



Joint submission to the 26th Session of the UPR Working Group

Civil and Political Rights Situation in the Republic of Uganda 2011-2016

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I. INTRODUCTION

1. The Foundation for Human Rights Initiative (FHRI) is an independent, non-governmental, non-partisan and not-for-profit human rights advocacy organisation in Uganda, established in 1991. FHRI seeks to remove impediments to democratic development and meaningful enjoyment of the fundamental freedoms enshrined in the 1995 Uganda Constitution and in regional and international human rights instruments through enhancement of knowledge, respect and observance of human rights and the promotion of exchange of information and best practices through training, education, research, legislative advocacy and strategic partnerships in Uganda.
2. The African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) is a unique non-government organisation that was established in June 1993 in Kampala, Uganda by African professionals drawn from different walks of life under the guidance of the International Rehabilitation Council for Torture Victims (IRCT). ACTV is dedicated to the promotion and protection of human rights with emphasis on advocacy against torture as well as treatment and rehabilitation of survivors of torture by state and non-state actors. ACTV is accredited by the Uganda Ministry of Health to operate a medical referral centre that provides physical and psycho-social care in support of the rehabilitation process of torture survivors in Uganda and the neighbouring countries.
3. FHRI and ACTV co-chair the Civil and Political Rights Cluster, a loose coalition of non-governmental organisations and networks that work on civil and political rights issues in Uganda. The cluster consists of 38 organisations/networks across the country who meet periodically to monitor progress towards the realization of civil and political rights in the country.
4. To validate the report, two validation meetings were held. The first validation meeting was held with wider civil society and the second validation meeting was held with government officials, including the Ministry of Justice and Constitutional Affairs, Uganda People's Defence Forces (UPDF) and the Uganda Police Force (UPF).

II. LEGAL AND INSTITUTIONAL FRAMEWORK

5. Following the Universal Periodic Review (UPR) of Uganda's human rights situation by the United Nations Human Rights Council in 2011 (hereafter referred to as the 2011 Review), Uganda voluntarily pledged to develop a Human Rights National Action Plan (NAP). The NAP is meant to provide a framework for coordinating the implementation of human rights commitments in the country. The process of developing the NAP is ongoing and has enlisted the participation of various stakeholders including government officials, civil society actors, the academia, Members of Parliament, and the general public as a whole. However, delay in releasing the NAP has negatively impacted government's commitment to effectively coordinate implementation of recommendations following the 2011 Review.
6. It does not help matters that several regressive laws that pose a threat to the enjoyment of human rights in Uganda have been enacted since 2011, including the *Public Order*

Management Act, 2013, the Anti-Pornography Act, 2014, the Anti-Terrorism (Amendment) Act, 2015, the Non-Governmental Organizations Act, 2015 and the annulled Anti-Homosexuality Act, 2014.

7. On a positive note, the *Prevention and Prohibition of Torture Act, 2012* was passed into law. It is a progressive piece of legislation which, among other remarkable features, broadens the definition of torture to cover acts committed both by private and non-state actors; it also operates to ensure individual criminal liability for perpetrators of torture.
8. In a bid to ensure better protection of human rights, the government rolled out a human rights training module that has been incorporated in the training curricula of both the UPDF and UPF. Human rights directorates within all security agencies have also been established to step up the realization of human rights within these agencies. This however has not translated into a change of attitude and/or practice as many human rights violations continue to occur at the hands of security officials.

