspects.⁵ Illegal detentions are carried out also by the military and other regular security forces.⁶ These security agencies routinely use torture in the context of other serious violations of human rights.⁷ Again, contrary to constitutional provisions, the government makes use of unacknowledged and unauthorized places of detention called "Safe Houses".⁸ These safe houses were commonly used before 1995 when some were closed down. They were reopened after the 1997-99 wave of terrorist bomb attacks in Kampala and are now commonly used once more.⁹

3. "State of Pain: Torture in Uganda" *id.* at 14-15.

4. See Human Rights Watch, *UGANDA: Human Rights Development* at [<http://www.hrw.org/wr2k3/africa13.html>].

5. The *ad hoc* security agencies include *The Joint Anti-Terrorist Task Force* (JATF) consisting of agents from the Chieftaincy of Military Intelligence (CMI), police and Internal Security Organization (ISO) and *Operation Wembley*, a specially constituted crime-fighting security structure and its successor the Violent Crime Crack Unit (VCCU): "State of Pain: Torture in Uganda" *supra* note 2 at 19-21.

6. Military and security agencies detaining suspects illegally include the Uganda Peoples' Defence Forces (UPDF): the Ugandan army, formerly known as the National Resistance Army (NRA); the Chieftaincy of Military Intelligence (CMI), a military intelligence agency; and the Internal Security Organization (ISO) and its regional offices the District Internal Security Organizations (DISO) responsible for "internal security": "State of Pain: Torture in Uganda", *ibid.*

7. *Id.* at 22-58.

8. Art 23 (2) of the Constitution provides: "A person arrested, restricted or detained shall be kept in a place authorised by law." The minister of internal affairs must publish in the Ugandan gazette the location of detention places. Unacknowledged or "ungazetted" places of detention are those not published in the official gazette.

9. According to the Human Rights Watch: "Police stations are gazetted facilities. UPDF barracks and CMI offices are not gazetted facilities. The other "safe houses" where the non-police agencies hold, interrogate, and torture suspects are not gazetted and are illegal also....Suspects are routinely taken to ungazetted places of detention, many of them in the capital, Kampala, for prolonged periods, without any official condemnation or effort to close them down. The two most commonly-cited safe houses are the headquarters of the Chieftaincy of Military Intelligence (CMI) on Kitante Road in Kampala, and a house on Clement Hill Road in Kampala, formerly used as the headquarters for Operation Wembley. Rooms, cells, and offices in military



The third factor is the determination of Museveni to hang unto power at all cost. There is a zero level tolerance of opposition within the democratic framework which Museveni's administration purports to be working. The elections of 2001 was marred by repression of political opponents of Museveni by military, intelligence and security personnel. There is little or no difference in the administration's treatment of political opponents and rebels. Both are still being subjected to the cruellest forms of tortures and indignities. The Human Rights Watch summarised the conditions facilitating torture, illegal arrest, detention, and unlawful death by state and military forces in Uganda as including: (i) A political climate of suspicion that political opponents are inevitably engaged in armed rebellion, the allegation most frequently used to justify illegal measures; (ii) erosion of the sole authority of the police to detain suspects; (iii) use of military intelligence officers in the Chieftancy of Military Intelligence (CMI), and use of intelligence officers in the Internal Security Organisation (ISO) to detain and interrogate unarmed civilian suspects; (iv) creation of *ad hoc* and unauthorized detaining agencies, such as Operation Wembley and its successor, the Violent Crime Crack Unit (VCCU); (v) adoption of the 2002 Anti-Terrorism Act, containing a broad definition of terrorism, referencing "opponents of the state," permitting the government to declare an organization terrorist, conferring broad powers on the *ad hoc* Joint Anti-Terrorism Task Force (JATF), and reducing the rights of terrorist suspects; (vi) constitutional provision for detention without evidence of treason and terrorism suspects for up to 360 days; (vii) disregard by military, security and intelligence agencies for lawful detention and interrogation, including holding suspects for weeks or months longer than the legally permitted 48 hours without charge; (viii) lack of right to be represented by counsel from the time of detention; (ix) use of ungazetted and illegal places of detention, such as "safe houses" and army barracks; (x) police fear of or reluctance to confront military, security and intelligence agencies detaining suspects contrary to law; (xi) lack of, or reluctance to use, judicial authority to confront the military, security and intelligence agencies' illegal procedures and acts; and, (xii) impunity for illegal detention, torture, prolonged arbitrary detention and deaths in custody.¹⁰

