



**A BRIEF SYNOPSIS OF THE CASES ON TRIAL OF
CIVILIANS IN MILITARY COURTS IN UGANDA**

2023

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FOREWORD

Justice Access Point (JAP) is pleased to contribute to the discourse on trial of civilians in the military courts in Uganda through this brief synopsis. It is intended as an advocacy tool kit to tickle discourse on the subject by pinpointing issues and possible pathways to addressing to lingering questions on the subject of trial of civilians in Military Courts in Uganda.

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THE INTRODUCTION

This paper is a brief synopsis of Ugandan cases contesting the trial of civilians in military courts and pools together the domestic, regional, and international guidelines on the trial of civilians in military courts. The courts responsible for exercising judicial power in Uganda, as provided in Article 129(1) of the Constitution of the Republic of Uganda 1995 include the Supreme Court, Court of Appeal, High Court, and any subordinate courts established by Parliament. The Constitution of the Republic of Uganda has neither expressly defined the relationship between the High Court and Courts Martial nor addressed whether the Courts Martial have jurisdiction over civilians. Section 119 of the Uganda Peoples' Defense Forces Act, 2006 grants the General Court Martial the authority to preside over cases involving civilians.

Numerous cases have been litigated challenging the prosecution of civilians in Uganda on varied grounds, including the competence of the court within the meaning of Articles 28(1), 126(1), 129(2), and (3) of the Constitution of the Republic of Uganda 1995; inconsistency with and in contravention of Articles 28(1), 126(1), and (3) and 210 of the Constitution of the Republic of Uganda 1995; and breach of Article 7 of the African Charter on Human and Peoples Rights, 1987 which guarantees the right to a fair trial. It is hoped that rulings of the different cases and guidance from national, regional, and international bodies or human rights experts will be instructive in any discourse for reform of the security sector. Uganda has ratified regional and international obligations that obligate it to ensure the right to a fair hearing, notably the African Charter in 1994 and acceded to ICCPR in 1995.

THE PROBLEM AND DILEMMA

The crux of the matter is that although courts of law have effectively pronounced themselves on the prosecution of civilians in the General Court Martial under section 119(1)(g) and (h) of the UPDF Act, 2006, the practice has continued unabated effectively undermining the rule of law. For instance, in *Michael Kabaziguruka v Attorney General*, Constitutional Petition No. 45 of 2016, it was held that Section 119(1)(h) and 179(1)(a) of the UPDF Act are unconstitutional as they are inconsistent with Article 28(1) of the Constitution of the Republic of Uganda; and the charges brought against him under the UPDF Act were unconstitutional, null and void and of no effect. This reaffirmed the rulings in *Attorney General v Uganda Law Society*, Constitutional Appeal No. 1 of 2006 and *Attorney General v Joseph Tumushabe*, Constitutional Appeal No. 3 of 2005. Furthermore, the trial of civilians in the military courts has been found to constitute violations of Article 6, Article 7(1)(b), (c), (d) and Article 26 of the African Charter in Communication 339.07: *Patrick Okiring and Samson Agupio v The Republic of Uganda*.

In its ruling, the ACHPR directed the government of Uganda to ensure the provisions of the Uganda People's Defence Forces Act No 7 of 2005, through which the victims were charged in the General Court Martial, were revised to prohibit the trial of civilians before military courts. The commission also ordered the government to pay adequate compensation to the victims and to inform the commission within 180 days of implementing the measures. The primary objective of UPDF is "to defend and protect the sovereignty and territorial integrity of Uganda, ensuring non-violability of peoples and individual rights, the rule of law and good governance." It is, therefore, paradoxical that UPDF continues to defy court orders and act in a manner that runs counter to its very essence. There is, therefore, an urgent need for the different stakeholders to work together to resolve the conundrum of the civilians' trial in Uganda's military court.



THE PURPOSE OF THE SYNOPSIS

The purpose of this brief synopsis is:

1. To present in one paper the background of the cases on trial of civilians in the Military courts (Brief facts of the case, legal issues and judgments);
2. To provide a brief reflection on the implications for the ruling for the different stakeholders in Uganda. on the succinct highlights of the regional and international Guidelines on prosecution of civilians in Military Tribunals;
3. To provide recommendations for the different stakeholders in the security sector community of practice.

THE SUMMARY OF TRIAL OF CIVILIANS IN MILITARY COURT CASES AND RULINGS IN UGANDA

This section provides an overview of leading cases on trial of civilians in Military Courts in Uganda and a succinct capture of the ruling of the African Commission on Human and Peoples Rights in Communication 339.07: Patrick Okiring and Samson Agupio v The Republic of Uganda. The facts of the cases, the legal issues and rulings are given (See Table 1),

Micheal Kabaziguruka v Attorney General, Constitutional Petition No. 45 of 2016.