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. Right to life

9. During the 2011 Review, the Government of Uganda accepted a recommendation to commute all death sentences to life imprisonment for inmates who spend more than three years on death row. In this context, the Judiciary has undertaken mitigation hearings, and as a result, the number of death row inmates has drastically reduced from 505 (470 men and 34 women) in 2011 to 211 (200 men and 11 women) in 2015. While this is commendable, Uganda still maintains the death penalty. However, the Foundation for Human Rights Initiative (FHRI) together with two Members of Parliament drafted a Private Member's Bill, titled the Law Revision Penalties in Criminal Matters Miscellaneous Amendment Bill, 2015. The Bill seeks to amend provisions of the *Penal Code Act, Cap.120* and the *Uganda People's Defence Forces Act, 2005* that still provide for the mandatory death penalty, reduce the number of offences punishable by death, define life imprisonment, introduce mitigation hearings for capital offenders and exempt vulnerable persons such as women and the elderly from the death sentence. In essence, the Bill gives effect to the commitment made by Government during the review in 2011 as earlier noted. The Bill was tabled in Parliament in December 2015.
10. Another issue impeding the full enjoyment of the right to life is the continued occurrence of extra-judicial killings. During the 2011 Review, the government accepted the recommendation to investigate and prosecute all persons found guilty of extra-judicial killings, however there has been an inadequate response and investigations into extra-judicial killings. For instance:
 - 10.1. During the Karamoja disarmament process (2001-2010), human rights violations by the Uganda People's Defence Force (UPDF) were reported. The government has allegedly instituted five investigations into the Karamoja disarmament exercise,

though to this date, findings of these investigations have never been made public nor has any UPDF officer been held accountable.

- 10.2. In September 2009, protests broke out in and around Kampala following a government decision to block the Kabaka of Buganda from visiting Kayunga. State security forces used live ammunition and fired tear gas to contain riotous crowds and quell the situation. Although there have been contradicting reports on the death toll, with Government noting 27 while Non-Governmental Organisations (NGOs) registered 40, no investigations into the killings have been conducted nor has any security official been held accountable.
- 10.3. Following the 'Walk to Work protests' in April 2011, nine people were reportedly killed and scores injured by police. During attempts to suppress the demonstrations, Police used tear gas, rubber bullets and live ammunition. To this date, no investigation and / or conclusive prosecution has been carried out.
11. Mob justice also remains an issue of concern. Mob justice incidents continue to be on the rise. A total of 266 cases of death by mob justice were reported and investigated in 2012, 426 incidents in 2013 and 453 in 2014.¹ This is mainly attributed to ignorance of the law and lethargic or unsatisfactory criminal justice processes. Uncoordinated sensitization efforts by police, the Directorate of Public Prosecution (DPP) and the Judiciary have not registered a significant footprint by way of impact in terms of inspiring public confidence in the criminal justice system.²

12. We therefore urge government to:

- 12.1. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with the aim of abolishing the death penalty;
- 12.2. Pass the Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill, 2013 that seeks to remove the mandatory death sentence from Uganda's laws, reduce the number of offences that attract the death penalty, define life imprisonment and exempt vulnerable persons from the death sentence;
- 12.3. Investigate and prosecute all persons found guilty of extra-judicial killings; and
- 12.4. Strengthen sensitization efforts of the public on their rights, duties and responsibilities in so far as the criminal justice system is concerned.

B. Freedom from torture, cruel, inhuman or degrading treatment or punishment

13. During the 2011 Review, the Government of Uganda accepted the recommendation to adopt national legislation to guarantee freedom from torture, cruel, inhuman or degrading treatment or punishment. For this purpose, the *Prevention and Prohibition of Torture Act, 2012* was enacted. Among others, it expands the definition of torture to acts

¹ Uganda Police Force, Annual Crime and Traffic/Road Safety Report, 2014, p. 8.

² O. Bitaliwo, Conceptualization of Community Policing in the Uganda Police Force, *International Journal of Peace and Conflict Studies*, Vol 2(3) 2014, p. 62.

committed both by private and non-state actors and ensures individual criminal liability for perpetrators of torture.

