

**THE ADMINISTRATION OF JUSTICE BY HUMAN**

**RIGHT ADMINISTRATIVE TRIBUNALS**

**A CASE STUDY-KAMPALA DISTRICT**

**BY**

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### **APPROVAL**

This dissertation on administration of justice by human rights administrative tribunals.

The undersigned certifies that he has read and hereby recommends for acceptance by the Kampala International University a dissertation titled administration of justice by human right administrative tribunals in Uganda in partial fulfilment of the requirement of award of a Diploma in laws.

Signed

.....  


MULALIRA FAISAL UMAR  
(SUPERVISOR)

.....  


DATE

### DECLARATION

I, TWINOMUKISA DAMASEN, do hereby declare that the work presented in this dissertation is my own and that it has never been submitted in any institution whatsoever for the award of a diploma in law.

Signed

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25<sup>th</sup> / 09 / 2012  
...../...../.....

TWINOMUKISA DAMASEN

date

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Supervisor (MULALIRA FAISAL UMAR)

## **DEDICATION**

I, dedicate this research dissertation to my beloved parents Mr. and Mrs Rwomushana, and to my brother in law Mr Nzaba for their parental and financial support in my academic life and for believing in me when no one could.

## **ACKNOWLEDGEMENT**

I owe my sincere appreciation to people that have financially, psychologically and academically contributed to my academic career especially in the conducting of this research.

Above all, I acknowledge my supervisor MULALIRA FAISAL who endlessly corrected and guided me. I appreciate your criticisms for their contribution in the accomplishment of this study. I also wish to acknowledge my lecturers especially those from the faculty of law for the professionalism they imparted in me without which, the accomplishment of this study would have not been possible. Thanks a great deal.

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Finally, I extend my sincere gratitude to all my respondents, for giving me their time and providing me with vital information for the successful completion of this work. May the good Lord bless you.

## **LIST OF STATUTES**

1. The constitution of the republic of Uganda 1995,
2. Uganda Human Rights commissions Act, Cap

## LIST OF ABBREVIATIONS

ACHPR-	African Charter on Human rights and Peoples Right.
ARU	Arua
CID-	Criminal Investigation Department
CPS –	Central Police Station
CSO-	Civil Society Organisation
CTRL	Central
D/C-	Detective Constable
DR-	Doctor
FPT	Fortportal
GLU	Gulu
ICCPR-	International Convention on Civil And Political Rights
IGP-	Inspector General of Police
IUDHR-	International Universal Declaration of Human Rights
JJA	Jinja
LVEMP-	Lake Victorial Environment Management Project
MBR	Mbarara
MR-	Mister
MRT	Moroto
MSK	Masaka
NGO-	Non Government Organisation
SRT	Sorot
UHRC-	Uganda Human Rights Commission
UN-	United Nations
VCCU –	Violent Crime Crack Unit

## TABLE OF CONTENTS

<b>APPROVAL .....</b>	<b>i</b>
<b>DECLARATION .....</b>	<b>ii</b>
<b>DEDICATION .....</b>	<b>iii</b>
<b>ACKNOWLEDGEMENT .....</b>	<b>iv</b>
<b>LIST OF STATUTES .....</b>	<b>v</b>
LIST OF ABBREVIATIONS .....	vi
TABLE OF CONTENTS.....	vii
 <b>CHAPTER ONE .....</b>	 <b>1</b>
1.1 INTRODUCTION.....	1
1.2 BACKGROUND TO THE STUDY .....	1
1.3 THE STATEMENT OF THE PROBLEM.....	2
1.4 THE PURPOSE OF THE STUDY.....	3
1.5 OBJECTIVES TO THE STUDY.....	3
1.5.1 GENERAL OBJECTIVES.....	3
1.5.2 SPECIFIC OBJECTIVES .....	3
1.6 RESEARCH QUESTIONS .....	3
1.7 RESEARCH HYPOTHESIS .....	4
1.8 THE SCOPE OF THE STUDY .....	4
1.8.1 GEOGRAPHICAL SCOPE.....	4
1.8.2 SUBJECT SCOPE.....	4
1.8.3 TIME FRAME.....	4
1.9 DESCRIPTION OF THE STUDY AREA .....	4
1.10 SIGNIFICANCE OF THE STUDY.....	5
1.11 DEFINITIONS OF KEY TERMS .....	5
1.12 LITERATURE REVIEW .....	6
1.13 Synopsis .....	6
1.14 RESEARCH METHODOLOGY .....	7
1.15 DATA COLLECTION AND REPRESENTATION METHODS .....	7
 <b>CHAPTER TWO.....</b>	 <b>8</b>
2.1 PREAMBLE (REFLECTION ON THE DEFINITION OF A “TRIBUNAL”).....	8
2.2 HUMAN RIGHT TRIBUNAL PROCEDURE.....	9
2.3 LEGAL REPRESENTATION AT A TRIBUNAL.....	10



2.4 REMEDIES GRANTED BY HUMAN RIGHTS TRIBUNALS.....	10
2.5 THE ROLES PLAYED BY HUMAN RIGHTS TRIBUNALS .....	11
2.6 RULINGS AND DECISIONS OF THE UGANDA HUMAN RIGHTS COMMISSION- TRIBUNAL HOLDEN AT KAMPALA.....	12
2.7 ISSUES.....	13
2.8 RESOLUTION OF THE ABOVE ISSUES BY UHRC-TRIBUNALS .....	13
2.9 RULING .....	14
ORDER.....	15
2.10 DECISION .....	15
2.11 ISSUES FOR DETERMINATION BY THE UHRC-TRIBUNAL , THE TRIBUNAL WAS EXPECTED TO DECIDE ON THE FOLLOWING ISSUES OF CONTENTION.....	16
2.12 APPEAL.....	16
2.14 RESOLUTION OF COMPLAINTS THROUGH THE HUMAN RIGHTS TRIBUNAL PROCESS.....	17
2.15 TYPES OF HUMAN RIGHT ADMINISTRATIVE TRIBUNALS AND THEIR EXAMPLES .....	21
2.16 FUNCTION OF THE UHRC- TRIBUNAL .....	22
2.17 POWERS OF UHRC-TRIBUNAL- TRIBUNAL.....	23
2.18 SPECIFIC UNDERSTANDING OF HUMAN RIGHTS.....	23
2.19 CATEGORIES OF HUMAN RIGHTS AND THEIR EXAMPLES.....	24
2.20 CATEGORIES OF HUMAN RIGHTS VIOLATIONS PROTECTED BY THE UHRC-TRIBUNAL IN ENSURING ADMINISTRATION OF JUSTICE .....	25
2.21 INSTANCES OF VIOLATIONS OF THIS RIGHT INCLUDE .....	25
2.22 EXAMPLE OF VIOLATION OF THE ABOVE RIGHT .....	26
2.22.1 Unlawful searches;.....	26
2.22.2 Unfair hearing; .....	26
2.22.3 Unlawful/ unfair terminations from employment: .....	27
2.22.4 Unreasonable / no worker's compensation:.....	27
<b>CHAPTER THREE.....</b>	<b>28</b>
3.1 INTERNATIONAL AND REGIONAL LEGAL FRAME WORK ON ACCESS TO JUSTICE.....	28
3.2 Conclusion.....	28
<b>CHAPTER FOUR .....</b>	<b>30</b>
4.1 CHALLENGES BY THE UHRC-TRIBUNAL TRIBUNAL IN THE COMPLAINTS HANDLING PROCESS.....	30

