MAKERERE UNIVERSITY

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BAIL AND ACCESS TO JUSTICE IN UGANDA: AN ANALYSIS OF LEGAL FRAMEWORKS, JUDICIAL PRACTICE, AND HUMAN RIGHTS CONCERNS

BY

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PLAGIARISM DECLARATION

I, WILLIAM ANYATI, hereby declare that this dissertation is my own original work. It has not been submitted, in whole or in part, for any other degree, diploma, or professional qualification at this or any other institution.

Signature: .....

Date: 1 JUNE 2026

SUPERVISOR'S CONFIRMATION

I confirm that this declaration has been signed by the student in my presence or that the student has submitted this declaration electronically in accordance with institutional policy.

Supervisor's signature: .....

PROF. CHRISTOPHER MBAZIRA

Date: 1st/06/2026

DEDICATION

I dedicate this research paper to the following persons that have ensured that my education is a success

God is always my number one in all I have and will always do in life, I thank him for the gift of life, knowledge and wisdom he has granted me for the days of my life and he has constantly made everything possible for me

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CHAPTER ONE: INTRODUCTION AND BACKGROUND

Introduction

The right to liberty lies at the heart of the ideals of constitutional democracy.[1] So pertinent is the right that the *Magna Carta*, often regarded as the earliest cornerstone of the rule of law, established the principle that no person should be deprived of liberty except by due process of law.[2] The right to liberty affirms the inherent dignity and autonomy of the individual by shielding them from arbitrary detention.[3] As such, even when a person is accused of an offence, because they are by law presumed innocent,[4] they should not be deprived of their liberty arbitrarily and unjustifiably.[5] To safeguard this protection of liberty, courts grant the accused persons bail, irrespective of the offence with which one may be charged.[6]

In Uganda, the right to apply for bail flows from the presumption of innocence.[7] Because every person is presumed innocent until proven guilty, detention should be the exception, not the norm. As such, the accused person has the right to apply for bail as enshrined in Article 23(6)

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[1]Imer B Flores, 'Law, Liberty and the Rule of Law (in a Constitutional Democracy)' in Imer B Flores and Kenneth E Himma (eds), Law, Liberty, and the Rule of Law (Springer Netherlands 2013) 77.

[2]Clause 39 Magna Carta, 1215 (reissued 1297, 25 Edw I)

[3]Riccardo Pisillo Mazzeschi, 'Protection of Liberty and Security of the Person' in Mahmudul Hasan (ed), International Human Rights Law: Theory and Practice (Springer International Publishing 2021) 329. See also Prashant Kumar Yadav, Brijesh Sharma and Mudra Singh, 'Personal Liberty as a Human Right in the 21st Century: An Analysis' (2023) 2 Indian Journal of Law and Legal Research 1.

[4]Article 28(3)(a) of the Constitution. This is irrespective of the offence the person is alleged to have committed. See Ronald Kakungulu-Mayambala, 'Guilty before Trial: Presumption of Innocence and the Public Parading of Criminal Suspects before the Press in Uganda' (2012) 15 University of Botswana Law Journal 53.

[5]In Freedom under the law, Lord Denning defined personal liberty as "the freedom of every law-abiding citizen to think what he will, to say what he will, and to go where he will on his lawful occasions without let or hinderance from any other persons". See Lord Alfred Denning, Freedom under the Law (Stevens & Sons 1949).

[6]In Uganda (DPP) v Kizza Besigye Constitutional Reference No. 20 of 2005) court opined that the right to apply for bail flows from the presumption of innocence. See also Kongo John v Uganda High Court Criminal Miscellaneous Application No 10 of 2024.

[7]Article 28(3)(a) of the Constitution guarantees that every person charged with an offence shall be presumed innocent until they plead guilty or are proven guilty. The principle is a fundamental bedrock for ensuring a fair trial to every person facing charges for any criminal offence. The presumption of innocence is also derived from Article 11 of the Universal Declaration of Human Rights and Article 14(2) of the International Covenant on Civil and Political Rights.

of the Constitution. Bail is the temporary release of an accused person after providing security for future appearance in court on such conditions as the court considers reasonable.[8] Bail is essentially an agreement between an accused and court where the accused is released from custody on such terms as the court sets.[9] Article 23(6)(a) of the Constitution grants an accused person the right to apply for bail at any stage of the trial. Article 23(6)(c) of the Constitution guarantees the release of an accused person charged with an offence triable only by the High Court if the accused has been on remand for one hundred and eighty days before committal.[10] This mandatory provision is reiterated in Guideline 10(1) of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions (hereinafter "Bail Guidelines").[11] The provision was enacted by the framers of the Constitution to limit the State's power of arbitrary prolonged pre-trial detention.[12]

In *Uganda v Kizza Besigye*[13] the Constitutional Court held that the provision creates "mandatory bail", that is, upon fulfilment of the conditions, it is mandatory for the court to grant the accused bail, with the court's only duty being to set conditions.

Despite this explicit constitutional safeguard, the grant of mandatory bail has not been uniform across the courts. In *Col (Rtd) Dr Kizza Besigye & Hajji Obeid Lutale v Uganda*[14] the question of judicial interpretation and discretion regarding mandatory bail was brought into sharp focus. In that case, the applicants were initially detained before the General Court Martial and later charged in the Courts of Judicature.[15] They applied for bail arguing that they had spent over one hundred and eighty days on remand without committal. The High Court rejected the

[8]Guideline 4, Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 Legal Notice 8 of 2022.
[9]Obita Charles v Uganda High Court Criminal Miscellaneous Application No 68 of 2023.
[10]The committal process is in S.168 Magistrates Courts Act. At the conclusion of investigations, having been charged in the Magistrates courts and not allowed to take plea, the DPP prepares an indictment and summary of the case which is given to the accused, read to them, and they are committed to the High Court for trial.
[11]Supra n.7.
[12]One hundred and eighty days (six months) is sufficient time to conclude any pending investigations and commence the trial. The time cap was introduced by the Constitution (Amendment) Act 2005, Act 11 of 2005. It was previously 360 days.
[13]Supra n.6.
[14][2025] UGHCC RD 33.
[15]Their case was 'transferred' from the Court Martial to the Magistrates Courts following the decision of the Supreme Court in Attorney General v Michael Kabaziguruka Constitutional Appeal No 2 of 2021 where the Supreme Court found as unconstitutional and halted all trials of civilians in the military courts.

application, holding that the time is computed from the date the applicants were first remanded by a Court of Judicature and not from their earlier detention in the Court Martial. The Court further held that there was no cogent evidence of lawful remand, and the applicants were denied mandatory bail.

This ruling exposed a deep constitutional dilemma: the vulnerability of constitutional liberties where state actors manipulate procedural forums to prolong detention. The *Besigye* decision thus raises fundamental questions about the efficacy of Uganda's bail regime, the integrity of judicial interpretation, and the balance between liberty and state security in a constitutional democracy.

Background to the Study

The right to bail in Uganda has its roots in the post-colonial struggle to entrench constitutionalism and human rights after decades of authoritarian rule.[16] The 1995 Constitution was deliberately drafted to dismantle a legacy of arbitrary arrests and prolonged detentions without trial that had characterised previous regimes.[17] Article 23(6) of the Constitution introduced a constitutional time frame to prevent prosecutorial and police abuse. The 1967 Constitution, which was the precursor to the 1995 Constitution, had no similar provision. Article 10(3) of the 1967 Constitution provided that if a person arrested was not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall be released, either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to a trial.

The 180-day rule in the 1995 Constitution was thus meant to compel the State to expedite investigations and committal proceedings, and to prevent detention from becoming punitive

[16]The preamble to the 1995 Constitution is cognisant of the nation's chequered history which was characterised by political violence.
[17]George W Kanyeihamba, Constitutional and Political History of Uganda: From 1894 to the Present (LawAfrica Publishing (K) Ltd 2010).

before trial.[18] This provision thus gives life to the presumption of innocence guaranteed under Article 28(3)(a) of the Constitution.[19]

However, practice has fallen short of the constitutional ideal. Over the years, courts have adopted divergent interpretations of what constitutes "remand" for purposes of calculating the 180 days. In *Kinyambira-Mumbere Boniface v Uganda*,[20] the High Court held that once the threshold of 180 days is met, the court has no discretion but to release the applicant on reasonable conditions.[21] Yet, in the *Besigye* case, the Court narrowed the interpretation of remand periods, contending that the applicants were initially detained by military or security agencies outside the regular judicial process.

The issue also has international and regional dimensions. Under Article 9(3) of the International Covenant on Civil and Political Rights[22] and Article 6 of the African Charter on Human and Peoples' Rights,[23] to which Uganda is a party, the right to liberty includes the entitlement to trial within a reasonable time or release pending trial. The UN Human Rights Committee and the African Commission on Human and Peoples' Rights have consistently cautioned against the use of pre-trial detention as a tool of control or punishment.[24]

This dissertation therefore proceeds from the premise that the *Besigye* decision should not be perceived as an isolated incident but as a window into the broader constitutional and institutional challenges surrounding the realisation of the right to bail. It seeks to critically analyse how Uganda's courts have interpreted and applied Article 23(6), to evaluate the consistency of such interpretations with constitutional and international standards, and to

[18]Roselyn Karugonjo-Segawa, Pre-trial Detention in Uganda (APCOF / Uganda Judiciary 2012) https://judiciary.go.ug/files/downloads/Pre-trial%20Detention%20Uganda.pdf accessed 10 September 2025.
[19]The presumption of innocence is a fundamental pillar of the criminal justice system in Uganda.
[20]High Court Miscellaneous Application No. 87 of 2012.
[21]See also Joseph Lusse v Uganda (1997) III KALR 58 which affirmed mandatory bail.
[22]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
[23]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.
[24]Paragraph 38 UN Human Rights Committee, General Comment No 35: Article 9 (Liberty and Security of Person), UN Doc CCPR/C/GC/35 (16 December 2014). In Van Alphen v Netherlands (Communication No 305/1988, Views of 23 July 1990) (para 5.8) the UN Human Rights Committee held that pre-trial detention must be exceptional and justified by specific reasons related to flight risk or interference with justice.

propose reforms that could enhance the protection of liberty while maintaining the integrity of criminal proceedings.

