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Committee on the Human Rights of Parliamentarians

Report on the mission to Uganda 25 - 29 January 2020

UGA19 - Robert Kyagulanyi Ssentamu (aka Bobi Wine)

UGA20 - Francis Zaake

UGA21 - Kassiano Wadri

UGA22 - Gerald Karuhanga

UGA23 - Paul Mwiru

Executive Summary

From 25 to 29 January 2020, a delegation of the IPU Committee on the Human Rights of Parliamentarians (hereinafter: “the Committee”) conducted an on-site mission to Uganda to gather first-hand information on the concerns identified by the Committee in the cases of five opposition members of parliament. These concerns relate primarily to events that took place in the context of a by-election in the district of Arua in August 2018 and include the following alleged human rights violations: acts of torture and other cruel, inhuman or degrading treatment; failure to respect parliamentary immunity; lack of due process at the investigation stage; lack of fair trial proceedings; failure to respect the rights to freedom of expression, assembly and association; and arbitrary arrest and detention.

The delegation appreciated the constructive cooperation extended by the national authorities, particularly the Speaker of Parliament, which was crucial to the smooth conduct of the mission.

Despite its specific request, the delegation was not able to obtain concrete information on possible ongoing cases against police officers in connection with the credible and serious allegations of torture against the members of parliament in the cases at hand. The delegation was told that no information could be shared as the matter was *sub judice*.

The delegation deeply regrets that no progress appears to have been made towards investigating these allegations and urges the relevant authorities to conduct a prompt, impartial and independent investigation including, where appropriate, the filing of specific torture charges against perpetrators, and the application of the corresponding penalties under domestic law. It also urges Parliament to effectively use its oversight powers to this end as part of its duty to ensure Uganda’s full respect of its human rights commitments. The delegation wishes to be kept informed of any relevant developments in this regard.

Considering that the cases at hand are intrinsically linked to the violence surrounding the by-election in Arua, including the reported pelting of the President’s car, the delegation is convinced of the need for these events to be investigated fully.



The delegation reaffirms the Committee's longstanding concerns relating to the right to a fair trial, including that Mr. Kyagulanyi was initially brought before a military court, that the members of parliament were brought before court after the stipulated constitutional timeframe (48 hours), that their right to access their close relatives, lawyers and personal doctors was allegedly denied, that a number of additional charges regarding the same events were brought against them one year later reportedly without supporting evidence, and to the fact that the five parliamentarians were charged with treason, which is punishable by death in Uganda. In light of these concerns, the delegation reiterates the Committee's wish to mandate a trial observer to monitor the court proceedings against the members of parliament. It therefore wishes to be kept informed of the dates of the trial and of other relevant judicial developments in the case.

Taking note of the information received on frequent and systematic arrests of opposition members of parliament, the delegation calls on the authorities to ensure that the police and other security forces do not use the punitive power of the State to harass opposition members of parliament and that the use and application of preventive measures involving the deprivation of liberty are adequately regulated and only resorted to in strict accordance with the law.

The delegation also considers that the concerns in this case have to be seen in the light of the importance of giving voice in parliament to young Ugandans. The delegation recognizes the important steps that the Ugandan Parliament has taken in this regard. It urges Parliament to take further targeted action to enhance the participation of young parliamentarians, including opposition members of parliament, in decision-making processes and to give them maximum support so as to contribute to a more youth-friendly and accessible environment.

The delegation also urges Parliament to take the necessary steps to guarantee that the concerns outlined in the present report, including with regard to the Public Order Management Act, are not repeated.

In view of the general elections to take place in 2021 in Uganda, the delegation urges all sides to refrain from violence and urges the relevant authorities to take all necessary measures to protect human life, to respect people's right to peaceful assembly, to take part in the conduct of public affairs, to vote and be elected, and to have equal access to public service positions. In this regard, the delegation also urges the relevant authorities to refrain from acts that could in any way undermine the civil and political rights of the five members of parliament.

The delegation is aware that much progress has been achieved in recent years in promoting and protecting human rights in Uganda. Nevertheless, in the cases in question, the delegation received systematic and detailed reports which underscored the treatment inflicted on the five members of parliament, the lack of enforcement of legal human rights provisions, and the many remaining challenges in ensuring access to justice and effective remedies. The delegation therefore calls on the authorities to take measures to tackle these issues decisively.

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A. Origin and conduct of the mission

1. Origin of the mission

1. The cases of five members of parliament, all members of the opposition, four of them under the age of 45, are currently under examination before the IPU Committee on the Human Rights of Parliamentarians (hereinafter: “the Committee”). The alleged human rights violations in these cases include: acts of torture and other cruel, inhuman or degrading treatment; the failure to respect parliamentary immunity; lack of due process at the investigation stage; lack of fair trial proceedings, failure to respect the rights to freedom of expression, assembly and association; and arbitrary arrest and detention.

