

**ANALYSIS OF THE EFFECTIVENESS OF THE LEGAL FRAMEWORK  
GOVERNING  
HUMAN RIGHTS IN UGANDA**

**BY**

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## DECLARATION

I **Laaza Elvis Jackson** hereby declare that the dissertation report titled "Analysis of the Effectiveness of the Legal Framework Governing Human Rights in Uganda" is my own original work and it has never been submitted to any other university or institution of higher learning for any academic award.

Signed ..  ..

Date..... 24<sup>th</sup> MAY. 2019 ..

## DEDICATION

I dedicate this book to **Basanga Laaza Godfrey** my Father and **Kagezi Jane Josephine** my mother, thank you for believing in me and assisting me financially and morally to see that I finish my Course.

## APPROVAL

This is to certify that the dissertation report titled “**Analysis of the Effectiveness of the Legal Framework Governing Human Rights in Uganda**” of **Laaza Elvis Jackson** has been under my supervision and is now ready for submission with my approval.

**MR. BARIRERE YOHANA**

(Supervisor)

Signed.....

Date.....

  
24<sup>th</sup> / 05 / 2019



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1. Coffin v. United States, 156 U.S. 432 (1895)
2. De Klerk and another v Du Plessis and Others [1994] BCLR 124
3. Du Plessis and Others (n 29) 12 Geneva: ICRC, (2005)
4. FIDA v Attorney General Constitution petition no.2 of 2003
5. Kent v. Dulles, 357 U.S. 116 (1958)
6. Law and Advocacy for Women in Uganda vs. Attorney General  
Constitutional Petition No.13/05 and 05/06
7. Paul v. Virginia, 75 U.S. 168 (1869)

## LIST OF STATUTES

1. Criminal Procedure Code Act, Cap 116
2. Divorce Act cap 294 laws of Uganda
3. Inhuman or Degrading Treatment or Punishment
4. International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
5. International Convention on the Elimination of All Forms of Discrimination against Women
6. International Convention on the Elimination of All Forms of Racial Discrimination
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
8. International Convention on the Rights of the Child
9. International Covenant on Civil and Political Rights
10. International Covenant on Economic, Social and Cultural Rights
11. International Optional Protocol to the Convention against Torture and other Cruel,
12. Land Act cap 227
13. Prisons Act, 2006
14. Protocol on the Right of Women in Africa
15. Succession Act Cap 162 laws of Uganda laws of Uganda
16. The 1995 constitution of the Republic of Uganda as Amended
17. The African Charter on the Rights and Welfare of the Child
18. The Children Act, Cap 59
19. The International Labour Organization 1919
20. The Office of the High Commissioner for Human Rights
21. The Penal Code Act, Cap 120
22. The Prevention and Prohibition of Torture Act, 2012
23. The Uganda Peoples Defense Forces Act, 2005
24. The International Bill of Human Rights
25. Uganda Land Alliance
26. Uganda Law Reform Commission
27. Universal Declaration of Human Rights (1948)

## LIST OF ACRONYMS

ACHPR -----African Charter on human and Peoples Rights

ACRWC -----African Charter on the Rights and Welfare of the Child

CPCA -----Criminal Procedure Code Act

CRC -----International Convention on the Rights of the Child

DHRPP-----District Human Rights Promotion and Protection Sub-Committee

DPP-----Directorate of Public Prosecutions

EVI/PSNs-----Extremely Vulnerable Individuals/Persons with Specific Needs

IASC-----Inter-Agency Standing Committee

ICCPR-----International Covenant on Civil and Political Rights

ICEAFDW-----International Convention on the Elimination of All Forms of Discrimination  
against Women

ICEAFRD-----International Convention on the Elimination of All Forms of Racial  
Discrimination

ICESCR-----International Covenant on Economic, Social and Cultural Rights

ICPRAMWMTF-----International Convention on the Protection of the Rights of All  
Migrant Workers and Members of Their Families

ICTCIDTP-----International Convention Against Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment

ILO-----International Labour Organisation

IOPCTCIDTP----International Optional Protocol to the Convention against Torture and other  
Cruel, Inhuman or Degrading Treatment or Punishment

LRA-----Lord's Resistance Army

OHCHR-----Office of the High Commissioner for Human Rights

PRWA-----Protocol on the Right of Women in Africa

UDHR-----Universal Declaration of Human Rights

ULA-----Uganda Land Alliance

ULRC-----Uganda Law Reform Commission

UPDF -----Uganda Peoples Defence Forces

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## ABSTRACT

This research paper analyses the effectiveness of the legal frame work governing human rights in Uganda, evaluating the effectiveness of the legislations, enforcement and weakness of the legislations and also proposes possible recommendations.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.0 Introduction and background

The history of human rights covers all the years and draws upon religious, culture, philosophical and legal development throughout the recorded history.

Human rights are indivisible and interdependent, which means that in order to guarantee civil and political rights, a government must also ensure economic, social and cultural rights and vice versa.

The concept of human rights has been evidenced right from the several governments in Uganda especially from the time Uganda became Independent, for instance as during the regimes of the dictatorship/ tyranny of President Apollo Milton Obote and Iddi Amin Dada, which was coupled by great mass violation of human rights, during, the Uganda National Liberation Front (UNLF) and Obote II government up to the current regime of the National Resistance Movement (NRM).

As soon as the National Resistance Movement took over power from Obote II's government 1985, the party set an ultimate Commission to make investigations on those who had involved themselves in the violation of human rights from 1962-1986 and the Commission made its submission in 1986 on its findings.

This Commission was termed as Odoki's Commission because it was led by Justice Odoki and in the promulgation of the 1995 constitution after the findings were presented by the Commission the new Constitution which commenced on the 8<sup>th</sup> day of October, 1995 contained a whole chapter four about the protection of fundamental Human Rights.

Various Commissions and Non-governmental bodies have been put into existence to the effect and also Uganda has gone ahead to ratify a number legislation of both Regional and International level to embrace and supplement on legislations on Human Rights in new Uganda.

### **1.1 Statement of the problem**

The Legal frame work governing Human Rights in Uganda is effective in that a lot of legislation have been enacted at the local level however Uganda too is a common wealth country in that it has ratified a number of legislation at both the Regional and International but the problem of human right violation is still prevalent.

### **1.2 General objective**

To analyze the effectiveness of the Legal frame work governing Human rights in Uganda.

### **1.3 Specific objective**

- i. To analyse the legal frame work governing human rights in Uganda.
- ii. To evaluate the effectiveness of the legal frame governing human work in Uganda.
- iii. To evaluate the weakness and the loopholes in the legal frame governing Human rights.
- iv. To recommend on the legal frame work governing human Rights in Uganda.

### **1.4 Research Question**

- i. What is the legal frame work governing human right in Uganda?
- ii. How is the legal frame work governing human Rights in Uganda effective?
- iii. What are the weakness and the loopholes in the legal frame governing Human rights?
- iv. What are the recommendations available on the legal frame governing human rights in Uganda?

### **1.5 Justification**

The Uganda Human Rights Commission was established as an Independent Commission in the 1995 Constitution as amended after the investigations were made in 1986 led by Justice Odoki as the chairman of the commission which was instituted by President Museveni the Chairman of NRM following the rampant human Rights violation in political, civil and economic development of Uganda.

The 1995 Constitution of the Republic of Uganda was the first legal frame work governing human rights in Uganda with a full chapter four, then followed with subsequent reports from the Commission and the Parliament enactments despite all these endeavors the violation of human Rights is still rampant due to the loopholes and weaknesses in the legal frame work.

There for this study provides information for further research in the academia, it will also enable policy makers to put up laws and rules to govern human rights effectively and lastly it will aid governmental stake holders and other Non-Governmental organizations to improvise for the enforcement mechanism of the existing law in order to reduce the growing rate at which Human Rights are violated.

### **1.6 Scope of Research**

This research is limited to the Geographical location of Kampala since many of the Organizations, commissions and ministries which are the stake holders of human Rights are located in Kampala.

The content will be limited to the Laws and celebrated writers and law journals and reports on the legal frame work governing Human Rights in Uganda in attempt to explain the effectiveness, weaknesses and possible recommendations and conclusions on the Legal framework governing Human Rights.

The time scope will be from 1986 the date in which the interest to legislate on Human Rights by Uganda developed up to date.

### **1.7 Literature Review**

#### **1.7.1 Introduction**

It is important to note that legal frame work governing human Rights is a globally discussed subject especially in the developing countries since it is an area of key concern in the judicial system of various countries. Many scholars, academicians, lawyers, researchers, judicial officers, Non-governmental Organizations and very many other agencies have written about and also possibly reported about human Rights violation in the world. I wish therefore to acknowledge their scholarly works in this area.

However, I must note with concern that whereas this topic has been widely written about by many scholars, this has only been on the general global scene and thus giving less emphasis on particular countries or Jurisdictions like Uganda in which the focus was more on the practice of human Rights activists and Organizations and commissions however there are positive remarks and challenges in the legal frame work governing human Rights. This has left many gaps that



need to be filled in those scholarly writings and that's my exact inspiration to write this paper particularly focusing on Uganda.

