

**THE EXAMINATION ON THE EFFECTIVENESS OF THE HUMAN RIGHTS
COMMISSION IN THE PROTECTION OF THE RIGHTS IN UGANDA**

BY

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DECLARATION

I declare that, this dissertation is from my own findings and has never been produced by anybody else for any award in any institution.

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APPROVAL

This is to satisfy that this dissertation has been done under my supervision and submitted to the school of Law for examination with my approval.

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75/100

DEDICATION

I sincerely dedicate this book to **MY MOTHER AGNES NABIRYE and MY FATHER MUFUMBIRO AGUSTINE** for their overwhelming support both morally and financially, without which this course would still be a dream. May the almighty GOD sincerely reward you and bless the works of your mind and hands.

And also I sincerely dedicate this book to my elder sister **KALIMWINE PROSCOVIA**, for supporting me in all ways, may the Lord God reward you kindly.

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ABSTRACT

This research paper examines the effectiveness of the Uganda Human Rights Commission in the protection and promotion of Human Rights in Uganda, challenge of the commission and other human right defenders, the enforcement of the law on Human Rights and sets out some recommendations to the findings of the study.

LIST OF STATUTES

1. East African Community
2. Gender-based violence
3. Human Rights (Enforcement) Bill 2015
4. Inter-Agency Standing Committee
5. International Covenant on Civil and Political Rights
6. Lord's Resistance Army
7. National resistance movement
8. Uganda Human Rights Commission
9. Uganda national liberation front
10. Universal Declaration on Human Rights
11. Universal Declaration on Human Rights

LIST OF ACRONYMS

CP-----	Child Protection
CSOPNU-----	Civil Society Organisations for Peace in Northern Uganda
DENIVA-----	Development Network of Voluntary Associations
DHRPP-----	District Human Rights Promotion and Protection
EAC-----	East Africa Community
EVI/PSNs----	Extremely Vulnerable Individuals/Persons with Specific Needs
GBV-----	Gender-based violence
HURINET-----	Human Rights Network Uganda
IASC-----	Inter-Agency Standing Committee
ICCPR-----	International Covenant on Civil and Political Rights
LRA-----	Lord's Resistance Army
MGLSD-----	Ministry of Gender, Labour and Social Development
NRM-----	National resistance movement
UDHR-----	Universal Declaration on Human Rights
UDHR-----	Universal Declaration on Human Rights
UHRC-----	Uganda Human Rights Commission
UNLF-----	Uganda national liberation front

CHAPTER ONE

1.0 Background.

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

The concept of human rights has been evidenced right from the several governments in Uganda especially from the time Uganda became independent for instances 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 in 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 and the new constitution which commenced on the 8th 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.

1.1 Introduction.¹

Human Rights, is an entitlement to human beings, they are inherent and not granted by the state.¹ These Rights must be respected, upheld and promoted by all organs and agencies of governments and by all people.²

The 1995 constitution of the republic of Uganda established the human Rights commission of Uganda³. This commission was set or established to carry out several tasks⁴.

1 Article 20 (1) of the 1995 constitution

2 Article 20(2) Ibid

3 Article 51 Ibid

4 Article 52(1) (a-h)

To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;

To visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations;

To establish a continuing programme of research, education and information to enhance respect of human rights;

To recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families;

To create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda;

To educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;

To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;

To monitor the Government's compliance with international treaty and convention obligations on human rights; and (i) to perform such other functions as may be provided by law.

The Uganda Human Rights Commission shall publish periodic reports on its findings and submit annual reports to Parliament on the state of human rights and freedoms in the country.

In the performance of its functions, the Uganda Human Rights Commission shall establish its operational guidelines and rules of procedure; request the assistance of any department, bureau, office, agency or person in the performance of its functions; and observe the rules of natural justice.

²The human rights commission was established as an independent body⁵ which it's independent from external factors, for example the pressure created by police and other security agencies can't affect it in its scope of work.

The commission was put in place in order to eliminate violation of human rights that was evidenced in the different governments such as political, cultural, and social and in economical rights among others.

1.2 Statement of the problem.

Here the research is more interested in the weakness of the Uganda Human Rights Commission as a body established constitutionally in its performance on the protection of human rights also to investigate the collision of the commission which is deemed independent by other government enforcement agencies, for instance the Uganda police.

Ugandan citizens have been experiencing injustices brought about as result of the violation of their human rights and as a result many people suffer the consequences as well.

So it's through this research that the researcher needs to make recommendations on what should be done so that the violation of human rights is reduced by the perpetrators through the enforcement of the available legislation by UHRC and other stake holders.

⁵ Art. 54 *ibid*

CHAPTER TWO

2.1 Objectives

2.1.1 General objectives

The Researcher established and evaluated the effectiveness of the Uganda human rights commission in the protection of human rights, determination of loopholes in legislation and considering options or strategies and recommendations that can be applied to cover loopholes.

2.1.2 Specific objectives.

- (i) To investigate the hindrances that has made the commission not to fulfil its performance.
- (ii) To investigate on those areas of weakness by the human rights commission.
- (iii) To investigate on the achievements of the commission since its establishment in 1995.
- (iv) To investigate on other agencies which were also established to protect and promote human rights in Uganda.
- (v) To investigate on the problems those have hindered the commission and other bodies from performing their functions and make recommendation to the effect.

2.1.3 Research questions

- i) Examine the achievements of the Human rights commission in the protection of Human rights in Uganda?
- ii) What are the weaknesses of the commission in the protection of the human rights in Uganda?
- iii) Identify the problems which hinder the commission from doing its work?
- iv) What recommendations are available to the Human Rights Commission in execution of its duties?
- v) What roles are played by others agencies in protection and promotion of human rights?

2.3 Research Methodology

In an attempt to answer the objectives, the researcher adopted a qualitative mode of Research. And the Researcher used data collected by means of Research which comprised of interviews carried out using an interview Guide, interviewing suspects in detention Centres who were attending courts and other respondents as the researcher thought fit.

The researcher also adopted a non-random methodology of data collection known as Accident/ convenient sampling in which the respondents were purposively selected.

The researcher encountered with the Suspects who were brought for Trails at the courts and relevant respondents, this was more convenient type of sampling since it was not costly and time consuming.

The researcher also used Desk Research which included text books, statutes, case law, journals, News papers, and other related legal articles. The researcher adopted this mode of Research because it was appropriate for the Topic; it was easy to use and cheap compared to other modes of research.

2.4 Scope of the study.

This study covered the Geographical area of Kampala-Uganda, in evaluation of the effectiveness of the Uganda human rights commission in the protection of the human rights. In attempt to answer the previous questions of the study the researcher also considered, the 1995 constitution of the Republic of Uganda, International and regional covenants and other legislations.

2.5 Relevance of the study.

At the end of the findings the researcher made recommendations on several occasions on how the protection of human rights of Ugandan has been effectively effected by the Uganda human rights commission and other enforcement agencies which will help to cover the loopholes in the legislation and in practice.

This study is therefore relevant to government Law enforcement Agencies and every department therein, in that it seeks to highlight the intersection between the protection of human rights by the commission and the practice.

2.6 Literature review

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.

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.

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 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.

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 Persons³ and the Guiding Principles on Internal Displacement, which emphasize

consultation with and participation of IDPs, particularly women and children, in decisions that impact on their current and future welfare.

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. 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.

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 those who have effectively returned but have yet to overcome conditions inherited from their former situation.

For child protection and GBV sub-clusters, separate plans for handover to the concerned government body were elaborated following extensive consultative processes. For the child protection sub-cluster, the coordination functions for humanitarian and recovery efforts will be fully taken over by the Department of Children and Youth of the Ministry of Gender, Labour and Social Development (MGLSD).