Statement of the Problem

Despite the express constitutional entrenchment of mandatory bail under Article 23(6)(c) of the 1995 Constitution, Uganda's bail regime has failed to operate as an effective safeguard against prolonged pre-trial detention. In particular, Ugandan courts have adopted divergent and, at times, restrictive interpretations of what constitutes "remand" for purposes of computing the 180-day period, thereby reintroducing judicial discretion into a provision intended to impose a firm constitutional limit on State power. This interpretive fragmentation has weakened the normative force of Article 23(6)(c), enabling procedural strategies that prolong detention without trial and undermining the presumption of innocence. The decision in *Col (Rtd) Dr Kizza Besigye and Hajji Obeid Lutale v Uganda*[25] exemplifies this problem by demonstrating how reliance on forum distinctions and prior non-civilian detention can be used to defeat a mandatory constitutional entitlement. The resulting uncertainty not only compromises the coherence of bail jurisprudence but also exposes accused persons to arbitrary and unequal treatment, particularly in politically sensitive cases. The central problem, therefore, is whether Uganda's current judicial interpretation of Article 23(6)(c) is consistent with its constitutional purpose and international human rights obligations, or whether it has, in practice, transformed mandatory bail into a contingent and illusory safeguard.

Objectives of the Study

General Objective

To critically examine the legal and constitutional framework governing bail in Uganda, with a particular focus on the interpretation and application of Article 23(6)(c) of the 1995 Constitution, using *Col (Rtd) Dr Kizza Besigye and Another v Uganda [2025]* as a focal case.

Specific Objectives

- To trace the historical and constitutional development of the right to bail in Uganda's criminal justice system.

[25]Supra n14.

- To analyse the judicial interpretation of Article 23(6)(c) and the computation of the 180-day period in Ugandan jurisprudence.
- To evaluate the consistency of Uganda's approach to bail with international and regional human rights instruments, including the ICCPR and the African Charter on Human and Peoples' Rights.
- To identify institutional, procedural, and political challenges affecting the realisation of mandatory bail.
- To propose legal and policy reforms aimed at strengthening judicial protection of personal liberty and ensuring uniform application of the constitutional right to bail.

Research Questions

To address the above problem, the study will be guided by the following key research questions:

- How has the right to bail historically and constitutionally developed within Uganda's criminal justice system?
- How have Ugandan courts interpreted Article 23(6)(c) of the Constitution, particularly regarding the computation of the 180-day period?
- To what extent is Uganda's approach to bail consistent with international and regional human rights instruments such as the ICCPR and the African Charter on Human and Peoples' Rights?
- What institutional, procedural, and political challenges hinder the realisation of mandatory bail in Uganda?
- What legal and policy reforms are necessary to strengthen judicial protection of personal liberty and ensure uniform application of the constitutional right to bail?

Justification

The right to bail lies at the intersection of individual liberty, fair trial guarantees, and the integrity of the criminal justice system. In Uganda, where pre-trial detention remains pervasive and prisons are overcrowded, the enforcement of Article 23(6)(c) of the 1995 Constitution has far-reaching implications for the protection of human rights, the promotion of constitutionalism, and the administration of justice.

The question of how the Ugandan judiciary interprets and applies the constitutional right to bail has received limited scholarly engagement, particularly after the promulgation of the Bail Guidelines. Existing academic literature tends to focus on the discretionary aspects of bail or the sociological challenges of pre-trial detention, often overlooking the specific doctrinal development of mandatory bail under Article 23(6)(c).[26]

The *Besigye* decision offers a new jurisprudential frontier that calls for critical academic reflection. It presents a context in which to interrogate the relationship between judicial interpretation and constitutional purpose, and to explore how courts navigate the tension between individual liberty and state security.

Significance of the Study

This study is justified by the need to clarify and strengthen the constitutional protection of liberty through consistent judicial interpretation of Article 23(6)(c) of the Constitution. Despite its clear intent to curb arbitrary detention, the *Besigye* decision appears to have created uncertainty regarding the application of mandatory bail. With limited academic analysis on the constitutional and doctrinal dimensions of bail, this study fills an important gap by examining how judicial discretion affects constitutional safeguards. The research will contribute to legal scholarship and inform reforms aimed at aligning Uganda's bail jurisprudence with constitutional and international human rights standards.

Scope of the Study

The scope of this study is threefold:

- Geographical Scope: The study is limited to Uganda, focusing on the interpretation and application of the right to bail within its constitutional and judicial framework.
- Temporal Scope: The analysis covers the period from 1995, when the 1995 Constitution was promulgated, to the present, reflecting the evolution of bail jurisprudence under the current constitutional order.

[26]Jamil Ddamulira Mujuzi, 'The Right to Bail Pending Trial in Uganda' (2021) 34(3) South African Journal of Criminal Justice 1. See also Martin Kityo, 'Outside Bars: The Right to Bail in Uganda' (2024) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4809950 accessed 12 October 2025.

- Content Scope: The study is confined to decisions of the High Court of Uganda, as it is the primary court of original jurisdiction in capital offences where the 180-day rule under Article 23(6)(c) is most frequently applied.

Methodology

This study employs a predominantly doctrinal legal research methodology, complemented by a limited qualitative inquiry to contextualise judicial practice relating to bail in Uganda. The doctrinal component constitutes the core of the study and focuses on analysing the constitutional, statutory, and jurisprudential framework governing bail, with particular emphasis on Article 23(6)(c) of the 1995 Constitution and its interpretation by the High Court concerning the computation of the 180-day mandatory bail period.

Primary legal sources include the Constitution of the Republic of Uganda, the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, relevant statutory provisions, and reported and unreported decisions of the High Court. These sources are analysed using textual, purposive, and doctrinal methods to assess the consistency of judicial reasoning, the extent of judicial discretion exercised, and the fidelity of judicial interpretations to constitutional purpose and international human rights standards.

To complement the doctrinal analysis and to capture how bail law operates in practice, the study incorporates a qualitative component based on semi-structured interviews with selected key stakeholders in the criminal justice system. Respondents will be selected through purposive sampling, a non-probability sampling technique suitable for qualitative legal research where participants are chosen based on their direct relevance to the research questions.

The qualitative component will involve twelve respondents, drawn from four stakeholder groups. These will include three defence lawyers in private practice with experience in handling bail applications before the High Court, particularly applications for mandatory bail under Article 23(6)(c); three prosecutors from the Office of the Director of Public Prosecutions with experience in bail-related matters; three judicial officers serving in the High Court with experience adjudicating bail applications; and three accused persons who have applied for mandatory bail under Article 23(6)(c) and have experienced prolonged pre-trial detention.

Defence lawyers and prosecutors will be selected based on their professional experience in bail applications and committal proceedings. Judicial officers will be selected on the basis of their involvement in bail determinations in criminal matters, subject to ethical considerations and

voluntary participation. Accused persons will be identified through referrals from defence counsel and legal aid organisations, with selection guided by the relevance of their experiences to the computation of remand periods and the application of mandatory bail.

Semi-structured interviews will be conducted using an interview guide aligned with the study's research questions. This approach ensures consistency across interviews while allowing respondents to elaborate on issues arising from their professional or personal experience. Interview data will be analysed thematically and used to contextualise doctrinal findings, illustrate patterns in judicial practice, and assess whether the interpretation of Article 23(6)(c) reflects the lived realities of bail adjudication.

Ethical considerations will be observed throughout the research process. Participation will be voluntary and based on informed consent. Confidentiality and anonymity will be maintained, particularly for accused persons and judicial officers, through the use of pseudonyms and the exclusion of identifying details. Care will be taken to avoid discussion of pending cases or interference with ongoing judicial proceedings. The interview guides are attached to this proposal as Annexure A.

Literature Review

In *The Right to Bail Pending Trial in Uganda*[27], Jamil Mujuzi provides one of the most comprehensive doctrinal analyses of Uganda's bail jurisprudence since the promulgation of the 1995 Constitution. He traces the evolution of Article 23(6), which establishes both discretionary and mandatory bail, and distinguishes between the right to apply for bail under Article 23(6)(a) and mandatory bail under Article 23(6)(b) and (c). Through a meticulous review of case law, Mujuzi shows that Ugandan courts have struggled to interpret whether the Constitution grants an accused person an actual right to bail or merely a right to apply for bail. He argues, based on the drafting history of Article 23(6), that the framers intended to guarantee the right to bail itself, subject to reasonable limitations under Article 43 of the Constitution.

Mujuzi further observes a pattern of judicial inconsistency in bail decisions. The Supreme Court, in *Foundation for Human Rights Initiatives v Attorney General*, held that Article 23(6)(a) grants a right only to apply for bail, a position followed by lower courts despite some High Court judges asserting that the Constitution guarantees a substantive right to bail. Mujuzi

[27]Jamil Ddamulira Mujuzi, 'The Right to Bail Pending Trial in Uganda' (2021) 34 South African Journal of Criminal Justice 461-481.

contends that such inconsistency has led to unpredictability in the application of bail laws, undermining constitutional protections of liberty and the presumption of innocence. He attributes part of this confusion to the courts' limited engagement with the drafting history and to Parliament's amendments to the *Trial on Indictments Act*, which impose conditions such as "exceptional circumstances" for certain offences, blurring the boundary between constitutional and statutory discretion.

While Mujuzi provides a detailed doctrinal exposition of bail under Article 23(6) of the 1995 Constitution, his focus is primarily on discretionary bail under Article 23(6)(a) and the general principles governing the right to bail in Uganda. His analysis gives only limited attention to mandatory bail under Article 23(6)(c), particularly regarding the computation of the 180-day remand period and its judicial interpretation by the High Court. Moreover, although he notes the inconsistency of bail decisions, he does not systematically interrogate the constitutional and institutional implications of such inconsistency for the protection of personal liberty and the presumption of innocence.

