



UGANDA

# Righting Military Injustice

Addressing Uganda's Unlawful Prosecutions of Civilians  
in Military Courts

HUMAN  
RIGHTS  
WATCH



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Civilians in Military Courts

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## Addressing Uganda’s Unlawful Prosecutions of Civilians in Military Courts

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## Summary

Since 2002, military courts in Uganda have prosecuted well over 1000 civilians for offenses under the criminal code, such as murder and armed robbery. In 2006, Uganda's Constitutional Court ruled that military prosecutions of civilians were unlawful. This ruling, upheld on appeal by the Supreme Court in January 2009, was consistent with international law, which unambiguously holds that military tribunals are not competent courts to try civilians accused of peacetime criminal offenses.

Despite this, Uganda's military courts continue to prosecute civilians.

Human Rights Watch is gravely concerned that not only have hundreds of civilians been convicted by courts that did not meet international standards of competence, independence, and impartiality, but that military courts have routinely violated fundamental fair trial rights, such as the right to present a defense, the right against self-incrimination, and the prohibition on the use of evidence procured by torture. Those convicted include civilians handed down death sentences, magnifying the harm to their basic rights from military court trials.

At the time of publication there were indications that Ugandan military authorities were contemplating amending the practice of prosecuting civilians in military courts. This is a positive step. However, no clear decision had yet been taken to halt military prosecutions or stop such transfers to the military justice system. We remain concerned that at least 341 cases involving civilians await trial or judgment before military courts without a clear plan to secure their rights to a fair trial in civilian courts. Scores of civilians likely remain trapped in military detention awaiting plea-taking and trial.

Not only should the Ugandan government stop these trials, it has a legal obligation to provide an equitable remedy for these civilians – both those convicted by military courts and those awaiting trial. For this to occur in an efficient and effective manner, the military should urgently identify all cases within its jurisdiction involving civilians. Military and civilian prosecutors should work together to assess each case and provide a remedy for each defendant.

Most Ugandan civilians brought before a military court do so via one of two routes. The first is arrest during disarmament operations that the Ugandan military has conducted in the Karamoja region of northeastern Uganda. The second is arrest by an ad-hoc law

enforcement unit, established by presidential directive in 2002, first known as “Operation Wembley,” then as the Violent Crime Crack Unit. It is currently named the Rapid Response Unit (RRU).

Ugandan President Yoweri Museveni has defended using military courts for civilians on the ground that civilian courts were failing to secure convictions of those accused of violent crimes. But to the extent this was true it reflected inadequate or mismanaged police resources, resulting in poor quality police investigations. Problems with the civilian criminal justice system can never be a justification for violating the fundamental rights of the accused.

Interrogations by Wembley operatives and its successors have routinely involved incommunicado detention and torture and other ill-treatment. Securing convictions before military courts with evidence obtained through abusive interrogations proved easier. By doing so, the government violated the prohibition on torture, and fundamental fair trial guarantees, such as the right against self-incrimination and adequate time and facilities to prepare a defense.

In 2005, the Ugandan Law Society, a professional association of lawyers, challenged the exercise of military jurisdiction over civilians for common criminal offenses. In 2006, the Constitutional Court ruled that such prosecutions of civilians were unconstitutional. The court’s finding was in keeping with Uganda’s obligations under international law, which prohibits the peacetime prosecution of civilians before military courts. This is a legal obligation, as the African Commission on Human and Peoples’ Rights reminded Uganda in 2006 soon after the constitutional ruling, and again in 2009 when it failed to halt the impugned practice.

Human Rights Watch calls for an immediate end to the transfer of civilian defendants to military court jurisdiction. Uganda should promptly establish a review process to identify all cases involving the wrongful detention and prosecution of civilians before military courts, and ensure each defendant can access an effective remedy. Such a remedy should include releasing those detained without lawful basis, and provide for the possibility of retrial respecting international fair trial standards and time served. Ugandan civilian prosecutors and others in the justice sector should work with military lawyers to efficiently address the hundreds of civilian defendants affected. Key donors to the justice and military sectors, including the United States, the United Kingdom, Ireland and the Netherlands, should press for an efficient, effective and comprehensive resolution of this decade of entrenched rights abuses.

# Recommendations

## To the President

- Officially and publicly renounce the prosecution of civilians before military courts.
- Promptly issue an executive order to police to immediately stop transferring civilians to military custody, whether for detention or to be charged before a military court.
- Immediately issue an executive order placing a moratorium on all death sentences on civilian defendants imposed by military courts.

## To the Police, particularly Rapid Response Unit

- Immediately stop the transfer of civilian detainees to military custody.
- Immediately release or charge with a cognizable criminal offense all those currently held without charge in the Rapid Response Unit's Kireka headquarters or any other location that police use for detention beyond the constitutional 48 hours. Promptly bring these suspects before civilian courts to be charged.

## To the Uganda Peoples' Defence Forces (UPDF)

- Immediately release all civilians currently held in military custody without charge (in Makindye military barracks, or any other barracks or facilities under military control). Those facing criminal prosecution, and who may be detained on lawful grounds, may be subject to arrest by police.

## To UPDF senior leadership, the UPDF Chief of Legal Services and UPDF Director of Prosecutions

- Instruct military prosecutors working in divisional, general, and appellate level military courts to immediately identify all ongoing cases before them in which civilians are defendants.
- Identify all cases in which military courts have tried civilians since 2002, which are now entitled to be reviewed and their convictions set aside.
- Immediately instruct military prosecutors to identify all cases in which military courts have sentenced civilians to death and suspend all such sentences, pending the competent judicial authority setting them aside as unconstitutional.
- Order military prosecutors to release civilians detained without charge; withdraw any charges and release civilians in pre-trial detention or transfer investigation

files to the Directorate of Public Prosecution (DPP) to be charged, if appropriate, before civilian courts.

- Ensure existing prosecutions of civilians by military courts are suspended and convictions rendered void with a view to releasing the defendants or transferring investigation files to the DPP for prosecution before regular courts.
- Ensure UPDF Legal Services provides information to all involved in courts martial (Court Registrar, Judge Advocates, defense counsel, military prosecutors) on the Constitutional Court ruling prohibiting prosecution of civilians before military courts, and directs judge advocates to raise it as a jurisdictional issue in the event civilians appear before military courts.

### **To the Director of Public Prosecutions**

- Cooperate with the UPDF Director of Prosecutions to transfer investigation files of civilians suspected of having committed criminal offenses to determine whether a prosecution before civilian courts in each case should be brought.
- Make available adequate personnel and resources to assess the cases of civilians convicted or pending trial before military courts.
- Cooperate with the UPDF Chief of Legal Services to ensure that any measures that need to be initiated before the civilian courts to secure a remedy – release or retrial – for all civilians prosecuted before military courts are efficiently implemented.
- Only retry cases against civilians in which the rights of the defendants can be ensured and all time served is taken into account.