2. It was in its decision adopted in October 2018 that the Committee first suggested sending a delegation to Uganda to obtain detailed information on the issues of concern and to contribute to facilitating a prompt satisfactory solution to the cases at hand in compliance with international human rights standards.

3. In her letters dated 25 February and 8 October 2019, the Speaker of Parliament expressed support for the Committee’s wish to conduct such a fact-finding mission. In her letter dated 18 December 2019, the Speaker confirmed that the President of the Republic would be able to meet with the delegation in January 2020, which therefore constituted a formal authorization to travel to Uganda.

4. Following consultations with the then President of the Committee, the composition of the delegation was determined as follows: Ms. Aleksandra Jerkov (Serbia) and Mr. Ali Alaradi (Bahrain). The delegation was accompanied by Mr. Roberto Rodriguez Valencia, IPU Human Rights Programme Officer.

2. Conduct of the mission

5. The mission took place from 25 to 29 January 2020. The delegation sincerely thanks the Ugandan authorities for their cooperation and the spirit of dialogue displayed, particularly the Speaker of Parliament and her staff, who ensured the smooth conduct of the mission.

6. The delegation met with the following parliamentary and executive authorities, members of parliament, diplomats, representatives of international organizations and civil society, complainants and other interested parties:

- Executive authorities:

- H.E. Mr. Yoweri Museveni, President of the Republic of Uganda
- Mr. Christopher Gashirabake, Deputy Solicitor General, Ministry of Justice and Constitutional Affairs
- Mr. Odumbi James Owere, Principal Assistant, Office of the Director of Public Prosecutions

- Parliamentary authorities:

- Ms. Rebecca Alitwala Kadaga, Speaker of Parliament
- Mr. Atiku Benard, MP, Member of the ad hoc parliamentary group established in August 2018 to inquire into the situation of the members of parliament

- Ugandan Human Rights Commission (UHRC):

- Dr. Katebaliirwe Amooti Wa Irumba, Commissioner, UHRC
- Ms. Ida Nakiganda, Director of Complaints, Investigations and Legal Services, UHRC
- Other senior staff members of the UHRC

- National Police:

- Brig. Jack Bakasumba, Chief of Joint Staff
- Other senior police officers

- Parliamentarians concerned:
 - Mr. Robert Kyagulanyi Ssentamu (aka Bobi Wine) (member of parliament, victim)
 - Mr. Francis Zaake (member of parliament, victim)
 - Mr. Kassiano Wadri (member of parliament, victim)
- Legal counsel to Mr. Robert Kyagulanyi Ssentamu:
 - Mr. David Lewis Rubongoya
 - Ms. Shamim Malende
 - Mr. Anthony Wameli Yeboah
- United Nations:
 - Ms. Rosa Malango, United Nations Resident Coordinator and Designated Official
 - Mr. Michael Wangusa, Communications Officer & Acting Head of Office
- European Union:
 - Ms. Anna Merrifield, Deputy Head of Delegation, Delegation of the European Union to the Republic of Uganda
 - Mr. Thomas Tiedemann, First Secretary, Head, Governance and Human Rights Section
- Civil society representatives and others
 - Mr. Simon Peter M. Kinobe, President, Uganda Law Society
 - Other civil society representatives in Kampala

B. Case outline and the Committee's concerns prior to the mission

7. Five opposition parliamentarians were violently arrested on 13 August 2018, together with 29 other people, in the district of Arua, after President Yoweri Museveni's convoy was reportedly pelted with stones. According to credible reports, the parliamentarians were victims of torture. All those arrested, including the five parliamentarians, were charged with treason, which is punishable by death in Uganda. The incidents took place on the last day of campaigning ahead of the Arua district by-elections which were held on 15 August 2018. Mr. Kyagulanyi alleged that Special Forces Command soldiers tortured him while he was detained by the military. The media reported that men in military uniform took Mr. Zaake, who was unconscious, to a hospital in Kampala and abandoned him there.

8. Mr. Kyagulanyi had travelled to Arua with the other parliamentarians to canvass support for Mr. Wadri, an independent candidate who was competing against candidates from the ruling party, the National Resistance Movement (NRM), and the largest opposition party, the Forum for Democratic Change (FDC).

9. Mr. Kyagulanyi was initially charged before a military court for illegal possession of firearms and ammunition, but these charges were later dropped. On 6 August 2019, the following additional charges were reportedly brought against all the five members of parliament in relation to the same events: intent to annoy, alarm or ridicule the President, incitement to violence, disobedience of lawful orders, failure to prevent obstruction of traffic, confusion or disorder during a public meeting, and failure to give right of way to the President.

