

**THE EXAMINATION OF THE RIGHT TO DEVELOPMENT IN UGANDA**

**BY**

**NALUBYAYI ZAHARA TALIDDA**

**REG. NO. LLB/32053/102/DU**

**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE  
AWARD OF A BACHALORS DEGREE IN LAW OF  
KAMPALA INTERNATIONAL  
UNIVERSITY**

**MAY 2015**

## DECLARATION

I NalubyayiZaharaTaliddahereby declare that the information in this research report is my true work and that it has never been presented to any other higher institution of learning for any award.

Signature ..... 

NALUBYAYI ZAHARA TALIDDA

Date ..... 

### **APPROVAL**

This is to certify that this study has been carried out under my supervision and has been submitted with my approval as a partial fulfillment of the award of a BACHOLORS OF LAW to Kampala International University.



Signature.....

Supervisor's Name.

COUNSEL KISUBI ESTHER

Date: 2nd/09/2015

## **DEDICATION**

My dedication goes to my dear parents, Mr. Lubyayi Al-Mousah and Mrs. Lubyayi Sarah Nankabirwa, my Grandmother Hajat Lukia Nabisere Nyanzi, my brothers, Sisters and friends who labored to provide everything necessary that was responsible for my life.

## **ACKNOWLEDGEMENT**

I would like to thank God who has enabled me to accomplish this work.

My thanks also go to counsel Kisubi Esther my Supervisor for the guidance and commitment to my work.

Special thanks also go to Human Rights Network-Uganda (HURINET-U) especially Mr. Dan Muliika and Mr. Tumwine Patrick for the support and inspiration they always gave me in proving with information concerning the EXAMINATION OF THE RIGHTS TO DEVELOPMENT IN UGANDA.

I conclude by thanking my fellow students for helping me read my books.

Above all, I thank the almighty God.

## **ACRONOMS**

KY	-	Kabaka Yekka
NRM	-	National Resistance Movement
UPDF	-	Uganda Peoples Defense Forces
UJCC	-	Uganda Joint Christians Council
UDHR	-	Universal Declaration of Human Rights
UHRC	-	Uganda Human Rights Commission
DP	-	Democratic Party
UPC	-	Uganda Peoples Congress
LRA	-	Lords Resistance Army
FGM	-	Female Genital Mutilation
NRA	-	National Resistance Army
UPDM	-	Uganda Peoples Democratic Movement
UNLA	-	Uganda National Liberation Army
CP	-	Conservative Party
UHRA	-	Uganda Human Rights Activists
IGG	-	Inspector General of Government
ULS	-	Uganda Law Society
PAFO	-	Parliamentary Advocacy Forum
PPU	-	Presidential Protection Unit
GDP	-	Gross Domestic Product

## **STATUTES**

The African Charter on Human and Peoples' Rights

The Electoral Commission Act, 1997

The Press and Journalist Act, 1995

The Police (Amendment) Act, 2006, Cap. 303

The Institution of Traditional or Cultural Leaders Act, 2011

The Universal Declaration of Human Rights (UNHR)

UN Declaration on the Rights of Indigenous peoples (UNDRIP)

Constitution of the Republic of Uganda, 1995

## TABLE OF CONTENTS

DECLARATION.....	i
APPROVAL ii	
DEDICATION.....	iii
ACKNOWLEDGEMENT .....	iv
ACRONOMS v	
STATUTES vi	
TABLE OF CONTENTS .....	vii
ABSTRACT x	
<b>CHAPTER ONE .....</b>	<b>1</b>
<b>INTRODUCTION .....</b>	<b>1</b>
1.0 Introduction.....	1
1.1 Background .....	1
1.2 Statement of the Problem.....	1
1.3 Purpose of the Study.....	2
1.4 Objectives of the Study .....	2
1.5 Research Questions.....	2
1.6 Scope of the Study.....	2
1.7 Significance of the Study .....	3
1.8 Methodology.....	3
1.9 Research design.....	3
1.10 Population of the study.....	3
1.1 Data collection method.....	3



1.13 Data processing and analysis .....	4
1.14 Limitation of the study .....	4
1.15 Data collection method .....	4
1.16 Data processing and analysis .....	4

## **CHAPTER TWO ..... 5**

### **HUMAN RIGHTS AND DEVELOPMENT IN CONTEMPORARY UGANDA..... 5**

2.0 Introduction.....	5
2.1 Human Rights And The Right To Development.....	6
2.2 The right to development .....	8
2.3. 'Development' .....	9
2.4. Political atmosphere of independence.....	10
2.5. Post-Independence Uganda .....	11
2.6. Uganda under Museveni .....	14
2.7. Nongovernmental Human rights.....	15
2.9. Media .....	17

## **CHAPTER THREE ..... 20**

### **LEGAL FRAMEWORK ON THE RIGHT TO DEVELOPMENT IN UGANDA ..... 20**

3.1. Legal Framework on the Right to Development in Uganda .....	20
3.2. The Electoral Commission.....	21
3.3. Federalism and the Buganda Factor .....	24
3.4. The Media .....	25
3.5. An Independent Judiciary .....	25

3.6. The Uganda Human Rights Commission (UHRC) .....	27
3.7. The Role of Religious Institutions .....	28
<b>CHAPTER FOUR .....</b>	<b>29</b>
<b>DATA PRESENTATION AND ANALYSIS.....</b>	<b>29</b>
4.1 Examine the role of the state in the promotion of respect to human rights. ....	29
<b>CHAPTER FIVE .....</b>	<b>35</b>
<b>RECOMMENDATION, ANALYSIS AND CONCLUSIONS.....</b>	<b>35</b>
5.0 Introduction.....	35
<b>BIBLIOGRAPHY .....</b>	<b>39</b>

## **ABSTRACT**

This paper attempts to reflect on the majority of the right to Development in Uganda as provided in the 1995 Uganda constitution, against the background of Principles and dimensions of the United Nations Declaration on the Right to Development and the African Charter on Human and People's Rights (Article 22). The 1995 constitution recognizes the Right to Development, stressing the role of people and the state in the development in Uganda, bringing to the fore to the need for balanced and equitable development. Therefore, this paper reflects on the effectiveness of the legal framework to development in Uganda, to examine the role of the state in the policy mechanisms for the interpretation of the right to development in Uganda; and to establish the challenges to effective implementation of the right to development. Uganda is faced with a real crisis, whatever decision made will have repercussions for a considerable period of time and its only people to decide for themselves. It can be surmised that there is a substantial section of the population who would like to process of political liberalization in the country. But in examining the issue we shouldn't only be moved by numbers but should also weigh the strength. A major tenet of modern day democracy is the existence of a multiparty system, and allowing political parties to function finely. As for the right to development in Uganda has not yet found real reflection on the life of the ordinary people , many of whom are still excluded from the development process . Uganda must get beyond constitutional provisions to translate these guidelines in to concrete human well being guided by comprehensive principles and an approach most suitable for realization of this right to development .Ugandans must ,therefore hold their government morally and politically accountable for any deviation from the principles and objectives of state policy contained in the construction . The approach most suitable for the realization of the right to development is holistic and integral , considering not only the economic well being of people but also taking in to account the social , political , cultural and moral dimensions of their life ; one that considers the human person as the central subject , active participant and beneficiary of the right to development.

## **CHAPTER ONE**

### **INTRODUCTION**

#### **1.0 Introduction**

Human rights in Uganda have had a limited recognition since pre-colonial times. Uganda's human rights record has been characterised more by violations than protection and promotion. The quest for respect of human rights in our society must, therefore, have as its starting point the historical experiences of dehumanisation and devaluation of Ugandans.

#### **1.1 Background**

The turning point in the struggle for respect for human rights and the promotion of human development in Uganda was marked by the promulgation of a new constitution for the republic in 1995. The adoption and enactment of this constitution is the result of the growing need to protect and promote human rights by promoting a culture of constitutionalism and rule of law. Thus, the 1995 constitution has given a recognizable place for human rights and freedoms. In fact, some commentators have even remarked that the new Ugandan Constitution should be seen as a "human rights charter" where human rights serve as the basis for all the provision of the Constitution.

This paper, therefore, attempts to reflect on the reality of the Bill of rights to development in Uganda as provided in the Ugandan 1995 Constitution against the background of the principles and dimensions of the United Nations Declaration on the Right to Development and the African Charter on Human and Peoples' Rights (article, 22). But first, let us look briefly at human rights and development in general.

