The Trial of Civilians Before Courts Martial in Uganda: Analysing the Jurisprudence of Ugandan Courts in the Light of the Drafting History of Articles 129(1)(d) and 210(a) of the Constitution

JD Mujuzi*

Online ISSN
1727-3781

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Author

Jamil Mujuzi

Affiliation

University of the Western Cape
South Africa

Email djmujuzi@gmail.com

Date Submission

18 August 2021

Date Revised

24 March 2022

Date Accepted

24 March 2022

Date published

5 April 2022

Editor Dr N Kilian

How to cite this article

Mujuzi JD "The Trial of Civilians Before Courts Martial in Uganda: Analysing the Jurisprudence of Ugandan Courts in the Light of the Drafting History of Articles 129(1)(d) and 120(a) of the Constitution" *PER / PELJ* 2022(25) - DOI http://dx.doi.org/10.17159/1727-3781/2022/v25i0a12023

DOI
http://dx.doi.org/10.17159/1727-3781/2022/v25i0a12023

Abstract

Unlike in the constitutions of other African countries such as Botswana and Lesotho, where the relationship between the High Court and courts martial is stipulated, the *Ugandan Constitution* 1995 (the *Constitution*) does not deal with this relationship. The *Constitution* is also silent on the question of whether courts martial have jurisdiction over civilians. The *Uganda Peoples' Defence Forces Act* (the *UPDF Act*) creates different types of courts martial with varying jurisdictions (section 197). The Act also provides (section 119) for the circumstance in which the General Court Martial has jurisdiction over civilians and appeals against the decisions of the General Court Martial lie to the Court Martial Appeal Court, which is the final appellate court except in cases where the offender is sentenced to death or life imprisonment. According to Regulation 20(2) of the UPDF (Court Martial Appeal Court) Regulations, in case an offender is sentenced to death or life imprisonment and his/her sentence is upheld by the Court Martial Appeal Court, he/she has a right to appeal to the Court of Appeal. Since 2003, Ugandan courts have grappled with the issues of whether courts martial are courts of judicature within the meaning of article 129(1) of the *Constitution* or organs of the UPDF and, therefore, part of the Executive under article 210 of the *Constitution* and whether courts martial have jurisdiction over civilians. Judges of the Supreme Court Constitutional Court and Court of Appeal have often disagreed on these issues. In this article the author relies on the drafting history of Articles 129 and 210 to argue that courts have erred by holding that courts martial are not courts of judicature under article 129(d) of the *Constitution*; and that courts martial are subordinate to the High Court. The author also relies on the drafting history of the *Constitution* and on international human rights law to argue that courts martial in Uganda should not have jurisdiction over civilians because they lack the necessary independence and impartiality and were established for the single purpose of enforcing military discipline.

Keywords

Courts martial; Uganda; civilians; jurisdiction; UPDF; independence and impartiality.

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1 Introduction

Unlike in the constitutions of other African countries such as Botswana[1] and Lesotho,[2] where the relationship between the High Court and courts martial is stipulated, the *Constitution* does not deal with this relationship. Article 129 of the *Constitution* deals with the judiciary and article 129(1) provides that:

> The judicial power of Uganda shall be exercised by the Courts of Judicature which shall consist of - (a) the Supreme Court of Uganda; (b) the Court of Appeal of Uganda; (c) the High Court of Uganda; and (d) such subordinate courts as Parliament may by law establish, including Qadhis' courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

It is evident that the court martial is not specifically mentioned under article 129(1). Article 120(3)(b) of the *Constitution* provides for some of the functions of the Director of Public Prosecutions, which include "to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial". This means, *inter alia*, that the court martial is meant to have its own prosecutors. Article 208 of the *Constitution* establishes the Uganda Peoples' Defence Forces. Article 210(a) of the *Constitution* requires Parliament to make laws regulating "the organs and structures of the Uganda Peoples' Defence Forces". In 2005, Parliament enacted the *UPDF Act* and it commenced in September of the same year.[3] Parliament derives its legislative powers from article 79(1) of the *Constitution* which states that "Parliament shall have power to make laws on any matter for the peace, order, development and good governance

* Jamil Ddamulira Mujuzi. LLB LLM LLD. Professor of Law, Faculty of Law, University of the Western Cape, South Africa. Email: djmujuzi@gmail.com. ORCiD https://orcid.org/0000-0003-1370-6718.

1 Art 95(5) of the *Constitution of Botswana*, 1966 provides that "[t]he High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court." Art 127(1) excludes the definition of courts martial from subordinate courts.

2 Art 119(1) of the *Constitution of Lesotho*, 1993 provides that "[t]here shall be a High Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings and the power to review the decisions or proceedings of any subordinate or inferior court, court-martial, tribunal, board or officer exercising judicial, quasi-judicial or public administrative functions under any law and such jurisdiction and powers as may be conferred on it by this *Constitution* or by or under any other law." Also see art 130, which provides that "In addition to the supervisory jurisdiction and jurisdiction on a reference conferred on the High Court by this *Constitution*, the High Court shall have such jurisdiction with regard to appeals from decisions of any subordinate court, court-martial or tribunal as may be conferred by Parliament."

3 The Act was assented to by the President of Uganda on 23 August 2005 and commenced on 2 September 2005.

of Uganda".[4] As illustrated in detail below, the drafting history of article 79 is silent on Parliament's role in enacting legislation establishing courts martial at the same level as the High Court and with jurisdiction over civilians. The long title of the *UPDF Act* provides, *inter alia*, that the purpose of the Act is to "provide for the regulation of the Uganda Peoples' Defence Forces in accordance with article 210 of the *Constitution*". In other words, the long title of the Act suggests that the Act does not give effect to article 129(1)(d) of the *Constitution*. However, the *UPDF Act* also establishes different courts martial with varying jurisdictions. These are the Field Court Martial,[5] the Division Court Martial,[6] the General Court Martial[7] and Court Martial Appeal Court.[8] During the making of the 1995 *Constitution*, four issues arose in the Constituent Assembly regarding the status and jurisdiction of the courts martial. Firstly, whether the Field Court Martial had jurisdiction over civilians; secondly, whether the General Court Martial had jurisdiction over non-service offences; thirdly, whether soldiers were protected by the principle of double jeopardy; and lastly, whether courts martial were courts of judicature within the meaning of article 129(1)(d) of the *Constitution* or were disciplinary courts governed by article 210 of the *Constitution*. The drafting history of the *Constitution* (the debates during the Constituent Assembly) shows that delegates agreed that courts martial were courts of judicature as contemplated in article 129(1)(d) of the *Constitution*. However, the drafting history does not conclusively answer the questions of whether courts martial have jurisdiction over civilians and over non-service offences. The *UPDF Act* provides for circumstances in which the General Court Martial has jurisdiction over civilians. Thus, section 119(1) of the *UPDF Act* provides that "persons subject to military law" include serving military officers and:

> (g) every person, not otherwise subject to military law, who aids or abets a person subject to military law in the commission of a service offence; and (h) every person found in unlawful possession of: (i) arms, ammunition or equipment ordinarily being the monopoly of the Defence Forces; or (ii) other classified stores as prescribed.

On the basis of section 119(1)(g) and (h), many civilians have been prosecuted before the General Court Martial for offences such as the unlawful possession of firearms or ammunition,[9] aiding and abetting soldiers

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4 This is referred to as legislative sovereignty. See for example, *Oloka-Onyango v Attorney General* (Constitutional Petition 8 of 2014) [2014] UGSC 14 (1 August 2014).

5 S 200 of the *UPDF Act*.

6 S 194 of the *UPDF Act*.

7 S 197 of the *UPDF Act*.

8 S 199 of the *UPDF Act*.

9 *Buchanan v Attorney General* (Miscellaneous Cause-2019/266) [2020] UGHCCD 11 (13 March 2020); *In Re: Muhindo Herbert* (HCT-05-CV-MA-2012/42) [2012] UGHC 96 (29 May 2012); *Kipoi v Attorney General* (Miscellaneous Application-2018/230)

to commit offences,[10] and treason.[11] Ugandan courts have grappled with the questions of whether the General Court Martial has jurisdiction over civilians; whether the courts martial are independent and impartial courts within the meaning of article 28(1) of the *Constitution*; and whether, they are courts of judicature within the meaning of article 129 of the *Constitution* or disciplinary courts under article 210 of the *Constitution*. In this Article, the author relies on the drafting history of article 129(1)(d) and article 210 of the *Constitution* to argue that the courts' view that the General Court Martial is not a court of judicature is erroneous. The author also relies on the drafting history of the *Constitution* and on international human rights law to argue that courts martial in Uganda should not have jurisdiction over civilians because they lack the necessary independence and impartiality and were established for the single purpose of enforcing military discipline.[12] Although article 79 of the *Constitution* empowers Parliament to enact legislation, it is argued that in the light of the drafting history of Articles 129(d) and 210 of the *Constitution*, Parliament cannot rely on article 79 to confer on the courts martial jurisdiction that was not contemplated by the drafters of the *Constitution*. The discussion will start with the drafting history of Articles 28, 129 and 210 of the *Constitution* in as far as they are applicable to courts martial.

2 The drafting history of Articles 28, 129 and 210 of the Constitution and the courts martial

In this part of the article the author discusses the drafting history of articles 28, 129 and 210 of the *Constitution* in as far as they are applicable to courts martial. He starts with article 28, which provides for the right to a fair hearing.

