



# UGANDA HUMAN RIGHTS COMMISSION



**THE 21ST ANNUAL REPORT - 2018**





UGANDA HUMAN RIGHTS COMMISSION  
**THE 21ST ANNUAL REPORT**  
**2018**

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The Rt. Honourable Speaker of Parliament,  
Parliament of Uganda,  
P. O. Box 7178,  
Kampala.

Dear Madam,

**RE: UGANDA HUMAN RIGHTS COMMISSION 21<sup>ST</sup> ANNUAL REPORT TO PARLIAMENT**

The Uganda Human Rights Commission (UHRC) has the pleasure and honour to present to Parliament its 21<sup>st</sup> Annual Report in accordance with Article 52 (2) of the Constitution of the Republic of Uganda.

The Report is divided into two sections namely; the state of human rights in the country (Chapters 1-12) and interventions/ activities carried out by the Commission in 2018 (Chapter 13). The former covers the Commission's analysis of the human rights situation in the country in the year 2018, while the later is about the activities of the Commission such as complaints management, inspection of places of detention, human rights education, as well as finance and administration.

FOR GOD AND MY COUNTRY!

Yours faithfully,



Med S. K. Kaggwa  
**CHAIRPERSON, UGANDA HUMAN RIGHTS COMMISSION**

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# ABBREVIATIONS AND ACRONYMS

## A

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**AAU** - ActionAid Uganda  
**ACERWC** - African Committee of Experts on the Rights and Welfare of the Child  
**ACHPR** - African Charter on Human and Peoples' Rights  
**ACORD** - Agency for Cooperation and Research in Development  
**ACRWC** - African Charter on the Rights and Welfare of the Child  
**ACTV** - African Centre for Treatment and Rehabilitation of Torture Victims  
**ADR** - Alternative Dispute Resolution  
**AIDS** - Acquired Immunodeficiency Syndrome  
**APCOF-PTD** - African Policing Civilian Oversight Forum - Pre-trial Detention  
**APP** - Acknowledgement of Prisoners' Properties (form)  
**Art** - Article  
**ARU** - Arua  
**ASP** - Assistant Superintendent of Police  
**ATAAS** - Agricultural Technology and Agribusiness Advisory Services  
**ATM** - Automated Teller Machine  
**APP** - Acknowledgement of Prisoner's Property

## B

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**BCU** - Bugisu Cooperative Union  
**BMCT** - Bwindi Mgahinga Conservation Trust  
**BRAC** - Building Resources across Communities

## C

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**Cap** - Chapter  
**CARITAS** - Latin term for Charity  
**CAT** - Coalition against Torture  
**CBOs** - Community-Based Organizations  
**CBR** - Central Bank Rate  
**CBS** - Central Broadcasting Service  
**CCEDU** - Citizens' Coalition for Electoral Democracy in Uganda  
**CCTV** - Closed-Circuit Television  
**CEDAW** - Convention on the Elimination of All Forms of Discrimination Against Women  
**CEDOVIP** - Centre for Domestic Violence Prevention  
**CERD** - Convention on the Elimination of All Forms of Racial Discrimination

**CESCR** - Convention on Economic, Social and Cultural Rights  
**CEWARN** - Conflict Early Warning and Response Mechanisms  
**CID** - Criminal Investigations Department  
**CMI** - Chieftaincy of Military Intelligence  
**CPF** - Central Processing Facility  
**CPI** - Corruption Perception Index  
**CRC** - Convention on the Rights of the Child  
**CRPD** - Convention on the Rights of Persons with Disabilities  
**CRRF** - Comprehensive Refugee Response Framework  
**CRS** - Catholic Relief Service  
**C-SAAP** - Country-Led Situation Analysis and Action Planning  
**CSOs** - Civil Society Organizations  
**CTR** - Central  
**CUUL** - Consortium of Uganda University Libraries

## D

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**DANIDA** - Danish International Development Agency  
**DDMC** - District Disaster Management Committee  
**DGF** - Democratic Governance Facility  
**DHS** - Demographic and Health Survey  
**DISO** - District Internal Security Officer  
**DLG** - District Local Government  
**DNMC** - District Non-Governmental Monitoring Committee  
**DNA** - Deoxyribonucleic Acid; it is a nucleic acid that contains the genetic code  
**DPC** - District Police Commander  
**DPP** - Directorate of Public Prosecutions  
**Dr** - Doctor  
**DRC** - Democratic Republic of the Congo  
**DRDIP** - Development Response to Displacement Impact

## E

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**EC** - Electoral Commission  
**ECD** - Early Childhood Development  
**EDC** - Education  
**EMGs** - Ethnic Minority Groups  
**EOC** - Equal Opportunities Commission

## F

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**F/Y** - Financial Year  
**FAO** - Food and Agriculture Organization  
**FDC** - Forum for Democratic Change  
**FGM** - Female Genital Mutilation  
**FGM/C** - Female Genital Mutilation/Circumcision  
**FHRI** - Foundation for Human Rights Initiative  
**FIDA** - The Association of Women Lawyers (Uganda)  
**Fig** - Figure  
**FM** - Frequency Modulation  
**FPIC** - Free, Prior and Informed Consent  
**FPT** - Fort Portal  
**FRA** - Food Rights Alliance  
**FTA** - Free to Air

## G

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**GAP** - Good Agricultural Practice  
**GBV** - Gender-Based Violence  
**GIZ** - (German Agency for International Cooperation)  
Deutsche Gesellschaft Fur Internationale  
Zusammenarbeit  
**GLU** - Gulu  
**GoU** - Government of Uganda

## H

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**HCI** - Health Centre One  
**HCII** - Health Centre Two  
**HCIII** - Health Centre Three  
**HCIV** - Health Centre Four  
**HIV/AIDS** - Human Immunodeficiency Virus/  
Acquired Immunodeficiency Syndrome  
**HMA** - Hoima  
**HRAPF** - Human Rights Awareness and Promotion  
Forum  
**HRBA** - Human Rights\_Based Approach  
**HRC** - Human Rights Council  
**HRCU** - Human Rights Centre Uganda  
**HRDs** - Human Rights Defenders  
**HRE** - Human Rights Education  
**HRPC** - Human Rights Peace Club  
**HURIFO** - Human Rights Focus  
**HURINET (U)** - Human Rights Network - Uganda  
**HURIS** - Integrated Human Rights Information  
Management System

## I

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**IARC** - International Agency for Research on Cancer  
**IBA** - International Bar Association  
**Ibid** - Latin word meaning “in the same place”  
**ICCPR** - International Covenant on Civil and Political  
Rights  
**ICD** - International Crimes Division  
**ICESCR** - International Covenant on Economic, Social  
and Cultural Rights  
**ICF** - International Classification of Functioning,  
Disability and Health  
**ICRMW** - International Convention on the Protection  
of the Rights of All Migrant Workers  
**ICT** - Information and Communications Technology  
**ID** - Identity  
**IDPs** - Internally Displaced Persons  
**IEC** - Information, Education and Communication  
**IFJ** - International Federation of Journalists  
**IGG** - Inspector General of Government  
**IGP** - Inspector General of Police  
**ILO** - International Labour Organization  
**ISO** - Internal Security Organisation

## J

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**JJA** - Jinja  
**JLOS** - Justice, Law and Order Sector  
**JOC** - Joint Operations Committee

## K

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**KALI** - Kirambi Action for Life Improvement  
**KCCA** - Kampala Capital City Authority  
**KMP** - Kampala Metropolitan Police  
**KRC** - Kidnap Resume Centre