#### **1.2 Statement of the Problem**

The 1995 Ugandan Constitution recognizes the right to development, stresses the role of people and the state in the development of Uganda, and brings to the fore the need

for balanced and equitable development. This paper, therefore, attempts to reflect on the effectiveness of the legal framework to the development in Uganda.

### **1.3 Purpose of the Study**

The purpose of the study is to examine the right to development of Uganda.

### **1.4 Objectives of the Study**

1. To analyze the legal framework on the Rights to the Development of Uganda.
2. To examine the role of the state in the promoting the respect of human rights.
3. To establish the policy mechanisms for the interpretation of the right to development in Uganda.
4. to establish the challenges to effective implementation of the right to development.

### **1.5 Research Questions**

1. What is the legal framework on the Right to the Development of Uganda?
2. To what extent has the state done its role of promoting the respect of human rights?
3. To what are the policy mechanisms for the implementation of the right to development in Uganda?
4. What are the challenges to effective implementation of the right to development?

### **1.6 Scope of the Study**

#### **1.6.1 Subject scope**

The study will examine the implementation of rights to development in Uganda.

#### **1.6.2 Time scope**

The study will cover the different political regimes in Uganda since pre-colonial period up to 2015

## **1.7 Significance of the Study**

The study will be used for future academic research to enhance an improvement of human rights and guide leaders most especially the ruling class on how to handle human right issues for example rallies, media and voting.

The study will assist policy makers and the government to know how to improve and amend the law.

## **1.8 Methodology**

The methods to be used in the study are included in this chapter, they include, the research design, population of the study, source of the data, methods of data collection, methods of data processing and analysis and limitation to the study.

### **1.9 Research design**

The study will be on examination of the effectiveness of the Bill of rights on the development in Uganda.

### **1.10 Population of the study**

The research intends to cover sources including homes, police stations, judiciary, parliament and human rights organization.

### **1.11 Data source**

The researcher will use primary data, which is the collection of first hand information of the subject from the field and secondary data will also be used by involving the use of journals, text books, newspapers and the internet which involves analyzing the already existing literature.

### **1.12 Data collection method**

Data will be collected using methods like interviews of judicial officers, police officers, local councils, human rights activists and persons in homes in Kampala city. Secondary data will be obtained through reviewing and evaluating already existing literature.

### **1.13 Data processing and analysis**

The data will be processed using micro soft word since it is likely to be cheap and easily accessible by the researcher, other information may also be presented in the table form. Data will be theoretically analyzed in order to ascertain its accuracy before presentation.

### **1.14 Limitation of the study**

There is likely to be a problem of obtaining information relating to human rights violations because practices like violence and torture are directed by law enforcers who are in trepidation of losing jobs.

Time is a major factor likely to affect the researcher because data collection, literature review, data analysis deserves a lot of time. The research is likely to be costly because it involves travelling, typing, stationary and access to Internet.

By involving the use of journals, text books, newspapers and the internet which involves analyzing the already existing interactive.

### **1.15 Data collection method**

Primary data will be collected using methods like interviews of judicial officers, police officers, and local councils and human rights activists in Kampala city.

Secondary data will be obtained through reviewing and evaluating already existing literature.

### **1.16 Data processing and analysis**

The data will be processed using micro soft word since it is likely to be cheap.

## CHAPTER TWO

### HUMAN RIGHTS AND DEVELOPMENT IN CONTEMPORARY UGANDA

#### 2.0 Introduction

Human rights in Uganda have had a limited recognition since pre-colonial times. Uganda's human rights record has been characterised more by violations than protection and promotion. The quest for respect of human rights in our society must, therefore, have as its starting point the historical experiences of dehumanisation and devaluation of Ugandans.

The turning point in the struggle for respect for human rights and the promotion of human development in Uganda was marked by the promulgation of a new constitution for the republic in 1995. The adoption and enactment of this constitution is the result of the growing need to protect and promote human rights by promoting a culture of constitutionalism and rule of law. Thus, the 1995 constitution has given a recognizable place for human rights and freedoms. In fact, some commentators have even remarked that the 1995 Uganda Constitution should be seen as a "human rights charter"<sup>1</sup> where human rights serve as the basis for all the provision of the Constitution; it's the best constitution in the whole world.

While it is true that the 1995 Constitution made remarkable achievements in the recognition and protection of some human rights, as seen in chapter four, it did not go very far. Many constitutional analysts have already alluded to this reality.

**Dr. Golooba Mutebi** observed that the expected that the expected outcome of decentralization especially as seen in the touted 1995 Constitution are purely personal and selfish reasons leading to a breakdown of public confidence in public institutions.

For instance, **Oloka-Onyango** has observed the fact that many rights, including social, economic and development rights, have been confined to that part of the constitution which has no legal force:

---

<sup>1</sup>For such a remark, see B. J. Odoki, *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (Kampala: Uganda Printing and Publishing Press, 1993).



The majority of the rights of this character [referring to economic and social rights] are confined to the section of the constitution, which is not amendable to legal enforcement: the National Objectives and Directive Principles of State Policy. The Language used in describing state commitment to the realization of these ideals is clear: "The following objectives and principles shall guide (rather than "bind") organs and agencies of the state..." at best imposing a moral obligation, but providing no mechanisms for enforcement. It is in this section of the Constitution that questions such as development . . . education, health, water; food security and nutrition are covered.<sup>2</sup>

The 1995 Ugandan Constitution recognizes the right to development, stresses the role of people and the state in the development of Uganda, and brings to the fore the need for balanced and equitable development.

This paper, therefore, attempts to reflect on the reality of the Bill of rights to the development as provided in the Ugandan 1995 Constitution against the background of the principles and dimensions of the United Nations Declaration on the Right to Development and the African Charter on Human and Peoples' --Rights (**article, 22**). But first, let us look briefly at human rights and development in general.

## **2.1 Human Rights And The Right To Development**

The idea of rights in general and human rights in particular is not new to most people. The language of human rights is predominant in our contemporary world. It cuts across all aspects of the human person: social, political, economic, and cultural. Human rights have occupied a central place in our lives because they have functioned and continue to function to protect and promote the dignity and value of human beings. Although there has been no agreement about to what rights and human rights are because of differences in how people conceive them, the Oxford English Dictionary

---

<sup>2</sup>J. Oloka-Onyango, "Poverty and Marginalization in the Age of Extremes: Reflections on Human Rights and Development in Contemporary Uganda," in D. Carabine and M. O'Reilly, *The Challenge of Eradicating Poverty in the World: An African Response* (Nkozi: Uganda Martyrs University Press, 1998), p. 84.

defines rights as justifiable claims, on legal or moral grounds, to have or obtain something, or to act in a certain way. Human rights, therefore, have been defined as the rights that everyone has equally, by virtue of their humanity;<sup>3</sup> they rightfully belong to all humans by the virtue of being human. They are a crucial part of the human being because they are inherent as the basic components of a true human way of living. Human rights have been defined also as "generally accepted principle of fairness and justice."

The concept of human rights has been analyzed extensively in moral, legal, and political theories. Human rights in one conceptual analysis are intrinsic human values inherent in the human person, due to all persons on the basis of their human dignity. These rights and freedoms are said to be fundamental and include the security of the persons the right not to be deprived of life and liberty without due process of law; the right not to be tortured or subjected to cruel, inhuman, or degrading treatment or punishment; and the right not to be held in slavery or servitude. Their fundamental function and importance, therefore, is the protection and promotion of the intrinsic value inherent in human nature. Every state has an obligation to guarantee them, and every individual has a right to claim and enjoy them because they give meaning to the human dignity. Human rights are not absolute, however, but the possibility of their limitation is limited to the common good.

While the protection and promotion of Human Rights is contained in Chapter 4 of the 1995 Constitution of Uganda, Human rights have different manifestations including the internationally, the Universal Declaration of Human Rights, UN Convention Against Torture, and regionally the European and American Convention of 1950 and 1969 respectively and the African Charter on Human and Civil Rights of 1981.

The concept of human rights in Africa is one of struggle against all forms of domination, exploitation, oppression and abuse. It is this sort of conception that Shiyji Issa alluded to in his book: "*The Concept of Human Rights in Africa*." For him, human rights must be

---

<sup>3</sup>R.J. Vincent, Human Rights and International Relations (Cambridge: Cambridge University Press, 1986), p. 13.

rooted in the perspective of class struggle and must be claimed and enjoyed collectively.<sup>4</sup> This conception of human rights is also clearly reflected in the African Charter on human and peoples' rights. In its preamble, the Charter affirms the duty of everyone "to achieve the total liberation of Africa, the people of which are still struggling for their dignity and genuine independence."