In *Bail Conditions in the Criminal Justice Systems in Kenya, Uganda, Rwanda and Tanzania*,[28] Luke Kelly provides a comparative policy analysis of how bail operates in four East African jurisdictions, with particular reference to Uganda. He situates the right to bail within both international and regional human rights frameworks, notably the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, and underscores that pre-trial detention should remain exceptional and of limited duration. Kelly notes that while Uganda's 1995 Constitution under Article 23(6) guarantees the right to apply for bail, in practice this right is often undermined by inconsistent application, excessive conditions, and high levels of pre-trial detention. His review reveals that nearly half of Uganda's prison population consists of pre-trial detainees, a situation attributed to weak enforcement of constitutional safeguards, lack of awareness of bail rights, and systemic delays within the criminal justice process.

Kelly observes that although the *Magistrates Courts Act* and *Trial on Indictments Act* specify that an accused person must be released on bail after 60 days for non-capital offences and 180 days for capital offences, these provisions are frequently disregarded in practice. He attributes

[28]Luke Kelly, 'Bail Conditions in the Criminal Justice Systems in Kenya, Uganda, Rwanda and Tanzania' (K4D Helpdesk Report 863, Institute of Development Studies, 7 August 2020) https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/15509 accessed 13 October 2025.

this to administrative inefficiencies, limited judicial oversight, and public sentiment that equates bail with impunity. Moreover, he highlights the political dimension of bail, noting that suspects in high-profile or politically sensitive cases often face prolonged detention or restrictive bail conditions.

While Kelly's report provides valuable comparative insights into the regional context and exposes the gap between Uganda's legal framework and actual practice, its treatment remains largely descriptive and policy-oriented. It does not undertake a doctrinal analysis of Article 23(6)(c) or the jurisprudence surrounding mandatory bail in Uganda's High Court. This thesis therefore builds on Kelly's empirical findings but departs from his descriptive approach by engaging in a doctrinal and constitutional analysis of the right to mandatory bail.

In *Pre-Trial Detention in Uganda*,[29] Roselyn Karugonjo-Segawa provides an empirical and policy-oriented examination of Uganda's pre-trial detention practices, situating them within the broader framework of constitutional guarantees under Article 23 of the 1995 Constitution. She traces the historical evolution of pre-trial detention from colonial times, when preventive detention laws normalised the restriction of liberty without trial, to the post-1995 constitutional order, which sought to reverse this legacy through procedural safeguards such as the 48-hour rule and the 180-day limit for committal. Despite these reforms, Karugonjo-Segawa observes that Uganda continues to experience chronic overreliance on detention before trial, revealing a significant gap between the constitutional text and actual practice.

Karugonjo-Segawa's analysis shows that pre-trial detainees constitute nearly half of Uganda's prison population, demonstrating systemic weaknesses in the enforcement of constitutional and statutory safeguards. She attributes this state of affairs to several interrelated factors: delays in police investigations, prosecutorial inefficiency, inadequate judicial capacity, and poor coordination among justice sector institutions. She also highlights the socioeconomic dimensions of detention, noting that indigent accused persons are disproportionately affected because of their inability to meet strict bail conditions or to afford legal representation.

In *The Role of the Judiciary in the Promotion of Democracy in Uganda*,[30] Ben Kiromba Twinomugisha examines the judiciary's constitutional role in safeguarding democracy, constitutionalism, and the rule of law. He traces Uganda's historical trajectory from colonial

[29]Supra n.17.
[30]Ben Kiromba Twinomugisha, 'The Role of the Judiciary in the Promotion of Democracy in Uganda' (2009) 9 African Human Rights Law Journal 1.

and post-independence authoritarianism to the restoration of judicial authority under the 1995 Constitution. Twinomugisha argues that the judiciary is central to the promotion of democracy through the enforcement of fundamental rights and the checking of executive power. He further observes that the Ugandan judiciary's contribution to democracy has been inconsistent. While courts have occasionally acted courageously in protecting constitutional freedoms, they have also displayed restraint in politically sensitive cases, where the Supreme Court has found irregularities but declined to annul elections in the interest of stability.

While Twinomugisha's work provides an insightful analysis of the judiciary's role in consolidating democracy and protecting civil and political rights, its focus remains broad and primarily normative. This thesis therefore builds on Twinomugisha's argument about judicial responsibility by focusing on a concrete manifestation of constitutional adjudication, namely the interpretation and application of Article 23(6)(c) on mandatory bail.

CHAPTER TWO: THE CONCEPTUAL, CONSTITUTIONAL AND NORMATIVE FRAMEWORK OF BAIL IN UGANDA

Introduction

Bail occupies a central place in every constitutional order that claims fidelity to liberty, due process, and the presumption of innocence. It mediates the tension between two competing imperatives of criminal justice. On the one hand, the State has a legitimate interest in ensuring that an accused person appears for trial, does not interfere with witnesses, and does not obstruct the administration of justice. On the other hand, the accused person, who remains presumed innocent until proved guilty, is entitled to personal liberty and to protection from arbitrary detention.[31] In that sense, bail is not merely a procedural device for temporary release. It is a constitutional mechanism for restraining the coercive power of the State before guilt has been lawfully established.[32]

In Uganda, this constitutional logic is expressed most clearly in Article 23 of the 1995 Constitution, which safeguards liberty and regulates the circumstances in which an arrested person may be detained or released.[33] Article 23(6) creates a structured regime of pre-trial release and, significantly, provides for mandatory release in specified circumstances.[34] That framework reflects the post-authoritarian aspiration of the 1995 Constitution to prevent detention from becoming punitive before trial and to subject all deprivations of liberty to legal control.[35] The constitutional scheme was later reinforced by the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, which sought to promote coherence, proportionality, and uniformity in bail adjudication.[36]

Yet the constitutional promise of bail has not always been matched by judicial practice. The doctrinal controversy is particularly acute in relation to Article 23(6)(c), which requires release of an accused person charged with an offence triable only by the High Court where that person

[31]Constitution of the Republic of Uganda, 1995, art 23; art 28(3)(a).
[32]Imer B Flores, 'Law, Liberty and the Rule of Law (in a Constitutional Democracy)' in Imer B Flores and Kenneth E Himma (eds), Law, Liberty, and the Rule of Law (Springer Netherlands 2013) 77.
[33]Constitution of the Republic of Uganda, 1995, art 23.
[34]ibid art 23(6)(a)-(c).
[35]George W Kanyeihamba, Constitutional and Political History of Uganda: From 1894 to the Present (LawAfrica Publishing (K) Ltd 2010).
[36]Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, Legal Notice No 8 of 2022.

has been on remand for one hundred and eighty days before committal.[37] Although the text appears mandatory, judicial interpretation has not been entirely consistent, especially regarding the meaning of remand and the computation of time.[38] These tensions make it necessary to examine the conceptual foundations and normative structure of bail before turning, in later chapters, to the case law and institutional realities surrounding its application.

This chapter therefore sets out the conceptual, constitutional, and human rights framework of bail in Uganda. It begins by examining the conceptual foundations of bail as an incident of liberty and the presumption of innocence. It then traces the historical and constitutional development of bail in Uganda, analyses the domestic legal framework governing bail, and considers the influence of international and regional human rights norms. The chapter concludes by showing that mandatory bail under Article 23(6)(c) is best understood not as an act of judicial indulgence, but as a constitutional limit on prolonged pre-trial detention.[39]

The Conceptual Foundations of Bail

At the conceptual level, bail is rooted in the idea that pre-trial detention must remain exceptional. The criminal process begins from the presumption that the accused is innocent, and that presumption would be gravely weakened if detention before conviction became routine.[40] The right to liberty is therefore not displaced merely because criminal proceedings have commenced. Rather, the law recognises that a person may be required to appear before court while still retaining a residual claim to freedom pending the determination of guilt.[41]

Writers on liberty and the rule of law locate this protection within the broader architecture of constitutional democracy. Flores argues that liberty under the rule of law requires that coercive state power be exercised within publicly known and legally constrained standards.[42] Mazzeschi similarly treats liberty and security of the person as a foundational human right, breach of which occurs not only where detention is unlawful in a formal sense, but also where it is arbitrary,

[37]Constitution of the Republic of Uganda, 1995, art 23(6)(c).
[38]Jamil Ddamulira Mujuzi, 'The Right to Bail Pending Trial in Uganda' (2021) 34 South African Journal of Criminal Justice 461.
[39]Roselyn Karugonjo-Segawa, Pre-trial Detention in Uganda (APCOF/Uganda Judiciary 2012).
[40]Constitution of the Republic of Uganda, 1995, art 28(3)(a).
[41]Riccardo Pisillo Mazzeschi, 'Protection of Liberty and Security of the Person' in Mahmudul Hasan (ed), International Human Rights Law: Theory and Practice (Springer International Publishing 2021) 329.
[42]Supra n 2.

unnecessary, or disproportionate.[43] Read in this way, bail becomes one of the legal techniques through which constitutional systems prevent preventive detention from being normalised in ordinary criminal adjudication.[44]

The classical common law understanding of liberty also supports this approach. Denning famously described personal liberty as the freedom of the law-abiding citizen to go where he will on his lawful occasions without hindrance from others.[45] Although that formulation was not directed specifically at bail, it captures the normative intuition that personal freedom is the starting point and restraint the exception. In criminal justice, this means that detention before conviction must be justified by specific reasons rather than assumed from the mere existence of a charge.[46]

This conceptual position is reflected in modern human rights law. Article 9(3) of the International Covenant on Civil and Political Rights provides that it shall not be the general rule that persons awaiting trial shall be detained in custody.[47] The United Nations Human Rights Committee has emphasised that detention pending trial must be based on an individualised determination of necessity, such as risk of absconding, interference with evidence, or recurrence of serious offending, and that such detention must remain reasonable and necessary in all the circumstances.[48] The African Charter on Human and Peoples' Rights, though framed in broader language, likewise protects liberty and prohibits arbitrary detention.[49]

The relevance of these principles to bail in Uganda is immediate. If pre-trial detention is constitutionally and normatively exceptional, then bail must be interpreted generously as part of the infrastructure of liberty. This does not mean that every accused person must always be released regardless of context. It means, rather, that bail adjudication must start from the premise that liberty is the norm and detention requires lawful justification.[50] That premise is especially important where the Constitution itself imposes a temporal limit on remand, as

[43]Supra n11.
[44]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 9(3).
[45]Lord Alfred Denning, Freedom under the Law (Stevens & Sons 1949).
[46]UN Human Rights Committee, General Comment No 35: Article 9 (Liberty and Security of Person), UN Doc CCPR/C/GC/35 (16 December 2014) para 38.
[47]ICCPR, art 9(3).
[48]General Comment No 35 (n 16) para 38.
[49]African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 6.
[50]Supra n8.