## L

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**LCI** - Local Council One  
**LCII** - Local Council Two  
**LCIII** - Local Council Three  
**LCs** - Local Councils  
**LCV** - Local Council Five  
**LDC** - Law Development Centre  
**LDUs** - Local Defence Unit (members)  
**LGBTI** - Lesbian, Gay, Bisexual, Transgender and  
Intersex  
**LRA** - Lord’s Resistance Army

## M

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**Maj** - Major  
**MBR** - Mbarara  
**MCA** - Magistrates Courts Act  
**MDAs** - Ministries, departments and agencies  
**MIFUMI** An NGO based in Ntinda, Kampala  
**MAAIF** - Ministry of Agriculture, Animal Industry and Fisheries  
**MoFA** - Ministry of Foreign Affairs  
**MoFPED** - Ministry of Finance, Planning and Economic Development  
**MGLSD** - Ministry of Gender, Labour and Social Development  
**MoH** - Ministry of Health  
**MoJCA** - Ministry of Justice and Constitutional Affairs  
**MLHUD** - Ministry of Lands, Housing and Urban Development  
**MoU** - Memorandum of Understanding  
**MPs** - Members of Parliament  
**MRG** - Minority Rights Group  
**MRT** - Moroto  
**MSK** - Masaka  
**MTI** - Medical Teams International

## N

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**NAADS** - National Agricultural Advisory Service  
**NAP** - National Action Plan  
**NAPE** - National Association of Professional Environmentalists  
**NBS** - National Broadcasting Services  
**NCD** - National Council for Disability  
**NCHRD-U** - National Coalition of Human Rights Defenders Uganda  
**NDA** - National Drug Authority  
**NEMA** - National Environment Management Authority  
**NGOs** - Non-Governmental Organizations  
**NHRIs** - National Human Rights Institutions  
**NITA-U** - National Information Technology Authority - Uganda  
**NPHC** - National Population and Housing Census  
**NRA/M** - National Resistance Army/Movement  
**NSP** - National Strategic Plan  
**NTV** - Nation Television

## O

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**OAG** - Office of the Auditor General  
**OAU** - Organization of African Unity  
**OC** - Officer in-Charge  
**ODPP** - Office of the Director of Public Prosecutions

**OHCHR** - Office of the High Commissioner for Human Rights  
**OPCAT** - Optional Protocol to the Convention Against Torture  
**OP-CRC-AC** - Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict  
**OP-CRC-SC** - Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography  
**OPD** - Out-Patient Department (clinic)  
**OPM** - Office of the Prime Minister  
**OWC** - Operation Wealth Creation

## P

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**Para** - Paragraph  
**PF3** - Police Form Three  
**PILAC** - Public Interest Law Clinic  
**POMA** - Public Order Management Act  
**PPTA** - Prevention and Prohibition of Torture Act  
**PSN** - Person with Special Needs  
**PWDs** - Persons with Disabilities

## R

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**RC** - Resistance Council  
**RDC** - Resident District Commissioner  
**RDO** - Refugee Desk Officer  
**REC** - Refugee Eligibility Committee  
**RED** - Research, Education and Documentation  
**RIP** - Rest In Peace  
**RLP** - Refugee Law Project  
**RWCs** - Refugee Welfare Councils

## S

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**SACCOs** - Savings and credit Cooperative Societies  
**SAGE** - Social Assistance Grants for Empowerment  
**SAHRC** - South African Human Rights Commission  
**SDGs** - Sustainable Development Goals  
**SDP III** - Sector Development Plan Three  
**SFC** - Special Forces Command  
**SGBV** - Sexual and Gender-Based Violence  
**SID** - Special Investigations Directorate  
**SIU** - Special Investigations Unit  
**SMS** - Short Message Service  
**SRT** - Soroti  
**SS** - Secondary School  
**STI** - Sexually Transmitted Infection



## T

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**TCM** - Tororo Cement Management  
**TIA** - Trial on Indictments Act  
**TV** - Television

## U

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**UBOS** - Uganda Bureau of Statistics  
**UCC** - Uganda Communications Commission  
**UCCA** - Uganda Consortium for Corporate Accountability  
**UCU** - Uganda Christian University  
**UDHR** - Universal Declaration of Human Rights  
**UGX** - Uganda shillings  
**UHRC** - Uganda Human Rights Commission  
**UK** - United Kingdom  
**UN OHCHR** - United Nations Office of the High Commissioner for Human Rights  
**UN** - United Nations  
**UNAIDS** - Joint United Nations Programme on HIV/AIDS  
**UNBS** - Uganda National Bureau of Standards  
**UNCAT** - United Nations Convention Against Torture  
**UCCA** - Uganda Consortium  
**UNCRC** - United Nations Convention on the Rights of the Child  
**UNCRD** - United Nations Convention on the Rights of Persons with Disabilities  
**UNDP** - United Nations Development Programme  
**UNESCO** - United Nations Educational, Scientific and Cultural Organization  
**UNFPA** - United Nations Population Fund  
**UNHCR** - United Nations High Commissioner for Refugees

**UNHS** - Uganda National Household Survey  
**UNICEF** - United Nations International Children's Emergency Fund  
**UNODC** - United Nations Office on Drugs and Crime  
**UOBDO** - United Organization for Batwa Development in Uganda  
**UPDF** - Uganda People's Defence Forces  
**UPE** - Universal Primary Education  
**UPF** - Uganda Police Force  
**UPR** - Universal Periodic Review  
**UPS** - **Uganda Prisons Service**  
**URN** - Uganda Radio Network  
**URSB** - Uganda Registration Services Bureau  
**USE** - Universal Secondary Education  
**UWA** - Uganda Wildlife Authority  
**VACIS** - Violence Against Children in Schools

## V

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**VAM** - Village Agent Model

## W

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**WFP** - World Food Programme  
**WHO** - World Health Organization  
**WHRD-UG** - Women Human Rights Defenders - Uganda  
**WICCE** - Women's International Cross Cultural Exchange

## X

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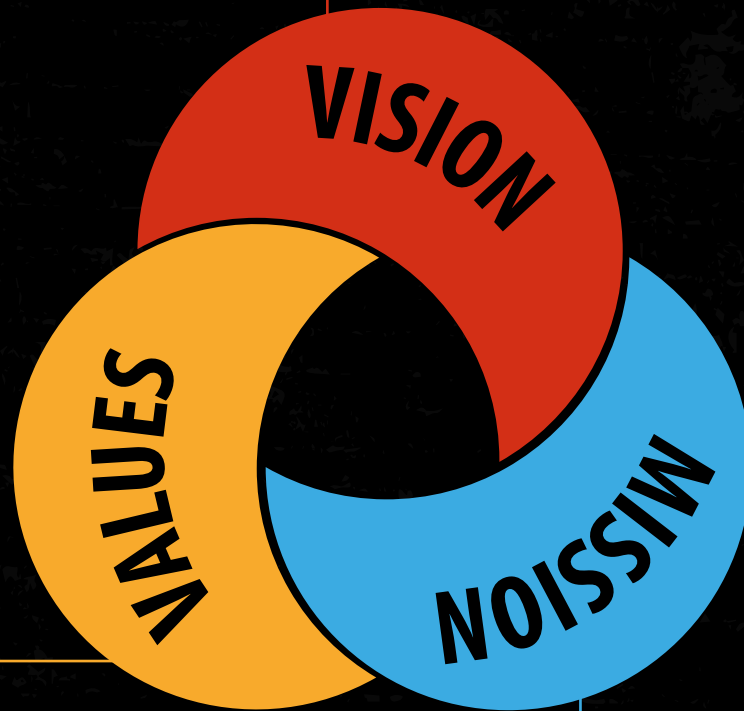
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## Y

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**YMCA** - Young Men's Christian Association

A society that respects human rights and fulfils civic obligations.