The concept of human rights in Africa is not limited to individual human rights. Human rights in Africa include peoples' rights enjoyed collectively or communally by a people or peoples. The right to development is one such right that can be claimed and enjoyed collectively.

The disagreement in the conception of human rights as seen above is one of the great aspects of, and challenges to, the process of globalization. The dominant human rights discourse of the West has often been accused of being too restricted to individual rights of a civil and political nature, while ignoring the collective/communal rights (including social, economic and cultural rights) advocated mostly by the developing nations. This disagreement has led to the categorization of human rights into first, second and third generations.

Attempts to harmonize such conceptual disagreements by the international community can be seen in the adoption of the Declaration on the Right to Development.

## **2.2 The right to development**

Is thus defined by this declaration as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized"**(Art. 1.1)**. From such a definition there follows the holistic approach to human rights conceptualization emphasized by the experience "every human person" and "all peoples." It was espoused by Lugakingira J

---

<sup>4</sup>I. G. Shivji, *The Concept of Human Rights in Africa* (London: 1989), p. 71. Shivji has argued for a historical and social rooting of human rights. He has dismissed any claim to individual rights because the right holder for him "is not exclusively an autonomous individual but a collective, a people, a nation."

in **Rev. Christopher Mtikila V. A.G of Tanzania**<sup>5</sup>, that fundamental rights are not gifts from the state. They inhere in a person by reason of birth and therefore prior to the state and the law of the National Objectives and Directive Principles of State Policy Provides for a balanced and equitable development. The principle states that the state shall take necessary measures to bring about balanced development of the different areas of Uganda and between the rural and urban areas.

The concept of development is sometimes as complex to define as that of human rights; development as a concept is sometimes difficult to understand. Many countries and many different writers have referred to development in various ways. Although development has been characterized as economic growth, its definition cannot be complete without reference to the human person. Development is a multidimensional process that includes the social, economic, cultural and political dimensions of human life. Thus:

### **2.3. 'Development'**

Is a positive word that is almost synonymous with 'progress.' Although it may entail disruption of established patterns of living, over the long-term it implies increased living standards, improved health and well-being for all, and the achievement of whatever is regarded as a general good for society at large.<sup>6</sup>

The United Nations Declaration on the Right to Development, 1986, in fact, makes a complete resume of all these new approaches to development. One of the real forces of this declaration is its novel realization that the human person should be at the center of development. This has been the key to the innovation and revision of many other trends to development since the Industrial Revolution in Britain. The new revolution in development is solely encompassed in the fact that development can be achieved only

---

<sup>5</sup> Civil Case No.5 of 1993

<sup>6</sup> Allen and Thomas (eds.), *Poverty and Development in the 1990s* (Oxford: Oxford University Press, 1996), p. 6.

with the human person as the central subject active participant and beneficiary of the right to development. Development is thus defined by the Declaration as:

a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.<sup>7</sup>

This definition of development not only underscores the central place of the human person in any development process, but also stresses the holistic or integral approach to development and makes clear the link between human rights and development.

Development without doubt is the achievement of human rights by an individual, community, and state: without respect for human rights, there can be no development. There is, in fact, an interrelationship between human rights and development, which intertwines these two concepts.

Where human rights are respected, development occurs. Where the opposition is the reality, underdevelopment and backwardness are the usual results. Human beings perform best and exert their full potential for development where they are secure in the enjoyment of their rights. The security of life, property and the guarantee of opportunities to raise the standards of living without discrimination or victimization are at the core of people's motivation for development.<sup>8</sup>

## **2.4. Political atmosphere of independence**

To understand the political development in Uganda, it is important to examine the political atmosphere of independence. In 1860, Uganda was declared a protectorate under the British colonial system. As a protectorate, land rights were respected, despite the commonplace of forced labor and high taxes. A century later, Uganda was granted internal self-government, with its first elections held on March 1, 1961. This would later

---

<sup>7</sup>United Nations, *Declaration on the Right to Development*, 1986, Article 1

<sup>8</sup>B. J. Odoki, *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (Kampala: Uganda Printing and Publishing Press, 1993), p. 133.

lead to full independence on October 1962. With the granting of self-rule, three major political parties formed in Uganda; the Uganda People's Congress (UPC), the Democratic Party (DP), and the **Kabaka Yekka (KY)**

The main platform of the UPC was nationalist and the party strived to unite all Ugandans despite ethnic differences. The KY was mainly an ethnic party consisting of the Baganda people who were the most favored under British rule. An alliance between the UPC and KY gave them more collective strength than the DP and increased the UPC's leader, **Milton Obote**.

## **2.5. Post-Independence Uganda**

At independence in 1962, Obote was appointed Prime Minister by the British and selected **Edward Walugembe Mutesa II**, King of the Baganda people, and leader of the KY to serve as the President. A popular slogan among the Baganda people was, "Mutesa I invited the Europeans into Buganda and Mutesa II was going to order the Europeans out of Buganda" (Gukiina 1972,100). However, Mutesa II served only as a figurehead of the central government. The 1962 constitution was modeled after the British system and Uganda held parliamentary elections for the first time. The UPC won a majority 37 seats, followed by the KY with 21 seats, and the DP won 24 seats (Jorgensen 1981). The alliance between KY and UPC gave them an upper hand in parliament. Despite these indicators of political development, strong ethnic divisions existed between and within parties. The main rivalry was between the Banyoro and Baganda groups and these divisions led to instability in Obote's administration.

In 1964, discord within the UPC, as well as challenges from opposition parties threatened Uganda's political development and led to massive instability. In 1966, the UPC's, Secretary-General, Grace Ibingira, accused Obote and his Deputy Army Commander, Idi Amin, of involvement in an ivory and gold scandal. Ibingira then organized a successful no-confidence vote against Obote, which was passed by the UPC's members of parliament. Obote responded by arresting Ibingira and others who opposed him. He then suspended the 1962 constitution, promoted Amin to Army Chief

of Staff, and deposed Mutesa II. Obote reclaimed himself President and convened the national assembly to write a new constitution. This new constitution restricted the power of the Baganda people and created a strong executive branch. Obote declared a state of emergency and stormed the palace of Mutesa II. More than one hundred people died during the struggle, but Mutesa II managed to escape to London where he lived the rest of his life in exile. In 1967 Obote introduced his own version of the constitution which gave him even more power and abolished the kingdoms within Uganda. After an assassination attempt in 1969, Obote banned political opposition groups thus creating a single party state (*Hostile to Democracy* 1999).

In January of 1971, Obote left Uganda for a conference in Singapore, and his Army Chief of Staff, Idi Amin, staged a military coup. Amin and his forces were upset with Obote for his constant consolidation of power in the executive, so they overthrew his administration in a guardian coup (Clapham 1985). He stated, "I am not an ambitious man, personally, I am just a soldier with a concern for my country and its people" ("Idi Admin Dada Oumee" 2003). Those in opposition to Obote originally welcomed the coup and Amin's government. However, this changed when Amin himself began to consolidate power and by implementing his own set of radical policies.

Amin suspended the constitution and declared himself President for life. He violently suppressed all political opposition and created the Public Safety Unit and the State Research Bureau to carry out this suppression. One of Amin's first acts was to separate the military along ethnic lines and have most of those in the Acholi and Lango groups killed because they were perceived as pro-Obote. Under Amin's rule, between 100,000 and 500,000 people were killed, including his Chief Justice Spring 2004Benedicto Kiwanuka, former head of government and leader of the banned, and the Anglican Archbishop Janani Luwum. In 1972, Amin ordered all Ugandans of Asian descent to leave the country. He claimed their business success was a hindrance to Africans and when the 70,000 Asians left the country, he gave their businesses to friends and family (*Hostile to Democracy* 1999). Amin's administration alienated most diplomatic friendships with Uganda which brought a halt to foreign aid. Most skilled Ugandans fled the country in fear of their lives, and the infrastructure collapsed.

Despite the strong crackdown on opposition, the Uganda National Liberation Front (UNLF) was able to form and operate from surrounding countries. Due to these activities, and the presence of Obote in Tanzania, Amin ordered troops into Tanzania and attempted to annex 1,800 square meters known as the Karega salient. President Julius Nyerere of Tanzania sent military forces to defend the invasion into Tanzanian land. They were joined by the Uganda National Liberation Army (UNLA), the military force of the UNLF, and together ousted Amin in April 1979. Amin escaped alive and lived in exile in Saudi Arabia until his death in August 2003 where he was never held accountable for the atrocities of his rule in Uganda (*Hostile to Democracy* 1999).