14. Despite this commendable effort, incidences of torture continue to occur. Notwithstanding a reduction of torture complaints noted by the UHRC between 2011 and 2013 (with 428 cases registered in 2011, 303 in 2012 and 273 in 2013), there was an increase in the number of torture complaints registered in 2014 amounting to 357 cases mainly by police officers. Timely compensation of torture victims also remains a challenge. For instance, in 2014 the UHRC awarded UGX 1,495,102,759³ to torture victims out of which only UGX 999,323,093⁴ has been paid so far, leaving an outstanding amount of UGX 495,779,666.⁵
15. The African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV) also continues to register torture victims. In 2014, ACTV registered 1,154 victims and in 2015 ACTV reached out to 1,168 new survivors of torture (816 men and 352 women).
16. To date, no alleged perpetrator of torture has been prosecuted under the Prevention and Prohibition of Torture Act. The government has, therefore, not fulfilled the commitment to undertake impartial and independent investigations into allegations of torture and ill treatment with a view to bringing perpetrators to justice. Regulations to facilitate the implementation of the Act have been drafted, but are yet to be issued.
17. NGOs, unlike the UHRC, continue to need permission before accessing detention facilities. This has hampered NGOs' ability to effectively monitor human rights violations considering that the permission is at times not granted in a timely manner or at all. The commitment made during the 2011 Review to establish a national prevention mechanism against torture, allowing NGOs to have access to detention facilities has, therefore, not been honoured.
18. **We therefore urge the Government of Uganda to:**
 - 18.1. Adopt the Prevention and Prohibition of Torture Act Regulations to fully operationalize the *Prevention and Prohibition of Torture Act, 2012*;
 - 18.2. Train police investigation officers and state attorneys on the provisions of the *Prevention and Prohibition of Torture Act, 2012* to ensure effective application of the Act.
 - 18.3. Set up a compensation policy to ensure that relevant government institutions act as focal points for paying out compensation awards to torture victims; and
 - 18.4. Ratify the Optional Protocol to the UN *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984* to allow for free and independent inspections in places of detention.

³ Equivalent to ±453,302 US Dollars.

⁴ Equivalent to ±302,986 US Dollars.

⁵ Equivalent to ±141,651 US Dollars.

C. Right to freedom of expression, association and assembly

19. During the 2011 Review, Uganda accepted to end intimidation, threats and physical attacks on journalists and promote open reporting and commentary on issues of public concern. However, attacks against journalists, mainly by police officers, continue to occur. For instance, 85 incidents were noted in 2012, while 2013 and 2014 registered 124 incidents.⁶ Worse still, the 2016 pre- and post-election period has registered a high number of attacks against journalists.

19.1. For instance, on 21st July 2015, three journalists in Jinja town were suspended after hosting Forum for Democratic Change (FDC) presidential candidate Dr. Kizza Besigye for a radio interview.⁷ Furthermore, in early August 2015, Eshato Publications Limited, a local newspaper was forced to rescind a congratulatory message to Amama Mbabazi, one of the presidential candidates for the 2016 elections, with two of their staff being arrested as a result.⁸

20. According to Human Rights Network for Journalists-Uganda, over 70 cases, including physical assault, destruction of equipment, intimidation, arrest, detention and closure of a media houses, have been registered between October 2015 and February 2016.

20.1. On 15th October 2015, the police attacked journalists who were covering the arrest of Ssemujju Nganda, Kyadondo East Member of Parliament. For instance, Alfred Ochwo, a journalist with the Observer newspaper was arrested while taking photographs of the arrest of Ssemujju at his residential home in Busiika, a Kampala suburb. Police also assaulted journalists who were streaming live telecasts of the detention of Ssemujju at Kira Road Police Station, Kampala.⁹

20.2. On the same day, Ivan Vincent Mukisa, a journalist with Radio One, was shot and injured while reporting a scuffle between the police and supporters of Dr. Kizza Besigye in Jinja.¹⁰

20.3. On 16th November 2015, Isaac Kugonza, a journalist with Delta TV, was shot in the head. He was covering the standoff between police and Kampala Lord Mayor,

⁶ Human Rights Network for Journalists-Uganda, Press Freedom Index Report 2014: the Rise of Tribulations of Frontline Journalism- 'Who will protect the media?' p. 23-25.

⁷ HRNJ "Blatant abuse of media freedoms by state agencies threatens the watchdog role of the media ahead of the 2016 general elections in Uganda. Perpetrators must be brought to book", 26 July 2015, <https://hrnjuganda.wordpress.com/2015/07/26/blatant-abuse-of-media-freedoms-by-state-agencies-threatens-the-watchdog-role-of-the-media-ahead-of-the-2016-general-elections-in-uganda-perpetrators-must-be-brought-to-book-said-hrnj-ugand/>

⁸ HRNJ, "State House Ordered Journalist to Delete Congratulatory Message From Magazine and Apologize" 5 August 2015, <https://hrnjuganda.wordpress.com/2015/08/05/hrnj-uganda-alert-state-house-orders-journalist-to-delete-mbabazis-congratulatory-message-from-magazine-and-apologize/>

⁹ The Observer, 'Observer journalist arrested for covering Ssemuju's arrest', by Alfred Ochwo, 16th October 2015, p. 3.