1. Integrity, transparency and accountability.
2. Fairness in the execution of functions and mandate.
3. Dignity of the person is central.
4. Independence, credibility and reliability as a national human rights institution.
5. Quality of service delivery.

To protect and promote fundamental human rights and freedoms in Uganda for sustainable development.

# ABOUT THE UGANDA HUMAN RIGHTS COMMISSIONS

## Mandate

The functions of the Commission as per **Article 51 (1)** are listed as follows:

- a) To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right.
- b) To visit jails, prisons and places of detention or related facilities with a view of assessing and inspecting conditions of the inmates and make recommendations.
- c) To establish a continuing programme of research, education and information to enhance respect of human rights.
- d) To recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights, or their families.
- e) To create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda.
- f) To educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation.
- g) To formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people.
- h) To monitor the Government's compliance with international treaty and convention obligations on human rights.
- i) To perform such other functions as may be provided by law.

**Article 52 (2)** also requires the Commission to publish periodical reports and submit annual reports to Parliament on the state of human rights and freedoms in the country.

**Article 52 (3)** states that in the performance of its functions, the Uganda Human Rights Commission shall:

- a) Establish its operational guidelines and rules of procedure;
- b) Request the assistance of any department, bureau, office, agency or person in the performance of its functions; and
- c) Observe the rules of natural justice.

Furthermore, **Article 48 (1)** of the Constitution grants the UHRC an intervention role in situations where a state of emergency has been declared, as stated herewith; "The Uganda Human Rights Commission shall review the case of any person who is restricted or detained under emergency laws".

## Powers of the UHRC

Under **Article 53(1)** of the Constitution, UHRC has the following powers:

- a) To issue summons or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission.
- b) To question any person in respect of any subject matter under investigation before the Commission.
- c) To require any person to disclose any information within his/her knowledge relevant to any investigation by the Commission.
- d) To commit persons for contempt of its orders.

The UHRC may, if satisfied that there has been an infringement of a human right or freedom, order:

- a) The release of a detained or restricted person.
- b) Payment of compensation; or
- c) Any other legal remedy or redress.

## Independence of UHRC

Under Article 54 of the Constitution, the Commission shall be independent and shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

## Expenses of UHRC

Under Article 55 of the Constitution, the UHRC shall be self-accounting and all the administrative expenses of the Commission, including salaries, allowances and pensions payable to persons serving with the commission, shall be charged on the Consolidated Fund.

The chairperson and other members of the Commission shall be paid such salaries and allowances as Parliament may prescribe.

## Removal of a member of the Commission

Under Article 56, the provisions of the Constitution relating to the removal of a judge of the High Court from office shall, with the necessary modifications, apply to the removal from office of a member of the Commission.

## Staff of UHRC

The appointment of the officers and other employees of the Commission is made by UHRC in consultation with the Public Service Commission.

## Laws governing the functions of UHRC

The laws that regulate and facilitate the performance of the functions of Uganda Human Rights Commission are the Uganda Human Rights Act 1997 and UHRC procedure rules.

“

**TO DENY PEOPLE  
THEIR HUMAN RIGHTS  
IS TO CHALLENGE THEIR  
VERY HUMANITY.”**

~ NELSON MANDELA ~

”

# ACKNOWLEDGEMENTS

The Uganda Human Rights Commission (UHRC) has come to an end of yet another year of execution of its constitutional mandate. The complex mandate that revolves, majorly, around the protection and promotion of human rights, involves many processes including stakeholder and public engagements, research and complaints handling, all in an effort to reach out and protect the rights of, mostly, the vulnerable; those that require protection because of, among others, their age and disability, and social, political and economic positioning.

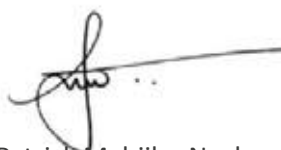
In that regard, UHRC acknowledges the support, both technical and financial, of the Government of Uganda, development partners and civil society, in the execution of her mandate. Special appreciation goes to the UN Office of the High Commissioner for Human Rights(OHCHR), United Nations Office of the High Commissioner for Refugees (UNHCR), United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), United Nations Children’s Fund (UNICEF), European Union (EU), Justice, Law and Order Sector (JLOS), Democratic Governance Facility (DGF), the Governments of France and Germany (GIZ), and the Network of African National Human Rights Institutions (NANHRI). We also appreciate all the support extended to the Commission for the successful production of this report.

The Chairperson and Members of the Commission are acknowledged in a special way, for providing political leadership, policy guidance and strategic direction that steered the process leading to the production of this report. Special gratitude goes to the members of the Editorial Board, in particular the Chairperson Mr. Med S.K Kaggwa, Members of the Commission: Mr. Meddie Mulumba, Dr. Katebalirwe Amooti Wa Irumba and Ms. Victoria Businge Rusoke, Directors: Ms. Ruth Ssekindi, Ms. Margaret Lucy Ejang, Ms. Ida Nakiganda, Mr. Kamadi Byonabye and Mr. Wilfred Asiimwe. The Commission also appreciates Ms. Rose Mary Kemigisha the Internal Editor and Mr. Charles Mukasa, the Commission’s Planner.

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The Commission further acknowledges and appreciates the contributions made by individuals and organizations during the consultative process. These include Hon. Jovah Kamateeka (Parliament), Mr. Robert Kotchani (UN-OHCHR), Capt. Jacqueline Nakayenze (UPDF), Mr. Bob Kirenga (NCHRD-U), Ms. Dorothy Bazibwe (SSA: UHSNET), Mr. Hakim Mufumbiro (UNBS), Mr. Innocent Ndahiriwe (OPM/ Refugees), Mr. Edmund Ariyo (MoFPED), Mr. Ibrahim Bossa (UCC), Mr. Onen David Ongwech (RLP), Mr. Dave Khayangayanga (MLHUD), Ms. Agnes Kirabo (FRA), Ms. Alexandria Kirunda (HRC-U), Mr. James Mugisha (MoH), Ms. Dianah Kagere (CEDOVIP), Ms. Nakirijja Grace Lwanga (CEDOVIP), Mr. Hilary Muhumuza (MGLSD), Mr. Arnold Kwesiga (UCCA), Ms. Agnes Kabajuni (MRG), Mr. Xavier Ejayi (AAU), Mr. James Kusemererwa (UPF), Dr. Cindy Orikiiriza (UMA), Mr. Fred Ssekindi (FHRI), Mr. John Thembo (FHRI), Ms. Barbara B. Kawuma (ODPP) and Ms. Anne Nyakato (MoFA). The information provided during the consultative meetings helped in enriching the annual report.



Patrick Mabiho Nyakaana  
**SECRETARY, UGANDA HUMAN RIGHTS COMMISSION**

# EXECUTIVE SUMMARY

This report presents the state of human rights and freedoms in Uganda during the year 2018. This is based on the Uganda Human Rights Commission's monitoring throughout the reporting year, complaints reported to the Commission and research on thematic human rights areas conducted by the Commission in 2018.

