

**THE ROLE OF UGANDA PEOPLE'S DEFENCE FORCE IN VIOLATION OF HUMAN
RIGHTS IN UGANDA**

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DECLARATION

I Mala Julius hereby declare that this research report is my original effort of my own, and it has never been submitted for a similar award to any other institution of higher learning and that all the right on the works should therefore be held and not violated by any other person without the permission of the developer.

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APPROVAL

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DEDICATION

I have the pleasure to dedicate this Research Report to my father the late Mr. Okiru Christopher and my mother Mrs. Nyadio Betty who have tirelessly supported me through my education and sacrificed everything for my wellbeing.

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CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Uganda is currently faced with massive human rights violations. The situation is further exacerbated by the inclusion of government agencies such as the Uganda People's Defence Force (UPDF) in human rights abuses. The UPDF is established by the Constitution of the Republic of Uganda¹ and is charged with defence and national security.² The force is nonpartisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authority.³ It is the responsibility of the UPDF to preserve and defend the sovereignty and territorial integrity of Uganda⁴ and foster harmony and understanding between the defense forces and civilians among others.⁵ However, past and recent events show that the UPDF has and continuously engages in human rights violation.

The UPDF is accused of human rights abuses in the northern region of Apaa, Teso region, Karamoja and Acholi sub-region and during the recent bye-elections in Jinja and Arua. In December 2006 and January 2007, in Kaabong district

UPDF soldiers shot and killed 10 individuals, including three children, as they attempted to flee during cordon and search operations. Only one of the individuals killed was reported to have fired at the soldiers, while the other ran away. Four other individuals, including two children and one youth, were also shot and injured. Also, in four armed confrontations with Karamojong communities between October 2006 and February 2007, at least two of which were preceded by cordon and search operations, dozens of civilians were killed, while the lives of an unknown number of UPDF soldiers were also claimed.

Soldiers routinely beat men, at times to uncover the location of weapons. Likewise in Moroto district victims of three cordon and search operations described an almost identical pattern of mass beatings by soldiers of the entire male population: men were first rounded up outside of

¹ The 1995 Constitution of the Republic of Uganda (as amended), Art. 208 (1)

² Ibid, Art. 208 (2)

³ Ibid, Art. 208 (2),

⁴ Ibid, Art. 209 (a),

⁵ Ibid, Art. 209 (c),

their homesteads, and then subjected to collective beatings with sticks, whips, guns, and tree branches accompanied by soldiers' demands that they "get the gun."⁶

1.2 Statement of the problem

It is alleged that the UPDF tortures political opposition leaders, suspects, prisoners, innocent civilian citizens in the name of interrogation and preventive arrest. Also, it is assumed that the UPDF carries out abductions, disappearances, extrajudicial killings, torture and harassment of media personnel as was the case during the recent 'FREE BOBI WINE' protest. Similarly, the military is accused of taking on the role of the traditional police force to the detriment of the civilians.⁷

UPDF has a long history of alleged human rights violation against civilian population including human rights activists who have also fallen victims of the human rights violation.

Uganda has signed and ratified several international human rights instruments that seek to promote and protect human rights. The principles embedded therein, are incorporated in chapter 4 on the Bill of rights in the 1995 Constitution of the Republic of Uganda. Fundamental human rights and freedoms are inherent and not granted by the state.⁸ The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.⁹

Notwithstanding the aforementioned measures, human rights violations are on the increase with government agencies such as the UPDF playing a major role. Also, the government has done very little to address these violations. Hence, it begs the question as to why the Ugandan government and the parliament have waited so long to take appropriate action.

1.3 Objectives of the study

1.3.1 Specific objectives

- 1) To assess the role of Uganda People's Defence Force in violation of human rights.

⁶Human Rights Watch: Human rights violation by Uganda's National Army in law enforcement operation in Uganda. Vol.19, No.13 (A) September 2007. [Accessed on 20th June 2019]

⁷Gudrum Dewey, intern, Access to justice programme & a reflection on real security for Uganda: COMMONWEALTH HUMAN RIGHTS INITIATIVE Vol. 4 No.1 New Delhi, Spring 2007.

⁸ Ibid, Art. 20 (1)

⁹ Ibid, Art. 20 (2)

- 2) To analyze relevant legal provisions in protection of Human Rights in Uganda
- 3) To examine the policy and institutional framework for protection of Human Rights in Uganda

1.4 Justification for the research

Human rights are inherent and not guaranteed by the state. Having signed and ratified international human rights instruments such as the Universal Declaration of Human rights, the International convention on Civil and Political rights, the state is obliged to protect, promote and respect human rights. However, the Ugandan government seems to aid human rights violations perpetrated by the UPDF by not taking the appropriate measures to ensure that the force is accountable for its role. The violations amount to criminal offences stipulated in the Anti-Torture Act Penal Code Act Cap. 120 such as rape, abduction, torture and murder. Soldiers seem to act with impunity which makes it harder for the victims to report such incidences. The research aims at contributing to the current literature on human rights violations perpetrated by government agencies that act with impunity.

1.5 Methodology

The researcher intends to employ qualitative research methodology by conducting a desk review on the available literature. This will involve a critical analysis of statutory case law, reports and journals on the subject. The law in issue includes the constitution of Uganda and leading human rights cases in Uganda that involves the UPDF. Data collection shall be based on library research from available literature, textbooks, journals, news report among others.

1.7 Scope of the study

The geographical scope of the study is largely limited to the Uganda jurisdiction. The law to be critically discussed in the domestic statutory law and a few cases in human rights. These include the 1995 constitution of the republic of Uganda, Conventions, UPDF Act 2005, Criminal Procedure Code Act Cap 116, Penal Code Act 120 and Case laws.

1.9 Literature review

Uganda is currently faced with massive human rights violations. The situation is further compounded by the inclusion of government agencies such as the Uganda People's Defence Force (UPDF) in human rights abuses.

According to John Locke (1632-1704) man has individual rights and ought to live in the perfect freedom without fear to be equal and enjoy the right to live in dignity¹⁰

Rousseau (1712-1778) argued for the natural goodness of human nature, that man is born innocent and equal, but the corrupt power of civilization are responsible for the evil situation he finds himself in, that men by nature born with rights and it is on the basis of these inalienable rights to freedom and equality that they enter a social contract with the government to protect them.¹¹ Human rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education among others.

According to the amnesty report, the Uganda security agencies have been implicated in torture and illegal detention of suspects, including suspected LRA rebels and their sympathizers. Methods of torture including suspending suspects tied “Kandoya”¹² from the ceiling, severe beating and kicking and attaching electric wires to the male genitals¹³

Modern states, (Uganda inclusive), can no more stand without pens than without bayonets¹⁴ the maxim might well have been phrased as a long-term prognosis, for all developing African democracies are today faced by a gathering problem of violation of human rights with the security forces involvement. This is in the appeal to the principle of the sovereignty of the state (national security)¹⁵

Modern state power thrives on military organs which are shrouded in secrecy¹⁶. The reason is obvious as there is no better way in which state can outmaneuvers their domestic opponents than to learn about them by monitoring their activities and suppressing them at the expense of human rights¹⁷. This dynamic underpinning growth of invisible repressive state apparatuses is certainly

¹⁰ J.P. Omony: Jurisprudence 1 on John Locke, Treaties:

¹¹ J.P. Omony: Jurisprudence 1 on Jean Jack Rousseau Treaties of Social Contract

¹² Tying of hands and feet behind the victim. Amnesty International Annual Report 2004.

¹³ Historical violation of human rights in Uganda free Wikipedia.org 7th May. 2019

¹⁴ Rober Southey in the early 19th century cited in Jerdan 1866:413

¹⁵ Marc Raboy & Bernard Dagenais (the crisis of the sovereign state) sage publication London. Newbury Park. New Delhi.

¹⁶ Dan Nabudere: “History of Modern states” 1982 Vol.2 Londo. Zes Press. [Accessed on 20th June 2019]

¹⁷ Ibid 8

evident in Uganda. Uganda People's Defence Force is antithetical to political democracy and to human rights and freedom.¹⁸

The problem of armed suppression of opposition leaders like Dr. Kiza Besigye, Hon Kyagulanyi Robert among others and involvement in the violation of human rights as observed by other researchers was evident within the operations of early regimes of Uganda as discussed by other researchers like the Human Rights Watch¹⁹

Violence against pupils, teachers and parents due to a land wrangle between the UPDF and a Primary School in Jinja District. UPDF officers and police blocked and dispersed pupils, parents and teachers of Guardian Primary School in Kimaka in Jinja District from accessing the school premises on Monday 19th February 2018 when the school term opened, owing to an outstanding land wrangle. The fracas involving the flogging and violent handling of some pupils, parents and teachers as well as the degrading arrest of the Director of the School, a one James Muwaya that was reported by various media outlets was unfortunate and indeed unnecessary²⁰.

The **US Department of State Report 2008**²¹ underscores the general human rights environment in Uganda. The report notes that the government human rights record remained poor. Although there were improvements in a few areas, serious problems remained, including unlawful killings by security forces majorly the Army, mob violence, torture and abuse of suspects by Army officials; poor prison condition; official impunity arbitrary arrest; restrictions on the right to a fair trial and freedom of speech, press, assembly and religion, sexual abuse of internally displaced persons in camps; restriction on opposition parties; electoral irregularities; official corruption, violence and decimation against women and children, including female genital mutilation and sexual abuse of children; trafficking in persons, violence and discrimination against persons with disabilities and homosexuals, restrictions on labour rights and forced labour, the report further avers in details the isolated incidents which have involved the Uganda People's

¹⁸Report submitted by the Special Rapporteur about Human Rights Defenders, Margaret Sekaggya p.568, Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/13/22/Add.1, 17/02/2010. [Accessed on 20th June 2019]

¹⁹Human Rights Watch: Human rights violation by Uganda's National Army in law enforcement operation in Uganda. Vol.19, No.13 (A) September 2007. [Accessed on 20th June 2019]

²⁰UHRC 20th Annual Human Rights Violation Report. Accessed on 20th June 2019

²¹ Human Rights Practices in Uganda

Defence Forces personnel²². The report points to the fact that those in Army and other security forces cannot act with impunity. Those who traverse the law must be punished; it also notes that efforts are being taken to empower the Army through human rights training.

The report also looks at the courts of Judicature vis-à-vis the Army court systems. It is noted in the report that the military court system often did not assure the right to a fair trial. Although the accused has the right to legal counsel, some military defence attorneys were untrained²³. The law establishes a court martial appeals process, however, a sentence passed by a military court, including the death penalty could be appealed only to the senior leadership of the UPDF. Under circumstances deemed exigent, a field court martial could be convened at the scene of the crime, the report avers that the law does not permit a conviction under a field court martial.

It is noted in the report that on October 13, the Supreme Court reversed a lower court ruling that Henry Tumukunde²⁴, the former director Internal Security Organization, had violated army rules and regulation when he criticized the government and army on radio talk shows. The Supreme Court noted that the lower court had ignored constitutional provisions that provide for rights to freedom of expression and speech and provisions of the Parliamentary Elections Act on procedures to elect or remove army MPs from Parliament.