¹⁰ Human Rights Network for Journalists, 'Police shoots, detains journalist and assaults others covering opposition politicians', accessed on 28th October 2015, available at <https://hrnjuganda.org/2015/10/15/police-shoots-detains-journalist-and-assaults-others-covering-opposition-politicians/>.

Erias Lukwago, as he attempted to proceed to the Electoral Commission offices to seek clarification on the mayoral nominations.¹¹

20.4. On 21st January 2016, the Uganda Communication Commission (UCC), the state-broadcasting regulator, under unclear circumstances, switched off Endigyito FM in Western Uganda. The radio had just hosted former Prime Minister and presidential candidate John Patrick Amama Mbabazi.¹²

20.5. On 1st February 2016, Margaret Kayondo, a journalist with Radio Simba, a local radio station in Kampala, was assaulted by four UPDF officers while covering a scuffle that had ensued between National Resistance Movement (NRM) supporters and police officers in Sembabule district. Her audio recorder and smart phone, both of which she was using to record the incident, were confiscated and all contents therein deleted.¹³

20.6. On 20th February 2016, plain-clothed security operatives doused Isaac Kasamani, a correspondent for AFP, with inordinate amounts of pepper spray while he was covering the arrest of former presidential candidate Dr. Kizza Besigye at his home in Kasangati.¹⁴

21. In addition to facing challenges with disseminating information, the media is also restricted with respect to accessing information. The Access to Information Regulations, 2011, contain provisions which make accessing information in possession of the state unnecessarily costly and cumbersome, undermining the practical significance of Article 41 of the *Constitution* and the *Access to Information Act, 2005*.¹⁵ The recent clampdown of social media during the presidential and parliamentary elections on 18th February further undermined freedom of expression and the right of Ugandans to seek and receive information.

22. Increased infringements on the right to freedom of peaceful assembly have also been noted. During the 2011 Review, the government accepted recommendations to enact public order legislation that fully guarantees the right to freedom of assembly and is in line with international human rights standards. In 2013, Government passed the *Public Order Management Act, 2013*. The main problem of the *Public Order Management Act* lies in selective implementation by the police. Gatherings and or demonstrations organized

¹¹ *ibid.*

¹² *ibid.*

¹³ Worrying trends of journalists targeted for covering political campaigns in Uganda, Human Rights Network for Journalists-Uganda, 26th February 2016.

¹⁴ *ibid.*

¹⁵ The Regulations require applicants to pay a number of fees that go beyond the specific charge for copying and preparing information. Most notably, applicants must pay a non-refundable access fee of UGX 20,000. This is a substantial investment for most citizens, particularly since the applicant risks losing the entire sum if the request is not granted. Furthermore, Schedule 2 of the Regulations provides 15 different forms to be used in the process of requesting information. This threatens to make requesting information unnecessarily cumbersome. Also, the forms require applicants to fill in their names and address, eliminating the option of submitting anonymous requests.

by opposition activists have been the main target of this selective implementation. For instance:

22.1. Police arrested and detained Dr. Besigye and Kampala Lord Mayor Erias Lukwago. Mr. Lukwago was arrested by police on 14th May 2015 in Nsambya, a Kampala suburb and driven to an unknown destination while Dr. Besigye was towed in his car to Jinja Road Police Station where he was detained without charge. This was after police, led by Kampala South Regional Police Commander, Sirajje Bakaleke, blocked a group of opposition politicians from accessing Nsambya Sharing Hall to hold discussions on electoral reforms. According to Mr. Bakaleke, the meeting was illegal because police was not notified about it. "When we asked them for the letter (approving the meeting) they did not have it. Both Besigye and Lukwago will be released and taken to their homes," Mr. Bakaleke added. Dr. Besigye and Mr. Lukwago are some of the opposition figures who had turned up at Nsambya Sharing Hall to hold further deliberations on electoral reforms.¹⁶