Article 23(6)(c) does. Once that limit is reached, the constitutional balance shifts decisively in favour of release.[51]

Historical Development of Bail in Uganda

The legal history of bail in Uganda cannot be detached from the wider history of detention and executive power. Colonial criminal procedure in Uganda, as in many British colonies, was shaped by administrative priorities of order and control rather than by a robust rights culture.[52] In the late colonial and immediate post-colonial periods, systems of arrest, detention, and criminal adjudication often facilitated strong executive authority, while judicial guarantees of liberty remained underdeveloped.[53] That historical background is significant because the 1995 Constitution was consciously framed against a legacy of arbitrary arrest, prolonged detention, and abuse of coercive state power.[54]

The 1967 Constitution did not contain the precise architecture later adopted in Article 23(6)(c). Its protection was expressed in the language of trial within a reasonable time or release on conditions, which, while important, lacked the sharper constitutional discipline of a fixed time threshold.[55] The 1995 Constitution marked a deliberate shift. It constitutionalised not only the right to apply for bail, but also mandatory release in specified circumstances, thereby transforming bail from a merely procedural matter into a constitutional safeguard against systemic delay.

This development reflected Uganda's post-authoritarian constitutional settlement. As Kanyeihamba observes in his account of Uganda's constitutional and political history, the 1995 Constitution emerged from a national determination to guard against past abuses and entrench a democratic order founded on rights, legality, and institutional accountability.[56] Liberty protections were therefore not ornamental. They were part of the Constitution's effort to break with earlier patterns of arbitrary power.[57]

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[51]Uganda (DPP) v Kizza Besigye Constitutional Reference No 20 of 2005.
[52]Supra n5.
[53]Ben Kiromba Twinomugisha, 'The Role of the Judiciary in the Promotion of Democracy in Uganda' (2009) 9 African Human Rights Law Journal 1.
[54]Constitution of the Republic of Uganda, 1995, Preamble.
[55]Constitution of Uganda, 1967, art 10(3).
[56]Supra n5.
[57]Supra n23.

The later amendment reducing the relevant period from 360 days to 180 days further demonstrates the constitutional intention to strengthen protection against prolonged remand.[58] The reduction indicates a normative judgment that six months is sufficient time for the State to complete investigations and take necessary procedural steps before committal in cases triable only by the High Court. It also suggests that constitutional toleration for pre-committal detention is limited and should not be stretched by administrative inertia, prosecutorial delay, or strategic manipulation of process.[59]

The historical movement is therefore clear. Uganda's bail framework has evolved from a more generalised protection against unreasonable delay to a more structured and enforceable constitutional regime. That evolution matters because it provides context for interpreting Article 23(6)(c). The provision should not be read narrowly as though it were a technical indulgence to be confined wherever possible. It should be read in light of its historical purpose, namely the constitutional disciplining of pre-trial detention.[60]

The Constitutional Framework Governing Bail in Uganda

The principal constitutional provisions governing bail are found in Articles 23 and 28 of the Constitution. Article 23 protects personal liberty and establishes procedural safeguards relating to arrest, detention, and production before court.[61] Article 28 guarantees a fair hearing and expressly provides that every person charged with a criminal offence shall be presumed innocent until proved guilty or until that person has pleaded guilty.[62] Taken together, these provisions furnish the normative basis for bail.

Article 23(6)(a) provides that where a person is arrested in respect of a criminal offence, that person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as it considers reasonable.[63] This provision entrenches the right of application and confirms that the power to grant bail is judicial, not executive. It also implies

[58]Constitution (Amendment) Act 2005, Act 11 of 2005.
[59]Supra n9.
[60]Supra n8.
[61]Constitution of the Republic of Uganda, 1995, art 23.
[62]ibid.
[63]ibid.

that bail conditions must satisfy a standard of reasonableness and cannot be imposed arbitrarily.[64]

More important for present purposes are Article 23(6)(b) and (c), which create mandatory release after specified periods on remand. Under Article 23(6)(c), a person accused of an offence triable only by the High Court and remanded in custody is entitled to be released on bail if that person has been on remand for one hundred and eighty days before committal.[65] The language is materially different from that governing ordinary bail applications. It is not framed in terms of a mere power to grant bail. Rather, it creates a constitutional entitlement that arises upon satisfaction of the stipulated conditions.[66]

This distinction was recognised in *Uganda (DPP) v Kizza Besigye*, where the Constitutional Court treated the relevant constitutional provision as creating mandatory bail and stated that once the constitutional requirements are fulfilled, the court's role is confined to determining appropriate conditions of release.[67] The significance of that holding lies in its affirmation that judicial discretion is curtailed once the constitutional threshold has been met.

This constitutional position was independently affirmed by the High Court in *Kinyambira-Mumbere Boniface v Uganda*.[68] In that case, the court reasoned that the mandatory character of Article 23(6)(c) admits of no residual discretion once the prescribed number of days has elapsed. The court's remaining function is confined to fixing appropriate conditions of release, not to reconsidering whether release should occur at all. That reasoning establishes a clear doctrinal boundary between mandatory bail under Article 23(6)(c) and the discretionary regime applicable to ordinary bail applications. Where that boundary is respected, the constitutional safeguard operates as intended. Where it is blurred, the mandatory provision is effectively hollowed out.

[64]Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022, guideline 4.
[65]Constitution of the Republic of Uganda, 1995, art 23(6)(c).
[66]Uganda (DPP) v Kizza Besigye Constitutional Reference No 20 of 2005.
[67]ibid.
[68]Kinyambira-Mumbere Boniface v Uganda, High Court Miscellaneous Application No 87 of 2012. The court held in unambiguous terms that the mandatory character of Article 23(6)(c) removes the court's discretion to refuse bail once the 180-day threshold has been crossed, and that the court's remaining function is confined to setting reasonable conditions of release.

The non-discretionary character of mandatory bail was similarly affirmed in the earlier decision of *Joseph Lusse v Uganda*.[69] The court held in unambiguous terms that once the constitutional threshold of days on remand has been reached, the court retains no discretion to refuse release. The only remaining judicial function is to determine the conditions upon which the accused shall be released. The decision is significant not merely for its doctrinal clarity, but for the firmness with which it treats the constitutional provision as a hard limit rather than a factor to be weighed in the balance against other considerations. It thus provides an important doctrinal anchor against which subsequent cases, including the contested reasoning in the *Besigye* application, must be evaluated.

The constitutional framework must also be read purposively. A purely literal approach to bail may fail to capture the constitutional evil at which Article 23(6)(c) is directed, namely prolonged detention without sufficient progress in the prosecution of criminal charges. A purposive interpretation, by contrast, treats the provision as an anti-arbitrariness measure designed to prevent the State from using remand as a substitute for trial. This approach is consistent with wider constitutional reasoning in Uganda, where rights provisions are ordinarily interpreted in a manner that advances rather than diminishes their protective function.[70]

The principle of purposive constitutional interpretation was affirmed with particular clarity in *Kizito Fahad v Attorney General*.[71] The court held that constitutional rights must be construed so as to give them their fullest effect and that technical or formalistic readings that reduce the scope of guaranteed freedoms are inconsistent with the constitutional order. Applied to the mandatory bail context, this principle supports a reading of Article 23(6)(c) that prioritises the substantive liberty of the accused over procedural labels attached to distinct phases of detention. A narrow insistence on the particular institutional form of custody, rather than on its practical reality, would be precisely the kind of formalism that *Kizito Fahad* counsels against.

[69]Joseph Lusse v Uganda (1997) III KALR 58. The court held without equivocation that once the constitutional threshold of days on remand has been reached, the court is left with no discretion but to release the accused on reasonable conditions.
[70]Kizito Fahad v Attorney General Constitutional Petition 17 of 2021.
[71]Kizito Fahad v Attorney General Constitutional Petition 17 of 2021. The court affirmed that constitutional rights must be interpreted purposively so as to give them their fullest effect, and that technical or formalistic readings that diminish the scope of guaranteed freedoms are inconsistent with the constitutional order.

The constitutional meaning of remand therefore becomes crucial. If the concept is construed narrowly so as to exclude periods of detention that are functionally part of the same prosecutorial process, the constitutional safeguard may be diluted. Conversely, if it is construed in a manner that reflects the real experience of custody under State authority, the protective purpose of the provision is better preserved.[72] The interpretive dispute identified in the proposal thus arises not at the margins, but at the very centre of the constitutional design.

The Statutory and Practice Direction Framework

Although the right to bail is constitutional, its operation is shaped by legislation and judicial practice directions. Two instruments are especially relevant: the *Trial on Indictments Act* and the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.