### **1.7.2 Content of Literature Review.**

International human rights law provides an important framework for guaranteeing the rights of all people regardless of the countries in which they live. International human rights law is contained in many different types of documents, including treaties, charters, conventions, and covenants. Despite the different official names, all of these documents are considered treaties and have the same effect under international law a country that ratifies a treaty is legally obligated to protect the rights it describes. Countries have different methods for joining or consenting to be bound by multilateral human rights treaties. Some countries use a process called accession which requires only one step depositing the instrument of accession with the United Nations. Other countries require a two-step process of signing and ratification. For example, for the United States to become a party to a treaty the President must first sign and then present it to the Senate, where two-thirds of the Senators must vote to ratify. Regardless of the method for ratifying a treaty, however, the end result is the same.<sup>1</sup>

Through accession or ratification, a country agrees to be legally bound by the terms of the treaty. Countries that ratify treaties are allowed to enter reservations to those instruments. Reservations are statements made by a country that modify the legal effect of certain provisions of the treaty. Entering a reservation allows a government to agree to most of a treaty, while excluding or limiting parts that might be controversial or unconstitutional in its own country. The means by which an international treaty enters into national legislation differs depending on the parliamentary system and national procedures. In some countries, the constitution or other legal provisions allow direct application of the treaty. In others, national legislation must be passed first to make the provisions of the treaty applicable. Even after treaty ratification, however, the strongest protection for the rights of individuals is often domestic law.

In some countries, the constitution may provide fundamental, minimum human rights protections. For example, many of the rights contained in the U.S. Constitution are also found in

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<sup>1</sup> U.S. Senate, "Treaties," accessed Jan. 7, 2014, <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>.

the Universal Declaration of Human Rights (UDHR), especially rights related to political and civil liberties. Although the U.S. Constitution provides strong protections for civil and political rights, it lacks similar guarantees for the economic, social, and cultural rights identified in the UDHR. In the United States, fulfillment of those rights depends on national and state legislation rather than on the U.S. Constitution. U.S. courts also provide a remedy for people whose fundamental rights have been violated.

Decisions of the U.S. Supreme Court specify fundamental rights that have analogs in human rights treaties, such as the presumption of innocence in a criminal trial<sup>2</sup> and freedom of movement<sup>3</sup>. Many Diaspora community groups and others doing social justice work use multiple strategies, including human rights monitoring, documentation, and advocacy, to advance their missions. Integrating a human rights approach into social justice work keeps all avenues for advocacy open, whether at the local, national, or international level.

International Humanitarian Law International Humanitarian Law, also known as the law of war or armed conflict, is a body of law created to place restrictions on the conduct of hostilities (the use of certain weaponry and means of warfare), to protect people who are not or who are no longer participating in the conflict (e.g., civilians, prisoners of war, wounded and sick, and humanitarian workers), and to confine the use of violence to the achievement of the objectives of the conflict<sup>4</sup>.

The overarching goal of international humanitarian law is to “ensure the safety and dignity of people in times of war.”(International Committee of the Red Cross, IHL: The Basics of International Humanitarian Law<sup>5</sup>. The rules of international humanitarian law set forth in the four Geneva Conventions (1949) and their two Additional Protocols (1977) differ in content and application depending upon the type of conflict. The most comprehensive international humanitarian law rules apply to situations of “international armed conflict” (i.e., conflicts between countries) (supra)<sup>6</sup>

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<sup>2</sup> Coffin v. United States, 156 U.S. 432 (1895)

<sup>3</sup> Paul v. Virginia, 75 U.S. 168 (1869); Kent v. Dulles, 357 U.S. 116 (1958)

<sup>4</sup> American Red Cross, “Fact Sheet: International Humanitarian Law and Human Rights,” accessed Jan.7, 2014

<sup>5</sup> Geneva: ICRC, (2005)

<sup>6</sup> Ibid



## CHAPTER TWO

### LEGAL FRAMEWORK ON HUMAN RIGHTS

#### 2.0 Introduction

This chapter analyses the available legal frame work (legislations) on the Human Rights at the National (Uganda), Regional and International Level.

#### 2.1 National Level

##### 2.1.1 The 1995 Constitution of the Republic of Uganda as amended

The 1995 Constitution is the Supreme law of the Republic of Uganda meaning that all laws and authorities must be consistent with its provisions, if not then those other laws are Null and Void.<sup>7</sup>

The preamble to the Constitution recalls Uganda's history as having been "characterized by political and constitutional instability"<sup>8</sup>. It also recognizes the "struggles against the forces of tyranny, oppression and exploitation".<sup>9</sup> In that regard, the words of Van Dijkhorst J. in the South African case of *De Klerk and Another v Du Plessis and Others*<sup>10</sup> would seem quite appropriate.

Referring to South Africa, the learned judge said: "When interpreting the Constitution and more particularly the bill of rights, it has to be done against the backdrop of our chequered and repressive history in the human rights field."<sup>11</sup>

It is in the light of Uganda's history that, like its predecessors, the 1995 Constitution was drafted to include a bill of rights contained in Chapter Four entitled "Protection and Promotion of Fundamental and other Human Rights and Freedoms." It has to be mentioned that the Bill of Rights in the 1995 Constitution is fundamentally different from the 1962 and 1967 versions both in the catalogue of rights protected and the mechanisms of implementation. For example, the opening Article of Chapter Four states that "[fundamental] rights and freedoms of the individual

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<sup>7</sup> Article 2 of the 1995 constitution of the Republic of Uganda

<sup>8</sup> See Preamble to the 1995 Constitution of the Republic of Uganda.

<sup>9</sup> Ibid.

<sup>10</sup> [1994] BCLR 124

<sup>11</sup> *Du Plessis and Others* (n 29) 128.

are inherent and not granted by the State".<sup>12</sup> Not only does this provision have no equivalent among earlier Ugandan constitutions, it also signals a departure in so far as the protection of fundamental rights and freedoms is concerned.<sup>13</sup>

The bulk of the rights contained in Chapter Four of the 1995 Constitution belong to the category known as first-generation rights (which include the traditional civil and political rights). These are rights generally included in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to which Uganda is a party<sup>14</sup>. Briefly, the civil and political rights protected in the Constitution include the right to equality and freedom from discrimination<sup>15</sup>, the right to life<sup>16</sup>, personal liberty<sup>17</sup>, respect for human dignity and protection from inhuman treatment<sup>18</sup>, prohibition of slavery, servitude and forced labour<sup>19</sup>, the right to privacy<sup>20</sup>, the right to a fair hearing<sup>21</sup> and freedom of conscience, expression, movement, religion, assembly and association.<sup>22</sup> Also protected are the rights of certain groups including women, children, persons with disabilities, and minorities<sup>23</sup>. In addition, the Constitution protects the rights of citizens to participate in the affairs of government<sup>24</sup> and the right of access to information<sup>25</sup>.

In so far as economic, social and cultural rights are concerned, it is interesting to note that despite Uganda's accession to the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>26</sup>, the 1995 Constitution pays minimal attention to such rights. In this category of so-called second and third generation rights, the only rights provided for under the Constitution are the protection from deprivation of property<sup>27</sup>, the right to education<sup>28</sup>, the right to

<sup>12</sup> Article 20(1)

<sup>13</sup> See PM Walubiri, *Uganda: Constitutionalism at Crossroads* (Uganda Law Watch Centre, Kampala 1998) 3.

<sup>14</sup> Uganda acceded to the ICCPR on 21 June 1995 and to the First Optional Protocol to the ICCPR on 14 November 1995.

<sup>15</sup> Article 21

<sup>16</sup> Article 22

<sup>17</sup> Article 23

<sup>18</sup> Article 24

<sup>19</sup> Article 25

<sup>20</sup> Article 27

<sup>21</sup> Article 28

<sup>22</sup> Article 29

<sup>23</sup> Articles 33, 34, 35 and 36

<sup>24</sup> Article 38

<sup>25</sup> Article 41

<sup>26</sup> Uganda acceded to the ICESCR on 21 January 1987

<sup>27</sup> Article 26

<sup>28</sup> Article 30



work and participate in trade union activity<sup>29</sup>, the right to a clean and healthy environment<sup>30</sup> and the right to culture<sup>31</sup>. Other important social and economic rights that should ordinarily be included in the Bill of Rights are laid down in the National Objectives and Directive Principles of State Policy<sup>32</sup>, making them unenforceable and, therefore, not justifiable. Such rights include the right to health, water, sufficient food, natural resources and, arguably, the right to development.

Quite apart from the substantive rights contained in Chapter Four of the 1995 Constitution, there are a number of observations that may be made about that chapter. To begin, the rights in the Constitution are subject to two limitations.

*The first is a general limitation contained in Article 43 which provides that:*

(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

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

*The second limitation applies during a state of emergency and is contained in Article 46(1) which provides that: An Act of Parliament shall not be taken to contravene the rights and freedoms guaranteed in this Chapter, if that Act authorizes the taking of measures that are reasonably justifiable for dealing with a state of emergency. Under Article 46(3), a law enacted in accordance with Article 46(1) "may make provision for the detention of persons where necessary for the purposes of dealing with the emergency."*

#### **2.1.2 The Prevention and Prohibition of Torture Act, 2012.**

*Acts supplement to The Uganda Gazette No. 52 Volume CV dated 18th September, 2012*

*Printed by UPPC, Entebbe, by Order of the Government.*

<sup>29</sup> Article 40

<sup>30</sup> Article 39

<sup>31</sup> Article 37

<sup>32</sup> The National Objectives and Directive Principles of State Policy are a set of objectives set forth in the preamble of the Constitution which are supposed to guide all organs of the State or non-state actors in applying or interpreting the Constitution or any other law

The Act provides under section 3 that prohibition of torture, notwithstanding anything in this Act, there shall, be no derogation from the enjoyment of the right to freedom from torture. The following shall not be a defence to a charge of torture a state of war or a threat of war; internal political instability;

The act also provides for Compensation, rehabilitation or restitution to be made by court in certain cases The court may, in addition to any other penalty under this Act, order for reparations, which may include restitution of the victim, his or her family or dependents to the greatest extent possible and such restitution may include the return of any property confiscated, payment for harm or loss suffered and payment for the provision of services and restoration of rights.<sup>33</sup>

### **2.1.3 The Penal Code Act, Cap 120**

*The Penal Code Act of Uganda is the law that provides for offences and their appropriate punishments in Uganda.*

This Act prohibits wrongful detention and makes it a misdemeanor punishable by law Section 248. This means that a person that wrongfully detains the other commits a misdemeanor. Quite often the police in Uganda have unlawfully/wrongfully detained individuals. This usually arises where the police detain suspects pending their investigation for a period beyond that within which they are supposed to be produced before court. This Acts clearly prohibits such an unlawful detention.