The report comprises of 14 chapters, with the first nine chapters dedicated to the thematic issues such as pre-trial detention and its implications on access to justice, freedom of expression and related human rights concerns, sexual and gender-based violence and its impact on women's rights in Uganda, the quality of food products on Uganda's market and the human rights concerns, the state of the right to housing, access to credit and human rights concerns, the plight of refugees in Uganda and concerns of host communities, the plight of health workers and its effect on access to health care and the operating environment of human rights defenders. Chapter 10 addresses the key emerging human rights concerns in the year 2018 which include kidnaps in 2018, the plight of ethnic minorities, insecurity in Karamoja sub-region, elections and Bududa landslides while chapter 11 considers the position of the Commission on bills before parliament of Uganda. Chapter 12 looks at the status of Ugandan government's compliance with the recommendations made by the Commission, while chapter 13 gives highlights on the various interventions by the Commission in 2018. These include complaints, investigations and tribunal, monitoring and inspections, human rights education, and finance and administration. Each chapter concludes with recommendations to various government ministries, departments and agencies. The last chapter of the report (chapter 14) looks at how Uganda has performed in terms of its reporting to international and regional treaty bodies.



## **CHAPTER 1: PRE-TRIAL DETENTION AND ITS IMPLICATIONS ON ACCESS TO JUSTICE**

This chapter highlights issues concerning access to justice in Ugandan courts, the challenges people face in accessing justice during pretrial detention in the justice chain institutions and makes recommendations on how to address these challenges.

### **Recommendations**

1. Judicial Service Commission and DPP should recruit more judicial officers and prosecutors to deal with issues of case backlog in the courts of law to expeditiously handle cases.
2. Government should finalize the process of developing the draft National Legal Aid Policy and related law.
3. Parliament should expeditiously enact the Witness Protection Bill to, among others, regulate conditions and procedures for providing out-of-court protection and assistance to a witness.
4. The Ministry of Finance, Planning and Economic Development should adequately finance all institutions involved in the administration of criminal justice in Uganda.
5. The Ministry of Justice and Constitutional Affairs and the Judiciary need to urgently ensure that prisoners detained under ministerial orders have their cases urgently addressed to avoid long and arbitrary detention which is an infringement on their rights.

## **CHAPTER 2: FREEDOM OF EXPRESSION AND RELATED HUMAN RIGHTS CONCERNS IN 2018**

This chapter looks at the enjoyment of this right in 2018 and identifies areas of progress and challenges in the enjoyment of the right. The chapter also makes recommendations as to what needs to be done to put in place a conducive environment for the enjoyment of the right to freedom of expression in Uganda.

### **Recommendations**

1. The Ministry of Foreign Affairs should fast-track the ratification of the Budapest Convention on Cybercrime, an international treaty that seeks to address Internet and computer crime by harmonizing national laws on cybercrime, improving national capabilities for investigating such crimes, and increasing cooperation on investigations.
2. The Ministry of ICT and National Guidance, should come up with a policy that improves access and usage of ICTs by vulnerable groups including PWDs, youth and women to enable them participate fully and equally in national development.
3. The Uganda Police Force should expeditiously investigate cases of attacks on the media by security agencies and have suspects prosecuted in the courts of law.
4. The Ministry of ICT, should come up with a law regulating against the arbitrary actions of switching off media stations and closing of media houses without a court order.

## **CHAPTER 3: SEXUAL AND GENDER-BASED VIOLENCE AND ITS IMPLICATIONS ON THE RIGHTS OF WOMEN IN UGANDA IN 2018**

The chapter gives highlights on forms of SGBV, causes and effects, and the human rights implications and suggests recommendations to curb the problem.

### **Recommendations**

1. There is need for strict enforcement of the Prohibition of Female Genital Mutilation Act of 2010, the Constitution and manage laws against child marriages by UPF.
2. There is need for continuous sensitization of the masses at all levels about the dangers of SGBV and the need to refrain from it by both government and non-state actors.
3. The Ministry of Education and Sports should provide the basic necessities to facilitate girls' retention in school and completion, including the provision of food at school, provision of sanitary towels and sanitary facilities.
4. The Ministry of Finance, Planning and Economic Development should adequately fund the criminal justice institutions like the Uganda Police Force, courts of judicature, probation and welfare offices and the directorate of Public Prosecutions, and provide adequate staffing. Funding from local revenue at the district is not adequate to facilitate the probation office.
5. Ministry of Health should spearhead training of health workers on how to handle victims of SGBV.
6. The Ministry of Finance, Planning and Economic Development and the Ministry of Gender, Labour and Social Development, increase funding for Uganda Women Entrepreneurship Program, Youth Livelihood Program and other livelihood programs.
7. Ministry of GLSD and local governments at all levels should encourage survivors of SGBV to report their cases.

## **CHAPTER 4: QUALITY OF FOOD IN UGANDA AND THE HUMAN RIGHTS CONCERNS**

This chapter looks at the food safety on the Ugandan market, issues revolving around harmful, dangerous and life-threatening chemicals that are put in food products, the agricultural products exposed to harmful chemicals, as well as expired food items on the market. It further looks at challenges and gives recommendations.

### **Recommendations**

1. Parliament should amend the Food and Drugs Act (1959) and the Food and Nutrition bill should be put into law.
2. There is need for a realistic, far-reaching and influential national policy on chemicals research in reference to their toxicology.
3. There is need for more cooperation and collaboration between the various bodies whose mandate affects the right to quality food and to establish a clear structure for collaboration.
4. There is need for continued sensitization and advocacy to citizens on their right to food (quality food) by responsible MDAs including UNBS, MoH, Ministry of Agriculture and civil society organizations.
5. Farmers and all value chain actors should ensure good agricultural practices (GAPs) such as timely planting, timely weeding, adequate pest and disease control, proper harvest and post-harvest handling practices, along the value chains to ensure quality.
6. A specific government institution dealing with food should be established to take care of food quality issues in Uganda.

7. Uganda National Bureau of Standards should be equipped with high technology to deal with food quality in Uganda.

## **CHAPTER 5: THE RIGHT TO ADEQUATE HOUSING IN SELECTED DISTRICTS OF UGANDA IN 2018**

This chapter presents UHRC's findings on the state of the right to adequate housing in selected districts in Uganda, and it particularly looks at the meaning and scope of the right to adequate housing, the international, regional and national legal and policy framework and human rights concerns. The findings include, positive developments and challenges, and the UHRC makes recommendations to the various stakeholders on how to improve the state of the right to adequate housing in the country.

### **Recommendations**

1. The Ministry of Lands, Housing and Urban Development (MLHUD) should expedite the process of enacting eviction laws and/or guidelines and a tenant-landlord law to guarantee security of tenure and protect households from illegal and forceful eviction.
2. Additionally, MLHUD should initiate the process of formulating and enacting the law housing, to give effect to the housing policy in Uganda.
3. The Ministry of Lands, Housing and Urban Development (MLHUD) and Ministry of Gender, Labour and Social Development should establish and document the magnitude of homelessness in Uganda.
4. The Ministry of Finance, Planning and Economic Development should revise tax regimes on building materials by reducing levies on essential building materials to ensure affordability by all categories of households as well as the regular supply at all time.
5. The Ministry of Lands, Housing and Urban Development should establish and implement low-cost housing schemes to enable majority of households' access adequate housing at subsidized costs on affordable terms.
6. The Ministry of Finance should prioritize and adequately allocate financial resources toward the implementation of the National Housing Policy of 2016, including funds to upgrade the state of housing in the informal settlements/slums.

## **CHAPTER 6: ACCESS TO CREDIT AND HUMAN RIGHTS CONCERNS**

This chapter, gives the legal framework and operations of various lending institutions including banks, microfinance institutions, Savings and credit Cooperative Societies and moneylenders and the attendant human rights and policy concerns.

### **Recommendations**

1. The Government should, through Ministry of Finance, Planning and Economic Development, further regulate the interest rates of the credit institutions to accommodate the poor.
2. Government should extend its credit facilities and also reduce the borrowing conditions for the most vulnerable persons to enable them to access credit and thus eradicate poverty.
3. There should be strict enforcement of the law to prohibit moneylending without licences.
4. Financial institutions should ensure that borrowers get thorough information to ensure that they make sound financial decisions.