10. The complainants claim that due process guarantees have been violated from the outset, that the parliamentarians are victims of political repression, as there is no evidence to support the charges brought against them, and that no action has been taken to investigate the allegations of torture or to hold to account the state agents that mistreated them upon their arrest. They state that Mr. Kyagulanyi is a popular young parliamentarian and a well-known singer who enjoys wide popularity among young people. Through his songs and, since 2017, through his parliamentary work, he has been a vocal critic of President Museveni and his government. The complainants affirm that the authorities are doing everything possible to prevent Mr. Kyagulanyi from staging concerts and thus conveying his music and political message.

11. In its decision, adopted by the Governing Council in October 2019, the Committee expressed its concern that, more than one year after the events, no one had been held to account for the torture and ill-treatment of the parliamentarians, and allegedly several others, in Arua in August 2018 by the security forces. It urged the relevant authorities to comply fully with their national and international obligations relating to the right of all persons to enjoy freedom from torture and cruel, inhuman or degrading treatment or punishment. The Committee also urged Parliament, which had asked the Government to report by October 2018 on the steps taken to investigate the torture and ill-treatment of the parliamentarians, to carry out its oversight function much more stringently, considering also that this particular matter did not appear to be before the courts and, even if it had, did not seem to be advancing.

12. The Committee expressed deep concern about the alleged serious violations of the right to a fair trial in proceedings initiated against the parliamentarians, as well as the other persons arrested in Arua in 2018, and about the nature and severity of the charge of treason, especially in view of the allegations that it was unsupported by evidence and the facts at hand. The Committee failed to understand how, one year later, the accused were reportedly subject to a whole set of additional charges in relation to the same events, including the charge of intent to annoy, alarm or ridicule the President with significant repercussions for free speech. It was also concerned that, earlier in 2019, Mr. Kyagulanyi was suddenly and temporarily taken into custody and charged with respect to his alleged role in a protest held in July 2018.

13. The Committee was deeply concerned about the steps taken to prevent Mr. Kyagulanyi from conveying his political message, which run counter to his rights to freedom of expression and freedom of assembly. It urged the authorities, therefore, to lift the restrictions imposed on him and to do everything possible to allow him to speak out, irrespective of whether he used his platform as a parliamentarian or a singer, and to meet and interact with his supporters.

C. Information gathered during the mission

1. Domestic legal framework

1.1 The recently adopted Human Rights (Enforcement) Act

14. The delegation received information on recent efforts to enhance national legislation from a human rights perspective. Several interlocutors, including civil society representatives, expressed their satisfaction with the adoption of the Human Rights (Enforcement) Act, 2019. The aim of this new legislation is to ensure that the human rights listed in the Constitution of Uganda¹ are respected and that there are consequences when they are not respected. A person who has reason to believe that the State is not taking adequate steps for the progressive realization of rights and freedoms guaranteed under Chapter Four of the Constitution or international treaties to which the State is a party, may apply to the High Court for redress.

15. Considering that the delegation was repeatedly told that the lack of financial resources of State institutions may have a negative impact on providing effective remedies in human rights cases, the delegation was pleased to note that under this law, Government has the obligation to report to Parliament every year on its action to effectively realize the rights and freedoms of citizens wherever a competent court finds that justice had not been provided due to resource constraints (cf. article 13 of the Human Rights (Enforcement) Act).

1.2 Prohibition of torture

16. The delegation also took note of the Prohibition and Prevention of Torture Act.² The Act aims to reinforce respect for human dignity by giving effect to the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Uganda in 1986. The Prevention and Prohibition of Torture Act foresees a range of measures to prevent and prohibit torture and provides a detailed definition of torture, determines

¹ Constitution of Uganda: http://statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf.

² Prohibition and Prevention of Torture Act: https://ulii.org/system/files/legislation/act/2012/3/prevention_prohibition_of_torture_act_no_3_of_2_17440.pdf.

torture a criminal offence, and establishes penalties for the offence of torture. The Act also gives effect to Articles 24 and 44 (a) of the Constitution of Uganda, which reaffirm the right of all persons to be free from torture and cruel, inhuman or degrading treatment or punishment.

17. In addition to the above-mentioned Act and the Constitution, which clearly provides that there shall be no derogation from the right to freedom from torture and cruel, inhuman and degrading treatment or punishment, the delegation noted that torture was also prohibited by other national laws, including:

- Section 21(e) of the Anti-Terrorism Act, 2002, which makes it an offence for any “authorized officer” to engage in acts of torture or ill-treatment.³
- Section 25(4) of the Police Act (Chapter 303), which requires that magistrates order an investigation into allegations of torture of suspects by police officers and that perpetrators of torture must be charged. The Police Act 303 (Section 70) also allows the public to lodge complaints against police officers in cases of violation of human rights and unprofessional conduct by police officers.⁴ A person is entitled, without prejudice to any other legal means of redress available to him or her, to make a written complaint, to do so orally or on-line by completing a form.⁵

18. The delegation was informed that where a complaint of torture of a suspect in custody was made to a magistrate, the latter should immediately order an investigation into the allegation. If the allegation was proven to be true, the magistrate should order for the examination and treatment of the person affected at the expense of the State, and any person responsible for the torture should be charged.