### **To the Ministries of Justice and Defence**

- Work together to establish a process to systematically review all cases in which civilians have been convicted before military courts.
- Ensure the review process includes a mechanism to ensure that convictions of all civilians tried before military courts be set aside, and the defendants immediately released or transferred for prompt retrial before competent civilian courts.

### **To the Uganda Human Rights Commission**

- Publicly denounce the practice of prosecuting civilians before military courts and raise this as a priority with police and military leadership.
- During routine monitoring visits of military barracks, press for the release of any civilians found in military detention and explain to military commanders the lack of legal basis for these detentions.



- Actively follow up with all relevant government bodies until all necessary measures are taken, in accordance with this report's recommendations.

### **To the Justice, Law and Order Sector (JLOS), including Development Partners such as Ireland and the Netherlands**

- Press the Ministry of Justice and the Directorate of Public Prosecutions to urgently address the problem of civilians awaiting trial or judgment before military courts by coordinating with the Ministry of Defence, specifically the UPDF Office of Legal Counsel, the UPDF Directorate of Prosecutions, and the Special Investigations Branch of the Chieftaincy of Military Intelligence (CMI).
- Support the establishment of an ad-hoc unit, comprised of senior officials of the Directorate of Public Prosecutions, Police's Criminal Investigations Directorate, the Directorate of Military Prosecutions, and Special Investigations Branch of CMI, to assess cases of civilians tried or awaiting trial before military courts and identify individuals for release or retrial before civilian courts.
- Support the Judiciary, the Directorate of Public Prosecutions, and Police to add personnel to address specifically the issue of civilians being tried or already convicted before military courts in a timely, efficient, and equitable manner. Provide assistance to help ensure that current court backlogs do not overly delay these cases.
- Support measures to ensure that all civilians detained under military jurisdiction have effective access to legal representation necessary to secure their release or retrial.

### **To Donors supporting Uganda's Military, specifically the United States and the United Kingdom**

- Press the Ministry of Defence and the UPDF Directorate of Prosecutions to urgently address the problem of civilians awaiting trial or verdict before military courts by coordinating with the Ministry of Justice, specifically Directorate of Public Prosecutions and Police's Criminal Investigations Directorate.
- Support the establishment of an ad-hoc unit comprised of senior officials of the Directorate of Public Prosecutions, Police's Criminal Investigations Directorate, the Directorate of Military Prosecutions, and Special Investigations Branch of CMI, to assess cases of civilians tried or awaiting trial before military courts; identify individuals for release or retrial before civilian courts.

## **Methodology**

Human Rights Watch has documented abuses in Uganda associated with the prosecution of civilians before military courts for several years, both in the context of disarmament operations in Uganda's Karamoja region, and arrests made by Rapid Response Unit and its predecessor units. During that time we interviewed over 100 civilians who faced trial or were convicted by military courts about their experiences.

This report is based on this previous work, and on research conducted between June 2010 and July 2011, when two researchers and a consultant observed 34 days of proceedings before various military courts, specifically the General Court Martial, the First Division Court martial and the Fourth Division Court martial.

We also interviewed the Director of Public Prosecutions, the UPDF Deputy Chief of Legal Services, and 10 other UPDF lawyers working as defense counsel, prosecutors, or judge advocates. Human Rights Watch also interviewed six civilian criminal defense lawyers who represented clients before military courts. In some instances, we were able to review military court files of cases of civilians. We also interviewed three international donors engaged in support to the justice sector and several members of civil society.

# I. Overview of Military Court Structure in Uganda

Uganda's military justice system is governed by the Uganda Peoples' Defence Forces Act 2005.<sup>1</sup> This provides for establishing a Unit Disciplinary Committee (UDC) for each army unit. UDCs enjoy jurisdiction to try all offenses covered by the act, excluding capital offenses.<sup>2</sup> Superior to UDCs are Divisional Courts Martial (DCM), which have jurisdiction to try offenses that carry the death penalty,<sup>3</sup> and a General Court Martial (GCM), which enjoys full original and appellate jurisdiction.<sup>4</sup>

Since 2002, civilians have been prosecuted before both DCMs and the GCM.

The Court Martial Appeals Court (CMAC) hears and determines appeals from the GCM.<sup>5</sup> The High Command of the Uganda Peoples' Defence Forces (UPDF) appoints members of court martial for one-year terms, and acts as the convening authority.<sup>6</sup> Although a number of CMAC members are trained lawyers (including the chairman, who should be qualified to sit as a member of the High Court) no members of the lower military courts, including the chairmen, are lawyers. Instead, a judge advocate who has legal training advises each DCM and the GCM on the law during proceedings and deliberations.

Each military court has a military defense counsel who is responsible for acting on behalf of all defendants who appear before that court martial, unless a defendant is able to pay

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<sup>1</sup> Uganda Peoples' Defence Forces Act (UPDFA) 2005, adopted September 2, 2005. This replaced the Uganda People's Defence Forces Act 1992. Appeals from the CMAC may be made to the civilian Courts of Appeal and the Supreme Court.

<sup>2</sup> UPDFA 2005, art. 195. If the army unit is engaged in an operation and trial before a UDC is not practical, an ad-hoc field court martial can be convened as needed. UPDFA 2005, art. 200. The use of the field court martial was heavily criticized in 2002 after two soldiers were executed without regard for the right of appeal. Since then, though still permitted in law, the field court martial is rarely used. In the current operations outside Uganda, UDCs are used in most cases, such as Somalia. The Fourth Division Court Martial, usually based in Gulu, northern Uganda, intends to travel to Sudan and Democratic Republic of Congo to try criminal cases involving soldiers currently in operations against the rebel Lord's Resistance Army. Human Rights Watch interview with spokesperson for the Fourth Military Division, July 12, 2011.

<sup>3</sup> UPDFA 2005, art. 194. There are five military divisions in Uganda but some have two sitting divisional courts martial. For example, there is a divisional court martial sitting in Kakiri and Bombo, both within the First Military Division.

<sup>4</sup> UPDFA 2005, art. 197.

<sup>5</sup> Ibid., art. 199.

<sup>6</sup> Ibid., art. 196.

for the services of a private lawyer. In general, and as far as practicable, the applicable rules of procedure and evidence should be the same in military courts as before regular courts.<sup>7</sup>

Section 119(h) of the UPDF Act provides that persons found in the unlawful possession of arms, ammunition, or equipment “ordinarily being the monopoly of the Defence Forces” may be subject to military law. Military prosecutors and spokespeople consistently offer this provision as the legal basis for prosecuting civilians charged with an offense involving a firearm.

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<sup>7</sup> UPDFA 2005, art. 209. The governing statute is the Trial on Indictments Act, 1971.