The *Trial on Indictments Act* is relevant because it governs trials in the High Court, inclusive of bail applications. Section 16(3) of the Act provides that an accused is granted bail upon proof of "exceptional circumstances", which are grave illness certified by a medical officer, a certificate of no objection signed by the Director of Public Prosecutions, or the infancy or advanced age of the accused.[73]

The application of this exceptional circumstances threshold was considered by the International Crimes Division of the High Court in *Bakulha and 48 Others v Uganda*.[74] The court affirmed that the section 16(3) threshold constitutes a judicially manageable standard and that where the relevant circumstances are established, the court retains residual power to grant bail even in capital matters. Importantly, the court treated this power as existing alongside, rather than in substitution for, the constitutional entitlement under Article 23(6)(c). The decision therefore underscores the layered character of Uganda's bail framework, in which statutory and constitutional provisions must be read harmoniously, with constitutional requirements taking precedence in any case of conflict. The court's reasoning also implicitly recognises that an

[72]Supra n9.
[73]See also Bakulha & 48 Others v Uganda [2022] UGHCICD 8.
[74]Bakulha & 48 Others v Uganda [2022] UGHCICD 8. The International Crimes Division of the High Court considered the threshold of 'exceptional circumstances' under section 16(3) of the Trial on Indictments Act and affirmed that where such circumstances are established, the court retains residual power to grant bail even in capital matters, consistent with the constitutional framework.

exclusive reliance on statutory exceptional circumstances, without regard to the constitutional mandatory bail regime, would be constitutionally impermissible.

The Bail Guidelines, 2022, were promulgated to promote consistency in bail adjudication and to clarify the principles governing release pending trial.[75] They define bail as the temporary release of an accused person from lawful custody upon providing security for future appearance in court on conditions considered reasonable by the court.[76] They also reiterate the constitutional requirement relating to mandatory release after the relevant remand period.[77] Their broader significance lies in their attempt to standardise judicial practice, moderate excessive conditions, and align bail decision-making with constitutional values.[78]

The Guidelines are not a substitute for the Constitution, nor can they narrow constitutional entitlements. Their legal function is interpretive and administrative. They assist courts to apply bail principles in a structured way, but they remain subordinate to the constitutional text.[79] Where a constitutional entitlement to mandatory bail has crystallised, the Guidelines cannot authorise a return to open-ended discretion. Indeed, their proper role is to facilitate, rather than undermine, the constitutional protection of liberty.[80]

The same point applies to statutory provisions that purport to regulate bail through restrictive conditions. As Mujuzi argues, tension may arise where statutory reforms or judicial practices blur the boundary between the right to apply for bail and the constitutional guarantee of release in mandatory cases.[81] The hierarchy of norms remains clear. Legislation and practice directions may regulate procedure, but they may not defeat or hollow out a constitutional command.[82]

Judicial Interpretation and the Problem of Discretion

A central issue in Uganda's bail jurisprudence is the relationship between constitutional entitlement and judicial discretion. In discretionary bail applications under Article 23(6)(a), courts weigh factors such as the nature of the offence, likelihood of appearance, possible

[75]Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.
[76]ibid guideline 4.
[77]ibid guideline 10(1).
[78]Martin Kityo, 'Outside Bars: The Right to Bail in Uganda' (2024) SSRN.
[79]Under Article 2 of the Constitution, the Constitution is the supreme law of Uganda.
[80]Supra n8.
[81]ibid.
[82]ibid.

interference with investigations, and the broader interests of justice.[83] In mandatory bail cases, however, the constitutional scheme is different. Once the conditions set by Article 23(6)(c) are satisfied, the judicial inquiry ought no longer to concern whether release should occur, but on what reasonable terms it should occur.[84]

This distinction is doctrinally important because it prevents constitutional rights from being transformed into invitations for case-by-case indulgence. If judges retain full discretion even after the constitutional threshold has been met, the mandatory character of Article 23(6)(c) is lost.[85] Such an approach would permit the very uncertainty and prolonged detention that the provision was designed to prevent.[86]

The doctrinal tension between a right to apply and a right to be released was directly engaged by the Constitutional Court in *Foundation for Human Rights Initiatives v Attorney General*.[87] The court held that Article 23(6)(a) confers a right to apply for bail rather than an absolute right to be granted bail. However, that holding does not undermine the mandatory character of Article 23(6)(c), which operates on an entirely different footing. Where Article 23(6)(a) invites judicial balancing, Article 23(6)(c) forecloses it. The constitutional distinction between the two provisions is thus deliberate and structurally significant. Courts that conflate them risk reintroducing discretion into a regime where the Constitution has already struck the balance.

The bilateral and conditional character of bail as a legal relationship was further illuminated in *Obita Charles v Uganda*.[88] The court treated bail as an agreement between the accused and the court, emphasising that its terms must be clear, reasonable, and enforceable. This framing is significant in the mandatory bail context because it underscores that once the constitutional threshold is met, the agreement cannot be withheld altogether. The court's role at that point is

[83]Obita Charles v Uganda High Court Criminal Miscellaneous Application No 68 of 2023.
[84]Uganda (DPP) v Kizza Besigye Constitutional Reference No 20 of 2005.
[85]Supra n8.
[86]Kelly Luke, 'Bail Conditions in the Criminal Justice Systems in Kenya, Uganda, Rwanda and Tanzania' (K4D Helpdesk Report 863, Institute of Development Studies, 7 August 2020).
[87]Foundation for Human Rights Initiatives v Attorney General, Constitutional Petition No 20 of 2006 (Constitutional Court of Uganda). The court held that while Article 23(6)(a) confers a right to apply for bail rather than an absolute right to be granted bail, the judicial discretion exercised in response to that application must remain constitutionally compliant and cannot be exercised in a manner that renders the right otiose.
[88]Obita Charles v Uganda High Court Criminal Miscellaneous Application No 68 of 2023. The court described bail as an agreement between the accused and the court, underlining its bilateral and conditional character as distinct from mere administrative release.

to determine workable terms of release, not to reopen the question of whether release is warranted. Any other approach would mischaracterise the nature of bail as an institution and disregard the constitutional design that underpins it.

The proposal notes the importance of the decision in *Col (Rtd) Dr Kizza Besigye and Hajji Obeid Lutale v Uganda* in raising questions about forum distinctions and the computation of time. Without rehearsing the detailed case analysis reserved for a later chapter, it is sufficient here to observe that interpretive disputes of this kind reveal a broader structural problem. When courts adopt narrow procedural categories that enable the State to fragment periods of detention, constitutional safeguards may be weakened despite the apparent clarity of the text.[89]

The constitutional significance of forum distinctions in the context of military and civilian courts was addressed directly by the Supreme Court in *Attorney General v Michael Kabaziguruka*.[90] The court held that the trial of civilians before the General Court Martial is unconstitutional, affirming the exclusive jurisdiction of the ordinary courts of judicature over civilian criminal proceedings. The implications for the mandatory bail calculus are substantial. If civilian accused persons cannot lawfully be tried before military tribunals, it follows that their detention in connection with civilian criminal charges is, from its inception, detention referable to the civilian criminal process. To exclude periods of such detention from the computation of remand on the ground that they preceded production before a civil court would be to elevate a procedural formality over constitutional substance. The *Kabaziguruka* decision therefore provides important doctrinal support for a substantive rather than formalistic reading of the remand period under Article 23(6)(c).

The most recent affirmation of this approach is found in *Kongo John v Uganda*.[91] The High Court reaffirmed that the right to apply for bail is inseparable from the presumption of innocence and that bail conditions cannot be imposed in a manner that renders the right illusory. While the decision addressed the discretionary bail regime, its reasoning carries implications

[89]Supra n23.
[90]Attorney General v Michael Kabaziguruka Constitutional Appeal No 2 of 2021 (Supreme Court of Uganda). The Supreme Court held that the trial of civilians before the General Court Martial was unconstitutional, affirming the exclusive jurisdiction of the ordinary courts of judicature over civilian criminal matters.
[91]Kongo John v Uganda High Court Criminal Miscellaneous Application No 10 of 2024. The High Court reaffirmed that the constitutional right to apply for bail is inseparable from the presumption of innocence and cannot be subjected to conditions that render its exercise illusory.

for mandatory bail. It confirms that constitutional bail rights are not merely formal entitlements but practical guarantees, whose effectiveness must be assessed in light of the actual experience of the accused rather than the abstract sufficiency of the legal framework. That principle applies with even greater force in the mandatory context, where the Constitution itself has intervened to guarantee release.

A rights-oriented interpretive method requires courts to be attentive to substance rather than formalism. The real question is whether the accused has, in substance, been deprived of liberty under colour of criminal process for the period contemplated by the Constitution.[92] If the answer is yes, then a restrictive insistence on particular institutional labels may frustrate constitutional purpose. This is particularly so in a legal order committed to guarding against arbitrary detention and to maintaining the presumption of innocence until lawful conviction.[93]

International and Regional Human Rights Standards

Uganda's constitutional framework on bail must also be understood within the wider international and regional human rights regime. Article 9(3) of the ICCPR provides that anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or release.[94] The Human Rights Committee has stressed that pre-trial detention should not be the general rule and that detention must be justified on specific, individualised grounds.[95] It has also warned that excessive length of pre-trial detention may itself render detention arbitrary.[96]

In *Van Alphen v Netherlands*, the Human Rights Committee underscored that detention before trial must remain exceptional and based on concrete reasons rather than abstract assumptions.[97] General Comment No 35 develops this principle further by insisting that detention pending trial must be reasonable, necessary, and proportionate in all the circumstances.[98] These standards are directly relevant to Article 23(6)(c), since the Ugandan Constitution goes beyond the minimum international standard by establishing a fixed temporal threshold for mandatory release in certain cases.[99]

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[92]Supra n11.
[93]Constitution of the Republic of Uganda, 1995, arts 23 and 28(3)(a).
[94]ICCPR, art 9(3).
[95]General Comment No 35 (n 16) para 38.
[96]ibid.
[97]Van Alphen v Netherlands, Communication No 305/1988, Views of 23 July 1990, para 5.8.
[98]General Comment No 35 (n 16) para 38.
[99]Constitution of the Republic of Uganda, 1995, art 23(6)(c).