The UNLA appointed Yusuf Lule, the chairperson of the political wing of the UNLA, as the new president. His government lasted for sixty eight days. Lule was perceived as having a pro-Muganda slant, which was not appreciated by all members of the UNLA. Due to tension between the military and political branches, the UNLA ousted Lule in a guardian coup and replaced him with Godfrey Binaisa in June of 1979. During the year of his rule, political parties were banned and Obote returned to Uganda and began gaining support in the UNLA. Pro-Obote forces in the UNLA removed Binaisa from power in May 1980 and promised democratic elections would take place in December. An interim Presidential Commission was put in place before the elections. It consisted of three men from different ethnic backgrounds, Wacha Olwol, David Musoke, and Polycarp Nyamuchoncho (*Hostile to Democracy* 1999).

During the interim period, the UPC and DP, reemerged and regained support. In addition, two new political parties, the Uganda Patriotic Movement (UPM) and the Conservative Party (CP), had emerged critique: A worldwide student journal of politics. The elections were held in December as promised and Obote had appeared to have won the presidency. However, the political opposition parties and some observers from the international community accused the pro-Obote military of rigging the elections. Obote succeeded in temporarily consolidating his controversial victory, but not without escaping the threat of a civil war. Yoweri Museveni of the UPM formed the National Resistance Army (NRA), and stood on a platform of radical change. Museveni argued that his call to arms was a legitimate response to undemocratic practices, and pointed



out that "Once again, a minority, unpopular clique was imposed on the people of Uganda, leaving them with no option but to take up arms in defense of their democratic rights" (*Hostile to Democracy* 1999,34). It was estimated that Obote's government exceeded the brutality of Amin's rule when dealing with opposition. During the five years of civilwar, hundreds of thousands of Ugandans were killed by the Obote regime .The growing resistance and mobilization of rebel groups against Obote, made it very difficult for the regime to wage a strong military campaign against the NRA (*Hostile to Democracy* 1999). In addition, fragmentation based on ethnic tensions began to grow in Obote's UNLA.

In May 1985, General Tito Lutwa Okello staged a coup and disposed Obote. Okello hoped to gain support on a platform of national reconciliation. As a gesture towards national reconciliation, he traveled to Nairobi, Kenya to draft peace accords. However, Museveni and the NRA refused to support Okello's gestures and the peace accords were never implemented (*Hostile to Democracy* 1999).

## **2.6. Uganda under Museveni**

In January 1986, Museveni successfully forced Okello and the UNLA to flee the country, and seized control of the country. Like his predecessors, Museveni banned political party activity. Museveni promised a four year interim period in which he would rearrange political and economic policies and create democratic institutions. Uganda's human rights record deteriorated after Idi Amin seized power in 1971. By the end of the 1970s, it was one of the worst in the world. Several hundred thousand civilians died at the hands of local security forces. In 1986 Museveni pledged to improve Uganda's reputation for human rights. To achieve this goal, the NRM arrested and tried soldiers and civilians for such crimes, and the government worked to improve its reputation for respecting human rights.

In May 1986, NRM officials created a Commission of Inquiry into the Violation of Human Rights under Legal Notice No.5 of 1986 to investigate these crimes under all governments since 9-10-1962 until 25-01-1986 the day before the NRM seized power. The commission examined judicial and other records regarding arbitrary arrest and

detention, torture, and executions. Its hearings began in December 1986, when an investigation team and the commission's chief counsel, Edward Ssekandi, began selecting witnesses who would testify in public session. One of the most controversial witnesses, a former NRA political instructor, testified that political opponents were considered traitors.

A lack of resources hampered the commission's performance. Financial and transportation problems initially confined its activities to Kampala; later, these difficulties temporarily brought public hearings to an end. Although a February 1988 Ford Foundation grant enabled the public hearings to resume, the commission's final report was unavailable in late 1990.

In 1987 the president also established the post of inspector general of government (IGG) to investigate individual complaints about human rights abuses committed since the NRM came to power. The inspector general answered only to the president and had the authority to seize documents, subpoena witnesses, and question civil servants as high ranking as cabinet ministers, with presidential approval. Government officials had to cooperate with the IGG or face three-year prison terms or fines. Budgetary problems and staff shortages reduced the inspector general's effectiveness, and there were complaints during the 1988-90 period that his investigations were too slow and produced no results, despite lengthy testimony and evidence by international human rights groups and individual witnesses.

## **2.7. Nongovernmental Human rights**

Several nongovernmental human rights organizations also worked to improve conditions in Uganda. The UHRA, for example, has monitored developments in Uganda since the early 1980s through its quarterly publications, *The Activist*. Initially, UHRA's relations with the government were tense after the 1989 arrest of UHRA Secretary General Paulo Muwanga for comparing the NRM's human rights record to that of the Amin government. Muwanga was subsequently released, and a UHRA report in 1990 generally approved of Museveni's human rights record.

The Ugandan Association of Women Lawyers works to inform rural populations of their legal rights, promote family stability through legal advice and counseling, ensure equal protection under the law for women and children, and promote Ugandan citizens' welfare by emphasizing laws that promote economic development. In March 1988, the association opened a legal clinic to help indigent Ugandans, especially women and children. By August 1990, the clinic had handled more than 1,000 cases dealing with property rights, inheritance, and a variety of family and business concerns.

## **2.8. Law society**

Many civil society organizations, such as the Uganda Law Society were at the forefront of the constitution-making process, and laid particular focus on the Bill of Rights. Additionally the ULS has instituted a number of test cases. However, it was also noted that any civil society organization that comes out to criticize the government is branded the opposition, without investigating the merits of the issues that are being raised. The Uganda Law Society is one of the most vocal advocates for protection of human rights in Uganda. In 1990 a quarter of the country's 800 lawyers belonged to the Uganda Law Society. Apart from speaking out against human rights violations in northern and eastern Uganda, the Uganda Law Society has called for an independent judiciary, an end to illegal arrests and detentions, legal reform, and constitutionalism. A lack of funds and resources has hampered Uganda Law Society activities.

To counter accusations of human rights abuse, particularly in northern and eastern Uganda, the government has punished members of the NRA convicted of assault or robbery against civilians. Several soldiers have been executed for murder or rape. Military officers even carried out some of these executions in the area where the crimes were committed, inviting local residents to witness the executions. Despite protests by several international organizations, these executions continued in 1990. Uganda's attorney general, George Kanyeihamba, justified the practice, insisting that strict discipline was necessary to maintain order in the military.

Despite these harsh measures, human rights violations continued in parts of northern, eastern, and western Uganda in the late 1980s and early 1990s. In October 1987, for

example, witnesses reported that soldiers killed 600 people in Tororo District during an NRA counterinsurgency operation. People in the southwest claimed that the security services killed a number of school children in antigovernment protests and that as many as 200 villagers were shot for refusing to attend a political rally. Murders of people suspected of being rebel sympathizers were also reported.

In early 1989, Dr. H. Benjamin Obonyo, secretary general of the antigovernment Uganda People's Democratic Movement (UPDM), corroborated evidence of atrocities acquired by Amnesty International and other human rights organizations. He also charged that the NRA had "burned or buried civilians alive" in regions of the north and east.

Throughout 1990, according to Amnesty International, the NRA killed a number of unarmed civilians in the districts of Gulu, Tororo, Kumi, and Soroti. Despite several government inquiries, Amnesty International claimed that no NRA personnel were ever charged with these human rights violations or brought to trial. Moreover, more than 1,300 people remained in detention without charge at the end of 1990. Government officials labeled most of these allegations "exaggerated," but it was clear that they were unable to eliminate abuses by the military forces and that Uganda would face mounting international protests engendered by such abuse.

Several comprehensive studies deal with the evolution of security issues in Uganda. The colonial era is covered in H. Moyse-Bartlett's *The King's African Rifles and Uganda*, by H. Thomas and R. Scott. A. Orala-Otunnu's *Politics and the Military in Uganda, 1890-1985* also assesses the development of the security services. A. Mazrui's *Soldiers and Kinsmen in Uganda* provides insight into the military's role in society. *Conflict Resolution in Uganda*, edited by K. Rupesinghe, is a compilation of papers by Ugandan scholars presented at a 1987 conference in Kampala concerning Uganda's quest for peace and stability.