In conclusion, this report merely focuses on reporting individual cases of human right violation in the country but does not offer any analysis of how such violation can be curbed under the law

²² It is noted in the report that on September 16, 2008, UPDF soldiers Muzamir Angufi, John Opio, Martin Menya and Edward Pyenkya tortured to death Muron Lomunan, the local council 1 Chairman of Lotitaleb Village, during a cordon and search operation in Kotido District, Karamoja region. On June 28, UPDF soldiers Michael Ocwir, Richard Baguma and Geoffrey Lubwama were all found guilty of killing suspected chicken thieves Wilfred Kinyera and Joel Orem in 2006. The report notes that several 2007 cases involving security force killings remained ongoing at the year's end, including the trial of Peter Ahimbisibwe, who was arrested for the April killing of presidential office official Nelson Ssendegeya, the May death of Faizal Kirunda from injuries inflicted by authorities at the Malikhu Prison in Eastern Uganda and the October rape and killing of a woman by UPDF officer Ochen Obonyo.

²³ African Peer Review Mechanism (APRM), Republic of Uganda, APRM Country Review Report No.7, January 2009, page 286

²⁴ Brigadier Henry Tumukunde V Attorney General & Electoral Commission Constitutional Petition No.6/2005. In this case one of the contentious issues was whether Commander-in-Chief was challengeable in a competent court of law. It was argued for the petitioner that Article 2 of the 1995 constitution of the Republic of Uganda proclaims constitutional supremacy of the constitution. It follows therefore, that its observance and protection is mandatory on all persons including the Commander-in-Chief of Uganda People's Defence Forces here after referred to as UPDF. The petition is not on the person of the president, but the issue is observance of fundamental human rights and freedoms averred by Oscar Kabona for the petitioner. The case demonstrates the direct confrontation of the power of the Judiciary vis a vis the Commander-in-Chief who is at the same time the president of Uganda and not liable to civil or criminal proceedings while still in power. The issue was answered in affirmative to the effect that the act or acts of the president in appropriate cases can be challenged in courts of law.

The current study therefore seeks to cover such loopholes in the available literature and devise feasible ways for improving on human rights prevention under the laws of Uganda and other international laws.

CHAPTER TWO

ANALYSIS OF RELEVANT LEGAL PROVISIONS ON PROTECTION OF HUMAN RIGHTS

2.0 Introduction

This chapter presents the analysis of legal provisions both municipal and international legal instruments that advocate and promote the observance and respect of human rights in Uganda. It also presents a critique of their inadequacy and ends with a review of the chapter.

There are many definitions of law according to different jurists. However, law is the system of rules that everyone in the country or society must obey²⁵. Laws are the ordinance of reason made by one who has the authority and care of the society for the common good and are promulgated²⁶. Glanville Williams in his book²⁷ defines law as the cement of the society and an essential medium of change. Thus, in a democratic society like Uganda it is important for the people to enjoy their inherent rights and freedom when these laws are in place as they are in papers today.

2.1.0 The Municipal instruments

The municipal laws in Uganda include the 1995 Constitution of the Republic of Uganda, UPDF Act of 2005, Press and Journalist Act Cap 105, Electronic Medial Act Cap 104, Access to Information Act No.6 of 2005 Criminal Procedure Code Act Cap116, the Penal Code Act Cap 120

2.1.1 1995 Constitution of the Republic of Uganda²⁸

The National Constitution is the basic law that gives rise to other laws which should not contradict the principles, and spirit of the This is the basic law which govern a society and for this case Uganda. The grand norm on which all the organs and departments of the government derive their authority and legitimacy from²⁹, it spells out the relationship between individuals and government, provides for bill of rights under Chapter Four, duties of government towards

²⁵Definition from Oxford Advanced Learners Dictionary 7th Edition A. S. Hornby(Author), Sally Wehmeier(Editor), Colin McIntosh(Editor), Joanna Turnbull(Editor)

²⁶ St Thomas Aquinas proponent of Natural law theory in his book *Theologica*.

²⁷Glanvill Williams "Learning the law" at Page 1

²⁸The 1995 Constitution of the Republic of Uganda as At 5th January 2018.

²⁹The 1995 Constitution of the Republic of Uganda, 1995 as At 5th January 2018, Art. 2

citizens and none citizen in respect to their rights under the constitution.³⁰ Uganda's Constitution is considered satisfactorily progressive according to B.J Odoki³¹. It has provisions which are very supportive of the rights of HRDs. It provides for a range of rights to be enjoyed by everyone including HRDs like right to access information, freedom of expression among others. In addition, the Constitution declares a range of National Objectives and Directive Principles of State Policy which guide all organs and agencies of State, all citizens, organisations and other persons in applying or interpreting the Constitution and implementing policy. Indeed, Article 8A of the Constitution states that Uganda must be governed based on these objectives.

Article 20 of the Constitution enjoins all organs and agencies of Government and all persons to respect, uphold and promote the rights and freedoms of individuals and groups enshrined in Chapter 4 of the Constitution. Additionally, article 38, recognizes the right of every Ugandan to participate in the affairs of Government individually or through his or her representatives in accordance with the law.³² Importantly, it recognizes the right of every Ugandan to participate in peaceful activities to influence the policies of Government through civic organisations.³³

These constitutional provisions not only protect but enhance the work of Human Rights Defenders -HRDs. To be effective, right to autonomy for HRDs must be recognized and protected so that they can carry out their activities impartially; without fear or favour. Independence of action and views is very important when promoting and protecting human right HRDs.³⁴ The right to participation provided for in Article 38 is key to the work of HRDs as they often question Government policies, practice and performance. Overall these provisions recognises and emphasis the pivotal role that HRDs play in society whether as individuals, associations, groups or NGOs. These provisions do in effect legally recognises the legitimacy of HRDs in Uganda.

Although the Constitution does not specifically mention HRDs, it clearly attributes rights to individuals, groups and associations that are often engaged in defending human rights and if

³⁰ The case of Joseph Tumushabe V Attorney General Constitutional petition. No. 6/2004-that all provisions of the constitution are binding on all authorities in Uganda unless specifically accepted by the constitution itself.

³¹ B. J. Odoki, *The Search for a National Consensus The Making of the 1995 Uganda Constitution*, Fountain Publishers, 2005, Kampala, Uganda at p.289

³² The 1995 Constitution of the Republic of Uganda,

³³ Ibid,

³⁴ Human watch Report.2018. Accessed on 25th May 2019.

these rights are violated it provides for recourse mechanisms. Article 50 provides for recourse to courts of law by any person or organisation to seek orders for redress when human rights are violated. Recourse can also be made to the Uganda Human Rights Commission under Article 53(2) which has powers to make orders for redress/ remedies where proof exists that human rights and freedoms have been infringed.

2.1.2 The Press and Journalist Act, Cap. 105, the Electronic Media Act, Cap. 104 and the Access to Information Act, 2005, Act No. 6 of 2005

The press and the media generally by the nature of their work do qualify as human rights defenders. The media can be a vibrant watchdog by recording and exposing human rights violations and abuse³⁵ The media can also be instrumental in promoting human rights. The laws regulating the media and access to information can either enhance or frustrate the role and impact of the media as HRDs.

Article 29 of the Constitution of Uganda recognises freedom of speech and expression defined to include freedom of the press and other media. The right is developed further in section 3(1) of the Press and Journalists Act (PJA), Cap 105 which provides that, “a person may subject to the provisions of this Statute publish a newspaper”. Section 3(2) of the Act provides:

“No person or authority shall, on ground of the content of a publication, take any action not authorised under this Statute, or any other law to prevent the printing, publication or circulation among the public”.

Furthermore, section 39 of the PJA protects journalists by providing that: **“A journalist shall not be compelled to disclose the source of his information except with the consent of the person who gave him the information or on order of a court of law”**. The Constitution and the subordinate laws on the media provide reasonable foundation for the enjoyment of the freedom of the press. This foundation has been strengthened by judicial precedents especially that of the Supreme Court which in the case of **Charles Onyango Obbo & Andrew Mujuni**

³⁵ Uganda 2017/2018 Amnesty International Report Release. 2017/2018[online]. Accessed 20 June 2019

Mwenda v. Attorney General³⁶, observed that “...given the important role of the media in democratic governance, a law that places it into [a dilemma of knowing what is, and what is not safe to publish and thus being liable to protection], and leaves such unfettered discretion in the state prosecutor to determine...what constitutes a criminal offence cannot be acceptable and is not justifiable in a free and democratic society”.

Despite the constitutional guarantees of freedom of the press and the elaboration of the meaning of this right by the Supreme Court, there are some laws that still severely restrict the freedom of the media. Examples are the Penal Code Act, which still criminalizes materials alleged to be seditious, sectarian and defamatory, as well as the Anti-Terrorism Act, 2002, Act No. 14 of 2002 which prohibits “promoting” terrorism. However, some sections of the Penal Code Act are currently under challenge in the Constitutional Court.

People have presented a range of opposing views. Four HRDs interviewed however pointed out that a negative trend has been noticeable since the 2006 general elections and that the atmosphere has been getting worse, generating fear among media practitioners. They cited the fact that several journalists have been prosecuted for sedition, promotion of sectarianism and criminal defamation³⁷. Journalists were reported to have been subjected to harsh court proceedings, detentions and denial of bail. Examples were cited of some journalists still facing serious criminal charges because of what they reported; condemnation of journalists and newspapers by people in high positions for reporting on matters of public interest; and the ban on privately-owned radio stations from commenting on the trials of opposition leader Rtd Col. Dr. Kizza Besigye for alleged treason and rape. Another example cited was the arrest of talk show host Andrew Mwenda, who was charged with several criminal offences including sedition and promoting sectarianism during a radio discussion; and for “disparaging statements” against the Government of Uganda in relation to the death of the late first Vice-President of the Republic of Sudan, John Garang³⁸. The KFM radio station which employed Mwenda was raided and shut down for several days in November 2006. Government agents raided the premises of **The**

³⁶Constitutional Appeal 2/2002 dated 11 February 2004. Accessed on 20th June at <http://www.ulii.org.com>

³⁷ See also Twinomugisha-Shokoro, ‘How Free is the Media in Uganda’, 4 East African Journal of Peace & Human Rights (EAJPHR) (1998), at 172. Accessed on 20th June 2019. At www.google.com.

³⁸ In the Matter of the Suspension of the Broadcasting License of KFM Ltd. No. 1 of 2005, published in Haruna Kanaabi, (Ed) The Legal Framework for the Media in Uganda, Eastern Africa Media Institute, 2006, Kampala, Uganda.

Monitor newspaper after it published an appeal to raise money for the defence of Dr. Besigye who was charged with treason. In December 2005, James Tumusiime and Ssemujju Ibrahim Nganda of the **Weekly Observer** were arrested and charged with promoting sectarianism for reporting that the President had ordered the prosecution of Besigye on ethnic grounds³⁹. The recent closure of the Central Broadcasting Service radio without following due process was cited as the latest blow to press freedom. Journalists who met the researchers asserted that many journalists and media outlets now practice self-censorship for fear of prosecution or loss of broadcasting licenses which must be obtained on an annual basis.

The Access to Information Act 2005 allows citizens to access information in the possession of the State or any organ or agency of the State except if accessing the information would prejudice security of the State or interfere with the right to privacy of any person. Importantly, the High Court recognised that the right of access to information extends to corporate citizens of Uganda and not natural persons only. In **Greenwatch (U) Limited v. Attorney General and Uganda Electricity Transmission Company Ltd**,⁴⁰ Justice Egonda-Ntende held,

"...a corporate body could qualify as a citizen under Article 41 of the Constitution to have access to information in the possession of the state or its organ and agencies".

The learned judge however pointed out that the onus lies on the body to show to a Court that it qualifies as a corporate citizen, for instance by adducing evidence of its membership

Despite broad constitutional safeguards for the right to access information, and the High Court's consideration that this right extends to legal persons, it is unfortunate that the Access of Information Act introduces claw-back provisions that hinder access. These include denial of information to protect commercial information of a third party, protection of confidential information provided by a third party, protection of safety of persons and property etc. In

³⁹<http://cpj.org/2006/01/political-influence-seen-in-accreditation.php>, accessed on 21/01/2010, topic; Political influence seen in accreditation. Accessed on 20th June 2019.

