The Treatment of Persons Who Use and Inject Drugs within the Criminal Justice System in Uganda

October 2019
ACKNOWLEDGEMENTS

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<tr>
<td>CAT</td>
<td>Convention Against Torture</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>CDC</td>
<td>Centers for Disease Control and Prevention</td>
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<td>GAL</td>
<td>Government Analytical Laboratory</td>
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<td>HIV</td>
<td>Human Immuno-deficiency Virus</td>
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<td>HRAPF</td>
<td>Human Rights Awareness and Promotion Forum</td>
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<td>International Covenant on Civil and Political Rights</td>
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<td>MoH</td>
<td>Ministry of Health</td>
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<td>NDPAA</td>
<td>National Drug Policy and Authority Act, Cap. 206</td>
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<td>NODPSP</td>
<td>National Objectives and Directive Principles of State Policy</td>
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<td>PWUIDs</td>
<td>People Who Use and Inject Drugs</td>
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<td>United Nations Office on Drugs and Crime</td>
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EXECUTIVE SUMMARY

1. Introduction and background

Human Rights Awareness and Promotion Forum (HRAPF) runs a legal aid clinic, which provides services to some of the most at risk and marginalised persons in Uganda. HRAPF has been handling cases of People Who Use and Inject Drugs (PWUIDs) since 2017 and has become aware that there are specific trends in the human rights abuses which this group is vulnerable to suffer when they come into contact with the criminal justice system. Human rights violations suffered by PWUIDs within the criminal justice system are sure to increase their vulnerability to HIV infection.

Uganda Police officers brutally arresting a youth in Kampala after finding him in possession of narcotics.
as it drives them further underground and away from HIV prevention and treatment services and support.

This study sets out to identify trends in human rights abuses and violations suffered by PWUIDs who come into contact with the criminal justice system in Uganda in order to make recommendations to address the situation through advocacy and sensitisation of law enforcement officials.

2. Methodology

Qualitative, primary research as well as secondary research were conducted for accomplishing the study objectives. The study had two research sites namely Kampala in the Central region and Mbale in the Eastern region of Uganda.

Primary data was collected among PWUIDs who had come into contact with the criminal justice system in both Kampala and Mbale. A total of 6 Focus Group Discussions were held with PWUIDs. In Kampala and Mbale respectively, 3 FGDs were held with groups of 6-8 female PWUIDs, male PWUIDS and mixed groups. A total of 8 In-Depth Interviews were held with PWUIDs: 4 in Kampala and 4 in Mbale. Key Informant Interviews were conducted with 18 law enforcement officials, providers of legal aid services and representatives of organisations working with PWUIDs. In Kampala, interviews were conducted with Officers in Charge of three police stations: Katwe Police Station, Old Kampala Police Station and Jinja Road Police Station. Police officers based at Mbale Police Station as well as Nakaloke Police Station outside Mbale were also interviewed. Three magistrates were interviewed in Kampala at Buganda Road Chief Magistrates Court, Nakawa Magistrates Court and Makindye Magistrates Court.
Court. A Magistrate from Mbale Magistrates Court as well as Sironko Magistrates Court outside Mbale were interviewed. One Officer in Charge of a Kigo Prison in Kampala Metropolitan area was interviewed. As far as legal aid service providers and organisations working with PWUIDs are concerned, the Executive Director of UHRN as well as two paralegals attached to UHRN in Kampala were interviewed. A lawyer providing legal aid to PWUIDs attached to HRAPF was also interviewed in Kampala. In Mbale, representatives of Women With a Mission as well as UHRN’s Mbale office were interviewed. Finally, an interview was conducted with a representative of African Prisons Project’s legal aid clinic.

Secondary data was collected through the review of existing literature on human rights abuses suffered by PWUIDs who come into contact with the criminal justice system. All files of cases of PWUIDs handled by HRAPF’s legal aid clinic from 2017 up to the first half of 2019 were also reviewed in order to identify trends and practices in the arrest and prosecution of PWUIDs. The Uganda Police Force Annual Crime Reports for 2017 and 2018 were also considered in order to document the number of arrests, prosecutions and convictions on the basis of crimes related to narcotics in recent years.

3. Findings

Every year, there are approximately 3000 cases related to narcotics recorded by the Uganda Police Force (UPF). This figure does not include instances where PWUIDs are arrested under the Penal Code Act’s vagrancy provisions or on the suspicion of committing a crime that does not directly involve narcotics. PWUIDs are most often arrested during police operations targeting a specific area in response
to public outcry concerning crime rates. About two thirds of narcotics cases are prosecuted and heard by the courts and the conviction rate is 3 to 4 out of every 10 cases. Upon conviction under the minimum sentences of the NDPSCA, PWUIDs would usually face a prison sentences due to the inability to meet the steep fines which the Act prescribes as an alternative to imprisonment.

The study finds that the following rights of PWUIDS are violated when they come into contact with the criminal justice system in Uganda:

a) **The right to liberty**

This right is violated in that PWUIDs are often arrested where there is no reasonable suspicion that the person is about to commit a crime, but the arrest is rather based on the person's appearance and the stigma that is attached to PWUIDs. A person presenting as a PWUID can easily be arrested for the purposes of extorting them for a bribe in return for their release or to ‘teach them a lesson’ by detaining them in police cells on an arbitrary basis. There may be a reasonable suspicion that the arrestee is addicted to drugs, however the study finds that the intention motivating the arrest of people believed to be PWUIDs is usually not to provide them with medical care and treatment, nor to protect the community.

This right is furthermore violated in that PWUIDs are rarely informed of the reason for their arrest at the time that they are arrested. PWUIDs are also not informed of their right to a lawyer and are often detained beyond 48 hours after being arrested. The right to liberty is furthermore violated in that PWUIDs are not given access to adequate medical care while they are in police detention; their withdrawal symptoms and need for medical care after a violent
arrest are often ignored.

**b) The right to a fair trial**

PWUIDs are usually forced to make statements by the police and in some cases evidence of drug possession is planted on them by the police. PWUIDs are also tried for offences that no longer exist since some magistrates are not aware that section of the National Drug Policy and Authority Act criminalising possession of opium, smoking opium and frequenting a place used for smoking opium were repealed.

c) **The right to equal protection of the law, equality and freedom from discrimination**

PWUIDs are often arrested on the basis of their appearance and the assumption that they are perpetrators of crime. They are targeted for arrest due to their dress code and social habits which ‘identify’ them as PWUIDs, rather than on a reasonable suspicion that specific crimes have been committed. This right is furthermore violated when groups of people arrested during police operations are sometimes subjected to a ‘screening’ process with the help of local leaders: those who are known to be PWUIDs will remain in detention while those who are not identified as PWUIDs are released, which confirms that the basis of these arrests are not the suspicion of the commission of a specific crime. PWUIDs do not have the equal protection of the law since the provisions of the NDPSCA are not applied uniformly by magistrates.

d) **The right to dignity and freedom from cruel, inhuman and degrading treatment or punishment**

This right is violated in that PWUIDs are subjected to beatings during arrest. PWUIDs are furthermore
not protected from assault by fellow inmates while in custody. PWUIDs are furthermore often denied access to toilet facilities while in detention which amounts to degrading punishment and infringes on their right to dignity.

4. Conclusion

The study concludes that PWUIDs face severe violation of their rights when they come into contact with the criminal justice system, especially at the level of the police. These violations are usually over and above what other groups suffer and are based on their status as PWUIDs. Violations are recorded in the process of arrests; in the treatment during police custody; during court hearings and in respect of remand as well as during the serving of a sentence in prison. The study identifies inconsistencies in the way in which law enforcers interpret and apply the Narcotic Drugs and Psychotropic Substances Control Act, 2016. The study furthermore finds that there is a lack of provision of healthcare services and rehabilitative services in particular to PWUIDs at every level of the criminal justice process.

5. Recommendations

To Parliament

- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to decriminalise individual drug use or to allow for more lenient sentences where a person is an individual drug user as opposed to a trafficker.

- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to allow police officers to defer PWUIDs for medical treatment and rehabilitation upon arrest.
• Repeal all sections of the Penal Code Act containing vagrancy offences.

To the Ministry of Health

• Adopt a harm reduction policy which can guide future legislation, programmes, the establishment of rehabilitation centres and treatment of PWUIDs in Uganda.

• Ensure that the section of the NDPSCA which deals with rehabilitation is operationalised.

• Initiate and undertake trainings of police officers, prison officials and magistrates to grasp the intricacies of drug use and addiction and the required treatment for PWUIDs as a Key Population and vulnerable group.

To the Ministry of Justice and Constitutional Affairs

• Train magistrates nationwide on the NDPSCA in order to understand its provisions, minimum sentences and the repeal of sections of the NDPAA.

• Adopt guidelines which allow community members to intervene in court cases where PWUIDs are the accused in order to support and guide them in court.

• Work with local CSOs to undertake a cost benefit analysis of the detention of PWUIDs, both at police level and in prison.

To the Ministry of Gender, Labour and Social Development

• Undertake sensitisation and awareness raising at community level to allow communities to understand the plight of PWUIDs and to be willing to support
them if they come into contact with the criminal justice system.

**To the Uganda Police Force**

- Adopt guidelines to instruct station commanders on how to handle cases of PWUID arrestees. Such guidelines could include to release persons if they are in need of medical care which the station is not in a position to provide.
- Continue training and awareness-raising among police officers of different ranks in all regions of the country, particularly arresting officers and officers responsible for keeping the anti-narcotics desks at various stations.

**To the Uganda Human Rights Commission**

- Investigate and monitor human rights abuses committed against PWUIDs.
- Include PWUIDs’ issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and police officers on the NDPSCA.