The Human Rights Watch report 2011 while condemning the actions of the police stated that “....it is indeed a practice for police to arrest suspects before concluding investigations and to continue investigations whilst the suspect is in police detention.”<sup>34</sup>

### **2.1.4 Criminal Procedure Code Act, Cap 116**

*The Criminal Procedure Code Act provides for procedure to be followed in criminal cases.*

The Act provides for detention of persons arrested without warrant. The law requires that where any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which the person is brought should

<sup>33</sup> Section 6 of the Prevention and Prohibition of Torture Act, 2012

<sup>34</sup> Human Rights Watch. 2011. *Violence instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit*. New York: Human Rights Watch. [http:// www.hrw.org/reports/2011/03/23/violence-instead-vigilance](http://www.hrw.org/reports/2011/03/23/violence-instead-vigilance)

release the person on his or her executing a bond, if it appears impractical to take him to the Magistrates Court<sup>35</sup>.

The major objective of this is to avert wrongful detention of a person and protect him or her from being subjected to lengthy detention in the police cells.

Also the Act imposes an obligation on the police officers to discharge an arrested person on suspicion of any charge where evidence is insufficient in his or her opinion after due police inquiry.<sup>36</sup>

### **2.1.5 The Children Act, Cap 59**

*The Children Act majorly provides for the care, protection and maintenance of Children. It also provides for the offences committed by children, their detention and punishment.*

In relation to detention of a child charged with any offence, the Act requires a child to be brought to court within a maximum period of 24 (twenty four) hours after he or she has been arrested.<sup>37</sup>

The Act also sets the time that a child can spend on remand. A child charged with an offence should not exceed three months on remand in case of an offence punishable by death and forty five days months in case of any other offence.<sup>38</sup> The Act goes ahead to specify the place of remand of a child charged with an offence as remand homes<sup>39</sup> and also prohibits the remand of children in an adult prison.<sup>40</sup>

Furthermore, children are entitled bail when produced before court unless the grant of such bail will put him or her in danger Section 90(1 Where that bail is not granted the court should inform the applicant (child) of his/her right to apply for bail to Chief magistrate or to the High court.<sup>41</sup>

### **2.1.6 The Uganda Peoples Defence Forces Act, 2005**

*The UPDF Act regulates the armed forces of Uganda.*

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<sup>35</sup> Section 17(1) of the Criminal Procedure Code Act, Cap 116

<sup>36</sup> Section 17(2) *ibid*

<sup>37</sup> Section 89(2) of The Children Act, Cap 59

<sup>38</sup> Section 91(5) *ibid*

<sup>39</sup> Section 91(1)

<sup>40</sup> Section 91(6)

<sup>41</sup> Section 90(2)



Important to note is that this Act also provides for the military courts under which the military and persons subject to the military are tried Sections 196, 197 It also provides for trial of military officers and their detention.

The Act penalizes any person subject to military who unlawfully detains another person in arrest or confinement or unnecessarily detains any other person without bringing him or her for trial Section 170(1) such a person commits an offence and is on conviction liable to imprisonment for a period not exceeding two

More to the above, the Act provides for reporting of delayed trial of a person under detention. Where a person triable under military court has been detained for 48 (forty-eight) hours, his or her commanding officer must report to the Service Chief of Personnel stating reasons for detaining the person and shall release the person on conditional bond after 72 (seventy-two) hours Section 190(1)

The Act also provides that a person detained for 28(twenty-eight) days without commencement of his trial may at the expiry of the period petition the President or any such Authority as the President may appoint in writing for that purpose to be released from custody or for the disposal of the case.

#### **2.1.7 Prisons Act, 2006**

*The Prisons Act provides for the Prisons Authority that is responsible for providing reasonable, safe, secure and humane custody and rehabilitation of offenders in accordance with universally accepted standards.*

Under this Act, for a person cannot be admitted or received into prison without a valid commitment or a remand warrant, order of detention, warrant of conviction or committal signed with a court seal or authenticated by a person authorized to sign or authenticate such warrant or order under the provision of any law.<sup>42</sup> This is intended to avoid any detention of persons before they appear before courts of law for trial.

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<sup>42</sup> Section 58 of the Prisons Act, 2006

This Act also provides for the prisoners' rights whilst in prison including entitlement to food<sup>43</sup> entitlement to exercise for the prisoners not deployed to outside work <sup>44</sup>opportunity to make complaints to officers assigned to represent them, right to information.<sup>45</sup>

#### 2.1.8 The Police Act, 2012

*The Police Act provides for the powers of the Uganda Police to arrest and detain any persons suspected to have committed crime or about to commit crime.*

The Police under this Act have the powers to arrest and detain a person in order to prevent that person from causing damage and suffering to people and property or unlawfully causing obstruction on highways.<sup>46</sup>

From the above, the Act provides for circumstances where the police can detain a person under the above mentioned situations without bringing them for trial before courts. However, this doesn't warrant prolonged detention of the persons detained under such circumstances. The person detained should be released as immediately as possible after such risk of loss, damage or obstruction has been sufficiently removed.<sup>47</sup>

#### 2.1.9 Land Act cap 227

The Land Act<sup>48</sup> provides for land ownership<sup>49</sup>, and the rights of women to own property, it states that any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, except that a decision which denies women or children or disabled people access to ownership, occupation or use of any land or imposes conditions which violates article, 33,34, 35 of the constitution shall be null and void.<sup>50</sup> On any ownership occupation or use of any land Its therefore evident that the land act has concerned the nature of customs and traditions that tend to discriminate and upheld the wording of the constitution which

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<sup>43</sup> Section 69 Ibid

<sup>44</sup> Section 71 Ibid

<sup>45</sup> Section 77 Ibid

<sup>46</sup> Section 25 of the Police Act, Cap 303

<sup>47</sup> Section 24(3) Ibid

<sup>48</sup> Cap 227

<sup>49</sup> section 2 land Act

<sup>50</sup> section 27 ibid

is to the effect that any law or custom inconsistent with any provisions of the constitution is void to the extent its inconsistency.<sup>51</sup>

The land Act thought to provide greater clarity in respect of the constitution imperative for equal rights for women by providing a co-ownership clause. It contained a c-ownership clause whose essence was to provide for a joint marital property rights.

The reality, however is that there have been no statutory reforms and the constitution provisions had little impact on the courts. Theoretically, women are free to administer their property without the consent of their husbands yet the reality is that decision making powers are typically granted to men. The result is that many female land owners lack the powers to exercise rights in respect of their own lands.

Further a widow is guaranteed a right to an equitable share in the inheritance of the property of her husband and the right to continue to live in the matrimonial home, even in instance of remarriage if it belongs to her or has inherited it. Moreover there is a right to inherit in equal shares between men and women of their parent properties.<sup>52</sup>

#### **2.1.10 Succession Act**

The right to own property embodies property owned by women prior to marriage, upon marriage and after its dissolution. The succession Act<sup>53</sup>, provides for the concept of separate property acquired before marriage is recognized.<sup>54</sup> Further it provides that a person shall not by virtue of marriage be incapacitated from doing any act with respect to his/her property which he/she could have done before marriage. In addition to this is the Domestic relations bill of 2003, where by a spouse may acquire his/ her separate property during the subsistence of marriage.<sup>55</sup>

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<sup>51</sup> Article 2 (2) of the 1995 constitution

<sup>52</sup> Article 21 *ibid*

<sup>53</sup> Cap 162 laws of Uganda laws of Uganda

<sup>54</sup> section 4 of the succession Act

<sup>55</sup> clause 71 *ibid*



### 2.1.11 Divorce Act

Under the Divorce Act<sup>56</sup> Where a judicial separation has been decreed, the wife is to be treated as unmarried with respect to property which she may acquire or which may devolve upon her, therefore she is free to deal with such property as if she were unmarried, if she dies intestate, and during the substance of the separation her husband will not be entitled to any portion of that property.<sup>57</sup>

In addition, attempts to protect the wife's proprietary rights where the husband has deserted her, under this provision, a wife in whose property the husband has acquired an interest by virtue of the marriage, may if deserted by him, apply to court for an order to protect any property which she may have obtained or may obtain after desertion. The essence of such an order is to protect the woman's property against the husband and his creditors.<sup>58</sup>

The rights of the parties were held to be equal in the leading constitutional court case of FIDA v AG<sup>59</sup>, in the leading Judgment of Justice Twinomujuni when he Held that about the equality in rights of the parties upon divorce , this means that all the grounds of divorce mentioned in section 4(1) and (2) are available to both parties to the marriage and the provisions of the Act relating to naming of the co-respondent, compensation, damages and alimony apply to both women and men who are parties to the marriage.

## 2.2 Regional Level

Some regional organizations have also developed their own human rights systems, although these systems vary considerably. Further information on regional approaches to enshrining human rights at regional level can be found below.