## II. Prosecution of Civilians before Military Courts

### Violent Crime Operations

In June 2002, Ugandan President Yoweri Museveni created Operation Wembley (or “Wembley”) via presidential directive as an autonomous, ad-hoc law enforcement unit to combat armed crime, mostly in the capital, Kampala.<sup>8</sup> Wembley was staffed by people from various units of the state security forces and initially led by an active member of the military and deputy director of the Internal Security Organization.<sup>9</sup> President Museveni said that Wembley was established to counteract the alleged inefficacy of the civilian judicial system in prosecuting and punishing crimes. As a result, those arrested by Wembley were ultimately handed to the military justice system to be tried before courts martial. In 2002, the government-owned *New Vision* newspaper quoted President Museveni as saying:

The robbers, the police, and the judiciary were related just like the palate and the tongue. The police would make the statements poorly and the thirsty magistrates would release the robbers to continue terrorizing people.<sup>10</sup>

The legal basis for Wembley was not clear, and the unit had no clear legal authority to carry out arrests and detentions.<sup>11</sup> It took most suspects that it detained to a house on Clement

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<sup>8</sup> Operation Wembley was formed at a meeting of security chiefs on June 25, 2002, which President Yoweri Museveni chaired. Grace Matsiko, “Bageya ‘is Voluntary ISO Cadre,’” *New Vision*, July 23, 2002. For more on the history of this ad-hoc unit, see Human Rights Watch, *Violence Instead of Vigilance: Torture and Illegal Detention by Uganda’s Rapid Response Unit*, March 23, 2011, <http://www.hrw.org/en/reports/2011/03/23/violence-instead-vigilance>.

<sup>9</sup> These included the military’s intelligence branch known as the Chieftaincy of Military Intelligence (CMI), the Criminal Investigation Department (CID) of police, the External Security Organisation (ESO), the Internal Security Organisation (ISO), as well as people who had worked informally as informants for military intelligence and the president’s office. Human Rights Watch, *State of Pain: Torture in Uganda*, vol. 16, no. 4(A), March 2004, <http://www.hrw.org/node/12160>; Moses Mugalu, “Ex-Wembley Convicts Behind City Crime,” *New Vision*, May 17, 2008; Human Rights Watch interview with current RRU employee, November 12, 2010.

<sup>10</sup> Allan Turyaguma, “Museveni Defends Ops Wembley,” *New Vision*, August 26, 2002.

<sup>11</sup> The Ugandan Constitution states that intelligence organizations must be established by an act of parliament, which Operation Wembley was not. In 2004, opposition parliamentarian Erias Lukwago alleged the formation of numerous security agencies without any act of parliament had violated the constitution. Erias Lukwago, “Uganda Public vs. Yoweri Museveni,” *Monitor*, January 3, 2004 (“President Museveni and his NRM [National Resistance Movement] government have established a plethora of intelligence and other militia groups without any supportive Parliamentary legislation to wit; CMI, PPU, PGB, KAP, PIN, VCCU, Wembley etc. This contravenes

Hill Road in Kampala, which the minister of internal affairs had never designated a legal place of detention, as required by law. Wembley engaged in a range of illegal practices, such as detention in unauthorized locations euphemistically known as “safehouses”; detention without charge; torture of suspects; denial of access to family, lawyers, or doctors; denial of bail; and trial of civilians by military courts martial.<sup>12</sup>

Questions about the lawfulness of trying civilians before a military court were compounded by allegations that torture had been used to extract much of the evidence used to prosecute civilians whom Wembley had arrested.

In late 2002, Operation Wembley’s name changed to the Violent Crime Crack Unit (VCCU) and was moved officially under police control.<sup>13</sup> In July 2007 it became known as Rapid Response Unit (RRU).<sup>14</sup>

## Karamoja Disarmament Operations

In May 2006, President Museveni directed the Ugandan military to begin so-called “cordon and search” disarmament operations in the Karamoja region of northeastern Uganda. The remote area is home to several traditionally agropastoralist groups, known collectively as the Karamojong. Restrictions on access to grazing lands across district and international borders have made survival in such harsh environmental conditions difficult.<sup>15</sup> Successive governments have also marginalized the area, leaving it with the lowest development and humanitarian indicators in Uganda, weak governmental institutions, and little support for alternative livelihoods.<sup>16</sup> Within these wider challenges of development, Karamoja has

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art. 218 of the constitution, which provides that: ‘Parliament may by law establish intelligence services and may prescribe their composition, functions and procedures.’”).

<sup>12</sup> Human Rights Watch, *State of Pain*.

<sup>13</sup> The official end date of Wembley is not known. News reports indicate that it ended sometime in August 2002, but the Certificates of Appreciation handed out by the President’s Office to Wembley operatives indicate that the operations ended in January 2003.

<sup>14</sup> Simon Kasyate, “Kayihura Undergoes Massive Overhaul,” *Monitor*, July 1, 2007.

<sup>15</sup> See Human Rights Watch, *Get the Gun!: Human Rights Violations by Uganda’s National Army in Law Enforcement Operations in Karamoja Region*, vol. 19, no. 13(A), September, 2007, <http://www.hrw.org/en/reports/2007/09/10/get-gun>, pp. 9-17; see also, Sandra Gray, “A memory of loss: Ecological politics, local history, and the evolution of Karimojong violence,” *Human Organization*, Winter 2000, pp. 401-18.

<sup>16</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA), “Uganda 2007 Consolidated Appeals Process,” November 30, 2006, [http://ochadms.unog.ch/quickplace/cap/main.nsf/h\\_Index/CAP\\_2007\\_Uganda/\\$FILE/CAP\\_2007\\_Uganda\\_VOL1\\_SCREEN.pdf?OpenElement](http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/CAP_2007_Uganda/$FILE/CAP_2007_Uganda_VOL1_SCREEN.pdf?OpenElement) (accessed July 20, 2011), p. 12.

grappled with significant law and order problems due to cattle raiding, banditry, and road ambushes, which the pervasive use of illegal weapons has exacerbated.

Karamojong arrested during the disarmament operations often ended up facing trial before the military courts.<sup>17</sup> In 2007, the spokesperson for the UPDF Third Division, which operates in Karamoja, told Human Rights Watch that while Ugandan soldiers sometimes hand over “warriors”—a term commonly used to refer to armed members of Karamojong communities—for prosecution before civilian courts, there was a preference for military courts. He said:

The military courts are faster. People themselves ask us to use military courts. They have lost faith in the civilian courts. We don’t have time to wait for civilian courts.<sup>18</sup>

President Museveni continued to publicly and repeatedly support using military courts to prosecute civilians. In his 2007 State of the Nation address, the president asserted that the Third Division Court Martial had tried and imprisoned 101 “hard-core warriors.”<sup>19</sup>

In 2005 he told media that military prosecutions of civilians were needed because:

[t]he killers were being arrested, taken to civilian courts and released back to the streets to commit more crimes. The court martial ended that nonsense....The General Court Martial is good because it reduces our problems by hastening trials of criminals.... It deals mainly with soldiers and other suspects who are found with illegal weapons, or who abet or aid crime with weapons, terrorists, rebels, Karimojong cattle rustlers and other such criminals.<sup>20</sup>

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<sup>17</sup> For more on abuses during UPDF disarmament operations in Karamoja, see generally Human Rights Watch, *Get the Gun!*.