**To the Equal Opportunities Commission**

- Monitor and investigate the situation of PWUIDs and their treatment in the criminal justice system.
- Include PWUIDs’ issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and police officers on the NDPSCA.
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SECTION 1

INTRODUCTION AND METHODOLOGY

1.1 Introduction

People Who Use and Inject Drugs (PWUIDs) face severe stigma and discrimination within Ugandan society and are furthermore a Key Population in respect of vulnerability to HIV infection. The probability of transmission of the human immunodeficiency virus (HIV) through injecting drug use is estimated to be 0.0100, which is greater than the probability of transmission through heterosexual intercourse (0.0009).¹ The United Nations Office on Drugs and Crime (UNODC) World Drug Report, 2019, states that

around 1 in every 8 injecting drug users lives with HIV – that is about 1.4 million people. An even higher prevalence of Hepatitis C was found – 5.6 million people which is nearly half of all injecting drug users.²

Globally, research has shown that addiction to drugs should best be approached as a public health issue.³ Specific interventions are required to ensure that PWUIDs, as a Key Population, are not infected with HIV and do not suffer other health issues.⁴ Leading international agencies such as the World Health Organisation (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), UNODC, and Centers for Disease Control and Prevention (CDC) accept that a harm reduction approach is the way to handle drug use.⁵ From a public health perspective, the main concern is the healthcare that PWUIDs need and the health rights they have. It has been demonstrated that drug dependence has drastically decreased where public health services have been made available.⁶ This has also been shown to result in a decrease in drug-related mortality and overdose and an improvement in the prevention of the spread of HIV.⁷

...............  
³ See n 1 above.  
⁴ As above.  
⁷ See n 2 above.
The public health approach entails an acknowledgment that, as a key risk group, specific interventions need to be undertaken to ensure that PWUIDs are not infected with HIV. With such an approach, the focus is on the health rights and needs of PWUIDs and it has been shown that where public health options are made available, there have been dramatic declines in drug dependence, mortality and overdose along with a measure of prevention of the transmission of HIV.

Notwithstanding the benefits of a public health approach to drug use from a human rights perspective, Uganda treats the issue of individual drug use as a criminal justice matter. Moreover, individual drug use and possession is not onlycriminalised in Uganda, but this criminalisation is also used to arbitrarily punish, blackmail and extort PWUIDs. Human Rights Awareness and Promotion Forum (HRAPF) has been handling cases of People Who Use and Inject Drugs (PWUIDs) since 2017. Cases handled are mostly from Kampala and Mbale, though legal aid service provision for this group has recently also been extended to Busia, Mbarara and Gulu. As a result, HRAPF has become aware of specific trends in human rights abuses which this group is vulnerable to suffer when they come into contact with the criminal justice system. In particular, the HRAPF’s Access to Justice team has identified specific police stations and magistrates’ courts in Kampala and Mbale that are known to refuse to grant police bond and bail to PWUIDs for the purposes of detaining them and ‘teaching them a lesson’. Human rights violations suffered by PWUIDs within the criminal justice system are sure to increase their vulnerability to HIV infection as it drives them further

8 As above.
9 As above.
underground and away from HIV prevention and treatment services and support.

To date, little research has been conducted on the lived realities of PWUIDs in Uganda and their plight when they come into contact with the criminal justice system. This study sets out to fill this gap by providing a balanced account of human rights abuses and violations suffered by this vulnerable group when they come into contact with criminal justice system.

1.2 Rationale and objective

The rationale for carrying out this study is to identify trends in human rights abuses and violations suffered by PWUIDs who come into contact with the criminal justice system in Uganda in order to make recommendations to address the situation through advocacy and sensitisation of law enforcement officials.

The sharing of needles between drug users is one of the biggest causes of HIV transmission amongst people who inject drugs. Every clean needle and syringe provided through NSPs saves a life.
1.3 Literature review

Globally, various studies have been carried out which explore the interface of PWUIDs as a Key Population with the criminal justice system. The 2019 report of the United Nations Office on Drugs and Crime examined the services and facilities available to drug users in prisons worldwide. Slightly more than half of the countries surveyed had at least one prison where opioid substitution therapy was provided as of 2017. Needle-syringe programmes were available in at least one prison in only 11 countries. It was noted that a combination of these two methods was most effective at combating HIV and hepatitis C but only ten countries globally had at least one prison in which they provided this. The overall conclusion was that the public health response is inadequate and there needs to be an improvement in the provision of science-backed interventions that conform to international human rights standards.

Jürgens et al. found that the criminalisation of drug use and prison environments can be detrimental to effectively dealing with drug use. As evidenced by the cases of Spain and Moldova, applying a harm reduction approach in prisons, including providing psychological support and supplying injecting equipment, decreases the prevalence of HIV and Hepatitis C. Additionally, broader prison-reform
initiatives have improved prison conditions and reduced overcrowding, which have improved health conditions within prisons. The researchers also found that crackdowns, the strategy used by most governments to combat drug use, do not actually serve the purpose that they aim to serve. For example, in Thailand, the crackdown did not serve to reduce drug use and barriers to treatment continued to exist. Both criminalisation and social stigma are described as significant barriers for drug users to access healthcare.\textsuperscript{16} Regarding gender and drug use, another study found that female prisoners were more likely to have a drug problem but were less likely to have access to drug treatment.

Female sex workers who use drugs are also at greater risk because of their ‘double criminalisation’. Because they are engaged in sex work, a criminal offence in many countries, they are pushed further away from the health services (if these exist) that they need because of their drug use, another criminal offence.\textsuperscript{17}

Many of the studies mentioned so far are useful in terms of identifying overall trends and practices but very few of them actually address the Ugandan context. A large literature review on HIV prevalence and injecting drug use published in 2017 did not draw any evidence from Uganda because there was no paper that the authors could use.\textsuperscript{18} Another

\textsuperscript{16} As above.

\textsuperscript{17} SA Strathdee et al ‘Substance use and HIV among female sex workers and female prisoners: risk environments and implications for prevention, treatment, and policies’ (2015) 6(2) Journal of Acquired Immune Deficiency Syndrome S111-S115.

\textsuperscript{18} L Degenhardt et al ‘Global prevalence of injecting drug use and sociodemographic characteristics and prevalence of HIV, HBV, and HCV in people who inject drugs: a multistage systematic review’ (2017) 5 The Lancet e1200-e1202.
2017 report also states that there is insufficient information about drug use, its prevalence and consequences in the East African region.  

Some of the only research that has been conducted on drug use and the realisation of the human rights of drug users has been published by local NGOs. In 2016 the MARPS Network and the Uganda Harm Reduction Network (UHRN) released a study on the particular risk factors which makes PWUIDs vulnerable to HIV infection. The study identifies a number of risk factors which make a person likely to use drugs and confirms that drug use increases risk to HIV infection.  

The study recommends a combination of approaches to reduce HIV transmission among PWUIDs such as the implementation of harm reduction measures which includes the creation of a health policy environment which allows PWUIDs to seek healthcare services. At present, the harsh criminalisation of individual drug use and possession and the human rights violations which PWUIDs suffer due to these criminal provisions make it near impossible to implement progressive harm reduction measures such as an Opioid Substitution Therapy and Needle and Syringe Exchange Programmes.


20 MARPS Network and Uganda Harm Reduction Network Drug use related vulnerability to HIV infection among Most-At-Risk Populations in Uganda (2016).

21 As above at 17.

22 As above.

23 As above.
In 2016, HRAPF conducted a study on the legal regulation of drug use in Uganda. The study analysed the newly introduced Narcotic Drugs and Psychotropic Substances Control Act, 2016 as well as other legal provisions used to arrest and prosecute PWUIDs. While the major focus of the study was the textual analysis of the laws to determine their levels of compliance with recognised human rights standards, it also included a small qualitative component to determine the impact of the legal regime on PWUIDs. Two Focus Group Discussions were held with PWUIDs in Kampala who had suffered criminal arrest on the basis of drug use. A handful of police officers, magistrates and legal aid service providers were also interviewed in Kampala. The study found that PWUIDs often are arrested on the basis of laws that do not directly criminalise drug use and possession, such as the ‘rogue and vagabond’ offence in section 168 of the Penal Code Act. The purpose of such arrests are often to intimidate or blackmail the PWUIDs involved. The study hints at a trend of manipulation of the system to remand PWUIDs for extended periods of time, even though there is not sufficient evidence on file to successfully prosecute the person involved for any crime. Cases were also identified where evidence had been planted on suspected PWUIDs by the police in order to secure their prosecution and punishment. The study also noted instances where PWUIDs were assaulted during and after arrest and

\[\text{24 Human Rights Awareness and Promotion Forum The Narcotic Drugs and Psychotropic Substances Control Act, 2015 and the legal regulation of drug use in Uganda: Analysing the tension between criminal law, public health and human rights (2016).}\]

\[\text{25 As above at 64.}\]

\[\text{26 As above.}\]
were made to do forced labour while awaiting trial.27

Another study of relevance to the human rights of PWUIDs and the criminal justice system is a 2008 rapid assessment which was conducted to determine the prevalence of drug use, along with HIV, syphilis and tuberculosis among prisoners in 34 prisons in Uganda.28 The knowledge, attitudes, behavior and practices of prisoners in relation to drug abuse, HIV/AIDS, STIs and tuberculosis were also assessed.29 According to the study, 64% of respondents reported drug use in Ugandan Prisons.30 The most commonly abused drugs were found to be tobacco, marijuana and Catha Edulis (also known as khati or mairungi) and there was no reported use of injecting drugs in prison.31 The study also found that male prisoners were significantly more likely to use drugs than female prisoners.32 Overall, 46% of people reported using drugs in order to reduce anxiety and 17%, in order to regain their strength. A total of 24% of prisoners who used drugs reported that they had a drug habit prior to being imprisoned. The assessment also found that there were no programmes aimed at lowering drug use or at offering assistance to users in prison.33 The prisons were largely found to be underequipped to

27 As above at 65-6.
29 As above.
30 As above at 17.
31 As above at 18.
32 As above at 18.
33 As above.
give drug users the care they needed and the Prison Health Service was found to be underfunded.\textsuperscript{34}

There is need to conduct further and detailed research on the trend of human rights violations which PWUIDs suffer when they come into contact with the criminal justice system. HRAPF has thus carried out a detailed study, covering Kampala and Mbale districts and investigating each phase of the process of criminal justice: arrest; prosecution and the carrying out of a sentence.

1.4 Methodology

Qualitative, primary research as well as secondary research were conducted for accomplishing the study objectives.