⁴⁰ **Greenwatch (U) Limited v. Attorney General and Uganda Electricity Transmission Company Ltd**, High Court Ruling No.139/2001.

summation, the Act narrows down the Constitutional right to access information which under the supreme law of Uganda is only restricted by three broad safeguards⁴¹.

Further setbacks to the enjoyment of the right to access information under the Act are restricted by the absence of guidelines to facilitate the process of accessing information. The terms of the Act itself provide for the issuing of such guidelines, but their promulgation has not taken place. According to local commentators, due to the absence of these guidelines, information officers continue to rely on the classifications in a law, the much-criticized Official Secrets Act, Cap. 302⁴². One case in which a group of citizens sought to access information about a contract between the Government and oil exploration companies revealed the dilemma of those that seek to access such information.

The applicants went to a Magistrates Court which to the surprise of many dismissed the application, leading to the accusation that the Court was incompetent to handle the case. This case left a lingering question as to which court one should go to if the right to access information is breached: the subordinate courts, the High Court or the Constitutional Court?

The Press and Journalist law as well as the Electronic Media Law both establish regulatory bodies for the media. The Media Council regulates the print media including regulation of the conduct, ethical standards and discipline of journalists. The Electronic Media Law established a Broadcasting Council with, amongst others, the function of exercising control over and supervising broadcasting activities. Journalists in both the print and electronic media strongly expressed the view that these regulatory bodies have excessive powers over the media houses and practitioners, and yet according to the journalists these bodies are not independent of Government, whom the journalists often criticize. They point to the composition of the Media Council and the Broadcasting Council most of whose members are politically nominated and appointed by the minister responsible for information. Several journalists were of the view that media freedom has been narrowed by laws that provide a weighty role to government-controlled

⁴¹ Ss 27-30.

⁴² African Media Barometer The First Home Grown Analysis of the Media Landscape in Africa, Friedrich Ebert Stiftung, Kampala, Uganda, p. 25.

regulatory bodies who are vested with powers to decide how the media as an independent industry should operate.

Unlike the pre-1995 independence constitutions⁴³ which eroded human rights by state inspired violence⁴⁴, the 1995 constitution provides that fundamental rights and freedom are inherent and not granted by the state⁴⁵ and was also held by the East Africa Court of Appeal in **Ibingira & Ors V Uganda**⁴⁶ that everybody has a right to liberty and no violation of that by any law or order is allowed.

Enjoyment and limitation of assembly and demonstration are, our Constitution (1995) not only entitles citizens to express their views, but also allows them to assemble and demonstrate with others peacefully and unarmed⁴⁷. These rights are also provided for in key international human rights instruments to which Uganda is a member state. For instance, under the African Charter on Peoples and Human Rights (ACPHR)⁴⁸ allows people to assemble and demonstrate with others peacefully and unarmed. Article 20(1), (2) and Article 21(1), (3), provides that man ought to live in perfect freedom, to be equal and have a right to live.

It provides for the police force and the UPDF as the departments of government and to exercise their powers and function in accordance with the constitution.⁴⁹

2.1.4 Criminal procedure Code Act cap 116

Every individual in Uganda has a constitutional protection as to right to personal liberty as enshrined in the bill of rights under the 1995 constitution of the Republic of Uganda as at 5th January 2018. It is to the effect that when conducting an arrest, the police officer (in this case Army-Police officer) shall not touch or confine the body of the person to be arrested, unless there

⁴³The independence constitution 1962, pigeon hall constitution and 1967 Republican constitution.

⁴⁴ Kivuth Kibwana & Nyangabyaki Bazaara; 1995 Constitutionalism in East Africa. Vol.2 Fountain Publishers.

⁴⁵ Under Article 20(1) of the Constitution 1995 as at 5th January 2018.

⁴⁶ (1966) E.A 305, 445s

⁴⁷ Article 29(1)(d) of constitution 1995 as at 5th January 2018: every person shall have the right to freedom of assembly and demonstrate together with others peacefully and unarmed.

⁴⁸ Article 11 of African Charter on Peoples and Human Right

⁴⁹ The 1995 Constitution of the Republic of Uganda, at 5th January 2018,

is a submission to the custody by word or action. The person arrested shall not be subjected to more restraint than is necessary to presents his or her escape.⁵⁰

2.1.6 Penal Code Act Cap 120

It provides for the use of minimum force that is reasonable in the apprehension of a person, in regard to the gravity of the offense which has been or was being committed by the person and the circumstance in which the offence had been or was being committed by the person. The Penal Code Act further suggests acts such as Rape, Murder and abduction as offences that violates human rights. Evidence shows that the UPDF has engaged in such acts and as such in violation of human rights. For example, Murder violates the right to life, Rape is considered a weapon per the Rome statue and such constitutes a crime against humanity- it violates the right to life, freedom from torture cruel, inhuman degrading treatment and punishment, right to privacy of person and the right to health, as well as the right to equality and non-discrimination on the basis of sex and social status, Abduction is equally an offence provided for under the Penal code Act (PCA). It violates the right to liberty, life, privacy among others.

2.2.0 The international instruments

Under international law, military personnel carrying out policing duties such as searches, arrest, and detention, in accordance with human rights standards that are applicable to all law enforcement officials.⁵¹ Many of these same standards including protections against the arbitrary deprivation of life, torture and other cruel, inhuman, and degrading treatment, and arbitrary searches, arrests, and detentions, articulated more fully below are binding on government agents as a matter of Ugandan law.⁵²

Regarding confrontations between Uganda Peoples' Defence Forces (UPDF) soldiers and armed members of Karamojong communities, international law distinguishes between armed conflict

⁵⁰Criminal Procedure Code Act Cap 116, s. 4 & 5

⁵¹See for example United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res.34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979), art. 1 cmmt. See also Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc.CCPR/C/21/Rev.1/Add.13 (2004), para. 4: All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level—national, regional or local—can engage the responsibility of the State Party. The executive branch ... may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility. Accessed on 20th June 2019.

⁵²Constitution of the Republic of Uganda, 1995, as amended by The Constitution (Amendment) Act, 2018, arts. 22, 23, 24, 27.

and internal disturbances and tensions. International humanitarian law (the laws of war) is primarily applicable to the former, while the ordinary principles of international human rights law govern the latter. Violent confrontations between the UPDF and armed members of Karamojong communities do not appear to have risen to the level of an armed conflict under international law. Article 3 common to the four Geneva Conventions of 1949 applies in cases of “an armed conflict not of an international character”⁵³ the authoritative International Committee of the Red Cross “Commentary” to the Geneva Conventions distinguishes between non-international (internal) armed conflicts and acts of banditry and unorganized and short-lived insurrections for which the conventions do not apply⁵⁴ the clashes in Karamoja appear to be cases of the latter. The Second Additional Protocol to the Geneva Conventions (Protocol II) applies only to non-international armed conflicts that are characterized by conflict between the national army and armed opposition groups “under responsible command” that “exercise such control of a part of the state’s territory as to enable them to carry out sustained and concerted military operations.”⁵⁵

Uganda being a member of international family is bound by international law instruments that prevent human rights abuses and violations that lead to torture of civilians by the state machinery. In the case of **Unity Dow V Attorney General (Botswana)**⁵⁶, states, ‘...that international human rights instruments whether ratified or not, all these international and regional instruments embody human rights norms which are broadly accepted by the entire

⁵³Article 3 common to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted August 12, 1949, 75 U.N.T.S. 31, entered into force October 21, 1950 (First Geneva Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted August 12, 1949, 75 U.N.T.S. 85, entered into force October 21, 1950 (Second Geneva Convention); Geneva Convention relative to the Treatment of Prisoners of War, adopted August 12, 1949, 75 U.N.T.S. 135, entered into force October 21, 1950 (Third Geneva Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950 (Fourth Geneva Convention). Uganda ratified the 1949 Geneva Conventions in 1964.

⁵⁴Jean S. Pictet et al., Commentary, I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva: International Committee of the Red Cross, 1952), p. 50.

⁵⁵See Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978, art. 1(1). According to a knowledgeable source, “There is no organized resistance to disarmament. The army just wants to justify its actions. There is no command structure within the groups. Some Karamojong may come to the assistance of others when they hear that a village is under attack, but then they go back.” Confidential communication with Human Rights Watch, November 16, 2006. Accessed on 20th June 2019.

⁵⁶[June 1991]. J Afr. Law. 36: 91-2. 1992 PMID 12321083. Available at <http://www.elaws.gov.bw/displaylrpage.php?id=2692&dsp=2>. [accessed 22 June 2019].

international community. They should and must be incorporated into domestic jurisprudence by judicial interpretation”,⁵⁷

However most recent judicial decisions favor in the application of international convention even when they have not been domesticated⁵⁸ These are: Universal Declaration of Human Rights, Convention on the rights of the Child, the African Charter on Human and Peoples Rights and the Rome Statute of the ICC, the Geneva Convention and Protocols of 1977, the International Committee of the Red Cross (ICRC).

2.2.1 Geneva Convention of 1949 and Protocols of 1977

International humanitarian law protects women when: they are combatants, by laying down limitations on permissible means and methods of warfare, they are captured, sick, wounded or shipwrecked combatants, they are members of the civilian population not taking an active part in the hostilities.

This protection is enshrined in the Four *Geneva Conventions of 1949 and their two additional Protocols of 1977* and in several other instruments. Women are afforded both general protection on the same basis as men and special protection reflecting their needs as women. Women who are not or no longer take part in hostilities are protected against the effects of the fighting and against abusive treatment by the parties to hostilities.

Women are entitled to humane treatment, respect for their life and physical integrity and to live free from torture, ill-treatment, acts of violence and harassment. In addition to this general protection, women are afforded special protection. For example, they are specially protected against attack, against rape, enforced prostitution or any form of indecent assault.⁵⁹ (This sentence reinforces the abovementioned statement.

The international Committee of the Red Cross (ICRC) is particularly concerned about the protection of women against the effects of hostilities, and especially against the acts of violence to which women are particularly vulnerable. It tries to prevent such violations by making

⁵⁷ A. Gubbay Chief Justice of Zimbabwe’s observations when Overruling the convention rule that international and regional treaties are not directly enforceable with the domestic courts to the extent that it is no more than a myth.

⁵⁸ Quoted in Tsumuine-Mukubwa: Report on the draft constitution (1995) at page 23. Retrieved on 23 May 2019.

⁵⁹ Fourth Geneva Convention relative to the protection of Civilian Persons in Time War of Art 27(2), Additional Protocol, Arts 75 and 76.

appropriate representations to parties to armed conflicts, be the states or armed opposition groups, urging them to comply with the rules of international humanitarian law and to respect and protect persons not, or no longer, taking an active part in the hostilities

The ICRC carries out and promotes the dissemination of international humanitarian law (also known as the ‘law of war’’) and refers to this law in its activities throughout the world when dealing with specific problems concerning women. Through detention visits, activities to protect members of the civilian population, relief and medical assistance programmes, and effort to restore family links, it seeks to protect and assist victims of hostilities. Moreover, in January 2000 the ICRC began implementing a four-year pledge to ensure dissemination of provisions of international humanitarian law relating to the protection of women and the prohibition of sexual violence to parties to hostilities, and to ensure that all its activities appropriately assist and protect women.

2.2.3 The Rome Statute of the International Criminal Court (ICC)

The Rome Statute in its preamble affirms that most crimes against civilians must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level. It entered into force on July 2002 after ratification by 60 countries inclusive of Uganda.(Indicate the website in your work and when you accessed it.)