³MGLSD, with the continued support of UNICEF, will be leading a Child Protection Coordination forum that will continue to engage all child protection agencies and government departments addressing the protection of children in Northern Uganda.⁶

Recognizing that the primary responsibility for effective protection leadership, service delivery and coordination thereof rests with national authorities, and in line with the intentions and core strategic objectives of the Government's 2009-2011 Peace, Recovery and Development Plan

(PRDP) Framework to stabilize the North as it transitions from relief to recovery, the natural successor to the Protection Cluster is the Uganda Human Rights Commission (UHRC). UHRC is the national body best placed to lead and coordinate the process according to the PRDP's stated core strategic objectives I & II- core objective I: Consolidation of State Authority and its focus on protection of human rights through rebuilding of state institutions in the region; and core objective II: Rebuilding and Empowering Communities through improvements in IDP conditions, pursuing durable solutions with specific attention to EVIs/PSNs, and initiating rehabilitation and recovery/development activities.

The Commission comprises a Chairperson assisted by six Commissioners, the Secretary to the Commission, and a senior management team of five Directors and four Unit-Heads.

The directorates are: Research, Education and Documentation; Monitoring and Inspections; Complaints, Investigations and Legal Services; Regional Services; and Finance and Administration. Altogether, staff number 158 in Kampala (Head Office) and eight regional offices in Kampala (Central Regional Office), Mbarara, Fort Portal, Gulu, Arua, Moroto, Soroti and Jinja.

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

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

⁶ JOINT PROTECTION TRANSITION STRATEGY OF the Uganda human rights commission and IASC protection cluster.

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.⁷

⁴TRANSITION STRATEGY

GOALS

(i) To effectively protect conflict-afflicted populations in IDP camps, transit sites and areas of return and reintegration as per the PRDP's core strategic objectives I & II; and (ii) To support actual and former IDPs as they pursue sustainable durable solutions during the transition from relief to recovery and development in accordance with PRDP core strategic objectives I & II, and the 1995 Uganda Constitution and its Chapter Four provisions governing the Protection and Promotion of Fundamental and Other Human Rights and Freedoms.

COOPERATION FRAMEWORK

Relations between UHRC and various Protection Cluster members will be governed by a Memorandum of Understanding. This multilateral instrument will be signed by all concerned partners once the joint protection transition strategy is endorsed by the Commission and Protection Cluster members.

To enhance its results and impact, the Protection Working Group, chaired by the Commission, shall aim to leverage, harmonize and mainstream the IDP protection agenda and discourse in close collaboration with the MGLSD-led GBV National Reference Group and Child Protection Working Group. To this end, the Protection Group chair shall participate in

⁷ JOINT PROTECTION TRANSITION STRATEGY OF the Uganda human rights commission and IASC protection cluster.

Child Protection and GBV Groups' coordination meetings and activities, and vice-versa, both in Kampala and at district-level. Internally, within the IDP Protection Working Group, cooperation will include, inter alia, joint protection assessments, responses, monitoring and reporting; regular exchanges of reports and sharing of information; and agreement on advocacy messages and initiatives.

To expand and enhance the impact of recovery interventions in return and reintegration areas So as to enable IDPs to achieve deeper and faster sustainable and integrated durable

Solutions, the Chair shall harness its constitutional prerogatives and privileged relations with Government, the judiciary, parliament, mass media, civil society and development partners to advocate for additional concerted action in finding quick and lasting protection solutions for IDPs and EVIs/PSNs.

IDP Protection Leadership, Coordination and Advocacy

The ongoing transition from humanitarian action to recovery presents significant challenges for the IDP population with respect to sustenance of the chosen durable solution. The breadth and depth of protection challenges such as information and knowledge on key protection concerns such as access to food and nutrition security, access to water and basic social services, and access to land and property to enable families to lead productive lives transcend the mandate, competences, capacity and resources of any single entity. Hence, to enhance the impact of appropriate and effective responses requires coordinated and integrated approaches that optimize synergies and resources across sectors and the breadth of actors.

As the constitutionally-mandated body to promote and protect human rights nationally and as the national chair of the Protection Working Group, UHRC will play an active and catalytic role in effectively responding to protection concerns by leveraging its multi-disciplinary network of allies and partners, notably, through mobilization of national and international attention and action at appropriate coordination fora (including the MGLSD-led GBV National Reference

Group and Child Protection Working Group); collaborating with all three branches of government; by engaging mass media; and by complementing government efforts to enlist development partners' support in transitioning from humanitarian assistance to recovery and development.

Coordination Meetings

Monthly Protection coordination meetings convened by the Chair (UHRC) both at Kampala and district levels will be open to members of the Gender-Based Violence (GBV), Child Protection (CP) and other relevant coordination fora, notably humanitarian, recovery and development from Kampala and the districts. Participants will provide updates of direct interest and relevance to the work of the Protection Working Group and proffer advice to enable the Chair and members to make informed policy, strategy and operations decisions impacting on IDPs and their pursuit of sustainable durable solutions.

To ensure regular information sharing, and identification & analysis of critical protection issues, UHRC as Chair of the Protection Working Group, shall convene represent and participate in regular MGLSD-GBV, MGLSD-CP and other coordination for a meetings at both Kampala and district levels.

⁵Monitoring, Reporting and Advocacy

The UHRC presents its annual report to Parliament on the status of human rights in the country every year and this report is debated by the Plenary. The report contains detailed findings and recommendations for improving the human rights situation to various relevant government departments, agencies and institutions. In addition, periodic reports are also published regularly and these cover different human rights issues that are prevalent in the country.⁸

⁸ JOINT PROTECTION TRANSITION STRATEGY OF the Uganda human rights commission and IASC protection cluster.)

CHAPTER THREE

3.1 Introduction to Uganda Human Rights commission⁶

In 1993, the United Nations General Assembly endorsed the Paris Principles relating to the status of national human rights institutions. This marked a movement towards the establishment of national human rights commissions in many countries throughout the world. These commissions have adopted different models, and possess varying degrees of power. However, they share the common goal of seeking to address human rights violations and educating the public about human rights.⁹

The Uganda Human Rights Commission is one of many institutions in Uganda involved in police oversight. It is the National Human Rights Institution of Uganda that came to be established as a result of a recommendation of the Uganda Constitutional Commission in consideration of Uganda's history of gross human rights violations since independence in 1962. The Constituent Assembly, which debated and passed the new Ugandan Constitution in 1995, took up the recommendation from the Uganda Constitutional Commission to establish a permanent Human Rights Commission with a mandate clearly outlined in the Constitution.

The Uganda Human Rights Commission was thus established as a constitutional body under article 51 of the 1995 Constitution of the Republic of Uganda (Constitution) as one of the principal institutions responsible for the protection and promotion of human rights. The Commission is composed of a Chairperson and not less than three other persons, appointed by the President with the approval of Parliament.¹⁰ The Chairperson and members of the Commission have to be persons of high moral character and proven integrity and serve for a period of six years and are eligible for re-appointment.¹¹ In carrying out its operations the Commission is guided by the Uganda Human Rights Commission Act, Commission Procedure Rules,¹² and the Commission Operational Guidelines.¹³ The Commission under the Constitution is independent and in the performance of its duties, should not be subject to the direction or control of any person or control authority.

9 A Comparative look at Implementing Human Rights Commission Laws March, 2009)

10 See article 51 (2) Constitution 2 See article 51 (4). Most of the Commissioners are currently serving a second term.

11 Uganda Human Rights Act, Act 4 of 1997.

12 The Uganda Human Rights Commission (Procedure) Rules, 1998.

13 Operational Guidelines of the Uganda Human Rights Commission, 1998.

The Uganda Human Rights Commission has its headquarters in Kampala and has regional offices in Gulu, Moroto, Jinja, Soroti, Fort Portal and Mbarara.