4.2 INTRODUCTION TO CHALLENGES.....30

4.3 RECOMMENDATIONS .....32

4.4 CONCLUSION.....34

## **CHAPTER ONE**

### **1.1 INTRODUCTION**

The research topic is administration of justice by human right administrative tribunals in Kampala, Uganda. This will look at the background of the study, statement of the problem, the purpose of the study, objectives of the study, research question, hypothesis, the scope of the study, significance of the study, research methodology, bibliography as well as appendences.

The research will be carried out from UHRC-Tribunal in Kampala, Uganda.

### **1.2 BACKGROUND TO THE STUDY**

Administration of justice is entirely the function of judiciary. However, without the mandate of the people, the judiciary can not register success in its system.

It is upon this background that the constitution empowers people to join forces in the administration of justice.

The human right tribunals are a forum for the full realization of justice.

Administration of justice in Uganda is governed by the 1995 Uganda constitution<sup>1</sup> which provides that judicial power is derived from the people and shall be exercised by the courts established under the constitution in the name of the people and in the conformity with law and with the values, norms and aspiration of the people.

Most often, the law that creates the human right tribunals confers them with Quasi- judicial functions/ powers. However, the 1995 constitutions of the republic of Uganda caters for the people themselves to participate in the administration of justice. "Parliament shall make laws providing for the participation of the people in the administration of justice by the court<sup>2</sup>".

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<sup>1</sup> Article 126

<sup>2</sup> Article 127

This is what forms the core of advocacy groups both public and private to participate in the administration of justice at different levels to ensure that:-

- a) Justice is done to all people irrespective of their social or economic status,
- b) Adequate compensation is awarded to the victims of wrongs,
- c) Justice shall not be delayed,
- d) Reconciliation between or among parties is administered without undue regard to technicalities.

The key Human Right administrative tribunals are spread all over the country and in the context of this study, the UHRC-Tribunals are singled out as they stand out rightly to champion the course of justice to all. The emphasis in this study is mainly administration of justice although some activities characterize all, for instance UHRC-Tribunal takes into account certain violations of rights as a core concern of its operation.

It must also be mentioned that among the leading activities of the Human Right Tribunal, advocacy, public litigation and arbitration are the frontlines. Therefore, administration of justice by Human right tribunals is a concern of every right thinking citizens to acquaint them selves with the different aspects of the systems.

### **1.3 THE STATEMENT OF THE PROBLEM**

Administration of justice is a key instrument of human life since it transforms itself in to development determinate, life insurance for a general class of people, political well being of the society in terms of the rule of law and constitutionalism, a proper measure of people's welfare. This study intends to "scan through" the general overview of administration of justice, types of human rights tribunals, their role, types of rights violations entertained, challenges that are faced in their way of administering justice and the way forward. The need to provide answers to such questions is the basis of this research and constitutes the problem statements.

## **1.4 THE PURPOSE OF THE STUDY**

The purpose of this study is to explore how human rights administrative tribunals have been involved in the process of administration of justice.

## **1.5 OBJECTIVES TO THE STUDY**

### **1.5.1 GENERAL OBJECTIVES**

To examine the veracity of administration of justice by human rights administrative tribunals.

### **1.5.2 SPECIFIC OBJECTIVES**

To find out the procedures followed by Human rights tribunals in the administration of justice,

To explore what human rights are in relation to the administration of justice,

To identify the roles played by each selected tribunals in human right,

To assess the challenges faced by the human right tribunals,

To explore possible solutions adopted by the human right tribunals in relation to the challenges.

## **1.6 RESEARCH QUESTIONS**

Which human right administrative tribunals take part in the administration of justice?

What role do human right administrative tribunals play in the administration of justice?

What challenges do they face in the administration of justice?

How have these challenges been addressed?

## **1.7 RESEARCH HYPOTHESIS**

The 1995 constitution of the Republic of Uganda condemns injustices in the administration of justice by stating that all people are equal before the law and enjoy equal protection of the law. The government has created new laws and creation of human rights tribunals to promote administration of justice in Uganda.

## **1.8 THE SCOPE OF THE STUDY**

The study covers the period between 2004 to date which will enable the researcher to examine the administration of justice by human right tribunals in Kampala.

### **1.8.1 GEOGRAPHICAL SCOPE**

Geographically, the study was conducted in Kampala at the offices of Uganda Human Right Commission located on Buganda road.

### **1.8.2 SUBJECT SCOPE**

The study generally is focused on administration of justice with a special emphasis on the Human Rights administrative tribunals.

According to the study, the UHRC-Tribunal now boasts of many new regional offices including Masaka regional office.

### **1.8.3 TIME FRAME**

The researcher wrote his proposal between June and July 2012, after proposal writing, the researcher went a head to collect information from the field and complied it for presentation to his supervisor for approval.

## **1.9 DESCRIPTION OF THE STUDY AREA**

Kampala is the capital city of Uganda situated in the central region. Kampala district has got five administrative units which include, Kawempe, Kampala central, Rubaga, Makindye and Nakawa units.

According to the 2011 estimated population of Ugandan towns and cities; Kampala central population was 1,659,600 people.

Kampala has the highest number of human rights violation probably due to its high population.

### **1.10 SIGNIFICANCE OF THE STUDY**

The research will be helpful to administrative institutions of justice especially human right tribunals as a reference in perfecting administration of justice. Lawyers, legal advisers, academicians and future researchers will use it to identify the parts not covered by this research and hence provide them with basic future research.

It will also help human right tribunals as a guide in enforcing, implementing and evaluation/ analysis of legal cases.

Lastly, it will help in promoting, protecting and creating awareness of human rights.