19. The Police Chief of Joint Staff confirmed that parliamentary delegations, duly mandated by the Speaker of Parliament, as well as the Ugandan Human Rights Commission, could freely access detention centres to oversee police action and detention conditions.

20. Despite this promising legal framework, the delegation was repeatedly told by civil society representatives and local human rights lawyers that there was a wide gap between the aspirations of those provisions and the implementation of the obligation to end and punish torture in Uganda.

1.3 Freedom of assembly

21. In the course of the mission, the issue of freedom of assembly came up several times. Numerous civil society representatives, human rights lawyers and opposition members of parliament highlighted that the Public Order Management Act⁶ was systematically used to silence and harass political opponents, in particular opposition parliamentarians.

22. The Act provides that organizers of public rallies must notify the police of the intention to hold events or activities. Even though the Act speaks of “notification”, there is disagreement as to the interpretation of this term. Some say it entails simply notifying the police, while others say that, in the context of the wording of the rest of Act, it meant that police permission was required for party activities to go ahead. According to information received, and other data available in the public domain, the Act was applied during the 2016 presidential campaign to carry out mass arrests of opposition members. Several civil society representatives mentioned that the situation persisted as did the systematic banning of meetings organized by opposition leaders, members of parliament included. The application of the law went as far as banning cultural events, like Mr. Kyagulanyi’s music concerts, in a bid to regulate “public order”.

23. The delegation notes that Article 29(1)(d) of the Ugandan Constitution provides that every person shall have the right to “freedom to assemble and to demonstrate together with others peacefully and unarmed”. The limitation to this right is to be found in Article 43(1) which provides that: “In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the

³ The Anti-Terrorism Act: <https://ulii.org/system/files/legislation/act/2002/2002/Anti%20terrorism%20Act%202002.pdf>.

⁴ The Police Act (Chapter 303): https://www.mia.go.ug/sites/default/files/download/THE_POLICE_ACT.pdf.

⁵ In: <https://www.upf.go.ug/complaints/>.

⁶ The Public Order Management Act: <http://old.ulii.org/files/PUBLIC%20ORDER%20MANAGEMENT%20ACT.pdf>

fundamental or other human rights and freedoms of others or the public interest”. Subparagraph (2) further provides that:

“Public interest under this article shall not permit –
(a) political persecution;
(b) detention without trial;
(c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.”

24. The delegation was repeatedly told that in practice, the government and its security forces were acting contrary to these provisions by widening the scope of the definition of “public interest” to justify police actions and arbitrarily prevent gatherings, particularly when organized by voices of dissent and President Museveni’s political opponents.

1.4 Parliamentary immunity

25. During its different meetings, the delegation sought further details on the arrangements in place regarding the arrest and prosecution of members of parliament. Senior officers from the national police and the Speaker of Parliament confirmed that members of parliament were treated equally before the law, without any distinction, and that they could be arrested at any time, in accordance with national legislation. There was no specific parliamentary immunity or inviolability provided by law. Only the following exceptions applied:

- No criminal proceedings may be instituted against any member of parliament for words spoken before, or written in a report to, Parliament (Article 2, The Parliament (Powers and Privileges) Act).
- No member shall be liable to arrest for any civil debt, except a debt that contradiction of which constitutes a criminal offence, while going to, attending at, or returning from a sitting of Parliament (Article 3, The Parliament (Powers and Privileges) Act).
- No process issued by any court in Uganda in the exercise of its civil jurisdiction shall be served or executed within the precincts of Parliament while Parliament is sitting (Article 4, The Parliament (Powers and Privileges) Act).⁷

26. According to the information received, when a member of parliament is arrested, the established practice is that the police may inform the Speaker of Parliament. The latter may also ask for detailed information on the whereabouts, detention conditions or other circumstances relating to member of parliament’s detention.

2. **Allegations of torture and other cruel, inhuman or degrading treatment**

27. During its meetings with three of the concerned parliamentarians, their lawyers and civil society representatives, the delegation was provided with detailed additional information relating to the circumstances in which the five members of parliament were arrested and about the conditions of their detention.