3.2 Functions and power of the Uganda Human Rights commission.⁷

The Uganda Human Rights Commission (UHRC) was established under the 1995 Constitution of the Republic of Uganda. The decision to establish a permanent body to monitor the human rights situation in the country was in recognition of Uganda's violent and turbulent history that had been characterized by arbitrary arrests, detention without trial, torture and brutal repression with impunity on the part of security organs during the pre and post independence era.¹⁴

3.2.1 Functions

The 1995 Constitution of Uganda lays down the functions of the Uganda Human rights Commission.¹⁵

To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;

To visit jails, prisons, and places of detention or related facilities with a view of assessing and inspecting conditions of the inmates and make recommendations;

To establish a continuing programme of research, education and information to enhance respect of human rights;

To recommend to Parliament effective measures to promote human rights including provision of compensation to victims of violations of human rights, or their families;

To create and sustain within society the awareness of the provisions of the Constitution as the fundamental law of the people of Uganda;

To educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;

¹⁴ <http://uhrc.ug/background>

¹⁵ Article 52 (1) of The 1995 Uganda Constitution

To formulate, implement, and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;

To monitor the Government's compliance with international treaty and convention obligations on human rights; and

To perform such other functions as may be provided by law.

The Commission is required to publish periodic reports and submit annual reports to⁸ Parliament on the state of human rights and freedoms in the country.¹⁶

The Uganda Human Rights Commission has to publish periodical reports on its findings and submit annual reports to Parliament on the state of human rights and freedoms in the country. In the performance of its functions, the Uganda Human Rights Commission can request the assistance of any department, bureau, office, agency or person in the performance of its functions and observe the rules of natural justice.

3.2.2 Powers of the Uganda Human Rights Commission.

In addition to the functions of the UHRC there are Powers the Commission has, its mandate or jurisdictional power which stipulate what the commission can do. Articles 52(3) and 48(1) also provide for other functions, powers and guidelines of the Commission.

The UHRC has the power of a court to: summon or order any person to attend before it and produce any document or record relevant to any investigation by the Commission; question any person in respect of any subject matter under its investigation; direct any person to disclose any information within his or her knowledge relevant to any investigation by the Commission, and commit persons for contempt of its orders.¹⁷

3.2.2.1 Order of Remedies

The Commission if satisfied that there has been a violation of human rights or freedom, may order the release of a detained or restricted person, payment of compensation, or any other

¹⁶ Article 52 (2) *ibid*

¹⁷ Article 53 (1) of the 1995 Constitution

¹⁸ The role of the Uganda Human Rights Commission's role as a police oversight body' POLICE ACCOUNTABILITY IN EAST AFRICA 12 -13 June 2006

legal remedy or redress however any person or authority dissatisfied with an order made by the Commission has the right to appeal to the High Court.¹⁸

3.2.2.2 UHRC as a police oversight body

In the performance of its functions, the Commission has overseen the performance of police particularly in terms of respect and observance of human rights principles in their operations. Police are often found in violation of human rights and fundamental freedoms such as the right to liberty, freedom from torture, cruel or inhuman degrading treatment or punishment, right to life and abuse of office, among others. The Commission oversees the work of the⁹ police through complaints handling, visiting places of detention, and monitoring compliance with international human rights instruments.¹⁹

3.2.2.3 Complaints handling

The Commission investigates on its own initiative and also receives complaints of human rights abuses committed by police and other perpetrators. A victim or a relative, friend, legal representative or any organization can come to the Commission offices i.e. Headquarters or Regional Offices to make a complaint. Unlike most National Human Rights Institutions which only make recommendations which have to be enforced in Courts, the Commission, if satisfied that there has been a violation of human rights or freedoms, may order: the release of a detained or restricted person, payment of compensation, or order any other legal remedy or redress. However any person or authority dissatisfied with an order made by the Commission has a right of appeal to the High Court. Since its inception the Commission has handled thousands of complaints against the police and awarded remedies to victims of human rights violations. In making the orders the Commission has made recommendations for prosecution and disciplinary action against the Police Officers who are responsible for the violations.²⁰

3.2.2.4 Human Rights Education

The Commission is involved in the carrying out Human Rights Education i.e. sensitization and dissemination of information on human rights issues. Having gone through turbulent

¹⁹ The role of the Uganda Human Rights Commission's role as a police oversight body' POLICE ACCOUNTABILITY IN EAST AFRICA 12 -13 June 2006

²⁰ ibid

times during the various dictatorships people had grown accustomed to human rights violations including by the Police as the order of the day. The Commission has played an important role in educating and informing the public about human rights values and concepts as provided in our Constitution and under international human rights instruments. This has enabled people to acquire knowledge of their rights and responsibilities and have acquired basic skills such as critical thinking, communication skills, problem-solving and negotiation, all of which are essential for the effective implementation of human rights standards. More people are becoming continually familiar with mechanisms for human rights protection at the local, national, regional, and global levels. The Commission has targeted Human Rights¹⁰ Education especially to the security agencies, police and prisons considering the large number of violations they commit. The Commission has particularly made good progress with the Police where it has carried out a Training of Trainers and developed a Police Human Rights Training Manual. This has helped to bring about a new found respect in the observance and respect for human rights among the Police. Although the Police are far from perfect, it is clear that progress is being made.²¹

3.2.2.5 Visiting places of detention and monitoring compliance with international human rights standards

Through the visits to police cells, jails and prisons the Commission has been able to assess and inspect conditions of the inmates which have enabled it make appropriate recommendations to parliament. The Commission has made various recommendations in Annual Reports regarding human rights violations including those by police, which are presented to Parliament and are also made public. With regard to the deplorable conditions of the prisons and other places of detention the Commission has recommended that the government should address these issues. The Commission has also recommended the revision of laws that are incompatible with the international human rights standards to enhance the promotion and protection of human rights in the country.

The Commission is also engaged in a dialogue with various government officials to bring an end to various violations of human rights by State agents. For example with regard to

²¹ The role of the Uganda Human Rights Commission's role as a police oversight body' POLICE ACCOUNTABILITY IN EAST AFRICA 12 -13 June 2006

violations of the right to liberty and freedom from torture, cruel and inhuman degrading treatment and the right to life, the Commission has discussed the matter with the concerned members of the cabinet ministers like the Minister of Internal Affairs, the Minister of State for Security, the Army Commander, Chief Chieftaincy of Military intelligence, Directors of the Internal and External Security Organizations and the Inspector General of Police to mention but a few.²²

3.3 Conclusion.

¹¹The Commission is barred from investigating any matter, which is pending before a court or judicial tribunal, or a matter involving the relations or dealings between the Government of Uganda and the Government of any foreign State or international organization, or a matter relating to the exercise of the prerogative of mercy. In view of the above functions and empowers, the UHRC has put in place various departments and committees to carry out its work.²³

²² ibid

²³ <http://uhrc.ug/background>

CHAPTER FOUR

4.1 Enforcement of the protection of human rights by commission¹²

UHRC appreciates the effort made by the Human Rights Committee of Parliament for drafting a bill that establishes an enforcement mechanism for the promotion and protection of human rights in Uganda. The proposed law is clearly an endeavour to bring Uganda in line with its international, regional and constitutional obligations.²⁴

This position paper therefore is as a result of UHRC's assessment coupled with consultations with various stakeholders.²⁵

4.2 Background to the enforcement Mechanism bill.

The Human Rights (Enforcement) Bill 2015 gives effect to Article 50(4) of the 1995 Constitution which provides that Parliament shall make laws for the enforcement of guaranteed rights and freedoms enshrined in Chapter 4 of the 1995 Constitution.

The Bill seeks to provide a law on enforcement of human rights as required by Article 50(4) of the Constitution. It further empowers the Rules Committee to make rules in respect of the specific procedural matters relating to protection of human rights and enforcement of the fundamental rights and freedoms by courts.

4.2.1 Positive aspects of the Bill

4.2.1.1 Right to Effective Remedy

Article 8 of the Universal Declaration on Human Rights (UDHR) provides for a right to an effective remedy for acts violating the fundamental rights guaranteed by the Constitution or by law. The right to a remedy is a secondary right, deriving from a primary substantive right that has been breached.²⁶ It encompasses the right to; equal and effective access to justice, adequate effective and prompt reparation for harm suffered, access to relevant information concerning violations and preparation mechanisms and access to fair and impartial proceedings.²⁷

24 UN Paris Principles relating to the status of national human rights institutions, Section 3 (a) (i).

25 Uganda Human Rights Commission consulted relevant stakeholders such as representatives from CSOs, Government Ministries and Departments, and the Academia.