22.2. On Thursday 9th July 2015, Dr Kizza Besigye was arrested while he was leaving his house to attend his party's official nomination at Kasangati. He was detained at Naggalama Police Station. Dr Besigye was arrested despite having notified police and police having acknowledged receipt of the notice. Police did not comment on the arrest.¹⁷

22.3. On 10th October 2015, a convoy of FDC party officials heading to Rukungiri district to open offices and mobilise party rallies was stopped along the Masaka-Mbarara road. According to the Inspector General of Police, Gen. Kale Kayihura, the FDC did not notify the police on time. He explained that the police did not have any problems with the FDC opening party offices, however, the exercise also entailed mobilisation of rallies, and therefore it could not be allowed.¹⁸

22.4. Only days later, on 15th October 2015 police arrested key FDC officials who had planned a mobilisation tour in Kireka, Mukono, Jinja and Iganga, and other suburbs in Kampala. At around 4:00 am, police deployed near Dr. Besigye's home in Kasangati, effectively putting him under preventive arrest. Around 10.30 am, Dr Besigye drove out of his home and was blocked after 200 metres by police officers. Dr Besigye was told by the commanding officer to return to his house or face arrest. He, however, refused to be imprisoned in his home. Consequently, Dr Besigye objected and was apprehended by police and detained at Naggalama

¹⁶ Daily Monitor "Besigye and Lukwago detained by Police" 14th May 2015 by Stephen Kafeero accessed from <http://www.monitor.co.ug/News/National/Besigye--Lukwago-detained-by-police/-/688334/2716082/-/unmwssz/-/index.html>

¹⁷ New Vision, 'Opposition Leader Kizza Besigye Arrested', by Charles Etukuti, 9th July 2015, retrieved on 18th August 2015 from: <http://www.newvision.co.ug/news/670762-opposition-leader-kizza-besigye-arrested.html>.

¹⁸ The New Vision, 'Kayihura faults officers over activists' arrest', by Simon Masaba, 16th October 2015, p.4.

Police Station. Three people who had come to visit him in the morning were also arrested and taken to an undisclosed location by police.¹⁹

23. While the government during the 2011 Review accepted a recommendation to provide an enabling environment where human rights defenders can perform their legitimate duties free from any harassment and intimidation in line with international standards, the passing of the *Non-Governmental Organizations Act, 2015* on 26th November 2015 poses a threat to the enjoyment of the right to freedom of association as it overregulates the NGO sector. S. 44 of the Act prohibits NGOs from carrying out activities in any part of the country unless it has approval from the District Non-Governmental Monitoring Committee (DNMC) and Local Government and has signed a memorandum of understanding (MoU) to that effect, nor extend its operations to new areas unless it has received a recommendation from the NGO Bureau through the DNMC of that area. Furthermore, this section of the Act dictates NGOs to have MoUs with all its donors, sponsors, affiliates and partners, and even the requirements of such MoUs.
24. Use of excessive force by security agencies still remains a challenge. Whereas the Government of Uganda during the 2011 Review committed to take immediate measures to investigate excessive use of force, and to prosecute and punish the perpetrators, this has not deterred security agents from using excessive force. For instance:
- 24.1. On 14th September 2015, Amama Mbabazi's head of security, Christopher Aine, was arrested outside the Amama Mbabazi campaign headquarters in Nakasero, Kampala. He stated that he was blindfolded, driven to an unidentified detention facility, and tortured over the course of three days before being released on 17th September 2015.²⁰
- 24.2. On 9 September 2015, the Uganda Police Force fired rubber bullets indiscriminately towards a large crowd of people that had gathered for a consultative meeting with Amama Mbabazi, a presidential candidate for the 2016 polls in Soroti, Eastern Uganda. The field police officers also lobbed tear gas canisters into the peaceful crowd.²¹
- 24.3. On 15th October 2015, an FDC activist, Fatuma Zainab who was en route to Rukungiri district-with other officials and members of the party-was violently arrested and humiliated by three female police officers. Her clothes were ripped off in the ensuing melee. This followed Dr. Kizza Besigye's nomination as the FDC presidential flag bearer. The circumstances of her arrest are a typical example of disproportionate use of force by the police.²²

¹⁹ Daily Monitor, 'Besigye detained, FDC rally blocked', by Stephen Kafeero, 16th October, p.4.