<sup>18</sup> Human Rights Watch telephone interviews with Lt. Henry Obbo, March 12-13, 2007.

<sup>19</sup> H.E. Yoweri Kaguta Museveni, President of the Republic of Uganda, State of the Nation Address 2007, June 13, 2007, <http://www.statehouse.go.ug/news.detail.php?newsId=1243&category=Major%20Speeches>, (accessed July 20, 2011).

<sup>20</sup> Alfred Wasike, “Museveni Defends Court Martial,” *New Vision*, November 30, 2005.

## Constitutional Petition No. 18 of 2005

In January 2006, Uganda's Constitutional Court ruled on a petition brought by the Ugandan Law Society holding that military courts do not have jurisdiction over civilians.<sup>21</sup> In a split 3 to 2 decision, the court majority held that sections of "the Uganda Peoples' Defence Forces Act No.7/05 which subjects civilians not employed by or voluntarily or in any other way officially connected with the Uganda Peoples' Defence Forces to military law and discipline, is inconsistent with articles 126(1) ["Judicial power is derived from the people"] and 210 ["Parliament shall enact laws regulating the Uganda Peoples' Defence Forces"] of the Constitution."<sup>22</sup> The court ruled, "Therefore, civilians who do not fall under the categories stated in the [UPDF] Act are not liable to be tried by military courts because Parliament did not intend them to [be] so tried."<sup>23</sup> In its summary, the court specifically stated that the trial of civilians accused of terrorism and unlawful possession of a firearm before military courts is unconstitutional.<sup>24</sup>

In January 2009, the Supreme Court dismissed an appeal by the Attorney General and upheld the Constitutional Court's ruling on this issue.<sup>25</sup> Military and police officials have disregarded the Constitutional Court's ruling since it was issued.

In January 2009, Human Rights Watch also presented the ruling to the then-chairman of the General Court Martial. He dismissed its importance, stating that he continued prosecuting civilians "every day."<sup>26</sup>

Asked why RRU police continue to hand suspects over to military courts despite the constitutional court ruling to the contrary, the inspector general of police told Human Rights Watch that police are obeying the law until parliament changes it.<sup>27</sup>

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<sup>21</sup> *Uganda Law Society v. Attorney General*, Constitutional Petition no. 18 of 2005, January 31, 2006.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> The judgment was appealed to the Supreme Court by the Attorney General in 2006 raising a number of issues beyond the issue of trial of civilians. The Supreme Court upheld the finding that the military courts were not competent to try civilians, see *Attorney General v. Uganda Law Society*, Constitutional Appeal No. 1 of 2006, January 20, 2009, [2009] UGSC 2.

<sup>26</sup> Human Rights Watch interview with Gen. Ivan Koreta, chairman of the general court martial, Kampala, January 2009.

<sup>27</sup> Human Rights Watch interview with Gen. Kale Kayihura, inspector general of police, January 24, 2011.



In December 2010, then-chairman of the General Court Martial, Brig. Bernard Rwehururu, affirmed in open court the failure to implement the ruling, stating:

We try people with army property.... Some people, the Uganda Law Society, wrote to say we should stay [stop] trying cases of civilians. I put it to the officials. We'll continue until otherwise. I'm waiting to be driven to court or I'll continue trying [civilians].<sup>28</sup>

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<sup>28</sup> Human Rights Watch trial observation, Makindye General Court Martial, December 16, 2010.

### III. Current Prosecutions of Civilians before Military Courts

After the Constitutional Court had pronounced the trial of civilians before military courts unconstitutional, the African Commission on Human and Peoples' Rights expressed its concern. In 2006, the commission called on Uganda to comply with article 7 of the African Charter on Human and Peoples' Rights on fair trials, and in particular with the prohibition on military tribunals trying civilians.<sup>29</sup> Three years later in 2009, the African Commission expressed alarm that its recommendation was not complied with, that military courts continued to try civilians, and called on Uganda to “[i]ntroduce legal measures that prohibit the trial of civilians by Military Courts.”<sup>30</sup>

Between June 2010 and July 2011, Human Rights Watch observed over 30 sessions of the GCM in Kampala.<sup>31</sup> Every session included hearings in which civilians appeared before the court for prosecution, with up to half of the cases involving at least one civilian defendant.<sup>32</sup>

In July 2011, when the registrar of the GCM was asked about the status of cases involving civilians, he confirmed that he was aware of the Constitutional Court decision from 2006, and indicated that discussions were underway about what steps should be taken for

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<sup>29</sup> See Concluding Observations and Recommendations on the 2nd Periodic Report of the Republic of Uganda Adopted at the 40th Ordinary Session of the African Commission on Human and Peoples' Rights, November 2006, Banjul, The Gambia, paras. 15 and 22; African (Banjul) Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58 (entered into force October 21, 1986) [hereinafter African Charter], art. 2. (ratified by Uganda on March 27, 1986).

<sup>30</sup> Concluding Observations and Recommendations on the 3rd Periodic Report of the Republic of Uganda Adopted at the 45th Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul, the Gambia, May 2009, paras. 27 and 37, and recommendation (f). This was after the Uganda Supreme Court had upheld the ruling on the competence of military courts, see *Attorney General v. Uganda Law Society*, Constitutional Appeal No. 1 of 2006, January 20, 2009, [2009] UGSC 2.

<sup>31</sup> Observers for Human Rights Watch were present at hearings before the General Court Martial in Kampala, on June 29, 2010; July 6, 7, 8, 2010; September 21, 22, 23, 28 and 29, 2010; October 26 – 28, 2010; November 2, 4, 24, 25, 2010; December 1, 2, 15, 16, 2010; January 18, 19, 2011; February 1-3, 2011; April 19, 20, 27, 28, 2011; May 10, 2011 and July 6, 2011.

<sup>32</sup> In hearings it was not always self-evident whether or not the defendant was a UPDF member. Most defendants, including many UPDF members, appeared in civilian clothing. Absent a clarification by the court as to the status of the defendant, the observer was not able to definitively determine in each case whether a particular accused individual was a civilian or a member of the military.

handling cases involving civilians whom the RRU had transferred to the military.<sup>33</sup> He suggested that the prosecution of several cases involving civilian defendants had been temporarily suspended, and stated that the court was awaiting a decision from the military's chief of legal services as to how to proceed.<sup>34</sup> In June 2011, the government-owned *New Vision* newspaper wrote that the military had suspended prosecution of civilians in the Third Military Division, but did not mention how pending or past cases would be addressed.<sup>35</sup>

According to the UPDF, there are currently 341 cases involving civilians pending before military courts. That number includes instances in which civilians have been read charges and courts have taken a plea, but not convictions.<sup>36</sup> Human Rights Watch could not determine how many civilians have been convicted by military courts since the practice began in 2002, or how many death sentences have been handed down.