## CHAPTER 7: THE PLIGHT OF REFUGEES IN UGANDA AND THE CONCERNS OF THE HOST COMMUNITIES

This chapter, highlights on the refugee situation Uganda, highlighting the plight of refugees in the settlement centres and the human rights issues of concern. It also outlines Government development interventions in regard to refugee issues.

### Recommendations

1. Office of the Prime Minister (OPM) should streamline the policy of land ownership and related benefits for the host communities before, during and after occupation by refugees.
2. OPM should create its own biometric system of registration of refugees or attain control over the UNHCR system.
3. Government should, through the Office of the Prime Minister, support the host communities who have already given out their land for refugee settlements and have nowhere to sustain their livelihoods.
4. Office of the Prime Minister should conduct massive awareness raising among the host communities on the terms and conditions on which their land was donated to the government for settlement of refugees As well as on how to tap the benefits arising from refugee population such as utilizing them as labour and market for produce.)
5. OPM, UNHCR and World Food Programme should revise the food distribution system in the settlements with a view to ensuring that food is not distributed very far away from the families.
6. Office of the Prime Minister should ensure that more schools, especially secondary schools, and health centres are set up within the settlement or in areas close to the households.
7. OPM and development partners should increase on water supply by installing a bigger water system to lessen the problem of inadequate water.
8. OPM should establish tertiary/vocational training institutions for the refugees and host communities to help the people, especially the youth, attain some skills.
9. The Government should open up more police posts in the refugee settlements and deploy more police officers in these settlements.
10. Government and other implementing partners should consider opening up some adult classes/ education for the adult refugees who are interested in it.

## **CHAPTER. 8: THE PLIGHT OF HEALTH WORKERS AND ITS EFFECT ON ACCESS TO HEALTH CARE IN 2018**

This chapter analyses the conditions under which health workers operate and considers the link between good working conditions for health workers and the realization of the right to health. It highlights the challenges and related human rights implications on access to health care in Uganda.

### **Recommendations**

1. Government should at all levels adopt the Abuja Declaration of having 15% of the budget on health provision.
2. The Ministry of Health should recruit more health workers, especially doctors and midwives, to solve the problem of understaffing and inadequate manpower.
3. The Ministry of Health, in conjunction with the National Medical Stores, should provide adequate drugs in line with the demand of the health facilities and also monitor the use of drugs by the health service providers to curb the stealing of drugs.
4. The Ministry of Health should train health workers and provide modernized technologies such as computers to ease data management in all health facilities.
5. The Ministry of Health should ensure provision of adequate work equipment, especially protective gears and digital technologies for screening patients especially for health workers.
6. The Ministries of Health and Public Service should address the plight of staff who are non-medical workers by enhancing their salaries.
7. The Ministry of Health should strengthen the referral system across the country in order to relieve and preserve the national referral hospitals to attend to only serious referred cases.

## **CHAPTER. 9: OPERATING ENVIRONMENT OF HUMAN RIGHTS DEFENDERS (HRDS)**

This chapter gives highlights on the increased importance of various HRDs in Uganda in respect of the promotion and protection of the rights of the people in Uganda. It highlights the achievements been made by HRDs, their working environment, as well as the risks they faced in line with their work as well as the human rights implications, then gives recommendations on how to address the issues raised.

### **Recommendations**

1. The Ministry of Internal Affairs and the National Bureau for NGOs (NGO Bureau) should review the laws concerning the registration of non-governmental organisations and ensure that they are conducive and facilitative of the work of human rights defenders.
2. The Uganda Law Reform Commission should review the Public Order Management Act 2013 to bring it in line with human rights standards.
3. The Uganda Police Force should speed up and conclude all investigations concerning violations against human rights defenders, and bring the perpetrators to justice.
4. HRDs need to strengthen partnerships by doing joint advocacy and collaboration, networking for purposes of mutual support and also reducing exposure to risk, harassment and retaining objectivity.

## CHAPTER 10: EMERGING HUMAN RIGHTS CONCERNS

This chapter considers some of the key human rights concerns that occurred in 2018.

These include kidnaps in 2018, the plight of ethnic minorities in Uganda, insecurity in Karamoja sub-region and its human rights implications, the 2018 elections (LCI and parliamentary) and their human rights implications, UHRC's interventions and the Bududa landslides.

### 10.1 Kidnaps in Uganda in 2018 and their human rights implications

In 2018, the country witnessed an increase in the number of kidnappings in urban areas, mainly in Kampala. Both print and electronic media were awashed with reported cases of kidnaps. The sub-chapter highlights the number of cases reported to various institutions, the causes and the human rights implications.

#### Recommendations

##### To Uganda Police Force

1. Heighten security presence, foot patrols and community policing.
2. Continuous capacity building to cope up with the modern trends in technology in as far as crime prevention and management are concerned.
3. Officers involved in unprofessional conducts should be made accountable for their actions.
4. Officers should be adequately facilitated with the required tools and equipment to effectively investigate cases.

##### To Government

1. Job creation especially for the youth.
2. Creation of meaningful poverty eradication programmes.
3. Rehabilitation centres should be established to give a new lease of life to some of the surviving victims.

### 10.2. Plight of ethnic minorities in Uganda

This sub-chapter specifically looks at the plight of selected ethnic minorities in Uganda i.e. the Ik, Ethur, Tepeth, Benet and Batwa that have suffered discrimination and marginalization over years. The sub-chapter highlights the legal framework and human rights concerns regarding the above-mentioned minorities, and then makes recommendations.

#### Recommendations

1. The Ministry of Education and Sports should develop inclusive and intercultural educational provisions and curricula, which will ensure that all ethnic minority groups have an understanding of their multi-cultural society.
2. Parliament should address the gaps in the legal and policy frameworks particularly by amending the Constitution of Uganda to ensure that all ethnic minorities and indigenous people in Uganda receive due recognition as ethnic groups in Uganda under the law.
3. The Ministry of Foreign should ratify the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
4. Ministry of Lands, Housing and Urban Development should fast-track the resettlement process of all minority communities who were evicted from their ancestral lands so that they can fully engage themselves in income-generating activities.
5. The Uganda Bureau of Statistics should compile comprehensive statistical data on the social, economic and political status of the indigenous minorities in Uganda.

### **10.3. Insecurity in Karamoja sub-region and its human rights implications**

This sub-chapter presents the Commission's findings from monitoring the security situation in Karamoja sub-region in 2018. It includes the major incidents of insecurity, the communities affected, effects of the violent incidents and their human rights implications. The section also highlights efforts in place to address the challenges, as well as recommendations to various government entities.

#### **Recommendations**

1. Ministry of Foreign Affairs should hold high-level engagements within the framework of the East African Community to ensure that all armed groups within the East African region are disarmed.
2. While UPDF and other security agencies have worked hard to ensure that the people and their properties are safe, police should deploy more forces at national borders to ensure that armed groups do not cross into Uganda to disturb border communities.
3. The Ministry of Foreign Affairs should engage with the Kenyan and South Sudanese governments jointly cooperate and control the theft of animals across the borders.
4. All stakeholders involved in peace initiatives in Karamoja sub-region need to reevaluate their strategies to ensure that the peace dialogues are effective in addressing the insecurity situation in the area.

### **10.4. The 2018 elections (local council and parliamentary), human rights implications and UHRC's intervention**

This sub-chapter presents UHRC's findings during its monitoring of the 2018 elections. It highlights areas of concern and challenges that curtailed full enjoyment of electoral rights and freedoms. The sub-chapter further highlights UHRC's interventions and gives recommendations to improve on the enjoyment of the electoral rights and freedoms.

