



## **Uganda's Compliance with the International Covenant on Civil and Political Rights: Suggested List of Issues Relating to the Death Penalty**

**Submitted by The Advocates for Human Rights,**

a non-governmental organization in special consultative status with ECOSOC since 1996

**Foundation for Human Rights Initiative**

and

**The World Coalition Against the Death Penalty**

for the 135th Session of the Human Rights Committee

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Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty**, an alliance of more than 160 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The **Foundation for Human Rights Initiative** (FHRI) is an independent, non-governmental, non-partisan and not-for-profit human rights advocacy organisation, registered in Uganda under the Non-Governmental Organizations Act, 2016. FHRI Vision is a society based on a human rights and civic culture as a foundation for peace, stability, democracy, social justice and sustainable development. FHRI's Mission is to promote respect and observance of human rights practices and civic values, enhance best practices through training, education, research, advocacy, ICTs, and strategic partnership. The organisation has Observer Status with the African Commission on Human and Peoples' Rights, is a member of the World Coalition Against the Death Penalty (Paris) and is affiliated to the International Federation of Human Rights Defenders, (FIDH) in Paris,

France. It is a membership organisation with a total of 1,515 members. FHRI commands a 29-year experience and expertise in human rights activism in Uganda. FHRI has been at the forefront in monitoring and documenting human rights violations, publication of periodic human rights reports, legal aid service provision to victims of human rights abuse; reporting before regional human rights treaty bodies, the judiciary, parliament, police and prisons; actively campaigns for the abolition of the death penalty including carrying out programmes that promote citizen participation and state accountability. Currently, it is spearheading five campaigns namely; *My Rights, My Power, Access to Justice, Rights and Rule of Law, Freedom from Pre-trial detention and the Campaign against the death penalty in Uganda*. FHRI is located at the Human Rights House, Plot 1853, John Kiyingi Road, Nsambya, Kampala Uganda.

## EXECUTIVE SUMMARY

1. This report addresses Uganda's compliance with its international human rights obligations with respect to the death penalty. The report examines the current state of the death penalty in Uganda, as well as violations of the right to a fair trial in capital proceedings and detention conditions affecting people under sentence of death.

### **Uganda fails to uphold its obligations under the International Covenant on Civil and Political Rights**

#### **I. The Death Penalty (2004 Concluding Observations paragraph 13)**

2. Uganda ratified the International Covenant on Civil and Political Rights in 1995, but it has not ratified the Second Optional Protocol to the ICCPR.<sup>1</sup>
3. The last civilian execution occurred in 1999<sup>2</sup> and the last military execution occurred in 2005.<sup>3</sup> On January 19, 2018, President Museveni announced that the country could resume executions.<sup>4</sup> In December of 2020, Uganda voted against the General Assembly's Resolution on a Moratorium on the Use of the Death Penalty.<sup>5</sup>
4. Courts have significantly reduced the number of death sentences issued since the 2008 *Kigula* decision, with no recorded death sentences in 2017, 5 recorded death sentences in 2018, 2 in 2019, and none in 2020.<sup>6</sup> An appendix to the Second Periodic Report confirms that as of 2019, 128 men and 5 women were on death row.<sup>7</sup> According to the European Union Ambassador to Uganda, as of October 11, 2021, there were 123 people on death row, 3 of whom were women.<sup>8</sup>

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<sup>1</sup> U.N. Human Rights Treaty Bodies, *Ratification Status of Uganda*, Also available online at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN).

<sup>2</sup> Human Rights Council. *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, (Aug 29-2016), U.N. Doc. A/HRC/WG.6/26/UGA/2, ¶ 27.

<sup>3</sup> Augustine Obura, *Situation of the Death Penalty in Uganda*, October 7, 2015. Also available at: <https://www.pgaction.org/pdf/2015-10-07-Obura.pdf>

<sup>4</sup> *Museveni: Uganda May Reintroduce Executions*, BBC News, January 19, 2018. Also available online at <https://www.bbc.com/news/world-africa-42746172>.

<sup>5</sup> Amnesty International *Global Report: Death Sentences and Executions 2020*. Also available online at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>.

<sup>6</sup> Amnesty International, *Global Report: Death Sentences and Executions, 2018*. Also available online at <https://www.amnesty.org/download/Documents/ACT5098702019ENGLISH.PDF> Amnesty International *Global Report: Death Sentences and Executions 2019*. Also available online at <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>; Amnesty International *Global Report: Death Sentences and Executions 2020*. Also available online at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>.

<sup>7</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, Appendix 8.