## Violations in Prosecuting Civilians before Military Courts

The continuing prosecution of civilians before military courts requires urgent resolution, partly due to the numerous human rights violations that occur, as well as their gravity, which may endanger the right to life or result in unlawful detention for many years. They include violations of:

- **The right to be tried before a competent, impartial, and independent tribunal.**<sup>37</sup> The Constitutional Court's judgment means there is no lawful basis for military courts to exercise jurisdiction over civilians for offenses under the Penal Code, nor any lawful basis for transferring civilians to the military. In addition, the composition of military courts—with the High Command appointing active military

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<sup>33</sup> Interview with the registrar of the General Court Martial, Kampala, July 5, 2011.

<sup>34</sup> Ibid. In trial observations at the General Court Martial on July 5, Human Rights Watch observed the military prosecution attempting to withdraw charges against three civilians but the court ultimately ordered them to be detained for two weeks pending further deliberations.

<sup>35</sup> O. Wanyama, "Moroto court martial halts civilian trials," *The New Vision*, June 23, 2011.

<sup>36</sup> Human Rights Watch interview with UPDF Deputy Chief of Legal Services, July 19, 2011. Specifically, there are 224 cases pending before the General Court Martial, 14 before Bombo First Division, 20 before Kakiri First Division, 37 before Mbarara Second Division, 40 before Mbale Third Division, 2 before Gulu Fourth Division and 4 before Acholi-Pi Division in Lira. Note that these are numbers of cases, not numbers of individuals. Many cases have more than one civilian defendant.

<sup>37</sup> See African Charter on Human and Peoples' Rights, art. 7(1); International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force March. 23, 1976), art. 14(1). Uganda acceded to the ICCPR on June 21, 1995.

officers as judges and acting as the convening authority— deprives military courts of the necessary independence and impartiality that human rights law requires. Moreover, the lack of legal qualifications of all panel members of DCMs and the GCM seriously compromises their competence to try serious offenses that the Penal Code provides for, several of which potentially carry the death penalty.

- **The right to adequate time and facilities for the preparation of a defense and to be tried without undue delay.** Although persons tried before military courts are legally entitled to be represented by a UPDF lawyer, or at their own expense by another lawyer of their choosing, the capacity to exercise the right to a defense is minimal. The UPDF defense lawyer is an active member of the armed forces, who has responsibility for all the files before a specific military court. Before they appear in court to enter a plea, defendants are often not provided with details of the charges against them, or information about the evidence against them. Nor do they have the opportunity to discuss a defense with their lawyer.<sup>38</sup> Resources provided to mount a defense are minimal. Civilians before courts martial are routinely denied bail, and often spend months, even years, awaiting trial.<sup>39</sup>

#### **Remand for Nine Years**

In one of the most egregious instances of civilians prosecuted by military courts, four civilian defendants have spent nine years on remand awaiting trial. Operation Wembley initially arrested them in 2002 and charged them with murder and attempted murder before the General Court Martial in Kampala. Over the years, they have appeared before all of the chairmen of the court and had numerous different UPDF defense lawyers and prosecutors. They were ultimately convicted of the offenses in May 2011, and are currently awaiting sentencing.

- **The right not to have any statement made as the result of torture used as evidence.**<sup>40</sup> The use of ill-treatment and torture against detainees by Wembley and

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<sup>38</sup> For example, in one instance, a defendant said in open court that he had never met his UPDF defense lawyer and wanted to at least know his name. The judge advocate told the defendant not to question the state. Trial observation notes of General Court Martial, June 29, 2010.

<sup>39</sup> Human Rights Watch observed in one session that a defendant who had been awaiting trial and on remand for eight years was denied bail because his lawyer had not put the request in writing, Trial observation notes, July 6, 2011.

<sup>40</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 15. Uganda ratified the convention on November 3, 1986.

its successors, VCCU and the RRU, has been well documented.<sup>41</sup> One UPDF lawyer told Human Rights Watch that there was “general consensus” within his office that the civilians whom Wembley, VCCU, and RRU had arrested had been tortured during interrogations.<sup>42</sup> In spite of credible allegations of torture, the military courts routinely accept as evidence information obtained by such methods. Although courts martial can, and do, sometimes hold a ‘trial within a trial’ to assess allegations of torture, two key GCM officers told Human Rights Watch that they were not aware of any trial of a civilian that was ever halted due to a finding that the defendant had been subject to torture. Moreover, even where a military court considers that a statement may have resulted from torture or ill-treatment, it will still be admissible and used to convict if the information is deemed reliable.<sup>43</sup> Both officers acknowledged the RRU and its predecessor units have a reputation for using torture. But they noted that the length of time that defendants spend in detention before being brought to a court, and the absence of any medical examination while detained, effectively deprives defendants of the ability to establish before the military court that they have been tortured.<sup>44</sup>

- **The prohibition of the imposition of death penalty except by a competent court.** The Ugandan Penal Code provides for several offenses that carry the death penalty, including murder and aggravated robbery involving use of a lethal weapon. Many civilians who have been unlawfully prosecuted and convicted before a court martial potentially face the death penalty. While international law and the International Covenant on Civil and Political Rights (ICCPR) do not prohibit the death penalty, its application and implementation are subject to stringent conditions. Article 6 of the ICCPR limits its imposition to the most serious crimes, and requires that it only be carried out “pursuant to a final judgment rendered by a competent court.”<sup>45</sup> As no military court has the competency to try a civilian, implementation of the death penalty against a civilian in any case that a court martial tries would be a grave violation of the right to life as protected under international law.<sup>46</sup>

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<sup>41</sup> See Human Rights Watch, *Violence Instead of Vigilance*, March 2011.

<sup>42</sup> Human Rights Watch interview with UPDF lawyer, July 1, 2011.

<sup>43</sup> Human Rights Watch interviews with GCM personnel, July 1 and 5, 2011.

<sup>44</sup> Ibid.

<sup>45</sup> ICCPR, art. 6.

<sup>46</sup> Human Rights Watch opposes the death penalty in all circumstances as an inherently cruel and irreversible punishment.

### **Case Study: The Conviction of Judith Koryang**

Military courts have convicted and sentenced civilians to death, despite the 2006 Constitutional Court ruling.

For example, on September 8, 2010, the Third Division Court Martial (DCM) sentenced Judith Koryang, a 20-year-old civilian, to death for murdering her husband, a UPDF member. Koryang was charged with murder under section 188 of the Penal Code Act, and pled guilty when she appeared before the DCM.<sup>1</sup> Despite her plea, the prosecution called four witnesses. Koryang was represented by an assigned UPDF defense lawyer who did not contest the court martial's jurisdiction to try a civilian for an offense under the Penal Code, nor sought to call any defense witnesses.