barracks are also frequently used as safe houses as well. At both the Central Police Station (CPS) and Kiira Road police station in Kampala, the UHRC found the CMI military personnel guarded "its" cells and did not allow relatives to visit the suspects—nor even the UHRC representatives, whose constitutional mandate it is to visit and inspect police stations and posts": "State of Pain: Torture in Uganda" *supra* note 2 at 59.

10. *Id.* at 6-7.



III The Human Rights Legal Regime in Uganda

The terrible situation in Uganda is not due to want of human rights legislation but to the constitutional limitations placed on some human rights and to the disrespect for law by security agencies. The 1995 Constitution, which is still in force in the country, contains copious human rights provisions.¹¹ Chapter four of the Constitution is devoted to protection of human rights.¹² Article 44 (a) gives special status to some rights:

Notwithstanding anything in this Constitution, there shall be no derogation from enjoyment of the following rights and freedoms:

(a) freedom from torture, cruel, inhuman or degrading treatment or punishment; (b) freedom from slavery or servitude; (c) the right to fair hearing; (d) the right to an order of habeas corpus.

It is ironic that arbitrary detention and torture are major problems in Uganda today. Article 23 (4) stipulates that any person detained upon a reasonable suspicion of having committed or about to commit an offence should be brought before a court of law within 48 hours of his arrest or detention. It has, however, been pointed out that this “unambiguous rule may well be the most routinely ignored provision in the Constitution”.¹³ The Constitution is also emphatic in its prohibition of torture¹⁴ and as seen above, does not allow for any derogation therefrom. Torture is, therefore, a gross violation of these constitutional provisions. Again, the Constitution expressly entrenched a democratic system where citizens above 18 years of age have the right to vote.¹⁵

11. The Constitution of Uganda, 1995.

12. These rights are: Equality and freedom from discrimination (art 21); right to life (art 22); protection of personal liberty (art 23); respect for human dignity and protection from inhuman treatment (art 24); Protection from slavery, servitude and forced labour (art 25); protection from deprivation of property (art 26); right to privacy of person, home and other property (art 27); fair hearing (art 28); freedom of conscience, expression, movement, religion, assembly and association (art 29); right to education (art 30); rights of the family (art 31); rights of women (art 33); rights of children (art 34); rights of persons with disabilities (art 35); protection of minorities (art 36); right to culture and similar rights (art 37); civic rights and activities (art 38); right to a clean and healthy environment (art 39); economic rights (art 40), right of access to information (art 41); and right to just and fair treatment in administrative decisions (art 42).

13. Joshua N. Auerbach, “What’s a Constitution Worth? Bringing an Illegal Detention to Light” in the *New Vision* Newspaper, Uganda, January 2003) also available at www.humanrightsinitiative.org/programs/aj/police/ea/articles.htm at p. 1.

14. Art 24 of the Constitution.

15. Right to participate in the affairs of government (art 38), right to vote (art 59), right to freedom of association (art 29) and right to form political parties (art 72 (1)).



The Constitution expressly prohibited turning the country into a one-party state.¹⁶ This provision and those contained in article 47 cannot be amended except through the rigid procedure prescribed in the Constitution.¹⁷ The Constitution, however, contains some grave derogation from the human rights contained therein. In the first place, the Constitution legitimatises the movement system as an alternative to multi-party system.¹⁸ The movement system is based on a “no-party system” which in practice allows no opposition parties to operate.¹⁹ New political parties cannot be formed because no law has been enacted to put in place the constitutionally required regulations governing political parties.²⁰ Political parties existing before the enactment of the Constitution now do so in name only as they are prohibited from functioning as a political party.²¹ They cannot open or operate branch offices, hold party conferences or public rallies, sponsor or endorse candidates, or carry on “any activities that may interfere with the movement political system.”²²

Secondly, the Constitution allows detention for up to 360 days without trial of persons suspected of committing “offences triable only by the High Court”.²³ All serious offences belong to this category. Judicial review is excluded during this period of detention, as the court cannot grant bail but must continually remand suspects to prison custody.