<sup>8</sup> Remarks by Ambassador Attilio Pacifici, European Union Delegation to the Republic of Uganda, 11 Oct. 2021, [https://www.eeas.europa.eu/delegations/uganda/eu-calls-uganda-abolish-death-penalty\\_en](https://www.eeas.europa.eu/delegations/uganda/eu-calls-uganda-abolish-death-penalty_en).

*Most serious crimes*

5. In its 2004 Concluding Observations, the Committee expressed concern “about the broad array of crimes for which the death penalty may be imposed,” and urged the Government of Uganda “to limit the number of offences for which the death penalty is provided and to ensure that it is not imposed except for the most serious crimes.”<sup>9</sup>
6. The Uganda’s Second Periodic Report offers no response to this recommendation.
7. Uganda’s Constitution articulates a qualified right to life, providing that “[n]o person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offense under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.”<sup>10</sup>
8. Uganda has the highest number of capital offences (28) in East Africa,<sup>11</sup> and Ugandan law does not limit the death penalty to the most serious crimes. The following crimes are eligible for the death penalty under the Penal Code: crimes related to treason and offenses against the state<sup>12</sup>; rape<sup>13</sup>; aggravated defilement<sup>14</sup>; murder<sup>15</sup>; aggravated robbery<sup>16</sup>; smuggling while armed with a deadly weapon<sup>17</sup>; detention with sexual intent<sup>18</sup>; and kidnapping or detaining with intent to murder.<sup>19</sup> There are also military offenses that are eligible for the death penalty, enumerated under the Ugandan Peoples’ Defense Forces Act.<sup>20</sup> Additionally, the Anti-Terrorism Act provides for the death penalty for terrorist acts resulting in the death of any person.<sup>21</sup>
9. Authorities have targeted members of the political opposition with allegations of treason. In the run-up to Uganda’s 2021 elections, numerous human rights violations were reported, including arbitrary deprivation of life, arbitrary arrest and detention, and torture.<sup>22</sup> On

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<sup>9</sup> Human Rights Committee, *Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding Observations: Uganda*, adopted by the Committee at its 80th session, UN Doc. CCPR/CO/80/UGA (4 May 2004), ¶ 13.

<sup>10</sup> Constitution - Article 22, Section 1.

<sup>11</sup> *Museveni: Uganda May Reintroduce Executions*, BBC News, January 19, 2018. Also available online at <https://www.bbc.com/news/world-africa-42746172>; Augustine Obura, *Situation of the Death Penalty in Uganda*, October 7, 2015. Also available online at: [2015-10-07-Obura.pdf](https://www.pgaction.org/2015-10-07-Obura.pdf) (pgaction.org)

<sup>12</sup> Section 23, Penal Code Act, Cap 120, Laws of Uganda (Offenses against the state include, “compelling by force or constraining the government to change its measures or counsels or to intimidate the parliament, or instigating any person to invade Uganda with an armed force, adversely attempting to incite any person to commit an act of mutiny or treacherous act; incite any person to make a mutinous assembly”).

<sup>13</sup> Section 124, Penal Code Act, Cap 120, Laws of Uganda.

<sup>14</sup> Section 129, Penal Code Act, Cap 120, Laws of Uganda.

<sup>15</sup> Section 188, Penal Code Act, Cap 120, Laws of Uganda.

<sup>16</sup> Section 286(2), Penal Code Act, Cap 120, Laws of Uganda.

<sup>17</sup> Section 319(2), Penal Code Act, Cap 120, Laws of Uganda.

<sup>18</sup> Section 134, Penal Code Act, Cap 120, Laws of Uganda.

<sup>19</sup> Section 243, Penal Code Act, Cap 120, Laws of Uganda.

<sup>20</sup> Uganda Peoples’ Defence Forces Act, 2005, Cap 307, Laws of Uganda.

<sup>21</sup> Anti-Terrorism Act of 2002, as amended by Act 12 of 2015.

<sup>22</sup> U.N. Office of the High Commissioner of Human Rights, *Press Briefing Notes on Uganda*, 8 January 2021. Also available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26645&LangID=E>.