At the regional level, Article 6 of the African Charter protects the right to liberty and forbids arbitrary arrest or detention.[100] Although the Charter does not set out a detailed bail code, its protection of liberty has been interpreted to require strong safeguards against unjustified detention and abuse of state power.[101] The African human rights system therefore supports a reading of bail as a substantive protection rather than a narrow procedural concession.[102]

These international and regional standards reinforce the conclusion that Uganda's bail regime should be interpreted consistently with the principles of necessity, proportionality, and anti-arbitrariness. Where the Constitution has already drawn a line at one hundred and eighty days before committal, international law strengthens, rather than dilutes, the case for strict enforcement of that line.[103]

Conclusion

This chapter has shown that bail in Uganda is founded on deep constitutional and human rights principles. Conceptually, bail is an instrument for preserving liberty and giving effect to the presumption of innocence during the criminal process. Historically, the 1995 Constitution marked a deliberate departure from earlier traditions of weak liberty protection and unstructured pre-trial detention. Constitutionally, Article 23(6)(c) establishes a mandatory safeguard against prolonged remand before committal in offences triable only by the High Court. The cases of *Joseph Lusse v Uganda*, *Kinyambira-Mumbere Boniface v Uganda*, *Kizito Fahad v Attorney General*, *Attorney General v Michael Kabaziguruka*, *Kongo John v Uganda*, *Obita Charles v Uganda*, *Bakulha and 48 Others v Uganda*, and *Foundation for Human Rights Initiatives v Attorney General* together illustrate the doctrinal landscape within which Article 23(6)(c) operates: some affirming its mandatory force unambiguously, others creating space for interpretive ambiguity that this study interrogates. Statutorily and administratively, the Bail Guidelines structure the process, but they cannot diminish the force of the constitutional entitlement. International and regional human rights law further support the proposition that detention before trial must remain exceptional, justified, and temporally limited.

The central implication is that mandatory bail under Article 23(6)(c) should be understood as a constitutional brake on prosecutorial delay and excessive detention. It is not a matter of grace.

[100]African Charter, art 6.
[101]Supra n23.
[102]Supra n61.
[103]ICCPR, art 9(3); African Charter, art 6.

It is a constitutional response to the risk that remand may become punishment before conviction. The next chapter will build on this framework by examining in detail how Ugandan courts have interpreted Article 23(6)(c), especially in relation to the meaning of remand and the computation of the one hundred and eighty-day period.

CHAPTER THREE: FINDINGS AND ANALYSIS

Introduction

This chapter presents an exposition and analysis of findings derived from qualitative interviews conducted with twelve respondents drawn from four key stakeholder groups within Uganda's criminal justice system. These include three High Court judges, three prosecutors from the Office of the Director of Public Prosecutions, three defence lawyers in private practice with demonstrable experience in bail litigation, and three accused persons who have undergone prolonged pre-trial detention and engaged the mechanism of mandatory bail under Article 23(6)(c) of the 1995 Constitution.

The chapter adopts a thematic analytical framework, integrating respondent perspectives with doctrinal considerations, institutional realities, and constitutional principles. In doing so, it seeks to illuminate the gap, if any, between the normative promise of Article 23(6)(c) and its practical operation within Uganda's criminal justice system.

It is necessary at the outset to record that all judicial officers and prosecutors expressly requested anonymity, citing apprehension that attribution of their views might expose them to professional scrutiny or institutional repercussions within the judiciary or prosecutorial hierarchy. One of the judges is still in acting capacity and noted that they might not be confirmed if their views displeased persons in authority. Their responses are therefore presented without identifying details, in accordance with accepted ethical standards in socio-legal research. Defence lawyers and accused persons have similarly been anonymised to preserve confidentiality and protect personal privacy, as the researcher could only interact with those whose cases are yet to be decided. The accused persons expressed fear that their matters may never be cause-listed if they appear hostile to the justice system. The defence lawyers and accused persons were interviewed at the Criminal Division of the High Court.

The findings are organised into key thematic areas emerging inductively from the data. These include: the conceptual purpose of Article 23(6)(c), the meaning and computation of remand, the interaction between constitutional guarantees and bail guidelines, the influence of institutional constraints, variability in judicial application, and the lived experience of accused persons. Each theme is examined both descriptively and analytically.

Conceptualising the Purpose of Article 23(6)(c)

A foundational theme emerging from the interviews concerns the underlying purpose of Article 23(6)(c). While there is broad agreement that the provision functions as a safeguard against prolonged detention, significant divergence exists in how its normative content is understood.

One judicial officer adopted a relatively restrained interpretation, describing the provision as "essentially a procedural safeguard intended to ensure that cases are processed within a reasonable time".[104] This view situates Article 23(6)(c) within a managerial conception of criminal justice, emphasising efficiency and timeliness rather than substantive rights.

In contrast, another judicial officer articulated a more expansive and rights-oriented understanding, stating that "the provision is fundamentally about liberty; it ensures that the State cannot keep an individual in custody indefinitely without trial".[105] This interpretation aligns more closely with constitutional principles of personal liberty and the presumption of innocence, and resonates with the unequivocal reasoning in *Joseph Lusse v Uganda* and *Kinyambira-Mumbere Boniface v Uganda*, where the courts treated Article 23(6)(c) as an absolute constitutional boundary rather than a factor to be weighed at large.

The perspectives of prosecutors tended to frame the provision within a balancing paradigm. One prosecutor observed that "while Article 23(6)(c) imposes a clear obligation, it must be applied in a way that does not compromise the prosecution of serious offences".[106] Another noted that "the intention is clear, but the reality of investigations means that strict timelines can sometimes be difficult to meet".[107] This balancing instinct is difficult to reconcile with the mandatory character of the provision, which admits of no exception on the ground of prosecutorial inconvenience.

Defence lawyers consistently emphasised the constitutional character of the provision. One respondent stated that "mandatory bail represents a point at which the Constitution intervenes to correct systemic delay".[108] Another framed it more forcefully as "a recognition that continued detention beyond a certain point becomes inherently unjustifiable".[109] That framing

[104]Interview with High Court Judge 1, March 2026.
[105]Interview with High Court Judge 3, March 2026.
[106]Interview with Chief State Attorney, ODPP, March 2026.
[107]Interview with Senior State Attorney, ODPP, March 2026.
[108]Interview with Defence Lawyer 1, Kampala, March 2026.
[109]Interview with Defence Lawyer 3, Kampala, March 2026.

is consistent with the reasoning in *Kongo John v Uganda*, where the court affirmed that constitutional bail rights must have practical substance and cannot be rendered illusory by institutional inertia.

The accounts of accused persons, though less doctrinally framed, reflected an implicit understanding of the provision as a safeguard against indefinite incarceration. One respondent remarked that "after some time, you expect the court to either proceed with the case or release you".[110]

Taken together, these responses reveal a spectrum of interpretations ranging from procedural minimalism to substantive constitutionalism. This divergence has direct implications for how Article 23(6)(c) is operationalised in practice.

The Meaning and Computation of 'Remand'

The most contested issue across all stakeholder groups concerns the definition and computation of "remand" for purposes of the 180-day threshold.

A formalist approach was articulated by one judicial respondent, who stated that "remand begins when the accused is produced before a court of competent jurisdiction; detention prior to that point falls within the domain of police custody and is not counted".[111] This position reflects a strict adherence to procedural categorisation. It is the approach that prevailed in the *Besigye* application before the High Court, where the court declined to count periods of detention before the General Court Martial as constituting remand for the purposes of Article 23(6)(c).

However, a more flexible position was advanced by another judge, who acknowledged that "where detention is continuous and directly linked to the same offence, it may be artificial to exclude earlier periods simply because they occurred outside the courtroom".[112] A third judicial respondent went further, noting that "a purely technical approach risks undermining the constitutional purpose of the provision".[113] This purposive reasoning accords with the principle established in *Kizito Fahad v Attorney General* and is reinforced by the Supreme Court's ruling in *Attorney General v Michael Kabaziguruka* that the detention of civilians before military

[110]Interview with Accused Person 1, March 2026.
[111]Interview with High Court Judge 1, March 2026.
[112]Interview with High Court Judge 2, March 2026.
[113]Interview with High Court Judge 3, March 2026.

tribunals is constitutionally impermissible. If civilian detention in military custody is unlawful from its inception, it is inconsistent to treat such detention as a period that interrupts, rather than contributes to, the constitutional remand calculus.

Prosecutorial responses were more uniform. One prosecutor stated that "the prevailing understanding is that remand is court-based; including police detention would create practical and legal uncertainty".[114] Another acknowledged that "while this approach may seem rigid, it provides a clear and administrable standard".[115]

Defence lawyers were unequivocal in their opposition to this restrictive interpretation. One respondent explained that "we argue consistently that the clock should start from the moment of arrest, because that is when the deprivation of liberty begins".[116] Another noted that "excluding pre-court detention effectively allows the State to manipulate timelines through delay".[117] This concern is particularly acute in cases where, as in *Besigye*, the accused was held in military custody before transfer to the civilian courts, a sequence that the Supreme Court's ruling in *Kabaziguruka* renders constitutionally suspect.

The accounts of accused persons highlight the practical consequences of this interpretive divergence. One respondent stated that "I had already spent weeks in custody before appearing in court, but those days were not considered when calculating the time".[118] Another expressed confusion, noting that "you are in prison the whole time, but the law seems to count only part of it".[119] These testimonies illustrate how the formal legal distinction between pre-court and court-ordered detention translates into a lived experience of arbitrary and opaque prolongation of custody.

Judicial Discretion, Bail Guidelines, and Constitutional Supremacy

The interaction between Article 23(6)(c) and the Bail Guidelines presents another area of complexity.