### **1.11 DEFINITIONS OF KEY TERMS**

“Administration of justice” means according to Salmon derived it from the definition of law, as the rule recognized and acted upon by the court in the administration of justice, and here he considered that the imperative theory of law, and any definition of law which omit any reference to the ethical element are defective .The administration of justice therefore, means the maintenance of rights within a political community by means of the physical force of the statute<sup>3</sup>

“Justice”, according to Sir Altered Dinning, justice was defined as what the right mined member of the community, those who have the right spirit within their believe to be fair.

Tribunal means a body with judicial or quasi-judicial function set up by statute and existing outside the usual judicial or hierarchy of the courts of judicature.

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<sup>3</sup> A simple guide to the introduction of law by Machama Wandera Livingstone at page 84

### **1.12 LITERATURE REVIEW**

Administration of justice is a corner stone of the well being of every society world wide. Many countries have taken a keen interest yet a conscious approach to administration of justice.

The existence of justice to all people peddles an accumulation of equitable development employment, boom, considerable calculated welfare of masses and political stability among other transformations.

The up come of the constitution <sup>4</sup> established the U.H.R.C-Tribunal. Many Ugandans especially the marginalized, poor and illiterates have been assisted by the Uganda Human Rights Commission- Tribunal (U.H.R.C)

Most of the cases handled include land evictions, unlawful termination of employment, unlawful detentions, torture and among others.

Legal experts have pointed out that the establishment of human rights tribunals have raised the standards of administration of justice in Uganda.

However, the challenges faced by the tribunal range from economic-financial, political-social in nature. But the emphasis remains that their contributions are paramount and far reaching in the legal frame work of administration of justice.

### **1.13 Synopsis**

The study was focused on the human rights administrative tribunals in the administration of justice.

The study aimed at finding out the types of human rights tribunals, their roles, procedures, challenges and the way forward.

In all the study, it was observed that the tribunals have fertile ground for performance in administration of justice and the challenges can be overcome with much government moral and financial support.

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<sup>4</sup> 1995 constitution of the Republic of Uganda



#### **1.14 RESEARCH METHODOLOGY**

The main type of methodology used was holding discussions with a number of Human rights activists at Uganda Human Rights Commission. Its suffice to note that due to geographical limitation, time frame and the scarce financial resources, the field work surveys were minimal.

The research is heavily dependant on prior published documents such as text books, law reports and journals from libraries such as that of the law Development centre (LDC), Kampala International University and Uganda Human Rights Libraries. Information from the conventions on civil and political rights and the Universal Declaration of Human Rights.

The reasearch employed both qualitative and quantitative method of data collection.

I however chose to relay more on the qualitative research method since most of this research findings were from the libraries. They did not in totality apply the qualitative method. I realized that in order to come up with a more concrete study, both the qualitative and quantitative methods of research needed to be applied so as to achieve his goals of the study.

#### **1.15 DATA COLLECTION AND REPRESENTATION METHODS**

The data was gathered from published and republished works in libraries, law reports, and other literature.

The data collected was represented, analyzed and interpreted by use of tables, figures and graphs as appropriate. This enabled me to examine the administration of justice in Uganda, in pursuit of the hypothesis and accomplishing the study's objectives

## CHAPTER TWO

### 2.1 PREAMBLE (REFLECTION ON THE DEFINITION OF A “TRIBUNAL”)

A tribunal is a person or group of people who have the power to adjudicate over disputes.

Administrative tribunals are bodies with quasi-judicial power and it handles matters related to social, political, and economic sector with power of administrative (quasi-judicial) to receive and adjudicate over disputes related to that sector. Tribunals are therefore specialised courts which are restricted to particular disputes.

According to Machama Wandera Livingstone; “A simple guide to the introduction of law” at page 84, defined a tribunal as the body with judicial or quasi-judicial as the body up by status and existing outside the usual judicial or hierarchy of the courts of judicature set up for three purposes namely:-

- a) To receive complaints of individuals amongst their government.
- b) To entertain disputes between individuals and to provide quasi-judicial remedies between or amongst the parties in a dispute.

Human Rights Administrative tribunal is one of the example of Administrative Tribunals which falls under the category of the above definition. In relation to the social administration of justice, they take extreme centre stage in promoting and protecting human rights concerns in administrative functions of their offices and arbitration roles through their tribunal formulations. However, matters that require arbitrating are referred to the ordinary courts.

To be effective in the administration of justice, the 1995 constitution<sup>5</sup>, establishes the Uganda Human Rights Commission as a tribunal with powers of court (quasi-judicial powers).

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<sup>5</sup> Article 53

In effectively dispensing its functions under the 1995 constitution<sup>6</sup> of the Republic of Uganda, the tribunal has dual roles which includes that of an administrative /advocacy body and that of quasi judicial constitution.

## **2.2 HUMAN RIGHT TRIBUNAL PROCEDURE**

The human rights tribunal procedure compared with that in ordinary, courts of law.

The human rights tribunals are semi-formal in character and are conducted to afford the parties a chance to present evidence to an impartial quasi-judicial tribunal charged with the responsibility of deciding the merits of the matter.

At the hearing, the moral rules of evidence applicable in the courts are relaxed in the interests of efficiency and parties. This is done without sacrificing principles of natural justice and the procedural fairness which guides ordinary administrative tribunals. For example giving each party the chances to be heard before any decision is taken. One of the cardinal aims for the establishment of human rights tribunals to provide a fair and expeditious redress process of human rights complaints.

This purpose would be the wanted if the human right tribunals were to resort to strict adherence of formal rules of procedure and rules of evidence which is obtained in formal courts of law.

A properly conducted hearing of the human right administrative tribunal under the Uganda human rights commission Act always comply with the rules of natural justice and procedural fairness with fundamental considerations that a miscarriage of justice doesn't occur. Therefore , the human right tribunal hearing is a semi-formal process for obtaining relevant information to the commission in resolving complaints before it.

The hearing is essentially a forum for gathering relevant resolutions. However, during the human right tribunal process, references have to be

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<sup>6</sup> Article 52 And 53

made to the Uganda human rights commission Act, the constitution of the Republic of Uganda<sup>7</sup>, the Uganda Human Rights Commission (Procedure) Rules , the civil procedure Act, the evidence Act, ratified international and regional instruments like the universal declaration of human rights (UNDHR) , UN convention against torture , African charter of human right and civil rights of 1981, as well as other related or relevant laws or as the circumstance may require.

### **2.3 LEGAL REPRESENTATION AT A TRIBUNAL**

Although usually necessary, parties in a dispute may be represented at the hearing by legal counsel<sup>8</sup> of their choice. However complainants at the Human Rights Tribunal need not have a lawyer to represent them as it is in an ordinary courts of law.