26 https://www.icrc.org/eng/assets/files/other/irrc_851_zegveld.pdf accessed 9th February, 2017

27 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of serious violations of international human rights law and international humanitarian law.

Article 2(2) of the International Covenant on Civil and Political Rights (ICCPR) calls upon State Parties: to undertake necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights such as the right to a fair and speedy trial. At the regional level the African Charter on Human and People's Rights, requires state parties to commit themselves to recognize human and people's rights, duties and freedoms and adopt legislative measures to ensure that the provisions under the charter are put to effect.²⁸ At the sub regional level, the Treaty for the establishment of the East Africa Community (EAC Treaty) provides in Article 3 (3) (c), 7 (2) and 123(3) (c) for adoption of key human rights principles by member States.

At the national level, Article 50 of the Constitution of the Republic of Uganda guarantees judicial remedy for human rights violations and in particular stipulates that, any person who claims that fundamental or other right or freedom guaranteed under this Constitution has been infringed threatened, is entitled to apply to a competent court for redress which may include compensation.

4.2.1.2 Establishment of procedure for enforcing human rights¹³

It is good to note that the bill endeavours to ensure that human rights violations and abuses are handled in a more unified and systematic manner according to the laws provided, and also provides a means ensuring accountability and redress for individuals whose rights have been abused.²⁹

UHRC also notes that the proposed law provides clarity on the procedure for taking action when seeking redress and action against human rights violations as stipulated in Article 50 of the Constitution. In addition, it enforces the provision under 50(1) and 50(2) of the Constitution which stipulates that any person may bring a case to court for the purpose of protecting and enforcing human rights.³⁰

²⁸ Article 1 of the African Charter on Human and People's rights.

²⁹ Article 8 of the Universal Declaration on Human Rights

³⁰ Refer to the Tanzanian Basic Human Rights Enforcement Act for any best practices

4.3 Human rights concerns arising from the Bill

Lack of a nexus between UHRC and the need to strengthen UHRC and its Tribunal for effective enforcement of human rights. UHRC appreciates the provision under Clause 1(3) of the bill which defines its mandate in enforcement of human rights and clearly sets it apart from other institutions such as the Judiciary. This is important for ensuring that there is no duplication of services. Article 51(1) of the 1995 Constitution of the Republic of Uganda and the Uganda Human Rights Commission Act No.4 of 1997 clearly sets out the powers and¹⁴ functions of the Uganda Human Rights Commission including summoning witnesses and receiving evidence regarding a human rights violation.³¹

Whereupon a violation is proven, UHRC can order for an appropriate redress such as compensation, or any other remedy that it deems fit³² most importantly, UHRC provides free services that enable citizens to enforce their rights.

It is noted that the Bill fails to provide a linkage with other institutions that promote and protect human rights like the Equal Opportunities Commission. This nexus between UHRC and other institutions that promote and protect human rights in the country is crucial in order to avoid duplication of mandates and forum shopping by litigants where redress mechanisms have concurrent jurisdiction over a claim. The current bill seems to create a parallel mechanism in regards to human rights enforcement yet it should be complementary to the work of the UHRC and other Constitutional bodies working in the area of human rights such as the Equal Opportunities Commission, and the IGG, which all have powers to investigate actions on human rights violations and abuses in various forms.³³ In addition the Bill does not provide for strengthening of the UHRC and its tribunal for effective and efficient enforcement of human rights.

UHRC notes that the bill excludes other economic, social, and cultural rights provided for under the National Objectives and Directive Principles of State Policy such as the right to education, right to health, right to adequate food as well as other rights provided for in other chapters of the Constitution such as rights in Chapter 3 on citizenship, rights in Chapter 5 on representation of the people all of which are justifiable. In addition, it must be noted that

31 Article 53(1) (a) of the 1995 Constitution of the Republic of Uganda

32 Article 53(2) of the 1995 Constitution of the Republic of Uganda

33 Section 15 of the Equal Opportunities Commission Act 2007

Article 45 of the Constitution makes reference to the fact that even if freedoms and rights are not explicitly mentioned within Chapter 4, it does not include them from being recognized. UHRC notes that human rights are universal and interrelated and therefore should be enjoyed on an equal basis.

4.3.1 High Court being the court of first instance

UHRC is concerned that the High Court has been stated as the court of first instance for enforcement of human rights. Clause 4(1) of the bill gives exclusive jurisdiction to the High Court to hear and determine matters relating to the enforcement of human rights, and. Clause 6(1) requires any subordinate courts to refer matters dealing with human rights enforcement to the High Court. To this extent the High Court acts as a court of first instance and- no subordinate court may determine the matter.

It is a well-known fact that the High Court of Uganda suffers from tremendous backlog of cases. Furthermore, the High Court circuits cover only 20 districts in the country. Under such circumstances, it is hard to envisage how prompt and effective remedies can be obtained through the High Court in relation to human rights violations. We further note that currently Uganda has over 80 magisterial areas and thus having more magistrates courts operating the country. This indicates that the citizens can easily access a magistrate court as opposed to the high court. The UHRC therefore suggests that the Committee considers Magistrate Grade One as the court of first instance to further enforce the UHRC tribunal which is in 10 districts only.

For instance, the Magistrates Court Amendment Act grants jurisdiction to Grade 1 Magistrates to handle cases of child protection. The then Chief Justice Benjamin Odoki¹⁵ directed Magistrate Grade 1 Magistrates to preside over cases involving families and children. In Legal Notice Supplement No.2, 2012, he assigned G.1 to preside over family and children courts which hear and determine criminal charges against a child and application relating to child care protection. Conclusively, Magistrate Grade one is more accessible to the vulnerable persons compared to High Court.³⁴

³⁴ Human rights Committee, General Comment No. 31, the Nature of the General Legal Obligation imposed on State Parties to the Covenant adopted on 29th March 2004, and par.15

4.3.2 Procedure for enforcement of violation of human rights by use of a plaint

Clause 5(1) of the Bill provides that a plaint could be used for instituting an action in court for a human rights violation claim.

UHRC highlights that Article 50(1) of the Constitution provides that any person who claims that a right or freedom has been infringed or threatened, is entitled to apply to a competent court for redress. In addition, Article 137 of the Constitution provides that if a person alleges that a law, act or omission contravenes the Constitution, he or she may petition court.

UHRC opines that the requirement of a plaint for this procedure will eliminate "any" person for petitioning or applying to the court for redress due to the technical, complex and intricate nature of plaint. UHRC is concerned about this provision since a plaint requires legal assistance, which is of course expensive and out of reach for the ordinary Ugandan.¹⁶ Additionally, a plaint is subject to number of procedures before consideration of the merits of the case can take place as per the Civil Procedure Rules.³⁵

This might pose a problem because it gives considerable time to the other party to respond, yet in many instances human rights violations need immediate redress or remedy.

In addition, the court may reject a plaint on many grounds including: where it does not disclose a cause of action; where the relief claimed is undervalued, where the suit appears from the statement in the plaint to be barred by any law; and where the suit is shown by the plaint to be frivolous or vexatious among others.³⁶ In essence, if the plaint is not expertly drawn, it could lead to the dismissal of an application.

To ensure non- discrimination and protection of human rights for all, the procedure for enforcement should be simple and accessible for all especially the vulnerable persons.

If the Committee views this procedure as too simplistic then UHRC suggests a notice of motion or petition supported by an affidavit of the complainant.

The UHRC therefore recommends that Clause 5(1) be amended to allow for an application by either or all of the following, A complaint form if Magistrates jurisdiction is in this matter is

³⁵ Order 7,8,9 Civil Procedure Rules, Statutory Instrument 71-1

³⁶ As above 7 procedure could be adopted such as a complaint form on oath as utilized by the Family and Children Court enforcement related to children.

adopted, a petition supported by an affidavit or a notice of motion similarly supported with an affidavit.