## **2.9. Media**

Uganda's tradition of an open and lively press was being revived in the late 1980s. *New Vision*, *Guide*, and numerous other local newspapers report and comment on current

developments. Numerous government publications also provide valuable information on the history of the security forces, conditions of service, and the effects of political and cultural change on them. *Uganda Journal* is useful for information about the historical development of the security services. For more recent information on the Ugandan military, see *African Defense Journal* or the National Resistance Army's journal, *The 6th of February*. Pre independence information on crime and the criminal justice system is available in the *Annual Reports* of the Uganda Police Force and the Prison Service. And in **Charles Onyango ObO and Anor VS Attorney General**<sup>9</sup>.

However this period was extended for another five years in 1989. During this time he created democratic institutions at the local level which included elected councils. Museveni's government, like all those before his, faced internal armed opposition and the suppression of this opposition led to accusations of human rights abuses from the international community. However, unlike his predecessors, Museveni did move towards a more democratic system as he had promised at the beginning of his interim administration.

In 1989, the Odoki Commission, officially known as the Uganda Constitutional Commission, was formed to draft a new constitution. The Odoki Commission worked on outreach programs to the Ugandan public and received over 25,000 submissions of suggestions for the new constitution. A popularly elected Constituent Assembly debated the Odoki Commission constitutional outline from 1994-1995. On September 22, 1995, the Constituent Assembly adopted a new constitution, which included strong restrictions on political party activity (*Hostile to Democracy* 1999) and the Bill of rights which gave citizens a right to vote and protection of freedom of conscience, expression, movement, religion, assembly and association.

Democratic presidential elections were held in 1996. The main candidates were Museveni, Dr. Paul Kwanga Ssemogerere, and Mohammed Mayanja Kibirige. A no-party election, the candidates were to base their platforms on personal merit. Museveni campaigned on a platform of economic improvement, stability, and security, all of which

---

<sup>9</sup> Constitutional Appeal. No.2/2002 S.C

he claimed had been absent in the regimes before him. Ssemogerere countered Museveni by saying that the new economic development benefited only a few Ugandans and he promised instead to eliminate poverty. Mayanja took a dependency theory approach and blamed the international system for Uganda's economic problems. Both Ssemogerere and Mayanja accused Museveni of increasing instability and insecurity with his suppression of political parties and opponents. Despite this, Museveni won with 75.5% of the popular vote. Although the losing candidates claimed the elections were rigged, international and third party monitors validated the election results. Along with the presidential election, parliamentary elections were held. Of the 271 seats, 214 were directly elected by the people. The remainder comprised of special representatives from the army, and trade unions, along with disabled people and women. Museveni was reelected in 2001 and now looks hopefully toward the next election in 2006.

Political development in Uganda has gone full circle, from parliamentary democracy to years of dictatorships and military rule, and back to a parliamentary democracy. The democratic system in place today, however, is more legitimate than the original parliamentary system left behind by Britain because the Ugandan people elected representatives at all levels and had a voice in the creation of the new constitution. Uganda is a success story for state-led democratization since the ruler, Museveni, was able to remain in power after the transition to elected government. Uganda has politically recovered and bloomed into a successful democracy. The political development in Uganda is a beacon of hope for other African countries plagued with military rule and dictatorships.

## CHAPTER THREE

### LEGAL FRAMEWORK ON THE RIGHT TO DEVELOPMENT IN UGANDA

#### 3.1. Legal Framework on the Right to Development in Uganda

According to the State Department's *Country Reports on Human Rights Practices in 2010*, Serious human rights problems in the country included arbitrary killings; vigilante killings; mob and ethnic violence; torture and abuse of suspects and detainees; harsh prison conditions; official impunity; arbitrary and politically motivated arrest and detention; incommunicado and lengthy pretrial detention; restrictions on the right to a fair trial and on freedoms of speech, press, assembly, and association; restrictions on opposition parties; electoral irregularities; official corruption; violence and discrimination against women and children, including female genital mutilation (FGM), sexual abuse of children, and the ritual killing of children; trafficking in persons; violence and discrimination against persons with disabilities and homosexual persons; restrictions on labor rights; and forced labor, including child labor.

Dicklitch (2002) argues that though the NRM does not have the egregious rights records of the previous Obote and Amin regimes, human, social and political rights are still being violated, and this puts democratic development at risk. The government is accused of both rights abuses and failure to protect human rights, particularly in the North, where Joseph Kony's Lord's Resistance Army (LRA) has, since late 1987, attacked villages, abducted thousands of children,<sup>10</sup> destroyed property and killed.<sup>11</sup> Human Rights Watch (March 2003) has also documented UPDF (Uganda People's Defense Force) recruitment of child soldiers, for protection of villages and for combat against the Lord's Resistance Army (LRA). Current estimates place the economic costs of this extended war at approximately US\$1.3 billion.

---

<sup>10</sup>According to the latest (January 2004) Human Rights Watch Report, 10000 children have been abducted since mid-2002. See Human Rights Watch (January 2004) Abduction of Children in Africa: Briefing to the 60th Session of the UN Commission on Human Rights. <http://hrw.org/english/dos/2004/01/29/africa7118.htm>

<sup>11</sup>Human Rights Watch (January 2004) claim that 'abducted children are forced to fight against the UPDP, raid villages for food, slaughter civilians. Girls as young as 12 are given to rebel commanders as "wives". Children who refuse to follow orders or try to escape are killed, typically by other children who are forced to beat or hack the victim or be killed themselves.'

There are a number of vocal caucus groups in Parliament, including the Parliamentary Advocacy Forum (PAFO), the Young Parliamentarians Association, and the Acholi, Teso and Lango Parliamentary groups.

These challenge the government on important areas of policy. MPs from these northern groups were involved in a recent parliamentary boycott, which was staged in protest of what they described as government inaction in the North.<sup>12</sup>

Under Museveni's leadership, new institutions for accountability have been created to secure both executive and legislative accountability. In principle, Members of Parliament are required to observe a 'Leadership Code of Conduct', which stipulates declaration of assets and income and prohibits conduct which is: 'likely to compromise the honesty, impartiality and integrity of specified officers; or likely to lead to corruption in public affairs; or is detrimental to the public good or welfare or good governance'.<sup>13</sup> The Inspectorate of Government---or any other authority that Parliament designates---is responsible for enforcing the Leadership Code. Where breaches occur, persons may be dismissed from office for a specified time and prohibited from holding any other public office. Piron and Afako (2004) observed that the Act may have limited effect, as some government officials have begun to challenge it in the courts and to insist on the right to privacy.

### **3.2. The Electoral Commission**

The Electoral Commission faces financial constraints. More profoundly, it suffers from a great deal of political interference and thus lacks independence. The perception that UPDF cannot be separated from NRM as re enforced by the comments and threats made by senior army officers including UPDF spokesperson Colonel Felix Kulalayigye the chief of defense forces . General Aronda Nyakayirima the commander of the infantry , Maj Gen Katumba Wamala who came out to warn the opposition against misleading the public and interfering with state programs and warning that army will come in to help

---

<sup>12</sup>BBC News, Uganda MPS walk out Over Conflict, Thursday 20 November 2003

<sup>13</sup>Uganda Constitution, Chapter 14, Article 233 (2)



the police in case of need<sup>14</sup> The Electoral Commission has limited legitimacy and public respect due to its composition and operational incompetence. For example, it has consistently failed to set election dates and ensure the smooth running of elections such as having proper registers, enough ballot paper and boxes and has failed to identify polling stations, among others. It has also failed to objectively handle the increasing vote rigging and electoral violence. Neither has it provided effective civic education as mandated. Which has led to several Election Petition cases for example Dr Kiiza Besigye Versus Yoweri Kaguta Museveni and Election Commission?<sup>15</sup>

The Movement has been accused of using underhand strategies to exclude 'the Opposition'. In 1996, for instance, President Museveni, Paul Ssemogerere (Democratic Party) and Muhammad Mayanja Kibirige were nominated for President. President Museveni won, though with complaints from his challengers that contrary to regulations, he had begun to campaign before the designated period and had unfair access to the media. It should be noted that though it was clear that Ssemogerere did not pose a real challenge to Museveni's leadership, he was still harassed and prevented from campaigning freely in Western Uganda<sup>16</sup>.