It defines torture as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, except that torture shall not include pain not include pain or suffering arising only from, inherent in or incidental to lawful sanctions⁶⁰

Most people find themselves victims of torture in the hands of the security forces especially Uganda People’s Defence as we shall see in the next chapter. A good example is seen in the , walk to work demonstration in 2011,the 2009 Kabaka visit to Kayunga incident, the Kasese massacre among others where many people were killed, tortured, and detain in un known places by the Army officials through in discriminant shooting, flogging rape and brutal in human torture and no wonder why some families are living in mass poverty and in state of paranoia after losing their bread winners during those period. According to Human Right Defender’s Report The

⁶⁰Rome Statute of International Criminal court. (ICC) Article 7 (2) (e).

commander in the kasese Brigadier General Olwelu Peter is pending trial for the Massacre in the ICC under Rome Statute According to amnesty International Report⁶¹, Violations of rights to freedoms of association, expression, and assembly persisted, as security forces beat and at times, tortured and arbitrarily detained protesters, journalists and opposition members. Thirty-three people, including six parliamentarians, arrested during by-election campaigns in Arua, northwestern Uganda, faced treason charges and alleged torture by security forces. Police and soldiers beat and detained journalists reporting in Arua and at ensuing protests⁶².

In February 2017, the UPDF Fisheries Protection Unit began 'Operation Pakalast' to crack down on illegal fishing. During confiscating illegal fishing gears at different landing sites in the country, a spate of human rights violations such as torture and deprivation of the right to life were reported by fishing communities. These have been reported in Masaka district, Kalangala district, Bubinge and Namit landing sites in Mayuge district, Ssenyondo and Nabyewanga landing sites, and Lufu islands and the other islands in Buvuma district. Reports have indicated that when the army's marine section imposed a ban on irregular fishing methods and began patrolling the lake, fear and trepidation engulfed the islands. UHRC is concerned about the deprivation of the main source of livelihood for the fishing communities without providing alternative means of survival as this could push the affected communities into criminal activities⁶³.

Torture remains the most recorded human rights violation in Uganda with the police accounting for a majority of the incidents, according to a report released Thursday by the Human Rights Commission.⁶⁴"Whereas there is a comprehensive legal regime that prevents and prohibits torture, this violation is still persistent and rampant," Chairman Katebalirwe Amooti said, adding torture had been used as a means to justice.

According to the report, a total of 1,658 cases of torture were registered between 2012 and 2016.

⁶¹Uganda 2017/2018 Amnesty International Report Release. 2017/2018[online]. Accessed 20 June 2019

⁶²Halima Athumanzi "Torture Major human right concern". (25 May 2017) World African: Human rights commission says. Accessed on 20th June 2019.

⁶³Uganda Human Rights Commission 20th Annual Report on state of human rights in the country. Accessed on 22 June 2019. At page 53

⁶⁴Uganda Human Rights Commission 20th Annual Report on state of human rights in the country. Accessed on 22 June 2019.

Torture has been used as an investigative technique to extract confessions and information from suspects of crime to secure easy convictions, the report said. For instance, the Suspect of the former AIG Andrew Kawesi who were subjected to torture to obtain confession despite High Court ordering for compensation of the torture victims they are yet to receive even a coin from the government.

It is also used as a means of "social control and political repression to oppress the opposition, journalists, human rights activists and other groups of people deemed unfavorable to the ruling party". The report said that torture was perpetrated by security agents responsible for upholding and enforcing the law. Since 2012, the Uganda Police alone had 1,016 torture complaints against it while the Uganda People's Defence Forces followed closely with 275 cases. Some of the forms of torture captured in the report include physical and psychological suffering from beatings, rape and the pulling out of fingernails. Others include electric shocks, mock executions, pepper sprays, denial of food and the shame of being stripped naked in the public.

Army spokesman Richard Karemire told journalists that taking second position was a "huge improvement". "In the past, the army was always number one in terms of killing people, torture and causing disappearance of citizens," he said, adding the army would implement the recommendations and work within the parameters of the laws. "We will continue training our officers and operatives within the law so that some of the mistakes committed are not reported."

Despite various government commitments to hold security forces accountable for their conduct, many investigations into military and police abuses of civilians failed to progress, including into the November 2016 killing of more than 100 civilians in Kasese, western Uganda, and the killings of protestors in September 2009 and April 2011. On August 13, security personnel arrested journalists Herbert Zziwa and Ronald Muwanga as they covered the Arua by-election and the military's fatal shooting of Yasin Kawuma, parliamentarian Robert Kyagulanyi's (aka Bobi Wine) driver. Security forces tied and beat Zziwa and Muwanga before holding them overnight in Gulu, charging them with malicious damage to property and incitement of violence. They were later released on bond.

On August 20, soldiers beat and detained journalists covering protests, including photojournalist James Akena, confiscating and damaging his equipment. In September, police detained at least eight journalists and confiscated their equipment as they sought to report on Kyagulanyi's return from the United States for medical treatment following his alleged torture by soldiers. Despite the military's stated commitment to investigate soldiers for beating journalists, no one had been held accountable at time of writing. Police and military shot and killed at least six people in Kampala, Mityana, Katwe and Gomba, during protests security forces' abusive conduct in the period around the Arua by-election.⁶⁵

During a field visit to Karamoja in late January/early February 2007, Human Rights Watch researchers interviewed victims of and eyewitnesses to nine cordon and search operations, as well as the January 2007 confrontation between Uganda Peoples' Defence Forces (UPDF) soldiers and Karamojong communities in Lotome subcounty, Moroto district.⁶⁶ Information about three other confrontations between UPDF soldiers and Karamojong communities, at least two of which were preceded by cordon and search operations, were collected from public reports of the Uganda office of the United Nations High Commissioner for Human Rights (OHCHR), the national print media, and interviews with UPDF spokespersons and other knowledgeable sources.⁶⁷ The findings of Human Rights Watch's research in Uganda tends to substantiate allegations of unlawful killings and other excessive force, torture and other cruel, inhuman, and degrading treatment, arbitrary detention, and destruction of property during UPDF-conducted law enforcement operations in Karamoja. The Ministry of Defence/UPDF spokesperson's office, writing to Human Rights Watch in September, denied that four of the operations described took place at all.

⁶⁵<http://www.scribd.com/document/341984210/Government-reponse-to-HRW>. Report on UPDF brutal acts in 2018_embed

⁶⁶The UN High Commissioner for Human Rights reported on two of these incidents—in Kalodeke ward, Lokolia parish, Kaabong subcounty, Kaabong district on December 7, 2006 and in Nakot ward, Lobongia parish, Kaabong subcounty, Kaabong district on December 10, 2006—in addition to the armed confrontation in Lotome county

⁶⁷Other confrontations have almost certainly occurred. A report of the UN High Commissioner for Human Rights cites three other unverified exchanges of fire between UPDF soldiers and Karamojong communities during the period November 16, 2006, to March 31, 2007. See UN High Commissioner for Human Rights, "Update report," p. 11. A draft report of a government committee investigating human rights abuses connected to disarmament also describes five hours of fighting on May 19, 2006, in Losilang parish, Kotido district, but does not reach any conclusions about the scale of loss of life or destruction of property.

The ad hoc international Criminal Tribunals for the former Yugoslavia and Rwanda are important developments in the realization of more effective mechanism for enforcing international humanitarian law. For example, the fact that rape and other forms of sexual violence in armed conflict have been prosecuted as war crimes is a major step forward in the fight against impunity. Furthermore, a significant political development in 2009 highlights the risks of protecting and promoting human rights in Uganda. 'Political discord' between the Central Government and the Buganda kingdom over governance issues triggered riots in September 2009 in which 27 people died⁶⁸ under the statute of international crime court, rape, sexual slavery, forced prostitution, forced pregnancy and any other form of sexual violence constitute grave breaches of the Geneva Conventions, and are war crimes when committed in international armed conflict.⁶⁹ The perpetrators of the 2009 and of recently the kasese genocide were never booked and in my opinion there is still a big lapse in the enforcement of the international conventions in Uganda most especially the atrocities occasioned by the state operatives the army in particular.

2.2.4 The African Charter on Peoples and Human Right (ACPHR)

The charter is in place to ensure that all Africans enjoy human rights. It provides equality, life and integrity, dignity, freedom from cruel, in human or degrading treatment or punishment and rights to due process concerning arrest and detention respectively. It is unique as regional human rights instruments, because it does not only award rights to individuals and people, but also includes duties.

The treaty covers four main categories of rights and duties, the individual rights and the rights of people. It also covers economic, social and cultural rights as well as civil and political rights⁷⁰ Article 11 allows people to assemble and demonstrate with other peacefully and unarmed and Article 3 provides the equality of all people under the law. These provisions are under the 1995 constitution of Uganda⁷¹ Article 22, 29 among others. This remains on a paper as nothing has

⁶⁸Uganda Preparing for the Polls Improving Accountability for Electoral Violence in Uganda, 2009, Human Rights Watch, U.S.A, p. 6 [accessed on 20 June 2019]

⁶⁹ The ICC Statute Article 8(2) (b) (xxii) and 8(2) (e) (vi).

⁷⁰ African (Banju) Charter on Human and people's Rights, Article 2&18(3), Article 3, Article 4, Article 5 and Article 6 respectively.

⁷¹ 1995 Constitution of Uganda as amended in January 2018

been done to enforce such provisions by the government on some incidents below according to Amnesty International Report of 2018;

On 19 March, immigration officials at Entebbe International Airport prevented academic Stella Nyanzi from boarding a flight to the Netherlands to attend a conference. This followed her criticism of the President and his wife, the Education Minister, for the government's failure to fulfil a 2015 commitment to provide sanitary towels in girls' schools. On 8 April, police arrested Stella Nyanzi for insulting President Museveni on social media. She was charged under the Computer Misuse Act of 2011 and detained for 33 days in Luzira Maximum Security Prison in the capital, Kampala, before being released on bail. The charges against her were later dropped.

On 8 April, Nation TV journalist Gertrude Tumusiime Uwitware was abducted, blind folded and interrogated by unknown assailants for several hours, after she had posted her support for Stella Nyanzi on social media. The spokesperson for the Kampala Metropolitan Police promised to investigate the incident but there was no further information on its progress by the end of the year.

On 27 September, the Ugandan Communications Commission threatened to revoke or suspend licences of media outlets which broadcast live parliamentary debates on a proposed constitutional amendment to remove the presidential age limit of 75 which was passed by Parliament in December and, according to the government, became law in the same month. The Commission said that such broadcasts promoted a "culture of violence". The opposition viewed the amendment to enable President Museveni to stand for re-election in 2021. He had already been in power for 31 years.⁷²

On 10 October, the police summoned editors Arinaitwe Rugyendo of the *Red Pepper* newspaper and the online Daily Monitor, and Charles Bichachi of the Nation Media Group which owns the Daily Monitor, about stories they published on the age limit debate. Army-Police questioned them after an MP, who was leading on moves to remove the age limit, filed a complaint claiming that the stories tarnished his reputation. They were charged in connection with these allegations under Section 27A of the Police Act.

⁷² Supra

On 24 November, after *Red Pepper* published an article alleging that the President was involved in a plot to overthrow Rwanda's President, the police searched the newspaper's office including computers and mobile phones and closed it down. At the same time, army-police arrested Arinaitwe Rugyendo and other members of staff Richard Kintu, James Mujuni, Patrick Mugumya, Richard Tusiime Johnson Musinguzi, Ben Byarabaha and Francis Tumusiime. They remained in detention at the end of the year.