4.3.3 An action for enforcement of human rights being heard in open court

UHRC notes that Clause 5(2) provides that every action shall be heard in an open court by a single judge. This provision is mandatory in its nature and yet it does not take into account the protection of witnesses and victims such as in cases related to children and those who are victims of Sexual Gender Based Violence (SGBV).¹⁷

For instance, due to the sensitivity of certain issues, parties may request for closed sessions where a complainant or victim is a child or in matters involving sexual violence. The court should take into consideration of the facts and acts in accordance with the best interests of that child or ensure that the dignity of the victim is protected. Some human rights cases are sensitive in nature and need to be heard in a judge's chambers, to avoid stigma and discrimination. The court should be given the discretion to decide whether to proceed in chambers or not.³⁷

In addition the 1995 Constitution provides that in the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society.³⁸

4.3.4 Right to Legal Representation

The Bill is silent about legal representation in cases before the high court yet most victims of human rights violations are marginalized persons, poor and often cannot afford services of a lawyer. An adequate legal aid system is one of the prerequisites for access to justice for all especially the vulnerable persons.³⁹ The limited ability of people living in poverty to access legal and adjudicatory processes and mechanisms is not only a violation of human rights in itself⁴⁰, but is also the consequence of numerous other rights violations.⁴¹ Legal aid is indispensable for effective access to courts especially the High Court. Self-representation would be ineffective given the complex procedure of the High Court and the vulnerability of victims of human rights violations.

³⁷ 14 Section 21 of the Judicature Act . 8

³⁸ Article 28 (2) of the 1995 constitution

³⁹ <http://www.dawn.com/news/1301948> accessed on 9th February, 2017

⁴⁰ Article 14 of the International Covenant on Civil and Political Rights

⁴¹ [http://www.flac.ie/download/pdf/lab_conference_paperjune_2014 .pdf](http://www.flac.ie/download/pdf/lab_conference_paperjune_2014.pdf) accessed on 9th February 2017 9

In the case of *Airey v Ireland* 32 Eu Ct HR Sera (1979) 2 E.H.R.R.305, Ms. Airey sought judicial separation from her physically abusive husband. She was unable to obtain such an order since she lacked financial means, in the absence of legal aid, to retain a solicitor.

The European Court of Human Rights held that this was a violation of her right to access court for determination of her civil rights and obligations.

UHRC is aware that there are current provisions under the Civil Procedure Act and rules to cater for those unable to afford the fees related to court proceedings. Such provisions should be replicated in the Bill

4.4 Other governmental agencies which protect human rights.

They are various organs both governmental and non-governmental (NGOs) organisation which deals in the protection of Human rights from being violated and these are referred to as Human Rights Defenders (HRDs).

Civil society in Uganda has grown tremendously over time and continues to grow. Civil society includes various NGOs working on vital issues such as health, poverty reduction, and human rights. Many of these NGOs qualify as HRDs by the nature of their work as they specialise in promoting human rights. Although relatively young, civil society in Uganda was considered by the majority of respondents to have made significant progress in its development, particularly those engaged in direct human rights work. Civil society in Uganda has organised itself into different organisations and associations. Some of the broader groups identified within civil society include: media, human rights organizations, lawyers, NGOs¹⁸ and CBOs, women and youth associations as well as religious organisations. These organisations address a wide range of issues including corruption, abuse of governmental powers, promotion of good governance and democracy, among others.⁴²

The defence of human rights is steadily gaining prominence in Uganda. There is also the growing realisation that in the course of defending human rights, many rights have been violated and this has in many instances gone unnoticed. Concern about the challenges faced

42 An Overview of the working environment for Human Rights Defenders in Uganda

by Non-Governmental Organisations (NGOs), individuals and other organisations involved in the defence of human rights has been one of the major reasons for publishing this report.

Human rights defenders (HRDs) share a commitment to protect promote and ensure the rights of others. With greater visibility and influence of human rights defenders comes responsibility. The Declaration on human rights defenders which clearly spells out these rights and responsibilities is hardly known, let alone utilised by defenders or even government institutions.⁴³

The Human Rights Centre Uganda (the Centre) is a non-partisan, non-profit organisation legally registered in Uganda since November 2008. It is dedicated to the promotion and protection of human rights with particular emphasis on the rights of Human Rights Defenders¹⁹(HRDs). The Centre aims at improving the legal, institutional and policy environments in which HRDs operate by engaging in various promotional and protection activities. In this regard the Centre aims at;

Contributing towards improvement of the environment in which HRDs operate in Uganda; Establishing national networks and contact points for receiving and collecting information that impacts on HRDs; Working towards the establishment and support of a unifying body for HRDs in Uganda that promotes and protects their interests; Organising regular fora, workshops, conferences on themes directly on HRDs in Uganda and on themes relevant to their rights such as freedom of information, speech, association and assembly.⁴⁴

From the interviews and responses, it was generally agreed that HRDs have fair legal protection in relation to their work in Uganda and also generally enjoy the right to exercise their freedom of association, speech and expression. It was however also pointed out that despite this there have been many cases of intimidation, arrests, detention, and harassment of HRDs. In discussing their situation, HRDs presented many critical challenges that confront them.⁴⁵

43 An Overview of the working environment for Human Rights Defenders in Uganda

44 ibid

45 ibid

CHAPTER FIVE

5.0 The challenges of the Uganda human Rights commission and other human right defenders.

5.1 Challenges on the Uganda Human Rights commission.²⁰

A commission should ideally be independent of the government. This means that it should be financially independent to the greatest extent possible, and that the government should have little or no control over the functioning of the commission. Members of the commission should be accountable to and responsive to the public, and should be diverse so as to reflect the plurality of society. A commission should also have a broad mandate and meaningful powers to monitor human rights compliance by the government effectively.⁴⁶

In the performance of its functions, the Uganda Human Rights Commission has faced various challenges some of which have been overcome such as acceptability and non-cooperation with the police. While others are still pending such as prompt and immediate access to all detention centres, payment of compensation to victims of human rights violations, defence of terror suspects and limited resources. In the beginning the Commission was not readily accepted as a watch dog. Police was uncooperative in aiding Commission investigations and would not respond to Commission letters of inquiry. However, over time there has been acceptance and communication with Police has greatly improved especially through the Human Rights Education Programmes and the Complaints and Human Rights Desk in the Police. I will discuss the outstanding challenges below.⁴⁷

5.1.1 Access to detention centres

The Uganda Human Rights Commission routinely visits places of detention and can promptly and immediately access most of the Police Cells. However, there is a requirement in case of military detention centres of at least 24 hours notice to comply with security measures. Although it is commendable that the Commission can access military detention centres unlike before, it nearly defeats the purpose. Moreover, some suspects are detained in ungazetted places known as 'safe houses' which cannot easily be accessed by the Commission.⁴⁸

46 A Comparative look at Implementing Human Rights Commission Laws March, 2009)

47 The role of the Uganda Human Rights Commission's role as a police oversight body' POLICE ACCOUNTABILITY IN EAST AFRICA 12 -13 June 2006

5.1.2 Payment of compensation to victims of human rights violations

The Commission has awarded numerous victims compensation for violation of their human rights including those by the Police. However, victims like other civil litigants who have orders against the government have to join the queue for payment. The victims are being paid in bits and pieces which is discouraging.⁴⁹

5.1.3 Defence of the rights of terror and rebel suspects²¹

It is a challenge to defend the rights of terror and rebel suspects who have been arrested by the military and kept in Police cells. The trend is that these are usually detained for longer than 48 hours before being taken to Court and subjected to torture, cruel, inhuman degrading treatment.⁵⁰

5.1.4 Resources

It is challenging for the Police to operate within their meagre resources. Most times Police have inadequate resources to carry out investigations. The upcountry police stations which cover even more areas lack basic necessities for work such as paper, files, clips etc which makes their work very complicated.⁵¹

5.2 Challenges on the Human Rights Defenders.

Introduction this sub chapter presents and analyses primary data collected from the field. The discussion focuses mainly on the challenges and violations faced by defenders which were identified by the respondents.⁵²

5.2.1 Legal and Policy challenges

5.2.1.1 Restrictive Legal and Policy framework

The HRDs that were interviewed expressed very strong sentiments against the policy and legal framework which they said generally restricts the space for civil society to carry out their activities. This is a trend similar to what is happening in other parts of the world, particularly in developing countries. It was reported that the Government has been introducing subtle measures to restrict the space in which activists promoting and defending democracy and human rights operate. Some of these measures relate to the introduction of

48 ibid

49 The role of the Uganda Human Rights Commission's role as a police oversight body' POLICE ACCOUNTABILITY IN EAST AFRICA 12 -13 June 2006

50 ibid

51 ibid

52 ibid

new laws and regulations to control and restrict the operation of civil society in ways that can frustrate the very objectives for which they were formed.