All versions concur on several details:

- On 13 August 2018, the by-elections activities in Arua took place in an atmosphere of overall calm.
- The five members of parliament were publicly seen campaigning in a festive atmosphere and in good physical condition.
- During the evening of 13 August, a large group of armed individuals (apparently members of the Special Forces Command, the Military Police and the Uganda Police Force) violently burst into the hotels where the members of parliament were staying, “beating up everyone they could see”.
- Several people were injured, and at least one person was shot dead.

⁷ The Parliament (Powers and Privileges) Act: <https://ulii.org/ug/legislation/consolidated-act/258>.

- There were numerous arrests, including the five members of parliament whose cases are before the Committee.
- Days after the events, and after being held in custody by police and military officers:
 - Mr. Kyagulanyi was unable to sit, stand or speak with visible signs of ill-treatment, his face swollen and a wound to his ear and at the back of his head.
 - Mr. Zaake, who had been reported missing on 13 August 2018, was subsequently hospitalized in Lubaga Hospital, Kampala, on 17 August, in great pain due to multiple and serious injuries on the head, arms and legs. He was checked into the hospital by military personnel.
 - Mr. Mwiru experienced great pain and paralysis in the left arm.
 - Mr. Karuhanga was limping as a result of an injury to his knee.
 - Mr. Wadri reported being physically and verbally abused by police and subjected to humiliating and intimidating treatment.

28. The physical condition in which the members of parliament were found after the first few days in custody was also formally confirmed by reports and public statements of the Ugandan Human Rights Commission, the ad hoc parliamentary committee, as well as the media.

29. During the meeting with the Police Chief of Joint Staff and other senior police officers, the delegation was informed about the existence of police disciplinary courts and a zero-tolerance policy on torture. However, in spite of its specific request, the delegation was not able to obtain concrete information regarding possible ongoing cases of police officers being investigated or prosecuted in relation to the allegations of torture of the members of parliament in the cases at hand, or relating to the alleged violent action of the police in the context of the Arua by-elections events in August 2018. The delegation was told that no information could be shared as the matter was *sub judice*. In addition, the position of the national police, as an institution, was that it could not communicate directly with international bodies as State positions could only be communicated by the Ministry of Foreign Affairs.

30. The delegation regrets that none of the national authorities questioned was able to confirm whether individual policemen and/or members of the armed forces were under investigation or had been sentenced on charges relating to the alleged torture of the five members of parliament. It therefore regrets deeply that no progress appears to have been made towards investigating the allegations of torture and ill-treatment and establishing accountability.

31. The delegation was appalled by the abundant information received on serious and credible allegations of torture and other cruel, inhuman or degrading treatment committed by armed State agents not only against the members of parliament but also against civilians, including sexual violence against women, in the context of the mass arrests that took place in Arua in August 2018. The delegation deeply regrets that, according to the information received, it seems that no concrete steps have been taken to duly investigate these allegations or prosecute and punish those responsible.

3. Role of Parliament

3.1 Action taken by the Speaker of Parliament

32. The delegation was pleased to hear from several sources, including civil society representatives, that the Speaker of Parliament actively and publicly denounced the circumstances of the arrest of the five members of parliament and urging the relevant authorities to guarantee their lives, physical integrity and their right to a fair trial.

33. The delegation was told that, among other actions, on 16 August 2018 during a parliamentary debate the Speaker publicly asked the First Deputy Prime Minister, Gen. Moses Ali, where the members of parliament were being detained and asked the Ministers of Security and Internal Affairs to appear before Parliament to report on the whereabouts of the members of parliament.⁸

⁸ In: <https://www.parliament.go.ug/news/2154/mp-kyagulanyi-face-court-martial>.

34. On 27 August 2018 the Speaker sent a public letter to the President of the Republic stating the following: "This is, therefore, to demand that the officers concerned be apprehended at the earliest opportunity and presented in court. Unless this is done, it will be very difficult to conduct government business in Parliament. The Uganda parliament will not condone or acquiesce in acts of torture."⁹

35. The delegation was also informed that in December 2018 the Speaker ordered the Prime Minister to clarify the reasons why Mr. Kyagulanyi was not allowed to freely practice his profession as a performing artist.¹⁰

3.2 The ad hoc parliamentary committee

36. The delegation took note that on 15 August 2018, the Parliament of Uganda decided to constitute an ad hoc committee to ascertain the condition of the members of parliament and the other people with whom they were arrested on the eve of the by-election in Arua municipality. The ad hoc committee visited the members of parliament in detention and interacted, among others, with military authorities. The delegation had access to a copy of the committee's report, which concluded that at least four of the five parliamentarians had sustained injuries as a result of the violence inflicted upon them by the security forces, that there was a lack of due process in the proceedings against the parliamentarians and that the responsible security officials had acted with impunity. It also concluded that accountability for these transgressions should be expeditiously established.