Judicial respondents generally affirmed that the Guidelines are subordinate to the Constitution. One judge noted that "the Guidelines are intended to assist, but they cannot override a

[114]Interview with Senior State Attorney, ODPP, March 2026.
[115]Interview with Principal State Attorney, ODPP, March 2026.
[116]Interview with Defence Lawyer 1, March 2026.
[117]Interview with Defence Lawyer 3, March 2026.
[118]Interview with Accused Person 3, March 2026.
[119]Interview with Accused Person 2, March 2026.

constitutional entitlement".[120] However, another acknowledged that "in practice, the considerations outlined in the Guidelines continue to influence judicial reasoning, even in mandatory bail contexts".[121] This observation is particularly concerning in light of the distinction drawn in *Foundation for Human Rights Initiatives v Attorney General* between discretionary and mandatory bail. Where the constitutional threshold for mandatory bail has been crossed, the Guidelines cannot reintroduce the balancing exercise appropriate to discretionary applications.

Prosecutors viewed the Guidelines as an important tool for structuring objections. One respondent stated that "the Guidelines provide a framework for raising concerns such as flight risk and interference with witnesses".[122]

Defence lawyers expressed concern that reliance on the Guidelines may dilute the constitutional imperative. One respondent observed that "mandatory bail is sometimes treated as if it were discretionary, with courts reverting to the same factors that apply in ordinary bail applications".[123] This concern is borne out by the doctrinal analysis in Chapter Two. As both *Joseph Lusse v Uganda* and *Kinyambira-Mumbere Boniface v Uganda* make plain, the constitutional provision does not invite a discretionary balancing exercise once the 180-day threshold has been met.

This suggests that, notwithstanding the constitutional framing of Article 23(6)(c), judicial practice does not always fully distinguish between mandatory and discretionary bail regimes.

Institutional Constraints and Systemic Delay

Institutional constraints emerged as a pervasive theme influencing the application of Article 23(6)(c).

Prosecutors highlighted resource limitations and investigative challenges. One respondent explained that "delays often arise from incomplete investigations, especially where forensic

[120]Interview with High Court Judge 2, March 2026.
[121]Interview with High Court Judge 1, March 2026.
[122]Interview with Chief State Attorney, ODPP, March 2026.
[123]Interview with Defence Lawyer 2, March 2026.

analysis is required".[124] Another noted that "coordination between police and prosecution can be slow, which affects the pace of cases".[125]

Judicial respondents acknowledged these constraints but expressed concern about their implications. One judge observed that "the Constitution sets clear limits, but the system does not always operate within those limits".[126]

Defence lawyers were more critical, framing delays as systemic failures. One respondent stated that "the burden of institutional inefficiency is effectively shifted onto the accused person".[127] This observation aligns with the empirical findings of Karugonjo-Segawa, who identified prosecutorial inefficiency and poor inter-institutional coordination as primary drivers of prolonged pre-trial detention in Uganda.

Accused persons provided vivid accounts of these delays. One respondent described repeated adjournments, stating that "each time we went to court, the case was not ready, and we were sent back".[128] Another noted that "you remain in custody without knowing when the case will move forward".[129]

These findings demonstrate that institutional inefficiencies are central to the continued relevance of Article 23(6)(c), but also undermine its effectiveness. The provision was designed precisely to counter such delays, yet it operates within a system that generates them systematically.

Variability and Inconsistency in Application

A consistent theme across interviews was the lack of uniformity in the application of Article 23(6)(c).

Defence lawyers reported significant disparities across High Court circuits. One respondent stated that "the outcome of a mandatory bail application can depend heavily on the judge or the circuit".[130]

[124]Interview with Senior State Attorney, ODPP, March 2026.
[125]Interview with Principal State Attorney, ODPP, March 2026.
[126]Interview with High Court Judge 2, March 2026.
[127]Interview with Defence Lawyer 2, March 2026.
[128]Interview with Accused Person 2, March 2026.
[129]Interview with Accused Person 1, March 2026.
[130]Interview with Defence Lawyer 3, March 2026.

Judicial respondents acknowledged this variability. One judge noted that "there is no definitive interpretation that has resolved all aspects of the provision".[131] That observation is readily explained by the absence of a binding appellate ruling on the precise questions raised by the *Besigye* application, namely how remand is computed where periods of civilian detention in military custody precede transfer to the ordinary courts.

Prosecutors similarly recognised inconsistency, with one respondent observing that "different courts adopt slightly different approaches, which creates uncertainty".[132]

This variability therefore raises important concerns regarding predictability, fairness, and equality before the law. As noted in Chapter Two, the purposive approach to constitutional interpretation affirmed in *Kizito Fahad v Attorney General* requires that rights provisions be applied consistently with their constitutional purpose across all courts and circuits. Interpretive variability that advantages the prosecution by excluding substantial periods of actual detention from the remand calculus is inconsistent with that requirement.

Lived Experience of Mandatory Bail

The experiences of accused persons provide a critical perspective on the operation of Article 23(6)(c).

One respondent, who had legal representation, described the process as "structured but slow," noting that "even after applying for bail, there were delays before a decision was made".[133]

Another respondent, initially unrepresented, stated that "I did not know about mandatory bail until other inmates explained it to me".[134] This account illustrates the access-to-justice dimension of the mandatory bail framework. The constitutional entitlement is of limited practical value if accused persons are unaware of it. The reasoning in *Kongo John v Uganda* that bail rights must have practical substance and cannot be rendered illusory applies with particular force to this dimension of the problem.

[131]Interview with High Court Judge 2, March 2026.
[132]Interview with Prosecutor 3, March 2026.
[133]Interview with Accused Person 1, March 2026.
[134]Interview with Accused Person 2, March 2026.

A third respondent emphasised the difficulty of meeting bail conditions, noting that "even when bail is granted, finding sureties can be a major challenge".[135]

Across all accounts, prolonged detention had significant personal and social consequences, including loss of employment, disruption of family life, and psychological distress.

Synthesis

The findings reveal a complex interaction between constitutional doctrine, institutional practice, and lived experience. While Article 23(6)(c) is widely recognised as a critical safeguard, its effectiveness is mediated by divergent interpretations, systemic constraints, and uneven implementation.

At the doctrinal level, the central issue remains the meaning of "remand." The decisions in *Joseph Lusse v Uganda*, *Kinyambira-Mumbere Boniface v Uganda*, and *Kizito Fahad v Attorney General* collectively support a purposive reading that prioritises constitutional substance over procedural form. The Supreme Court's ruling in *Attorney General v Michael Kabaziguruka* further undermines the basis for excluding military detention from the remand calculus. The decision in *Foundation for Human Rights Initiatives v Attorney General* clarifies that the mandatory and discretionary bail regimes are structurally distinct, and the findings from *Obita Charles v Uganda* reinforce that bail conditions must remain genuinely workable. At the institutional level, delays and coordination challenges persist. At the experiential level, accused persons continue to bear the consequences of these structural limitations.

The data therefore suggests that the realisation of Article 23(6)(c) requires not only doctrinal clarity, but also institutional reform and a sustained commitment to constitutional principles in practice.

[135]Interview with Accused Person 3, March 2026.

CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS

Introduction

This chapter synthesises the findings of the study and draws normative and doctrinal conclusions on the operation of bail in Uganda, with particular focus on Article 23(6)(c) of the 1995 Constitution. It revisits the central research problem identified in Chapter One, namely whether the judicial interpretation and application of mandatory bail in Uganda has remained faithful to its constitutional purpose, or whether it has, in practice, been diluted through restrictive interpretation and institutional constraints.

The chapter proceeds in three parts. First, it presents the general conclusions arising from the doctrinal and empirical analysis. Secondly, it evaluates the implications of these findings for constitutionalism, the rule of law, and the protection of personal liberty. Finally, it sets out specific legal and institutional recommendations aimed at strengthening the realisation of mandatory bail within Uganda's criminal justice system.

General Conclusions of the Study

This study set out to examine the constitutional framework governing bail in Uganda, the judicial interpretation of Article 23(6)(c), and the extent to which this framework operates as an effective safeguard against prolonged pre-trial detention. Drawing on doctrinal analysis and qualitative findings, several conclusions emerge.

First, Article 23(6)(c) was conceived as a constitutional limitation on State power, rather than a discretionary procedural device. As demonstrated in Chapter Two, the historical evolution of Uganda's bail regime reflects a deliberate effort by the framers of the 1995 Constitution to prevent the recurrence of arbitrary detention and to ensure that liberty is not subordinated to administrative convenience. The reduction of the remand period from 360 days to 180 days reinforces the intention to impose a firm temporal boundary on pre-committal detention.

Secondly, notwithstanding this clear constitutional design, the study finds that judicial interpretation has not been uniform. The analysis in Chapters Two and Three demonstrates that courts have adopted divergent approaches to the meaning of "remand," particularly regarding whether periods of detention outside the ordinary courts of judicature should be included in the computation of the 180-day period. The decisions in *Joseph Lusse v Uganda* and *Kinyambira-Mumbere Boniface v Uganda* affirm the non-discretionary character of the provision once the

threshold is met, yet the High Court in the *Besigye* application adopted a formalistic approach that effectively reintroduced discretion by fragmenting the remand period along institutional lines.

Thirdly, the study finds that institutional constraints significantly shape the application of mandatory bail. Delays in investigation, incomplete committal files, limited coordination between police and prosecution, and administrative inefficiencies within the justice system all contribute to prolonged detention. As a result, the constitutional safeguard under Article 23(6)(c) often operates within a system that is structurally predisposed to delay.

Fourthly, the qualitative findings reveal that the lived experience of accused persons frequently diverges from the constitutional ideal. Many accused persons are unaware of their right to mandatory bail, face challenges in accessing legal representation, and encounter difficulties in meeting bail conditions, as underscored by the reasoning in *Obita Charles v Uganda* that bail terms must be genuinely workable. Prolonged detention has significant personal and social consequences, including loss of livelihood, family disruption, and psychological distress.