2.2.5 Universal Declaration of Human Rights (UDHR)

The UDHR is to the effect that all human beings are born free and equal in dignity and rights and are endowed with reason and conscience and should act to one another in a spirit of brotherhood. Its further state that everyone is entitled to all the rights and freedoms in the declaration without distinction of any kind as race sex and thus all people are equal before the law and entitled to protection of the law⁷³

The declaration consists of 30 Articles affirming an individual's rights which although not legally binding in themselves have been elaborated in subsequent international treaties, economic transfer required human rights instruments, national constitution and other laws.

The declaration was the first step in the process of formulating the international bill of human rights, which was completed in 1966 and came into force in 1976 after anenough country had ratified them Uganda inclusive.

Some legal scholars have argued that because countries have constantly invoked the declaration for more than 50 years, it has become binding as part of customary international law⁷⁴. However, in the United States the supreme court in *Sosa Vs Alvarez Machaim (2004)*⁷⁵ concluded that the Declaration "does not of its own force impose obligations as a matter of International law. Whether not a treaty itself, the declaration was explicitly adopted for the purpose of defining the meaning of the words "Fundamental freedom and 'Human rights'" appearing in the United Nations Charter which is binding on all member states and it is for this reason that's why Universal Declaration of Human Rights is a fundamental constitution documents of United

⁷³UDHR Article 1,2 &7

⁷⁴ Henry J Steiner and Philip Alston, "International Human Rights in Context: Law, Politics, Morals [2nd Edition], Oxford University Press, Oxford, 2000. Accessed on 20th June 2019.

⁷⁵ *Sosa Vs Alvarez Machaim*, 542, US. 692, 734 (2004) .

Nations according to John Peters Humphrey an international Lawyer⁷⁶among others who all believe that customary international law is a powerful tool in applying diplomatic and moral pressure to governments that violate any of its Articles⁷⁷

2.4 Justification for the laws and critique.

In an era where the state power thrives on military organs which are shrouded in secrecy, to outmaneuver their domestic opponents, there is need to have legal machineries in form of laws to regulate and check their actions and conduct⁷⁸

In 2015, Government passed Public Management Act (POMA) which has implications on the right to freedoms. This was in response to the numerous demonstrations and strikes that were witnessed in the 2011 ‘work to work’ and other demonstration in the aftermath of the general elections. Thus, this chapter highlights the importance of these freedoms, the challenges faced in the enjoyment of the right and the need for implementation.

⁷⁶John Peters Humphrey (23 May 1979): “The Universal declaration of human rights, its history, impact and juridical character”

⁷⁷Office of High Commissioner for Human Rights. “Digital record of UDHR: United Nations

⁷⁸ Marc Raboy & Bernard Dagenais: The Crisis of the Sovereign States; Sage Publications London Newbury Park. New Delhi

CHAPTER THREE

SITUATIONAL ANALYSIS OF THE ENJOYMENT OF THE HUMAN RIGHTS IN UGANDA.

3.0 INTRODUCTION

The right to a fair hearing envisages the right to be heard equitably, justly and publicly within a reasonable time, by a competent, independent and impartial court; and that there should be no derogation from these standards.

Freedom of assembly and demonstration provides an effective means of communication for those who feel that their demands are not being given serious consideration by the government. Some concerns which may not have been presented within the confine of representative politics are often expressed in such assemblies and demonstrations which often generate debate and improve the deliberative process.

The freedom of assembly and demonstration is protected because it help to communicate the public's will to the state, and in so doing, prevents the government from undertaking or continuing a particular course of action which lacks either public support or legitimacy. Thus, by allowing population to demonstrate, assemble and express their views, the government's general exercise of power becomes more legitimate and democratic⁷⁹

However, the abuse of police and army through denying people's right to assemble and demonstrate, is a threat to safety of the demonstrators, security of property as well as law and order during the suppression of this rights and freedom.

An arrest is the deprivation of liberty for the purpose of compelling a person to appear in court.

The law of arrest attempts to harmonize the competing social interest based on the need to enforce the law on one hand and the need to respect individual liberty on the other hand the law of arrest attempts

⁷⁹ 10th UHRC Annual report on Public demonstrations and the freedom of assembly and demonstration at page 39-40. Accessed on 20th June 2019.

The duty to fulfill the right to a fair hearing, freedom of association & expression and torture in the context of criminal trials in Uganda lies with a cross-section of government ministries, departments and agencies (MDAs) in the Justice, Law and Order Sector (JLOS).

The law provides for the different actors as independent in the execution of their roles; the effectiveness or the lack of this independence by one institution directly affects the effectiveness of the other.

According to JLOS,⁸⁰ there were 51,772 detainees in prisons in Uganda by 30th June 2017; 51.8% of the prison population being on remand. The average length of stay on remand was 10.4 months for capital offences and two months for non-capital offences after committal.

In terms of general case disposal, 46,036 cases were handled by Magistrate's courts, 1,359 by the High Court and 79 by the Court of Appeal and hence case backlog reduced to 24% in 2017 from 35% in 2016, while case disposal grew by 64% from 86,000 in 2011/2012 to 175,556 cases in 2016/2017. Some of the cases were disposed of after the 47 plea bargain sessions held in the financial year.⁸¹

In addition, by 30th June 2017, the average caseload per Criminal Investigations Directorate (CID) officer was 22 files, the caseload per State Attorney was 245 cases (down from 820) while the average time taken to process forensic investigations was 90 days compared to 210 days in 2010/2011⁸².

The success of a criminal trial and, therefore, the extent to which the right to a fair, speedy and public hearing is fulfilled mainly depend on the role of the UPF, the Office of the DPP, the Judiciary, the UPS and the defence lawyers. The roles of these stakeholders and the related emerging challenges are discussed here below.

⁸⁰ Rachael Odoi Musoke. Presentation at the Uganda Human Rights Commission 20th Annual Report Consultative meeting, 5th December 2017.

⁸¹ Rachael Odoi Musoke: Presentation at the Uganda Human Rights Commission 20th Annual Report Consultative meeting, 5 December 2017

⁸² Rachael Odoi Musoke: Presentation at the Uganda Human Rights Commission 20th Annual Report Consultative meeting, 5 December 2017 .

3.1. The Uganda Police Force

The Uganda Police Force is by virtue of Article 212 of the Constitution⁸³ mandated to protect life and property, preserve law and order, prevent and detect crime and cooperate with civilian authority, other security organs and the population.

This mandate, coupled with the powers of arrest of suspects of crime, makes the UPF the entry point into the criminal justice system. Thus, the UPF in the preservation of law and order and the prevention and detection of crime, arrests suspected offenders, conducts investigations, charges offenders and produces the suspects in courts of law. In the performance of this function, UPF is obliged to respect, uphold and promote human rights⁸⁴, including the rights of suspects and accused persons set out in the various laws and human rights instruments.

Article 221 of the Constitution⁸⁵ of Uganda obliges the police to observe and respect human rights and freedoms in performance of their functions. The practice of the police seemingly using and working with stick-wielding men to beat up people and disperse public demonstrations in the name of keeping law and order is undesirable. The right to freedom of speech and expression is provided for under Article 29 of the Constitution of Uganda and regulated under laws like the Public Order Management Act 2013, among others. However, these rights were regularly transgressed by security agencies in the course of their work. It is the duty of state security agencies to ensure the observance of the enjoyment of rights and freedoms as long as such activities are not in breach of public peace and security.

However, during the reporting period, there were instances in which the UPF fell short of the human rights standards in the performance of their functions and thus, affected the human rights and freedoms in performance of their functions. Such instances included:

⁸³ The Constitution of the Republic of Uganda, 1995.

⁸⁴ Articles 20(2) and 212 of the Constitution of the Republic of Uganda, 1995.

⁸⁵ Article 221 of 1995 constitution of the Republic of Uganda as amended in January 2018.

3.1.1 Prolonged detention of suspects of crime in police facilities

Whereas the Constitution⁸⁶ provides that a person arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence shall if not earlier released, be brought to court within forty-eight hours from the time of arrest, this continued to be a challenge in 2017. Some suspected offenders were detained in police custody beyond the mandatory period of 48 hours. In fact, complaints relating to detention beyond 48 hours as a violation of the right to personal liberty accounted for 30.21% of 917 the total complaints registered by UHRC in 2017. They came second to those relating to torture or cruel, inhuman or degrading treatment or punishment.⁸⁷

On the other hand, the UPF, through their interactions with UHRC, has argued that the delay in the production of suspects in court is attributable to internal factors such as delayed investigations due to inadequate human and financial resources and external factors such as the delay in sanctioning of files by the DPP and unavailability of judicial officers. UHRC has also learnt that some suspects overstay in police custody due to lack of transport to court; and complainants are sometimes asked to pay for the transportation of the suspects to court.

The above explanations notwithstanding, the delay in the production of suspects in court directly affects their right to personal liberty and fair and speedy trial, and thus not only delays justice to the accused persons and the victim(s) of crimes, but also exposes suspects to torture⁸⁸ and other challenges resulting from the poor conditions of detention in police custody.

Delayed police investigations

In the execution of their mandate to detect crime, UPF conducts criminal investigations on reported cases, the result of which informs the prosecution process. To enhance the production of suspected offenders in court within the prescribed period of 48 hours, the Inspector General of

⁸⁶ Article 23(4)(b) of the constitution of the republic of Uganda, 1995.

⁸⁷ See chapter on the highlights of UHRC interventions on complaints management.

⁸⁸ The 19th Annual Report of the Uganda Human Rights Commission, 2016. Page 8.

Police (IGP) has previously issued a directive for police to conduct investigations prior to the arrest of suspects in non-violent crimes⁸⁹. However, during the reporting period, some suspects were arrested before investigations and thus spent long periods in police custody pending conclusion of investigations. Even where suspects were produced in court, some were not immediately tried on grounds that police was still conducting investigations. The delay in investigations is attributable to various factors such as lack of motivated, skilled, specialised, and/or experienced human resource, inadequate experience, lack of adequate tools/equipment for investigations, lack of transport facilities, the use of a manual system of file storage and retrieval, and corruption.

Delayed investigations also result from the inadequate use of scientific methods and modern technology in investigations such as DNA machines, and fingerprint and lie detectors. In 2017, the Government Analytical Laboratory that is charged with carrying out and availing scientific analyses or investigations so as to enhance the right of access to justice for victims and the right to fair hearing for accused persons suffered a brain drain as a result of low wages, poor working conditions, inadequate funding and poor equipment that caused the scientists/skilled doctors to seek greener pastures outside the country.⁹⁰

According to the Government Analytical Laboratory, at the beginning of January 2017, there were 2,630 cases pending toxicology, 2,000 new cases pending analysis/investigations and 4,500 backlog cases⁹¹ and yet it is a single laboratory in the whole country, and just a directorate in the ministry of Internal Affairs.

The incapacity of Uganda Police Force to conduct scientific investigations also affected the victims and complainants, especially regarding the sexual and gender-based violent crimes

⁸⁹ Mudangha Kolyangha & Ronald Sebbe: Investigate cases before arrest, directs IGP Kayihura, *Daily Monitor*, 22nd August 2016. Situated at <http://www.monitor.co.ug/News/National/Investigate-cases-before-arrests--directs-IGP-Kayihura/688334-3353070-sgigod/index.html> Accessed on 26/02/2018.