In its judgment, the court stated that it believed the defendant's statements indicating that she had killed her husband after he had begun abusing her and telling her to leave his home when she tested positive for HIV. Still, when it handed down its verdict, the court stated that the sentence of death "should serve as an example to all women married to soldiers to desist from plotting to kill their husbands over petty issues."

Koryang's death sentence was subject to automatic appeal, but it is not known when that will be heard: under current practice, it would be before the General Court Martial. Despite some media coverage of her conviction and death sentence, no private lawyers or nongovernmental organizations have offered to represent her.

## IV. International Law on Civilians before Military Courts

Military courts should ideally serve as a disciplinary mechanism for military personnel, and their jurisdiction should be limited to offenses—provided for in law—committed by military personnel while they are subject to military law.

International legal standards deem the trial of civilians in military courts, in principle, to be incompatible with the right to a fair trial, and in particular the right to be tried before an independent and impartial tribunal. Trials before military courts are often incompatible with international standards due to the lack of independence of judges, who tend to be serving members of the military who remain in the military chain of command, and often offer reduced due process safeguards.

While international law does not prohibit limited use of military courts to try civilians in times of armed conflict, the United Nations Human Rights Committee, the expert body that monitors state compliance with the ICCPR, has held that “as certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations.”<sup>47</sup>

UN human rights bodies have on numerous occasions studied the challenges that military justice raises, including the problem of trial of civilians before military courts. The “Draft Principles Governing the Administration of Justice Through Military Tribunals,” an expert document submitted to the UN in 2006, provides that “military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts.”<sup>48</sup> This principle reflects the practice of UN treaty bodies such as the Human Rights Committee and the Committee Against Torture, which have repeatedly called on states to ensure that military court jurisdiction is restricted to offenses of a strictly military nature committed by

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<sup>47</sup> Human Rights Committee, General Comment 29, States of Emergency (art. 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16; See also, UN Commission on Human Rights, Draft Principles Governing the Administration of Justice Through Military Tribunals (“Decaux Principles”), U.N. Doc. E/CN.4/2006/58 at 4 (2006), January 13, 2006, no. 3 (in emergency situations any derogation from the ordinary administration of justice, “strictly required by the exigencies of the situation,” need to comply with the fundamental principles of fair trial).

<sup>48</sup> Decaux Principles, no. 5.

military personnel.<sup>49</sup> In May 2011, the Human Rights Committee in a case involving Cameroon, explicitly affirmed that military tribunals should not in principle have jurisdiction to try civilians.<sup>50</sup>

## African Regional Legal Standards

The prohibition against trying civilians before military courts is particularly strong in the regional African system.<sup>51</sup> The African Commission on Human and Peoples' Rights,

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<sup>49</sup> See, e.g., Human Rights Committee: call on Slovakia to amend its Criminal Code “so as to prohibit the trial of civilians by military tribunals in any circumstances,” Concluding Observations of the Human Rights Committee, Slovakia, U.N. Doc. CCPR/C/79/Add.79 (1997), para. 20; express its concern to Cameroon “about the jurisdiction of military courts over civilians and about the extension of that jurisdiction to offences which are not per se of a military nature, for example all offences involving fire-arms ... The State party should ensure that the jurisdiction of military tribunals be limited to military offences committed by military personnel,” Concluding Observations of the Human Rights Committee, Cameroon, U.N. Doc. CCPR/C/79/Add.116 (1999), para. 21; and, call to Equatorial Guinea at “the absence of safeguards to ensure that civilians are tried solely by civilian courts and not by military tribunals,” Concluding Observations of the Human Rights Committee, Equatorial Guinea, U.N. Doc. CCPR/CO/79/GNQ (2004), July 30, 2004, para. 7. The Human Rights Committee also welcomed reforms in Ecuador so “that the jurisdiction of the military tribunals has been limited to members of the armed forces in the exercise of their official functions; that these tribunals have no jurisdiction over civilians;” Concluding Observations of the Human Rights Committee, Ecuador, U.N. Doc. CCPR/C/79/Add.92 (1998), para. 7. See also, Human Rights Committee, Comments on El Salvador, U.N. Doc. CCPR/C/79/Add.34 (1994), para. 5; and Human Rights Committee, Comments on Guatemala, U.N. Doc. CCPR/C/79/Add.63 (1996), para. 11. The Committee Against Torture has likewise held in the relation to Peru that it was “concerned by the subjection of civilians to military jurisdiction” and recommended that “[t]he military courts should be regulated to prevent them from trying civilians and to restrict their jurisdiction to military offences, by introducing the appropriate legal and constitutional changes,” U.N. Doc. A/50/44, July 26, 1995, paras. 69 and 73; and in relation to Guatemala called on the state to amend “the legal provisions concerning the military jurisdiction, in order to limit the jurisdiction of military judges exclusively to military crimes,” U.N. Doc. A/51/44, July 7, 1996, para. 57(h). The UN Working Group on Arbitrary Detention has also held that military justice should observe four rules, the first of which is that it should be incompetent to try civilians. See U.N. Doc. E/CN.4/1999/63, December 18, 1998, para. 80.

<sup>50</sup> See Redress, “Akwanga v. Cameroon,” May 12, 2011, <http://www.redress.org/case-docket/akwanga-v-cameroon>, (accessed July 12, 2011), paras. 1-3. One committee member in a separate opinion went further and said unambiguously that the trying of civilians by military tribunals is incompatible with article 14 of the ICCPR.

<sup>51</sup> Other regional courts have also unambiguously stated that civilians should not be tried by military courts. The Inter-American Court on Human Rights has also been consistent in its rejection of the use of military courts to try civilians in several cases. In the case of *Loayza Tamayo v. Peru*, the court found that the composition of military tribunals, by military personnel appointed by the executive and subject to military discipline, did not meet the required standards of independence and impartiality. See Inter-American Court of Human Rights, *Loayza Tamayo v. Peru*, Judgment of September 17, 1997, Series C No. 33. Similarly when a retired member of the armed forces was tried before a military tribunal in *Cesti Hurtado v. Peru*, the Inter-American Court concluded that he should not be judged by the military courts and that his trial violated the right to be heard by a competent tribunal. See Inter-American Court of Human Rights, *Cesti Hurtado v. Peru*, Judgment of September



interpreting the African [Banjul] Charter on Human and Peoples' Rights ("the African Charter"), has prohibited the trial of civilians in military courts.<sup>52</sup> The African Charter, to which Uganda is a party, guarantees the right to equality before the law and equal protection of the law, fair trial, and judicial independence.<sup>53</sup> The African Charter does not admit any exceptions to the rule against the use of military courts to try civilians, such as emergency situations.

The African Charter guarantees the right to a fair trial (article 7) and the associated right to judicial independence (article 26). The fundamental right to procedural fairness is undermined in Uganda by the infrequency of military court sessions and the composition and lack of legal training of the panel members who act as judges in the military courts.