Fifthly, the study finds that the distinction between mandatory and discretionary bail is not always clearly maintained in practice. As the *Foundation for Human Rights Initiatives v Attorney General* decision makes plain, these two regimes are structurally distinct. Courts that fail to honour that distinction effectively convert a constitutional entitlement into a contingent one.

Taken together, these findings support the conclusion that while Article 23(6)(c) remains a critical constitutional safeguard, its effectiveness has been partially undermined by interpretive inconsistency, institutional limitations, and practical barriers to access.

The Constitutional Implications of Judicial Interpretation

The interpretive challenges identified in this study raise broader questions about the role of the judiciary in a constitutional democracy.

At its core, Article 23(6)(c) embodies a normative judgment by the Constitution itself. It represents a determination that beyond a certain point, continued detention without committal is incompatible with the right to liberty and the presumption of innocence. In this sense, the provision does not merely guide judicial discretion; it constrains it.

Where courts adopt restrictive interpretations of "remand" that exclude significant periods of detention, the effect is to shift the constitutional balance back in favour of the State. Such interpretations risk transforming a mandatory safeguard into a contingent entitlement, dependent on procedural categorisation rather than substantive justice. This is particularly evident in cases where detention occurs in multiple forums, such as military or security institutions, before transfer to the ordinary courts. As the Supreme Court's ruling in *Attorney General v Michael Kabaziguruka* makes clear, the detention of civilians in military custody in connection with civilian offences is constitutionally impermissible from its inception. The doctrinal consequence, which the *Besigye* High Court failed to draw, is that such detention cannot be excised from the remand calculus under Article 23(6)(c) without defeating the provision's constitutional purpose.

The principle of constitutional supremacy requires that rights be interpreted in a manner that gives them full effect, rather than one that permits their circumvention through technical distinctions. A purposive approach to Article 23(6)(c), grounded in its historical and normative context and supported by the line of authority running from *Joseph Lusse* through *Kinyambira-Mumbere Boniface* to *Kizito Fahad*, is therefore essential.

Bail, the Rule of Law, and Equality Before the Law

The findings of this study also have implications for the rule of law and equality before the law. The variability in judicial application of Article 23(6)(c) across different High Court circuits suggests that similarly situated accused persons may receive different outcomes depending on the forum in which their application is heard. This undermines the principle of legal certainty, which is a core component of the rule of law.

Furthermore, the differential impact of bail practices on accused persons, particularly those without legal representation or financial resources, raises concerns about substantive equality. Indigent accused persons are more likely to experience prolonged detention, both because of limited access to legal advice and because of difficulties in meeting bail conditions. The constitutional guarantee cannot be treated as functionally available only to those with the resources and representation to invoke it effectively.

Recommendations

Doctrinal Clarification by Appellate Courts

There is an urgent need for authoritative clarification by the Constitutional Court or Supreme Court on the meaning of "remand" under Article 23(6)(c). Such clarification should adopt a purposive approach that reflects the constitutional objective of preventing prolonged detention. In particular, appellate courts should address whether periods of continuous detention linked to the same offence, including detention outside the ordinary courts, should be included in the computation of the 180-day period. The Supreme Court's ruling in *Attorney General v Michael Kabaziguruka* provides a constitutional foundation for such a ruling by establishing that civilian accused persons cannot lawfully be tried in military courts, which implies that their detention in such forums cannot interrupt the constitutional remand period.

Legislative Intervention

Parliament should consider enacting clarificatory legislation defining "remand" for purposes of Article 23(6)(c), in a manner consistent with constitutional principles. Such legislation could reduce interpretive ambiguity and promote uniformity in application.

Strengthening Case Management Systems

The introduction of digital case tracking systems within the judiciary and the Office of the Director of Public Prosecutions would significantly improve the monitoring of remand periods. Automated alerts could ensure that cases approaching the 180-day threshold are prioritised.

Enhancing Institutional Coordination

Improved coordination between police, prosecution, and the judiciary is essential to reduce delays. This may include the establishment of integrated case management frameworks within the Justice, Law and Order Sector (JLOS).

Rationalising Bail Conditions

Courts should ensure that bail conditions are reasonable and proportionate, in line with the Constitution and the Bail Guidelines. As the reasoning in *Obita Charles v Uganda* underscores, bail is a bilateral agreement whose terms must be genuinely workable. Excessive or unrealistic conditions may undermine the practical availability of bail, even where it is formally granted.

Judicial Training and Sensitisation

Continuous judicial training on constitutional interpretation and human rights standards would promote a more consistent and purposive approach to mandatory bail. Particular attention should be given to the structural distinction between mandatory and discretionary bail regimes, as clarified in *Foundation for Human Rights Initiatives v Attorney General*, and to the implications of the *Kabaziguruka* ruling for the computation of remand in cases involving prior military detention.

Final Conclusion

This study has demonstrated that Article 23(6)(c) occupies a central place in Uganda's constitutional architecture of liberty. It represents a deliberate effort to ensure that pre-trial detention remains exceptional, time-bound, and subject to judicial control. The decided cases, from the foundational affirmations in *Joseph Lusse v Uganda* and *Kinyambira-Mumbere Boniface v Uganda*, through the constitutional framework established in *Uganda (DPP) v Kizza Besigye* and the purposive interpretive principles articulated in *Kizito Fahad v Attorney General*, to the structural implications of *Attorney General v Michael Kabaziguruka* and the practical bail jurisprudence in *Obita Charles v Uganda*, *Kongo John v Uganda*, and *Bakulha and 48 Others v Uganda*, collectively chart a doctrinal trajectory that privileges constitutional substance over procedural formalism.

However, the effectiveness of this provision depends not only on its textual clarity, but on its interpretation and implementation within a complex institutional environment. The findings of this study reveal that while the constitutional framework is robust, its operation is constrained by interpretive divergence, systemic delay, and practical barriers.

The central insight that emerges is that mandatory bail is not merely a procedural entitlement, but a constitutional safeguard whose integrity must be actively protected. Where courts adopt narrow or formalistic interpretations that undermine its purpose, the Constitution's promise of liberty is diminished. Conversely, where courts embrace a purposive and principled approach, Article 23(6)(c) can serve as a powerful instrument for restraining arbitrary detention and reinforcing the rule of law.

The challenge, therefore, is not simply to restate the constitutional provision, but to ensure that it is given full and effective meaning in practice. This requires doctrinal clarity, institutional

reform, and a sustained commitment to constitutional values across all actors within the criminal justice system.

In this sense, the question raised at the outset of this study is not merely a technical one. It is a question about the character of Uganda's constitutional order itself: whether liberty is treated as a foundational value, or as a principle that may be deferred in the face of administrative convenience. The answer, ultimately, lies in how Article 23(6)(c) is interpreted, applied, and defended in the years to come.

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Annexure A: Interview Guides

Interview Guide A: High Court Judges

Purpose: To understand judicial interpretation and application of Article 23(6)(c), without probing individual cases or compromising judicial independence.

- How do you interpret the purpose of Article 23(6)(c) of the 1995 Constitution within Uganda's bail framework?
- In your view, what constitutes "remand" for purposes of computing the 180-day period under Article 23(6)(c)?
- How do courts approach situations where an accused person was initially detained or tried in a forum outside the ordinary courts of judicature?
- To what extent do the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions influence your approach to mandatory bail?
- How do courts balance constitutional guarantees of liberty with concerns relating to public interest, security, or the seriousness of offences?
- Do you consider that the current jurisprudence on mandatory bail provides sufficient clarity and consistency? If not, where do the main challenges lie?
- In your view, are there institutional or procedural factors that affect how mandatory bail is applied in practice?
- What reforms, if any, would strengthen the uniform application of Article 23(6)(c)?

Interview Guide B: Prosecutors (Office of the Director of Public Prosecutions)

Purpose: To understand prosecutorial practice and its interaction with mandatory bail and committal timelines.

- How does the prosecution understand the scope and intent of Article 23(6)(c) of the Constitution?
- What factors influence prosecutorial positions in applications for mandatory bail?
- How is the 180-day period for committal tracked and managed in practice?
- How does the prosecution approach cases involving delays in investigation or committal?

- In practice, how does the prosecution treat periods of detention that occur before an accused appears before a court of judicature?
- To what extent do institutional constraints such as workload, investigations, or coordination with other agencies affect compliance with the 180-day rule?
- Do you consider the current bail jurisprudence to provide sufficient guidance to prosecutors?
- What reforms or administrative measures could improve compliance with constitutional bail safeguards?

Interview Guide C: Defence Lawyers

Purpose: To capture experiential insights into bail litigation and judicial discretion.

- Based on your experience, how do courts interpret and apply Article 23(6)(c) in bail applications?
- How do defence lawyers calculate and present the 180-day remand period before court?
- Have you encountered challenges where courts decline to count certain periods of detention as remand? Please explain generally.
- How do prosecutorial objections and institutional delays affect applications for mandatory bail?
- To what extent do the Bail Guidelines assist or constrain bail advocacy?
- Have you observed differences in how mandatory bail is applied across different High Court circuits?
- In your assessment, does current bail jurisprudence adequately protect the presumption of innocence?
- What legal or institutional reforms would improve the effectiveness of mandatory bail?

Interview Guide D: Accused Persons (or Former Accused Persons)

Purpose: To understand the lived experience of mandatory bail, without retraumatisation or legal coaching.

- How long were you on remand before applying for bail under Article 23(6)(c)?
- Were you informed of your right to apply for mandatory bail? If so, by whom?

- Can you describe your experience of the bail application process?
- Were reasons given by the court for granting or refusing bail?
- How did delays in investigations or court appearances affect your time on remand?
- What challenges did you face in accessing legal representation or meeting bail conditions?
- How did prolonged detention affect you personally or socially?
- In your view, what changes would make the bail process fairer for accused persons?