March 4, 2021, Internal Affairs Minister Jeje Odongo presented a list to Parliament of 177 people in military detention who had been arrested between November 18, 2020 and February 8, 2021, allegedly for participating in riots, possession of military stores, and attending meetings to plan post-election violence.<sup>23</sup> On March 8, President Museveni said that 50 people were being held for “treasonable acts of elements of the opposition.”<sup>24</sup> Human rights observers note reports of arbitrary arrests and torture of opposition members.<sup>25</sup> The National Unity Platform announced on March 5, 2021, that 423 members and supporters had been abducted and were still missing, and 41 members had been released.<sup>26</sup>

10. In October 2019, Uganda announced plans for a bill that would impose the death penalty on homosexuals.<sup>27</sup> A presidential spokesperson later denied these plans, after major aid donors objected and said that they were monitoring the situation.<sup>28</sup>

#### *Mandatory death penalty*

11. The Committee also found that Uganda’s mandatory death penalty for murder, aggravated robbery, treason, and terrorism resulting in the death of a person is “incompatible with the Covenant” recommended that Uganda “abolish mandatory death sentences.”<sup>29</sup>
12. This discussion of the mandatory death penalty is the only portion of the Committee’s 2004 recommendations on the death penalty to which the Second Periodic Report responds. The Second Periodic Report states that “Uganda has taken several steps to reform the law towards removing the mandatory death sentence.”<sup>30</sup> The report explains steps that

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<sup>23</sup> Human Rights Watch, *Uganda: End Enforced Disappearances of Opponents*, March 11, 2021 12:00AM EST. Also available online at: <https://www.hrw.org/news/2021/03/11/uganda-end-enforced-disappearances-opponents#>.

<sup>24</sup> Human Rights Watch, *Uganda: End Enforced Disappearances of Opponents*, March 11, 2021 12:00AM EST. Also available online at: <https://www.hrw.org/news/2021/03/11/uganda-end-enforced-disappearances-oppon> Human Rights Watch, *Uganda: End Enforced Disappearances of Opponents*, March 11, 2021 12:00AM EST. Also available online at: <https://www.hrw.org/news/2021/03/11/uganda-end-enforced-disappearances-opponents#.ents#>.

<sup>25</sup> Human Rights Watch, *Uganda: End Enforced Disappearances of Opponents*, March 11, 2021 12:00AM EST. Also available online at: <https://www.hrw.org/news/2021/03/11/uganda-end-enforced-disappearances-opponents#>.

<sup>26</sup> Human Rights Watch, *Uganda: End Enforced Disappearances of Opponents*, March 11, 2021 12:00AM EST. Also available online at: <https://www.hrw.org/news/2021/03/11/uganda-end-enforced-disappearances-opponents#>.

<sup>27</sup> Nita Bhalla, *Uganda Plans Bill Imposing Death Penalty for Gay Sex*, REUTERS, October 10, 2019, 6:09 A.M. Also available online at <https://www.reuters.com/article/us-uganda-lgbt-rights/uganda-plans-bill-imposing-death-penalty-for-gay-sex-idUSKBN1WP1GN>.

<sup>28</sup> Nita Bhalla, *Uganda Denies Plans to Impose Death penalty for Gay Sex Amid Global Concern*, REUTERS, October 14, 2019, 11:32 A.M. Also available online at <https://www.reuters.com/article/us-uganda-lgbt-rights/uganda-denies-plans-to-impose-death-penalty-for-gay-sex-amid-global-concern-idUSKBN1WT231>.

<sup>29</sup> Human Rights Committee, *Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding Observations: Uganda*, adopted by the Committee at its 80th session, UN Doc. CCPR/CO/80/UGA (4 May 2004), ¶ 13.

<sup>30</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 86.

authorities have taken to implement the Supreme Court's 2008 decision in *Attorney General v. Susan Kigula & 417 others* banning the mandatory death sentence.<sup>31</sup>

13. As mentioned in the Second Periodic Report, following the landmark *Kigula* case, the death penalty is no longer mandatory for capital offenses.<sup>32</sup> In *Kigula*, the Ugandan Supreme Court held that various provisions of the laws of Uganda prescribing a mandatory death sentence were inconsistent with the Constitution insofar as they were contrary to the principles of equality before the law and of fair trial. Consequentially, the decision of whether to impose the death penalty is now discretionary in all capital cases, with the presiding judge deciding the sentence based on consideration of all the relevant circumstances surrounding a particular case. The Court further held that “where after three years from the date of sentence no decision has been made by the Executive to carry out the Court Order for execution of the convict, the death sentence shall be deemed commuted to imprisonment for life without remission.”<sup>33</sup> As a result of the *Kigula* decision, Section 23 of the Penal Code Act and sections 7 and 8 of the Anti-Terrorism Act (2002) were declared unconstitutional.
14. Despite the *Kigula* ruling, in 2017, the Ugandan Parliament passed the Anti-Terrorism Amendment Bill. This law imposed a mandatory death penalty for acts of terrorism. (Anti-Terrorism (Amendment) Bill, 2017, § 2, amending § 7 of the Act.)<sup>34</sup> A terrorist is defined as someone who:
  - Carries out or perpetrates any act, whether occurring in Uganda or elsewhere, that constitutes a crime in accordance with agreements, protocols and treaties described in the annex to the International Convention for the Suppression of the Financing of Terrorism, 1999; or
  - Travels outside Uganda for the purpose of the perpetration, planning, or preparation of, or participation in terrorist acts or the providing or receiving of terrorist training.<sup>35</sup>
15. On November 4, 2019, President Museveni signed into law the Law Revision (Penalties in Criminal Matters) Miscellaneous (Amendment) Act 2019. The Act amended the Penal Code Act and the Anti-Terrorism Act to: (a) remove the mandatory death penalty prescribed by these laws; (b) restrict the death penalty to the most serious crimes under