According to the 1995 constitution<sup>9</sup> of the Republic of Uganda , the human rights tribunal under the Uganda Human Rights Commission may if satisfied that there has been an infringement of human rights or freedom order, the release of detained (restricted persons) , payments of compensation or any other legal remedy.

However, emphasis must be made to the effect that the constitution<sup>10</sup> of the Republic of Uganda is put in such broad terms as to give the Uganda human rights commission – tribunal a wide discretion/jurisdiction to do what ordinary courts of law are enjoyed to do , by providing that the UHRC–tribunal can order any other legal redress and the UHRC–tribunal should do so for ends of justice.

### **2.4 REMEDIES GRANTED BY HUMAN RIGHTS TRIBUNALS**

Since the human rights tribunals are the creatures of statutes empowered with the quasi-judicial powers , the human rights tribunal can award any other remedy which is stipulated in the constitution of the Republic of Uganda like , granting compensation, an injunction and preventive

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<sup>7</sup> The 1995 constitution

<sup>8</sup> section 15 (2) of UHRC-TRIBUNAL

<sup>9</sup> Article 53(2)

<sup>10</sup> Article 53(2) (C)

measures declarations that is making a formal statement intended to create, preserve, assert or testify to or the decision on a question of law or rights, payments of interests at designated rates depending on which the claim is commercial in nature nor non-commercial.

Restitution that is ordering the return of an Article to its rightful owner, payments of costs usually taxable by the registrar, directing another body to act, recommending another disciplinary body to conduct disciplinary proceedings and lastly, vacant possession, eviction and many others.

Therefore, the human rights tribunals can do virtually any thing that facilitates the expeditious conclusions of the hearing, as long as what it does conforms with the principles of natural justice and good conscience.

Mostly important, legal technicalities are reduced to the barest minimum so that the complainant and the respondent fully understand what is going on, and the Uganda human rights tribunal should be able to assist the tribunal to obtain useful information to assist in resolving the matter.

## **2.5 THE ROLES PLAYED BY HUMAN RIGHTS TRIBUNALS**

Though tribunals do not usually allow legal representation, it's a right of the parties in disputes. In the case of *De Souza Vs Tanga town council*<sup>11</sup>, the accused person was kept outside while proceedings were going on inside. The court held that this was a denial of a right to a fair hearing because the accused person was denied facilities of counsel.

It handles mechanical issues, some disputes require knowledge which may be unavailable which are passed with that specialised knowledge. Tribunals usually have members who are not necessarily lawyers but knowledgeable in the matter in dispute to handle technical matters it ensures simple procedures. Tribunals have simple procedures which are supposed to be

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<sup>11</sup>

understood by every lay person. They are usually exempted from strict rules of evidence

It gives notices to the parties in dispute. The parties to the dispute must be given adequate notice so as to be able to prepare their cases.

To receive complaints, the person in dispute should be able to present his case whether orally or in writing or produce necessary document or any other relevant evidence that assists in the determination disputes.

It ensures public hearing. Of disputes for the purpose of transparency. Also some time matter of dispute concern the public at large and they have interest in it for instance licensing disciplinary proceedings.

It ensures fair hearing between parties in the dispute.

## **2.6 RULINGS AND DECISIONS OF THE UGANDA HUMAN RIGHTS COMMISSION- TRIBUNAL HOLDEN AT KAMPALA**

The Uganda Human Rights Commission –Tribunal in an administration of justice has handled a number of matters expeditiously and the list stands.

However , its important to note that in 2000, 2004 and 2007 , the Uganda Human Rights Commission –Tribunal entertained among others the following cases:-

### **THE UHRC-TRIBUNAL HELD AT KAMPALA**

COMPLAINT NUMBER UHRC-TRIBUNAL 1137/2000

SONKO ZUBAILI = = = COMPLAINT

AND

ATTORNEY GENERAL = = = RESPONDENT PULLING

The above complaint was lodged by the complainant against the respondent seeking compensation for alleged violations of his human rights of which he was detained at central police station(CPS). He further testified that upon reaching CPS, he was beaten until he lost consciousness for the

two days. It was Sonko's contention that the alleged actions of the police men constituted violations of his human rights from torture, cruel, inhuman and degrading treatment and to personal liberty. He holds the respondent vicariously liable for the violation of those rights,

## **2.7 ISSUES**

The issues for determinations by UHRC-Tribunals are:-

Whether the respondent's servants or agents violated the complainant's right to personal liberty.

whether the respondent's servant or agents violated the complaint's right to freedom from torture, cruel, inhuman and degrading treatment.

Whether the complainant is entitled to the remedy sought.

## **2.8 RESOLUTION OF THE ABOVE ISSUES BY UHRC-TRIBUNALS**

The right to personal liberty is protected by the <sup>12</sup>constitution of the republic of Uganda which provides that "No person shall be deprived of personal liberty except in any of the following circumstances:-

For purposes of bringing that person before a court, upon reasonable suspicion that person he/she has committed or is about to commit a criminal offence in the laws of Uganda.

Under the constitution<sup>13</sup>, it provides that a person arrested or detained upon reasonable suspicion of his or her having committed a criminal offence under the law of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than 48 hours, from the time of his/ her arrest.

The arrest and detention of the complainant by the policemen at CPS was therefore justifiable for having stolen the motorcycle of one Nampiima. The only mistake they made was that they detained Sonko for a period exceeding 48 hours before releasing.

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<sup>12</sup> Article 23(1)

<sup>13</sup> Article 23(4) (b)

In this way, they acted contrary to the provisions of the constitution<sup>14</sup>.

## ORDERS

The complaint was allowed in part, the respondent was ordered to pay the complainant a sum of Ush. 3, 000,000 as general damages for violation of his rights to personal liberty.

THE UHRC-TRIBUNAL HELD AT KAMPALA

COMPLAINT NUMBER UHRC-TRIBUNAL 52/2007

IN THE CASE OF HUMAN RIGHTS NETWORK OF  
JOURNALISTS = = = COMPLAINANT

AND

ATTORNEY GENERAL = = = RESPONDENT

## 2.9 RULING

The above complaint was lodged by the complainant against the inspector general of police (IGG) on march 9, 2007 seeking five remedies namely:- respect for media /journalists freedoms and right, easy access to news scenes without interference and harassment by security agencies , compensation and legal redress, return of confiscated gadgets to the respective journalists or payments of the value share of sensitization of Security Agencies about human rights and freedom.

According to FAUZAT MARIAM WANGADYA (MS) presiding officer of UHRC-Tribunal at that time did not consider various cases before her to decide because the alleged complainant did not disclose any cause of action against the respondent. The complainant was misconceived, frivolous vexatious ,embarrassing and an abuse of court process.