1.4.1 Study sites

The study had two research sites namely Kampala in the Central region and Mbale in the Eastern Region of Uganda. Kampala was selected as one of the two study sites as it is the capital city of Uganda and is likely to have the largest concentration of PWUIDs in the country. Mbale is part of a major transit route between Kenya and Uganda and one of the bigger towns in Uganda. Uganda Harm Reduction Network, which works with PWUIDs country-wide, has registered a bigger number of PWUIDs in Mbale compared to other towns outside Kampala and for this reason, it was selected as the second research site for this study.\textsuperscript{35} HRAPF, in providing legal aid services to PWUIDs, has furthermore recorded the greatest number of incidences of human rights abuses of PWUIDs who come into

\textsuperscript{34} As above 34.
\textsuperscript{35} UHRN & CHAU (n 19 above) 7.
contact with the criminal justice system in firstly Kampala, and secondly, Mbale. The need to explore these violations further also serves as justification for the selection of these two study districts.

1.4.2 Primary data collection

Data was collected among PWUIDs who had come into contact with the criminal justice system in both Kampala and Mbale. A total of 6 Focus Group Discussions were held with PWUIDs. In Kampala and Mbale respectively, 3 FGDs were held with groups of 6-8 female PWUIDs, male PWUIDS and mixed groups. A total of 8 In-Depth Interviews were held with PWUIDs: 4 in Kampala and 4 in Mbale.

Key Informant Interviews were conducted with 18 law enforcement officials, providers of legal aid services and representatives of organisations working with PWUIDs. In Kampala, interviews were conducted with Officers in Charge of three police stations: Katwe Police Station, Old Kampala Police Station and Jinja Road Police Station. Police officers based at Mbale Police Station as well as Nakaloke Police Station outside Mbale were also interviewed. Three magistrates were interviewed in Kampala at Buganda Road Chief Magistrates Court, Nakawa Magistrates Court and Makindye Magistrates Court. A Magistrate from Mbale Magistrates Court as well as Sironko Magistrates Court outside Mbale were interviewed. One Officer in Charge of a Kigo Prison in Kampala Metropolitan area was interviewed. As far as legal aid service providers and organisations working with PWUIDs are concerned, the Executive Director of UHRN as well as two paralegals attached to UHRN in Kampala were interviewed. A lawyer providing legal aid to PWUIDs attached to Human
Rights Awareness and Promotion Forum was also interviewed in Kampala. In Mbale, representatives of Women With a Mission as well as UHRN’s Mbale office were interviewed. Finally, an interview was conducted with a representative of African Prisons Project’s legal aid clinic.

1.4.3 Secondary data collection

Secondary data was collected through the review of existing literature on human rights abuses suffered by PWUIDs who come into contact with the criminal justice system. All files of cases of PWUIDs handled by HRAPF’s legal aid clinic from 2017 up to the first quarter of 2019 were also reviewed in order to identify trends and practices in the arrest and prosecution of PWUIDs. The Uganda Police Force Annual Crime Reports for 2017 and 2018 were also considered in order to document the number of arrests, prosecutions and convictions on the basis of crimes related to narcotics in recent years.

1.5 Ethical Considerations

Scientific and ethical approval was obtained from the National Council of Science and Technology following review by The AIDS Support Organisation (TASO)’s Research Ethics Committee (REC). Prior to participation in the study, all participants were required to give their informed consent. This informed consent, however, was not recorded for research participants who are PWUIDs in order to protect their identity. Potential participants were informed of the potential risks, benefits and purposes of the study. Where participants were not fluent in English, they were interviewed by a research assistant who is fluent in a language they are comfortable with. The interviews and
group discussions were furthermore held in private, convenient locations.

1.6 Limitations of the study

A limitation, inherent in this study, is the fact that it is qualitative in nature and presents two sides of a matter according to the perceptions, experiences and viewpoints of PWUIDs who had come into contact with the criminal justice system and those who protect their rights on the one hand, and law enforcement officials tasked with combating illegal drug use on the other. Another limitation is the fact that an interview was refused at the Kabalagala Police Station, which is known to have a particularly large number of arrests of PWUIDs. The Uganda Prisons Service furthermore refused authorisation for the research team to interview prison officials on the basis of security reasons. Engagements with the UPS resulted in limited permission to conduct interviews in Kampala, however only one interview could finally be conducted at Kigo Prison serving Kampala Metropolitan area.
SECTION 2

THE LEGAL FRAMEWORK GOVERNING CRIMINALISATION OF DRUG USE AND THE PROTECTION OF HUMAN RIGHTS OF PEOPLE WHO USE AND INJECT DRUGS IN UGANDA

2.1 Introduction

In this section of the report, the legal regime governing drug use in Uganda is examined, alongside the framework within which the rights of People Who Use and Inject Drugs (PWUIDs) is protected. The section analyses key provisions of both domestic and international laws relating to drug use and rights of PWUIDs, which are applicable within the jurisdiction of Uganda.
2.2 Protection of human rights of People Who Use and Inject Drugs (PWUIDs) in Uganda

In discussing the concept of human rights in relation to PWUIDs, the major rights issues that arise are the right to health, and the right to liberty. In this subsection, the international, regional and domestic human rights framework that is applicable to Uganda in relation to rights of PWUIDs is outlined.

2.2.1. International and regional human rights framework

Uganda is party to various human rights treaties on both the regional and the international front. The treaties include the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESR); the Convention Against Torture (CAT); the African Charter on Human and Peoples’ Rights and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. These instruments provide comprehensive protection to the fundamental rights and freedoms of all persons in Uganda.

a) The right to health

The World Health Organization (WHO) defines health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.’ In its Constitution, the WHO provides for ‘the enjoyment of the highest attainable standard of health as one of the fundamental rights of every human being.’

.....................

36 See 1946 Constitution of the World Health Organization to which Uganda is party.
The right to health has since been re-affirmed in a myriad of other international and regional human rights treaties. The Committee on Economic, Social and Cultural Rights (CESCR), established under the ICESCR has given an elaborate explanation of the normative content of the right to health. According to the Committee, in its General Comment No.14 on the Right to Health, health is a fundamental human right that is inalienable, and in order for it to be realised, health care facilities, goods and services must be available, accessible, acceptable and of requisite good quality.

With regard to PWUIDs, it is imperative to note that the international drug control regime accommodates the introduction of harm reduction interventions, making for a balanced approach to drug use. In this regard, the UN Special Rapporteur on the right to health has endorsed the recommendations of the UNODC, WHO and UNAIDS for a comprehensive harm reduction approach to drug use, and stated that they constitute part of the legal obligations of states to progressively realise the


38 See CESCR, General Comment No.14, Para 1.

39 CESCR, General Comment No.14, Para 12.

right to health.41

b) The right to liberty

With regard to the right to liberty, the key regional and international human rights provisions are those that can be found in the African Charter on Human and People’s Rights (ACHPR),42 and the International Civil and Political Rights (ICCPR).43 These offer protection to PWUIDs from arbitrary arrest and unlawful detention.

2.2.2 The domestic human rights framework

In highlighting the key provisions relating to the right to health and the right to liberty within the domestic framework, the key legal provisions to take into account are those that are embedded within the 1995 Constitution and the Human Rights (Enforcement) Act, 2019.

a) The Constitution of the Republic of Uganda

The main source of human rights and obligations to respect, protect and promote individuals rights is the Constitution of the Republic of Uganda of 1995. The Constitution in its chapter four contains various rights which are protected and ought to be upheld. The Constitution protects a number of rights which are of importance to PWUIDs, particularly when they come into contact with the criminal justice system.

41 Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the 2016 UN General Assembly Special Session on the Drug Problem (UNGASS).

42 See Article 6 of the ACHPR on the right to liberty security of person and freedom form arbitrary arrest.

43 See Article 12 of the ICCPR on the right to liberty of movement.
These include the right to equality and freedom from discrimination,\textsuperscript{44} the right to life,\textsuperscript{45} the right to dignity and freedom from cruel, inhuman and degrading treatment and punishment,\textsuperscript{46} protection from slavery, servitude and forced labour; the right to a fair trial\textsuperscript{47} and the right to privacy.\textsuperscript{48} Two rights, namely the right to health and the right to liberty, will be discussed in greater depth.

\textit{i) The right to health}

The 1995 Constitution of the Republic of Uganda does not expressly provide for the right to health, although it is intimated in the National Objectives and Directive Principles of State Policy (NODPSP),\textsuperscript{49} read together with Article 8A of the Constitution (as amended), which stipulates that the country must be governed based on principles of national interest and common good enshrined in the NODPSP. It is imperative to note that in line with these provisions, and the international human rights regime on the inclusion of harm reduction approaches within the enforcement of drug control laws, as an integral aspect of the right to health, the NDPSCA of Uganda does provide an opportunity for inclusion of harm reduction interventions within certain sections that provide for

\textsuperscript{44}Article 21.
\textsuperscript{45}Article 22.
\textsuperscript{46}Article 24.
\textsuperscript{47}Article 28.
\textsuperscript{48}Article 27.
\textsuperscript{49}Objective XIV (b) of the NODPSP, stipulates that the State must ensure that all Ugandans enjoy rights and opportunities and access to health services, clean and safe water, decent shelter, adequate clothing and food security, among others.
the prescription of narcotic drugs and psychotropic substances for medical purposes, and for rehabilitation of PWUIDs.

ii) The right to liberty

The rights guarantees on the liberty of PWUIDs are enshrined in Article 23 of the 1995 Constitution, which stipulates the circumstances for lawful arrest and detention, as well as other rights guarantees that must be observed during arrest and detention; which include, but are not limited to: the right to be informed of the reason for arrest, the right to legal representation, right to be granted an opportunity to prepare one’s defence, the right to access medication and medical personnel, and the right not to be detained in police custody beyond 48 hours.

b) The Human Rights (Enforcement) Act, 2019

The recently enacted Human Rights Enforcement Act, 2019 provides a general framework for enforcement of human rights for PWUIDs. The Act operationalises Article 50 of the Constitution, which provides for the enforcement of fundamental human rights where these have been violated. The Act creates personal liability for state agents that commit human rights violations, and the adjudication of both constitutionally and internationally guaranteed rights that are to be progressively realised by the state, including the right to health. This means

50 See section 7 of the NDPSCA.
51 See sections 51-58 of the NDPSCA.
52 See Article 50 of the 1995 Constitution.
53 Section 10 of the Human Rights Enforcement Act, 2019.
54 Section 13 of the Human Rights (Enforcement) Act, 2019.
that PWUIDs whose rights have been violated by law enforcement officers during the criminal justice process can make use of this Act to hold the specific officers personally liable.