Indeed, the Non Governmental Organisations Act and its implementing regulations were particularly cited as they give the Government considerable control over the operations of NGOs, most of whom are HRDs. The Act prohibits any NGO from operating unless it is²² registered by the NGO Board, which can impose conditions or directives as it deems fit. The law also requires annual renewal of licenses, the issuance of which is at the discretion of the Board.⁵³

5.2.1.2 Accessing protection and remedies

Many HRDs in Uganda are employees of organisations working on human rights issues or are by the nature of their work engaged actively in the task of promoting and protecting human rights. A typical example in the latter category is that of journalists. Many respondents lamented that there is no specific law to provide protective mechanisms for HRDs. While they pointed out that they sometimes go to the police, the courts or to the Uganda Human Rights Commission in cases where their rights are violated, these mechanisms were not effective enough to address their unique problems as HRDs. It was claimed that the police do not give serious consideration to their complaints, while accessing the court system is expensive if one is to use legal experts to effectively present a case. They said the UHRC was overwhelmed with complaints.⁵⁴

One journalist in Kampala underscored the fact that when journalists get into trouble with the authorities and are charged in court for an alleged crime related to their work, their employers do not provide the necessary legal assistance. Another said that generally journalists fight for themselves when their rights are violated and that no institution comes to the aid of journalists in such situations. In particular HRDs who are journalists feel that penal laws are being used disproportionately to prosecute journalists with a view to intimidating them and exercising undue control on what they can express publicly. These testimonies showed that at the time of research HRDs in Uganda felt very vulnerable.⁵⁵

⁵³ An Overview of the working environment for Human Rights Defenders in Uganda

⁵⁴ *ibid*

⁵⁵ *ibid*

5.2.2 Operational Challenges

5.2.2.1 Security threats²³

By the nature of their work, HRDs all over the world are not very popular with the authorities. In less democratic states, views expressed by defenders can expose them to the risk of being arrested, harassed, and threatened or even being attacked or killed. For example, the President of Gambia made statements on 21 September 2009 publicly threatening to kill HRDs and those that cooperate with them.⁵⁶

A number of HRDs interviewed expressed a sense of vulnerability because of their work. Other than those who reported being arrested, detained and prosecuted, many others interviewed stated that threats against defenders were largely covert or subtle. Respondents reported that threats include anonymous telephone calls in which they were warned and threatened with danger on account of their work; surveillance by unknown persons; as well as burglary of property, documents, and laptops from office premises or vehicles.⁵⁷

A defender in Kampala had this to say: “When the organisation I work for exposed some Government authorities on corruption we received anonymous phone calls with threats and intimidation, security people roamed around my office. My family and I had to leave our home for some few weeks”. Other than covert and subtle threats, some respondents reported overt threats, mainly from the police, soldiers, military intelligence, RDCs and District Internal Security Officers. It was reported that such conduct was carried out by state officials with impunity; such threats would be reported to relevant authorities but they would not be investigated or the police would not charge the persons concerned.⁵⁸

These security threats have had a negative impact on the work of HRDs who reported that they act with caution in whatever they do, due to fear for their security and their jobs. In particular, it was the general view that many HRDs in Uganda are practising self-censorship in the exercise of freedom of association, assembly and expression for fear of treading on ‘dangerous grounds.’ Some of them, as a matter of precaution, have chosen to concentrate on ‘soft’ human rights issues that are unlikely to annoy the authorities.⁵⁹

⁵⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11&LangID=E> as accessed on 1/12/2009.

⁵⁷ An Overview of the working environment for Human Rights Defenders in Uganda

⁵⁸ *ibid*

⁵⁹ *ibid*

The threats to personal security notwithstanding, some HRDs were of the opinion that not all HRDs are prone to these threats. They noted that HRDs in conflict with the authorities are those working on issues interpreted to be connected with politics. Generally HRDs at risk are those engaged in civil and political rights, or those directly involved in monitoring and reporting on violations of human rights. By the nature of their work these defenders often criticize government policies and the conduct of government officials. Other than misunderstandings related to HRDs' work in this category, it was reported that on the whole, the relationship between government and many civil society organisations was fairly good.

5.2.2.2 Weak Organisational Capacity²⁴

Civil society organisations in Uganda date as far back as 1989 with the enactment of the Non-Governmental Organisation Statute. Since then many NGOs and CBOs working in the field of human rights have been formed. Many continue to be formed but are relatively inexperienced or weak. Some of the organisations that were interviewed confessed that their ability to perform effectively is limited by inadequate human and technical capacities. They have staff that lack skills and are in need of training but lack the resources to create the required capacity. Although some of the organisations said they utilise their HRD networks to support the training of their staff, this was only possible if training opportunities were offered.⁶⁰

A core capacity challenge that almost all the HRD organisations cited was the difficulty of retaining trained and skilled staff. Due to insufficient funds, staffs are poorly remunerated. Those who are experienced and skilled frequently look for better jobs and move on. One organisation in Kampala confirmed that “many human rights organisations do not have enough money to pay all their workers well and so the workers leave for better opportunities elsewhere”. As the organisations grow, coupled with the changes in the cost of living, staff demands increase and yet human rights organisations are incapable of meeting the increased demands. Consequently, organisations lose their skilled staff and this has proved disruptive of their work.

Many HRDs noted that there was a general perception by the public that HRDs join various organisations for monetary reasons and that they lack passion for their work. Some HRDs felt

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that there is need to work on this perception to let the public know that it is not true of all HRDs and that HRDs too need to be paid so that they can effectively carry out their work. A number of HRDs stated that it is the passion that has kept them going and enabled them to do their work.

Some HRDs also noted that there is weak technical capacity in most organisations and this has continuously affected the work they do. The problem was attributed to the lack of adequate financial resources to equip these organisations and individuals with the necessary technical support, as well as the lack of well trained personnel in the required fields.

5.2.2.3 Networking

There has been considerable, positive activity by NGOs and HRDs in networking on various thematic issues. For example, networks have been formed to crusade on anti-corruption, provision of legal aid, budget tracking, women's rights, environmental rights, children's rights, torture, freedom of association, and others.

Setting up and utilising networks of HRDs was recognised as important in enhancing the work of HRDs. It was cited as a mechanism that can be exploited for protection of the rights of HRDs as it can enable synergy of action and utilisation of collective effort. Unity of purpose and action was lauded as critical in all these.

Organisations and individuals involved in human rights work that are located in the capital city Kampala reported engaging in extensive networking among themselves. They also reported regular interaction with other human rights actors at the regional and international level. These interactions were mainly through seminars, workshops and correspondence on matters of mutual interests. At the national level, examples were cited of horizontal and vertical collaborations by HRDs in form of networks and coalitions like Human Rights Network Uganda (HURINET), Development Network of Voluntary Associations (DENIVA) Uganda National NGO Forum, Uganda child Rights Network (UCRNN) and Coalition for Civil Society Organisations for Peace in Northern Uganda (CSOPNU).