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<sup>14</sup> ibid



## **ORDER**

The complaint was dismissed and the parties were informed of their right to appeal to the high court of Uganda within 3 days from date in event of dissatisfaction with this ruling.

UGANDA HUMAN RIGHTS COMMISSION (UHRC-TRIBUNAL)

TRIBUNALS HOLDER AT KAMPALA

ADUKULE ABRAHAM = = = COMPLAINANT

AND

ATTORNEY GENERAL = = = RESPONDENT

### **2.10 DECISION**

The complainant alleged that he was arrested by detective constable (D/C) of the criminal investigation department (CID) at Entebbe police station on allegation of stealing the property of lake Victoria environment management project. (LVEMP).

That he was detained at Entebbe police station for nine 9 days before he was taken to court thus, violating his right to personal liberty. He added that the first two days he was detained in a cell which was full of cold water and was not given food while he was under detention, D/C Aweru together with some operative of the former violent (VCCU) tortured him severely causing him to loose a premolar tooth from the upper jaw and the two other teeth become loose.

The complainant alleged further that D/C Aweru deprived him of his properties which included a motor cycle.

The complainant sought compensation for violation of his right to personal liberty, his right to property and his right of freedom from torture or cruel, as human or degrading treatment or punishment

## **2.11 ISSUES FOR DETERMINATION BY THE UHRC-TRIBUNAL , THE TRIBUNAL WAS EXPECTED TO DECIDE ON THE FOLLOWING ISSUES OF CONTENTION.**

- i. Whether the complainant's right to personal liberty was violated by the state agents
- ii. Whether the complainant's right of freedom from torture or cruel , human or degrading treatment or punishment was violated by the state agents
- iii. Whether the complainant's right to property was violated by the state agents.
- iv. Whether the attorney general (respondent) was liable for the, violations.
- v. Whether the complainant was entitled to any remedies.

## **ORDER**

The complaint was to a great extent allowed. The attorney general was ordered to pay to the complainant a total of Ushs. 9, 000, 000 (nine million as damages broken down as follows:-

General damages for the violation of his right to personal liberty Ushs 2,500,000/=

General damages for violation of his right of freedom from torture or cruel, in human or degrading treatment or punishment Ushs 5,000,000.

Exemplary damages may appeal to the high court of Uganda within 30 days from the date of this decision of not satisfied with the decision of the UHRC-tribunal.

## **2.12 APPEAL**

Section 21, of the Uganda Human Rights Commission Act. Appeals under Article 53(3) of the 1995 constitution.

The chief justice shall make rules of court for regulating appeals to the high court from the orders of the Uganda human rights commission – tribunal made under the 1995 constitution<sup>15</sup>.

The rules made under subsection (1) may without prejudice to general effect of subsection (1), make provision for:-

The period within which an appeal may be lodged forms and fees in relation to such appeals. The procedure generally for hearing such appeals with or without modification of any rules of court applicable to the high court.

## **2.14 RESOLUTION OF COMPLAINTS THROUGH THE HUMAN RIGHTS TRIBUNAL PROCESS**

In 2011 the UHRC-Tribunal heard and concluded complaints of which 41 were decided in favour of the complainants while 34 were dismissed for want of prosecution<sup>16</sup>. This was however a reduction from 92 complaints heard and concluded in 2010.

Table 1.1 below shows the number of complaints concluded before human rights tribunal in 2011 while table 1.2 shows the nature of violations. Figure 1.1 shows the number of complaints concluded through human rights tribunal process over last eight years. At the tribunal, the UHRC-Tribunal conducted 107 circuit hearings where a member of the UHRC-Tribunal goes to a particular regional office and hears matter for period of one week.

The court hearings be aimed at fulfilling the UHRC-Tribunal strategic objectives of bringing services closer to the people.

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<sup>15</sup> Article 53(2)

<sup>16</sup> a case may be dismissed for want of prosecution in failure of any party seeking affirmative relief to appear for any hearing or trial, or failing to take certain specified actions of which the party had notice.

**TABLE 1.1****COMPLAINTS DECIDED PER REGIONAL OFFICE**

<b>Region</b>	ARU	CTRL	FPT	GLU	JJA	MBR	MRT	MSK	SRT
<b>No.</b>	1	24	5	10	10	12	3	5	10

**Source:** UHRC 14<sup>th</sup> annual report (2011), page 12

**TABLE 1.2**

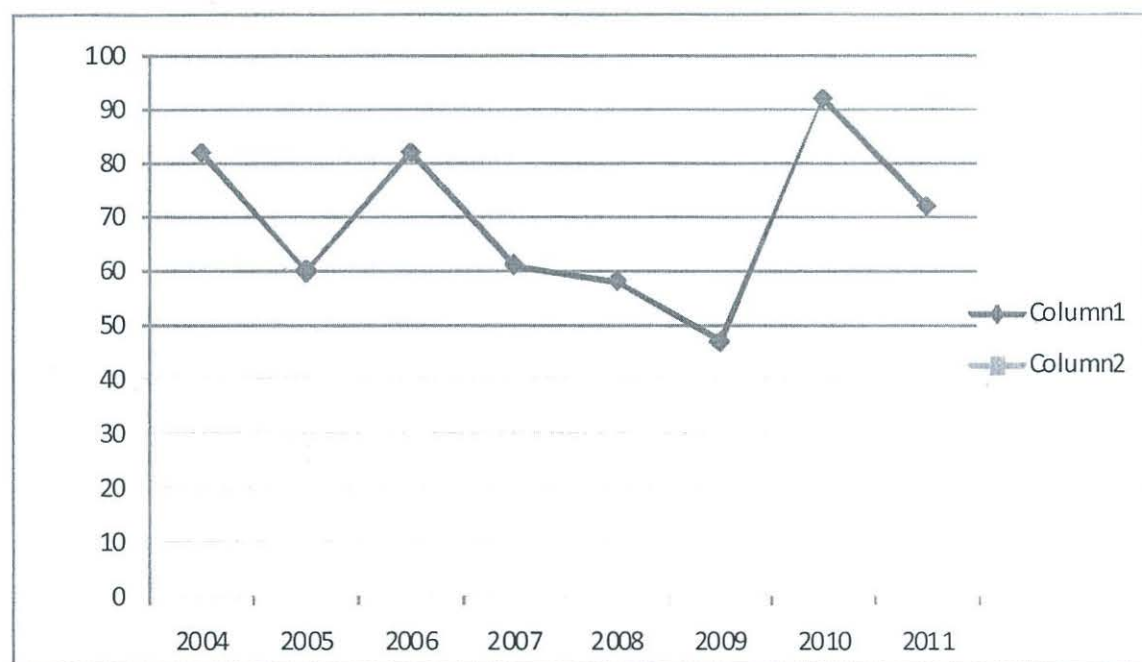
<b>COMPLAINTS BEFORE THE HUMAN RIGHTS TRIBUNAL IN 2011</b>	
<b>NATURE OF VIOLATION</b>	
Right to life.....	9
Right to freedom from torture, cruel, in human and degrading treatment.....	44
Right to property.....	8
Remuneration .....	2
Access to children .....	2
Maintenance .....	5
Freedom of expression and assembly .....	1
Right to personal liberty .....	31
Right to non-discrimination .....	1
Right to education.....	1
<b>TOTAL</b>	<b>104</b>