The African Commission previously established that the African Charter prohibits the trial of civilians by military courts. In *Suleiman v. Sudan*, the commission held that "[c]ivilians appearing before and being tried by a military court presided over by active military officers who are still under military regulations violates the fundamental principles of fair trial."<sup>54</sup> The commission referred to the Resolution on the Right to a Fair Trial and Legal Aid in Africa, which adopted the Dakar Declaration and Recommendations.<sup>55</sup> It had noted that

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29, 1999, Series C No. 56. In *Castillo Petruzzi et al. v. Peru*, in which several civilians had been tried and convicted by a Peruvian military court for treason, the court noted that "transferring jurisdiction from civilian courts to military courts, ... means that the competent, independent and impartial tribunal previously established by law is precluded from hearing these cases. ... Having no military functions or duties, civilians cannot engage in behaviors that violate military duties. When a military court takes jurisdiction over a matter that regular courts should hear, the individual's right to a hearing by a competent, independent and impartial tribunal previously established by law and, *a fortiori*, his right to due process are violated." See Inter-American Court of Human Rights, *Castrillo Petruzzi et al. v. Peru*, Judgment of May 30, 1999, Series C No. 52. In *Cantoral Benavides v. Peru*, the court reiterated that "military jurisdiction is established in several laws, in order to maintain order and discipline within the armed forces. Therefore, its application is reserved for military personnel who have committed crimes or misdemeanors in the performance of their duties and under certain circumstances." Inter-American Court of Human Rights, *Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69.

<sup>52</sup> *Law Office of Ghazi Suleiman v. Sudan*, Comm. Nos. 222/98 and 229/99, para. 64 (African Commission on Human and Peoples' Rights 2003); *Media Rights Agenda v. Nigeria*, Comm. No. 224/98, paras. 60-66 (African Commission on Human and Peoples' Rights 2000).

<sup>53</sup> African [Banjul] Charter on Human and Peoples' Rights ("African Charter"), June 27, 1981, 21 I.L.M. 58 (entered into force Oct. 21, 1986), arts. 2, 3, 7, and 26. Uganda ratified the African Charter on March 27, 1986.

<sup>54</sup> *Law Office of Ghazi Suleiman v. Sudan*, at para. 64.

<sup>55</sup> Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa (1999). The Dakar Declaration seeks to consolidate the standards on fair trial under the African Charter as well as take into consideration the relevant jurisprudence of the African Commission and other international human rights bodies. Among other topics, the declaration emphasizes the necessity of rule of law, fundamental rights and freedoms, and the

“[t]he purpose of Military Courts is to determining offences of a pure military nature committed by pure military personnel.”<sup>56</sup> The commission further stated that military courts should “in no case try civilians.”<sup>57</sup>

Likewise, in *Media Rights Agenda v. Nigeria*, the commission determined that the arraignment, trial, and conviction of a civilian by a Special Military Tribunal “presided over by serving military officers” violated the basic principles of fair hearing guaranteed by article 7 of the charter, as well as the duty to guarantee the independence of the courts under article 26.<sup>58</sup> Citing its Resolution on the Right to a Fair Trial and Legal Aid in Africa, the commission stated that military courts “should not, in any circumstances whatsoever, have jurisdiction over civilians. Similarly, Special Tribunals should not try offences that fall within the jurisdiction of regular courts.”<sup>59</sup>

The prohibition against the trial of civilians by military courts is also reflected in the commission’s Principles and Guidelines, which state that “[t]he only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.”<sup>60</sup> To underscore the exclusivity of military court jurisdiction over military personnel, the principles and guidelines further affirm that military courts should not have jurisdiction over civilians “in any circumstances.”<sup>61</sup>

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independence and impartiality of the judiciary. In November 1999 at the 26th Ordinary Session in Kigali, Rwanda, the African Commission adopted the Dakar Declaration without amendment.

<sup>56</sup> *Law Office of Ghazi Suleiman v. Sudan*, at para. 62 (quoting the Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa (1999)). African Commission on Human and Peoples’ Rights, Resolution on the Right to Fair Trial and Legal Assistance in Africa, ACHPR/Res.41 (XXVI) 99 (adopting the Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa).

<sup>57</sup> *Law Office of Ghazi Suleiman v. Sudan*, at para. 65.

<sup>58</sup> *Media Rights Agenda v. Nigeria*, at paras. 61 and 66.

<sup>59</sup> *Ibid.* para. 62.

<sup>60</sup> African Commission on Human & Peoples’ Rights, “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,” DOC/OS(XXX)247, 2001, section L(a); see also *id.* at section L(c) (“Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offenses which fall within the jurisdiction of regular courts.”).

<sup>61</sup> The African Union Principles and Guidelines on the Right to a fair trial and legal assistance in Africa, section L(c).

## V. Ending Prosecution of Civilians before Military Courts

Under the International Covenant on Civil and Political Rights (ICCPR), governments have an obligation to ensure access to a remedy for rights violations.<sup>62</sup> The ICCPR imposes on states the duty to ensure that any person shall have their right to an effective remedy “determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”<sup>63</sup>

As the Human Rights Committee has noted in its general comment on the obligations of states under the ICCPR, “[c]essation of an ongoing violation is an essential element of the right to an effective remedy.”<sup>64</sup> However, stopping the abuse is not sufficient: “Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy . . . is not discharged.”<sup>65</sup>

Any remedy should be effective, timely, and implemented in a manner that respects and complies with international law. To be effective a remedy must be accessible. The African Commission on Human and Peoples’ Rights has said that a remedy “must be available, effective and sufficient” to satisfy the African Charter.<sup>66</sup> A remedy is considered available if the victim “can pursue it without impediment.”<sup>67</sup> To be sufficient, it must be capable of rectifying the violation of rights that has occurred.

An available or accessible remedy in the context of the systematic prosecution and detention of civilians pursuant to an unlawful exercise of military jurisdiction should mean:

- The remedy is not dependent solely on the initiative of a victim taking legal action to secure an end to their unlawful detention or to void their unlawful conviction. Any barrier that effectively deprives a victim of a meaningful opportunity to avail

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<sup>62</sup> ICCPR, art. 2(3).

<sup>63</sup> Ibid.

<sup>64</sup> Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, May 26, 2004, para. 15.

<sup>65</sup> Ibid., para. 16.

<sup>66</sup> African Commission, Communication Nos. 147/95, 149/96, *Jawara v. The Gambia* (2000), para. 31.

<sup>67</sup> Ibid., para. 32.

themselves of the remedy, such as financial barriers or onerous bureaucratic or administrative requirements, would render the remedy ineffective.

- The remedy is capable of providing a finite resolution to the violation. In this context, this means that the remedy should lead to the release and/or retrial in compliance with international standards of those who have been detained and prosecuted in violation of their human rights, and contrary to the Ugandan Constitution.