⁹⁰ Kephher Kuchana, the director of the Government Analytical Laboratory as reported by NTV Uganda under title "Government Analytical Laboratory loses skilled staff due to poor pay and bad working conditions". Retrieved at <http://www.ntv.co.ug/news/local/23/jan/2017/government-analytical-laboratory-loses-skilled-staff-due-poor-pay-and-bad#sthash.h0oBgYmR.dpbs>

⁹¹ Ibid

whereby mostly women and girls have to pay for the services of the private medical practitioners for medical examination, even where government health facilities exist.

The delay in the conclusion of police investigations in no doubt affected the right to a fair hearing, leading to long pretrial detentions, delay in the commencement and conclusion of trial and thus resulting in long remand periods.

Use of torture as a method of investigation

According to the Uganda Human Rights Commission report⁹² concerns about the continued use of torture of suspected offenders as a method of investigations is very rampant.⁹³ In 2017, there were several media reports of torture while in detention of persons arrested in connection with the murder of Police Spokesperson AIGP Andrew Felix Kaweesi, especially at Nalufenya Police Station in Jinja district. In fact, the High Court found that the 22 suspects charged with the murder of AIGP Kaweesi were tortured while in detention, condemned the acts as a violation of their constitutional rights and awarded them compensatory and punitive damages with other consequential orders.⁹⁴

In addition, the UPF was also accused of using poor or primitive methods of investigations, thus causing delays in the conclusion of investigations. The *Daily Monitor* on 17th November 2017 quoted a judge of the High Court of Uganda to have said during a conference,

“...because of police inefficiencies in investigations, the Force has now resorted to torturing suspects to extract evidence”.

⁹² The 20th Annual Report

⁹³ Torture had earlier on been found to be used as a method of investigations. See chapter 1 of the 19th Annual Report of the Uganda Human Rights Commission, 2016.

⁹⁴ *Abdu Rashid Mabazira & 21 Others versus Attorney General*, Misc. Cause No. 210 of 2017. The judge was Hon. Lady Justice Margaret C. Oguli Oumo.

In response to the various media reports on torture of suspects in police custody, His Excellency the President of Uganda General Yoweri Museveni, on 15th May 2017 wrote to the heads of the security organs thus:⁹⁵

...It is, therefore, clear that torture in order to extract confessions (okutatsya) has three possible mistakes that may even interfere with the fight against crime. Number one, you may torture the wrong person, somebody who is totally innocent. This is very unfair. Secondly, somebody may admit guilt when he is innocent in order to be spared being tortured. This will make the real criminal escape in order to commit more crimes later. Thirdly, confessions by the criminals are not necessary. Even if the suspects do not admit their guilt, if the investigators do their work well (fingerprints, photographs, DNA tests, eyewitnesses, the use of other scientific methods, the use of dogs, etc), the criminals can get convicted.

The use of torture during criminal investigations affects the quality of prosecutions since the evidence obtained through torture is inadmissible against the accused person.⁹⁶ It is argued that many case files are closed after obtaining charge and caution statements which end up being successfully challenged at the trial as having been made under duress or torture, leaving nothing against the accused person.⁹⁷ This ultimately affects the right to a fair hearing and the delivery of justice to the victims of crime.

3.1.4 Parading of suspects before the media

The study was further concerned about incidents in 2017 where UPF paraded suspected offenders before the media as those responsible for the crimes committed. A case in point was when the IGP on 24th April 2017 paraded 15 suspects before the media following several violent crimes in the greater Masaka region.⁹⁸ They were paraded as the ones responsible for the killings in the region.⁹⁹ This practice offends the rights of the suspects to the presumption of innocence in

⁹⁵ President's statement on torture released on Tuesday 16th May 2017. Accessed on 29th June 2019 at <http://www.statehouse.go.ug/media/presidential-statements/2017/05/16/presidents-statement-torture>

⁹⁶ See Section 14 of the Prevention and Prohibition of Torture Act, 2012.

⁹⁷ Hon. Justice J.W Kwesiga. Right to a fair and speedy hearing in administration of Justice. A paper presented at the 20th UHRC consultative meeting, 5th December 2017.

⁹⁸ Greater Masaka comprises the present-day districts of Bukomansimbi, Kalangala, Kalungu, Masaka, Lyantonde, Lwengo, Sembabule, Kyotera and Rakai.

⁹⁹ NTV Uganda Located at <https://www.youtube.com/watch?v=AHBvT6cL3YA>. Also Bukedde TV, as at <https://www.youtube.com/watch?v=LOZR7HDWuZs>. Both accessed on 19th June 2019.

a criminal trial and creates unfounded biases in the minds of the public. Some members of the public have also criticised UPF leadership for routinely appearing at the scenes of crime immediately after the crimes are committed.¹⁰⁰ Critics urge that such appearances by the IGP confuse levels of command and the Scene of Crime Officers' professional concentration is disrupted.¹⁰¹ This affects the investigations since it has the effect of the actual culprits evading investigations, tampering with the evidence and thus causing the cases to collapse.¹⁰²

3.1.5 Invasion of courts and rearrest of accused persons upon their release on bail

The rearrest of accused persons released on bail manifested in two incidents in 2017. First, on 13th January 2017, Charles Wesley Mumbere, the Rwenzururu king who had been charged with terrorism, murder, aggravated robbery and attempted murder, was rearrested immediately after being granted bail by the High Court of Uganda at Jinja. The police blocked his convoy from leaving the court while different police units took over the premises.¹⁰³ Secondly, on 7th November 2017 at Spear Motors, Nakawa in Kampala, armed personnel in civilian clothes brutally and violently arrested four of the eight suspects charged with the murder of Police Spokesperson AIGP Andrew Felix Kaweesi who had just been released on mandatory bail by the Grade One Magistrate Noah Sajjabi after spending six months on remand without being committed for trial.¹⁰⁴ This rearrest was condemned by several institutions including the Judiciary, Uganda Law Society¹⁰⁵ and UHRC¹⁰⁶ as undermining the independence of the judiciary and the rule of law in Uganda and thus an infringement on the suspects' rights. Indeed, such an incident violates the accused's right to a fair hearing.

¹⁰⁰ According to Stephen Kafeero. Kayihura blames Entebbe, Wakiso killings on police, Saturday Monitor, 29th July 2017. Published at <http://www.monitor.co.ug/News/National/Kayihura-blames-Entebbe-Wakiso-killings-police/688334-4036066-x02g91/index.html> Accessed on 22nd February 2018). The IGP had appeared at the scenes of murder of women in Entebbe municipality, Wakiso district twice in one month.

¹⁰¹ Mr. Hebert R. Karugaba was quoted by Hon. Justice J.W Kwesiga in "Right to a fair and speedy hearing in administration of justice", a paper presented at the 20th UHRC consultative meeting, 5th December 2017.

¹⁰² Hon. Justice J.W Kwesiga: Right to a fair and speedy hearing in administration of Justice, a paper presented at the

20th UHRC consultative meeting, 5 December 2017

¹⁰³ URN Published at <http://observer.ug/news/headlines/50772-rwenzururu-king-re-arrested-in-jinja> Accessed on 22nd June 2019.

¹⁰⁴ Francis Gimara. Uganda Law Society (ULS) statement on the forceful arrest of Kaweesi murder suspects released on bail, 8th November 2017. Retrieved on 22nd June 2019

¹⁰⁵ Ibid

¹⁰⁶ Meddie Mulumba. UHRC statement on the highhandedness of security agents, 10th November 2018.

3.1.6 Detention of remanded accused persons in police facilities

Related to the above, there were incidents in 2017 where the accused persons remanded to Uganda Prisons Service facilities were detained in police facilities. This was the case with some of the suspects charged with the murder of Police Spokesperson AIGP Andrew Felix Kaweesi who were held at Nalufenya Police Station after court had remanded them to Luzira prison. This detention was a subject of litigation and was condemned by the High Court of Uganda in the case of **Abdu Rashid Mbazira & 21 Others Versus Attorney General** as a violation of the applicants' guaranteed protection of law provided in Article 21(1) of the Constitution.¹⁰⁷

The Commission was concerned about the detention of juveniles in police facilities even after the courts had sent them to remand homes. This was mostly the case in places without remand homes and where the authorities lacked adequate facilitation to transport such suspected juvenile offenders to gazetted places of detention.

All the above failures or shortcomings at the stage of criminal investigations, whether due to incompetence, corruption or malice, led to a miscarriage of justice or total failure of human rights protection by police¹⁰⁸

According to Amnesty International indicates that the rights to freedom of expression, association and assembly were restricted. Journalists and others who criticized the President or his family were arrested, detained and harassed. There was a sharp rise in the number of women killed, some of whom were subjected to sexual violence. The government said it would investigate and prosecute those responsible. Draft constitutional amendments to the land laws gave the government authority to expropriate private land. Uganda hosted the largest number of refugees in the region, including over 1 million from South Sudan.

3.2. The Office of the Director of Public Prosecutions

The DPP is mandated by the Constitution¹⁰⁹ to direct the police to investigate any information of criminal nature and to institute criminal proceedings against any person or authority in any court

¹⁰⁷ *Abdu Rashid Mbazira & 21 Others Versus Attorney General*, Misc. Cause No. 210 of 2017, presided over by Hon. Lady Justice Margaret C. Oguli Oumo.

¹⁰⁸ Hon. Justice J.W Kwesiga.

¹⁰⁹ Article 120(3) (a) and (b).

other than the court martial. This study noted that the mandate to conduct criminal prosecutions as to accord a right to a fair hearing was in 2017 affected by frequent adjournments to allow the police to conclude investigations. Such adjournments contributed to the long pretrial detentions and hence were not only very costly on the national economy but also to the parties involved and their families who had to forego productive work and spend resources to attend court only for their cases to be adjourned for police to conclude investigations. A case in point was Dr. Kizza Besigye who was charged with treason before the Nakawa Magistrate's Court and on 25th January 2017. Besigye expressed dissatisfaction over the endless adjournments:

Your worship, before I was charged in this court [Nakawa Magistrate's Court], I was charged in Moroto for the same offence. I have been told for months now that investigations are continuing. I told court that there is no need for investigations since I admitted that I declared myself a winner. I, therefore, do not know what they are investigating because I have made that declaration in court. If it is an offence, we should start hearing how it becomes an offence on my declaration...I secured bail in respect to these charges from the High Court. I will continue responding to my bail terms of reporting to High Court but I will never come back to this court except as a prisoner again - if they choose to arrest me.¹¹⁰

It can, therefore, be argued that the above concerns by an accused person arising out of endless adjournments to conclude police investigations cast doubt on the criminal justice system, especially the capacity of the police, the DPP and courts to perform their roles equitably, fairly and justly even in a politically charged environment such as in the immediate post-election period of 2017. This study noted that the DPP's practice of seeking adjournments to conclude investigations was partly perpetrated by the lack of legal time frame within which to conclude criminal trials.

In 2017, the enjoyment of the right to a fair hearing was further affected by the industrial action of members of DPP spearheaded by the Uganda Association of Prosecutors from 12th July to 11th December 2017. Whereas the prosecutors had a right to industrial action, this study was

¹¹⁰ The Independent, 26th January 2017: Besigye: 'I will not return to this Nakawa court'. <https://www.independent.co.ug/besigye-will-not-return-nakawa-court/>. 26 January 2017 Accessed on 23rd June 2019.

concerned that government took long to resolve the impasse and thus their strike directly perpetrated the violation of the right to a fair hearing through long police detentions pending sanctioning of charges, and even where accused persons were produced in court, they could not be heard without the DPP.

The Judiciary

The Judiciary is one of the main duty bearers in the fulfillment of the right to a fair, speedy and public hearing. Speedy hearing means that once a charge has been preferred against an accused person, the trial should start and be completed without unreasonable delay.¹¹¹ Unreasonable delay has not been defined although the Judiciary targets that a case should be heard and concluded within two years and judgment delivered within sixty days from the date of conclusion of hearing.