HURINET was established in 1994 as an independent, non-partisan, not-for-profit organisation. Currently it has a membership of 32 NGOs working on a range of human rights including civil, political, economic, social and cultural rights, group rights, and conflict resolution among others. DENIVA is a network of indigenous NGOs and CBOs. It provides a platform for collective action and voice for voluntary local association to strongly advocate

for the creation of more opportunities and CSO participation in development in Uganda. Established in 1989, DENIVA's mission is to influence poverty reduction and good governance processes and strategies through mobilising diverse experiences, knowledge and skills of CSOs in Uganda onto a common platform.⁶¹

²⁵Outside of Kampala and in the regions some HRD organisations have also formed networks. Some notable ones are Bugishu Civil Society Network (BUCINET), Association of Human Rights Organisations (AHURIO), Gulu NGO Forum, Kamuli District NGO Network, Masindi District NGO Network, Kalangala District Human Rights Defenders, Koboko Civil Society Network (KOCISNET) among others. It emerged from the discussions with some NGOs in the regions that most human rights networks in the region are fluid without formal registration. Some of them exist mainly to co-ordinate meetings and are not fully formalised and operational like the national networks.

Since HRDs work to protect and promote human rights the need for an organised referral system for issues between them was highlighted. This was expressed as a critical role which proper networking would make possible. It was suggested for example, that matters presented to one organisation could be referred to another organisation that has better capabilities or expertise in the particular area concerned in order to deal with the matter more efficiently. HRDs said such a referral system did not exist and even if they were to be initiated, it would have financial implications unlikely to be easily met by the networks.⁶²

5.2.2.4 Inadequate Knowledge about human rights protective mechanisms

Particular groups of HRDs were seriously concerned about their vulnerability, compounded by the lack of awareness regarding the existing regional and international mechanisms that could be utilised in the event of violations or to pre-empt impending violations. Media practitioners were particularly very candid about their lack of knowledge about the existence of such mechanisms and how to utilise them. For example, they were not aware of the United Nations Special Rapporteur on the situation of Human Rights Defenders. A quick search on the website of the OHCHR revealed that HRDs in Uganda are not making frequent use of the UN Special Procedures system. When asked why, HRDs generally conceded that they lacked

⁶¹ An Overview of the working environment for Human Rights Defenders in Uganda

⁶² *ibid*

⁶³ Patrick Okiring & Agupio Samson v. Uganda ACHPR/LPROT/COMM/339/07/SO.

knowledge about the procedures. Only HURINET had in 2007 lodged a case with the African Commission on Human and Peoples' Rights.⁶³

5.2.3 Human rights education

5.2.3.1 Technical skills

Many HRDs in Uganda spend a considerable part of their work disseminating human rights information. Most of them admitted encountering resistance in the process. Resistance according to them comes from politicians, traditionalists and other individuals who regard some human rights principles, norms and standards as unwanted influence from the Western world. Politicians resist the dissemination of human rights knowledge that empowers the citizen to hold them accountable. Traditionalists oppose ideas that conflict with their cultural beliefs and practices. As a result, HRDs working in human rights education and enforcement of certain rights have faced frustrations when they found it difficult to sell their ideas. One organisation had this to say about such frustration:

“Most people, including district leaders lack knowledge about the concept of human rights when we invite district leaders to train them about political rights. Some of them have walked out of human rights conferences...” Another organisation working on the rights of girls said:

“We protect the rights of girls who have returned from the bush. Many of them are teenage mothers. When they come back home we help integrate them into society. Some have lost their parents. When the girls try to claim their parents' property especially land, some elders chase them away from the community because girls are not supposed to inherit land. This makes our work very difficult”. These testimonies show the challenges HRDs encounter especially where the ideas promoted conflict with the interests of established norms, practices and beliefs and also with the interests of the authorities. This concern was discussed with a number of HRDs and the general view was that some HRDs lack the necessary skills to conduct human rights education. HRDs concurred that introducing new ideas requires a careful approach and the skills to make what is being taught relevant to local values. Some examples were given of clashes between human rights educators and the public whom they seek to sensitise on human rights.

5.2.4 Financial Challenges

5.2.4.1 Lack of adequate finances to implement project

As a consequence of the challenges related to fundraising, most organisations lack adequate funds to implement specific projects. Local sources of funds for HRDs are insufficient and thus there is heavy reliance on foreign donors, such as international NGOs, intergovernmental agencies, embassies and foreign governments. A respondent from a well-known NGO in Kampala lamented, “Sustainability of human rights work is never assured as our organisations have no local sources of funding.” The extent of absence of local sources of funding is illustrated by the fact that even governmental bodies mandated to promote and protect human rights are inadequately funded. A respondent in western Uganda working for a governmental human rights body pointed out that all its funding to run its activities come from international donors.

Respondents mentioned the tendency by donors to provide short term funds (six months to three years) as opposed to long-term funding of five or more years. Short-term funding, according to respondents in western, northern and central Uganda is favoured by donors because of the need to test projects and the credibility of the organisations. Inevitably, some organisations are unable to implement activities that require a long period of time to realise behavioural change. For example, two respondents in western Uganda mentioned that they needed long-term funding in order to change cultural attitudes or behaviour that negatively impact on human rights. A respondent in Gulu stated: “Development agencies cannot commit funds for a long term. Most commit themselves for only five years.” Some HRDs considered funding for five years insufficient for them to perform their work effectively. (An Overview of the working environment for Human Rights Defenders in Uganda)

A respondent in Kyenjojo felt that donors wanted beneficiaries to strictly adhere to activities outlined in project proposals and that this did not allow for contingencies during implementation. Finally, a respondent in Kampala stated that some donors support organisations selectively, committing funds for the promotion of particular rights but not of others.

Some respondents mentioned that funding was not tailored to meet actual needs on the ground. A respondent in Kabale stated: “[Donors] cannot understand what we are facing,” because they wish to provide funding for an activity such as a workshop of one day yet the NGO actually needs funding to be stretched over a longer period due to the geographical

remoteness of the NGO from workshop participants. A respondent in Soroti said: “Donors tie funding to specific projects which have no relevance to local people.”

“The reasons for this were concentration of technical capacity to draft good project proposals in the central region, lack of networking and proper communication upcountry and low visibility of organisations in areas remote from Kampala.” A respondent in Kyenjojo said that in deciding where to channel funds, donors “should put into consideration regional issues and not focus on general issues.” Another in West Nile said that donors “should not concentrate their support on organisations in Kampala but reach out to the other districts to build a big alliance.”

HRDs noted the absence of efforts to raise funds internally, for instance through encouraging the private sector to donate funds. It was felt that HRDs have not been pro-active enough in engaging the public’s interest in what they do in order to help raise funds through subscription fees or contributions. In addition, corporate social responsibility was cited as an opportunity for HRDs to explore as a potential source of local financial assistance from corporate bodies.

5.2.5 Women Human Rights Defenders²⁶

Women HRDs face challenges that are unique to them because of their gender and the environment in which they operate. Like media practitioners, women HRDs play a vital role in society by speaking on issues that may be considered unfavourable to certain elements of society. However, the fact that these HRDs are female may operate against them in environments where there is an urge to ‘undress’ (humiliate) women and prejudices abound about the way women are ‘supposed’ to behave. Some communities think that the current Government has ‘spoilt’ women and children by promoting their rights (a reference to affirmative laws, policies, programs, and institutions supporting women). One respondent in western Uganda mentioned that there are few women activists “because we’re associated with female HRDs who have failed in their marriages and people think we will follow such footsteps.”⁶⁴

64 Uganda Preparing for the Polls Improving Accountability for Electoral Violence in Uganda, 2009, Human Rights Watch, U.S.A, p. 9.

In northern Uganda, a respondent noted that massive campaigns on women's rights have made the work of women HRDs easier. However, they still face many challenges. Those who are advocating for the rights of 'extremely vulnerable individuals' like the elderly, orphans below eight years, those with HIV/AIDS and persons with disabilities are considered controversial. Men in particular do not respect the work of women HRDs so they verbally abuse, mock and intimidate them, sometimes threatening them with death. All this amounts to violation of the rights of women HRDs.

Women defenders reported repudiation or exclusion by fellow women who do not agree with the work they do. A respondent in Kampala said that their female staffs who go to rural areas for advocacy work have noted that some women disagree with them when they state that wife battery is wrong. This creates friction and at times the female members of the community refer to those doing such work as 'home-breakers'.