#### **Recommendations**

1. The DPP should institute criminal proceedings against police officers suspected to have shot dead Ramanthan Walyendo, Samuel Ssekiziyivu and Yasin Kawuma when they fired live bullets to disperse the crowds.
2. The Uganda Police Force and UPDF should desist from the use of live bullets and other dangerous weapons on unarmed demonstrators and non-violent suspects.
3. Government should expeditiously streamline the modalities of joint security management during processions and public demonstrations to ensure that police is appropriately equipped, adequately resourced and supported to effectively play its constitutional role in keeping law and order.
4. DPP should expedite the prosecution of officers of Uganda Police Force and UPDF who assaulted, tortured and damaged the property of journalists and suspects as they covered the Arua by-elections and the recent demonstrations.
5. In line with the Prevention and Prohibition of Torture Act, the Directorate of Public Prosecutions (DPP) should prosecute individually security officers who tortured suspects during the Arua fracas.
6. Security agencies should respect the freedom of expression and media freedoms and allow journalists to perform their legitimate role without undue interference.
7. The public should ensure responsible use of social and other forms of media to guard against prejudice tendencies.
8. Electoral laws should be proposed and implemented to promote voter protection in the communities with stringent measures against voter intimidation.

## 10.5. Human rights concerns arising from the Bududa landslides

This sub-section presents the UHRC findings from its visit to Bududa and Bulamuli districts in Eastern Uganda during the mudslides. It further gives an assessment on whether there was adequate disaster early warning, a description of the disaster incident, highlights on the effects of the disaster on the communities and the human rights implications therein. The section also highlights recommendations to the relevant ministries, departments and agencies.

### Recommendations

1. The Office of the Prime Minister should expedite the process of resettling the affected communities to avoid future disasters.
2. The proposed resettlement should ensure that all the social amenities are in place before people are relocated.
3. The Ministry of Finance, Planning and Economic Development should ensure that adequate financial resources are allocated to the district disaster management committee so as to enable it effectively prepare and respond to future disasters.
4. The Ministry of Education and Sports should work hand in hand with Bududa district local government to ensure that the schools destroyed by the disasters are rehabilitated.
5. The Government should establish a disaster management commission as provided for under the Constitution to effectively prepare and respond to all natural disasters.
6. Government should, through the Ministry of Lands, Housing and Urban Development, expeditiously settle the ownership claims on the proposed resettlement site.

## CHAPTER 11: uhrc POSITION ON SELECTED BILLS BEFORE PARLIAMENT

This chapter highlights UHRC's position on four bills. The Commission has the responsibility of reviewing and analyzing bills, laws and policies in order to ensure that they comply with human rights standards.<sup>1</sup> It is on this basis that this chapter analyses the four bills that were presented to Parliament and these include the Administration of the Judiciary Bill, 2018; the Indigenous and Complementary Medicine Bill, 2015; the Data Protection and Privacy Bill, 2015; and the Sexual Offences Bill 2015.

## CHAPTER 12: GOVERNMENT'S COMPLIANCE WITH UHRC ANNUAL REPORT RECOMMENDATIONS

This chapter highlights the level of Government of Uganda's compliance with UHRC recommendations in the UHRC'S last 20<sup>th</sup> Annual Report. The Commission noted that the level of government's compliance with the UHRC recommendations was 4%, while the level of noncompliance was 19%. Therefore, UHRC is concerned that majority of its recommendations have continued to go unimplemented.

### Recommendations

1. The Commission urges all MDAs to implement its recommendations and also to use its database to help track progress of implementation.
2. The ministry of Finance, Planning and Economic Development should amend the Public Finance Management Act, 2015 to give UHRC powers to issue certificates of human compliance upon review of MDA budget to ensure that they address the human rights-based approach to development.

<sup>1</sup> UN Principles Relating to the Status of National Institutions (The Paris Principles), Section 3 (a) (i).



## CHAPTER 13: HIGHLIGHTS OF UHRC'S INTERVENTIONS IN 2018

### 1. Highlights of interventions on complaints management

This subsection provides highlights on complaints management by UHRC in 2018. These include the number of complaints received by the Commission, number of complaints registered, complaints investigated, complaints referred to other institutions for further management and complaints resolved through mediation. The alleged violation of the freedom from torture ranked highest among the complaints registered, at **346** complaints. This was a 13% increase from the 306 complaints that were registered in 2017. These were followed by complaints involving the violation of the deprivation of personal liberty through detention beyond 48 hours at **323** complaints. This was a 16.6% increase from the 277 complaints that were registered in 2017. The subsection also gives some challenges encountered by the Commission during complaints resolution.

#### Recommendations

1. Ministry of Justice and Constitutional Affairs and Office of the Attorney General, handle matters proposed for amicable settlements in a timely manner and ensure that victims of human rights violations are compensated expeditiously.
2. Ministry of Justice and Constitutional Affairs, facilitate the expeditious appointment of more members of the Commission to enable the Commission expeditiously dispose of its tribunal backlog.
1. Ministry of Justice and Constitutional Affairs, streamline the process of decentralisation of payment of tribunal awards by the MDAs. Ministry of Justice and Constitutional Affairs should act as a focal point to coordinate the process and follow up with the concerned MDAs to ensure that payments are made to victims of human rights violations.

### 2. Highlights on conditions in places of detention

In line with its constitutional mandate, Uganda Human Rights Commission continued to monitor the human rights situation in the various places of detention, to assess the conditions of suspects and inmates. This monitoring and inspection of places of detention was also done to assess government's compliance with national, regional and international human rights standards in regard to persons deprived of liberty. The subsection presents the findings and recommendations regarding the monitoring and inspection of the places of detention by UHRC in 2018.

The Commission conducted 962 inspection visits to places of detention which included; 409 police stations, 384 police posts, 163 government prisons, 05 remand homes and 01 military detention facility. It noted that progress had been made in some areas while, in others, a number of human rights issues were still noted.

#### Recommendations

1. Ministry of Finance, Planning and Economic Development should increase funding to Uganda Prisons Service and Uganda Police Force to enable them build better structures so as to have facilities suitable for human habitation and stop overcrowding.
2. Uganda Law Reform Commission and Ministry of Justice and Constitutional Affairs should review the civil procedure rules and the Magistrates Courts Act to prohibit detention of civil debtors.
3. Ministry of Internal Affairs and Ministry of Gender, Labour and Social Development should ensure that juveniles are separated from adult offenders in all detention facilities and that children who are incarcerated with their imprisoned mothers are catered for.
4. Uganda Prisons Service and Uganda Police Force should completely phase out the bucket waste disposal system.

5. Uganda Prisons Service and Uganda Police Force should stop the torture of detainees in their custody.
6. Uganda Police Force should adequately facilitate all its stations and posts with the necessary stationery, equipment and transportation to enable officers do their policing work well.

### **3. Highlights of UHRC civic/ human rights education**

In fulfillment of its mandate of protecting and promoting human rights in Uganda, the Commission continued to reach out to various categories of people in its quest to carry out awareness on a number of human rights issues. This subchapter highlights different platforms used by the Commission to create awareness and these included civic education interventions, baraza meetings where grassroots communities were targeted and road shows using civic education vans. The youth were further engaged through the human rights and peace clubs in secondary schools and the general public was targeted through media programmes such as television and radio talk shows, radio spot messages and regular media briefs.

UHRC was further able to reach other sections of society through information, education and communication (IEC) materials, training workshops and activities organized by stakeholders through partnerships while it also used the commemoration of selected international human rights days to do advocacy.