It is argued that in determining whether there has been a speedy trial, regard should be made to the circumstances of each case, taking into consideration the conduct of the accused person, the competence of the prosecution in availing witnesses and the complexity of the case.¹¹² However, the trial judicial officers have the duty to intervene where there is professional misconduct of the investigator, prosecutor or defence lawyer that would lead to the perversion of the fair trial and render it prejudicial to the accused person, the victim or the community as a whole.¹¹³

To enhance the right to a fair, speedy and public hearing in 2017, the Judiciary implemented strategies such as the opening of nine new High Court circuits, (raising their number to 20), innovative case disposal options including plea bargaining, the rollout of the plea bargain process to all High Court circuits and allowing live media coverage of court proceedings to enhance public trials.

¹¹¹ Hon. Justice J.W Kwesiga: Right to a fair and speedy hearing in administration of Justice, a paper presented at the 20th UHRC consultative meeting, 5 December 2017

¹¹² Ibid

¹¹³ Ibid

The above notwithstanding, some situations prevailing in the Judiciary in 2017 affected the enjoyment of the right to a fair hearing, and these included:

Long pretrial detentions

This study was concerned about the long pretrial detention period which partly contributed to the increasing remand population. Whereas long pretrial detention is a crosscutting challenge to the JLOS institutions, the Judiciary has the discretion to release pretrial detainees on bail and release those in unlawful custody.

Long pretrial detention is an outright violation of the right to a fair hearing and is worsened by the fact that even after the trial commences, prosecutions are not successful, with some cases withdrawn, dismissed or accused persons acquitted.

Long pretrial detention in the event of unsuccessful prosecution negatively affects the productivity of the accused persons, their livelihoods and that of their dependants. In fact, some people contract diseases while in detention and remain unproductive or die immediately after their release.

In 2017, UHRC interacted with the family of Alex Piwun who was arrested in June 2012, charged with aggravated robbery and remanded at Arua prison. He allegedly contracted tuberculosis while in detention for which he was treated in various prisons facilities. He was tried by the High Court of Uganda at Arua and acquitted on 8th March 2017. By this time his health had deteriorated and he was admitted at Arua Regional Referral Hospital where he died on 14th March 2017, seven days after a whole five years in prison. Meanwhile, the family was reported to have sold their only land during the trial to pay for the services of a defence lawyer and, therefore, their livelihood was shattered in pursuit of a fair and speedy trial for their sole breadwinner, now deceased. This was not an isolated story in Uganda's criminal justice system.

3.2.2 Inadequate number of judicial officers

This study was concerned about the small number of lower judicial officers supposed to hear the bulk human rights and criminal cases within their jurisdiction. In January 2017, there was a redefinition and creation of magisterial areas to the effect that they increased to 82 with various chief magistrates' courts and magistrates' grade 1 Courts across the country.¹¹⁴

However, these courts had not been fully operationalised, and in some places where they were operational, a judicial officer presided over more than one court. This scenario created a number of challenges, such as absence from duty due to poor facilitation and motivation; long period of detention of suspects in police custody; and in some cases, arbitrary detentions where some judicial officers left such stations with pre-signed remand warrants for filling in of suspects' details and the remand of such suspects in the absence of the judicial officer.

3.4. The Uganda Prisons Service

Uganda Prisons Service contributes to the right to a fair hearing by providing a safe and human environment conducive for the accused persons in their custody to prepare their defence and produce such persons in court for hearing until lawfully discharged.¹²² In so doing, UPS provides lawyers with access to their clients and ensures safe custody of inmates to guarantee their appearance in court.

However, this study was concerned that UPS lacked adequate facilitation to ensure the production of inmates in court. Some inmates walked long distances to court while others were transported on trucks, thus compromising their security.

¹¹⁴ The Magistrate Courts (Magisterial Areas) Instrument 2017; Statutory Instrument No. 11 of 2017 that revoked Statutory Instrument No. 45 of 2007.

UGANDA HUMAN RIGHTS COMMISSION (UHRC)

The Uganda Human Rights Commission is established under Article.51 of the Constitution¹¹⁵ which is headed by a high court judge who shall serve for a period of six years and be eligible for reappointment.

The Human Rights Commission is also mandated under Article.52(d)¹¹⁶ to recommend to Parliament effective measures to promote human rights including provision of compensation to victims of violations of human rights or their families. This has been adequately done through publication of periodic reports on its findings and the subsequent submission of the annual reports to Parliament on the state of human rights and freedoms in the country. This function without any doubt has been effectively fulfilled by the UHRC for example the UHRC has so far submitted 20 Annual Reports to Parliament on the State of human rights in the country of which recommendations have been made and this in turn has also given the Public chance to audit its performance and lastly under Clause 3 of Article 52 In the performance of its functions, the Uganda Human Rights Commission is required to 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.

¹¹⁵ Article 51, 1995 Constitution of the Republic of Uganda as amended in January 2018.

¹¹⁶ Ibid

CHAPTER FOUR

POLICY AND INSTITUTIONAL FRAMEWORK FOR PROTECTION OF HUMAN RIGHTS DEFENDERS

3.0 INTRODUCTION

This policy and institutional framework to promote and protect the work of HRDs is provided for under international and national law. There are also critical principles that States can adopt from the Declaration on HRDs to enhance their protection. However, there have been challenges and obstacles within the policies and institutions established by Government that relate to the promotion and protection of the rights and work of HRDs.

3.1.1 Policy Framework

According to the Declaration on HRDs, States should put in place domestic policy and legislation to implement the Declaration. In addition any policy or legislation passed at the domestic level should conform to the Declaration

3.1.2 Domestication of the Provisions of the Declaration into National Legislation

States are expected to take measures to ensure that the provisions of the Declaration on HRDs are domesticated in national legislation and policy.

This would give effect to the Declaration and strengthen its potential as a support tool for human rights and Declaration on Human Rights Defenders (HRDs)¹¹⁷. In that respect, Uganda like any other State Party is expected to adopt “legislative, administrative and other steps” to effectively guarantee the rights and freedoms in the Declaration¹¹⁸. Uganda is a member of the UN and all member States have a duty to promote international instruments.

¹¹⁷ Art. 2.

¹¹⁸ Art. 2 (2).

In Uganda, the State has established institutions with the mandate to promote and protect human rights, many of which influence policy and legal reforms. Although HRDs are protected generally under different laws that promote and protect the rights of everyone; there is need to enact a specific law on HRDs in Uganda.

Enacting such a law will serve three primary purposes:

a) To show and strengthen Uganda's commitment towards respecting international standards on human rights. Objective XXVIII of the National Objectives and Directive Principles of State Policy of Uganda's

Constitution provides foreign policy principles which include respect for international law and treaty obligations. It underscores the need for the State to actively participate in international and regional organisations that stand for peace and for the well-being and progress of humanity¹¹⁹.

The Declaration has not yet been adopted by any country as a national binding instrument; however, States are increasingly considering doing so¹²⁰.

Article 55 (c) of the United Nations Charter provides that:

“With a view to the creation of conditions of stability and well-being which are necessary, for peaceful and friendly relations among nations based on the respect for the principles of equal rights and self determination of the people, the United Nations shall promote universal respect for and, observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion”¹²¹.

¹¹⁹ Objective XXVIII of the National Objectives and Directive Principles of State Policy of the Constitution of the Republic Of Uganda 1995 as amended in January 2019.

¹²⁰ http://www.humanrightsnexus.org/index.php?option=com_content&task=view&id=81&Itemid=100, accessed on 20 June 2019

¹²¹ Article 55(c) United Nations Charter, 1945.

According to B.J Odoki, the chief Justice of Uganda, the Constitutional Court must promote international instruments¹²² which in this case would include the Declaration on Human Rights Defenders

b) To provide information to the public about who is a Declaration on Human Rights Defenders (HRD) and what is expected of a Declaration on Human Rights Defender. The law would enable Declaration on Human Rights Defenders to develop various networks depending on their thematic areas. Like most respondents around the country conceded, one in Kampala stated:

“We are a human rights organisation but I have not yet heard of that declaration. In fact, if it is possible you should send us a copy or disseminate it to various organisations”.

Another respondent in Gulu stated:¹²³

“We have a copy of the Declaration but we have not yet used it for any work. This interview will help us think about how to implement it seriously”.

Once a specific law on HRDs is enacted as law in Uganda, it would be used to sensitize HRDs and the public about the rights of defenders. Many HRDs would find the law very critical for them to effectively carry out their activities as proper protection mechanism would then be in place for them in cases of violation of their rights.

c) To provide a basis for the development and implementation of clear policies in relation to the work of HRDs. The Country Review Mission of the African Peer Review Mechanism note: “Policy implementation in Uganda remains weak. Policies have not been fully mobilised in order to achieve accelerated sustainable development¹²⁴,”

¹²² B.J Odoki, The Role of Constitutional Courts in the Promotion of the Rule of Law, Vol.1.No.1, Makerere University Law Journal 4, 2008, p.14.

¹²³ Supra Note. 104

¹²⁴ African Peer Review Mechanism (APRM), Republic of Uganda, APRM Country Review Report No.7, January 2009, page 286. Accessed on 20th June 2019

3.1.3 Constitutional policy guidelines

The National Objectives and Directive principles of State Policy in the Constitution of Uganda outline principles related to the promotion and protection of human rights. These principles form the basis for policy development. Specifically,

Objective V (i) states that the State must guarantee and respect the institutions charged with the responsibility of protecting human rights by providing them with adequate resources to function effectively. Article 8A of the Constitution further affirms that Uganda “shall be governed based on principles of national

Interest and common good enshrined on the national objectives and directive principles of state policy”.

Objective V (ii) allows the State to guarantee and respect the independence of NGOs which protect and promote human rights. A respondent from Kampala stated that the political environment in which they work is favorable. However another respondent from Kampala said that Government officials often interfere with radio talk shows that are aimed at educating the public about their rights. In order for Declaration on Human Rights Defenders to effectively carry out their work, they need to work in an environment which is conducive and nurtures and guarantees their independence. The respondent cited the weak protection of Human Rights Defenders (HRDs) fighting corruption, articulating the need for better legal guarantees for their safety, arguing that the Whistle Blowers Act does not sufficiently protect those who supply information about corrupt officials, as it is meant to. The respondent called for a Witness Protection law that ensures that witnesses are sufficiently protected from possible revenge from corrupt officials.¹²⁵

¹²⁵ Human rights Defenders in Uganda “An overview of the working environment for human rights defenders in Uganda”. Human Rights Centre Uganda. Accessed on 20th June 2019

3.2 Implementation of Human Rights Education.

Uganda as a State party is expected to develop and monitor programmes that will ensure the implementation of the principles laid down in the Declaration¹²⁶. There are various institutions that have been established to promote and protect human rights such as UHRC. However, the implementation of the Declaration is not receiving due attention. As noted earlier, there is little awareness and knowledge in Uganda about the Declaration even after commitments by the international community, through numerous General Assembly resolutions, to promote awareness of its existence and the need for its adoption and implementation. The Declaration has not been made widely known to state agents, public officials or the general public. Human rights education programmes for the public and public institutions have not at all covered the Declaration.

Under Article 52(1) (c) of the Constitution¹²⁷ one of the functions of UHRC is to establish a continuing programme of research, education and information to enhance respect of human rights. UHRC has carried out human rights education for local council leaders to enhance their understanding of human rights among councilors in administering justice for their communities¹²⁸. Training of the local council leaders is important as they too are Human Rights Defenders who interact a lot with community members and make decisions through the Local Council Courts established under the Local Government Act.