Women HRDs face the following violations specifically because of their gender: beatings by men and some family members, intimidation in the workplace, prejudice, public repudiation, anonymous death threats, smear campaigns, psychological torture, and inaction from authorities when their rights are violated. Other violations include physical violence, intimidation, verbal abuse, unfair dismissals, stigmatisation with degrading stereotypes, sexual violence or harassment, exclusion, gender-based discrimination and unfair dismissals related to their work as HRDs.

In Kampala, an interviewee stated: "the state violates people's rights in many ways but to me the biggest violators of rights are individuals. I have advocated for women's rights for so many years but women suffer silently with abuse from almost everyone around them". The respondent added that recently, women have faced humiliating and degrading treatment especially from police regarding the manner in which they are arrested.

5.2.6 Disability Rights²⁷

HRDs that defend the rights of persons living with disabilities (PWDs) face unique challenges. Under Objective XVI of the National Objectives and Directive Principles of State Policy, the Constitution of Uganda provides that society and the State shall recognize

⁶⁵ http://www.parliament.go.ug/index.php?option=com_wrapper&Itemid=37 accessed on 20th January 2010

⁶⁶ Objective XXIV(c) of the National Objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda 1995

the rights⁶⁵ of persons with disabilities to respect and humanity⁶⁶. Objective XXIV(c) provides that the State shall promote the development of a sign language for the deaf. The State and some members of society have recognised the rights of PWDs.

A Human Rights Defender from Kampala stated that although there are constitutional provisions in place to protect the rights of PWDs, most people have a negative attitude towards those that promote and defend the rights. They generally do not know much about disability rights.

A respondent from Kampala who is a PWD defending other PWDs stated: “We face a lot of discrimination and verbal abuse. I was once attacked by someone in a bus. He loudly told everyone that I had compound eyes like for an insect. I really felt bad about this but I decided to let go.”

A respondent from Kampala cited discrimination when interacting with other HRDs. He told the researchers:

“When we go to some meetings with people from other NGOs, at times it is difficult for us. Some of them shout at us in front of everyone. Even fellow HRDs do not understand nor support us.”

Another HRD in Kampala pointed out that: “Donor support for PWDs is minimal as compared to funds given to promote and protect other rights and yet we need a lot of this support too. We need both moral and financial support.” This respondent also complained about poor infrastructure as one of their biggest problems. Most buildings especially offices are generally inaccessible to PWDs especially those who have a physical disability. The two respondents quoted above also reported engaging in many public awareness campaigns to inform the public about disability rights but faced resource constraints. They both called for provision of more funds for promoting disability rights as well as support towards the domestication of international standards on disability rights in Uganda.

CHAPTER SIX

6.0 Recommendations and conclusions.

6.1 Recommendations.²⁸

The national human rights commissions must be independent of the government in order to work effectively.

National human rights commissions are more likely to be successful when they have a diverse membership. When commissioners come from different backgrounds, they may draw on a variety of expertise.⁶⁷ More specifically, when members are drawn from civil society or when commissions consult regularly with civil society, their relationships can be stronger and their interactions more consistent with individuals or groups who are marginalized or threatened.

Additionally, commissioners should have fixed terms of service and rotate out on a regular basis. The United Nations, for example, suggests a fixed term of at least five years, with a possibility of re-appointment for one additional term of the same length.

Effective commissions should enjoy widespread public legitimacy, have open organizational structures and be accessible to the general public.⁶⁸ To this end, national human rights commissions should publish monthly, quarterly and/or annual reports, including their results, their future plans, statistics and findings on cases, etc.

A state should also set forth a long-term national human rights action plan for its commission a for example, a ten or twenty year plan for future progress. Such plans should include a future timeline of actions to implement human rights obligations, as well as steps to develop relationships with international and regional human rights organizations.

To address legal and policy challenges due to the restrictive legal and policy framework the laws, particularly the Non-Governmental Organisations Act, 2006 and regulations, which

67 Commonwealth Human Rights Initiative 41

68 International Council on Human Rights Policy 7-8

regulate the environment in which HRDs operate, should be reviewed to accommodate the concerns of HRDs and CBOs in general.

The laws that hinder press freedom, freedom of assembly, association and demonstration should be repealed. While these concerns have been brought to the attention of Government to no avail, urgent appeals to the Government must continue. HRDs and CBOs should continue appealing to Government and should therefore intensify the campaign to have the laws reviewed.

On accessing protection and remedies HRDs should be trained on the national and international protection mechanisms available to them when their rights are violated and HRDs should be trained on their rights and responsibilities, including those elucidated in the Declaration on HRDs.

Operational Challenges, HRDs should establish a system of engagement with the authorities with a view to sorting out misunderstandings when they arise and HRDs should form a strong network of HRDs particularly to pursue collective action on security threats.

There is need for regular training programmes to strengthen the capacity of HRD organisations and their individual personal and HRDs should from time to time identify knowledge capacity gaps to be addressed through training, either through their networks or organisations like the Human Rights Centre Uganda.

Inadequate knowledge about human rights protective mechanisms, HRDs should be trained on their rights as HRDs. In particular they should be trained on the Declaration on the rights of HRDs.

There should be a section in the Bill to the effect that the mandate of the Commission to receive investigate and resolve human rights matters shall not be negated as a result of the Human Rights Enforcement Bill. The UHRC's mandate should therefore be maintained and clearly spelt out in the bill especially strengthening UHRC and its Tribunal/for effective enforcement of human rights.

UHRC therefore recommends that scope of application under Clause 1 should be widened to include all rights as stipulated in Constitution as well as those in ratified international and regional human rights instruments and not limited to the rights within Chapter 4 of the Constitution.

The UHRC recommends that the bill provides for legal representation for vulnerable persons.

UHRC therefore recommends that the Rules Committee be solely in charge of developing the rules of procedure.

UHRC therefore recommends that Grade One Magistrate Court should be the Court of first instance of High Court for enforcement in human rights matters.

6.2 Conclusions.

The UHRC notes the proposed Human Rights Enforcement Bill is a positive step towards enhancing the promotion and protection of Human Rights, it will specifically give effect to Article 50 (4) of the 1995 Constitution which provides that Parliament should make laws for the enforcement of guaranteed rights and freedoms enshrined in Chapter 4 of the 1995 Constitution of the Republic of Uganda.

However, the UHRC notes that the bill has negative aspects that might hinder the full realization of human rights including: limitation of enforcement of rights; definition of the subordinate court; high court being the first court of instance; appeal process stopping at High Court; procedure for enforcement of human rights violations among others.

The role of the Uganda Human Rights Commission in police oversight is mostly through complaints handling, visiting places of detention and monitoring compliance with international human rights instruments. There are still challenges in carrying out this oversight function but there is a clearly marked improvement in the operations of the Police since the Commission was established which is commendable.

It is important for the government to avail the Police with adequate resources to enable them to effectively perform their duties. It is equally important that the police uphold human rights values and principles as they carry out their duties. As people responsible for the maintenance of law and order they are partners in the promotion and protection of human rights. Furthermore, it is vital that victims of human rights violations be promptly and adequately compensated and that the perpetrators be prosecuted or disciplined as is deemed fit. It is crucial to have an oversight body composed of all stakeholders to oversee the Police and such

²⁹a body is welcome because no one organization can effectively and wholly oversee the operations of the police.⁶⁹

In general, the HRDs in Uganda have played a vital role in protecting human rights as important for peace, security and development of the country. Many of the human rights NGOs have in spite of challenges have been instrumental in exposing human rights violations by releasing researched reports, making pronouncements, issuing press releases and working together with the authorities to create awareness on human rights principles, norms and standards.

The study also showed that HRDs had appreciated the relatively good legal framework for their work even though in some aspects it was restrictive. However, there were concerns that since the 2006 general elections there has been an increasing trend of harassing HRDs, especially those working in the media and the organisations that work in promoting and protecting civil and political rights. The NGO (Amendment) Act passed by Parliament in 2006 is said to have introduced what is considered to be subtle Government efforts to control HRD organisations considered to be troublesome.

⁶⁹ The role of the Uganda Human Rights Commission's role as a police oversight body' POLICE ACCOUNTABILITY IN EAST AFRICA 12 -13 June 2006)

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