The NRM used various scare tactics to bully the electorate. For example, people were told that Ssemogerere had links with Milton Obote and that Obote would return and resume the slaughter if Ssemogerere were to win the presidency.<sup>17</sup>

In the 2001 elections, the Electoral Commission confirmed reports of voter intimidation, harassment, and undue military presence, particularly the Presidential Protection Unit (PPU). Dr. Kizza Besigye, the President's main opponent, subsequently went into exile, claiming continual harassment. Other Besigye agents were subject to arbitrary arrests and beatings. Some commentators maintain that UPF which is supposed to be civilian force is yet to outgrow this Regime protection behavior. Further, that Uganda does not

---

<sup>14</sup> Gerald Bareebe and Tabubutagira "Besigye Warns Gen Tinyefuza" Nov . 11<sup>th</sup> 2010.

See; Felix Kulayigye , Good Security Critical to Elections , The Monitor , 6<sup>th</sup>jan 2011

<sup>15</sup>Baryaet. al., p. 43

<sup>16</sup>Dicklitch, p. 210. Source: The Monitor March 6, 1996 and The New York Times May 10, 1996

have a democratic, accountable police service<sup>18</sup> In addition; there were widespread reports of double voting, ballot stuffing and missing election material. The Electoral Commission itself was accused of fraud, as voter cards were found on its premises and three officials were arrested for tampering with the voting register leading to Dr Besigye;s challenging the election of Museveni in **Besigye V Museveni** , The electoral commission wherein he alleged rigging of elections The Movement again depicted elements within the 'the Opposition' as criminals, this time with links to terrorist plots in Kampala and Kasese<sup>19</sup>. Dicklitch suggests that with such propaganda, voters prefer to choose the 'safe' option.<sup>20</sup>

Analysts warn that political repression and intimidation are fuelling radical elements among 'the Opposition' and increases the likelihood that groups will seek unconstitutional avenues to gain power. Repression has had other consequences: it has prevented organization and coherence across opposition parties so that many have been unable to develop internal democratic structures and processes and credible agendas.

In June 2002, a new political Parties Organization Act(PPOA) was then passed providing that no party or organization was allowed to hold more than one national conference in a year; were also prohibited from holding public meeting, executive committees and seminars at national level which was challenged in **Paul Kawanga Ssemwogere and 5 others V. Attorney General**,<sup>21</sup>challenging Section 18 and 19 of the Act which the Constitutional Court accepted and found **section 18 and 19** of the PPOA to be unconstitutional.

With this the Police Force argued and rightly that they needed the Instrument for Public Order Management during the elections to calm public gathering or demonstrations.<sup>22</sup>

---

<sup>18</sup> See; Common Wealth Human Rights Initiative, The Police, The Politics; Police Accountability in Uganda, 2006.at 1

<sup>19</sup>Baker and May, Uganda Governance Assessment, Draft, April 3, 2001

<sup>20</sup> See; TabuButagira, Police arm heavily ahead of elections', The Daily Monitor', Money, Jan. 17<sup>th</sup>, 2011.

<sup>21</sup> Constitutional Petition No.5 of 2005,

<sup>22</sup> See; AwelUwihangane'To What Extent Does the Political Opposition offer an Alternative to the National Resistance Movement Government.

In Yusuf Kiranda and Mathias Kamp(eds) Reality Check' The State of Multi Party Democracy I Uganda,2010 at 122

Both the DP and the UPC have radical elements; segments within the UPC are still connected to Obote.<sup>23</sup>

### **3.3. Federalism and the Buganda Factor**

The Buganda Government has persistently vied for the return of Federalism. Although 97% of Buganda wanted the Federal system of government, and 67% of the whole country supported the federal idea during the constitution-making process under the Odoki Report (Constitutional Review Commission), the Constitution ignored it. The Federal system was strongly advocated on the following grounds:

- During the federal system of governance, Uganda witnessed the best income per capita, and infrastructure in terms of schools and hospitals.
- Preservation of cultural heritage and the promotion of strong traditional values.
- Decentralization of power from the centre.
- Good leadership with enhanced accountability.

Sam Njuba also added that the Constitutional Draft was presented to Museveni on 31<sup>ST</sup>.Dec. 1992 who delivered it to the Internal Affairs Minister Hon. Sam Njuba on the 28.May.1993 who also demanded for the Odoki Commission Report before considering the Constitutional Draft<sup>24</sup>

Other commentators like Paul Kawanga Ssemwogerere added that Museveni paid people to run the Constitutional Assembly to ensure that feudalism and federalism can be destroyed.<sup>25</sup>

Also Dr.Kizza Besigye added that Museveni chaired a meeting at Kisozi that was attended by Noble Mayombo, Margret Nantongo Zziwa,Aziz Kasujja and more others to fail federalism.<sup>26</sup>

---

<sup>23</sup>Dicklitch 2002, p. 214

<sup>24</sup> Weekly Observer-September, 22-28, 2005.

<sup>25</sup> Sunday Vision, August,13<sup>th</sup> ,200, pg.12

<sup>26</sup> Sunday Vision, November, 17<sup>th</sup>, 1999, pg9.

### 3.4. The Media

In spite of the numerous tortures, arrests and lawsuits levied against both journalists and newspapers especially when they try to cover unwanted scenes by the Police when it's clobbering people<sup>27</sup>, the media in Uganda is vibrant and has promoted public debate on a whole variety of issues. In particular, the media has through the protection of **Article 29**, made a tremendous contribution to political education and debate as well as provided credible information and exposed corruption<sup>28</sup>. Many respondents commended the *Monitor* newspaper and also appreciated the objectivity of *TheNew Vision*, its government ownership notwithstanding.

Article 41 of the 1995 Constitution provides for the Right to Information which is supported and upheld by the media. This Right was exemplified in **Green Watch(U)Ltd V. Attorney General and Anor.**<sup>29</sup> in which GreenWatch claimed having a right of access to the Power Purchase Agreement that pertained to the proposed Construction of the hydro-electricity power dam at Bujagali. According to **Egonda – Ntende,J**, "Article 41(1) referred to information in possession of the state..... What is important here is the possession in whatever capacity occurring....."

### 3.5. An Independent Judiciary

The Constitution also provides for an independent judiciary and a civilian army. Various horizontal accountability mechanisms, including the Uganda Human Rights Commission and the Inspectorate of Government, have been established. Democracy is always a struggle, and it is thus important to have institutions to mediate or resolve conflicts. Overall, the judiciary enjoys the confidence and faith of the disputants, as illustrated by the continuous resort to settle political disputes through the law, as was the case with

---

<sup>27</sup> See- Policeman kicks Monitor Journalist, *The Monitor*, June, 18<sup>th</sup> 2010

<sup>28</sup> See-Odoki Commission Report as cited in Vicent Babaland, *Its your Right To get Information and The Daily Monitor*, October, 18<sup>th</sup>, 2006.

<sup>29</sup> (HCCS 139/2011)

the Besigye case, the opposition over the constitutionality of **Art 269**, the referendum and the numerous electoral petitions.

The doctrine of Independence of the Judiciary and its importance was underscored in the well-known case of **Masalu Musene and 3or.s V. Attorney General**<sup>30</sup>, wherein **Mpagi Bahigeine J.A** noted that judicial officers are charged with safeguarding the fundamental rights and freedoms of the citizenry.

There has been increasing independence of the judiciary in Uganda, particularly of the High Court and the Supreme Court, with several test cases witnessed in recent years to attribute the Right of fair trial under Article 28 of the 1995 Constitution. The High Court possesses untitled original jurisdiction in all matters as provided under Article 139(1)<sup>31</sup>.as in **Myers and Anor. V Ltd. Akira Ranch**<sup>32</sup>. However, there was concern over the timidity of the Court of Appeal/Constitutional Court. For example, after the Court had rendered the 1999 Referendum law null and void, Parliament passed a new Referendum Act 2000 within a matter of hours in order to validate the referendum process. Subsequently, a new amendment was made to the Constitution, which stated that henceforth, if any party wanted to challenge the proceedings of Parliament, they had to seek the permission of the Speaker to access any records. This raises serious doubts about the commitment of Parliament to uphold constitutionalism. The Court of Appeal held that the constitution can be amended in one day, and that the requisite materials need not be published in the gazette. Again, although it is apparent that the constitution contains contradictory provisions, rather than iron out these inconsistencies, the Constitutional Court decided that each provision stands on its own. This is one of the examples illustrating the failure of the Constitutional Court to develop constitutional law jurisprudence.