However, the Local Council Courts are faced with many challenges including “the level of education of members sitting on LC Courts which is low and constitutes a major hindrance to the delivery of justice in a fair and equitable manner”¹²⁹. For justice to be delivered through these courts and the right to a fair trial fully implemented, the Government of Uganda together with development agencies need “to provide relevant training and refresher courses to all LC

¹²⁶ Human Rights Defenders: Protecting the Right to Defend Human Rights Factsheet No. 29, Office of the United Nations High Commissioner for Human Rights, p.30.

¹²⁷ Article 52(1) (c) of the Constitution of the Republic of Uganda 1995. As amended in January 2018.

¹²⁸ 11th Annual Report of the Uganda Human Rights Commission to the Parliament of Uganda, 2008, p.

¹²⁹ Access to Justice in Northern Uganda, UN OHCHR, 2008, p. 13. Accessed on 20th June 2019.

Executive Committee members sitting on the courts”¹³⁰. Human rights education is critical as it fosters “development of values and attitudes which can uphold human rights and encourage action aimed at preventing violations”¹³¹. The UHRC programme of training district councilors provides a good entry point for disseminating the content and values of the Declaration. Therefore, more training programmes that cover the Declaration should be offered to the district councilors.

3.3 Effective Judicial Protection of Human Rights Defenders

States are required to ensure that Human Rights Defenders benefit from the full protection of the judiciary. The Declaration also enjoins States to ensure that violations committed against Human Rights Defenders are promptly and fully investigated, with appropriate redress provided¹³². Article 126(1) of the Constitution mandates the Judiciary to exercise judicial power in the name of the people and in conformity with law and with the values, norms and aspirations of the people¹³³.

Under Article 128 of the Constitution, the judiciary is to be independent in the exercise of judicial power and should not be interfered with by any person or authority¹³⁴. In principle, the judiciary in Uganda is independent but there have been instances where its independence has been interfered with by some branches of government. For example, in November 2005 military personnel (known as “the Black Mambas”) raided the High Court to arrest treason suspects that had been granted bail and prompted Justice James Ogola as then was to referred to it as ‘Raping the Temple of Justice’¹³⁵

Article 126 (2) of the Constitution provides for key principles in administration of justice. These include: justice shall be for all irrespective of status; justice shall not be delayed; there shall be

¹³⁰ Ibid at p. 56.

¹³¹ The Protectors, Human Rights Commissions and Accountability in East Africa, Edited by Chris Maina, Fountain Publishers, Kampala, p. 76. Accessed on 20th June 2019.

¹³² Supra note 61.

¹³³ Article 126(1) of the Constitution of the Republic of Uganda 1995. As amended in January 2018

¹³⁴ Article 128 of the Constitution of the Republic of Uganda 1995. As amended in January 2018.

¹³⁵ <http://news.bbc.co.uk/2/hi/africa/6422435.stm> as . Accessed on 20th June 2019.

adequate compensation for victims of wrongs; promotion of reconciliation between parties; and administration of justice not to be affected substantially by technicalities.

The judiciary acts as a mechanism through which other Human Rights Defenders can seek protection and redress when their rights are violated. Article 50 of the Constitution of Uganda¹³⁶ guarantees enforcement of rights and freedoms by the courts of law. HRDs and their representatives can use this Article to seek redress from the courts of law in Uganda when their rights are violated.

The current legal framework in principle guarantees access to justice in that the law guarantees protection of the rights of Human Rights Defenders. However, in practice challenges exist which negatively impact on access to justice especially for the poor, Human Rights Defenders inclusive. One of these barriers is corruption which “is a major problem facing Uganda today”¹³⁷

A significant political development in 2009 highlights the risks of protecting and promoting human rights in Uganda. ‘Political discord’ between the Central Government and the Buganda kingdom over governance issues triggered riots in September 2009 in which 27 people died¹³⁸. Briefly described, the discord is linked to disagreement between the Central Government and the Buganda Kingdom over the latter’s role and purported authority over an ethnic minority, the Banyala of Kayunga. The discord subsequently led to inter alia alleged use of lethal force by military police against rioters protesting the Government’s obstruction of the Katikiro’s (Prime Minister of the Buganda kingdom) visit to the Banyala of Kayunga. This purported use of lethal force by military force combined with no publicized attempts to trace accountability for killings allegedly committed by military or police during the riots entrenches the idea that individuals and groups are not de facto free to campaign for civil and political rights in Uganda¹³⁹. In the wake of the riots, several radio stations were closed and a prominent journalist was arrested and

¹³⁶ Article 50 of the Constitution of the Republic of Uganda 1995. As amended in January 2019.

¹³⁷ African Peer Review Mechanism, Republic of Uganda, APRM Country Peer Review Report No.7, January 2009 at p. 37. . Accessed on 20th June 2019.

¹³⁸ Uganda Preparing for the Polls Improving Accountability for Electoral Violence in Uganda, 2009, Human Rights Watch, U.S.A, p. 6. Accessed on 20th June 2019.

¹³⁹ Uganda Preparing for the Polls Improving Accountability for Electoral Violence in Uganda, 2009, Human Rights Watch, U.S.A, p.9. Accessed on 24th June 2019.

abused¹⁴⁰. The popular weekend talk shows popularly known as 'Bimeeza', where ordinary people met and discussed issues at hand were also arbitrarily closed. one journalist in Kampala alleged that the closure of these stations violated his right to freedom of association as he could not meet other journalists on radio talk shows to air out his views. Simply closing radio stations without the right to be heard being followed is an indication of the infringement by the state on the freedom of expression, speech and association.

3.4 General Weaknesses of Human Rights Defenders in Uganda

Discussions with Human Rights Defenders revealed that they, like other sections of Ugandan society, have not been immune to some of the vices or weaknesses that bedevil Ugandan society. While a number of Human Rights Defenders have sought to promote democratic values and principles of good governance in the conduct of public affairs, many are accused of failure to practise these within their organisations. The leadership of many Human Rights Defenders organisations is known to practise internal dictatorship. The staffs are given very little say in the management of the affairs of the organisations as founders claim exclusive ownership. This, it was claimed, had affected efficiency in some of these organisations because the valuable views of staff members get stifled or are never expressed

Some Human Rights Defenders also suffer lack of credibility. The credibility dilemma is attributed to the general perception that many Human Rights Defenders are not committed to the cause of defending human rights but are in it for the money and other privileges associated with human rights work. This has the effect of minimizing the influence and impact that Human Rights Defenders seek to have on the issues they address. In a number of cases therefore their views are treated as the "usual" stand of Human Rights Defenders with little attention given to the genuine stands HRDs take on critical issues.

Most if not all Human Rights Defenders organisations rely on donor funds for their institutional and programmatic work because of the difficulty of generating funds locally. On account of all HRDs looking to donors for the resources to guarantee their existence, inter-HRD rivalry and

¹⁴⁰ See Human Rights Watch report, 'Following Reporting on Demonstrations, Prominent Journalist Arrested and Abused' 15 September 2009 available at <http://www.hrg.org> as accessed on 22/06/2019.

competition was cited, and this has sometimes derailed effective human rights campaigns and advocacy initiatives. Networking and co-operation towards pooling of resources for effective human rights work on common issues of interest was recommended as useful in stamping out unhealthy competition

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0. Overview

This current chapter presents the conclusion of the research and recommendations examined in this research.

5.1 Conclusion

There can be no human society without government, no government without sovereignty, no sovereignty without infallibility¹⁴¹. Therefore it is the responsibility of the government to protect its citizen as per the social contract executed with them and the citizens have the responsibility to obey the government as an authority instituted by the people. The root cause of Uganda People's Defence Force brutality to the civilian that has characterized the Uganda political and social scene appears to have the result of deliberate manipulation and instigation by the state, the immediate cause of violence against the civilians have always been political, illiteracy and ignorance of the law rather than the poor salary pay the UPDF get advanced, such as poor housing.

The study contends that since independence the successive governments have been using force to exert their authority to the citizens. Time honoured attempts by governments to bully parts of the citizens into submitting directly to their wishes by means of threats, bans and arrests have continued to make their presence today. The state power thrives on military organs which are shrouded in secrecy. The reason is obvious: there are no better ways in which state officials can outmaneuver their domestic opponents than to use violent force against them and monitor their activities.¹⁴²

Therefore the only means of reconciliation is government ensuring that civic education is taught to the Uganda People's Defence Force and updating them that we are living on 21st century where the welfare and rights of an individual is a priority. The understanding of the security

¹⁴¹ Julie Peace Editorial posted Tuesday August 3rd 2010 <http://www.monitor.co.ug/OpEd/Editorial/-/689360/969448/-/qvdgssz/-/index.html>

¹⁴² John Keane; *Crisis of the sovereign state*: Sage Publications London. Newbury Park. New Delhi (John Keane is a director of the centre for the study of democracy and professor of political science at the polytechnic of central London, UK.)

forces will help them when they receive directives from the above to weigh the amount of force to use to combat the threat posed by the victim of his actions.

This study therefore demonstrates the nexus between the politics, violence and brutality. It notes that Uganda People's Defence Force, politics and the state versus citizens on the other hand who ought to co-exist together peacefully have now become arch-rivals, ready to use lethal weapons against each other, with dire results on the enjoyment of inherent rights and freedom.

Brutal violence on civilians has had far reaching implications for the Uganda body politics. There is strong evidence that the state was and is partisan in its intervention to violations of human rights through security apparatus. The Uganda People's Defence Force cannot escape censure and blame for the violations of human rights in Uganda. This is because it is the duty of the state to ensure the safety of its citizens.¹⁴³

The study concludes that the brutal nature of Uganda People's Defence Force has impeded the democratization and enjoyment of Human rights in Uganda. The institutionalization of violence has adversely hindered the achievement of democratic co-existence and the rule of law that is consistent with the new global political order.

5.2 Recommendations

The government should Provide support to victims of human rights violations including legal, health, safety and shelter needs and also allocate more resources to the Uganda People's defence Forces to improve their infrastructure and the quality of their detention facilities.

The government should Join the other 78 countries that have signed the optional protocol to the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and opened their detention facilities to independent, international inspection.

The government should Institute an investigation into the extra-judicial killings alleged to have been committed by UPDF soldiers in Karamoja and around landing sites.

¹⁴³ Human rights watch/Africa, 2012, security forces as a mean to ensure the survival of the ruling class in East Africa states, New York, HRW

Use established media regulatory bodies and channels to settle disputes with the media and foster a working relationship with the media to avoid continuous clashes when exercising their duties.

The government should amend the *Uganda Peoples Defence Force Act* to exclude trial of civilians by military courts.

The Electoral Commission must work to make registration more streamlined and the voters' register more accurate, comprehensive, and transparent.

All political parties and candidates should enjoy access to the same resources and the incumbent party should refrain from appropriating public funds for political purposes.

Instead of intimidating and instilling fear, military should be used to create an environment conducive to the realization of civil liberties.

Whereas the UPDF spokesperson has issued an apology (*Daily Monitor of Thursday 15th February 2018*) on the Kimaka incident, the UPDF and the Uganda Police Force should take disciplinary action against their errant officers who were involved in the scuffle with journalists, pupils, teachers and parents of the Kimaka Guardian Primary School in Jinja.

Both the UPDF and the Guardian Primary School authorities should respect the ongoing court process to resolve the land wrangle, and as much as possible work towards an amicable resolution of the dispute.

The Uganda People's Defence Force should respect and observe the rights of journalists and promote media freedoms and freedom of expression in the country.

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