**Source:** UHRC 14<sup>th</sup> annual report (2011), page 12

**FIGURE 1.1**

**THE NUMBER OF COMPLAINTS CONCLUDED THROUGH THE HUMAN RIGHT TRIBUNAL PROCESS FROM 2004-2011.**

**NO OF COMPLAINTS CONCLUDED THROUGH THE HUMAN RIGHT TRIBUNAL PROCESS 2004-2011.**



**Source:** UHRC 14<sup>th</sup> annual report (2011), page 12

The number of violations, appears more than the number of cases decided or disposed of because a single case may disclose more than one violation.

The respondents in the complaints decided in 2011 were mainly the attorney general, local governments and private individuals. The attorney general is the major respondent because the office is vicariously liable for human rights officials and other state agents acting in official capacity. The same explanation goes to the liability of local governments for acts done by their servants or persons in their employments.

**TABLE 1.3**

**SHOWS CATEGORIES OF RESPONDENTS IN MATTERS DISPOSED OF  
AT THE UHRC-TRIBUNAL-TRIBUNAL IN 2011**

<b>NO</b>	<b>RESPONDENTS</b>	<b>No OF COMPLAINTS</b>	<b>PERCENTAGE (%)</b>
1	Private individual	19	23.2%
2	Local governments	2	2.4%
3	Government departments and agencies and	60	73.2%
4	represented by A.G Private institutions	1	1.2%
<b>TOTAL</b>		<b>82</b>	<b>100 %</b>

**Source:** UHRC 14<sup>th</sup> annual report (2011), page 13

**Table 1.4**

**STATUS OF FILES BEFORE HUMAN RIGHTS TRIBUNAL**

<b>STAGE OF COMPLAINTS FILE</b>	<b>TOTAL NUMBER OF FILES</b>
Part heard	394
Pending hearing	207
Pending allocations	
Pending of allocation	
<b>TOTAL</b>	<b>596</b>

**Source:** UHRC 14<sup>th</sup> annual report (2011), page 13

There were 5% files pending disposal by the UHRC-TRIBUNAL –Tribunal. The part heard cases whereby evidence was still being adduced by respective parties, those pending hearings that are yet to be heard for the first time.

Files pending allocation were those yet to be allocated to a specific commissioner while those pending re-allocations were files previously allocated to a commissioner but due to a number of factors such as expiry of terms of office, resignation or disqualification the matter was then re-allocated to another commissioner

## **2.15 TYPES OF HUMAN RIGHT ADMINISTRATIVE TRIBUNALS AND THEIR EXAMPLES**

There are human rights administrative tribunals which are created under the constitution of the republic of Uganda 1995. Such tribunals which are created under the 1995 constitution of the republic of Uganda include:-

The Uganda human right commission- tribunal and only those under a single Act of parliament, such tribunals include; the NGOs under the NGO Act such as. FIDA-Uganda

In effect therefore Uganda human rights commission emerges as a HUMAN RIGHT TRIBUNAL under 1995 constitution<sup>17</sup> of republic of Uganda establishes the Uganda human right commission with its head office located on Buganda road in Kampala.

The UHRC-Tribunal is composed of a chairperson and other members appointed by the president with the approval of parliament. The chair person will be a judge of the high court or person qualified to hold that office. The chairperson and other members must be of high moral character and proven integrity and serve for a period of six years and eligible for re-appointment. Currently, the UHRC-Tribunal newly appointed chairperson is Mr. Meddie Kaggwa as overall head of the institution and heads the UHRC-Tribunal which is the policy making organ of human right administrative tribunals in Uganda. Other members of UHRC-Tribunal as of current include Mr. Etima Joseph, Dr. Katebalirwe, Amooti, Maram Wangadya and Mr. Agaba Maguru.

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<sup>17</sup> article 51

## **2.16 FUNCTION OF THE UHRC- TRIBUNAL**

Among the functions of the UHRC-Tribunal are powers and functions conferred upon it for purpose of enforcing the promotion and protection of human rights. Functions are provided. For under section of UHRC-Tribunal Act and Article 5.2 of the 1995 constitution of the republic of Uganda which includes the following:-

- (a) To investigate at its own initiative or on complaint made by any person on group of persons against the violation of any human right.
- (b) To visit jails, persons and places of detention or related facilities with a view to assessing and inspecting condition of the inmates and make recommendations,
- (c) To visit any place or building where a person is suspected to be illegally detained;
- (d) To establish a continuing programme of research education and information to enhance respect of human rights;
- (e) To recommend to parliament effective measures to promote human rights, including provision of compensation to victims of violations of human right or their families;
- (f) To create and sustain within society the awareness of the provisions of the constitution as the fundamental law of the people of Uganda;
- (g) To educate and encourage the public to defend the constitution at all times against all forms of abuse and violation;
- (h) To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their rights and obligations as free people;
- (i) To monitor the governments compliance with international treaty and convention obligations on human rights ;
- (j) To carry out the functions of the commission under Article 48 of the constitution; and
- (k) To perform such other function as may be provided by the law.

The powers provided for under Article 53.



## **2.17 POWERS OF UHRC-TRIBUNAL- TRIBUNAL**

It issues summons or other orders requiring the attendance of any person before it and the production of any document or record relevant to any investigations being conducted by the UHRC-Tribunal

The UHRC-Tribunal has power to question any person in respect of any subject matter under its investigations.

The UHRC-Tribunal further may also require any person to disclose information within his or her knowledge relevant to any investigation by it.

Like an ordinary court of law, the UHRC-Tribunal is vested with discretionary powers to commit persons for contempt of its orders.

## **2.18 SPECIFIC UNDERSTANDING OF HUMAN RIGHTS**

Human rights in general terms are understood to be rights which belong to any individual as a consequence of being human. These rights are inherent and cannot be separated from that person, indivisible, they are interdependent on each other and they are necessary to each other.