37. The member of the ad hoc committee who agreed to meet with the delegation confirmed that a draft committee report had been debated in parliament. He added that a lack of consensus among the members of the ad hoc committee about the content of the report had led to the elaboration of a minority report by dissenting members. This minority report was supposed to be an integral part of the final report. The member of the ad hoc committee was unable to provide further details on the current status of the report.

3.3 Alleged treatment of the opposition in Parliament

38. The delegation was told different versions about what transpired in Parliament. According to the parliamentary authorities, all members of parliament were given a fair opportunity to contribute to its work. The opposition claimed otherwise: parliamentary proceedings favour the ruling party and do not allow for the proper discussion of proposals from the opposition. The situation was reportedly even more difficult for young opposition members of parliament as they were not considered as equals and as their voice was regularly being silenced or diminished during debates. The delegation considers that the cases of the five members of parliament should also be seen in light of this context of apparent difficulty for the opposition to carry out its work.

4. **Legal proceedings against the parliamentarians**

4.1 Military jurisdiction

39. According to the information on file, which was confirmed by several sources during the mission, Mr. Kyagulanyi was initially brought before a military court for illegal possession of firearms and ammunition; however those charges were finally dropped. The delegation was also told by local human rights lawyers that, while in 2009 the Supreme Court of Uganda had ruled that the trial of civilians by military courts was unconstitutional, court martials continued to try suspects systematically.

4.2 Due process concerns

40. The delegation was told by different sources that the members of parliament had been detained in different places and brought before court long after the stipulated constitutional timeframe (48 hours). The delegation noted with great concern that Mr. Kyagulanyi and Mr. Zaake appear to have been detained in ungazetted military detention centres and that other rights such as to access

⁹ In: <https://www.pmldaily.com/news/2018/08/kadaga-asks-museveni-to-arrest-sfc-soldiers-over-torture-of-mps-civilians.html>.

¹⁰ In: <https://www.softpower.ug/parliament-tasks-prime-minister-to-explain-ban-on-bobi-wines-concerts/>.

their close relatives, lawyers and personal doctors, all guaranteed by the Constitution of Uganda and international human rights law, seem to have been denied.

41. The delegation received information confirming that in August 2019 the following additional charges were brought against the five members of parliament and 29 other people in relation to the same events of August 2018: intent to annoy, alarm or ridicule the President, incitement to violence, disobedience of lawful orders, failure to prevent obstruction of traffic, confusion or disorder during a public meeting, and failure to give right of way to the President. The delegation fails to understand how, one year later, the accused can be subject to a whole set of additional charges, apparently unsupported by evidence, in relation to the same events.

4.3 Reported action by the authorities against the parliamentary opposition

42. Mr. Kyagulanyi reported that his car had been blocked by the police on his way to the meeting with the delegation. He mentioned that the police regularly prevented him from moving freely and that he had been arrested on several occasions after the Arua events. On 23 April 2019, Mr. Kyagulanyi was placed under de facto house arrest after being detained by police and was forced to stay at home and cancel scheduled events. On 29 April 2019, he was arrested and taken to a maximum-security prison. The accusations seem to be related to the application of the Public Order Management Act. These incidents also have to be seen in the light of other information that the delegation received about what seems to be systematic arbitrary arrests of political opponents, including opposition members of parliament, in recent months. The delegation is deeply concerned that, if true, this practice could be an intimidation tactic aimed at harassing and silencing political opponents.

5. **The role of the Uganda Human Rights Commission**

43. The delegation appreciated the discussion with Dr. Katebaliirwe Amooti Wa Irumba, Commissioner, and the senior staff members of the UHRC. It transpired from this discussion that the UHRC was conducting remarkable work but also facing numerous challenges, mainly due to lack of adequate financial resources to carry out its functions.

44. The delegation took note that the UHRC had monitored the pre and post-election situation relating to the Arua by-election, that it had carried out an inspection visit to Gulu Central Police Station to monitor the condition of the 34 suspects who had been transferred from Arua, and had also visited the Uganda Government Prison in Gulu to physically assess the condition of the remanded inmates.

45. The UHRC informed the delegation that on 17 August 2018 a UHRC team had visited Mr. Kyagulanyi at Makindye Military Barracks. It was noted that his face was swollen, that he was in pain and needed support to walk. The UHRC had also observed that he had difficulty sitting and breathing. Mr. Kyagulanyi had informed the UHRC's team that he felt pain in his rib cage, and that he had bruises all over his body. He added that he had been severely tortured during his arrest in Arua.

46. Regarding Mr. Zaake, the UHRC team established on Friday 17 August 2018, that he had been admitted at Rubaga Hospital in Kampala. The team had been informed by the Executive Director of the Hospital that Mr. Zaake was in great pain due to the multiple injuries he had sustained to his head, arms and legs; and that although he had been put on oxygen, he was nevertheless able to talk.