2.3 Criminalisation of Drug Use, and People Who Use and Inject Drugs in Uganda

Uganda is signatory to the UN Drug Control Conventions,\(^55\) which establish measures to control trafficking in and use of psychoactive substances. The 1988 Convention\(^56\) places an obligation on states parties to establish criminal offences aimed at combatting illicit production, possession and trafficking of psychoactive substances. In line with this obligation, Uganda has an established legal regime that governs drug use in the country. Key among the laws that constitute this legal regime is the Narcotic Drugs and Psychotropic Substances Control Act of 2016.

2.3.1 The Narcotic Drugs and Psychotropic Substances Control Act, 2016

The Narcotic Drugs and Psychotropic Substances Control Act is, according to its long title, aimed at: ‘consolidating and amending the law relating to narcotic drugs and psychotropic substances in respect to the control of the possession of, trafficking in narcotic drugs and psychotropic substances and cultivation of certain plants; providing for the forfeiture of property derived from or used in illicit


\(\text{\textsuperscript{56}}\) As above.
traffic in narcotic drugs and psychotropic substances; implementing the provisions of international conventions on narcotic drugs and psychotropic substances; and providing for other related matters’. The Act came into force in 2016 and repealed sections of the National Drug Authority and Policy Act Cap 206 which criminalised drug use and possession.57

a) Criminalisation of possession

Section 4 of the Act states that any person who has in their possession any narcotic drug or psychotropic substance commits an offence and is liable on conviction:

i. in respect of a narcotic drug listed in the Second Schedule to the Act, to a fine of at least Ugx 10,000,000 (approx. USD 3,000) or three times the market value of the drug, whichever is greater, or to imprisonment not less than ten years but not exceeding twenty five years, or both such fine and imprisonment and;

ii. in respect of a prohibited psychotropic substance listed in the Third Schedule to the Act, a fine of not less than Ugx 5,000,000 (approx. USD 1,500) or three times the market value of the prohibited psychotropic substance, whichever is greater or imprisonment not less than five years but not exceeding fifteen years, or both such fine and imprisonment.

57 See Uganda Gazette, Statutory Instruments Supplement No. 6, the Narcotic Drugs and Psychotropic Substances (Control) Act (Commencement) Instrument 2016, 12th February 2016.
b) Criminalisation of trafficking in narcotic drugs or psychotropic substances

Under the Act, it is an offence for any person to traffic in a narcotic drug or psychotropic substance, and upon conviction they are liable to a fine of Ugx 10,000,000 (approx. USD 2700), or three times the market value of the narcotic drug or psychotropic substance, whichever is the greater; in addition to imprisonment for life.58

It restrains medical doctors from prescribing narcotic drugs or psychotropic substances for any other purposes other than for medical or dental treatment, lest they become liable to a fine of note less than Ugx 960,000 (approx. USD 260), and not more than Ugx 2,000,000 (approx. USD 550), or to imprisonment of not less than two years and not exceeding 5 years.60

This is in addition to having their professional licenses revoked.61

..........................

58 Section 5 of the NDPSCA.

60 Section 7.

61 Section 8.

c) Criminalisation of the use of narcotic drugs and psychotropic substances

The Act also penalises a number of other acts connected to narcotic drugs and psychotropic substances, such as the smoking, inhalation, sniffing, chewing or other use of narcotic drugs or psychotropic substances; owning, occupying or being ‘concerned in the management’ of any premises used for the cultivation, sale or manufacture of such substances; possession of any pipe or utensil for the illicit use of such drugs and ‘recruiting’ or ‘promoting’ the smoking, inhaling, sniffing or other use of such substances.59

59 Section 6.

60 Section 7.

61 Section 8.
d) Other penalties under the Act

In addition to the prior mentioned fines, prison sentences and other sanctions prescribed under the Act, provision is made for additional sanctions for offences under the Act. Some of these include: forfeiture to the state of narcotic drugs and psychotropic substances kept or used without authority; as well as of any chemical, machinery, equipment, implement, pipe, utensil and other articles used for the commission of any offence under the Act. The Act also provides for restraining persons suspected of having committed offences under the Act from using any or all of their property, and tracing, confiscation and assumption of proprietary rights over the property of persons convicted of specified offences by the state. Provision is also made for international assistance and cooperation in narcotic drugs and psychotropic substances investigations and proceedings.

2.3.2 The National Drug Policy and Authority Act, Cap 206

This law still has a few provisions that affect PWUIDS.

Section 27 limits possession of classified drugs to pharmacists and such persons, while section 27(2) criminalises illegal possession of a classified drug and this is punishable by a fine not exceeding two million shillings or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

62 Section 21.
63 Sections 22-38.
64 Sections 39-49.
65 Sections 59-46.
66 Section 27(1), NDPA.
2.3.3 The Penal Code Act, Cap 120

While the Penal Code Act does not have direct provisions on the criminalisation of drug use in Uganda, it does have certain note-worthy provisions under which Persons Who Use and Inject Drugs (PWUIDs) often are arrested.

Section 167 criminalises being idle and disorderly. This criminalises any person who:

i) being a prostitute, behaves in a disorderly or indecent manner in any public place;

ii) wanders or places himself or herself in any public place to beg or gather alms, or causes or procures or encourages any child to do so;

iii) plays at any game of chance for money or money’s worth in any public place;

iv) publicly conducts himself or herself in a manner likely to cause a breach of the peace;

v) without lawful excuse, publicly does any indecent act;

vi) in any public place solicits or loiters for immoral purposes;

vii) wanders about and endeavours by the exposure of wounds or deformation to obtain or gather alms is deemed an idle and disorderly person, and is liable on conviction to imprisonment for three months or to a fine not exceeding three thousand shillings or to both such fine and imprisonment. However with regard to those limbs of the section relating to prostitution, indecency, or immorality, a person is liable

to imprisonment for seven years.\textsuperscript{68}

Under section 168 of the Act, every:

i) person convicted of an offence under section 167 after having been previously convicted as an idle and disorderly person;

ii) person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

iii) suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself or herself;

iv) person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose

is deemed to be a rogue and vagabond, commits a misdemeanour and is liable for the first offence to imprisonment for six months, and for every subsequent offence to imprisonment for one year.

2.4 Conclusion

This section sets out the legal framework according to which drug use and possession is regulated and the rights of PWUIDs are protected. It is clear that the international and domestic legal framework protects the rights of PWUIDs. This is however watered down by the criminal laws on drug use, and that general approach to drug use in Uganda which encourages the criminal law approach rather than the public health approach.

\textsuperscript{68} Section 167, Penal Code Act, Cap 120.
SECTION 3

TRENDS IN THE TREATMENT OF PWUIDS WHO COME INTO CONTACT WITH THE CRIMINAL JUSTICE SYSTEM

3.1 Introduction

This section sets out the findings of the study in terms of trends in treatment of PWUIDs at the various stages of the criminal justice process: arrest and police detention; prosecution and the carrying out of a prison sentence.

3.2 Arrest of PWUIDs

3.2.1 Number of arrests

Every year, there are approximately 3000 cases related to narcotics reported to the Uganda Police Force (UPF). According to the UPF’s Annual Crime reports, 2,890 cases were reported in 2018,
2,854 in 2017 and 2,851 in 2016. These figures do not paint a complete picture considering that in many cases PWUIDs are released without a charge being recorded in the police records at the particular station, or they are charged under one of the Penal Code petty offences such as being rogue and vagabond.

Human Rights Awareness and Promotion Forum’s legal aid clinic has been handling cases of PWUIDs since the beginning of 2017. In the period of January 2017 up to July 2019, there were 92 criminal arrests of PWUIDs handled by HRAPF.

3.2.2 Places of arrest
PWUIDs are mainly arrested from the hotspots where they share needles and drugs; from slum areas, bars and video halls where they spend time socially and from homes where they are known to reside, often in groups. As described by a paralegal based in Mbale:

Drug users are normally found in busy places for example streets where everyone does their business. Others are found in the ghetto what we call hot spots but some have small businesses there. Some are found in video halls where they go to relax in such situations, in slums.

3.2.3 Nature and reasons for arrest
PWUIDs are often arrested in large groups at the places where they would spend time together during police raids or ‘swoops’:

So [they] do not arrest one person they usually arrest them in big numbers and at times they find them with drugs. Sometimes

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70 Interview with paralegal attached to UHRN, Mbale, 26th August 2019.
My friends died as victims of HIV/AIDS which they contracted through sharing and re-using syringes and needles. Often we hide them to avoid others using them and police arrests from carrying them. We want clean needles and safer disposal of needles to save our lives - we are dying in silence.