According to Dr.Kofi Quashingei in his paper: “the philosophical basis of human rights” he defined the rights as follows, “Human right is universal rights or enabling qualities attaching to human beings”. These qualities flow from the realization that as matter of scientific facts, man is distinguishable from other living beings because he is a rational and a moral person who must shade his life in accordance with moral and rational purposes. No man may be deprived of those rights without brake a front to justice.

Human rights are different from other rights in the sense that these rights are inherent. That's all human beings are born with all these rights, they are actually potentialities, have got different characteristics whose values may not be determine by the society which the human being himself is born, but only by the human being himself and the person who creates him.

They are also universal that is there are standards of right that are recognised in the whole world and must not be born. Therefore, there rights can be protected by every one since they are internationally recognised.

Similarly they are different from other rights because man is a unique person who is often discovering himself in the world. Therefore, human rights are dynamic and are not static with each discovery of new rights emerge which ought to be protected. The concept of human right creates a distinction between human rights and other rights because of different cultures, traditions norms, and human beings tend to associate themselves with their back grounds. This means therefore that the perception of right itself will normally depend on the way the human being understands life.

Human rights often receive different perceptions because human right vary from culture to culture because the standard is different. However the nature and classification of human right takes another trend in total being referred to as human rights and fundamental freedoms.

## **2.19 CATEGORIES OF HUMAN RIGHTS AND THEIR EXAMPLES**

The subsequent division of human rights are into three main categories and these include:-

- (a) Civil and political rights also known as first generation rights which can be brought to the class of derogable and non-derogable rights.
- (b) They form fundamental human rights and freedoms and mainly of a constitutional concern. These rights include among others freedom of movement, assembly, association, religion, speech, how and other property respect for inhuman dignity and protection from right to life and protection of personal liberty.
- (c) Economic social and cultural rights, these rights form another set of rights also known as the second generation rights. These rights encompass the right to work, housing, education and many others.
- (d) Sociality right s or group rights emerge as the third generation rights. They include the right to clean environment, the right to peace. However, the rights have different manifestations including the International Universal, Declaration of Human Rights, UN convention against torture and regionally the African charter of human and civil rights of 1981.



- (e) It therefore follows the violation of a set of the above substantiated human rights defeats the presence of justice to people and thus the human right tribunals draw their administration of justice in situations of infringement of such rights encompass

## **2.20 CATEGORIES OF HUMAN RIGHTS VIOLATIONS PROTECTED BY THE UHRC-TRIBUNAL IN ENSURING ADMINISTRATION OF JUSTICE**

The following human rights violations among others are handled by the human right tribunal that also corresponds with Article in the 1995 constitution of the republic of Uganda. It is not limited to Article in the constitution but includes others violations that are applicable as ratified by Uganda.

- (a) Unlawful defections in violation of rights in Article 23 and 29 (2) (a) of the 1995 constitution of the republic liberty include the facility of the person of the individual.
- (b) It doesn't only provide the substantive right to personal liberty but also procedural and remedial guarantees. The purpose of this right is to regulate conduct of those persons that get in contact with the individual and are likely to violate personal liberty like the police. The prison service, the courts and to an extent the armed forces and the intelligent services.

## **2.21 INSTANCES OF VIOLATIONS OF THIS RIGHT INCLUDE**

Detaining individual by the government agencies beyond forty eight hours in wrong / unlawful or un gazetted places like the so called "safe houses" among others. The commission therefore entertains such violations of this right.

Disrespects for human dignity, torture more cruel, in human or degrading treatment /punishments. Such as violation of the right to respect for human dignity and protection from inhuman treatment. The freedoms under this Article 24 of the 1995 Constitution of the Republic of Uganda are absolute / non derogable meaning that cannot be suspended by any means.

Torture refers to acts against the physical integrity of the individual while cruel, inhuman or degrading treatment or punishments refers to conduct that causes unnecessary suffering; be shame or raffles the dignity of the person.

## **2.22 EXAMPLE OF VIOLATION OF THE ABOVE RIGHT**

Corporal punishments are perceived as inhuman and degrading punishment. The up come of such infringements on these freedoms calls for an intervention of the Uganda human rights commission.

Situations of slavery of any one individual or servitude which violates the freedoms enshrined in Article twenty five (25) of the 1995 Uganda constitution. freedom from slavery and servitude is also an absolute right and the Article provides "No person shall be held in slavery or servitude, "No person shall be required to perform forced labour" save for provisions in Article 25(3) of 1995 constitution any act of such nature as to slavery or servitude forced labour will be ranked a consideration worth protection by the Uganda human rights commission (UHRC-Tribunal).

Detentions in contravention of Article 23 (2) in contravention of Article 23(2) and (4) (b) of 1995 constitution where in clause (2) provides that a person arrested or detained shall be kept in a place authorized by law. Places not authorized by law are for detention and individuals have been victims of such detention have over the period sought redress of habeas corpus through the commission.

**2.22.1 Unlawful searches;** entry and interference with the privacy of an individual and his/ her home. Such prima-facie amounts to violation of the right to privacy as under Article 27 of the 1995 constitution which includes correspondence and communication. The right protects privacy of the persons, home and other properties.

**2.22.2 Unfair hearing;** this violation is inconsistent with the provisions of the right to a fair trial in Article 28 of the 1995 constitution. The Article

guarantees that the individual shall be entitled to a fair, speedy and public hearing before an independent and important court. Any contravention of any provision in here amounts to unfair hearing. For instance cases where the court was not impartial or unreasonable delays in the trial.

**2.22.3 Unlawful/ unfair terminations from employment:** the provisions of lawful terminations of an employee by employer are provided for under the Employment Act. However such provisions if infringed on amounts to unfair or unlawful terminations.

**2.22.4 Unreasonable / no worker's compensation:** this normally arises in circumstances of workers injured while in course or scope of their employment. Also in terms of terminal benefits due to the worker.

The provisions relating to workers' compensation are provided for under the workers compensation Act. Most individual report such violations to the commission for redress.

The list of violations is in final but in ensuring that the commission meets the mandate in the administration of justice. It has spread the branches in every region of the country also known as regional offices to deal with matters of human rights concern and such branches include Mbarara , Gulu Fortportal and many others.

## **CHAPTER THREE**

### **3.1 INTERNATIONAL AND REGIONAL LEGAL FRAME WORK ON ACCESS TO JUSTICE**

The importance of access to justice is emphasized by the international and regional instruments ratified by Uganda, such as the Universal Declaration of Human Rights (UDR)

UDHR<sup>18</sup> provides for the rights to effective redress too a fair hearing by independent and impartial national tribunals, as well as the right to be presumed innocent until proved guilty<sup>19</sup>. These rights are also reiterated in other international human rights instruments.