The enactment of the Anti-Terrorism Act, 2002 in response to the American President’s call for global action against terrorism after the September 11 incidents has compounded the human rights problems in

16. Art 75.

17. See arts 258-60 of the Constitution.

18. See *id.*, arts 69-75.

19. See the review of the movement system in Peter Bouckaert, *supra* note 1.

20. Art 72 of the Constitution provides: “(1) Subject to the provisions of this Constitution, the right to form political parties and any other political organisations is guaranteed. (2) An organisation shall not operate as a political party or organisation unless it conforms to the principles laid down in this Constitution and it is registered. (3) Parliament shall by law regulate the financing and functioning of political organisations.

21. Art 270 of the Constitution.

22. Art 269 of the Constitution provides: “On the commencement of this Constitution and until Parliament makes laws regulating the activities of political organisations in accordance with article 73 of this Constitution, political activities may continue except- (a) opening and operating branch offices; (b) holding delegates’ conference; (c) holding public rallies; (d) sponsoring or offering a platform to or in any way campaigning for or against a candidate for any public elections; (e) carrying on any activities that may interfere with the movement political system for the time being in force.”

23. See art 23 of the Constitution.



terms of ouster of the jurisdiction of the courts.²⁴ Under this Act, ministers can declare any organisation “terrorist”, without any challenge in court.²⁵ Secondly, the Act reduces the rights of suspects and confers wide powers on the *ad hoc* security agency – Joint Anti-Terrorist Task Force (JATF) – even though it has no legal status.²⁶ The main problem lies in the paralysis of legal procedures as regards these agencies. The Human Rights Watch pointed out that police are afraid or reluctant to confront military, security and intelligence agencies detaining suspects contrary to law and that there is the lack of, or reluctance to use judicial authority to confront the military, security and intelligence agencies’ illegal procedures and acts.²⁷ The gross regard for human rights exhibited by America in its “war against terrorism” has become a source of encouragement for autocratic regimes all over the world.²⁸

International human rights treaties have not been of much legal significance in Uganda even though some are applicable in the country. Uganda ratified the African Charter on 10 May 1986.²⁹ Article 45 of the Constitution provides that the “rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter [four] shall not be regarded as excluding others not specifically mentioned”. This clause should be applicable to the rights provided in the African Charter. The African Charter holds a lot of potential for improving the human rights situation in Uganda if applied by the courts. The movement system can be challenged in court on the grounds that it violates the right to freedom of association and the right to participate freely in the government of one’s country under articles 10 and 13 (1) of the African Charter, respectively. Article 13 (1) provides:

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the law.

The 360 day detention period authorized by the Constitution would also be an unreasonably long period in view of article 7 of the Charter

24. See “State of Pain: Torture in Uganda” *supra* note 2 at 15-17.

25. Cl. 14, Anti-Terrorism Act, 2002.

26. “State of Pain: Torture in Uganda” *supra* note 2 at 6.

27. *Id.* at 7.

28. See R Sankore, ‘Anti-terror legislation and democracy in Africa’ at <http://www.kabissa.org/kfn/newsletter.php?id=4520> (accessed 31 July 2004) and Paul Chevigny, “Repression in the United States After September 11 Attack” I *Sur International Journal on Human Rights*, 15-159 (2004).

29. See “Ratification of the African Charter” at [http://www.africaninstitute.org/eng/afSystem/child/ratification_of_africancharter.php].



which guarantees, *inter alia*, for persons accused of crimes “the right to be tried within a reasonable time by an impartial court or tribunal”.