71 Interview with paralegal attached to UHRN, Mbale, 26th August 2019.
PWUID who is a relative. As explained by a police officer interviewed in Kampala:

... if there is public outcry the DPC can organise for an operation. They go and surround that place, they arrest them or policemen can be on patrol then they come across anyone smoking, automatically they arrest them and bring them here. Then there are some relatives or parents who say my kid has become a problem: a parent volunteers to bring his own son around we handle also.\textsuperscript{72}

PWUIDs are rarely arrested because they have been caught in the act of taking an illegal narcotic or psychotropic substance. Arrests would rather be based on a PWUID’s physical appearance which is associated with drug use: \textit{Sometimes the reason they give... for example the way they are dressed: he/she is wearing sandals, the clothes are just there, unkempt hair. So the reasons they give is your behaviors that show that you are a criminal...} \textsuperscript{73}

In some instances the PWUIDs will be found in possession of drugs. If they are not in possession of drugs, the police will justify the arrest on the basis that they had reason to believe that they were about to commit a crime.\textsuperscript{74}

A major concern is the fact that PWUIDs are often arrested for the purpose of extorting them for a bribe, rather than to bring them before a court of law in order to have them prosecuted for committing an offence: an outright violation of the right to liberty. As explained by a lawyer working with

\begin{itemize}
\item \textsuperscript{72} Interview with Police Officer at Katwe Police Station, Kampala, 2\textsuperscript{nd} September 2019.
\item \textsuperscript{73} Interview with paralegal attached to UHRN, Mbale, 26\textsuperscript{th} August 2019.
\item \textsuperscript{74} Interview with representative of Uganda Harm Reduction Network, Kampala, 13\textsuperscript{th} September 2019.
\end{itemize}
HRAPF who handled cases of PWUIDs:

[S]ometimes when random police officers arrest people they just want to collect money. So they will arrest maybe thirty people and not record any of them in the ASD reference or in the lock up, they will just go and put them in the cell and then tell them “you know what to do”. So whoever has what to do does it and then they leave … they usually try to release them before the suspect parade the next morning.75

3.2.4 Charges recorded at police

From perusal of the PWUID case files handled by HRAPF between January 2017 and July 2019, it appears that the most common charge recorded when a PWUID is arrested is using or smoking drugs, presumably referring to section 6(a) of the NDPSCA. This was the charge recorded in 41 of HRAPF’s 92 cases. The second most common charge is possession of ‘opium’, which was the recorded charge in 19 of HRAPF’s 92 cases. This offence was created by the National Drug Policy and Authority Act Cap. 206 and repealed and replaced with the offence of possession of narcotic drugs and psychotropic substances under section 4 of the NDSPCA. The repealed offence of ‘frequenting a place for smoking opium’ was also recorded in 7 cases. Another charge recorded against PWUIDs in 8 of HRAPF’s cases is the Penal Code Act offence of ‘being a rogue and vagabond’.76

75 Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.
76 Section 168 of the Penal Code Act.
3.3 Prosecution of PWUIDs

3.3.1 Number of PWUIDs prosecuted for drug-related offences

According to the Police Annual Crime Reports, 67% of cases related to narcotics were taken to court in 2018 and 61% of these cases were taken to court in 2017. According to a police officer interviewed in Kampala, cases tend to be referred to the State Attorney to investigate and prosecute ‘especially those ones where you see that it’s too much like I release you today then tomorrow I find you in the same thing’.77

HRAPF’s case files indicate a lower percentage of cases which are prosecuted and heard in court. Only 17 of the 92 cases handled by HRAPF were prosecuted in Court, amounting to 18%. The majority of cases end at the police level, which may be due to HRAPF’s intervention.

3.3.2 Outcome of court cases of PWUIDs

Table B: National figures on outcome of narcotics cases heard in court

<table>
<thead>
<tr>
<th>Outcome</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases recorded</td>
<td>2890</td>
<td>2854</td>
</tr>
<tr>
<td>Cases taken to court</td>
<td>1939</td>
<td>1755</td>
</tr>
<tr>
<td>Convictions</td>
<td>635</td>
<td>786</td>
</tr>
<tr>
<td>Dismissal</td>
<td>319</td>
<td>312</td>
</tr>
<tr>
<td>Acquittal</td>
<td>15</td>
<td>17</td>
</tr>
<tr>
<td>Pending</td>
<td>786</td>
<td>824</td>
</tr>
</tbody>
</table>

Table A: National figures on number of narcotics cases recorded by police and taken to court

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases recorded</th>
<th>Cases taken to court</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>2890</td>
<td>1939</td>
</tr>
<tr>
<td>2018</td>
<td>2854</td>
<td>1755</td>
</tr>
</tbody>
</table>

77 Interview with Police Officer, Jinja Road Police Station, 10th September 2019.
The Annual Crime reports indicate that 33% of cases brought to court in 2017 and 44% of cases brought in 2018 ended with a conviction. The national conviction rate is almost double the rate of dismissal of cases, which is 16% for 2017 and 18% for 2018, which indicate that the evidence on file has to be strong enough to support a conviction in most cases. HRAPF has recorded a far lower conviction rate than what is displayed in the national figures. Out of 92 cases and 17 prosecutions, only one case has resulted in conviction of a PWUID – in that case for smoking an illicit drug. This low conviction rate recorded in HRAPF’s case files could be attributed to the fact that the organisation’s lawyers have intervened in the cases.

The question of the likelihood of a PWUID being convicted of a drug-related crime depends on the individual magistrate who hears the case. Three of the magistrates interviewed indicate that they regularly dismiss drug-related cases on the basis of unclear and contradictory information in the case files as well as insufficient evidence. Other magistrates are known to be likely to find PWUIDs guilty of the crimes of which they have been accused. There is thus an inconsistency in the way in which the NDPSCA is applied.

3.4 Sentencing of PWUIDs

The Police Annual Crime Reports record the number of convictions under narcotics-related crimes. Since all the crimes

78 Interview with Magistrate, Mbale District, 29th August 2019; interview with Magistrate, Kampala, 3rd September 2019.

79 Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.
under the NDPSCA carry a minimum sentence of imprisonment or a steep fine, it can be expected that most individual PWUIDs who are convicted will be imprisoned. A total of 635 persons were convicted of narcotics-related crimes in 2017 and 786 in 2018. While the Annual Crime Reports do not differentiate between drug traffickers and individual drug users in these figures, it does give an indication that the number of PWUIDs imprisoned for narcotic-related charges would be in the hundreds. The figures also do not include PWUIDs who had been sentenced under the Penal Code provisions or for committing other crimes such as theft.

3.5 Conclusion

This section shows the trends in arrest, prosecution and sentencing of PWUIDs in Uganda. It indicates a figure of roughly 3000 narcotic-related arrests per year which does not include instances where PWUIDs are arrested under the Penal Code Act’s vagrancy provisions or on the suspicion of committing a crime that does not directly involve narcotics. PWUIDs are most often arrested during police operations targeting a specific area in response to public outcry concerning crime rates. About two thirds of narcotics cases are prosecuted and heard by the courts and the conviction rate is 3 to 4 out of every 10 cases. Upon conviction under the minimum sentences of the NDPSCA, PWUIDs would usually face a prison sentences due to the inability to meet the steep fines which the Act prescribes as an alternative to imprisonment.
4.1 Introduction

This section sets out the human rights abuses and violations which PWUIDs face when they come into contact with the criminal justice system. The primary human rights violations identified include: violation of the right to liberty; violation of the right to equality and freedom from discrimination; violation of the right to dignity and freedom from cruel, inhuman and degrading treatment or punishment as
well as violation of right to a fair trial. The circumstances and trends of violation of these rights will be discussed in turn.

4.2 Violation of the right to liberty

Article 23 of the Constitution of the Republic of Uganda guarantees the right to liberty and protects against arbitrary arrest and illegal detention. Article 23(1) sets out the circumstances under which a person's liberty may be limited through a lawful arrest or detention. The Constitution also provides for particular safeguards to persons arrested or detained for the purposes of bringing them before a court of law or in pursuit of a court order including: freedom from prolonged detention without appearing in court; the right to be supported by a lawyer of your choice; and the right to medical attention while in detention.

4.2.1 Arbitrary arrest and detention

The Constitution of the Republic of Uganda, under Article 23(1) sets out nine particular circumstances under which a person may be lawfully deprived of their liberty. Arrest and detention must be justified under one of these nine grounds, otherwise it will be considered arbitrary. Deprivation of liberty is justified ‘in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that

80 See also Article 9(1) of the ICCPR.
81 Article 23(4)(b) of the Constitution; Article 9(3) of the ICCPR.
82 Article 23(3) of the Constitution and Article 14(3)(d) of the ICCPR.
83 Article 23(5)(c).
84 See Article 23(1)(a) to 23(1)(g) of the Constitution.
persons or the protection of the community’.\textsuperscript{85} A person can furthermore be deprived of their liberty ‘for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or about to commit a criminal offence’.

The study finds that there are cases where PWUIDs are arrested and while there is a reasonable suspicion that the persons is addicted to drugs, the purpose of the arrest is not to ensure their care or treatment nor to protect the community. PWUIDs are not given adequate care or treatment while in police custody, as explained by a lawyer who provides legal aid to PWUIDs:

\begin{quote}
...they don’t receive any kind of treatment when they are at the station, in some places they will release them early like they don't ask for bond they will just give them bond so they can go home and get treatment, in other places because they think we might sue them, they keep them in hoping that they will get better before they release them. Either way unless a person is really, really grievously injured they don’t take them for treatment.\textsuperscript{86}
\end{quote}

Arresting officers are not concerned about the withdrawal symptoms that PWUIDs experience in their custody. A PWUID participating in an FGD in Kampala confirmed that she was only ever referred to a hospital when she started vomiting blood. For any illness or withdrawal symptoms there are simply no options or care:

\begin{quote}
One of those three times that I was arrested ... I fell so sick from there and they
\end{quote}

\textsuperscript{85} Article 23(1)(f) of the Constitution.

\textsuperscript{86} Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30\textsuperscript{th} August 2019.
took me to Mulago with a policeman. Then they treated me, they gave me a drip and after they took me back until I finished my sentence ... You can be in a bad condition and you fall seriously sick and many die, it kills you. You vomit, you have a running stomach, you don't eat, you don't drink, so if you happen to have other illnesses, you die from there. 87

Under the current legal regime, magistrates are able to defer convicted PWUIDs to serve their prison sentences in a rehabilitation centres. 88 These provisions are, however, not yet operational since the facilities for such deferral are not available nationwide. 89 The Executive Director of UHRN confirms that the organisation has never come across a case where a PWUID was deferred to a rehabilitation center upon conviction. 90 It can therefore not be claimed that a person reasonably suspected of being a PWUID can be arrested in order to provide them with care and treatment.