However, it should be noted that the judiciary and the government should reinforce and facilitate the effectiveness of its independence. In the case of **Masalu Musene,Twinomujuni.JA** on his part reiterated that for judiciary to be effective, it

---

<sup>30</sup> Constitutional Petition No.5/2004

<sup>31</sup> The 1995 Constitution

<sup>32</sup> (No.2) (1972) E.A 347

needs assistance from all but especially from the Executive and legislature. He thus regretted the so called chastisement of the judiciary apparently for no other reason other than doing a job vested in it by the Constitution. He further cited examples where after passing judgement, it is allowed by threats to fix or sort out the biased judges. In the case of **Law Society V. Attorney General**<sup>33</sup> the doctrine was held to have been blatantly violated and in his judgement **Egwauj .A** noted that “under **Article 128(3)** of the Constitution, all organs and agencies of the state are required to accord to the courts such assistance as may be required to ensure the effectiveness of the courts What these military personnel did that day was not assistance envisaged in **Article 3(128)** of the Constitution”.

In more recent times, the President made nominations of appointments to judicial office which has been seen by many as tending to the erosion of the independence of the judiciary. In particular, for example the nominations for the appointment of Zam Zam Nagujja who has been known to be a Movement supporter, has been seen by many as a step towards compromising the judiciary.

### **3.6. The Uganda Human Rights Commission (UHRC)**

Uganda has signed all the major international human rights conventions and instruments. Chapter 4 of the Constitution underscores that all individuals have fundamental rights and freedoms, including economic and social rights, which should be protected by all organs of the State. The 'National Objectives and Directive Principles of State Policy' is meant to provide some guidance on how to promote and protect rights. The Uganda Human Rights Commission is authorized to investigate human rights complaints, enhance respect for human rights through public education, advice Parliament of effective strategies for promoting human rights, monitor Government compliance with international treaties and obligations. The Commission should remain independent and has the power to order redress where rights are violated.

---

<sup>33</sup> Constitutional Petition No.8/2005

The UHRC has been commended as an overseer for the respect of human rights. Although a government institution, it has diplomatically pointed out the flaws of government in its use of power including torture, and decried the army intervention in politics particularly in elections. The UHRC provides hope to many Ugandans that there are at least some institutions that can speak out against the excesses of governmental power.

### **3.7. The Role of Religious Institutions**

Religion can be used positively, given that most Ugandans profess one religious belief or another. Under the Uganda Joint Christian Council (UJCC), which is an amalgamation of three churches, there has been an active promotion of civic and political education. UJCC also has a permanent observer status in Parliament.

## **CHAPTER FOUR**

### **DATA PRESENTATION AND ANALYSIS**

#### **4.1 Examine the role of the state in the promotion of respect to human rights.**

The shift in sovereignty and globalization meant that non-state actors are more involved than ever in the state issues relating to human rights. This development poses challenges to International human rights law, because for most part that law has been designed to restrain abuses by powerful states and state agents.

Human rights law aims primarily to protect individuals and groups from abusive actions by states, state agents and other actors. Recent developments throughout the country include a failed state, economic deregulation, privatization and trade liberation has lead to emergency of powerful non-state actors who have resources sometimes greater than those of the state.

Monitor the implementation of human rights obligations of the State party and report annually.

Report and make recommendations on human rights matters, including on legislation and administrative provisions, the violation of human rights situation in the country and initiatives to improve the human right situations.

Promote harmonization of national law and practice with international human rights standards; encourage ratification of human rights treaties.

Cooperate with regional and United Nations human rights bodies as well as with human rights and efforts that are required to combat discrimination.

Assist in the formulation of human rights education programmes ; and Raise public awareness about human rights and efforts to combat discrimination.



Two opposing views of globalization and relationship to human rights have emerged. Some see the two topics as mutually reinforcing and positive in improving human well-being.

After considering whether or not the state favors the promotion and protection of human rights, several approaches for promotion and protection of human rights, are laid down: (1) emphasizing state responsibility for the actions of non-state actors; (2) imposing international legal obligations directly on non-state actors, including international institutions, multi lateral enterprises, and individuals; (3) encourage private regulations through corporate codes of conduct, product labeling and other consumer or corporate actions; and (4) involving non-state actors directly in the activities promoting and protecting human rights.

These challenges have brought greater transparency to and participation in state organizations, producing unintended benefits and further challenges to the democratic deficit in state governance. At the same time, an emphasis on subsidiary and a strengthening of weak arms of the state and their institutions to ensure that there is no decline in the state promotion and protection of human rights. To ensure that such strengthening does not lead to further human rights violation, the international community should make concerted multilateral efforts to enhance its ability to respond to human rights violation, rather than unleashing each state to control what it views as the sins of private sector.

#### **4.1.1 To what extent are the policy mechanisms for implementation of the right to development in Uganda?**

While its true the 1995 constitution made remarkable achievements in the recognition and protection of some human rights, as seen in Cap. 4, it did not go very far. Many constitutional analysts have already alluded to this reality. For instance, Oloka – Onyango has observed that many rights including social, economic and development rights, have been confirmed to that part that has no legal force.

It's not clear why these rights were moved to this part of the constitution because they formed an important part of Cap.3 of the Draft constitution. Perhaps there of the reasons could have been that "The Report of the constitutional commission referred to these rights as a generally not enforceable by legal means as they state general principles rather than substantial entitlements. "What this means is that the state cannot be held legally responsible for any limited achievement of these rights, but could be held morally accountable. Despite the above, the 1995 constitution recognizes the right to development stresses the role of people and the state in development of Uganda and brings to the force the need for balanced and equitable development.

The right to development doesn't appear in most international human rights treaties, but it's formally recognized in the African Charter on Human and Peoples rights. Art. 22 of the charter provide that all people shall have the right to their economical, social and cultural development with regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. State shall have the duty, individually or collectively to ensure the exercise of the right to development.

The government of Uganda recognizes the right to development of the state as a whole and of its peoples as it is in the 1995 constitution. Here the right to development finds its expression among the National Objectives ad Directive Principles of State Policy as objective number 9. It provides that: the state shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them.

The 11<sup>th</sup> objective describes the role of the state in development, by which the state commits itself to the enactment of legislation to establish measures that protect and enhance the right of the people to equal opportunities in development. In recognition of historical imbalances in development the state commits itself to taking necessary measures to bring about balanced development the state commits itself to taking

“necessary measures to bring about balanced development of different areas of Uganda and between the rural and urban areas”.

Uganda has embarked on Universal Primary Education (UPE) in an effort to effect people-centered development. Although this programme has had a number of setbacks such as inadequate classrooms facilities, unlimited number of trained teachers, inadequate resources, and limited coverage of the whole population of the school age children due to above constraints it is nevertheless essential for developing the abilities and skills of the people for the future development.

Participation is an essential component of successful lasting development. It contributes to equity by involving people living in poverty and other groups in planning and implementation. Participatory decision-making, together with democracy, and transparent and accountable governance and administration in all sectors of society is an important requirement for the effectiveness of development policies.

The constitution of the republic of Uganda 1995, guarantees every Ugandan the right to participate in the development process of Uganda. However, the same constitution also recognizes the need to protect the rights of minority to participate in decision making processes that their views and interests are taken into account in making national plans and programmes (Article 36). This is a good gesture in response to the requirements of the right to development, which is to encourage popular participation in all spheres as an important factor in development and the full realization of human rights.

The creation of national and international conditions favourable to the realization of the right to development requires full respect for the principles of international law. Underlying international law are principles of the sovereign equality of states, national and territorial integrity, the peaceful resolution of international conflicts, and non-interference in the domestic matters of state-all of which are contained in the Charter of the United Nations.

In a country like Uganda, popular participation of the people requires democracy. Democratic involvement of people in charting their development goals programmes is at

the core of people's own development. This can be achieved through respect for the right to participation and self determination of peoples.

In conclusion, in light to the above discussion, the right to development in Uganda has not yet found real reflection on the life of the ordinary people, many of whom are still excluded from the development process. Uganda must get beyond constitutional provisions to translate these guidelines into concrete human well being guided by comprehensive principles and approach most suitable for realization of this right to development.

#### **4.1.2 What are the major challenges to effective implementation of the right to development?**

The report of the Global Consultation concludes that above all, the concentration of economic and political power in the most industrialized countries" is an obstacle to development and is "perpetuated by non democratic making processes of international economic, financial and trade institutions.

Democracy at all levels (local, national and international) and in all spheres is essential to true development, cultural inequalities in international relations as within individual countries, are obstacles to the achievement of genuine democracy and a barrier to development.