### 2.2.1 AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS (Banjul)

The African Charter on Human and Peoples Rights was adopted in Nairobi June 27, 1981

Entered into Force October 21, 1986

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<sup>56</sup> cap 294 laws of Uganda

<sup>57</sup> section 15 ibid

<sup>58</sup> Article 2 of the Protocol on the right of women in Africa

<sup>59</sup> constitution petition no.2 of 2003

Under *Article 1* it states that the Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.<sup>60</sup>

Every individual shall be equal before the law; individual shall be entitled to equal protection of the law<sup>61</sup> and Human beings are inviolable and every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.<sup>62</sup> Also in subsequent article there are a lot of human rights enshrined therein

### **2.2.2 The African Charter on the Rights and Welfare of the Child**

Under the charter, Member States of the Organization of African Unity Parties will recognize the rights, freedoms and duties in this Charter and will adopt laws these rights. Any custom, tradition, cultural or religious practice that is inconsistent with these rights are discouraged<sup>63</sup> and it states that a child means every human being below the age of 18 years.<sup>64</sup>

It also provides that every child should be allowed to enjoy the rights and freedoms in this Charter, regardless of his or her race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status<sup>65</sup> and further provides that if children can voice their opinions, then those opinions should be heard and taken into consideration during legal and administrative proceedings.<sup>66</sup>

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<sup>60</sup> Article 2 of the African Charter on Human and Peoples Rights

<sup>61</sup> Article 3 Ibid

<sup>62</sup> Article 4 Ibid

<sup>63</sup> Article 1 of the African Charter on the Rights and Welfare of the Child

<sup>64</sup> Article 2 Ibid

<sup>65</sup> Article 3 Ibid

<sup>66</sup> Article 4



The charter provides that every child has a right to live<sup>67</sup>, right to be named and registered at birth<sup>68</sup>, every child who is capable of communicating his or her own views should be allowed to express his or her opinions freely<sup>69</sup> and that every child has the right to free association and freedom of peaceful assembly, in conformity with the law.<sup>70</sup>

In the subsequent Articles others rights have been accorded and recognized by this charter on Children

### 2.3 International Level

In International Law, human rights obligations are those that states have undertaken by signing treaties, which are then ratified by national parliaments and enacted through changing the state's practice. The **1948 Universal Declaration on Human Rights** is by far the most widely accepted definition of human rights, encompassing civil and political as well as economic, social and cultural rights, all sharing the principles of universality and indivisibility. Its principles have subsequently been further developed in a range of international human rights instruments, some of which have been accepted by most states, others not.

These instruments define specific standards for women, children, disabled persons, migrant workers and other vulnerable groups, as well as collective rights for minorities and indigenous groups.

The human rights framework is designed to be a legally, politically and morally binding set of principles for governments. A distinction must be made between legally binding treaties, covenants, statutes, protocols and conventions, and political statements such as declarations and principles. The UN human rights system also involves a series of organs and institutions designed to promote these rights, including treaty monitoring bodies and special mechanisms. This page introduces a selection of core human rights treaties and treaty monitoring bodies.

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<sup>67</sup> Article 5 of the African Charter on the Rights and Welfare of the Child

<sup>68</sup> Article 6 Ibid

<sup>69</sup> Article 7 Ibid

<sup>70</sup> Article 8 Ibid

### **2.3.1 The International Bill of Human Rights**

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

### **2.3.2 Universal Declaration of Human Rights (1948)**

The Charter of the United Nations of 1945 proclaims that one of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms for all. With the energetic support of Eleanor Roosevelt, alongside figures such as René Cassin, Charles Malik, Peng Chun Chang and John Humphrey, States sought to set out in a single document, for the first time, the range of fundamental rights and freedoms that belonged to all by virtue of their status as human beings.

These efforts resulted in the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, henceforth Human Rights Day. This document, expressed as “a common standard of achievement for all peoples and all nations”, sets out a wide span of rights covering all aspects of life. Its Article 1 famously describes the idea of fundamental human rights: “All human beings are born free and equal in dignity and rights.”

Articles 3 to 21 describe classic civil and political rights (including the right to asylum and the right to property). Articles 22 to 28 guarantee a range of economic, social and cultural rights, with the important recognition in article 28 that: “Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

### **2.3.3 International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The convention was adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1) which states that this Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

This convention defines the term "torture" to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions and this article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.<sup>71</sup>

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction and no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.<sup>72</sup>

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture and for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>73</sup>

#### **2.3.4 International Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

This protocol was adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. Protocol is available for signature, ratification and accession as from 4 February 2003 (i.e. the date upon which the original of the Protocol was established) at United Nations Headquarters in New York.

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<sup>71</sup> Article 1 (1) & (2) of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>72</sup> Article 2 (1) & (2) of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>73</sup> Article 3 (1) & (2) Ibid

The protocol provides that a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol and The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.<sup>74</sup>

### **2.3.5 International Convention on the Elimination of All Forms of Discrimination against Women**

The convention was adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1) which provides for that the present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

The convention provides that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.<sup>75</sup>

Also it states that notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.<sup>76</sup>

### **2.3.6 International Convention on the Rights of the Child**

In the preamble of the Convention on the Rights of the Child, States parties take "due account of the importance and cultural values of each people for the protection and harmonious development of the child". While all the rights contained in the Convention apply to all children,

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<sup>74</sup> Article 2 (1) & (2) of the International Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>75</sup> Article 12 (1) of the International Convention on the Elimination of All Forms of Discrimination against Women

<sup>76</sup> Article 12 (2) of the International Convention on the Elimination of All Forms of Discrimination against Women



whether indigenous or not, the Convention on the Rights of the Child was the first core human rights treaty to include specific references to indigenous children in a number of provisions.

Article 30 of the Convention states that “In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language.”

Furthermore the Convention provides that “education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin”.<sup>77</sup>

### **2.3.7 International Convention for the Protection of All Persons from Enforced Disappearance**

The convention provides that No one shall be subjected to enforced disappearance.

And there are no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for enforced disappearance.<sup>78</sup>

For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.<sup>79</sup>

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<sup>77</sup> Article 29 of the International Convention on the Rights of the Child

<sup>78</sup> Article 1 1&2 of the International Convention for the Protection of All Persons from Enforced Disappearance

<sup>79</sup> Article 2 Ibid

### **2.3.8 International Convention on the Elimination of All Forms of Racial Discrimination**

The convention was adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19 which provides that This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.<sup>80</sup>

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>81</sup>

The article also provides that this Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens and that nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.<sup>82</sup>

### **2.3.9 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

The convention was adopted by General Assembly resolution 45/158 of 18 December 1990.

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<sup>80</sup> Article 19 (2) International Convention on the Elimination of All Forms of Racial Discrimination

<sup>81</sup> Article 1 (1) Ibid

<sup>82</sup> Article 1 (2) & (3) Ibid

The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.<sup>83</sup>

The Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.<sup>84</sup>

### 2.3.10 International Covenant on Civil and Political Rights

The convention was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49 which provides that the Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession and that for each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>85</sup>

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.<sup>86</sup>

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<sup>83</sup> Article 1 (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

<sup>84</sup> Article 1 (2)

<sup>85</sup> Article 1 (1) of the International Covenant on Civil and Political Rights

<sup>86</sup> Article 1 (2) Ibid



### **2.3.11 International Covenant on Economic, Social and Cultural Rights**

The convention was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27 which provides that the Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession and for each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

The covenant provides that States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.<sup>87</sup>

The covenant also provides that steps should be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.<sup>88</sup>

### **2.3.12 The International Labour Organisation (ILO) 1919**

Human rights are also defined in the many treaties generated by the International Labour Organisation (ILO) since its creation in 1919.

ILO Labour Standards Since its creation in 1919, the International Labour Organisation (ILO) has generated almost 200 treaties. These treaties lay down basic standards on labour-related issues ranging from child labour to indigenous rights. The international labour standards laid out in these treaties can be accessed on the ILO website.

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<sup>87</sup> Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights

<sup>88</sup> Article 6 (2) of the International Covenant on Economic, Social and Cultural Rights



ILO Declaration on Fundamental Principles and Rights at Work. The ILO launched a Declaration on Fundamental Principles and Rights at Work in 1998, which reasserts the labour standards laid out in ILO treaties.

### **2.3.13 International treaty monitoring bodies**

International human rights are protected by core international structures and organisations developed to promote and protect human rights. This includes the United Nations Office of the High Commissioner for Human Rights, treaty-based human rights committees, and the ILO's systems for enforcing labour rights.

### **2.3.14 The Office of the High Commissioner for Human Rights (OHCHR)**

It is part of the UN Secretariat. It works to raise awareness of human rights and to promote them through dialogue, advice and technical assistance with member governments and other organisations.

Treaty-based human rights bodies are committees of independent experts elected by governments. They work in specific areas laid out by the particular treaty and monitor its implementation by the states that have ratified it. States that have ratified a treaty are required to periodically submit reports on progress to the relevant treaty committee. All the committees consider states' reports. In addition, the HRC, CERD, CAT and CEDAW committees examine and decide on complaints.

## **2.4 Conclusion**

There are wide legislations on Human Rights on all Levels, the National and Regional Levels adapt most of the provisions of the International Level Legal Frameworks after the Ratification process.

There are hundreds more legal instruments and political declarations on a wide range of issues that are relevant to international development. The website of the Office of the High Commissioner for Human Rights provides links to the full text and ratification status of many of these instruments.

## CHAPTER THREE

### EFFECTIVENESS OF LEGAL FRAME WORK GOVERNING HUMANA RIGHTS IN UGANDA

#### 3.0 Introduction

This chapter examines the effectiveness of the legal frame works Governing Human Rights, it will analyse the achievements by the Governmental and Non- Governmental Stake holders in enforcements of the legislations to bring about the achievements in Human Rights in assessing the effectiveness.