47. The delegation took attentive note of the constitutional obligation of the UHCR to annually report to Parliament on the state of human rights and freedoms in Uganda.

D. **Findings and recommendations**

48. Regarding the serious and credible allegations of torture, the delegation notes that the United Nations Convention against Torture (CAT) does not state that there has to be a formal complaint for the authorities to act. It also points out that State failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State's obligations

under Article 14 of the CAT.¹¹ Likewise, “[u]ndue delays in initiating or concluding legal investigations into complaints of torture or ill-treatment compromise victims’ rights to obtain redress, including fair and adequate compensation and the means for as full rehabilitation as possible”.¹²

- The delegation urges the relevant authorities to conduct a prompt, impartial and independent investigation into all allegations of torture and other cruel, inhuman or degrading treatment of the members of parliament, including, where appropriate, the filing of specific torture charges against perpetrators, and the application of the corresponding penalties under domestic law.

49. The delegation fully adheres to the democratic principles of separation of powers and the independence of the judiciary. It also understands the importance of respecting the *sub judice* rule in a democratic State. However, at the same time, the delegation underscores that Parliament is responsible for helping ensure that all State institutions fully abide by the rule of law, which entails in the case of the judiciary the proper administration of justice. In this regard, the delegation considers that the *sub judice* rule cannot be invoked as an obstacle to justice or accountability.

- The delegation urges Parliament to effectively use its oversight powers to ensure that Uganda fully respect its human rights commitments, which in these concrete cases implies that the very serious and detailed allegations of torture against the five members of parliament be fully and immediately investigated, followed by whatever accountability steps are warranted as a result. The delegation wishes to be kept informed of any relevant developments in this regard.

50. Echoing the Committee’s longstanding concerns about the right to a fair trial, including its concerns that: Mr. Kyagulanyi was initially brought before a military court and kept in detention in military premises; that the members of parliament were brought before court after the stipulated constitutional timeframe (48 hours); that they were allegedly denied the right to access their close relatives, lawyers and personal doctors; that a number of additional charges were brought against them one year after the events of August 2018 reportedly without supporting evidence; and considering that the five parliamentarians were charged with treason, which is punishable by death in Uganda.

- The delegation reiterates the Committee’s wish to mandate a trial observer to monitor the upcoming court proceedings against the members of parliament, and therefore, wishes to be kept informed of the dates of the trial, when available, and of any other relevant judicial developments in the case.

51. With regard to the report of the ad hoc parliamentary committee, the delegation notes the lack of clarity about the final outcome of the UHRC’s deliberations. It is also concerned by the absence of follow-up by Parliament to the recommendations made by the ad hoc committee. The delegation wishes to receive further clarification on this.

52. The delegation takes notes of the information received on frequent and systematic arrests of opposition members of parliament and calls on the authorities to ensure that the police and other security forces refrain from using the punitive power of the State to harass opposition members of parliament and that the use and application of preventive measures involving the deprivation of liberty be adequately regulated and only resorted to in strict accordance with the law.

53. The delegation considers it crucial that the work of the UHRC is fully supported and strengthened, and therefore recommends that the Parliament:

- take all measures to ensure that the necessary resources are fully and timely allocated to the UHCR to avoid the persistent challenges of relying on external financial support for its functioning.
- consider taking further advantage of the annual presentation of the UHRC report before it by holding debates on pressing human rights issues and by holding the UHRC to account with regard to its own actions and results in relation to the individual cases of the five members of parliament.

¹¹ United Nations Committee against torture, General comment No. 3, para. 17 (CAT/C/GC/3).

¹² Ibid. para. 25.

54. With regard to the recent adoption of the Human Rights (Enforcement) Act, the delegation notes with appreciation that under Article 13 of this Act, Government has the obligation to report to Parliament every year on action taken to realize the rights and freedoms of Ugandans if a competent court finds that justice had not been provided due to resource constraints.

- The delegation invites Parliament to take advantage of this new window of opportunity to hold Government to account when it comes to respecting the human rights of citizens and ensuring access to justice and effective remedies.

55. The delegation is concerned that in four out of the five cases before the Committee, the alleged violations were committed against young parliamentarians from the opposition. Taking into consideration the testimonies gathered during the mission, including reports that young opposition members of parliament face particular challenges in Parliament when trying to convey their messages and often endure jeering and teasing during parliamentary work, the delegation underscores that democracy depends on all voices in society being represented in parliament and that youth participation promotes active citizenship, which should be considered as an opportunity for enhancing democracy and placing new issues on the political agenda.¹³

- The delegation acknowledges the important steps that Uganda has taken to ensure the representation of youth in parliament. It encourages Parliament to take targeted action to enhance the participation of young parliamentarians, including opposition members of parliament, in parliamentary decision-making and to give them maximum support so as to contribute to a more youth-friendly and accessible environment. This may include setting up or providing further support to existing specialized bodies entrusted with mainstreaming youth issues in parliament's work; encouraging, promoting and making more visible the initiatives and creativity of young members of parliament; encouraging young members of parliament's access to responsibilities within parliament.