2.1 The right to a fair hearing before courts martial [jurisdiction over non-service offences and whether disciplinary tribunals]

One of the issues discussed during the making of the *Constitution* was the right to a fair trial before courts martial. One of these rights was the right to appeal. The draft *Constitution* provided that a person sentenced to death

[2019] UGHCCD 44 (8 February 2019); *Kitata v Uganda* (Miscellaneous Application-2018/) [2018] UGHCCRD 130 (6 June 2018); *Namugerwa v Attorney General* (Civil Appeal-2012/4) [2013] UGSC 20 (19 June 2013); *Lujila v O/C Kigo Rrison* (Miscellaneous Cause-2013/86) [2013] UGHCCD 134 (7 October 2013); *Bukeni v Attorney General* (Miscellaneous Cause-2021/10) [2021] UGHCCD 12 (16 March 2021); *Bazibu Bruno Francis v Attorney General* (Miscellaneous Cause No 110 of 2021) (24 January 2022).

10 See for example, *Namugerwa v Attorney General* (Civil Appeal-2012/4) [2013] UGSC 20 (19 June 2013).

11 *Dr Kizza Besigye v Attorney General* (Constitutional Petition-2007/7) [2010] UGSC 6 (12 October 2010).

12 For a detailed discussion of the right to a fair trial before courts martial in Uganda, see Naluwairo 2018 *Global Campus Human Rights Journal*.

could be executed only after the sentence had been confirmed by the highest appellate court. It was submitted, and agreed to, during the Constituent Assembly that this provision should also be applicable to courts martial where they sentenced people to death.[13] It was argued that before a court martial imposes a sentence on any soldier, there has to be "due process" as provided for in the *Constitution* and that the soldier must be guaranteed "a fair hearing".[14] This would avoid "cases of arbitrary deprivation of life in the military" courts.[15] It was argued further that history had shown that in courts martial "due process as stipulated in the *Constitution* is not strictly adhered to" because "[t]hey tell these people who are accused that they can have a defence, and the army provides a defender for them". The speaker, Mr Lule, argued that there was a need for "an independent defence Lawyer" to assist the accused on appeal against the decision and the appeal should be heard by "an independent set of individuals".[16]

In response to that submission, one of the army representatives argued that the army has structures of appeal within its court system.[17] He added that apart from the right to appeal, a person who is accused before a court martial has a right to a fair hearing guaranteed in the *Constitution* which includes the right to be presumed innocent, the right to an interpreter if he does not understand the language of the proceedings and the right to be represented by a lawyer of his choice.[18] He cautioned, however, that the definition of a court under the current article 129 of the *Constitution* "excludes a disciplinary court or a service court".[19] In other words, the constitutional guarantees of the right to a fair hearing are meant to apply to a court martial and a court above the court martial. These guarantees do not extend to those being prosecuted before a disciplinary court or a service court. This is so because disciplinary courts or service courts have to decide their cases expeditiously to avoid undermining the "operation efficiency" of the army.[20] It was emphasised that a person who had been sentenced to death had a right to appeal before the sentence was executed whether the sentence had been imposed by the "High Court dealing with civilians or the Military Court martial" and that courts martial are "separate courts for the army".[21] Against that background the delegates agreed to include the following provision in the *Constitution*:

13 Uganda Constituent Assembly *Proceedings* 1886.
14 Uganda Constituent Assembly *Proceedings* 1887 (Mr Waswa Lule).
15 Uganda Constituent Assembly *Proceedings* 1887 (Mr Waswa Lule).
16 Uganda Constituent Assembly *Proceedings* 1887 (Mr Waswa Lule).
17 Uganda Constituent Assembly *Proceedings* 1887 (Lt Mayombo).
18 Uganda Constituent Assembly *Proceedings* 1888 (Lt Mayombo).
19 Uganda Constituent Assembly *Proceedings* 1888.
20 Uganda Constituent Assembly *Proceedings* 1888.
21 Uganda Constituent Assembly *Proceedings* 1889 (Mr Mulenga).

> No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.[22]

For an accused's right to a fair trial to be guaranteed, it is critical that he/she appears before an independent and impartial court. To ensure that a court martial is an independent court, there was consensus in the Constituent Assembly that the General Court Martial and any court above it should not be chaired by serving military officers but rather by Judge Advocates. As one of the army representatives to the Constituent Assembly argued:

> Under our judicial system in the Army, we have passed laws where we have decided that in order to chair, for instance, a court martial in the Army, it will be done by a person, for instance, we shall call a Judge advocate. This is a person who will be equivalent or somebody qualified to be a High Court Judge of Uganda, not below. So, Members should not fear that any member of the Armed Forces shall be chairing this court martial, we are trying to stop that. Secondly, we are allowing and opening up in specific criminal offenses the appearance of advocates in grave offenses and then we have like three senior officers sitting on that tribunal and where the sentence involves the trial of a soldier, this Court Martial or Court Martial Appeal Court has no jurisdiction, actually, to carry out the sentence without giving a chance to the soldier to appeal to the Supreme Court. So, even that one, we are actually, emphasising that where a soldier's life is threatened he has a right to appeal to the Supreme Court.[23]

He added that the *Constitution* should provide that if a soldier commits a non- service offence and a service offence at the same time, he/she should be prosecuted before the court martial for both offences.[24] However, the Chairman of the Constituent Assembly suggested that instead of including such details in the *Constitution*, the *Constitution* should rather empower Parliament to enact legislation providing for the circumstances in which a soldier can be tried before a civilian court or a court martial.[25] As will be discussed later in this Article, when the *UPDF Act* was enacted, it provided that a General Court Martial should be presided over by a serving military officer as opposed to a judge advocate and this is one of the reasons why its competence was challenged before the Constitutional Court in the cases discussed below.

The following observations should be made at this stage. Firstly, there was consensus during the making of the *Constitution* that the court martial had jurisdiction over soldiers. In other words, no delegate suggested that it had jurisdiction over civilians. Secondly, accused before the court martial had the right to a fair hearing guaranteed under the *Constitution*. Thirdly, the

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22 Uganda Constituent Assembly *Proceedings* 1889. This provision would later become art 22(1) of the *Constitution*.

23 Uganda Constituent Assembly *Proceedings* 2059-2060 (Maj Gen Tinyefuza).

24 Uganda Constituent Assembly *Proceedings* 2060.

25 Uganda Constituent Assembly *Proceedings* 2060.

court martial is a court of competent jurisdiction within the meaning of article 22(1) of the *Constitution*. In other words, has jurisdiction to impose a death sentence. However, like any other court, the sentence it has imposed can be executed only after being confirmed by the Supreme Court. Closely related to the issue of fairness of the trial is the jurisdiction of the court. Although some of the aspects of the jurisdiction of the courts martial are referred to in the above discussion, this issue is discussed in detail in the next section.

2.2 The jurisdiction of courts martial

The issue of the jurisdiction of the courts martial came up again when the delegates were dealing with the right against double jeopardy. Article 58(9) of the draft *Constitution* (which would later become article 28(9) in the final *Constitution*) prohibited the prosecution for a person for an offence of which he had been prosecuted and convicted or acquitted. However, article 58(10) of the draft *Constitution* provided for an exception to the effect that:

> No law shall be taken to be in contravention of clause (9) of this article merely because it authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force; except that any court which tries and convicts him shall, in sentencing him to any punishment, take into account any punishment imposed on him under the disciplinary law.[26]

This provision meant that a soldier who had been convicted or acquitted of an offence under the *Penal Code*, for example, could also be prosecuted of the same offence before a court martial. This was because the relevant military legislation made all offences under the *Penal Code* "service offences" over which the court martial had jurisdiction, the rationale being that an offence under the *Penal Code*, over which civil courts have jurisdiction, is also a disciplinary wrong under the *UPDF Act* over which courts martial have jurisdiction. In opposing this amendment, one of the army representatives to the Constituent Assembly argued that:

> [T]he import of article 58(9) is the principle that citizens should not be tried twice for committing an offence. The exception to that rule, which is existing in sub-article (10) now is to the effect that a soldier who commits a criminal offence can be tried again, after he has served his sentence, by a civil court. You charge, convict and sentence a soldier in a military court, the civil court still has jurisdiction to try him again and sentence him. The only exception is that they put into consideration the punishment that he has served…I think this is double jeopardy. I seek the indulgence of this Assembly to remove this double jeopardy so that soldiers who are tried and convicted by a civil court or an ordinary court are not tried again by a military court.[27]

He added that the jurisdiction of the court martial or any military tribunal should be limited to service offences, which according to him, are "to be

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26 Uganda Constituent Assembly *Proceedings* 1962.

27 Uganda Constituent Assembly *Proceedings* 1962 (Lt Mayombo).

only those offenses which are related to the administration of the army – which are related to the running of the military".[28] He argued further that adopting this approach would be ensure "that court martials will be relieved of the task of trying the common criminal offenses. This jurisdiction should be left to the civil and ordinary courts".[29] He argued that if a soldier commits both a service offence and a non-service office, he should be prosecuted before the civil courts for a non-service offence and later before the military court for a service office.[30] These submissions were supported by other delegates who added, *inter alia*, that the conviction of a soldier by a civil court does not bar the military court or tribunal from taking disciplinary action against that soldier for committing a non-service offence.[31] It was also argued that the reason why the issue of double jeopardy arose was because legislation had been enacted to erroneously empower military tribunals, which are traditionally disciplinary tribunals, to try criminal offences.[32] It was emphasised that military courts should deal with service offences and that criminal offences should be handled by civil courts.[33] Therefore, a soldier who was being charged before a military tribunal for a service offence did not have a right to a lawyer of his choice. The lawyer had to be assigned by the military from its legal department. However, a soldier charged with a non-service offence had the right to a lawyer of his choice.[34] It was also submitted that:

> [T]he provision should clearly view the disciplinary court in the way the law takes administrative tribunals and if a situation arises where a Member of a discipline force commits an offence triable by both the disciplinary court and ordinary court, the procedure should be that, the disciplinary court trials are enforced and then eventually, before executing the sentence, comes to the ordinary court for trial as an offence which is triable by the ordinary court. And it is eventually the ordinary court that will take cognisance of the findings of the disciplinary court. In that way, it will be what is normal in the administration of justice where administrated tribunals are subject to the ordinary court.[35]

It was emphasised that military courts should only deal with disciplinary issues and that a soldier who committed a criminal offence should be tried by a civil court. This would ensure that soldiers are dealt with like any other Ugandan who breaks the law.[36] One of the army representatives argued that a military court should have jurisdiction over both service offences and non-service offences. This would ensure that soldiers are brought to book for both service and non-service offences within the military structures.