#### 3.1 Uganda Human Rights Commission

The major commission of observing and protecting Human Rights, is the Uganda Human Rights Commission established by Article 51 of the 1995 constitution of the Republic of Uganda which stipulates its composition.<sup>89</sup>

The commission has power, In the performance of its functions, the commission shall have the powers of a court, to issue summons or other orders requiring the attendance of any person before the commission and the production of any document or record relevant to any investigation by the commission, to question any person in respect of any subject matter under investigation before the commission, to require any person to disclose any information within his or her knowledge relevant to any investigation by the commission and to commit persons for contempt of its orders.<sup>90</sup>

#### 3.2 Uganda Land Alliance

Over the past two years, ULA has increased its activities around women's land rights by ensuring that in the National Land Policy and the review of national laws on land, the issues of women stand out prominently.

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<sup>89</sup> Article 51 1 (2), (3) & (4) of the 1995 constitution of the Republic of Uganda

<sup>90</sup> Article 53 1(a) (b) (c) (d) Ibid

Despite the successes and the acceptance of integration of these in policy and law, the practice has not changed. Women are still discriminated against in relation to land access, ownership and control.

There is therefore a need to address the issue from a practice change dimension. It is against this realization that ULA invited a group of organizations and Government departments to rethink the women's land rights question in Uganda in a bid to develop a common agenda and strategy to achieve practice change towards poverty reduction and improved household incomes and nutrition.

The Women's Land Rights Movement was thus born on the 2nd June 2010 with four Government Ministries (Ministry of Lands, Housing and Urban Development, Ministry of Gender, Labour and Social Development, Ministry of Agriculture, Animal industry and Fisheries, and Ministry of Justice), and 13 Civil Society Organizations working around women's issues in Uganda. The first and major activity of the Movement is the conference scheduled for October 4th-6th 2010.

The women's Land Rights Movement Uganda is holding its first event the National Women's<sup>91</sup> Land Rights Conference that was attended by an estimated 300 participants mostly drawn from the grassroots, the academia, legal institutions, and Government. The Conference also drew participants from all regions of Uganda, the East African countries, Southern Sudan, South Africa, USA and Asia.

The key objectives of the conference were;

To raise a common voice for women to enable they demand for the realization and recognition of their rights to land.

To provide a platform for women from different regions and status to share their challenges and experiences on land;

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<sup>91</sup> Speke resort Munyonyo - Kampala 4th - 6th October 2010 theme: "equality is not equality of outcomes but equality of resources, rights and voice

Explore advocacy opportunities for practice change; and rejuvenate the women's movement on land that has a stronghold at the grassroots, spreading its strength to the national level.

The output of this conference was the minimum demands for women on land in Uganda, which will guide advocacy and the roadmap for the women's movement in the following year.

After the conference, the Women's Land Rights Movement started wide campaigns aimed at ensuring the realization of the key concerns deliberated upon during the conference.<sup>92</sup>

### 3.3 Uganda Law Reform Commission

Although a number of studies have been carried out on the law of succession in Uganda, these studies have had some notable limitations. The only official study on the law on Succession is about 5 decades old having been carried out in 1965.<sup>93</sup>

It is also important to note that this study did not focus specifically on matters of succession as its major focus was marriage, divorce and the status of women. Similarly, the Domestic Relations study by the Uganda Law Reform Commission was part of another study that focused on Domestic Relations thereby making issues of succession secondary.

Other studies by independent researchers<sup>94</sup> were limited in their scope; they largely focused on women's concerns and did not culminate into tangible legal reforms. Nonetheless, the findings of these studies were used to inform the present study. This study was more comprehensive in its scope including; gender, ethnic and religious concerns, as well as attitudes and practices which influence the operation of the law of succession.

Other issues which were taken into consideration under this study included the developing social trends, international and regional obligations and developments in jurisprudence.

There were a variety of social changes that had taken place since the enactment of the succession laws that necessitated a review.

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<sup>92</sup> Ibid

<sup>93</sup> Report of the Kalema Commission on Marriage, Divorce and the status of Women, 1965.

<sup>94</sup> WLEA (ibid), Okumu Wengi (ibid).



Some of these included changes within the family dynamics, the changing role of women in contribution to property within the home, developments in land tenure systems, and increasing recognition of individual property rights within marriage.

Presently, legal reforms<sup>95</sup> recognise the equitable interests of spouses and family members and reform proposals are targeting the recognition of property rights of cohabiting couples.

It is also important to note that economic empowerment of women had enabled them to contribute to purchase of family property thereby changing their status from dependants to co-owners in some instances.

These issues brought to the fore key issues for reform within the law of succession.

It was also the case that there had been no recent attempt to concretely analyse the complex issue of succession under the customary laws of the different communities in Uganda. As such there was limited empirical research available on succession according to the lived realities of women, children and men at the grassroots where customary practices of succession are applied.

Therefore, there was a need for an empirical study to establish the body of customary laws on inheritance as practiced in the communities. This would serve the purpose of giving an enlightened perspective about the customary law vis-à-vis statutory law of succession and to identify those practices that are fair and just while eliminating those that are discriminatory hence unconstitutional.

Recent Constitutional court decisions had rendered some provisions of the Succession Act null and void for non-conformity with the Constitution.

In the case of **Law and Advocacy for Women in Uganda vs. Attorney General**<sup>96</sup> the Constitutional Court declared null and void sections several of sections of the succession Act and different Rules of the 2nd Schedule of the Succession Act.

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<sup>95</sup> Land Act section 39 and Mortgage Act Section... No. 8 of 2009 40 Marriage and Divorce Bill. No. 19 of 2009.

<sup>96</sup> Constitutional Petition No.13/05 and 05/06

Consequently, an implementation gap was created for the actors in the law of succession which needed to be bridged urgently by amending the current law to bring it in conformity with the 1995 Constitution of the Republic of Uganda.

In addition, Uganda is signatory to various regional and international law instruments that champion the cause of equality and non discrimination of persons<sup>97</sup>. The Charter of the United Nations attests to a faith in fundamental human rights, specifically to the dignity and ultimate worth of the person, and recites among its purposes the 'promotion and encouragement of respect' for those rights 'for all without distinction as to race, sex, language, or religion.'<sup>98</sup>

The Convention to eliminate all forms of Discrimination against Women (CEDAW) requires states not only to prohibit discrimination but also to take affirmative steps in order to achieve gender equality.

The African Charter on Human and Peoples Rights (the African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (The Women's Protocol to the African Charter) similarly prohibit discriminatory practice against women. The discriminatory provisions in the succession Act fall short of the required standard of equality and nondiscrimination.<sup>99</sup>

### 3.4 Ratification

Ratification of any international instrument or treaty has the effect that without any reservations a state that ratifies such is bound to domesticate the provisions of the treaty or protocol and if in breach of these provisions can be held accountable. For instance, Uganda ratified the Universal Declaration of human rights and thus basing on it provides that every individual is supposed to enjoy the rights set forth in the conventions and in addition, everyone has a right to own property alone and in association with others.<sup>100</sup>

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<sup>97</sup>These include the African Charter on Human and Peoples Rights, The Convention to eliminate all forms of Discrimination against Women and the Universal Declaration on Human Rights among others.

<sup>98</sup>

Winston Langley "The Rights of Women, The African Charter, and the Economic Development of Africa", 7 Boston College Third World Law Journal 215

<sup>99</sup>uganda law reform commissionstudy report on the review of laws on succession in uganda July 2013)

<sup>100</sup> 50 Article 2 of the Universal Declaration of human rights

Basing on the above provisions if Uganda is in breach it will be held liable since it is a signatory and through these the international conventions ensures enjoyment of property rights at the domestic levels.<sup>101</sup>

### 3.5 Enforcement of the Legislations

The important observation relates to the enforcement of rights and freedoms by the courts. In that regard, Article 50(1) provides that, any person, who claims that a fundamental or other right or freedom has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

It is not quite clear what is meant by a “competent court” as this is not defined in the Constitution. It has been opined, however, that “for purposes of the enforcement of human rights it is understood to mean the High Court.”<sup>102</sup>

Article 50(2) broadens the *locus standi* provision by allowing “any person or organization to bring an action against the violation of another person’s or group’s human rights”, and Article 50(3) provides for the right of appeal to an “appropriate court.” It can safely be assumed that “appropriate court” means the Court of Appeal, and, in case of a further appeal, the Supreme Court.

It is interesting to note that no mention of the Constitutional Court is made in Chapter Four although such a court is provided for elsewhere in the Constitution.

Article 137(1) provides that “any question as to the interpretation of the Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.” This rather strange phenomenon of the Appeal Court doubling up as a constitutional court is somewhat unique to the Ugandan Constitution, and it is opined that such an arrangement limits the traditional role of a Constitutional Court in the enforcement of human rights.

It is not only the Courts of Judicature that are mandated with the enforcement of human rights in Uganda. Other relevant institutions include the Uganda Human Rights Commission, the

<sup>101</sup> Research report, women’s gains from the implementation of the succession law in Uganda, voices from Wakiso and mpigi district.

<sup>102</sup> See The Fundamental Rights and Freedoms (Enforcement Procedures) Rules 5.1.26 of 1992 as quoted in *The domestic protection and promotion of human rights* (n 1) 476



Inspectorate of Government, the Electoral Commission, the National Planning Authority and the Service Commissions (on health and education). For purposes of the discussion in this article we will only focus on the Human Rights Commission and the Inspectorate of Government and it is to these that we now turn our attention.

Provision is made under Article 51(1) for the establishment of the Uganda Human Rights Commission. Article 51(2) spells out the functions of the Commission which include, *inter alia*,

- Investigating complaints relating to violations of human rights;
- Visiting jails, prisons and other places of detention to assess and inspect conditions of inmates and to make recommendations;
- Establishing a continuing program of research, education and information to enhance respect for human rights;
- Recommending to Parliament effective measures to promote human rights;
- Creating and sustaining within society, awareness of the Constitution and the law of the country;
- Educating and encouraging the public to defend the Constitution against all forms of abuse and violation; and
- Monitoring the Government's compliance with international treaty and convention obligations on human rights.