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<sup>31</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 87.

<sup>32</sup> *Attorney General v. Susan Kigula & 417 Others* (Constitutional Appeal No. 03 OF 2006) [2009] UGSC 6 (21 January 2009).

<sup>33</sup> *Attorney General v. Susan Kigula & 417 Others* (Constitutional Appeal No. 03 OF 2006) [2009] UGSC 6 (21 January 2009).

<sup>34</sup> Library of Congress, *Uganda: Parliament Passes Anti-Terrorism Amendment Bill*, June 8, 2017.

<sup>35</sup> Anti-Terrorism (Amendment) Bill, 2017, § 2, amending § 7 of the Act.

these laws; (c) remove the restriction on mitigation in the case of convictions that carry a death penalty; and (d) define life imprisonment or imprisonment for life.<sup>36</sup>

*Right to appeal and seek pardon*

16. The Committee further stated that “the imposition of death sentences by field courts-martial without the possibility of appeal or to seek pardon or commutation of the sentence” is “incompatible with the Covenant” and urged Uganda “to ensure the possibility of full appeal in all cases, as well as the right to seek pardon or commutation of sentence.”<sup>37</sup>
17. The Uganda’s Second Periodic Report offers no response to this recommendation.
18. After a court sentences a person to death, the case record is submitted to the Advisory Committee on the Prerogative on Mercy, a committee that is made up of the Attorney General and six Ugandan citizens appointed by the President. The Committee reviews the defendant’s case and makes a recommendation to the President on clemency, with the President making the final decision. Civilians charged in military courts, however, are often denied the right to file an appeal in the civilian court system.<sup>38</sup>

*Protracted time on death row*

19. The Committee also expressed “concern about the long periods of time which convicted prisoners spend on death row (almost 20 years in one case).”
20. The Uganda’s Second Periodic Report offers no response to this recommendation.

*Death penalty for juvenile offenders*

21. The Second Periodic Report asserts that the death penalty “cannot be meted on children since under section 89(11) of the Children’s Act, a child can only be sentenced . . . to a maximum of 3 years in prison and cannot be sentence[d] to [the] death penalty.”<sup>39</sup>
22. Despite these assertions, Moses Otim, a juvenile offender, had been sentenced to death and had been on death row for over 10 years when the Supreme Court of Uganda quashed his death sentence in 2020.<sup>40</sup>

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<sup>36</sup> Amnesty International *Global Report: Death Sentences and Executions*, Uganda 2019. Also available online at <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>.

<sup>37</sup> Human Rights Committee, *Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding Observations: Uganda*, adopted by the Committee at its 80th session, UN Doc. CCPR/CO/80/UGA (4 May 2004), ¶ 13.

<sup>38</sup> U.S. State Department, *2021 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/uganda/>.

<sup>39</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 88.

<sup>40</sup> Amnesty International *Global Report: Death Sentences and Executions 2020*, at 54. Also available online at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>.