28 Uganda Constituent Assembly *Proceedings* 1962.
29 Uganda Constituent Assembly *Proceedings* 1962.
30 Uganda Constituent Assembly *Proceedings* 1962.
31 Uganda Constituent Assembly *Proceedings* 1962-1964.
32 Uganda Constituent Assembly *Proceedings* 2062 (Mr Kawanga).
33 Uganda Constituent Assembly *Proceedings* 2063 (Mr Amama Mbabazi).
34 Uganda Constituent Assembly *Proceedings* 2063 (Mr Amama Mbabazi).
35 Uganda Constituent Assembly *Proceedings* 2064 (Mr Olwa).
36 Uganda Constituent Assembly *Proceedings* 2064-2065 (Mr Ringwegi).

However, he added that "a military tribunal is subject, and shall always be, to the ordinary courts".[37] This view was supported by another delegate.[38] Because of the disagreements on whether clause 10 violated the principle of double jeopardy, the amendment was withdrawn for better redrafting.[39]

When it was tabled again, all soldiers in the Constituent Assembly opposed it on the ground that it was contrary to the principle against double jeopardy. However, some civilian delegates supported it by reasoning, *inter alia*, that it would ensure that the soldiers were held accountable for both service offences and non-service offences.[40] As a result, the suggestion (especially by the army officers) that clause 58(10) should be deleted and replaced by a provision "to enable Parliament to make laws in respect of the trial of members of disciplined forces in respect of discipline offenses under the laws to be made" was defeated at the vote.[41] This meant that clause 10 was retained at least for a few weeks.

However, this issue was raised again when some delegates argued that clause 10 should be deleted because it constitutionalised the principle of double jeopardy.[42] Arguing in support of deleting clause 10, one of the delegates submitted that soldiers should not be subjected to double jeopardy. Military courts were bound by the *Constitution* because they derived their "legitimacy and force" from the *Constitution* and that "in any case, if any military tribunal seems to be abused, Parliament will have the right to strengthen them or recall them".[43] He added that it was "only right that we should leave the matter to Parliament to strengthen military tribunals, withdraw cases where they think civil courts will do better and not subject soldiers" to double jeopardy.[44] It was also argued that courts martial held trials for soldiers who had committed offences which were not strictly speaking service offences but the accused were guaranteed all the relevant constitutional rights.[45] Therefore, there was no need to subject a soldier to another trial before a civil court. It was also emphasised that the law provided that any soldier convicted of any offence in a civil court and sentenced to two years' imprisonment "automatically ceases to be an Army officer, he is dismissed with disgrace" and that "it would make little sense to bring him back and convict him on desertion", which is a service offence.[46]

37 Uganda Constituent Assembly *Proceedings* 2065 (Major Tumukunde).
38 Uganda Constituent Assembly *Proceedings* 2065-2066 (Mr Mulenga).
39 Uganda Constituent Assembly *Proceedings* 1964.
40 Uganda Constituent Assembly *Proceedings* 2066-2071.
41 Uganda Constituent Assembly *Proceedings* 2071.
42 Uganda Constituent Assembly *Proceedings* 5935 (the amendment to delete the clause was introduced by Lt Col Kiiza Besigye).
43 Uganda Constituent Assembly *Proceedings* 5935 (Mr Amanya Mushega).
44 Uganda Constituent Assembly *Proceedings* 5935 (Mr Amanya Mushega).
45 Uganda Constituent Assembly *Proceedings* 5935-5936 (Major Aronda).
46 Uganda Constituent Assembly *Proceedings* 2059 (Maj Gen Tinyefuza).

It was also argued that almost every soldier convicted by the court martial of non-service offences was supposed to be sentenced to death, yet when a person was convicted of the same offence by a civil court, the court imposed a custodial sentence.[47] In other words, the army delegates were of the view that it was in the best interests of soldiers who had committed offences under the *Penal Code* to be tried in civil courts rather than in military courts because of the death penalty issue.

One delegate opposed the deletion of clause 10 and his concern could be explained by the fact that the army legislation at the time (the *Armed Forces Act*) had defined "service offences" to include offences under the *Penal Code* and other pieces of legislation (over which civil courts have jurisdiction). He argued that:

> [T]here are disciplinary procedures in every government institution. In the Civil Service for example, we have an act which is the Public Service Act and under this Act, certain procedures or disciplinary measures can be taken against a civil servant if he does anything wrong. For example, a civil servant can be interdicted, he can be dismissed. At the same time, such a civil servant can be taken to court and be charged which is also double jeopardy. So to me…, in the NRA, court martial is one of the disciplinary measures and it is embodied in the Armed Forces Act…I therefore feel…that if a member of the armed forces is court martialled, he should serve that disciplinary measure under that particular institution and then if such a person has offended the general public, he can be taken to court.[48]

In this delegate's view, a court martial was a disciplinary court and should not have jurisdiction to try criminal offences. This view was emphasised by another delegate who argued that the Police and the Prisons had disciplinary tribunals but that he could not understand why these tribunals were not also being discussed in the context of clause 10.[49] Another delegate also argued that courts martial were meant to have jurisdiction over soldiers for the purpose of enforcing military discipline. He emphasised that a court martial "is a military court" and that without the "strong arm of the government", the military would be undisciplined.[50] In the light of the stiff opposition to clause 10, especially from the army delegates, the delegates to the Constituent Assembly voted unanimously to delete clause 10.[51] During the drafting of article 121(6) of the *Constitution*, some delegates (civilians) wanted to know whether the Field Court Martial would have jurisdiction over civilians.[52] However, this question was not answered by the

47 Uganda Constituent Assembly *Proceedings* 5936 (Mr Pacos Kuteesa).
48 Uganda Constituent Assembly *Proceedings* 5935 (Mr Sabiiti).
49 Uganda Constituent Assembly *Proceedings* 5936 (Mr George Masika).
50 Uganda Constituent Assembly *Proceedings* 1887 (Mr Kagimu Kiwanuka) (2 September 1994).
51 Uganda Constituent Assembly *Proceedings* 5936.
52 Uganda Constituent Assembly *Proceedings* 3348 (Mr Mugyeni Ponsiano) and 3351 (Mr Dick Nyai).

army delegates.[53] It was emphasised that a trial, whether before a civil court or a court martial, had to be fair.[54]

The above discussion shows that all the delegates, including the army representatives, understood a court martial to be a disciplinary court irrespective of whether it was dealing with a service offence or a non-service offence. For soldiers who had committed offences under the *Penal Code*, their trial before courts martial was meant to prevent and combat indiscipline in the army. However, there was agreement that either way, a person who appeared before a court martial has a right to a fair hearing. The discussion also implies that the delegates to the Constituent Assembly were of the view that courts martial did not have jurisdiction over civilians. This is discernible from three factors: first, the submissions that it was a disciplinary tribunal for soldiers like any other disciplinary tribunal in any other government institution with the mandate to deal with the employees of that institution; second, the submission that once a person has been dismissed from the army, the court martial ceases to have jurisdiction over him in other words, courts martial do not have jurisdiction over people who have ceased to be soldiers although they may have committed service offences when they were still subject to military law; and third, during the debates on the Field Court Martial, none of the army representative submitted that a court martial had jurisdiction over civilians although some civilian delegates raised this question on more than one occasion. It should also be remembered that the Constitutional Commission Report shows that military courts are exclusively for soldiers[55] and that some delegates made it very clear that the *Constitution* should prohibit the detention of civilians in military barracks. This submission was not opposed by the military delegates.[56] They argued that civilians arrested by the military should be handed over to the police, who know where to detain civilians "properly".[57] It is now necessary to discuss the issue of whether courts martial were established under article 210 of the *Constitution*.

2.3 Courts martial as a "structure" of UPDF Act within article 210?

During the debates in the Constituent Assembly delegates expressed various views on whether the details relating to the structure of the army should be included in the *Constitution*.[58] In the end, the delegates agreed unanimously that the *Constitution* should empower Parliament to enact legislation regulating the structures of the army.[59] Because the draft

53 Uganda Constituent Assembly *Proceedings* 3347-3352.
54 Uganda Constituent Assembly *Proceedings* 4377 (Prof Kanyeihamba).
55 Uganda Constitutional Commission *Report* para 14.90.
56 Uganda Constituent Assembly *Proceedings* 786 (Dr Aniku) and 1273 (Mr Latigo).
57 Uganda Constituent Assembly *Proceedings* 1914 (Mr Steven Kavuma).
58 Uganda Constituent Assembly *Proceedings* 2745-2776.
59 Uganda Constituent Assembly *Proceedings* 2776.