The Human Rights Commission began operations in 1997.<sup>103</sup> It is important to note that the Commission has the powers of a court and indeed since its inception it has exercised these judicial powers by making decisions regarding claims of human

The other relevant institution is the Inspectorate of Government. This constitutional functionary has its genesis in the Inspector-General of Government Statute which was enacted in 1987 – long before the 1995 Constitution came into being.<sup>104</sup> Section 7 of that statute, dealing with the function of the Inspectorate, provided that the Inspector-General was “charged with the duty of

<sup>103</sup> See J Oloka-Onyango, *Economic and Social Human Rights in the Aftermath of Uganda's Fourth Constitution: A Critical Reconceptualization*, Working Paper No. 88/2004 (Centre for Basic Research, Kampala 2004) 39.

<sup>104</sup> See ‘Inspector-General of Government’ <<http://www.igg.go.ug/functions.htm>> accessed 13 April 2005. The Statute is known as the Inspector-General Act of 1978.



protecting and promoting the protection of human rights and the rule of law in Uganda.”<sup>105</sup> In that regard, one of the functions of the Inspector-General was “to inquire into allegations of violations of human rights committed against any person in Uganda by any person in a public office....”<sup>106</sup>

Most of the provisions of the Inspector-General of Government Statute have now been overtaken by Chapter Thirteen of the 1995 Constitution, through which the Inspectorate of Government has now been constitutionalized. Article 223 establishes the Inspectorate and Article 225 spells out its functions which include, the promotion and fostering of strict adherence to the rule of law, the elimination of corruption and abuse of authority, the promotion of good governance and the stimulation of public awareness about the values of constitutionalism.<sup>107</sup> It has been opined that these areas “involve human rights issues and therefore the Inspectorate has the potential of complementing the work of the Human Rights Commission.”<sup>108</sup>

There is no doubt that good governance is essential for effective promotion of human rights.<sup>109</sup>

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.<sup>110</sup>

### 3.6 Achievements by the stake holders

For the last two decades, northern Uganda has been devastated by an armed conflict between the Lord's Resistance Army (LRA) and the Government of Uganda. The conflict led to human rights violations and massive population displacement in northern Uganda. Millions of civilians were forced to abandon their homes and farms to lead a life of confinement in congested government-designated camps located in northern Uganda. At the height of the displacement, Uganda's IDP population numbered some two million- the largest in the world.<sup>111</sup>

<sup>105</sup> Section 7(1). Ibid

<sup>106</sup> Section 7(1)(a). Ibid

<sup>107</sup> Article 225(1) of the 1995 constitution of the Republic of Uganda

<sup>108</sup> *The domestic protection and promotion of human rights* (n 1) 479.

<sup>109</sup> *The domestic protection and promotion of human rights* (n 1) 480

<sup>110</sup> Article 42 of the 1995 constitution of the Republic of Uganda

<sup>111</sup> UNHCR Evaluation and Policy Analysis Unit. Consistent and Predictable Response to IDP. A Review of UNHCR Decision Making Processes. By Vanessa Mattar and Paul White.

To respond effectively and in a coordinated fashion to the IDP situation, an inter-agency collaborative approach was implemented by the Inter-Agency Standing Committee (IASC).

This “cluster” approach requires various complementary agencies be part of a coordinated response to IDP situations.<sup>112</sup>

By the end of 2006, the Protection Cluster had ascertained the salient durable solution gaps and challenges afflicting IDPs, *inter alia*, insecurity; restricted freedom of movement; limited access to property, farmland and prospects for sustainable livelihood; congested and squalid camp conditions with poor access to basic services, justice and civilian policing; and high incidence of GBV and child protection cases. Circumstances had conspired to create a traumatized, vulnerable and dependent population.

In line with IASC global guidance, the Uganda Protection Cluster established in 2006 three sub-clusters focused on technical and operational areas of responsibilities requiring dedicated resources and attention: 1) Gender-based violence sub-cluster Human Rights and Rule of Law Sub-cluster (led by OHCHR); and Child Protection sub-cluster. These three sub-clusters have been reporting to the overall Protection Cluster.<sup>113</sup>

The Protection Cluster set itself three broad strategic objectives to guide its interventions: (i) the effective protection of IDPs, (ii) effective and efficient delivery of appropriate assistance to camp-based populations, and (iii) advocate for freedom of movement to enable IDPs to pursue sustainable durable solutions.

The Protection Cluster immediately set about leading, coordinating and advocating for IDPs freedom to choose the appropriate durable solution, notably, voluntary return to area of origin, relocation to a third area, or local integration. In order to ensure a coordinated and consistent approach to the return and reintegration processes, Protection Cluster members ensured IDPs were informed about their rights as per the National Policy for Internally Displaced Persons<sup>114</sup> and the Guiding Principles on Internal Displacement, which emphasize consultation with and

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<sup>112</sup> Ibid

<sup>113</sup> Documentation produced by the 3 sub-clusters from 2006-2009 (including strategies, reports and training materials can be directly requested from OHCHR, UNFPA and UNICEF.

<sup>114</sup> The National Policy for Internally Displaced Persons “commits the government of Uganda to promote the right of IDPs to return voluntarily, in safety and dignity, to their homes or places of habitual residence or to resettle voluntarily in another part of the country.



participation of IDPs, particularly women and children, in decisions that impact on their current and future welfare.<sup>115</sup>

Concerted efforts to find durable solutions for the IDPs received a major boost in August 2006 with the signing of the Cessation of Hostilities Agreement between the Government of Uganda and LRA/M. Notable and lasting improvement in the security environment coupled with Government finally granting IDPs freedom to move and choose a durable solution, led to massive returns. To date, 87 *per cent* of IDPs are reported as either having returned or reintegrating in their chosen place of return.<sup>116</sup> the preferred durable solution of a majority of IDPs has been to return to their villages of origin.

To guide actions directed towards supporting IDPs and host communities overcome situations directly linked to their displacement, the Framework for Durable Solutions was introduced in Uganda in 2008; with the aim of assisting various actors, ranging from branches of government to civil society, understand the process and related policy and strategic actions required to overcome displacement-related conditions.<sup>117</sup>

This phased, transition strategy, with substantive contributions from the Uganda Human Rights Commission (UHRC) and Protection Cluster members, aims to support the UHRC to effectively lead, coordinate and advocate for sustainable durable solutions to remaining IDPs, in particular Extremely Vulnerable Individuals/Persons with Specific Needs (EVI/PSNs), and

Yet it is important to be able to say when internal displacement has ended so that governments and the international community can target limited resources, and also to remove the stigma of the label from the people involved. When, then, can it be said that internal displacement has ended and a durable solution for IDPs has been found? To answer this question, The Brookings Institution University of Bern Project on Internal Displacement and the Institute for the Study of International Migration at Georgetown University, at the request of the Representative of the U.N. Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, undertook an extensive inquiry. The result of this process was the creation of the *Framework for*

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<sup>115</sup> Policy NO, 3.4 (6)

<sup>116</sup> IASC Working Group Kampala, *Update on IDP Movements (September 2009)*

<sup>117</sup> IDPs do not have a special legal status that ends at a particular time.

*Durable Solutions*, which shows that the ending of displacement occurs not at one point in time but is a gradual process.<sup>118</sup>

The Commission had a two-year corporate plan (2009-2011) outlining activities and programs that reflect its mandate and functions. The Commission's vision in the corporate plan was:

To empower the people of Uganda to protect and promote human rights, civic obligations and constitutionalism.

Assist in building a society in which all human rights and civic obligations are understood and observed by all within a culture of constitutionalism.

To this end, the Uganda Human Rights Commission has been involved in the promotion and protection of the IDPs' human rights since the establishment of the Gulu regional office in 1999. The Commission monitors human rights concerns in IDP camps and chairs the District Human Rights Promotion and Protection Sub-Committee (DHRPP). DHRPP serves as a conduit for information sharing between national and district structures. UHRC was also consulted during the National IDP Policy drafting process. However, given constraints in human resources, equipment and finances, the Commission has been constrained in fully carrying out its constitutional mandate.

### **3.7 Conclusion**

In many States, the obligation to respect, protect and implement human rights is generally fulfilled effectively; and in almost every State there are, at the very least, individuals within the security and civilian authorities who work very hard to protect human rights and who themselves fulfill the role of human rights defenders. In some cases, police officers, judges, civilian members of the State bureaucracy and politicians have placed themselves at great personal risk so as to protect the human rights of others, to support justice and to end corruption.

Similarly, although some private actors are perpetrators of violations against human rights defenders, others provide fundamental support in addressing such acts. Transnational corporations can be a powerful force in assuring that rights are respected, and some corporations

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<sup>118</sup> <http://www.brookings.edu/reports/2007/09displacementends.aspx>.



have adopted good employment policies and contributed to the economic and social rejuvenation of the communities in which they are established. Religious leaders have often been at the forefront of action to defend human rights and human rights defenders themselves.

In some cases, there may be no clear-cut separation between positive and negative non-State actors. Business interests may contribute positively to some human rights but have a negative impact on others. It is essential, therefore, to look at how businesses and other actors respond to human rights defenders who draw their attention to the negative human rights impact of their activities.

As mentioned earlier, the institutional protection and promotion of human rights in Uganda is not confined to the courts, the Human Rights Commission and the Inspectorate of Government. There are a few other institutions that play indirect but important roles. It was also mentioned earlier that the effective enjoyment or enforcement of human rights largely depends on the level of public awareness of and perceptions towards such rights and the mechanisms and institutions through which to enforce them. It is to that end and against that background that I conducted a survey aimed at seeking information on public knowledge or awareness of the rights in the constitution, violations or protection of such rights, and awareness and perceptions regarding human rights institutions. What follows is an analysis of the results of that survey.