## II. Fair trial rights (2004 Concluding Observations paragraph 21)

23. The Committee also expressed concern “about shortcomings in the administration of justice, such as delays in the proceedings and in pre-trial detention, the lack of legal assistance provided to non-capital offenders and the conditions in which a confession may be secured.” The Committee recommended that Ugandan authorities “take steps to remedy shortcomings in the administration of justice in order to ensure full respect for the judicial guarantees enshrined in the Covenant. It should revise legislation and practices, in particular with regard to the above-mentioned concerns.”<sup>41</sup>
24. The Second Periodic Report notes the drafting of a Legal Aid Policy and Bill, which would ensure access to legal services for the indigent.<sup>42</sup> The report asserts that once the policy and bill are passed, “the policy and legal aid law will result into the establishment of a comprehensive state funded legal aid scheme and better regulation of the legal aid field to ensure the provision of quality services.”<sup>43</sup> The report gives no timeline for the adoption of this policy and bill, however.
25. Responding to the Committee’s concerns about delays in proceedings, the Second Periodic Report cites the establishment of nine new High Court circuits, and states that authorities have recruited more Judicial Officers and introduced plea bargaining.<sup>44</sup>
26. The Second Periodic Report offered no response to the Committee’s concerns about “the conditions in which a confession may be secured.”
- Access to counsel, case backlogs*
27. While authorities are supposed to try people who are arrested for capital offenses within 360 days or release them on bail, they often do not respect this requirement. If prosecutors present a case to the court before the 360 days expire, the court may extend the pretrial detention indefinitely.<sup>45</sup> Detainees are often not immediately informed of the reasons for detention.<sup>46</sup> While detainees have the right to legal representation, authorities often do not respect this right and indigent defendants charged with capital offenses often experience significant delays in getting access to an attorney.<sup>47</sup> Case backlogs, due in part to an under-

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<sup>41</sup> Human Rights Committee, *Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding Observations: Uganda*, adopted by the Committee at its 80th session, UN Doc. CCPR/CO/80/UGA (4 May 2004), ¶ 21.

<sup>42</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 126.

<sup>43</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 126.

<sup>44</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 132, 134.

<sup>45</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>46</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>47</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.



resourced judiciary and inadequate police investigations, are significant and can lead to prolonged pretrial detention.<sup>48</sup> The Uganda Prisons Service reported that in August 2020, COVID-19 restrictions halted court sessions, further increasing backlogs and lengthening pretrial detention.<sup>49</sup>

28. In Uganda, people charged with capital offenses are entitled to legal aid under the state brief system. Ugandan courts appoint state briefs or private lawyers required to provide pro bono representation. Defending a capital case is usually not well-compensated, therefore state briefs often go to inexperienced graduates or “failed lawyers.”<sup>50</sup> This lack of dedicated legal aid and funding results in inexperienced or ineffective legal representation. Approximately 75% of capital defendants are represented by state briefs.<sup>51</sup> Observers note that during capital offence trials, state briefs “invariably met with their client for the first time on the morning of the trial,” spending only a few minutes discussing the case with the defendants.<sup>52</sup> Co-accused are routinely represented by one state brief despite potential conflicts of interest.<sup>53</sup> State briefs rarely cross-examine or call witnesses, and the prosecutor’s evidence mostly goes unchallenged.<sup>54</sup>
29. Efforts have been underway to expand legal aid services through the expansion of the state brief system and the Justice Centres Programme, under which the government has created legal aid clinics and justice centers at courts and prisons.<sup>55</sup> The draft National Legal Aid Bill, referenced in the Second Periodic Report, is still pending.<sup>56</sup> A major part of the proposal is the establishment of an independent National Legal Aid Body that would oversee the rollout and delivery of a comprehensive legal aid package across Uganda.<sup>57</sup>
30. The Judiciary Administration Act, 2019, provides for independent funding for the judiciary. Nonetheless, the judiciary remains under-resourced.

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<sup>48</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>49</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>50</sup> Counsel, *Death Row in Uganda*, July 31, 2012. Also available online at: <https://www.counselmagazine.co.uk/articles/death-row-uganda>.

<sup>51</sup> Cornell Center on the Death Penalty Worldwide, *Uganda Country Profile*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=82>.

<sup>52</sup> Counsel, *Death Row in Uganda*, July 31, 2012. Also available online at: <https://www.counselmagazine.co.uk/articles/death-row-uganda>.

<sup>53</sup> Counsel, *Death Row in Uganda*, July 31, 2012. Also available online at: <https://www.counselmagazine.co.uk/articles/death-row-uganda>.

<sup>54</sup> Counsel, *Death Row in Uganda*, July 31, 2012. Also available online at: <https://www.counselmagazine.co.uk/articles/death-row-uganda>.

<sup>55</sup> See Justice Centres Uganda. Available online at: <https://www.jlos.go.ug/index.php/about-jlos/projects/legal-aid/justice-centers>.

<sup>56</sup> The Independent, *Lack of Political Will Slowing Legal Aid Policy*, July 12, 2019. Also available online at: <https://www.independent.co.ug/lack-of-political-will-slowing-legal-aid-policy/>.

<sup>57</sup> The Independent, *Lack of Political Will Slowing Legal Aid Policy*, July 12, 2019. Also available online at: <https://www.independent.co.ug/lack-of-political-will-slowing-legal-aid-policy/>.