A claim that an arrest of a PWUID is justified in order to 'protect the community' would rarely hold water. PWUIDs are most often arrested from a place where they have gathered for social purposes or in order to use drugs together. 91 They would not be presenting any immediate threat the community at the time of arrest. According to a lawyer working on these issues, PWUIDs would engage in petty crimes but are not the perpetrators of major violent crimes as perceived

87 R4, FGD with male and female PWUIDs, Kampala, 16th August 2019.
88 Section 50 of the NDPSCA.
89 Interview with Magistrate in Mbale, 27th August 2019.
90 Interview with representative of UHRN, Kampala, 13th September 2019.
91 Interview with paralegal attached to UHRN, Mbale, 26th August 2019.
by society.\textsuperscript{92} HRAPF has only handled one case in which the PWUID has committed a violent crime.\textsuperscript{93} The presumption is that if a person looks like a drug user that they must be a dangerous criminal ready to strike at any time.

The exception of an arrester having a reasonable suspicion that the PWUID has or is about to commit a crime also rarely applies in cases of arrest.

\textit{...the real problem is the general perception of drug users as criminals and not just criminals but violent criminals so in most cases even when police arrests a person for possession they will say we can’t release him yet because we have to first check and investigate ... every drug user out there is an unapprehended felon basically according to the police.}\textsuperscript{94}

In some cases PWUIDs are arrested and charged for possessing drugs, yet they did not have any drugs on them at the time of arrest.\textsuperscript{95} PWUIDs are seemingly targeted for arrest on the basis of the prejudice of arresting officers and charged with inapplicable charges or the overbroad and vague offences of ‘being rogue and vagabond’ or ‘being idle and disorderly’:

\textit{They told us that we were idle, gathering in a wrong place at wrong time without work to do. We told them that some of us work on matooke trucks and they come in the market early in the morning ... and by noon you are resting taking your marijuana and that’s when they strike and tell you that you are idle.}

\textsuperscript{92} Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.

\textsuperscript{93} As above.

\textsuperscript{94} Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.

\textsuperscript{95} Interview with paralegal attached to UHRN, Mbale, 26th August 2019.
A lawyer providing legal aid to PWUIDs expressed that most arrests of PWUIDs amount to a violation of their rights:

... they find them walking on the roads so they arrest them ... they will arrest a person and say because there have been so many robberies and suspect this person may have been involved. On what basis do they suspect this person may have been involved? ... so a lot of those arrests are just arbitrary, they see you have dreadlocks and you are a man they take you in, some stations arrest you just purely because you have hair and you are a man.\(^\text{96}\)

The purpose behind these arbitrary arrests are to keep known PWUIDs ‘off the streets’. In some instances PWUIDs are arrested, not told the reason for their arrest and then eventually have their name added to a file concerning a serious crime along with another group of people that they were not even arrested with.\(^\text{97}\) By the time that it comes to the fore that the PWUID is not even connected to the other suspects on the file, they would have spent a number of years in prison on remand.\(^\text{98}\)

In other cases, the purpose of the arrest is not arbitrary punishment, but rather to extort the PWUIDs involved for a bribe. Instances of this was narrated by a number of PWUIDs interviewed:

... they do night raids and release the ones with money but remember we don’t have money and we stay there... If you have something like 120,000 shillings because I think the major aim of those raids is to extort money from us ... Those who fail to raise the money you board

\(^{\text{96}}\) Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30\(^\text{th}\) August 2019.

\(^{\text{97}}\) Interview with representative of UHRN, Kampala, 13\(^\text{th}\) September 2019.

\(^{\text{98}}\) As above.
Another PWUID interviewed in Kampala shared his experience as follows:

We were three, they arrested three of us and we were taken to the police station but there was no evidence but we were high and truthfully we were high and had taken it... They took us to the police, early in the morning they told us they were taking us to court. But as you know ... each one gave in Ugx 450,000 ...I never went to court.  

A paralegal interviewed in Mbale made a similar observation:

In most cases when they are arrested individually there are those who panic and say that, “please call such a person to represent me, officer I have 100,000 shillings.” When the officer hears that even if he was going to release you sometimes you are four but then you talk about money, that’s where the challenge comes in. They release you and retain the rest who don’t have money.  

4.2.2 Informing PWUIDs of reason for arrest

Article 23(3) of the Constitution provides that an arrested person shall be informed immediately, in a language that the person understands, of the reasons for arrest. If an arrestee is not informed of the reason for arrest immediately, this amounts to a violation of the right to liberty.

This safeguard is rarely followed during the arrest of PWUIDs. Many times the arrestees are only informed of the reason for their arrest after reaching the police station, or not at all.

99 Interview with PWUID, CA, Kampala, 16th August 2019.
100 Interview with PWUID, LB, Kampala, 16th August 2019.
101 Interview with paralegal attached to UHRN, Mbale, 26th August 2019.
A magistrate interviewed in Mbale described the practice as follows:

... these arrests are always done at night. So there is always the suspects wanting to fight back trying to escape so there is chase-ups and the like. That is where we get issues of a little bit of violations sometimes they are not immediately informed of the charges why they are arresting them. So they first bundle them into their pick up then they put them into cells. So in most cases it is on the next day when they get to know what actually why they were arrested.102

When people are arrested in large groups, usually nobody is told why they are being arrested.103 The police would usually say that the arrested persons will find out what the reason for their arrest was at the police station.104

A worrying trend is that even if the PWUID involved was informed of the charges against them at the point of arrest or during police detention, they may find themselves facing altogether different charge when they reach the court, especially when they are tried with others.105

4.2.3 Right to a lawyer of choice

Article 23(3) provides that an arrested or detained person shall be informed immediately of his or her right to a lawyer of his or her choice. If this is not done, the arrestee’s right to liberty has been violated. The PWUIDs interviewed found this safeguard to be a laughable notion compared to the

102 Interview with Magistrate, Mbale District, 29th August 2019.
103 Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.
104 Interview with paralegal attached to UHRN, Mbale, 26th August 2019.
105 Interview with representative of UHRN, Kampala, 13th September 2019.
reality that they face in the police cells:

We even hardly ate, our friends who brought us eats were asked in which capacity they did it … If they find you bringing anything for the prisoners, they extort bribes from you yet we have no money. Do you expect such a person to tell you your right to a lawyer?106

Where lawyers are made aware of cases, they are often made to speak to their clients in the presence of police officers, creating an intimidating environment.107

4.2.4 Detention not exceeding 48 hours

The Constitution provides that if a person had been arrested on suspicion of having committed or being about to commit a criminal offence, the person should be brought to court not later than 48 hours from the time of their arrest, if they are not released.108 Detention beyond 48 under these circumstances amounts to a violation of the right to liberty. This is a very common occurrence however.

One PWUIDs stated that:

I spent in the cell four days yet it is not acceptable for one to stay in a police cell for four days.109

This was confirmed by a lawyer who handles cases involving PWUIDs:

...we have had people being held for a long period for no reason for example Kabalaga [Police Station] they usually hold them for long. Four days, five days even a week is not strange for Kabalagala and yet

106 Interview with PWUID, CA, Kampala, 16th August 2019.
107 Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.
108 Article 23(4).
109 Interview with PWUID, LB, Kampala, 16th August 2019.
there are others whom they release that same day that they are arrested … sometimes if a person has no-one speaking for them or they have been charged with a serious offence they will stay in a week maybe.  \textsuperscript{110}

4.2.5 Right to medical treatment in detention

A person that has been restricted or detained is to be allowed access to medical treatment.  \textsuperscript{111} If need be, the person is also allowed to request and pay for private medical treatment.  \textsuperscript{112} This rights is violated in police detention settings, both in terms of general medical care as well as specific care which PWUIDs are likely to need if they are to deal with withdrawal symptoms. One FGD participant shared a harrowing account of how she gave birth in police cells after being arrested:

...I gave birth but they harassed me and they refused to take me to the hospital, I gave birth in the cells. I told them until my water broke but they said “she has urinated on herself, you see the people who take those things she needs canes”, because they couldn’t believe it. They brought their police doctor and she checked on me and even a man called Ssentamu said “I have a wife, when she is going to give birth she is not like that”, then I gave birth … They closed the whole prison very quickly so that people were unable to see me.  \textsuperscript{113}

In this case, it seemed that medical treatment would have been available, however

\textsuperscript{.................}

\textsuperscript{110} Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30\textsuperscript{th} August 2019.

\textsuperscript{111} Article 23(5)(c).

\textsuperscript{112} As above.

\textsuperscript{113} R5, FGD with male and female PWUIDs, Kampala, 16\textsuperscript{th} August 2019.
"We want to get off of drugs, but don’t even know how to start. If we go to rehabilitation centers, there is no treatment and we suffer badly from ‘tickes’ (withdrawal symptoms). Often we are put away with people who have mental illnesses. So we are forced to go back to the drug dens, where we continue using.”

the woman’s symptoms of labour were not taken seriously because she is a PWUID. A lawyer providing legal aid confirmed that the symptoms of withdrawal and other illnesses exhibited by PWUIDs are usually ignored by the police:

Just last week we had a client who passed out in the police cell and even after she passed out they still left her in, we had to first complain but look at
Conditions such as HIV and TB are not treated while in police detention.\textsuperscript{115} In some cases, the need for medical treatment arises from the fact that the person had been subjected to force during the course of the arrest, rather than the fact that the person is experiencing withdrawal symptoms. As narrated by a lawyer from HRAPF:

\begin{quote}
... they do not receive any kind of treatment when they are at the station, in some places they will release them early like they don't ask for bond they will just give them bond so they can go home and get treatment, in other places because they think we might sue them, they keep them in hoping that they will get better before they release them.\textsuperscript{116}
\end{quote}

This was confirmed by a PWUID who shared that she was beaten in the process of being arrested:

\begin{quote}
They made me to write a statement by force. Because they put me in cell no medication, I asked for a phone so that I can at least call someone, they knew in their hearts that they had beaten me but they never gave me any unit [phone credit] to call not even medication.\textsuperscript{117}
\end{quote}

In terms of treatment of withdrawal symptoms and providing rehabilitative care to PWUIDs, the criminal justice system does not have much on offer. According to two police

\begin{flushleft}
\textsuperscript{114} Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30\textsuperscript{th} August 2019.
\textsuperscript{115} Interview with UHRN, Kampala, 13\textsuperscript{th} September 2019.
\textsuperscript{116} Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30\textsuperscript{th} August 2019.
\textsuperscript{117} Interview with PWUID, LB, Kampala, 16\textsuperscript{th} August 2019.
\end{flushleft}
officers interviewed in Kampala, juvenile PWUIDs are sometimes referred to Butabika National Referral Hospital for treatment directly from the police station. The police officers admitted that this practice is not lawful under the NDPSCA though they believe it to be in the best interest of the arrested PWUID.\(^\text{118}\) Arrestees suffering severe withdrawal symptoms are also referred to local hospitals for treatment.\(^\text{119}\) It was confirmed by the Executive Director of UHRN that on rare occasions, they are called by the police and arrested PWUIDs are released into their care on the condition that they are provided with treatment.\(^\text{120}\) Others shared that they were given nothing more than Panadol to help them deal with their withdrawal symptoms.\(^\text{121}\)

The medical treatment offered in prisons is generally considerably better than that offered in police custody.\(^\text{122}\) Prisons do not, however, offer comprehensive rehabilitation and treatment for PWUIDs in particular. Law enforcers view prison in itself as a viable rehabilitation centre:

> Maybe at least when somebody stays in prison like four months you never know if the drug may reduce in the body a bit.\(^\text{123}\)

In the opinion of this police officer, PWUIDs can easily escape from Butabika

\(^{118}\) Interview with police officers, Kampala, September 2019.