Constitution had not included a provision empowering Parliament to enact legislation regulating the structures of the army, one delegate proposed that the draft *Constitution* should be amended to include a provision to the following effect:

> Parliament shall make laws regulating the Uganda Armed Forces and in particular providing for: (a) the organs and structures for the management of the Armed Forces; (b) the recruitment, appointment and promotion, discipline and removal ...[60]

In support of this amendment, one of the army representatives argued that it would ensure that Parliament established the courts martial and it was "in charge of regulating even the structures of the Army".[61] The rationale behind this amendment was to ensure that the army was "subject to civilian authority and the civilian authority here is the President and Parliament".[62] The Chairman of the Constituent Assembly added that this provision would empower Parliament to enact legislation to "establish the organs and the structures" of the army.[63] Although courts martial were mentioned here when the delegates were drafting article 210 of the *Constitution*, the statement should be understood as indicating that the Constituent Assembly had already indicated that courts martial were part of the judiciary under article 129(1)(d) of the *Constitution*. In other words, courts martial were mentioned as one of the organs of the army but they were not established under article 210 of the *Constitution*.

2.4 Courts martial as courts of judicature under article 129(1)(d)

Another issue which arose during the making of the *Constitution* was whether a court martial is a court of judicature as contemplated in article 129 of the *Constitution*. The draft article 159(1) (which would later become article 129) provided that:

> The judicial power of Uganda shall be exercised by the courts of judicature which shall consist of: (a) The Supreme Court of Uganda; (b) The Court of Appeal of Uganda; (c) The High Court of Uganda and; (d) Such subordinate courts as Parliament may by law establish.[64]

After a lengthy discussion delegates, especially Muslims, successfully argued that the draft provision should be amended to expressly mention the Qadhi's court as a subordinate court.[65] One of the army delegates argued that in his opinion "Military Tribunals are not courts of Judicature" and that in giving effect to article 159(d), "Parliament shall be confined to such other

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60 Uganda Constituent Assembly *Proceedings* 2779 (amendment moved by Hon Komakec).
61 Uganda Constituent Assembly *Proceedings* 2780 (Maj Gen Tinyefuza).
62 Uganda Constituent Assembly *Proceedings* 2780 (Mr Komakec).
63 Uganda Constituent Assembly *Proceedings* 2780.
64 Uganda Constituent Assembly *Proceedings* 4039.
65 Uganda Constituent Assembly *Proceedings* 4039-4043.

courts that must be courts of judicature".[66] Maj General Tinyefuza added that he understood courts of judicature to mean "courts with original jurisdiction" which excluded appellate courts and courts martial.[67] In response to that statement, the Chairperson of the Legal and Drafts Committee argued that he disagreed with the above understanding of the meaning of courts of judicature because:

> Courts of Judicature may even be a repetition. It is courts that apply law. Now, we are not providing for military tribunals that will not apply law. So, any court created by parliament shall be, by this definition, a court of judicature.[68]

The Chairperson of the Legal and Drafts Committee added that Maj General Tinyefuza's understanding of the meaning of the phrase "courts of judicature" was very restrictive and if followed, the only courts of judicature would be the High Court and the Magistrate's Court. He added that "[a]ll the other courts sub-ordinate to the High Court are also included if created by Parliament".[69] In other words, military courts are courts of judicature and subordinate to the High Court. This explanation was supported by other delegates.[70] Shortly thereafter the Chairman of the Constituent Assembly asked one of the delegates, Mr Mayanja, to explain whether court martials are subordinate courts within the meaning of draft article 159(1)(d).[71] Mr Mayanja responded that he had been caught "unawares" by the Chairman's question, but he argued that according to him "there seems not to appear any reference to courts martial. They are not sub-ordinate courts" within the meaning of draft article 159(1)(d).[72] Mr Mulenga refuted Mr Mayanja's submission and argued that "they [courts martial] are subordinate courts. They are sub-ordinately [sic] High Courts definitely".[73] In response to that answer, the Chairman of the Constituent Assembly posed the following question: "But I think when we were dealing with defence we made reference to Courts Martial. Did we?"[74] Mr Mulenga's answer to that question was "No, but Mr. Chairman, they are established by Statute and, therefore, come under paragraph (d)".[75] Mr Mayanja argued that "if they [courts martial] are going to have powers to administer the death penalty – things of that kind; I think they should be mentioned in the *Constitution*".[76] In response to this argument, Mr Mulenga argued that "what is mentioned in the *Constitution* does not depend on what sentence may be carried out"

66 Uganda Constituent Assembly *Proceedings* 4043-4044 (Gen Tinyefuza).
67 Uganda Constituent Assembly *Proceedings* 4044.
68 Uganda Constituent Assembly *Proceedings* 4044 (Mr Mulenga).
69 Uganda Constituent Assembly *Proceedings* 4044 (Mr Mulenga).
70 Uganda Constituent Assembly *Proceedings* 4044-4045.
71 Uganda Constituent Assembly *Proceedings* 4045.
72 Uganda Constituent Assembly *Proceedings* 4045.
73 Uganda Constituent Assembly *Proceedings* 4045.
74 Uganda Constituent Assembly *Proceedings* 4045.
75 Uganda Constituent Assembly *Proceedings* 4045.
76 Uganda Constituent Assembly *Proceedings* 4045.

and that in the past "magistrates were given very large powers, but were still sub-ordinate to the High Court".[77] Against that background, the Chairman of the Constituent Assembly brought the debate on draft article 159(1)(d) to an end by stating that there was no need to specifically mention courts martial under draft article 159(1)(d) of the *Constitution*. The above debate shows that the drafters of the *Constitution* agreed that courts martial are courts of judicature within the meaning of article 129(1)(d) of the *Constitution* and that they are subordinate to the High Court.

The status of the court martial arose again when the delegates were discussing the jurisdiction of the Uganda Human Rights Commission and in particular the issue of the court which had jurisdiction to hear appeals from the Human Rights Commission. When one of the delegates wanted to know whether the decision of the Human Rights Commission could be appealed against to the High Court or Court of Appeal,[78] the Chairperson of the Legal and Drafts Committee clarified that:

> We have created in this *Constitution* three courts of record, namely, the High Court, the Court of Appeal, and the Supreme Court. And we have said that all other courts are subordinate to these courts, including the High Courts. Therefore, this kind of Commission or any other tribunal including courts, like courts martial are subordinate to the High Court. That way, the natural sequence is that, even if it is chaired by a Judge of Supreme Court or somebody equivalent it is still subordinate to the High Court because it is not a court of record, and therefore, the review would have to be in the High Court and nothing higher.[79]

The above submission shows that any court martial is subordinate to the High Court. It also shows that a court martial is one of the courts contemplated under article 129(1)(d) of the *Constitution*. It also implies that any court created by Parliament, for example, under article 79 of the *Constitution* must be subordinate to the High Court.

3 The status of the courts martial and their jurisdiction over civilians

In this part of the Article, the author illustrates how Ugandan courts have dealt with three questions: first, whether courts martial are courts of judicature within the meaning of article 129 of the *Constitution* or disciplinary tribunals under article 210 of the *Constitution*; second, whether courts martial are subordinate to the High Court; and finally, whether courts martial have jurisdiction over civilians.

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77 Uganda Constituent Assembly *Proceedings* 4045.
78 Uganda Constituent Assembly *Proceedings* 5850 (Mr Malinga).
79 Uganda Constituent Assembly *Proceedings* 5850 (Prof Kanyeihamba).

3.1 Courts of judicature or disciplinary tribunals and whether subordinate to the High Court?

Whereas there has been consensus amongst the judges of the Constitutional Court, Court of Appeal and the Supreme Court that courts martial are bound by the *Constitution* and must respect the accused's right to a fair trial and the right to bail,[80] judges have been divided on the questions of whether the General Court Martial is subordinate to the High Court and whether it is a court of judicature. Different approaches have been followed in this regard. The first approach has been to hold that courts martial are subordinate courts and are courts of competent jurisdiction without explaining whether they are established under article 129(1)(d) or 210 of the *Constitution*.[81] The second approach is to hold that courts martial are courts of judicature established under article 129(1)(d) of the *Constitution*.[82] The third approach is to hold that courts martial are established under the *UPDF Act* and article 210 of the *Constitution* and, therefore, are not courts of judicature within the meaning of article 129.[83] The third view is supported by the fact that courts martial are not regulated by the Chief Justice.[84] For example, in the Supreme Court decision of *Attorney General v Joseph Tumushabe*,[85] Justice Katureebe referred, *inter alia* to article 129(1) of the *Constitution* and held that "[t]he Court Martial is set up as part of the disciplinary mechanism for the UPDF under article 210(b) of the *Constitution*, and its jurisdiction is set out in the *UPDF Act*".[86] The fourth approach is to the effect that courts martial are established under both Articles 129 and 210 of the *Constitution*. For example, in *Uganda Law Society v Attorney General of the Republic of Uganda*[87] Justice Okello referred to article 129(1) and held that it empowered Parliament to establish courts of judicature and that courts martial were established by Parliament

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80 *Joseph Tumushabe v Attorney General* (Constitutional Petition No 6/2004) (8 December 2004) (hereafter the *Joseph Tumushabe v Attorney General*); *Attorney General v Joseph Tumushabe* (Constitutional Appeal-2005/) [2018] UGSC 32 (9 July 2018*)* (mandatory bail) (hereafter *Attorney General v Joseph Tumushabe*).

81 *Uganda Law Society v Attorney General* (Constitutional Application No. 7/2003) 14 as cited in *Uganda Law Society v Attorney General of the Republic of Uganda* (Constitutional Petition-2005/18) [2006] UGSC 10 (30 January 2006) 106 (hereafter *Uganda Law Society v Attorney General of the Republic of Uganda*).

82 *Joseph Tumushabe v Attorney General* (Twinomujuni, JA) 5-6 (Constitutional Court); *Attorney General v Joseph Tumushabe* (Supreme Court).

83 *Joseph Tumushabe v Attorney General* case (Justice Byamugisha); *Uganda Law Society v Attorney General of the Republic of Uganda* (decision by Justice Mukasa-Kikonyogo); *Michael Kabaziguruka v Attorney General* (Constitutional Petition No 45 of 2016) (1 July 2021) (both the majority and minority decisions) (hereafter *Michael Kabaziguruka v Attorney General*).