However, it appears there is little use to which the African Charter can be employed against draconian provisions of the Constitution. Although, the Ugandan Constitution enjoins the state to have “respect for international law and treaty obligations”³⁰ and to respect, uphold and promote human rights,³¹ the Constitution affirms its own supremacy: “If any other law is inconsistent with any of the provisions of the constitution, the constitution shall prevail and that other law shall to the extent of the inconsistency be void”.³² The African Charter and other international human rights instruments fall into the category of “any other law” and is, therefore, subject to the Constitution. International human rights instruments only have the limited use of strengthening the human rights entrenched in the Constitution. For example, in *Onyango-Obbo and Mujuni Mwenda v. Attorney General*,³³ while striking down the penal code offence of “publication of false news” as inconsistent with article 43 of the Constitution which guarantees the right to information, the Supreme Court referred to international human rights documents which guarantee freedom of expression. The court cited in this regard, article 9 of the African Charter in addition to article 10 of the International Covenant on Civil and Political Rights.

Given the limitations in the enforceability of international human rights instruments in Uganda, the courts have resorted to the human rights provisions in the Constitution to mellow down the effects of the draconian laws in the country. In *Paul K. Ssemogerere and Ors v. Attorney-General*,³⁴ the main issue was whether the Constitutional Amendment 13 of 2000 was enacted in accordance with the requirements of the Constitution. The Act, among other things, excluded members and other officers of Parliament from giving “evidence elsewhere” in

30. Art. XXVIII (i) (b), Ugandan Constitution.

31. *Id.*, art 20 (2).

32. *Id.*, art 2 (1) and (2).

33. Constitutional Appeal No. 2 of 2002 decided by the Supreme Court on 11/2/2004. A summary of the judgment is available at [<http://www.article19.org> under Handbook/cases. See comments on this case in *International Law in Brief* April 7, 2004 at [<http://www.asil.org/ilib/ilib0706.htm>] and Article 19, “Uganda: Supreme Court strikes out law criminalising false news” at [<http://www.kubatana.net/html/archive/legal/040212a19.asp>].

34. Constitutional Appeal No. 1 of 2002 decided by the Supreme Court (Odoki, CJ, Oder, Tsekooko, Karokora, Mulenga, Kanyeihamba JJ.S.C And C.B. Byanmugisha, Ag.J.S.C.) at Mengo on 11/2/2004, the full text of the judgment is available at [<http://www.judicature.go.ug/docs/CONSTITUTIONAL%20APPEAL%20NO.1%20OF%202002%20Odoki.pdf>] and a summary of the judgment is available on [<http://www.article19.org> under Handbook/cases].



respect of the contents of the minutes of parliamentary proceedings or of any document laid before Parliament except after obtaining special permission of Parliament. It was contended that this expressly amended article 41 of the Constitution which guarantees access to information and also by implication amended article 28 which guarantees fair hearing. The latter is an entrenched provision by virtue of article 44 of the Constitution.³⁵ This being so, the Act could not have been validly passed without Parliament complying with the stringent requirements under sections 258 to 262 of the Constitution dealing with the amendment of entrenched constitutional provisions.³⁶ The Supreme Court citing in addition rule 98 of the Rules of Parliament which precluded Parliament from introducing bills that derogate from human rights, accepted these contentions and held that the Act was not validly passed.³⁷

The *habeas corpus* provisions in the Constitution is perhaps the most effective way by which persons detained at illegal places can be assisted.³⁸ *Habeas corpus* proceedings generally ensure that the suspect is transferred from such places of detention to prison where torture is rare.³⁹ However, bail proceedings, even if successful, may not result in the release of the detained person because he is upon release by court generally rearrested immediately by the detaining authority upon similar charges to start another long detention for another 360 days. The courts have also invoked article 23(4)(b) of the Constitution which prohibits the detention of accused persons beyond 48 hours without being brought before a court. According to the high court:⁴⁰

There is no other short cut to this Article. Whatever crime a person is suspected to have committed, the Constitution makes it imperative for him or her to be taken to Court not later than forty-eight hours. Any time beyond that becomes unlawful arrest or detention

35. Art 44 quoted above.

36. These articles require separating the second and third readings of the amendment Bill by at least 14 days of Parliament, and the holding of a referendum or ratification by district councils in specified cases, see further the judgment of Odoki, CJ, *supra* note 34 at 13.