\(^{119}\) Interview with representatives of Jinja Road Police Station, 10\(^{th}\) September 2019.

\(^{120}\) Interview with UHRN, Kampala, 13\(^{th}\) September 2019.

\(^{121}\) Interview with PWUID, DK, Kampala, 16\(^{th}\) August 2019.

\(^{122}\) Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30\(^{th}\) August 2019.

\(^{123}\) Interview with representatives of Jinja Road Police Station, Kampala, 10\(^{th}\) September 2019.
National Referral Mental Hospital and therefore it is advisable to send them to prison instead.\textsuperscript{124} According to a magistrate interviewed in Kampala, there are cases where prison officials would help inmates to gradually break their addiction:

\begin{quote}
... they first allowed him to take his marijuana slowly, then after some time he stopped. Actually he is now a commander at the prison. The prisons officer was telling me “the man reformed, he is actually a prison ‘Katikiro’ [leader of a group of prisoners]’. They give them ranks.\textsuperscript{125}
\end{quote}

This practice was not confirmed by a representative of Kigo Prison who stated that there are no drugs in prison:

\begin{quote}
... in prisons here when you come in we have systems, we admit you and we have a reception board which is an admission board. From there we have welfare and rehabilitation officers, rehabilitation and integration, they talk to them and counsel them. We identify the need of anyone they sentence, we get you into rehabilitation activities. And that is part of healing: part of rehabilitation and sorting you out... we don’t use drugs here you will not get them here, this is a rehabilitation center it’s a prison but it’s a rehabilitation center.\textsuperscript{126}
\end{quote}

If the sections of the NDPSCA providing for rehabilitation is to be operationalised, some measure of relief will be offered to PWUIDs since they will be able to spend prison sentences in

\begin{flushright}
\textsuperscript{124} As above.
\textsuperscript{125} Interview with Magistrate, Makindye Chief Magistrates Court, 3\textsuperscript{rd} September 2019.
\textsuperscript{126} Interview with representative of Kigo Prison, Kampala Metropolitan Area, 27\textsuperscript{th} September 2019.
\end{flushright}
rehabilitation facilities rather than in prisons. However, various steps still need to be taken in terms of training of magistrates, establishing the Rehabilitation Fund, establishing new rehabilitation centres and forming the oversight bodies envisioned by the Act.

4.2.6 Right to be released on mandatory bail after a period of remand

In the case of offences which are triable by both the High Court and a subordinate court, if a person had been remanded in custody in respect of the offence for 60 days before trial, that person shall be released on bail on conditions which the court considers reasonable. In practice, if PWUIDs are unrepresented in court, which they almost always are, they would often not be aware of their right to apply to be released after spending 60 days on remand. A magistrate interviewed in Sironko, outside Mbale in the Eastern Region, shared that the accused PWUIDs are usually unrepresented in court and for that reason the magistrates courts in Mbale area are working with Justice Centers to try and ensure that legal aid will be provided to this group going forward. This was confirmed by a magistrate in Kampala:

Actually representation is zero, at times we offer them what we call lawyers on duty counsel. We have got a duty counsel here provided by law society, so if they are not here because they also appear here twice a week then they represent

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127 See sections
128 Article 23(6)(b) of the Constitution.
129 Interview with Magistrate, Makindye Chief Magistrates Court, 3rd September 2019.
130 Interview with Magistrate, Sironko, Mbale District, 29th August 2019.
It would therefore be up to the magistrate to notice, at some point, that the same unrepresented accused is appearing before them every few weeks for a period longer than 60 days and to dismiss the case. However, there is no system in place to ensure that PWUIDs do not spend unnecessary time on remand when they could have been released.

4.3 Violation of the right to a fair trial

Article 28 of the Constitution guarantees the right to a fair trial. There are a number of practices taking place which undermine this right when PWUIDs are in contact with the criminal justice system. The first practice which was noted is the planting of evidence on PWUIDs during and after arrest in order to justify their prosecution. As explained by one of the PWUIDs participating in an FGD:

_We asked them the exhibits they found with us and they said they have marijuana in their stores they can use as exhibits against you if you insist._

A lawyer providing legal aid to PWUIDs advises them against searching themselves after arrest when the police tells them to empty their pockets because it could mean inadvertently placing their fingerprints on drugs that were planted on them. This right is also violated in instances where PWUIDs are forced to make statements:

_AT the moment they didn’t give me a reason but they_

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131 Interview with Magistrate, Makindye Chief Magistrates Court, 3rd September 2019.
132 Interview with Magistrate in Mbale, 28th August 2019.
133 R4, FGD with male PWUIDs held in Mbale, 26th August 2019.
134 Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.
took me to a cell and forced me to record a statement and after they told me I recorded the statement because I was found smelling drugs which meant I was from smoking marijuana and I was high. We were beaten, poured water on us and told us to record statements.  

Article 28(7) of the Constitution provides that ‘[n]o person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence’. It was found that not all police officers and magistrates are aware that the criminal provisions in the NDPAA had been repealed and replaced by section 4 and 5 of the NDPSCA. HRAPF recorded 4 cases since 2017 in which the accused were charged and tried for ‘frequenting a place used for smoking opium’ – an offence which no longer exists.  

4.4 Violation of the right to equality and freedom from discrimination

Article 21 of the Constitution protects the right of every person to equality before and under the law as well as equal protection of the law. This right is violated whenever PWUIDs are arrested on the basis of their appearance rather than on the basis of a genuine belief that the person has committed or is about to commit a crime. When PWUIDs are arrested on the basis of their dress code and social habits which ‘identify’ them as PWUIDs, rather than on a reasonable suspicion that specific crimes have been committed, this could amount to discrimination on the basis of social and economic standing.

This right is furthermore

135 Interview with PWUID, SS, Kampala, 16th August 2019.
136 Sections 47 and 48 of the NDPAA.
violated in that groups of people arrested during police operations are sometimes subjected to a ‘screening’ process with the help of local leaders: those who are known to be PWUIDs will remain in detention while those who are not identified as PWUIDs are released, which confirms that the basis of these arrests are not the suspicion of the commission of a specific crime, but are rather carried out on the basis of a persons being identified as a PWUID. A police officer interviewed in Kampala described the process as follows:

Somebody can happen to be in that place with the smokers when he himself is not a smoker. So the screening we involve LCs [Local Council leaders] of the area then they can tell you this one we know him much as he was found in that place … of wrongdoers but he is not a wrongdoer and he does not smoke opium. So he is screened and he is questioned and set free… So when there is operation of massive arrests they call all the surrounding LCs to come talk about them.137

PWUIDs do not receive equal protection of the law in that provisions of the law are applied to them in an arbitrary manner as the provisions of the NDPSCA are not applied uniformly by magistrates. The PWUID’s fate depends more on the magistrate in front of whom they appear than on the evidence on file against them. As explained by a lawyer who provides legal aid to PWUIDs:

... it is still a specific magistrate not the court itself … we have the same problem in Nabweru but again a specific magistrate. We have the problem in Makindye with a specific magistrate that every time they arrest them you pray that one magistrates gets that case because if the other one gets it they are

137 Interview with Police Officer at Katwe Police Station, Kampala, 2nd September 2019.
going on remand.\textsuperscript{138} One of the magistrates shared that they had never convicted a person brought before them on a drug-related offence since there are almost always inconsistencies in the information in the case file. The information on some files do not give a clear, comprehensive picture of what has taken place and so they decide to dismiss the cases.\textsuperscript{139} Two other magistrates representing both Kampala and Mbale confirmed that even though many cases of PWUIDs reach them, their convictions are rather few since evidence is often lacking:\textsuperscript{140}

\ldots if three times have elapsed and police has not or anybody from GAL [Government Analytical Laboratory] or from the Narcotics department has not come to testify, then I dismiss them. Actually they constitute the highest percentage of my dismissals; I have no room for them.\textsuperscript{141}

There is furthermore an inconsistency in the way the provisions on minimum sentencing in the NDPSCA are interpreted and applied by magistrates. One magistrate interviewed in Kampala was of the view that there is no alternative for a person convicted of drug use or possession than to be sentenced to 5 years in prison, payment of a steep fine or both.\textsuperscript{142} Another magistrate expressed that the heaviest punishment

\begin{flushright}
\footnotesize\textsuperscript{138} Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30\textsuperscript{th} August 2019. \\
\textsuperscript{139} Interview with Magistrate in Kampala, 4\textsuperscript{th} September 2019. \\
\textsuperscript{140} Interview with Magistrate, Mbale District, 29\textsuperscript{th} August 2019; interview with Magistrate, Kampala, 3\textsuperscript{rd} September 2019. \\
\textsuperscript{141} Interview with Magistrate at Makindye Chief Magistrates Court, Kampala, 3\textsuperscript{rd} September 2019. \\
\textsuperscript{142} Interview with Magistrate, Buganda Road Magistrates Court, Kampala, 26\textsuperscript{th} August 2019.
\end{flushright}
that they have ever given in a drug-related case was one year imprisonment and that they would usually give light punishments such as community service for 200 hours after the accused had pleaded guilty. There is thus a clear inconsistency in the way in which the NDPSCA is applied by members of the judiciary which leads to unequal treatment before the law of some suspected of drug-related crimes as opposed to the treatment of others.