In 2016, Michael Kabaziguruka, a civilian, and then member of Parliament of Nakawa was arrested and detained on treachery charges and arraigned before the General Court Martial. Mr. Kabaziguruka petitioned the court challenging the jurisdiction of the General Court Martial to try him as he was a civilian. The court sought to establish the following legal issues:

1. Whether the General Court Martial established under section 197 of the UPDF Act, 2006 is a competent court within the meaning of Articles 28(1), 126(1), 129(2) and (3) of the Constitution of the Republic of Uganda?
2. Whether section 197 of the UPDF Act, 2006 is inconsistent with and in contravention of Articles 28(1), 126(1) and (3) and 210 of the Constitution of the Republic of Uganda to the extent that it purports to create a court of law without constitutional authority?
3. Whether section 2 of the UPDF Act, 2006 is inconsistent with and in contravention of Articles 28(1) and 44 (c) of the Constitution of the Republic of Uganda to the extent that it defines a service offence

to mean any offence under all the laws of Uganda, thereby conferring jurisdiction unto the court martial over any criminal offence including non-disciplinary offences and over every person?

4. Whether the act of charging or arraigning the petitioner before the General Court Martial Holden at Makindye is inconsistent with and in contravention of Article 28(1) of the Constitution of the Republic of Uganda?
5. Whether the Petitioner is entitled to the orders and declarations set out in the petition?

**Rtd. Capt. Amon Byarugaba, Hasibu Kasiita, Mathias Rugira & 167 Others v Attorney General
Constitutional Petition No. 44 of 2015.**

The Petitioners brought this petition on behalf of 167 other petitioners all stated to be civilians who have in the past been tried in the General Court Martial. In their petition, they contended that the basic objective of the UPDF was to preserve and defend the sovereignty and territorial integrity of Uganda, which means that trying civilians is outside the constitutional mandate of the UPDF. The court sought to establish the following legal issues:

1. Whether the Military courts have jurisdiction to try civilians for civil offences?
2. Whether charging a person with an offence under section 119 (l) (h) or the UPDF Act is unconstitutional as it creates an offence outside an Act of Parliament?
3. Whether military courts are not independent and impartial courts as required by Article 28 (1) of the 1995 Constitution?
4. Whether the petitioners are entitled to any remedies?

Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. Republic of Uganda.

On 29th March 2007 Human Rights Network – Uganda, HURINET-U, and Women’s International Cross Cultural Exchange – ISIS-WICCE submitted a communication (Communication 339/2007) on behalf of Mr. Patrick Okiring and Mr. Agupio Samson (the Victims). Mr. Patrick Okiring and Mr. Agupio Samson are one of the persons who were arrested in Yumbe district in Uganda on allegations of membership in an armed group whose aim was to forcefully overthrow the Government of President Museveni; however, they were neither charged nor brought before a court of law at the time of their arrest. On 15 November 2005, Mr. Patrick Okiring and Mr. Agupio Samson, along with 20 other accused including Kiiza Besige (a former Presidential candidate), were charged with treason and concealment of treason, and committed to stand trial in the High Court of Uganda, in Criminal Case No. 955 of 2005. On 16 November 2005, fourteen (14) of the accused, including “the two (Peoples Redemption Army [PRA]) suspects,” were granted bail by the High Court; however, they were not released in spite of the release orders. The Complainants further allege that, before commencement of the court proceedings, “armed police/military personnel” cordoned off the court premises, stormed the High Court and forcefully returned the bailed suspects back to Luzira Maximum Prison. On 17 November 2005, the accused were charged with the offence of terrorism, and in the alternative with being in unlawful possession of firearms, before the General Court Martial, in UPDF/GEN/075 of 2005. In this communication, the Complainants sought for the recognition of the violations of human rights committed by the Respondent State; an order of compensation for the Victims; and an order upon the Respondent State to in future desist from violating the provisions of the Charter and respecting the individual rights of its citizens as protected under the Charter.

Table 1: The Rulings on Ugandan cases on Trial of Civilians in Military Courts

THE CASE	PARTIES	COURT
Constitutional Petition No. 45 of 2016	Micheal Kabaziguruka v Attorney General	In the Constitutional Court of Uganda
RULING		
<p>a. That the General Court Martial established under the section 197 of the UPDF Act is a competent quasi-judicial military court established under the UPDF Act whose jurisdiction is limited to the enforcement of military discipline.</p> <p>b. The General Court Martial is only limited to trying service offences specified under the UPDF Act, only in respect of persons subject to military law.</p> <p>c. Military law under the UPDF Act must be construed to exclude laws that are the preserve of civil courts of judicature established under chapter 8 of the Constitution.</p> <p>d. Persons subject to military law under the UPDF Act must exclude all those persons who have not voluntarily placed themselves under the jurisdiction of that Act as provided under section 119(1)(g).</p> <p>e. Section 119(1)(h) and 179(1)(a) of the UPDF Act are unconstitutional as they are inconsistent with Article 28(1) of the Constitution.</p> <p>f. Section 119(1) (g) is not unconstitutional. Provided the person not otherwise subject to military law is as the principle offender on the same charge sheet.</p> <p>g. The petitioner is not a person subject to military law and his trial under the UPDF Act, 2006 is unconstitutional. The charges brought against him under the UPDF Act are unconstitutional, null and void and of no effect.</p>		