### *Military courts*

31. In the military justice system, even though the accused has a right to a lawyer, some military defense attorneys lack adequate training, which often leads to poor quality representation.<sup>58</sup> Civilians tried by military courts are often denied the right to a public trial and the right to communicate with their attorney.<sup>59</sup>

### *Women charged with capital crimes*

32. There is limited information available on the context of the crimes committed by women who have been sentenced to death in Uganda. There is at least one reported case in which a woman was sentenced to death for killing her abuser.<sup>60</sup> This case suggests that when women are sentenced to death for killing another person, legal proceedings ignore gender-based violence and the imbalance in power dynamics between an accused woman and her abusive spouse or family member.<sup>61</sup> Women imprisoned in Uganda for committing offences against life (i.e., murder, assault, or manslaughter) have typically experienced prolonged domestic violence at the hands of a partner, spouse, or another family member. As such, domestic violence is an important context for homicides committed by women in Uganda.<sup>62</sup>
33. Under Ugandan law, the elements of self-defense have been articulated under *Uganda v. Kamyuka Ivan* to include: (1) an attack on the accused person or close relative; (2) reasonable belief that he was in imminent danger of death or serious bodily harm; (3) belief that it was necessary to use force to repel the attack; and (4) reasonable belief that the force used was necessary to prevent or resist the attack.<sup>63</sup> Though self-defense has been used widely in homicide cases against an intimate partner, it has not been accessible to women who kill following a *history* of abuse. This gap is because these women often cannot make a showing of an actual threat at the time the responsive force was used. Consequently, the

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<sup>58</sup> Cornell Center on the Death Penalty Worldwide, *Uganda Country Profile*. Also available online at: <https://deathpenaltyworldwide.org/database/#/results/country?id=82>.

<sup>59</sup> U.S. State Department, *2021 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/uganda/>.

<sup>60</sup> Tanya Murshed, affiliated with Evolve, Interview with the Cornell Center on the Death Penalty Worldwide, Mar. 18, 2015.

<sup>61</sup> See The Cornell Center on the Death Penalty Worldwide (The Alice Project), *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty*, Sep. 2018, p. 11. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>62</sup> Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 5. Available online at [https://cdn.penalreform.org/wpcontent/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence\\_Uganda.pdf](https://cdn.penalreform.org/wpcontent/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf).

<sup>63</sup> Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 5. Available online at [https://cdn.penalreform.org/wpcontent/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence\\_Uganda.pdf](https://cdn.penalreform.org/wpcontent/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf).

response may be viewed as unreasonable. Moreover, the requirement of apprehension of death or grievous bodily harm is problematic in the context of domestic violence because not all forms of abuse are physical (i.e., emotional abuse, economic/financial abuse).<sup>64</sup>

### *Torture*

34. The Constitution prohibits torture.<sup>65</sup> The Prevention and Prohibition of Torture Act of 2012 also penalizes torture with up to 15 years' imprisonment, monetary fine, or both. The penalty for conviction of aggravated torture is life imprisonment.
35. The Uganda Human Rights Commission (UHRC) frequently receives allegations of torture committed by security agencies, particularly in cases of lengthy pretrial detentions.<sup>66</sup> According to the U.S. State Department, “[h]uman rights organizations, opposition politicians, and local media reported that [in 2021] security agencies tortured suspects as well as dissidents to extract self-incriminating confessions.”<sup>67</sup> Authorities do not always carry out investigations into credible allegations of mistreatment.<sup>68</sup> Prolonged pretrial detention is the result of an under-resourced judiciary, inadequate police investigations, and the absence of a time limit for the detention of people awaiting trial.<sup>69</sup> The UHRC and Uganda Prisons Service (UPS) reported that numerous suspects were being held for longer than eight months without arraignment, and that 48% of the country's inmates were in fact pretrial detainees.<sup>70</sup>
36. Opposition members and activists have made numerous credible reports of torture.<sup>71</sup> For instance, opposition member Kyagulanyi reported that Special Forces Command soldiers

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<sup>64</sup> Penal Reform International, *Women who kill in the context of domestic violence in Uganda: How does the criminal justice system respond?*, 2021, p. 16. Available online at [https://cdn.penalreform.org/wpcontent/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence\\_Uganda.pdf](https://cdn.penalreform.org/wpcontent/uploads/2021/10/Women-who-kill-in-the-context-of-domestic-violence_Uganda.pdf).

<sup>65</sup> Constitution - Article 24 (“No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment”).