4.5 Violation of the right to dignity and freedom from cruel, inhuman and degrading treatment or punishment

Article 24 of the Constitution protects the right to dignity and freedom from torture and cruel, inhumane and degrading treatment or punishment. This right cannot be derogated under any circumstances. This right is violated in that PWUIDs are subjected to violence and mistreatment during and after arrest and while in detention:

... sometimes the police has used force because the arrestee was very violent and in those cases it is necessary ... it depends on the police officer doing the arrest, some are more professional than others, they will use force but not enough to injure the person, others will use it as an excuse to inflict the violence they wanted to inflict anyway.

A PWUID shared the following experience of violence during arrest:

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143 Interview with Magistrate at Makindye Chief Magistrates Court, Kampala, 3rd September 2019.
144 Article 24.
145 Article 44(a) of the Constitution.
146 Interview with lawyer who handles cases of PWUIDS at Human Rights Awareness and Promotion Forum, 30th August 2019.
When these people find you smoking there is a way they treat and beat you. I was once in the ghetto smoking and a police officer came and beat me on the ankles before arresting me. It took six months for the ankles to heal, I was even beaten on the neck, the ribs are rotten.\textsuperscript{147}

Other PWUIDs shared similar experiences:

... we were raided by over fifty officers with four vehicles but we were only six people in the ghetto. The way they arrested us was harsh. I was beaten and my knee cap came out, it was my colleagues who helped put it back ... The guys treated us badly with my colleagues, they beat us badly my chest is still paining, the foot was treated but it still has a scar, even the palm. The guy kicked me on the neck and I fell down...\textsuperscript{148}

A PWUID who participated in an FGD in Kampala shared that he was made to perform labour at the police station after suffering a violent arrest the previous night:

... they go and arrest you in a bad way, they have beaten you up and in the morning when they come, they ask “where are the ones we brought at night? Come and mop the office, you mop the veranda” then you say “officer I am not feeling well”. Then sometimes he beats you and continues to hurt you and he tells you “you will mop it”, then he takes you by force but yet you are no feeling good truthfully, they have mistreated you.\textsuperscript{149}

Another recounted a tale of inhuman and degrading treatment while in police custody:

They beat us up and even undressed our top dresses and poured water on us

\textsuperscript{147} R1, FGD with male PWUIDs, Mbale, 26\textsuperscript{th} August 2019.
\textsuperscript{148} R4, FGS with male PWUIDs, Mbale, 26\textsuperscript{th} August 2019.
\textsuperscript{149} R6, FGD with male and female PWUIDs, Kampala, 16th August 2019.
One PWUID shared that she had agreed to have sex with a police officer and that he would ensure her release in return:

I was arrested from Kabalagala... We were in a group of five girls. The police officers beat me up and tortured me and one wanted to have sex with me in order to release me. He had sex with me but he didn’t help me in any way because he didn’t even release [me].

PWUIDs are furthermore not protected from assault by fellow inmates while in custody:

Those cell leaders make money in the cells. I was once arrested from Kibuye but the prison cell leader could make around 100,000 shillings a day... the officers do not blame and stop them.

Another PWUID narrated the ill-treatment meted out by other inmates as follows:

The prisoners also involved in the torture, you are not supposed to enter if you don’t have some money first of all. You have to “fry them a chapatti”, do you know that torture? You rub your hands then you slap hard down on the floor... Others are pushups while they are sitting on you or singing for example if you are a singer.

The right to dignity and freedom from cruel, inhuman and degrading treatment or punishment is furthermore violated when PWUIDs are denied access to toilets while in police custody:

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150 Interview with PWUID, SS, Kampala, 16th August 2019.
151 Interview with PWUID, SS, Kampala, 16th August 2019.
152 Interview with PWUID, LB, Kampala, 16th August 2019.
153 Interview with PWUID, CA, Kampala, 16th August 2019.
You request to go to the toilets and they tell you the one with keys is not around and you have to wait. But when a new inmate is brought they open for him and you wonder how they opened and you have to wait. The inmates leader is threatening you not to urinate on the floor and the officers have refused to open so you have to wait and that is the least I can mention.\textsuperscript{154}

Another PWUID interviewed in Kampala confirmed this violation:

\textit{You have no freedom as a person, first of all you do not bathe, second when you want to ease yourself, you do not get access to the urinals that very time so you can ask to go like at 7:00 but they take like after 5 hours to allow you go because you cannot ease yourself from inside. They can even tell you to ease yourself from inside, they give you a bucket remember you are like ten and no space to put the bucket, sometimes it is full ... and you also add on that smell, that is another torture.}\textsuperscript{155}

### 4.6 Conclusion

This section sets out the human rights abuses and violations which PWUIDs face when they come into contact with the criminal justice system. The study finds that PWUIDs suffer various human rights violations when they come into contact with the criminal justice system in Uganda. In particular, the liberty; the rights to a fair trial; the right to equality and non-discrimination and the right to dignity and freedom from cruel, inhuman and degrading treatment or punishment are violated.

\textsuperscript{154} Interview with PWUID, CA, Kampala, 16\textsuperscript{th} August 2019.

\textsuperscript{155} Interview with PWUID, LB, Kampala, 16th August 2019.
5.0 Conclusion

This study finds that PWUIDs face severe violation of their rights when they come into contact with the criminal justice system, especially at the level of police. Violations are recorded in the process of arresting and reasoning behind arrests; in the treatment at police and during police custody; during court hearings and in respect of remand as well as during the serving of a sentence in prison. The study identifies inconsistencies in the way in which law enforcers interpret and apply the Narcotic Drugs and Psychotropic Substances Control Act, 2016. The study furthermore finds that there is a lack of provision
of healthcare services and rehabilitative services in particular to PWUIDs at every level of the criminal justice process.

5.1 Recommendations

The study makes the following recommendations to various government bodies and agencies, especially law enforcement agencies, as well as civil society:

To Parliament

- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to decriminalise individual drug use or to allow for more lenient sentences where a person is an individual drug user as opposed to a trafficker.
- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to allow police officers to defer PWUIDs for medical treatment and rehabilitation upon arrest.
- Repeal all sections of the Penal Code Act containing vagrancy offences.

To the Ministry of Health

- Adopt a harm reduction policy which can guide future legislation, programmes, the establishment of rehabilitation centres and treatment of PWUIDs in Uganda.
- Ensure that the section of the NDPSCA which deals with rehabilitation is operationalised.
- Initiate and undertake trainings of police officers, prison officials and magistrates to grasp the intricacies of drug use and addiction and the required treatment for PWUIDs as a Key Population and vulnerable group.
To the Ministry of Justice and Constitutional Affairs

• Train magistrates nationwide on the NDPSCA’s provisions, minimum sentences and the repeal of sections of the NDPAA.

• Adopt guidelines which allow community members to intervene in court cases where PWUIDs are the accused in order to support and guide them in court.

• Work with local CSOs to undertake a cost benefit analysis of the detention of PWUIDs, both at police level and in prison.

To the Uganda Police Force

• Adopt guidelines to instruct station commanders on how to handle cases of PWUID arrestees. Such guidelines could include to release persons if they are in need of medical care which the station is not in a position to provide.

• Continue training and awareness-raising among police officers of different ranks in all regions of the country, particularly arresting officers and officers responsible for keeping the anti-narcotics desks at various stations.

To the Ministry of Gender, Labour and Social Development

• Undertake sensitisation and awareness raising at community level to allow communities to understand the plight of PWUIDs and to encourage willingness to support them if they come into contact with the criminal justice system.

To the Equal Opportunities Commission

• Monitor and investigate the situation of PWUIDs and their treatment in the criminal justice system.
Something as basic as clean water is hard to find in drug hotspots. Injecting drug users are forced to mix heroin with blood or dirty water before injecting, increasing their exposure to HIV and other diseases.

Needle and Syringe Programme (NSP) kits provide sterilised water along with clean needles and syringes to these communities.

- Include PWUIDs’ issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and police officers on the NDPSCA.

To the Uganda Human Rights Commission

- Investigate and monitor human rights abuses committed against PWUIDs.
- Include PWUIDs’ issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and police officers on the NDPSCA.
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ABOUT HRAPF

Background
Human Rights Awareness and Promotion Forum is a voluntary, not for profit, and non-partisan Non-Governmental Organisation. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, research, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. It was established in 2008 with a vision of improving the observance of human rights of marginalised persons in Uganda.

Legal Status
HRAPF is incorporated under the laws of Uganda as a company limited by guarantee.

Vision
A society where the human rights of all persons including marginalised persons and Most at Risk Populations are valued, respected and protected.

Mission
To promote respect and protection of human rights of marginalised persons and Most at Risk Populations through enhanced access to justice, research and advocacy, legal and human rights awareness, capacity enhancement and strategic partnerships.

HRAPF’s Objectives
1. To create awareness on the national, regional and international human rights regime.

2. To promote access to justice for marginalised persons and Most at Risk Populations groups.
3. To undertake research and legal advocacy for the rights of marginalised persons and Most at Risk Populations groups.

4. To network and collaborate with key strategic partners, government, communities and individuals at national, regional and international level.

5. To enhance the capacity of marginalised groups, Most at Risk Populations and key stakeholders to participate effectively in the promotion and respect of the rights of marginalised persons.

6. To maintain a strong and vibrant human rights organisation.

Our target constituencies
1. Lesbian, Gay, Bisexual and Transgender (LGBT) persons
2. Intersex Persons
3. Sex Workers
4. Women, girls and service providers in conflict with abortion laws
5. People Who Use Drugs
6. People Living with HIV and TB (PLHIV/TB)
7. Poor women, children and the elderly with land justice issues

HRAPF Values
- Equality, Justice and Non-Discrimination
- Transparency, Integrity and Accountability
- Learning and Reflection
- Quality and Excellence
- Teamwork and Oneness
- Passion and Drive
- Networking and Collaboration

Slogan
Taking Human Rights to all