Greater equality is related, in turn, to respect for the principles of self determination and non use of force. Existing trade and financial arrangements have been dictated by a small number of countries, frequently for their own benefits and expense of development elsewhere often resulting directly or indirectly in violation of human rights. These models largely ignore the social, cultural and political aspects of human rights and development limiting the human dimension to questions of productivity. They foster greater inequalities of power and control of resources among groups and lead to social tensions and conflicts. These tensions and conflicts are often the pretext used by states to justify placing restrictions on human rights.

In contrast with the policies of international institutions, “no one model of development is universally applicable to all cultures and peoples”. What constitutes “development” is largely subjective and in this respect development strategies must be determined by the people themselves and adopted to their particular conditions and needs.

It follows that participation must be “the primary mechanism for identifying appropriate goals and criteria” for the development process. Since internal and external conditions for development are interdependent, democracy is essential at national as well as international levels. Democracy is an essential element in realization of the right to development and failure to implement and respect the principles of democratic government has been shown to present a serious obstacle to the realization of development.

Lack of awareness among the planning and implementing authorities on the various national and international laws and various policies of the government.

Huge gap between the mandates of the National and International Legislations and the design of the various schemes both specific and general.

Scarcity of resources in terms of financial, manpower, qualified profession hence denial to rights to access to be addressed.

In this context, the right to development is not so much a right to the improvement of material conditions but the right to have a voice in and share control over the economic environment. It’s how an apology for a liberal, laissez faire state in which that is simply an absence of public restraint on private self interest. This becomes clear of the interpretation given to the concept.

## **CHAPTER FIVE**

### **RECOMMENDATION, ANALYSIS AND CONCLUSIONS**

#### **5.0 Introduction.**

Uganda is faced with a real crisis. Whatever decision it makes will have repercussions for a considerable period of time. The only people who can decide are Ugandans themselves. At the same time, the world is moving forward. The one party system had its historical moment. There was a time when it was not only fashionable, but in certain societies, historically necessary as well. That period has now passed. Perhaps the Movement System was necessary in 1986 and for a few years thereafter; is it still necessary now? It is true that Uganda has undergone a terrible past, but is there no other political system that can make Uganda forge ahead with different schools of thought, without forgetting its past?

From what the Mission was told, it can be surmised that there is a substantial section of the population who would like to see a process of political liberalisation in the country. Since the Mission had no opportunity to visit the rural areas, it can be said that this opinion is urban based. But in examining this issue we should not only be moved by numbers, but should also weigh the strength of the arguments. . A major tenet of modern day democracy is the existence of a multiparty system, and allowing political parties to function freely. This is not to say that Zaire under Mobutu, with more than 100 political parties, was democratic, or that the US or the UK with basically only two political parties in each, are undemocratic. The Movement System had its objectives, and definitely served its purpose well. Perhaps in 1986 Uganda needed that kind of system to breathe and emerge from the politics of hatred. We do not know how the Ugandan population is divided according to age group, but we would not be surprised if those in the 15-35 years category constitute a substantive number. These are the people who either were not yet born when the NRM government came into power, or were only nine years old when that happened.

Of all the people we interviewed, only two were strongly opposed to the idea of Uganda re-introducing a multiparty system. Because of the offices they hold, both of them can

be said to be very close to the President. Since we also met others closer to the President who holds contrary ideas, we cannot assume that what our two respondents were telling us is necessarily close to the President's thinking. Unfortunately, we did not seek an appointment in advance to have an audience with the President. But it is important that the President formally opens up a national debate on the issue, and sits back and listens to what the people have to say. He should have an open mind, in the sense that he accepts whatever the people's verdict would be.

In the light of the above discussion, the right to development in Uganda has not yet found real reflection on the life of the ordinary people, many of whom are still excluded from the development process. Uganda must get beyond constitutional provisions to translate these guidelines into concrete human well-being guided by comprehensive principles and an approach most suitable for the realization of this right to development. The people of Uganda must, therefore, hold its government morally and politically accountable for any deviation from the principles and objectives of state policy contained in the constitution. This is not to say that the people are exonerated from their responsibility to develop themselves individually and collectively.

The approach most suitable for the realization of the right to development is holistic and integral, considering not only the economic well-being of the people but also taking into account the social, political, cultural and moral dimensions of their life; one that considers the human person as the central subject, active participant and beneficiary of the right to development.

Drawing from the United Nations Declaration on the Right to Development, integral development requires that the principles of human centered development, participation, democracy, self-determination, social justice and international cooperation be upheld. Integral development therefore, must be underlined by good governance. Dictatorships or political monopolies cannot create a conducive atmosphere for development, although this has been the extended experience of many African countries including Uganda. The right to development recognizes peoples' potentialities and capabilities to determine their political and economic life. It recognizes that peoples should define

their form of governance: how to be governed, by whom, and when. As a necessary condition for economic development, recognition of peoples' sovereignty over their natural resources is paramount. Economic development is not simply economic growth or the numerical increase of national Gross Domestic Product (GDP); it encompasses the overall well-being of peoples. It involves the evolution of new forms of economic systems, trade relations, and the establishment of relevant economic policies and institutions. These must facilitate not only the production of goods and services, but also their distribution to all people of the community for their consumption and well-being. The "promotion of human dignity, basic human rights, solidarity of people, participation, and self-determination need to become the warp and woof of the economic structures"<sup>34</sup> Peoples' development, therefore, must be rooted in "basic human needs and dignity," rather than on greed.

Integral development involves also the social and cultural well-being of people. The social aspect of development presupposes that the wealth of the country is equally shared among its people. The cultural aspect of development presupposes that a country is able to grow and progress with its own values intact. Uganda must not succumb to a materialistic consumerism life style, sacrificing and losing its social sensitivity because of rapid economic development resulting from the forces of globalization. The country should develop with its peculiar and particular creativity, values, talents and skills. We need to cultivate our values of integrity, solidarity, love and respect for others, which are intrinsic in our cultures and important in facilitating true and meaningful human relations significant for the peoples' development.

Contemporary development requires that concrete choices ought to be made in order to achieve and maintain justice and peace. The option for collaboration, dialogue and nonviolent resolution of conflict are some of the more significant choices Uganda, therefore, must promote regional integration and international cooperation based on the true principles of international relations. International cooperation must play a



significant part in encouraging and promoting the rights to development by creating peace and promoting respect for human rights.

There is need to create linkages with religious leaders through the inter-religious forum on the notions of convergence and commonality with the Covenants' aspirations to consider possible collaborations on specific issues.

The cultural front is also relevant. We should bring together cultural leaders and institutions and work towards having one voice. They can be a great partner to civil society in speaking out against injustices. This can best be done by mainstreaming indigenous knowledge through cataloguing and documentation or actualization and engagement, which can be done with the help of cultural institutions.

## BIBLIOGRAPHY

### TEXT BOOKS

- Allen and Thomas (eds.), *Poverty and Development in the 1990s* (Oxford: Oxford University Press, 1996), p. 6.
- B. J. Odoki, *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (Kampala: Uganda Printing and Publishing Press, 1993), p. 133.
- Baker and May, Uganda Governance Assessment, Draft, April 3, 2001
- Hannah.R.Garry, Applying the Plumline of Bill of Rights, Human rights and the draft Bill on Refugees
- J. Odoki, *The Report of the Uganda Constitutional Commission:*
- Oloka-Onyango, *"Poverty and Marginalization in the Age of Extremes:* p. 84.
- I. G. Shivji, *the Concept of Human Rights in Africa* (London: 1989), p. 71.
- Stefanie Grant, the Social and Economic Human Rights of non-citizens.
- G.W Kanyeihamba, Human Rights in Uganda, a new dawn. Presented to Oxford University's Refugee studies Program on 24<sup>th</sup>.October.1986.
- R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 13.
- United Nations, *Declaration on the Right to Development*, 1986, Article 1

HURINET-U(2009). Towards Peaceful, free fair and democratic elections in Uganda, Kampala, HURINET-U.

-Khisa, I.(2010). Government denies Uganda's opposition media access ahead of elections. East Africa in Focus. Kampala, East Africa in Focus.

## **JOURNALS**

-Human Rights Watch Report, 10000 children have been abducted since mid-2002.

-Human Rights Watch. Report (January 2004) claim that 'abducted children are forced to fight against the UPDP.

## **PAPERS**

-Dicklitch, (2010) Source: The Monitor March 6, 1996 and the New York Times May 10, 1996