<sup>66</sup> U.S. State Department, *2019 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/uganda/>; see also Amnesty International, *Uganda 2020*. Also available online at <https://www.amnesty.org/en/countries/africa/uganda/report-uganda/>; see also Human Rights Watch, *Fresh Torture Accusations Leveled Against Uganda's Police*, May 14, 2017 11:00 P.M. EDT. Also available online at: <https://www.hrw.org/news/2017/05/15/fresh-torture-accusations-leveled-against-ugandas-police>;

<sup>67</sup> U.S. State Department, *2021 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/uganda/>.

<sup>68</sup> U.S. State Department, *2019 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/uganda/>.

<sup>69</sup> U.S. State Department, *2019 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/uganda/>.

<sup>70</sup> U.S. State Department, *2019 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/uganda/>.

<sup>71</sup> Human Rights Watch, *World Report 2019, Uganda Events of 2018*. Also available online at <https://www.hrw.org/world-report/2019/country-chapters/uganda#9d0b87>.

tortured him when the military detained him for 10 days.<sup>72</sup> Francis Zaake, an opposition Member of Parliament, has also given detailed descriptions of his torture by the Uganda Police Force (UPF).<sup>73</sup> Civil society organizations and opposition activists reported that security forces arrested, beat, and killed civilians as punishment for allegedly violating regulations related to the COVID-19 pandemic.<sup>74</sup>

37. Impunity remains ongoing and widespread in the police and military forces, such as the UPF, the Uganda People’s Defense Force, and the UPS, as well as within the executive branch.<sup>75</sup> Investigations are often lacking, and even when officials do undertake investigations, they do not release their findings or hold perpetrators accountable.<sup>76</sup> Authorities often give judicial and political cover to officials who are implicated in human rights violations.<sup>77</sup>

### **III. Detention Conditions (2004 Concluding Observations paragraph 18)**

38. The Committee in 2004 expressed concern that Uganda’s measures to counteract shortcomings in detention conditions were “inadequate to overcome the problems” and recommended that Ugandan authorities “take immediate action to reduce overcrowding in prisons.”<sup>78</sup>
39. The Second Periodic Report recites various efforts to “address the problem of long-stays in pre-trial detention,”<sup>79</sup> as well as measures to eliminate congestion in places of detention.<sup>80</sup> The report also confirms that the Uganda Human Rights Committee is authorized to visit places of detention to assess and inspect conditions and to make

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<sup>72</sup> Human Rights Watch, *World Report 2019, Uganda Events of 2018*. Also available online at <https://www.hrw.org/world-report/2019/country-chapters/uganda#9d0b87>.

<sup>73</sup> U.S. State Department, *Uganda 2020 Human Rights Report*. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>74</sup> U.S. State Department, *Uganda 2020 Human Rights Report*. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>75</sup> U.S. State Department, *Uganda 2020 Human Rights Report*. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>76</sup> U.S. State Department, *Uganda 2020 Human Rights Report*. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>77</sup> U.S. State Department, *Uganda 2020 Human Rights Report*. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>78</sup> Human Rights Committee, *Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding Observations: Uganda*, adopted by the Committee at its 80th session, UN Doc. CCPR/CO/80/UGA (4 May 2004), ¶ 18.

<sup>79</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 106.

<sup>80</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 108.

recommendations. According to the report, these visits have “helped in ensuring that people deprived of their right to personal liberty are accessed and their rights monitored.”<sup>81</sup>

40. Despite these efforts, conditions in detention centers and prison are harsh and often life-threatening. The most common issues are overcrowding, forced labor, physical abuse of detainees, and inadequate resources, including a lack of food.<sup>82</sup> Overcrowding is particularly serious. In 2020, the prison population rose from 59,000 to 65,000 within the span of four months as the government arrested thousands of people alleged to have violated COVID-19 restrictions.<sup>83</sup> The prison population reached more than three times its capacity.<sup>84</sup> In November 2021, the Minister for Internal Affairs reported that the prison population was at least 70,000 people, far greater than the 22,000-capacity that the Uganda Prisons Service had reported earlier that year.<sup>85</sup> There were reports of death due to prison conditions, including media reports of pretrial detainees dying in Atopi prison after having to work on a prison farm despite being ill.<sup>86</sup>
41. Authorities do not carry out impartial investigations into credible allegations of mistreatment.<sup>87</sup>
42. In November 2019, the Uganda Committee on Human Rights submitted a report on alleged torture in detention centers around the country.<sup>88</sup> The report found that security forces detained and tortured people in unofficial detention centers (safe houses) across the country,<sup>89</sup> even though in 2004 the Ugandan Government represented to the UN Human Rights Committee that such “safe houses” had been outlawed.<sup>90</sup>

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<sup>81</sup> Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (19 Nov. 2020), UN Doc. CCPR/C/UGA/2, ¶ 107.