#### **Recommendations**

1. Government should approve the draft National Civic Education Policy.
2. As recommended in the previous reports, Government should, through Ministry of Finance, Planning and Economic Development, increase funding for civic education in Uganda.
3. Government should, through the ministry of ICT and National Guidance, design a strategy of inculcating a spirit of respect for the rule of law and value systems vital for fulfillment of duties and responsibilities by the people.
4. The ministry of Education and Sports should put in place mechanisms to eradicate the use of corporal punishments in schools.

### **1. Highlights of interventions in finance and administration in the financial year 2017/2018**

Administration and support services rendered during the year financial year 2017/2018 were aimed at enabling UHRC to achieve its strategic objectives as well as strengthening its systems and accountability with the ultimate goal of enhancing effective service delivery. The interventions included mobilization of financial resources from both Government of Uganda (GoU) and development partners; maintaining the necessary level of human resources to accomplish planned activities; review of the client charter; printing and distributing the UHRC anti-corruption strategy; and international engagements.

The main sources of funding the Commission during the financial year 2017/2018 remained as follows: GoU remained the major funding source and it was supplemented by contributions from development partners. The development partners included Democratic Governance Facility (DGF); Justice, Law and Order Sector (JLOS); German Cooperation for International Development (GIZ); United Nations Development Programme (UNDP); and United Nations International Children's Fund (UNICEF).

The total funding from the various sources as highlighted was UGX 22,670,000,000 billion (twenty-two billion, six hundred seventy million shillings only); and on this amount, GoU contribution constituted 85% while donor contribution was only 15% of the total budgetary provision.

## Recommendations

1. Ministry of Finance, Planning and Economic Development should make deliberate efforts to improve on the Medium-Term Expenditure Framework to address the recurring underfunding of the Commission and enable the Commission to:
  - a) Pay a competitive wage to staff to address the challenge of high staff turnover.
  - b) Stop depending on donors for funding of core activities.
  - c) Implement the approved structure which includes opening of two new regional offices in Lira and Kabale that was approved by the ministry of Public Service in June 2016.
2. Ministry of Finance, Planning and Economic Development should specifically consider making adequate budgetary provision for capital expenditure to construct UHRC head office and regional offices and procure transport equipment over the medium term.

## CHAPTER 14: STATUS OF UGANDA'S REPORTING TO INTERNATIONAL AND REGIONAL HUMAN RIGHTS MECHANISMS

Uganda has signed and ratified core international and several regional human rights instruments; by this, the state undertakes to promote, protect, respect and fulfill the obligations under these instruments which include submitting initial and periodic reports on the measures undertaken to implement the recognized rights. In line with Article 52 (1) (h) of the Constitution, this chapter highlights the status of Uganda's reporting to treaty bodies at both the international and regional levels focusing on reporting activities done in 2018. The chapter also looks at the status of implementation of the recommendations accepted from the Universal Periodic Review (UPR) processes and the recommendations received from the committee overseeing the implementation of the provisions of the Convention on the Rights of Persons with Disabilities (CRPD) by the various ministries, departments and agencies (MDAs).

The chapter also gives an update on the status of the National Action Plan (NAP) whereby it highlights on observations and challenges of treaty body reporting and makes appropriate recommendations for improvement.

### From the findings, UHRC recommends:

1. The Ministries of Foreign Affairs; Gender, Labour and Social Development; and Justice and Constitutional Affairs should continue following up on implementation of the Government's voluntary pledges and recommendations accepted from the UPR and treaty bodies to enhance the promotion and protection of human rights in the country.
2. It is also recommended that Uganda makes a declaration allowing direct access to the court as per Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, (the Protocol) for the court to accept cases from individuals and NGOs with observer status before the African Commission (direct access), since it has already ratified the protocol.

## CHAPTER 1

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# PRE-TRIAL DETENTION AND ITS IMPLICATION FOR ACCESS TO JUSTICE

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## 1.0 INTRODUCTION

This chapter focuses on pre-trial detention in Uganda and its implication for access to justice considering that many marginalised, less privileged and vulnerable persons are usually deprived of their right to access justice during the period of their detention. The dictionary definition of detention is the act or fact of holding a person in custody<sup>2</sup>. In this regard, pre-trial detention refers to the locking up of a suspect or an accused person on criminal charges in police and/or prison before completion of their trial.

Even though detention pending trial should be the exception rather than the rule, the use of pre-trial detention was found to be common in Uganda. Indeed, pre-trial detainees constituted a large proportion of the suspects and inmates, causing overcrowding at police stations and prisons.<sup>3</sup> The Commission registered 323 pre-trial detainees in 2018, accounting for 34.5% of the total 936 complaints of human rights violations registered.

Access to justice implies that all persons irrespective of their social, economic, cultural or gender status are able to access quality and affordable legal services in the enforcement of their legal and human rights.<sup>4</sup> Thus, the ability to access justice is of critical importance to the enjoyment of all rights. Equal access to justice for all is not only a fundamental human right but also a pre-requisite for protection and promotion of civil, political, economic, social and cultural rights.<sup>5</sup> In 2018, the Commission monitored pre-trial detention to assess its human rights implications.

Pre-trial detention is only legitimate where there is reasonable suspicion that the person committed the offence and where detention is necessary and proportionate to prevent them from absconding, committing another offence, or interfering with the course of justice as the next procedures are awaited. This means that pre-trial detention is not legitimate where these objectives can be achieved through other, less intrusive measures or alternatives. Such measures include bail, seizure of travel documents, the condition to appear before the court as and when required and/or not to interfere with witnesses, periodic reporting to police or other authorities, electronic monitoring, or curfews.<sup>6</sup> It is not a sanction, but a measure to safeguard a criminal procedure.<sup>7</sup>

The use of alternative measures has a number of advantages compared to deprivation of liberty including lowering the repeat offender (recidivism) rate. It avoids the disintegration and stigmatisation of communities associated with personal, family and social consequences of pre-trial detention. It is also an indispensable tool for reducing overcrowding in prisons and avoiding prolonged pre-trial detention.

In analysing the human rights implications of pre-trial detention for the year 2018, the Commission engaged with stakeholders including officers of Uganda Police Force (UPF) and Uganda Prisons Service (UPS), chief magistrates, state attorneys, district community development officers as well as suspects and inmates in various detention facilities. The focus was on the human rights at stake including the right to personal liberty, and to a fair and speedy trial for those in prolonged detention, as both affect access to justice.

2 Bryan A. Garner (2004). Black's Law Dictionary, 8th edition.

3 <http://apcof.org/wp-content/uploads/2016/07/APCOF-PTD-Uganda-Proof-3.pdf>. Accessed on 26th February 2019.

4 <http://www.cba.org/sajea/en/Doc/conceptrevised.doc> Accessed on 26th February 2019.

5 <http://www.ohchr.org/Documents/Issues/Poverty/SubmissionRuleOfLaw.pdf>. Accessed on 18th December 2012.

6 [https://cdn.penalreform.org/wp-content/uploads/2013/11/Factsheet-1-pre-trial-detention-v10\\_final2.pdf](https://cdn.penalreform.org/wp-content/uploads/2013/11/Factsheet-1-pre-trial-detention-v10_final2.pdf) Accessed on 26th February 2019.