84 *Joseph Tumushabe v Attorney General* (Justice Byamugisha) 7.

85 *Attorney General v Joseph Tumushabe*.

86 *Attorney General v Joseph Tumushabe* 28.

87 *Uganda Law Society v Attorney General of the Republic of Uganda* (decisions by Justice Mukasa-Kikonyogo, Engwau and Kavuma).

under the *UPDF Act* on the basis of Articles 129(1)(d) and 210 of the *Constitution*.[88] In my view, based on the drafting history of article 129 of the *Constitution*, there is no doubt that courts martial are courts of judicature under article 129(d) of the *Constitution*. By invoking its legislative powers under article 79 of the *Constitution* to enact the *UPDF Act*, Parliament is required to operationalise the intention of the drafters of the *Constitution* expressed in article 129(d). In other words, courts martial are not a creature of Parliament's general legislative powers under article 79 of the *Constitution*.

Another issue that the courts have dealt with is whether courts martial are subordinate to the High Court. The Constitutional Court has also been divided on this issue. For example, in *Joseph Tumushabe v Attorney General*[89] the Constitutional Court, by majority, held that courts martial in particular the General Court Martial, are subordinate to the High Court. The Court held that under article 129(1)(d) of the *Constitution*:

> Parliament cannot establish a Court, which is superior to the High Court. It only has power to create subordinate courts. The phrase "Sub-ordinate Court" is defined in article 257 to mean a court sub-ordinate to the High Court.[90]

The Court added that "article 129(1) (d) regarding subordinate courts is not meant to be exhaustive"[91] and therefore, the General Court Martial is "legally authorised to perform judicial functions" as a court subordinate to the High Court under article 129(1)(d).[92] Since courts martial are subordinate to the High Court, they are "subject to the supervision of the civil superior courts regardless of the concurrency of jurisdiction with the High Court".[93] This is the same conclusion reached by Justices Okello and Engwau in *Uganda Law Society v Attorney General of the Republic of Uganda.*[94] Justice Okello held that the General Court Martial, like any other specialised court, is subordinate to the *Constitution* and that article 129(1)(d) "empowers Parliament to establish only subordinate courts. Parliament, therefore, cannot establish superior courts or courts equivalent to those mentioned in article 129(2). That would be *ultra vires* the *Constitution* and such a law would be null and void".[95] He also explained that under article 208 of the *Constitution*, the military must be subordinate

88 *Uganda Law Society v Attorney General of the Republic of Uganda* 53-54.
89 *Joseph Tumushabe v Attorney General*.
90 *Joseph Tumushabe v Attorney General* (Twinomujuni JA) 6.
91 *Joseph Tumushabe v Attorney General* (Twinomujuni JA) 3.
92 *Joseph Tumushabe v Attorney General* (Justice Mpagi-Bahigeine JA) 4.
93 *Joseph Tumushabe v Attorney General* case (Justice Mpagi-Bahigeine JA) 5.
94 *Uganda Law Society v Attorney General of the Republic of Uganda* (decision by Justice Okello).
95 *Uganda Law Society v Attorney General of the Republic of Uganda* 55.

to civilian authority and, therefore, the General Court Martial has to be subordinate to the High Court (a civil court).[96]

However, in her dissenting opinion in *Joseph Tumushabe v Attorney General*,[97] Justice Byamugisha held that since courts martial are not courts of judicature they are not subordinate to the High Court.[98] A similar conclusion was reached by Justices Mukasa-Kikonyogo and Kavuma in *Uganda Law Society v Attorney General of the Republic of Uganda*,[99] in which Justice Mukasa-Kikonyogo held *inter alia* that "the General Court Martial is equivalent of the High Court of Uganda"[100] and that she was "not persuaded by the argument that Parliament can only create subordinate courts to the High Court"[101] under article 129(1)(d) of the *Constitution*. Likewise, Justice Kavuma held that "the GCM [General Court Martial] is not a subordinate court to the High Court".[102] The above discussion shows that for some time the Constitutional Court was divided on the issue of whether the General Court Martial was subordinate to the High Court.

The issue of whether the General Court Martial is subordinate to the High Court was dealt with by the Supreme Court in 2018. In *Attorney General v. Joseph Tumushabe*[103] the Supreme Court held that courts martial are specialised courts but are meant to administer justice.[104] The Court also held that "the General Court Martial (from which, appeals lie to the Court Martial Appeal Court), is both a subordinate court within the meaning of article 129(1)(d), and lower than the High Court in the appellate hierarchy of courts".[105] In the same judgement, Justice Katureebe held that the mere fact that the General Court Martial has concurrent jurisdiction with the High Court in some criminal matters "does not make the General Court Martial equivalent to the High Court which the *Constitution* has created as a superior court with unlimited jurisdiction in all matters".[106] In my view, although the Supreme Court does not rely on the drafting history of article 129 of the *Constitution*, its conclusion that courts martial are subordinate to the High Court is supported by the drafting history of article 129. This implies that even the Court Martial Appeal Court should be subordinate to the High Court and appeals against it should lie with the High Court. Legislation

96 *Uganda Law Society v Attorney General of the Republic of Uganda* 81.
97 *Joseph Tumushabe v Attorney General*.
98 *Joseph Tumushabe v Attorney General* (Justice Mpagi-Bahigeine, JA) 8.
99 *Uganda Law Society v Attorney General of the Republic of Uganda* (decision by Justice Mukasa-Kikonyogo).
100 *Uganda Law Society v Attorney General of the Republic of Uganda* (decision by Justice Mukasa-Kikonyogo) 15.
101 *Uganda Law Society v Attorney General of the Republic of Uganda* 15.
102 *Uganda Law Society v Attorney General of the Republic of Uganda* 123.
103 *Attorney General v Joseph Tumushabe*.
104 *Attorney General v Joseph Tumushabe* 17-18.
105 *Attorney General v Joseph Tumushabe* 19.
106 *Attorney General v Joseph Tumushabe* 28.

purporting to create any court of the same status as the High Court or superior to the High Court is contrary to article 129 of the *Constitution* and unconstitutional.

3.2 Jurisdiction over civilians

Naluwairo has discussed in detail the history of the jurisdiction of the courts martial over civilians in Uganda.[107] It is beyond the scope of this article to repeat that discussion. The judges of the Constitutional Court have been divided on the issue of whether courts martial have jurisdiction over civilians. It has been mentioned above that section 119(1) of the *UPDF Act* provides that "persons subject to military law" include serving military officers and civilians found in possession of weapons which are a monopoly of the UPDF. Based on section 119 many civilians have been prosecuted before courts martial especially the General Court Martial. Some of these civilians have opposed their prosecution before courts martial on the grounds that courts martial, do not have jurisdiction over civilians generally or that courts martial lack sufficient independence and impartiality to guarantee the right to a fair trial. For example, in *Uganda Law Society v Attorney General of the Republic of Uganda*[108] civilians, including a retired soldier, were prosecuted before the General Court *inter alia* for terrorism and treason. The accused argued, *inter alia*, that as civilians, the General Court Martial did not have jurisdiction over them and that section 119(g) and (h) of the Uganda Peoples' Defence Forces Act is inconsistent with Articles 126(1) and 210 of the *Constitution*.[109] Justice Kikonyogo held that section 119(1)(g) and (h) was not unconstitutional because:

> Due to the importance of national security it appears it is generally accepted that those members of civil society who assist in anyway the commission of a military offence or aid and abet military offenders or those holding arms and ammunition unlawfully should be answerable in military courts. It is presumed that they had common criminal intention with military offenders when the alleged offences were committed.[110]

She explained that even in other countries such as the USA, there were circumstances in which civilians could be tried before military courts.[111] She added that civilians could be tried before military courts "as long as the principles of the rules of natural justice and the rules of evidence and procedure were strictly observed".[112] Likewise, Justice Byamugisha held that civilians can be prosecuted before a court martial if legislation provides that the courts martial have jurisdiction over those civilians and the offences

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107 Naluwairo 2018 *Global Campus Human Rights Journal*.
108 *Uganda Law Society v Attorney General of the Republic of Uganda*.
109 *Uganda Law Society v Attorney General of the Republic of Uganda* 3.
110 *Uganda Law Society v Attorney General of the Republic of Uganda* 20.
111 *Uganda Law Society v Attorney General of the Republic of Uganda* 20-21.
112 *Uganda Law Society v Attorney General of the Republic of Uganda* 21.

they committed.[113] She therefore found that section 119(1)(g) and (h) of the *UPDF Act* was not contrary to Articles 129(1)(d) and 210 of the *Constitution*.[114] She also held that "the trial of civilians with members of the UPDF for offences under the *UPDF Act* is not inconsistent with Articles 28(1), 126(1) and 210 of the *Constitution*".[115] Justice Kavuma also held that section 119(1)(g) and (h) was not inconsistent with the *Constitution* and that the trial of civilians before military courts did not violate the accused's right to a fair trial.[116]

However, Justice Okello came to a different conclusion. He referred to section 119 of the *UPDF Act* and held that by granting courts martial jurisdiction over civilians, Parliament exceeded is powers under article 210 of the *Constitution*. This is because under article 210 Parliament could establish a court or tribunal as an organ of UPDF only for the purpose of enforcing military discipline. He was "satisfied that those civilians who fall under sections 119(1)(g) and (h) could be adequately dealt with in the civil courts where they expect to get a fair trial". He emphasised that "Military Courts have no general jurisdiction over civilians" because "article 210 does not empower Parliament to make laws that would give such courts jurisdiction over civilians or non-members of the UPDF".[117] While holding that sections 119(1)(g) and (h) of the *UPDF Act* were unconstitutional, Justice Engwau outlined the powers of Parliament under article 210 of the *Constitution* and held that courts martial are not courts of judicature and, therefore, they do not have jurisdiction in cases of the joint trial of civilians and persons subject to military law. Such joint trials should be held by the High Court.[118] He concluded that:

> Section 119 (1) (g) and (h) of the … *UPDF Act*, which subjects civilians not employed by or voluntarily or in any other way officially connected with the Uganda People's Defence Forces to military law and discipline, is inconsistent with Articles 126 (1) and 210 of the *Constitution*.[119]

As was the case with Justice Engwau, Justice Byamugisha held that the General Court Martial was not a court of judicature because it had been established under article 210 of the *Constitution* as opposed to article 129(1).[120] He emphasised that "the different layers of military courts that were established under the Act were intended to carry out disciplinary functions under the Act but they are not courts as defined under the

113 *Uganda Law Society v Attorney General of the Republic of Uganda* 102-103.
114 *Uganda Law Society v Attorney General of the Republic of Uganda* 108.
115 *Uganda Law Society v Attorney General of the Republic of Uganda* 108.
116 *Uganda Law Society v Attorney General of the Republic of Uganda* 126-130.
117 *Uganda Law Society v Attorney General of the Republic of Uganda* 65-66.
118 *Uganda Law Society v Attorney General of the Republic of Uganda* 84.
119 *Uganda Law Society v Attorney General of the Republic of Uganda* 88.
120 *Uganda Law Society v Attorney General of the Republic of Uganda* 105.

Constitution".[121] She emphasised "the framers of the *Constitution* did not intend military courts to be courts within the meaning of the *Constitution*".[122] She held further that military courts belong to the executive arm of government and lack sufficient independence for them to be recognised as "courts" as defined in the *Constitution*.[123] On the other hand, Justice Kavuma held that the *UPDF Act* provides for several safeguards to ensure that the accused, whether civilians or soldiers, get a fair trial.[124]

The issue of whether courts martial have jurisdiction over civilians arose again in *Michael Kabaziguruka v Attorney General*[125] in which the petitioner, a civilian, was prosecuted before the General Court Martial and argued *inter alia* that he was as a civilian the General Court Martial did not have jurisdiction over him. The Constitutional Court held by majority[126] that the General Court Martial did not have jurisdiction over civilians. This is so because it lacked the necessary independence and impartiality to qualify as a competent court within the meaning of article 28(1) of the *Constitution*. The Court's decision was based on the fact that the officers who preside over courts martial proceedings lack the necessary security of tenure, and they are accountable to their military commanders for their actions or omissions (because of the oath of allegiance they take as military). They also held that a court martial is a quasi-judicial body with the mandate to enforce military discipline. However, the minority judgement was to the effect that courts martial have jurisdiction over civilians because they are bound by the *Constitution*, are independent and impartial and are under a duty to ensure the accused's right to a fair trial.[127]

4 Analysing the case law

The starting point is for one to ascertain the legal status of the courts martial in Uganda. It has been illustrated above that some judges have held that courts martial were established under article 210(a) or (b) of *Constitution* and the *UPDF Act*. Although there is no doubt that the courts martial were established under the *Constitution*, courts have erred to hold that courts martial were established under article 210(a) or (b) of the *Constitution*. The drafting history of the *Constitution*, as discussed above, illustrates clearly

121 *Uganda Law Society v Attorney General of the Republic of Uganda* 105.
122 *Uganda Law Society v Attorney General of the Republic of Uganda* 107.
123 *Uganda Law Society v Attorney General of the Republic of Uganda* 107-108.
124 *Uganda Law Society v Attorney General of the Republic of Uganda* 123-126.
125 *Michael Kabaziguruka v Attorney General*.
126 *Michael Kabaziguruka v Attorney General* (Justices Kakuru, Obura and Kasule).
127 *Michael Kabaziguruka v Attorney General* case (Justices Madrama and Musota). As at the time of writing, the Attorney General had appealed to the Supreme Court against this judgment but judgement has not been handed down. See *Attorney General v Kabaziguruka* (Constitutional Application 5 of 2021) [2021] UGSC 21 (5 August 2021) (in which the Supreme Court stayed the Constitutional Court's order).

that courts martial were established under article 129(d) of the *Constitution*. This conclusion has two implications. Firstly, courts martial are courts of judicature. Secondly, any court martial must be subordinate to the High Court. This means that the decisions of the Court Martial Appeal Court, when dealing with non-services offences, should be appealable to the High Court and not to the Court of Appeal. Therefore, Regulation 20(2) of the Uganda Peoples' Defence Forces (Court-Martial Appeal Court) Regulations,[128] which provides that decisions of the Court Martial Appeal Court in cases where offenders are sentenced to death or life imprisonment lie to the Court of Appeal and not the High Court, is unconstitutional. This is so because the drafting history of article 129 of the *Constitution* shows that every court martial must be subordinate to the High Court. Therefore, much as Parliament has the power to enact legislation under article 79, that legislation should not be contrary to the *Constitution*. The *Constitution* is very clear that all courts martial are subordinate to the High Court. Legislation which is contrary to this clear constitutional provision cannot withstand constitutional scrutiny. This means that the holding by the Supreme Court that there is nothing problematic with Parliament enacting legislation establishing Tribunals whose decisions are appealable to the Court of Appeal instead of the High Court was reached because the Supreme Court had not considered the drafting history of article 129(d) of the *Constitution*. The drafting history of article 129(d), as discussed above, illustrates without doubt that the drafter of the *Constitution* made it very clear that any court or tribunal established by Parliament must be subordinate to the High Court. In simple terms, article 129(d) does not permit Parliament to establish a court which is of the same status as the High Court. Establishing a court which is of the same status as the High Court would be like establishing another High Court. This power Parliament does not have.

Another issue that must be discussed is whether courts martial should have jurisdiction over civilians. The Constituent Assembly debates show that when this issue was raised there was no concrete answer from the delegates. It could be argued that had the delegates wanted courts martial to have jurisdiction over civilians, they would have stated so expressly. It could also be argued that the opposite is true. However, the debates in the Constituent Assembly on the courts martial show that the delegates were concerned with four main issues: firstly, the jurisdiction of the courts martial over non-service offences; secondly, the right to fair trial of the soldiers being prosecuted before the courts martial (especially the issues of double jeopardy and legal representation); thirdly, the independence of the courts martial (especially the question of having Judge Advocates presiding over courts martial); and fourthly, the status of the courts martial (as subordinate

128 The Uganda Peoples' Defence Forces (Court-Martial Appeal Court) Regulations, Statutory Instrument 307-7.

courts). The debates in the Constituent Assembly emphasised the rights of soldiers being prosecuted before courts martial. This means that by implication the possibility of courts martial having jurisdiction over civilians was not envisaged. Had it been envisaged, there is no doubt that delegates would have discussed it and dealt with it firmly. There was no doubt that whether courts martial had jurisdiction over non-service offices, the accused (the soldiers) had to get a fair trial. As discussed above, Ugandan courts have held that one of the most important elements of the right to a fair trial is that the court or tribunal should be competent, independent and impartial. Some judges have held that there is no problem with the court martial having jurisdiction over a limited category of civilians (for example, those working in the army and those using military materials to commit offences) if the accused will get a fair trial. The same applies regarding the question of whether courts martial should have jurisdiction over non-service offences. Assuming for the sake of argument, that the judges who held that courts martial should have jurisdiction over civilians simply because the *UPDF Act* confers that jurisdiction on them were correct, the next question is whether courts martial in Uganda meet the international standards required of a court martial before it can exercise jurisdiction over civilians.

International human rights law, as a general rule is against the trial of civilians before military courts. However, there are a few exceptions.[129] As the Human Rights Committee explained in General Comment No 32 on article 14 of the *International Covenant on Civil and Political Rights*:

> While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.[130]

Although in the above clarification the Human Rights Committee states that in exceptional circumstances civilians maybe tried before military courts, the African Commission's jurisprudence on this issue is more restrictive. For

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129 See generally Naluwairo 2019 *E Afr J Peace & Hum Rts*.

130 *Human Rights Committee General Comment No 32 (Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial)* UN Doc CCPR/C/GC/32 (2007) para 22.

example, in *Law Office of Ghazi Suleiman v Sudan*[131] the African 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".[132] This is so because these courts lack independence and impartiality, which are fundamental components of the right to a fair trial. The Commission also held that military courts "should not, in any circumstances whatsoever, have jurisdiction over civilians" and that "Special Tribunals should not try offences that fall within the jurisdiction of regular courts".[133] In other words, military courts should not try civilians for offences which are "quite capable of being tried by normal courts".[134] Likewise, in *Okiring v Uganda*[135] the African Commission on Human and Peoples' Rights relied on the jurisprudence of the Human Rights Committee and held that "military tribunals may only try civilians in extraordinary, objectively determined and narrowly defined circumstances such as cases where fair, independent and impartial civilian courts are unavailable".[136] The Commission held that the prosecution of civilians for "civilian offences" before military courts presided over by military officers is a flagrant violation of the requirement of good justice.[137] The African Commission added that:

> Civilians having neither military duties nor functions cannot be tried before military courts. The trial of civilians by a military tribunal violates due process and fair trial rights, in particular the individual's right to a hearing by a competent, independent and impartial tribunal.[138]

The African Commission directed the Ugandan government "to ensure that the provisions" of the *UPDF Act* "through which the Victims who are civilians were charged in the General Court Martial, are revised to prohibit the trial of civilians before military courts".[139] The African Commission has also held that military courts must be independent and impartial[140] and that:

> The discretionary power of appointment by the President of the Republic in respect of these judges [of military courts] establishes or is likely to establish

131 *Law Office of Ghazi Suleiman v Sudan* (Decision, Comm 222/98; 229/99) (ACmHPR, 29 May 2003).