²⁰ Amnesty International, "We come in and Disperse Them" violations of the right to freedom of assembly by the Ugandan Police", p. 19. <https://www.amnesty.org/en/documents/afr59/2983/2015/en/>

²¹ Ibid p. 17-18.

²² Ibid p. 20.

25. We therefore urge the Government of Uganda to:

- 25.1. Prosecute police officers and other public officials who harass, intimidate and assault journalists;
- 25.2. Introduce a certificate of human rights compliance for all bills tabled in Parliament to ensure that they are human rights complaint.
- 25.3. Refrain from selective implementation of the *Public Order Management Act, 2013* and instead regulate and facilitate the enjoyment of the right to freedom of assembly;
- 25.4. Amend the restrictive provisions of the *Non-Governmental Organisations Act, 2015* to create an enabling legal framework for NGOs;
- 25.5. Extend an invitation to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; and
- 25.6. Ensure that those who commit human rights violations are held accountable and that victims are provided with adequate and timely redress.

D. Right to liberty and security of the person

26. Article 23(4)(b) of the *Constitution* provides that a person arrested or detained should, if not released earlier, be brought to court as soon as possible and not later than 48 hours from the time of his or her arrest, yet observance of the same remains wanting. The UHRC 17th Annual Report noted that the highest number of complaints registered in 2014 related to detention beyond 48 hours, which constituted 381 complaints (34.69% of the total number of complaints). This is a slight increase from 2013 when there was a total of 295 complaints in relation to detention beyond 48 hours.²³

27. In addition, the law is silent on the duration a suspect is allowed to spend on remand once he or she is committed for trial.²⁴ In 2014/2015, the average time spent on remand for capital offenders was ten and a half months and two months for non-capital offenders.²⁵ As part of FHRI's routine monitoring of detention facilities, on 15th August 2015 FHRI found 5 inmates in Kitalya Prison on committal for 5-6 years. Similarly, during FHRI's visit to Arua Prison on 1st May 2015, FHRI found 5 inmates on committal for 3-4 years. On 13th October 2015, in Muinaina Prison, FHRI found one inmate on committal who had been incarcerated for 15 years without having been tried. Considering that a suspect on committal has not been proven guilty, and is therefore presumed innocent, prolonged detention is a major violation of their right to liberty.

28. During the 2011 Review, Uganda committed to improve conditions of prisons and adopt relevant measures to tackle problems such as overcrowding, unsatisfactory state of prisons and shortcomings in the quality of health care. Despite measures adopted by the Uganda Prisons Service to improve prison conditions nationwide, overcrowding continues to undermine these efforts. As per the prison statistics, the total approved

²³ Uganda Human Rights Commission, 17th Annual Report, p.19.

²⁴ Article 23 of the *Constitution* provides that suspects of minor offences shall not spend more than 60 days (2 months) and capital offenders shall not spend more than 180 days (6 months) in pre-trial detention.

²⁵ Justice Law and Order Sector Performance Report 2014/2015, p.23.

prison capacity as at July 2015 was 16,517, against a prison population of 45,314 inmates – an overcapacity of 274%.²⁶