37. See in particular the judgment of Odoki, CJ, *id.* at 8-10.

38. Art 23 (9) of the Constitution states *inter-alia*: "The right to an order of habeas corpus shall be inviolable and shall not be suspended", while art 44 says: "Notwithstanding anything in this Constitution, there shall be no derogation from enjoyment of the following rights and freedoms - (d) the right to an order of habeas corpus".

39. "State of Pain" *supra* note 2 at 5.

40. Ruling, *In the matter of Application for the Writ of Habeas Corpus and Subjucendum by [applicant]*, High Court at Gulu, 17.02.2003 cited in "State of Pain", *id.* at 62.



The courts have invoked in several cases, the constitutional provision which allows compensation for victims of torture.⁴¹

Apart from the courts, the Uganda Human Rights Commission offers remedies for violations of human rights. The commission established under the Constitution is given very wide powers.⁴² It has the powers of a high court and can at its own initiative or on the complaint made by any person or group, investigate cases of violations of human rights. It can visit “jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations”.⁴³ Where the commission is “satisfied that there has been an infringement of a human right or freedom” it can order – “(a) the release of a detained or restricted person; (b) payment of compensation; or (c) any other legal remedy or redress”.⁴⁴ There is a right of appeal to the high court against the decisions of the commission.⁴⁵

Under the Constitution the state is to allow the commission to function without any hindrance. The Constitution provides that “the State shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively”.⁴⁶ However, the commission is handicapped when it comes to visiting illegal places of detention. It has only gained access to UPDF facilities on notice and has not been able to gain access to CMI at all.⁴⁷ The commission has awarded damages in some torture cases and has many such complaints pending before it.⁴⁸

In April 2004, Museveni retired from the army saying: “I need to retire in order to fight new battles”.⁴⁹ Observers have suggested that this may mean that he is going into “full time” politics which may well

41. The Human Rights Watch cited one such case: *Hon. Reagan Okumu and anor v. Attorney General* decided by the High Court at Gulu on 14/2/03, see *State of Pain, id.* at 73.

42. See arts 51-58 of the Constitution for provisions relating to the commission and for more details concerning the commission, see the Uganda Human Rights Commission Act, 1997.

43. Art 52 (b), 1995 Constitution.

44. *Id.*, art 53 (2).

45. *Id.*, art 53 (3).

46. Art V (i) of the National Objectives and Directive Principles of State Policy under the Constitution.

47. *State of Pain, supra* note 2.

48. See for example, *Stephen Gidudu v. Attorney General*, UHRC at Kampala, February 26, 2003 damages were awarded: *State of Pain, id.* at 72.

49. Ocha Irin, “UGANDA: President Museveni retires from the army” at [http://www.plusnews.org/report.asp?ReportID=40443&SelectRegion=East_Africa].



usher in another era of multiparty politics and hopefully, elimination of political repression in the country.

IV Conclusion

Although, the Ugandan Constitution contains a bill of rights, derogation from those rights approved by the Constitution have given room for many violations of human rights. It is a grave violation of a suspect's right to liberty to have to wait for up to 360 days in detention without being charged to court. The "no-party politics" has turned into a mockery of democracy. It has stultified opposition and has thus encouraged more rebel activities.

The lesson from Uganda is that domestic human rights legislation may not be enough to stop massive human rights violations and this makes a strong case for concerted action by the international community and intervention by supra-national courts. The international community should look into the activities of the rebels in Uganda with a view to putting an end to their nefarious activities. The Ugandan Constitution, under which Museveni's administration operates, contains grave derogation from internationally accepted human rights norms. The wider scope of the human rights provisions in the African Charter offers a challenge to the governments and the judiciary of Uganda. The legislature in Uganda should assist in the protection of human rights by enacting legislation which will make the international human rights documents to which their country have subscribed enforceable in their domestic courts. International human rights norms are currently in a crisis. International human rights standards can be effective only if they are credible. The derogation from these standards initialled by the United States in the wake of the September 11 attacks and which has spread to other countries need be checked, otherwise international human rights norms will lose meaning, and dictators all over the world will find refuge in a domestic "war against terrorism".

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