132 *Law Office of Ghazi Suleiman v Sudan* (Decision, Comm 222/98; 229/99) (ACmHPR, 29 May 2003) para 64.

133 *Media Rights Agenda v Nigeria* (Decision, Comm 224/98) (ACmHPR, 6 November 2000) para 62.

134 *Mgwanga Gunme v Cameroon* (Decision, Comm 266/2003) (ACmHPR, 27 May 2009) para 128.

135 *Okiring v Uganda* (Decision, Comm 339/2007) (ACmHPR, 7 August 2017) (hereafter *Okiring*).

136 *Okiring* para 124.

137 *Okiring* para 125.

138 *Okiring* para 126.

139 *Okiring* para 139(v).

140 *Interights v DRC* (Decision, Comm 274/03 and 282/03) (ACmHPR, 5 November 2013) (hereafter *Interights*).

> a hierarchical relationship with higher authority. In these circumstances, the court would not meet the required standards of an impartial court.[141]

The Commission called upon the respondent state to align its legislation "establishing a Military Court with the standards of fair trial prescribed by the African Charter".[142] The Commission also held that the soldiers who are being prosecuted before military courts have the right to a fair trial, which includes the right to appeal against the decisions of the trial court and the right to legal representation[143] and that "Military Tribunals must be subject to the same requirements of fairness, openness, justice, independence, and due process as any other process".[144]

The question is whether the courts martial in Uganda meet the above international law standards. The answer is in the negative. This is because of the reasons the Constitutional Court explained in detail in the majority judgment in the case of *Michael Kabaziguruka v Attorney General*.[145] These reasons relate to the way the Chairman and other officials of the courts martial are appointed, their allegiance to their commanders and their lack of security of tenure. There is also evidence to show that courts martial in Uganda have been used by the President to oppress his political opponents.[146] Some statements made by the President also show that courts martial follow his orders instead of applying the law.[147] In the past the Chairman of the General Court Martial did not have legal training and even sentenced lawyers to prison for questioning some of the decisions he had made against their civilian clients who were being prosecuted before the court martial.[148] In the light of the above discussion, courts martial in Uganda are not competent courts and should not have jurisdiction over civilians at all. Likewise, they should not have jurisdiction over soldiers who have committed non-service offences. They should instead enforce military discipline. However, should their independence be guaranteed, and should they be able to ensure that an accused get a fair trial, they could have jurisdiction over non-service offices as subordinate courts, in which event their decisions should be appealable to the High Court.

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141 *Interights* para 78.

142 *Interights* para 89(a).

143 *Working Group on Strategic Legal Cases v DRC* (Decision, Comm 259/2002) (ACmHPR, 24 July 2013); *Forum of Conscience v Sierra Leone* (Decision, Comm 223/98) (ACmHPR, 6 November 2000).

144 *Civil Liberties Organization v Ghana* (Decision, Comm 218/98) (ACmHPR, 7 May 2001) para 44.

145 *Michael Kabaziguruka v Attorney General*.

146 The persecution of Dr Kiiza Besigye and supporters of the National Unity Platform are clear examples of this abuse.

147 See for example Tumusiime and Wesaka 2021 https://www.monitor.co.ug/uganda/news/national/museveni-yet-to-drop-kayihura-military-charges-3381526.

148 During General Tumwine's era as the Chairperson of the General Court Martial.

According to Justice Madrama's reasoning in *Michael Kabaziguruka v Attorney General*,[149] courts martial have jurisdiction over civilians because a person convicted by a court martial of an offence which is provided for under the *Penal Code* as a penal offence (for example murder) is considered to have been convicted of a service offence. In other words, the court before which a person is convicted determines the type of the offence of which he/she is convicted. If it is a civil court, the person is convicted of murder. If the conviction is before a court martial, it is a service offence with murder as the ingredient. In other words, criminal offences are "ingredients" of service offences. This definition ignores the fact that what he refers to as "ingredients" of a service offence are offences on their own with their specific ingredients. For example, murder and manslaughter, robbery etc. It also ignores the fact that the drafters of the *Constitution* understood service offences to mean offences that relate to the operation of the army. He recognises the dilemma in which he puts himself by holding that:

> Obviously, the question of whether a person has committed a penal offence under the Penal Code Act or any other enactment can be further interrogated as to whether the proof of the commission of an offence ought to be a conviction by a civil court for that offence and the evidence of that conviction be by way of the decision or order of the relevant court. I will leave that open for the moment as a matter which may require further elucidation by the Supreme Court.[150]

The reason why Justice Madrama found himself with a question he could not answer is because he proceeded under the impression that every offence "cut" from another piece of legislation and "pasted" into the *UPDF Act* is a service offence. The weakness with this reasoning is that it ignores the simple distinction between creating an offence and copying and pasting an offence from another piece of legislation. The drafting history of article 129 of the *Constitution* shows that army representatives to the Constituent Assembly made it very clear that offences created in other pieces of legislation such as the *Penal Code* are "penal offences" which were included in the UPDF legislation as "service offences". Therefore, the name of the court in which a person is being prosecuted does not change the classification of the offence. For example, whether murder is referred to as a penal offence or a service offence, the ingredients remain the same and the burden and standard of proof do not change. This explains why the Court of Appeal has required that in cases where soldiers have been prosecuted for murder before courts martial, the prosecution must prove all the ingredients of the offence under the *Penal Code*.[151] Therefore, the *UPDF Act* does not strictly speaking create penal offences. It creates its

149 *Michael Kabaziguruka v Attorney General*.

150 *Michael Kabaziguruka v Attorney General* 28.

151 *Lt Steven Misango and Lt Omar Obongo v Uganda* (Criminal Appeal-2001/52) [2007] UGCA 2 (21 March 2007) (convicted of murder).

specific service offences which are not included in other pieces of legislation. This also explains why the penalties for offences under the *Penal Code* are in the *Penal Code* and not in the *UPDF Act*. This is the "dilemma" which Justice Madrama pointed out when he observed that allowing military courts to have jurisdiction over offences in the *Penal Code Act* or any other piece of legislation is "troublesome" as it "presupposes that it is the Military Court which will try the person for the offence under the Penal Code Act or the other enactment".[152]

Judges who have held that courts martial lack the necessary independence and impartiality to ensure a fair trial have given compelling reasons to substantiate their conclusions. This has not been the case with those who have taken the opposite view. For example, in *Michael Kabaziguruka v Attorney General*,[153] although Justice Madrama takes issue with the majority view that courts martial are not independent, he fails to explain how independent and impartial courts martial in Uganda are and how they respect the rights of the accused who appear before them, especially in high profile cases. As the majority view explains, the way the officers of the court martial are appointed and their lack of security of tenure compromise their independence. And a court which is not independent and impartial is not a competent court within the meaning of article 28(1) of the *Constitution*. Although courts martial deal with many cases every year where their independence and impartiality do not make newspaper headlines, their lack of independence and impartiality have been evident in high profile (politically sensitive) cases.

In *Uganda Law Society v Attorney General of the Republic of Uganda*[154] Justice Okello referred to article 208(2) of the *Constitution* to hold that courts martial are subordinate to the High Court because the army is supposed to be under civilian authority.[155] He held that:

> The GCM [General Court Martial] is an organ of the UPDF that is enjoined to be subordinate to the civilian authority. The Judiciary is part of the civilian authority established under this *Constitution*. The High Court is part of the Judiciary. In terms of the provision of article 208(2) above, therefore, the GCM is subordinate to the High Court.[156]

It is argued that the drafting history of article 208 shows when referring to civilian authority the makers of the *Constitution* did not have the relationship between the courts martial and civil courts in mind. What they meant was

152 *Michael Kabaziguruka v Attorney General* 28.
153 *Michael Kabaziguruka v Attorney General*.
154 *Uganda Law Society v Attorney General of the Republic of Uganda*.
155 Art 208(2) of the *Constitution* provides that "[t]he Uganda Peoples' Defence Forces shall be Non-partisan, National in character, Patriotic, Professional, Disciplined, Productive and Subordinate to the civilian authority as established under this *Constitution*".
156 *Uganda Law Society v Attorney General of the Republic of Uganda* 57.

that the army had to follow orders from the government headed by a civilian as commander-in-chief, and its mandate was to protect Ugandans and Uganda.[157] In other words, the "civilian authority here is the President and Parliament".[158] The army is supposed to be non-partisan which means "an army which is not aligned to any political force or opinion".[159] Therefore, Justice Okello's reliance on article 208 as the basis for holding that courts martial are subordinate to the High Court was stretching the ambit of article 208 beyond its intended objective.

5 Conclusion

There is no doubt that military courts have a very important role to play in maintaining discipline in the UPDF. Therefore, a statutory provision establishing military courts is not inherently unconstitutional. If one understands the purpose for which the courts martial were established, it would be easy to answer the question of whether they have jurisdiction over civilians. The drafting history of the *Constitution* shows that the sole purpose for the establishment of the courts martial was to enforce military discipline. This means that they should have jurisdiction only over people who are subject to military law in other words, over people who have joined the army either voluntarily or through conscription.[160] In simple terms, those people should have belonged to the army at the time they committed the offence. The drafting history of article 129(1)(d) shows that the drafters of the *Constitution* made it very clear that all courts martial, and these include the Court Martial Appeal Court, are subordinate to the High Court. This is so because during the debates on Articles 28, 129 and 210, the drafters of the *Constitution* mentioned the Court Martial Appeal Court, but they did not suggest that it was not subordinate to the High Court. Therefore, the argument that the Court Martial Appeal Court is on the same level as the High Court is not supported by the drafting history of the *Constitution*. As mentioned above, article 79 of the *Constitution* empowers Parliament "to make laws on any matter for the peace, order, development and good governance of Uganda". The powers of Parliament under article 79 have not been questioned by courts.[161] However, these powers must be

157 Uganda Constituent Assembly *Proceedings* 2728, 2746, 2763-2765, 2769-2770, 2781-2784.

158 Uganda Constituent Assembly *Proceedings* 2780.

159 Uganda Constituent Assembly *Proceedings* 2744.

160 Art 17(2) of the *Constitution* provides that "[i]t is the duty of all able-bodied citizens to undergo military training for the defence of this *Constitution* and the protection of the territorial integrity of Uganda whenever called upon to do so; and the State shall ensure that facilities are available for such training".