29. Continued detention of inmates with mental illness is another challenge to the realization of the right to liberty. As of December 2014, there were 38 inmates with mental illness pending 'Minister's Orders' in prison. Though the Judiciary on 10th July 2015 stripped the Minister of Justice and Constitutional Affairs of powers to release mentally ill prisoners²⁷, there is need to amend the *Trial on Indictments Act, Cap. 23* which confers these powers to the Minister so as to align it with the judgment.
30. The plight of juveniles in conflict with the law is another issue of concern. Due to shortage of remand homes in the country,²⁸ juveniles continue to be detained with adults. Worse still, there is only one rehabilitation center in the country, Kampiringisa rehabilitation center, where convicted juveniles are detained. Conditions both in the remand homes and at Kampiringisa rehabilitation center are inadequate and as such, fail to meet the primary purpose of juvenile detention – to rehabilitate children. As such, the government has to this extent failed to fulfill its 2011 commitment to review its juvenile justice system and provide better protection for children.
31. Following the general elections held on 18th February 2016, Dr. Kizza Besigye, the FDC presidential flag bearer, continues to be placed under house arrest, as at 23rd March 2016. The police has vowed to continue detaining Dr. Kizza Besigye because he has allegedly threatened to mobilize protests against the results of the presidential election as declared by the Electoral Commission.²⁹ This continued detention is unlawful considering that he is not being detained in a gazetted detention facility³⁰ and that the detention period has exceeded the constitutionally mandated 48 hours.³¹
32. Following the Review, Uganda committed to study the possibility to ratify the International Convention for the Protection of All Persons from Enforced Disappearances (CED). The CED has not been ratified yet. Ratification of the CED is especially important as disappearances do continue to occur.
 - 32.1. Amama Mbabazi's head of security, Christopher Aine disappeared mid-December 2015 after police threatened to arrest him together with other Amama Mbabazi supporters for allegedly assaulting National Resistance Movement (NRM) party supporters in Ntungamo district. His whereabouts are unknown to date.

33. We therefore urge the Government of Uganda to:

- 33.1. Promote strict adherence to the 48-hour rule as provided by the Constitution;

²⁶ As per Uganda Prisons Service statistics, July 2015.

²⁷ *Bushoborozi Eric v. Uganda*, High Court of Uganda at Fort portal, 10th July 2015.

²⁸ Uganda currently has 6 remand homes and 247 prisons.

²⁹ Daily Monitor, 'Besigye arrested again, police vow to keep siege', by Eriasa Mukiibi Sserunjogi and Joseph Kato, 1st March 2016.

³⁰ Article 23(2) of the *Constitution of the Republic of Uganda, 1995*.

³¹ Article 23(4) (b) *ibid*.

- 33.2. Review Article 23 of the *Constitution* to stipulate a definite period of detention after committal;
- 33.3. Allocate more budgetary resources to the Uganda Prisons Service to improve existing infrastructure and the quality of detention facilities and services and construct more prisons across the country;
- 33.4. Amend S. 45 of the *Trial on Indictment Act, Cap. 23* to confer the powers of the Minister in respect of issuing orders for inmates with mental illness to the Judiciary in line with the High Court ruling in *Bushoborozi Eric v. Uganda*;
- 33.5. Adopt policies and standards with an express purpose of promoting child correction and rehabilitation rather than mere incarceration; and
- 33.6. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances.

E. Right to a fair trial

- 34. The right to a fair trial remains an issue of concern due to lengthy trial proceedings as a result of limited funding and a shortage of judicial officers. This has resulted into a high case backlog. In 2014/15 the case backlog brought forward from 2013/14 was 171,198 cases. In 2014/15, 156,963 new cases were registered. 45.80% of the total cases were disposed of, leaving the Judiciary with a pending case backlog of 177,876 cases.³²
- 35. One of the recommendations accepted by Uganda during the 2011 Review was to enhance the separation of powers between the Executive branch and the Judiciary. To realize this, there is need to guarantee the financial autonomy of the Judiciary. Currently, all administrative expenses of the Judiciary are charged on the Consolidated Fund.³³ It is paramount that the Judiciary becomes functionally independent.
- 36. Though Uganda is a signatory to major international and regional conventions that provide for the right to legal aid, only capital offenders are entitled to legal aid under the state brief system. Non-capital offenders have to hire a private lawyer. However, in a bid to ensure access to affordable legal aid for all, a draft National Legal Aid Policy was developed. The policy recognises the need to guarantee legal advice and assistance to all persons from the time of arrest.

37. We therefore urge the Government of Uganda to:

- 37.1. Table and pass the Administration of Justice Bill, to guarantee the financial autonomy of the Judiciary; and
- 37.2. Exeditiously approve the National Legal Aid Policy.

F. Electoral process

- 38. During the Review in 2011, government committed to make the Electoral Commission (EC) appointment process more consultative. Appointment of the chairperson and members of the EC by the President has been sighted as a major indication of likely interference with the independence of the EC by the Executive. However, refusal by

³² Justice Law and Order Sector Performance Report, 2014/2015, A pro-People Justice System: As a result, Profiling Vulnerability, September 2015, p.31.