THE CASE	PARTIES	COURT
Constitutional Petition No. 44 Of 2015	Rtd. Capt. Amon Byarugaba, Hasibu Kasiita, Mathias Rugira, and 167 Others v Attorney General	In the Constitutional Court of Uganda
RULING		
<p>a. The exercise of jurisdiction by Military Courts to try civilians for criminal offences is unconstitutional. Under the 1995 Constitution, trying civilians is the role of civilian Courts of Judicature, which do not include Military Courts. Military Courts are intended as disciplinary Courts for the UPDF to serve the public interest of maintaining discipline among the members of the UPDF.</p> <p>b. The UPDF Act, 2005, to the extent that it may be understood as conferring jurisdiction on Military Courts to try civilians is unconstitutional and therefore null and void to that extent.</p>		

Although the rulings in Micheal Kabaziguruka v Attorney General; and Rtd. Capt. Amon Byarugaba, Hasibu Kasiita, Mathias Rugira, and 167 Others v Attorney General have considered the trial of civilians in the military courts unconstitutional, in August 2021, following an appeal by the Attorney General, the Supreme Court allowed the application for stay of execution until the appeal is disposed of thereby ordering the execution of the orders by the constitutional courts to be halted.

Oddly, although the supreme court considered the Attorney General would suffer irreparable damage if the stay of execution was not granted, it did not seem obvious to the supreme court that the person tried in the military court will suffer even greater harm. Moreover, the supreme court has not disposed of the appeal till now giving the executive a blank cheque to try civilians in the military courts.

REGIONAL AND INTERNATIONAL STANDARDS AND GUIDELINES ON TRIAL OF CIVILIANS IN MILITARY COURTS.

There is a strong guiding light within the regional and international law on the question of civilian trials in military courts. According to Article 7 (1) of the African Charter on Human and Peoples Rights, every individual has the right to be heard. The right of the individual to be heard encompasses the individual's fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force: the right of to be presumed innocent until proven guilty by a competent court or tribunal; the right to defence, including the right to be defended by counsel of his choice; and the right to be tried within a reasonable time by an impartial court or tribunal.

Further, this is buttressed by Principles 1 and 2 of the Principles and Guidelines on the right to a fair trial and legal assistance in Africa, all of which underscore a fair and public hearing and the observance of a fair hearing.

In a landmark case, Patrick Okiring and Agupio Samson (represented by Human Rights Network and ISIS-WICCE) v. the Republic of Uganda, the African Commission on Human and Peoples Rights ruled that the trial of civilians in a military court was a violation of due process and amounted to a breach of Article 7(1)(b), (c), (d) and Article 26 of the Charter. The ACHPR subsequently directed the Government of Uganda to ensure that the provisions of the Uganda Peoples' Defence Forces Act No. 7 of 2005, through which the civilians were charged in the General Court Martial, are revised to prohibit the trial of civilians before military courts; adequate compensation is given to the Victims for the violations of Article 6, Article 7(1)(b), (c), (d) and

Article 26 of the Charter; and accordingly, inform the Commission within one hundred and eighty (180) days of being notified of the decision, the measures it has taken to implement the judgment under Rule 112(2) of the Rules of Procedure of the Commission. The decision by ACHPR has underscored the importance of aligning domestic laws and practices with regional and international human rights instruments, including those aimed at protecting individuals' right to a fair trial and ensuring effective remedies for human rights violations. The scrutiny placed on Uganda's practice through this case could catalyze legislative or policy changes to enhance legal protections for civilians involved in criminal proceedings and encourage the state to review its laws and procedures concerning military courts and civilian trials. Strangely, the Republic of Uganda is yet to comply with the decision and directives of the Commission.

Whereas International Covenant on Civil and Political Rights (ICCPR) does not expressly address the issue of the trial of civilians in military courts, Article 14 of the Covenant provides that All persons shall be equal before the courts and tribunals and argues that in the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The trial of civilians in military tribunals has been addressed explicitly in Principle 5 of the UN Basic Principles on the Independence of the Judiciary which provides that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly appointed procedures of the legal process shall not be created to displace the jurisdiction of ordinary courts or judicial tribunals. The trials of civilians in military courts have been faulted for failing to meet the competence, independence, and impartiality criteria. This indeed has been the case for the different cases on trial of civilians in military courts brought before the Constitutional Court of the Republic of Uganda.