161 The *Constitution* also provides for circumstances in which Parliament can delegate some of its legislative powers. This is the case with subsidiary legislation. See for example *Tusingwire v Attorney General* (Constitutional Appeal 4 of 2016) [2017] UGSC 11 (5 May 2017); *Bukenya Church Ambrose v Attorney General*

exercised in line with the *Constitution* although, as the Supreme Court held, "[t]here is a rebuttable presumption that parliament is always right while carrying out its functions".[162] As the Constitutional Court held in *Male Mabirizi v Attorney General*:[163]

> Parliament has to exercise the powers conferred upon it, within the legal framework or parameters laid down in specific provisions of the *Constitution* itself; which parameters qualify the general power conferred on Parliament to make laws.[164]

Likewise, in *Zachary Olum and Anor v Attorney General*[165] the Constitutional Court held that although Parliament has powers to make laws, "[t]he laws so made must conform with the *Constitution*".[166] The drafting history of article 79 shows that none of the delegates to the Constituent Assembly argued expressly that article 79 should empower Parliament to enact laws establishing courts martial at the same level as the High Court and with jurisdiction over civilians. However, they argued that Parliament had the mandate to make legislation dealing with issues such as cultural institutions[167] and the protection of the family.[168] This does not mean that the list of the issues on which Parliament could legislate was exhaustive. However, had the legislators wanted Parliament to use its mandate to establish courts martial at the same level as the High Court and with jurisdiction over civilians, nothing would have prevented them from expressly stating so since the issue of courts martial was debated for several hours in the Constituent Assembly. A correct interpretation of the *Constitution* in the light of its drafting history shows that Parliament should not invoke article 79 as a basis to confer on the courts martial jurisdiction and a status not contemplated by the drafters of the *Constitution*.

(Constitutional Petition 26 of 2010) [2011] UGCC 5 (20 March 2011); *Kasozi v Attorney General* (Constitutional Petition 37 of 2010) [2015] UGCC 2 (29 September 2015).

162 *Foundation for Human Rights Initiatives v Attorney General* (Constitutional Appeal 3 of 2009) [2018] UGSC 46 (26 October 2018) 55.

163 *Male Mabirizi v Attorney General* [2018] UGCC 4 (26 July 2018).

164 *Male Mabirizi v Attorney General* [2018] UGCC 4 (26 July 2018) 122. Also see *Kiiza Besigye v Attorney General* (Constitutional Petition 13 of 2009) [2016] UGCC 1 (29 January 2016); *Thomas Kwoyelo alias Latoni v Uganda (Constitutional Petition 36 of 2011) [2011] UGCC 10 (22 September 2011*) (the Constitutional Court held that Parliament had acted in accordance with Art 79 to enact the relevant legislation).

165 *Zachary Olum v Attorney General* (Constitutional Petition 6 of 1999) [1999] UGCC 7 (02 December 1999).

166 *Zachary Olum v Attorney General* (Constitutional Petition 6 of 1999) [1999] UGCC 7 (02 December 1999) 10.

167 Uganda Constituent Assembly *Proceedings* 5695.

168 Uganda Constituent Assembly *Proceedings* 5834-5835.

Bibliography

Literature

Naluwairo 2018 *Global Campus Human Rights Journal*
Naluwairo R "The development of Uganda's Military Justice System and the tight to a Fair Trial: Old Wine in New Bottles?" 2018 *Global Campus Human Rights Journal* 59-76

Naluwairo 2019 *E Afr J Peace & Hum Rts*
Naluwairo R "Sustainable Development Goal 16 and the Militarization of the Administration of Justice in Uganda" 2019 *E Afr J Peace & Hum Rts* 195-252

Uganda Constituent Assembly *Proceedings*
Uganda Constituent Assembly *Proceedings of the Constituent Assembly* (The Assembly Entebbe 1995)

Uganda Constitutional Commission *Report*
Uganda Constitutional Commission *Report of the Uganda Constitutional Commission: Analysis and Recommendations* (The Commission Kampala 1993)

Case law

Attorney General v Joseph Tumushabe (Constitutional Appeal-2005/) [2018] UGSC 32 (9 July 2018)

Attorney General v Kabaziguruka (Constitutional Application 5 of 2021) [2021] UGSC 21 (5 August 2021)

Bazibu Bruno Francis v Attorney General (Miscellaneous Cause No 110 of 2021) (24 January 2022)

Buchanan v Attorney General (Miscellaneous Cause-2019/266) [2020] UGHCCD 11 (13 March 2020)

Bukeni v Attorney General (Miscellaneous Cause-2021/10) [2021] UGHCCD 12 (16 March 2021)

Bukenya Church Ambrose v Attorney General (Constitutional Petition 26 of 2010) [2011] UGCC 5 (20 March 2011)

Civil Liberties Organization v Ghana (Decision, Comm 218/98) (ACmHPR, 7 May 2001)

Dr Kizza Besigye v Attorney General (Constitutional Petition-2007/7) [2010] UGSC 6 (12 October 2010)

Forum of Conscience v Sierra Leone (Decision, Comm 223/98) (ACmHPR, 6 November 2000)

Foundation for Human Rights Initiatives v Attorney General (Constitutional Appeal 3 of 2009) [2018] UGSC 46 (26 October 2018)

In Re: Muhindo Herbert (HCT-05-CV-MA-2012/42) [2012] UGHC 96 (29 May 2012)

Interights v DRC (Decision, Comm 274/03 and 282/03) (ACmHPR, 5 November 2013)

Joseph Tumushabe v Attorney General (Constitutional Petition No 6/2004) (8 December 2004)

Kasozi v Attorney General (Constitutional Petition 37 of 2010) [2015] UGCC 2 (29 September 2015)

Kiiza Besigye v Attorney General (Constitutional Petition 13 of 2009) [2016] UGCC 1 (29 January 2016)

Kipoi v Attorney General (Miscellaneous Application-2018/230) [2019] UGHCCD 44 (8 February 2019)

Kitata v Uganda (Miscellaneous Application-2018/) [2018] UGHCCRD 130 (6 June 2018)

Law Office of Ghazi Suleiman v Sudan (Decision, Comm 222/98; 229/99) (ACmHPR, 29 May 2003)

Lt Steven Misango and Lt Omar Obongo v Uganda (Criminal Appeal-2001/52) [2007] UGCA 2 (21 March 2007)

Lujila v O/C Kigo Rrison (Miscellaneous Cause-2013/86) [2013] UGHCCD 134 (7 October 2013)

Male Mabirizi v Attorney General [2018] UGCC 4 (26 July 2018)

Media Rights Agenda v Nigeria (Decision, Comm 224/98) (ACmHPR, 6 November 2000)

Mgwanga Gunme v Cameroon (Decision, Comm 266/2003) (ACmHPR, 27 May 2009)

Michael Kabaziguruka v Attorney General (Constitutional Petition No 45 of 2016) (1 July 2021)

Namugerwa v Attorney General (Civil Appeal-2012/4) [2013] UGSC 20 (19 June 2013)

Okiring v Uganda (Decision, Comm 339/2007) (ACmHPR, 7 August 2017)

Oloka-Onyango v Attorney General (Constitutional Petition 8 of 2014) [2014] UGSC 14 (1 August 2014)

Thomas Kwoyelo alias Latoni v Uganda (Constitutional Petition 36 of 2011) [2011] UGCC 10 (22 September 2011)

Tusingwire v Attorney General (Constitutional Appeal 4 of 2016) [2017] UGSC 11 (5 May 2017)

Uganda Law Society v Attorney General (Constitutional Application No. 7/2003)

Uganda Law Society v Attorney General of the Republic of Uganda (Constitutional Petition-2005/18) [2006] UGSC 10 (30 January 2006)

Working Group on Strategic Legal Cases v DRC (Decision, Comm 259/2002) (ACmHPR, 24 July 2013)

Zachary Olum v Attorney General (Constitutional Petition 6 of 1999) [1999] UGCC 7 (02 December 1999)

Legislation

Constitution of Botswana, 1966

Constitution of Lesotho, 1993

Constitution of Uganda, 1995

Penal Code Act, 1950 (Ch 120)

Uganda Peoples' Defence Forces Act, 2005

Uganda Peoples' Defence Forces (Court-Martial Appeal Court) Regulations, Statutory Instrument 307-7

International instruments

Human Rights Committee General Comment No 32 (Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial) UN Doc CCPR/C/GC/32 (2007)

International Covenant on Civil and Political Rights (1966)

Internet sources

Tumusiime and Wesaka 2021 https://www.monitor.co.ug/uganda/news/national/museveni-yet-to-drop-kayihura-military-charges-3381526

Tumusiime B and Wesaka A 2021 *Museveni yet to Drop Kayihura Military Charges* https://www.monitor.co.ug/uganda/news/national/museveni-yet-to-drop-kayihura-military-charges-3381526 accessed 16 August 2021

List of Abbreviations

E Afr J Peace & Hum Rts	East African Journal of Peace and Human Rights
UPDF	Uganda Peoples' Defence Forces