It is illegal to use information obtained by torture in a court case.

This crime can give 2 years' imprisonment or a fine of up to nine hundred sixty thousand shillings, or both.

The Chief Magistrates Court of Uganda can try cases of torture anywhere the crime has been committed, both inside and outside of Uganda. Any person living in Uganda can also be tried for torture, even if they are not Ugandan citizens, with the permission of the Director of Public Prosecutions.

The Amnesty law cannot be used to forgive or pardon a person accused of torture.<sup>119</sup>

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<sup>119</sup> Simplified Anti Torture Law inside pages' pdf

## CHAPTER FOUR

### WEAKNESSES OF THE LEGAL FRAME WORK GOVERNING HUMANA RIGHTS IN UGANDA

#### 4.0 Introduction

This chapter analyses the weakness of the legal frame governing Human Rights, this will cover the loopholes in the legislation and weaknesses in the enforcement of the available legal frame on all levels.

#### 4.1 Content on Legal frame work weaknesses

In some instances, human rights defenders are the object of criminal or other charges leading to prosecution and conviction. Peaceful demonstrations, lodging an official complaint against ill-treatment by police, participation in a meeting of indigenous rights activists or unfurling a banner commemorating victims of human rights violations have all led to prosecution on charges as varied as bribery, public disturbance and hooliganism. Court sentences in these cases have included long terms of imprisonment, forcible commitment to psychiatric institutions and "reeducation through labour".

Harassment of human rights defenders is commonplace and often goes unreported. It is almost always committed by authorities and can involve a wide variety of circumstances. Human rights defenders are kept under surveillance and have their telephone lines cut or tapped. They have their travel and identity documents confiscated, preventing them from going abroad to address human rights forums. Human rights lawyers have been threatened with disbarment or placed under investigation. Defenders have suffered administrative harassment, for example being forced to pay heavy fines for trivial administrative transgressions or to report repeatedly over extended periods to an administrative office for no clear reason.

Judges have been removed from presiding over particular cases or have been suddenly transferred from one jurisdiction to another, requiring the whole family to move to another part of the country.

Human rights defenders have been the victims of defamation campaigns, with slanderous allegations appearing in State-controlled media attacking their integrity and morals. Complaints have been fabricated to discredit independent non-governmental organizations and journalists exposing human rights abuses. Defenders and their work have been publicly misrepresented, being described as, among other things, terrorists, rebels, subversives or actors for opposition political parties. State authorities and State media have equated human rights defenders with the persons whose rights they seek to protect; for example, defenders acting in support of the rights of persons from armed opposition groups have themselves been described as being affiliated to those groups.

Policies, legislation and procedures described as "security" measures are sometimes applied in such a way as to restrict the work of human rights defenders and sometimes target the defenders themselves. Under the pretext of security reasons, human rights defenders have been banned from leaving their towns, and police and other members of security forces have summoned defenders to their offices, intimidated them and ordered the suspension of all their human rights activities. Defenders have been prosecuted and convicted under vague security legislation and condemned to harsh sentences of imprisonment.

In addition to violations targeting individuals, there are clear trends illustrating a strategy, in some States, of restricting the environment in which human rights defenders operate. Organizations are closed down under the slightest of pretexts; sources of funding are cut off or inappropriately limited; and efforts to register an organization with a human rights mandate are delayed by intentional bureaucracy. State authorities obstruct the holding of meetings between human rights defenders and prevent defenders from travelling to investigate human rights concerns.



The enactment and enforcement of laws curtailing the legitimate exercise and enjoyment of the rights to freedom of opinion and expression, religious belief, association and movement, such as laws on registration and regulation of the activities of non-governmental organizations, or legislation banning or hindering the receipt of foreign funds for human rights activities, have all been used to harass and obstruct the work of human rights defenders.

Some efforts to hinder the work of human rights defenders have focused on their place or means of work. The offices and/or homes of defenders are the subject of attacks, burglary and unauthorized searches.

Premises from which human rights defenders operate have been closed by authorities, and defenders have had their bank accounts frozen. Their equipment and files, including computers, documents, photographs and diskettes, have been stolen or confiscated. Access to the Internet and international e-mail facilities has been restricted or prevented altogether.

All the above violations of the rights of human rights defenders have been compounded by a culture of impunity which exists in many countries in relation to acts committed against human rights defenders.

It is debatable whether the Inspectorate of Government has been successful in executing its mandate. It is well known, however, that the Inspectorate is significantly under-funded and understaffed and that its efforts are often frustrated by high-ranking government officials who are potential targets of the Inspectorate's investigations. Be that as it may, to the extent that the Inspectorate has the potential for building good governance through improving administration, it does play, and will continue to play, an important role in the protection of human rights.<sup>120</sup>

#### 4.2 Conclusions

It is clear that though the Legal frame work is rich, but there are many Loopholes in the enforcement of the Law being that some people or state holders who have to enforce the law are the Number one perpetrators in the violations of Human Rights for instances participation of Police in politics and Land Evictions around Uganda.

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<sup>120</sup> See 'Inspector-General of Government' <[http://www.igg.go.ug/press\\_details.php?id=62](http://www.igg.go.ug/press_details.php?id=62)>accessed 14 April 2005.



## **CHAPTER FIVE**

### **RECOMMENDATIONS AND CONCLUSIONS**

#### **5.1 Recommendation**

##### **PARLIAMENT**

Ensure coherence between Uganda's international obligations and the national legislation and practices which address the prevention and prohibition of torture, the needs of victims, and the protection of witnesses; Support the implementation of the Prevention and Prohibition of Torture Act amongst members of the legislature and executive arms of government and other stakeholders; Ensure increased funding to cater for the welfare of law enforcement officers;

Encourage Uganda's ratification of the Optional Protocol to the Convention against Torture (OPCAT) and the establishment of the National Preventive Mechanism (NPM); Ensure adequate resources, capacity building of security agencies to enable the effectively implement the Act; Enact the Witness Protection legislation; Monitor places of detention through visits of its Committee on Human Rights to all places where people are deprived of their liberty.

##### **DIRECTORATE OF PUBLIC PROSECUTIONS (DPP)**

Take concrete steps to ensure the full implementation of anti-torture legislation; Ensure that a prompt and impartial investigation is commenced wherever there is reasonable ground to believe that an act of torture has been committed; Prosecute criminal cases related to torture in the country; Ensure that all evidence which prosecutors know, or believe on reasonable grounds, to have been obtained by torture, be excluded from the criminal process.

##### **UGANDA POLICE FORCE**

Enforce the Prevention and Prohibition of Torture Act by conducting effective, independent, prompt, transparent and impartial investigations into all allegations of torture in order to bring perpetrators to justice and to end impunity. Enforce the Prevention and Prohibition of Torture

Act and prevent or detect crimes of torture in society; Recruit additional medical doctors and police surgeons; Lobby for increased resources, facilitation and sustainable funding to acquire the necessary tools for effective investigations such as forensic equipment, finger print data bases for all suspected criminals, lie detectors, motor vehicles and motorcycles, and other investigative equipment; Train and build capacity of the police forces in effective investigations skills in order to avoid resorting to torture as a means of obtaining information from suspects; Develop standard training manuals or guidelines on the Prohibition and Prevention of torture for the police force; Conduct on-going trainings on the prohibition and prevention of torture for serving police officers; Integrate a module on prohibition and prevention of torture in their initial training curriculum.

#### **UGANDA PRISONS SERVICES**

Take concrete steps to ensure the full implementation of anti-torture legislation; Review the working hours and working conditions inmates; Develop a welfare policy for the UPDF officers; Conduct on-going trainings on the prohibition and prevention of torture for serving prison officers; Integrate a module on prohibition and prevention of torture in their initial training curriculum.

#### **UGANDA PEOPLES DEFENCE FORCES**

Train UPDF officers on effective investigations skills; Take concrete steps to ensure the full implementation of anti-torture legislation; Develop a welfare policy for the UPDF officers; Conduct on-going trainings on the prohibition and prevention of torture for serving UPDF officers; Integrate a module on the prohibition and prevention of torture in their initial training curriculum.

#### **MINISTRY OF JUSTICE: - FIRST PARLIAMENTARY COUNSEL**

Develop Regulations to operationalize the Act; Produce simplified version of the Act; Provide legal aid for victims of torture and other affected parties; Enact the witness protection legislation. Provide reports on the progress of the implementation of the Act.

## **MINISTRY OF FOREIGN AFFAIRS**

Ratify the Optional Protocol to the United Nations Convention against Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT)

## **MINISTRY OF INTERNAL AFFAIRS**

Take urgent steps to ratify and implement the Optional Protocol to the United Nations Convention against Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT); Develop and implement National Action Plans against torture and secure sufficient funding to support these plans; Ensure the effective dissemination of the anti-torture legislation to all stakeholders and the general public.

## **MINISTRY OF FINANCE PLANNING AND ECONOMIC DEVELOPMENT**

Allocate adequate resources to security agencies to enable the effective implementation of the Act. Adequately fund any other institutions responsible for the implementation of the newly enacted Prevention and Prohibition of the Torture Law.

## **JUDICIARY**

Take concrete steps to ensure the full implementation of anti-torture legislation including systematic refusal of any evidence obtained through torture; Develop jurisprudence, dynamic interpretation and use of international and regional standards such as the Convention against Torture (CAT) and the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (RIG) in their decisions. Refuse evidence obtained through torture in line with international and regional standards. Expeditiously hear cases related to torture.

## **UGANDA LAW REFORM COMMISSION**

Review and reform, if necessary, existing legislation and policies to conform to the Act.