<sup>82</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>83</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>84</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>85</sup> U.S. State Department, *2021 Country Reports on Human Rights Practices: Uganda*. Also available online at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/uganda/>.

<sup>86</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>87</sup> U.S. State Department, Uganda 2020 Human Rights Report. Also available online at: <https://www.state.gov/wp-content/uploads/2021/03/UGANDA-2020-HUMAN-RIGHTS-REPORT.pdf>.

<sup>88</sup> Report of the Committee on Human Rights on Alleged Torture in Ungazetted Detention Centres in the Country, November 2019.

<sup>89</sup> Report of the Committee on Human Rights on Alleged Torture in Ungazetted Detention Centres in the Country, November 2019.

<sup>90</sup> Human Rights Committee, *Consideration of reports submitted by States Parties under article 40 of the Covenant, Concluding Observations: Uganda*, adopted by the Committee at its 80th session, UN Doc. CCPR/CO/80/UGA (4 May 2004), ¶ 17.

#### IV. Suggested questions for the Government of Uganda

43. This stakeholder report suggests the following questions for the Government of Uganda:

- Since 2004, how many people have been sentenced to death? For each, please provide disaggregated data about the person's gender, nationality, date of arrest, date of conviction, crime(s) of conviction, relationship to any victim, the sentencing authority, the status of any appeals, rehearings, or requests for pardons or clemency, and the current sentence being served.
- For all other persons currently under sentence of death, please identify the length of time each person has been under such sentence.
- What measures have authorities taken to reduce the number of crimes eligible for the death penalty, limiting applicability of the death penalty to the "most serious" crimes, and to institute an official, *de jure* moratorium on executions?
- What safeguards are in place to ensure that people are not charged with treason or terrorism-related offenses for expressing opposition to the government or for supporting opposition parties or candidates?
- How do prosecutors and the judiciary ensure that no person is charged with a capital crime or sentenced to death for a crime committed when under the age of 18? What explanation do authorities offer for the death sentence imposed on Moses Otim for a crime he committed as a juvenile?
- What steps has the State Party taken to sensitize Members of Parliament about human rights concerns related to the death penalty and about the State Party's obligations under the Covenant as they pertain to the death penalty, particularly with respect to the mandatory death penalty and the death penalty for offenses that do not entail an intentional killing?
- How has the State Party improved legal assistance for individuals charged with capital offences and people who are sentenced to death? What measures has the State Party taken to strengthen the state brief system through adequate funding and appropriate, mandatory training, in collaboration with civil society organizations?
- Please describe the training provided to military defense attorneys who represent persons accused of capital offenses and policies in place to ensure that they provide defendants with high quality legal representation.
- What training is provided to judges overseeing capital cases on gender-sensitivity and tactics of coercive control in the context of gender-based violence and women in conflict with the law?

- How does the State Party ensure that legal counsel representing women charged with capital crimes are specialized in capital representation and are trained to recognize and raise claims of gender-specific defenses?
- Are there any efforts underway to expand the definition of self-defense to take into account a woman’s history of abuse, rather than limiting the defense to situations involving an actual threat at the time the responsive force was used?
- Please describe any mandatory human rights training provided to members of the Uganda Police Force, the Uganda People’s Defence Force, the Local Defense Unit, and Uganda Prisons Service, including training on the detection and prevention of torture.
- What measures has the State Party taken to improve prison detention conditions, consistent with the Nelson Mandela Rules, particularly with respect to overcrowding, provision of food, forced labor, and physical ill-treatment of people in detention?
- How has the COVID-19 pandemic affected monitoring visits to detention facilities?
- How has the COVID-19 pandemic affected prison overcrowding and detention conditions? What measures have authorities taken to minimize the health risks to people in detention?
- Has the State Party undertaken any efforts to establish a public awareness-raising and educational campaign about the death penalty, in collaboration with civil society, to assist in shifting public opinion around the death penalty?
- What policies and procedures are in place to hold security forces and law enforcement accountable for human rights violations by fully investigating violations and holding perpetrators to account?
- How has the Ugandan Government responded to the November 2019 report of the Uganda Committee on Human Rights, in particular as it alleged that security forces continue to use “safe houses” and other unofficial detention centers to detain and torture people?