## Application of the Right to a Remedy

International human rights bodies have repeatedly held that the appropriate remedy for an individual being unlawfully deprived of their liberty is their “immediate release.”<sup>68</sup>

Uganda is responsible for the unlawful prosecution and detention of all civilians currently in custody as the result of the exercise of the military jurisdiction, which includes those who have been convicted or are undergoing trials before military court martial. The Constitutional Court has clearly held the exercise of military jurisdiction over civilians to be unlawful. Therefore as a matter of domestic and international law all convictions and detentions based on the wrongful exercise of jurisdiction are a violation of the right to a fair trial and a violation of the prohibition on arbitrary detention. The state therefore has a duty to identify all cases of civilians prosecuted or facing prosecution before court martial since 2002 and to provide an appropriate remedy.

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<sup>68</sup> See, e.g., UN Human Rights Committee, *Weinberger Weisz v. Uruguay*, UN Doc CCPR/C/111D128/1978, para. 17 (Oct. 29, 1980) (“the State party is under an obligation to provide the victim with effective remedies, including his immediate release”); *Grioua v. Algeria*, UN Doc CCPR/C/901D11327/2004, para. 9 (Aug. 16, 2007). In *Constitutional Rights Project v. Nigeria*, the African Commission instructed that the remedy for seven civilians detained following conviction before a military tribunal was their release. The commission found that the seven men, who had been tried under the Nigerian Robbery and Firearms (Special Provision) Act before a military tribunal, had their rights to be tried before an independent and impartial court or tribunal violated and should be freed. Communication no. 60/91, *Constitutional Rights Project v. Nigeria (in respect of Wahab Akamu, G. Adegas and others)* (1995). In *Assanidze v. Georgia*, the European Court of Human Rights (ECHR), having found a violation of a fair trial and that the applicant was being detained in violation of human rights norms, ordered Georgia to put an end to the violation and that the government must secure the applicant’s release at the earliest possible date. *Assanidze v. Georgia*, ECHR, Judgment of April 8, 2004, para. 202. Likewise in *Loayaza Tamayo v. Peru*, the Inter-American Court of Human Rights (Inter-Am Ct. HR) ordered the release of the applicant who, among other things, had her right to a fair process violated and was unlawfully detained. *Loayaza Tamayo v. Peru* 9197, 3 Inter-Am Ct. HR (ser. C), para. 84.

The initial remedy to which all those detained pursuant to military courts martial are entitled is the dropping of pending charges or voiding of the conviction, and release from detention. This can be done by:

- Guaranteeing that all wrongfully detained civilians have systematic access to habeas corpus proceedings to contest the lawfulness of their detention; or
- Initiating proceedings in their cases to have their convictions set aside or voided for lack of jurisdiction.

For this to occur, all defendants will need access to legal representation or assistance and measures should be put in place to ensure that this can happen for all defendants in an efficient manner.

Releasing all those who are unlawfully detained does not preclude the retrial of those against whom there is credible evidence that they have committed a criminal offense under Ugandan law. The decision to proceed with any retrial would need to take into account time that an accused has already spent in detention, and whether a retrial would further violate the rights of an accused to a fair hearing.

One model that the Ugandan authorities should consider establishing is a review process conducted by a specialized unit that has the mandate to review cases identified as miscarriages of justice because they have been conducted in violation of constitutional standards.<sup>69</sup> At a minimum, the unit should be able to issue enforceable recommendations regarding release or retrial. The review process should encompass review of all cases before military courts in which the defendants are, or were, civilians; in each case a recommendation as to the appropriate remedy should be made. The unit could also be

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<sup>69</sup> For example, in the UK, an independent public body, the Criminal Cases Review Commission, established by statute (Criminal Appeal Act 1995) has the mandate to review potential cases of miscarriages of justice in the criminal courts and refer appropriate cases to the appeal courts (See Criminal Case Review Commission of England, Wales and Northern Ireland, <http://www.ccr.gov.uk/>). In Canada a review process is entrusted to the Criminal Conviction Review Group (CCRG), which is a unit within the Department of Justice. The CCRG does not resolve cases of miscarriage of justice, but assesses and investigates applications for review of criminal cases, and provides legal advice and recommendations to the Minister of Justice on what should happen in such cases (See Department of Justice, Canada, Criminal Conviction Review, <http://www.justice.gc.ca/eng/pi/ccrc/index.html>).

given the mandate to initiate the appropriate legal processes to secure the release and, where appropriate, the retrial of wrongfully detained individuals.

To secure a judicial remedy, each case should be referred to the appropriate judicial authority, either CMAC or the civilian Court of Appeal, with a view to obtaining the release of unlawfully detained individuals. The competent judicial authority should void all judgments as unconstitutional and make clear that the individual resumes the right of presumption of innocence. In cases where there is credible and admissible evidence to pursue a criminal prosecution in the civilian courts, an application can be made for a retrial of the case before the civilian courts. When deciding whether to grant a retrial, the court should consider if doing so would further violate the rights of a defendant who has already served time in detention.

In cases in which the person has not been convicted, all pending charges should be dropped, and the review unit should determine whether the evidence warrants a recommendation to pursue a criminal prosecution in the civilian courts. If so, civilian prosecutors can bring fresh charges before civilian courts.

As indicated above, since no military court had the competency to try a civilian, implementing the death penalty against a civilian in any case tried by court martial would be a grave violation of the right to life as protected under international law. Therefore any case in which military courts sentenced a civilian to death should be identified as a matter of urgency, and the case referred to the competent judicial authority to have the sentence immediately set aside.

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H U M A N  
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# Righting Military Injustice

## Addressing Uganda's Unlawful Prosecutions of Civilians in Military Courts

Since 2002, military courts in Uganda have prosecuted over 1,000 civilians on charges under the criminal code, such as murder and armed robbery. Some of those convicted were sentenced to death. In 2006, the Ugandan Constitutional Court, in a judgment consistent with international law, held that military courts are not competent to try civilians. Yet civilians continue to be prosecuted and, as of July 2011, at least 341 cases involving civilians were pending before the country's military courts.

*Righting Military Injustice: Addressing Uganda's Unlawful Prosecutions of Civilians in Military Courts* documents civilian prosecutions before military courts and the steps Uganda should take to address the rights violations of those detained, awaiting trial and convicted.

Human Rights Watch calls on Uganda to halt immediately the proceedings in all pending cases of civilians before military courts, and to fulfill its obligations to remedy the situation for civilians serving prison terms handed down by military courts. To carry out these steps efficiently and effectively, military and civilian prosecutors should collaborate to identify all military court cases involving civilians and provide each defendant a remedy, such as release with possible retrial before civilian courts. Donors involved in supporting the professionalization of the Uganda People's Defence Forces and strengthening Uganda's justice, law and order sector should help authorities take effective remedial action in line with international human rights law.