56. The delegation is aware that much progress has been achieved in recent years in promoting and protecting human rights in Uganda. Nevertheless, the delegation received systematic and detailed reports about the lack of enforcement of legal human rights provisions and on many challenges relating to access to justice and effective remedies.

- The delegation therefore calls on the authorities to take effective measures to tackle these issues.

57. The delegation is convinced that such steps will not only offer better guarantees that the trials against the five members of parliament are held with respect for due process and that justice will be served regarding the allegations of torture, but also enhance the public's confidence in State institutions.

58. Considering that the cases at hand are intrinsically linked to the reported violence surrounding the by-election in Arua, including the reported pelting of the President's car, the delegation is convinced of the need for these events to be investigated fully.

59. Although this situation does not fall directly within the remit of the IPU Committee on the Human Rights of Parliamentarians, the delegation is deeply concerned that the death of Mr. Yasin Kawuma, Mr. Kyagulanyi's driver, who was shot dead while on duty on 13 August 2018, remains unpunished and that his relatives have been denied access to truth and justice. The delegation was told by different sources that several elements tend to confirm the suspicion that Mr. Kawuma's death was a result of a failed assassination attempt on Mr. Kyagulanyi. In this regard, the delegation considers that the national authorities have the obligation to shed all possible light on this death and that impunity for those responsible could reflect a lack of determination of the State of Uganda to establish the truth. The delegation hopes that the national authorities will take all necessary steps to rectify the situation and wishes to be kept informed of any relevant developments.

60. Considering that the Arua by-elections events and the consequent legal cases involve many other Ugandan citizens and fall within a complex and broader political context, the delegation is convinced that a satisfactory solution of the individual cases before the Committee needs a comprehensive response from the authorities. In this vein, effective guarantees of non-repetition and

¹³ IPU resolution, *Youth participation in the democratic process* (Bangkok, April 2010).

preventive measures would also require broad action, including possible legislative measures and enhanced parliamentary processes.

- The delegation urges Parliament to take the necessary steps to provide guarantees of non-repetition in connection with the concerns outlined in the present report. To this end, the delegation invites Parliament to progressively adopt all necessary legislative, budgetary and oversight measures to:
 - Fully operationalize the Prevention and Prohibition of Torture Act and ensure that police officers and State attorneys receive specialized training to guarantee its effective application.
 - Review the Public Order Management Act for the purpose of aligning it with international human rights standards and establish the necessary mechanisms and procedures to ensure effective parliamentary oversight of its implementation by the police. In this regard, the delegation recalls that the UN Human Rights Committee clearly stipulates that the requirement of authorisation to hold a peaceful assembly undercuts the idea that this is about a basic human right. The UN Human Rights Committee also states that, where there is the requirement to notify the authorities in advance, it should not be unduly burdensome, it has to be proportionate to the potential public impact of the assembly concerned, and it cannot be misused to stifle peaceful assemblies. The Committee also holds that notification should not be required for assemblies where the impact of the assembly on others can reasonably be expected to be minimal. The delegation suggests that Parliament explore how best to reflect these international standards in a revised Public Order Management Act.
 - Ensure that the police do not use excessive force when policing public rallies. In this regard, the unlawful use of firearms in public gatherings, including political campaign rallies, should be properly investigated and stopped.

61. Finally, in view of the upcoming general elections to take place in 2021 in Uganda, the delegation urges all sides to refrain from violence.

62. Recalling that States should take the necessary legislative steps and other measures, pursuant to their constitutional provisions, to guarantee the rights and institutional framework for periodic and genuine, free and fair elections, in accordance with their obligations under international law,¹⁴ the delegation urges the relevant authorities to take all necessary measures to protect human life, respect people's right to peaceful assembly, to take part in the conduct of public affairs, to vote and be elected, and to have equal access to public service positions. In this regard, the delegation also urges the relevant authorities to refrain from acts that could in any way undermine the civil and political rights of the five members of parliament, particularly with a view to the upcoming elections.

63. The delegation is keen to hear from Parliament if and how it aims to address the above-mentioned matters and suggests that the IPU lend its support, should that be considered useful, to examine ways to strengthen the work of the institution of parliament.

Geneva, 23 March 2020

¹⁴ IPU, *Declaration on Criteria for Free and Fair Elections* (Paris, March 1994).