Further more, the international convention on civil and political rights (ICCPR)<sup>20</sup> provides for separation of accused juveniles from adults, separation of accused persons from convicted persons, as well as equality before courts and tribunals. The Africa charter on human rights and peoples rights (ACHPR) equally reiterates these rights that facilitate administration of justice<sup>21</sup>

### **3.2 Conclusion**

There is no ideal model of administrative of justice that is “fit for all”. Each country develops its own justice system, based on its particular historical background and national traditions. What is important, however, is that the system put in place should be able to bring justice to all people on basis of equality and impartiality that they meet the international standards as outlined by UN. Only when laws consistent with international human rights standards are rigorously applied by all officials will therefore be equal access to all.

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<sup>18</sup>The UDHR was adopted on the 10<sup>th</sup> December 1948

<sup>19</sup> UDHR articles 7, 8, 10 and 11

<sup>20</sup> Article 6, 7, 9, 10 14 and 15 of ICCPR 1966

<sup>21</sup> Article 3 (1), 18 (3) of the ACHPR



The tribunal acknowledges the important strides made in improving access to justice in Uganda. This can be seen in, amongst other things, the enactment of key laws, increased number of judicial officers, construction of offices and courts, reduction in case back log and reduced remand population. However, several challenges still impede access to justice such as delay in hearing of cases and poor service delivery.

## **CHAPTER FOUR**

### **4.1 CHALLENGES BY THE UHRC-TRIBUNAL TRIBUNAL IN THE COMPLAINTS HANDLING PROCESS**

#### **4.2 INTRODUCTION TO CHALLENGES**

The UHRC-Tribunal currently has only four presiding commissioners expected to traverse the commission's nine regional officers conducting tribunal hearing. This impact on the rate at which cases are disposed of at the tribunal given the heavy work load.

Owing to the delays by the Attorney General's office to approval proposed amicable settlements, many cases are left pending without action which causes uncertainty on whether to proceed with the matter or wait for the amicable settlement. This slows process of approval often demoralises the complainants who in turn opt to continue with the tribunal process. In this regard therefore, the ability of the Attorney General to promptly settle matters amicable affects the quick dispensation of justice.

The UHRC-Tribunal continues to face a challenge of locating victims and witnesses who use a variety of names or change location but fail to communicate the change of address.

There is lack of adequate cooperation from respondents and a witness to avail the UHRC-Tribunal with relevant information often derails the investigations and hinders the quick resolution of complaints.

With limited legal Aid service providers and with a big population unable to afford legal fees, the commission continued to receive complaints which are purely criminal or civil in nature and outside its mandates.

In an attempt to administer or participate in the administration of justice by the Human Rights Tribunal several challenges are evident that tend to thwart (abstract) the set aims and objectives of the Tribunals.



The aspect of corruption, the task of administering justice especially the UHRC-tribunal has been affected by the ever growing escalating state of corruption to do in the country. This negates on the performance of the tribunal. The well-to-do (wealthy class) use their “cash” to silence the complaints lodged by especially the poor class. Therefore, the UHRC-Tribunal tends to act in discrimination or selectively.

Lack of education or illiteracy among the masses has also worked against the performance of the tribunals. This is what has contributed to low distribution of information on Human rights matters, parochialism and apathy (indifferences) among the target groups therefore; publications by the tribunals have not yielded so much.

Government policies and interference has not favoured the proper operation of the UHRC-Tribunal as the commission members are appointed by the president. There is therefore direct undue influence in the matters of the UHRC-Tribunal and that’s why the victims of government infringements have received an “impulse” response in enforcing their rights against the government through the UHRC-Tribunal.

The influence of cultural relativism. There is a clash between culture and Human rights. Cultural relativism can be described as a theory that this is infinite cultural diversity and that all cultural practices are equally valid. This kind of situation has tended to confuse the station of human rights violation between the tribunals and the masses.

There is also inadequate funding of the tribunals. This relatively limits the performance of the tribunals in terms of man power source, publications which in turn widens the gap between the tribunals and the masses in access to justice.

### **4.3 RECOMMENDATIONS**

Government should promptly appoint new members of the UHRC-Tribunal to fill the vacant positions of commissioners in order to ensure that the UHRC-Tribunal's activities are not stalled.

Parliament should hasten the process of enacting the bill on the prohibition and prevention of torture into law. This will make individuals perpetrators of torture criminally liable which will reduce incidents of torture or cruel inhuman or degrading treatment or punishment committed by state agents.

The ministry of justice and constitutional affairs should also establish a victim's compensation fund, to ensure the expenditure compensation of victims of human rights violations.

The government should ratify and domesticate the optional protocol to the convention against torture which provides for additional preventive measures in the prevention of torture and ill treatment.

Government should conclude the development of legal Aid policy and the ministry of Gender, Labour and Social development should operationalise the industrial court to ensure access to justice.

The ministry of Internal Affairs should expedite the National Identity Registration and distribution process as this would address the issue of identifying persons.

The Uganda Police Force should invest in training of police officers to keep a breast with modern investigation techniques to avoid use of torture in obtaining information. In the alternative, the Uganda police should not arrest before obtaining sufficient evidence.

The Uganda police should also establish appropriate internal mechanism to hold accountable and subject its members to disciplinary action. If they participate in human rights abuses such as torturing suspects in their custody.

In a way of combating the effects of relative illiteracy/parochialism, the UHRC-Tribunal under its functions has fronted and formulated programmes like awareness sessions within communities.

Legal Aid clinics have also been used as a form of awareness sessions regarding human rights and their violation to various people. This has been key education programme under UHRC-Tribunal.

Through mass media like print media, journals, radios, televisions across sections of Ugandans are made aware of the existence of these tribunals and their levels of operations including location of their offices, areas of their human rights concerns and procedures submitting complaints among others.

For purposes of general access to justice to all, regional offices have been established to meet the concerns of every region as this could prove a problem under a single central office due to geographical, financial and environmental factors.

In particular to reduce the financial bottlenecks of the commission, the UHRC-Tribunal have mere often submitted its financial statement/financial proposal to parliament for a remedial action. This has been the peak point of dealing with the financial inadequacy of the commission that here equally hampered its expected performance.

#### **4.4 CONCLUSION**

The overall impression and implication of administration of justice by human rights tribunals from the foregoing is a combination of both public and private quasi-judicial tribunals.

In the context of administration of justice, there is a direct link between arbitration and advocacy as key canons of justice, inter-twined as yard sticks or barometers indicating the violation of human rights. The general concern in both arbitration and advocacy is what brands the tribunals or useful material in the administration of justice.



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