## UGANDA HUMAN RIGHTS COMMISSION

### *Coordination role*

Coordinate among institutions to avoid duplicity in regard to the implementation of this roadmap; Advise on reform of institutional practices, legislation and policies on whether they are in conformity with the Act; Produce annual reports on the progress of prevention of torture and implementation of the anti-torture law. Convene a meeting with development partners and other relevant actors to share this roadmap or plan of action; Convene, twice a year, a meeting of relevant stakeholders to share information and discuss the progress on the implementation of the Prevention and Prohibition of Torture Act. Appoint a focal point person on prevention and prohibition of torture.

### *Investigative and quasi-judiciary role*

Conduct effective, independent, prompt, transparent and impartial investigations into all allegations of torture in order to bring perpetrators to justice and to end impunity, as well as to ensure that public authorities are held accountable for their actions, in order to build public confidence in the rule of law. Expeditiously hear cases related to torture and provide appropriate remedies to victims.

### *Training and production of tools*

Ensure the effective dissemination of the anti-torture legislation to all stakeholders and the general public. Advocate for Training academies to integrate human rights and particularly a module on Prevention and Prohibition of torture within their curriculum.

Develop an interpretation guide in collaboration with the Ministry of Justice. Facilitate/Promote the empowerment of law enforcement agencies on effective investigations skills and development of standard training manuals and guidelines for the various target groups;

Develop a compendium of laws relevant to prohibition and prevention of torture which would include the constitution, penal code Act, the Prevention and Prohibition of torture Act and other laws as may be selected;

Produce easy to read pocket books of the Act for law enforcement agencies. The pocket books should be in English and Swahili with explanations for each section of the Act in easy to read



language; Train on the Istanbul Protocol for the medical personnel and dialogue with the Ministry of health on how best to operationalize the Act; Initiate on-going trainings on the Prevention and Prohibition of Torture Act for relevant practitioners including the Judiciary, Police, Army, Prosecutors, Prisons services, Lawyers etc.

### *Creating awareness*

Create awareness on prohibition and prevention of torture: -Public Prosecutors (DPP), Police Force (UPF), Prisons services (UPS), Military (UPDF), Members of Parliament, Judicial Officers (e.g. through Judicial Studies Institute, Annual Judges conference), Law Students, Legal practitioners (e.g. CLE Points, ULS), Medical practitioners, primary and secondary school children and the General Public;

Ensure wider accessibility of the Prevention and Prohibition of Torture Act to different government institutions, educational institutions, law enforcement agents, and other professional bodies. This should include the translation, simplification and the use of all creative strategies to increase the coverage and reach of the document.

Create public awareness through electronic and print media, spot messages, talk-shows, music, drama, posters, workshops, etc.

### *Advocacy*

Advocate for resources, facilitation and sustainable funding for law enforcement agencies to acquire the necessary tools for effective investigations such as forensic equipment, finger print data base for all suspected criminals, lie detectors, motor vehicles and motorcycles, etc.; Lobby for the ratification and effective implementation of the OPCAT; Provide technical support, advocacy, direct support services and mobilize communities to prevent torture and rehabilitate torture victims; Review the Act and advocate for any proposed amendments

### *Monitoring places of detention*

Regularly monitor and undertake unannounced visits to all places of detention where people are deprived of their liberty. Develop and keep an updated database/inventory of all places of detention within their respective jurisdictions including their locations.

## CIVIL SOCIETY ORGANIZATIONS, COALITION AGAINST TORTURE

Ensure wider accessibility of the Prevention and Prohibition of Torture Act to different government institutions, educational institutions, law enforcement agencies, and other professional bodies. This should include the translation, simplification and the use of all creative strategies to increase the coverage and reach of the document. Provide technical support, research, advocacy, direct support services, and mobilize communities to prevent torture and rehabilitate torture victims. Take appropriate measures to support the work related to the implementation of the Act by the Police, UHRC, Judiciary and other relevant institutions aimed at the prevention of torture and rehabilitation of torture victims. Support the effective dissemination of the anti-torture legislation to all stakeholders and the general public;

Support in the development of a compendium of laws which include the constitution, penal code Act, the Prevention and Prohibition of torture Act and other laws as may be selected; Produce easy to read pocket books of the Act for law enforcement agencies. The pocket books should be in English and Swahili with explanations for each section of the Act in easy to read language; Training on the Istanbul Protocol for the medical personnel and dialogue with the Ministry of health on how best to operationalize the Act; Create public awareness through electronic and print media, spot messages, talk-shows, music, drama, posters, workshops, etc. Advocate for resources, facilitation and sustainable funding for law enforcement agencies to acquire the necessary tools for effective investigations such as forensic equipment, finger print data base for all suspected criminals, lie detectors, motor vehicles and motorcycles, etc.; Lobby for the ratification and effective implementation of the OPCAT;

### 5.2 Conclusion

Several conclusions can be drawn from the results of the study. First, in Uganda there is a high level of public awareness of the Constitution and the human rights it contains. Although that awareness is generally widespread (both in urban and rural areas), it is mainly higher among males than it is among females. This is why, it has been opined, in Uganda, as in many other African countries, women constitute the majority of the victims of human rights violations.<sup>121</sup> Women are routinely subjected to violence, denied the right to own property and generally discriminated against.

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<sup>121</sup> L Sewanyana and T Awori, 'Uganda: The Long and Uncertain Road to Democracy' in A Ahmed An Naim (ed), *Human Rights Under African Constitutions* (University of Pennsylvania Press, Philadelphia 2003) 415.

This perhaps explains why many respondents thought the Government could and should have done more to make the whole population aware of the human rights in the Constitution, despite the fact that the level of human rights public awareness is already quite high.

Secondly, that human rights violation take place more in rural areas than in urban areas. This is not surprising considering that Uganda's population is largely rural, with an estimated 90 percent of the population living in rural areas and over 60 percent of these living below the poverty line.<sup>122</sup> The significance of this is that poverty is in itself not only a denial of human rights, but it also erodes or nullifies the realization of both socio-economic rights and civil and political rights. The other view is that although the government is the main culprit of human rights violations, the main causes of such violations are social and economic inequalities and the lack of access to basic social services.<sup>123</sup>

In the specific context of civil and political rights it is clear that certain important rights, such as the right to equality and freedom of expression, are not well protected. The results of the survey, however, show divergent views on the death penalty, participation in political activity and the rights of prisoners. What is quite clear though, is that the majority of Ugandans feel that the right to freedom of religion is well protected.

There is little doubt that many Ugandans are not happy with the level of protection of their socio-economic rights. It ought to be remembered that only a few of these rights are incorporated in the Bill of Rights section of the Constitution, the rest being included in the section on National Objectives and Principles of State Policy. It has actually been suggested that the Bill of Rights section of the

Constitution needs to be redrafted "in order to incorporate these rights which are fundamental to the full existence of a whole human being."<sup>70</sup><sup>124</sup> According to Oloka Onyango In recognizing and incorporating these rights in an amended constitution, the South African example can serve

<sup>122</sup> *Human Rights Under African Constitutions* (n 67) 387.

<sup>123</sup> See JC Mubangizi, 'Know Your Rights: Exploring the Connections between Human Rights and Poverty Reduction with Specific Reference to South Africa', (2005) 21 *South African Journal on Human Rights* 32, 33.

<sup>124</sup> *Economic and Social Human Rights* (n 51) 47.

as inspiration. This is with respect to the formulation of these rights, as well as in relation to the articulation of the nature of the state's obligation in ensuring their progressive realization.<sup>125</sup>

In so far as human rights institutions are concerned, it is clear that there is a generally high level of awareness of the existence of such institutions and the work they do. However, the same cannot be said about the knowledge of the mechanisms and channels for approaching these institutions. Moreover, although the Human Rights Commission and the Inspectorate General of Government play an important role in human rights protection, it ought to be remembered that those institutions are only quasi-judicial bodies and their ability to enforce human rights is severely limited. The courts, particularly the Constitutional Court, should be better placed to play this role. However, the reality is that "the few cases that have been brought before the Constitutional Court to date have been brought by powerful elites, who are seeking through the courts to protect their own interests."<sup>126</sup>

Compared to the years of Idi Amin and Milton Obote, there is no doubt that there has been some improvement in Uganda's human rights record over the last decade or so. There is also remarkable improvement in the institutional mechanisms through which human rights violations can be redressed. These are facts of historical reality that are not necessarily borne out by the findings of this survey. Rather, what the results of the survey show is that human rights violations still abound.

There are other factors relevant to human rights protection that fall outside the parameters of this study. The continuing war in northern Uganda and the stubborn insistence of the NRM to stay in power no matter what, do not auger well for the future of human rights protection in that country. As mentioned earlier, in

July 2005 Ugandans voted in a national referendum to approve a multi-party system. In August 2005, Parliament voted to change the constitution to lift presidential term limits. The elimination of term limits cleared the way for Museveni to run again in 2006 despite significant controversy and mounting allegations of human rights abuses and the most recent of all the lifting of the Age Limit in 2018 also to pave away for the NRM Government. There are several other challenges,

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<sup>125</sup> 71 Ibid.

<sup>126</sup> See *The Long and Uncertain Road to Democracy* (n 67) 417.



some of which have been highlighted in this study. Any attempts to address these challenges must take advantage of the opportunities offered by the constitutional framework. Tampering with this framework as the present government is doing only serves the selfish political interests of a few and can only be a recipe for disaster. Ugandans do not need that.

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*The National Objectives and Directive Principles of State Policy are a set of objectives set forth in the preamble of the Constitution which are supposed to guide all organs of the State or non-state actors in applying or interpreting the Constitution or any other law*

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