The trial of civilians in military courts is a matter that has seized the attention of not only affected victims but also legal practitioners and pundits. Legal experts developed the Yale Principles on Trial of Civilians in Military Tribunals in response to the increasing use of military tribunals to try civilians, especially in the context of armed conflict and national security. The principles aim to guide the fair trial rights of civilians subject to trial by military tribunals, ensuring that such trials adhere to international human rights standards and the rule of law. Principle 6 of the Yale Draft, asserts that military courts have no jurisdiction over civilians save for exceptional circumstances and compelling reasons based on a clear and foreseeable legal basis justifying such a trial. Such a trial is only permissible if explicitly permitted or required by international humanitarian law; in respect of a civilian serving or accompanying a force deployed outside the territory of a sending state and there is no appropriate civilian court available, and where the civilian is no longer subject to military is to be tried in respect of an offence committed at the time they were a serving officer. Arguably, none of the cases tried in the military courts in Uganda are grounded on 'exceptional circumstances and compelling reasons based on a clear and foreseeable legal basis' justifying such a trial.

THE IMPLICATIONS AND RECOMMENDATIONS OF THE RULINGS ON TRIAL ON CIVILIANS IN THE MILITARY COURTS IN UGANDA

The convergence of domestic and regional court rulings on civilian trials within Uganda's military courts has far-reaching implications. These rulings collectively influence the rights, justice, and legal standards affecting civilians, fostering a complex and critical discourse in our pursuit of justice. Below are the profound consequences emerging from this unique legal intersection.

1. Breach of the constitutional provisions; Articles 23(1) and (6), 28(1), 128(1)(2) and (3), and 210 of the Constitution of the Republic of Uganda, 1995.
2. Breach of Article 7 of the African charter on Human and Peoples' Rights which espouses the right of an individual's cause to be heard including the right to an appeal to competent national organs against acts of violating his Fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in Force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.
3. Violation of the right to due process thereby leading to denial or miscarriage of justice..
4. Undermining the rule of law in Uganda.
5. Undermining the independence of judiciary enshrined under Article 128 of the Constitution of the Republic of Uganda, 1995.
6. Service offences under Section 2 and 179 of the UPDF Act, No. 7 of 2005 are no longer under the ambit of the General Court Martial which only leaves military discipline offences under Part VI of the Act.

7. Trial of civilians in the military court will adversely impact civil military relations by blurring the lines between civilian and military jurisdictions potentially leading to tensions and mistrust between the citizens and the state.
8. Breach of international standards on the trial of civilians may adversely affect the reputation of the government in the international arena regarding its commitment to human rights and rule of law.

In view of the above, the following recommendations are put forward for consideration regarding the thorny issue of trial of civilians in the military courts in Uganda :

1. That Uganda complies with the provisions set out in the African Charter on Human and Peoples Rights, 1981 particularly Articles 5, 6,7 and 26 of the African Charter.
2. Section 119 of the UPDF Act, No. 7 of 2005 through which civilians are charged in the General Court Martial should be reviewed to prohibit the trial of civilians before the military courts.
3. Training of military personnel and law enforcement officials on human rights principles, including the African Charter, the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial detention in Africa, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, among others.
4. Domesticating the UN Human Rights Committee General Comment No. 32, Article 14 on the right to equality before courts and tribunals and to a fair trial which is a key element of human rights protection and serves as a procedural means to safeguard rule of law.
5. The domestic and regional court rulings on the trial of civilians in the military courts should be widely spread and keep the courts in action on the earlier decisions.
6. Emphasis should be put on the role of judiciary in dispensing justice without any sort of bias.

CONCLUSION

In reviewing the cases contesting the trial of civilians in Uganda's military courts, a striking and consistent pattern emerges. The domestic rulings, as well as the decisions of the African Commission on Human and Peoples' Rights, underscore the inherent incongruity with Article 28(1) of the Constitution of the Republic of Uganda, and the blatant breach of Article 7 of the African Charter on Human and Peoples' Rights. It is abundantly clear that the trial of civilians within the military jurisdiction stands in stark contradiction to fundamental legal and human rights principles. In light of this undeniable conflict, there is an urgent and compelling imperative for the Government of Uganda to take immediate action. This necessitates a critical review and amendment of the UPDF Act No. 7 of 2005, a pivotal step towards ending the continued practice of trying civilians in military courts. By embracing this essential reform, Uganda can not only rectify a longstanding injustice but also affirm its commitment to upholding the rule of law and respecting human rights.

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