³³ Article 128 (5) of the *Constitution of the Republic of Uganda, 1995*.

Government to table electoral reforms and Parliament's omission to debate most of the critical electoral reforms including the appointment process of the EC, shows a lack of political will on the side of government to fulfill this commitment.

39. Recent utterances by the EC Chairperson, Dr. Badru Kiggundu point to the partiality of the EC. Dr. Badru Kiggundu was quoted to have said that he regretted having nominated Dr. Kizza Besigye, the FDC presidential flag bearer as a presidential candidate citing his statements of defiance.³⁴ Such utterances do not instill confidence in the public that the EC is impartial and independent.

40. Another concern is the low levels of voter education. According to Citizens Election Observers Network-Uganda (CEON-U) provision of voter education remained low in the lead up to the 2016 elections. Barely three months to the elections in February 2016, 39% of CEON-U observers did not report any voter education activities in their constituencies.

41. Intimidation and harassment of opposition activists and incidences of violence, mainly due to delayed delivery of electoral materials on polling day, marred the 2016 general elections. On the issue of intimidation and harassment of opposition activists, the European Union Election Observer Mission noted that, this was rampant mainly by police and law enforcement bodies.³⁵ Arrests of supporters and voters were also reported from more than 20 districts.³⁶ Incidences of violence during and after elections continue to dominate the media. For instance:

41.1. Gunfire rocked Kibuye One Zone near Molly and Paul polling station in Makindye, Kampala, on election day as angry voters wanted to lynch an unidentified man who they said had pre-ticked ballot papers allegedly in favour of incumbent President Museveni. Voters found the behavior of the man suspicious because he refused to line up. On searching him, they found pre-ticked ballot papers and a pistol on him.³⁷

41.2. In Bulambuli District, a fight ensued between supporters of two candidates for the Woman MP seat, Ms. Sarah Wekomba and Ms Irene Muloni, Minister of Energy and Mineral Development. Police noted that Ms Wekomba's supporters armed with tools such as stones and clubs, beat anyone they suspected to be supporting Ms Muloni. Ms Wekomba claimed they had detected a ploy for the vote to be rigged in favour of her opponent. The police, overwhelmed by the situation, called on the Uganda Peoples' Defence Forces to assist in restoring peace and security.³⁸

³⁴ New Vision, 'Kiggundu, Besigye clash', by Mubarak Mugabo, 16th February 2016.

³⁵ European Union Election Observation Mission, Uganda 2016 Presidential, Parliamentary and Local Council Elections, Preliminary Statement, 20th February 2016.

³⁶ *ibid.*

³⁷ Saturday Monitor, '*Gunfire rocks Makindye over pre-ticked ballots*', by Anthony Wesaka and Lilian Namagembe, 20th February 2016, p. 31.

³⁸ Saturday Monitor, '*40 held in Bulambuli over poll violence*', by David Mafabi and Rebecca Kabuya, 20th February 2016, p. 35.

- 41.3. On 19th February 2016, Steven Sekayu, a 17-year-old boy, was shot and injured as police battled supporters of FDC. Steven Sekayu sustained injuries on the legs and buttocks where he was hit by four bullets as police fired live ammunition to quell a demonstration by FDC supporters in Bugiri to protest the declaration of Ms. Agnes Taaka Wejuli, as winner of the race for the District Woman MP seat.³⁹
42. Violent confrontations between supporters of the three main presidential contenders, Yoweri Museveni, Dr. Kizza Besigye and Amama Mbabazi were noted throughout the election period. For instance, on 13th December 2015 when Amama Mbabazi's supporters clashed with those of Yoweri Museveni accusing them of attempting to interfere with the formers campaigns in Ntungamo district.
43. **We therefore urge the Government of Uganda to:**
- 43.1. Enhance the provision of voter education to improve on election related knowledge and change public's attitude towards electoral offences;
 - 43.2. Table and pass electoral reforms especially relating to the appointment process of the EC; and
 - 43.3. Ensure impartiality and human rights compliance by the security forces in the election process.

³⁹ Daily Monitor, *'Family demands police pays bills of shot student'*, by Asuman Musobya, 25th February 2016, p. 14.