7 Ibid.

## 1.1 LEGAL FRAMEWORK

Pre-trial detention is provided for by various international and regional legal instruments that Uganda is a party to. The Universal Declaration of Human Rights (UDHR),<sup>8</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>9</sup> and the African Charter on Human and Peoples' Rights (ACPHR)<sup>10</sup> provide for the right to liberty and security of person. Rule 111 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) provides for a right to a fair and public hearing for suspects, while Rule 10.2 of the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985 provides for a fair and speedy trial for juveniles. In addition, The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) provide for the 48-hour rule and also provides for separation of pre-trial inmates from convicted prisoners.

In the national legal framework, Article 23 of the 1995 Constitution of Uganda provides for the right to personal liberty. Article 23 (6) specifically provides for the pre-trial detention period; that is, 60 days for cases triable by the High Court and its subordinate courts and 180 days for cases triable only by the High Court. Other legislations such as the Prisons Act 2006,<sup>11</sup> the Children Act cap 59<sup>12</sup> and the Magistrates Courts Act<sup>13</sup> also provide for an elaborate framework on pre-trial detention.

## 1.2 SITUATION ANALYSIS ON PRE-TRIAL DETENTION AND ITS IMPLICATIONS ON ACCESS TO JUSTICE

Globally, pre-trial detention is a very contentious issue. In many countries, Uganda inclusive, the number of people in detention awaiting legal proceedings is higher than those who have actually been convicted and sentenced to imprisonment.<sup>14</sup> Pre-trial detention contributes significantly to prison overcrowding since people can wait for years for legal proceedings to begin. Some governments, Uganda's inclusive, have been accused of using pre-trial detention to effectively imprison people indefinitely without trial.<sup>15</sup>

The law requires that pre-trial detention is used as an exceptional measure, in accordance with international law. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),<sup>16</sup> for instance, stipulate that governments should make every reasonable effort to avoid pre-trial detention. In particular, these rules provide the following:

- a) Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offense and for the protection of society and the victim.
- b) Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary and shall be administered humanely and with respect for the inherent dignity of human beings.
- c) The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

<sup>8</sup> Articles 3 and 9.

<sup>9</sup> Articles 9(1), 9(3), 14(2) and 14(30)(c).

<sup>10</sup> Article 7.

<sup>11</sup> Section 64 (1), 74 (1) and 74 (4).

<sup>12</sup> Sections 89, 92 (8) and 104 (3).

<sup>13</sup> Section 77.

<sup>14</sup> <http://www.laspnet.org/k2/press-release/305-combating-prolonged-pre-trial-detention-in-uganda/file>. Accessed on 26th February 2019.

<sup>15</sup> <http://www.laspnet.org/k2/press-release/305-combating-prolonged-pre-trial-detention-in-uganda/file>. Accessed on 6th February 2019.

<sup>16</sup> United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 6, adopted by the General Assembly, December 14, 1990.

### 1.3 MAGNITUDE OF PROLONGED PRE-TRIAL DETENTION IN UGANDA

When a person is arrested by police, he or she has a right to be granted police bond within 48 hours or to be brought before court. The suspect has the right to apply for bail before a magistrate within 24 hours as provided for by section 23 (5) of the Police Act, cap 303. The Constitution guarantees that all suspects, regardless of offence, are entitled to apply to the court for bail, which the court may grant where it is reasonable<sup>17</sup>. In the case of *Omar Awadh Omar and 10 ors V Attorney General, Constitutional Petition Nos. 55 & 56 of 2011*, police detention beyond 48 hours was referred to as illegal detention.

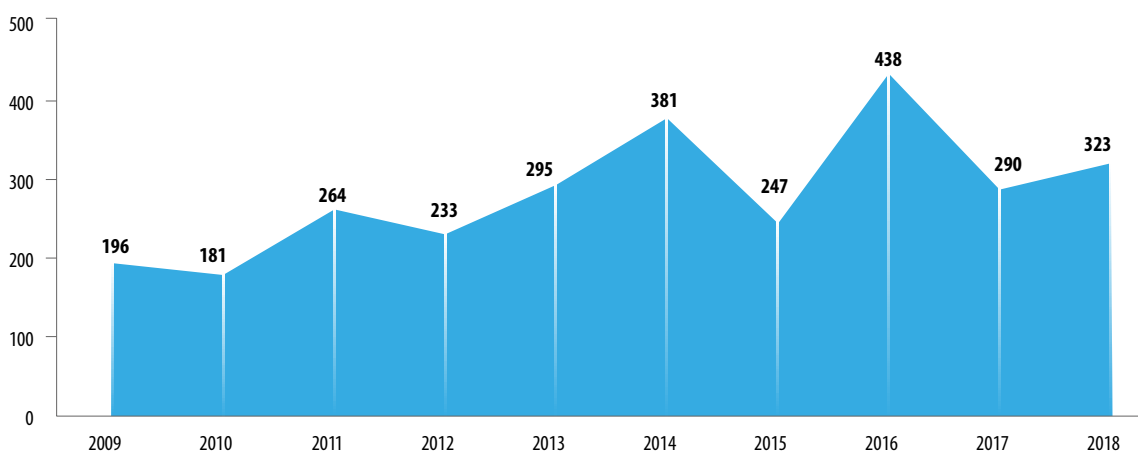
Long pre-trial detention is an outright violation of the right to a fair hearing. This gets worse when even after the trial commences, prosecution is not successful, leading to some cases being withdrawn, dismissed or accused persons acquitted. Innocent people end up spending long periods in detention. In the period in issue, prolonged pre-trial detention was prevalent and many cases/complaints were received regarding deprivation of personal liberty. Many detainees were awaiting trial including juveniles or children in conflict with the law, some of whom had been detained for a long time on petty cases.

#### 1.3.1 Complaints of deprivation of personal liberty

The Constitution provides that a person arrested or detained upon reasonable suspicion that he or she has committed or was about to commit a criminal offence shall if not earlier released, be brought to court within 48 hours from the time of arrest. However, detention of suspects beyond the 48 hours remained a challenge in 2018.

Complaints of violation of the right to personal liberty; specifically relating to detention beyond 48 hours, which the Commission registered in 2018 were 323, accounting for 34.5% of the total 936 complaints of human rights violations registered. This has been the trend over the last 10 years with the Commission receiving between 181 and 438 complaints annually of detention beyond 48 hours, as shown in Figure 1 below. In 2018, the majority of such complaints amounting to 296 out of 323 were reported against Uganda Police Force while only 14 were against the Uganda People's Defence Forces (UPDF). Refer to chapter 13 on highlights of the Commission's interventions in 2018, on complaints management.

FIGURE 1: TRENDS ON THE NUMBER OF COMPLAINTS REGISTERED BY THE COMMISSION ON DETENTION BEYOND 48 HOURS FROM 2009 TO 2018



17 Foundation for Human Rights Initiative(2017). Justice Delayed is Justice Denied, page 11.

When the Commission engaged UPF in 2018, the officers attributed the inability to observe the 48-hour rule to internal and external dynamics including: arresting suspects before investigations; delayed investigations due to inadequate human and financial resources; the delay by the directorate of Public Prosecutions to sanction files; and the unavailability of judicial officers. However, one state attorney explained: *“Sometimes it is due to lack of sufficient evidence; so, we send back the files to police for further investigations. Then also the heavy workload at the DPP stations is another reason since we are still so thin on the ground”*.

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

The Commission also received cases of alleged prolonged pre-trial detention against the Chieftaincy of Military Intelligence (CMI) and the Special Investigations Unit (SIU) of UPF. By the end of 2018, the Commission was still investigating the complaints of suspects allegedly detained for more than eight months in violation of their right to personal liberty and/or freedom from torture, as Table 1 below shows.

**TABLE 1: CASES OF PROLONGED PRE-TRIAL DETENTION AGAINST CMI AND SIU IN 2018**

S/N	PARTIES	ALLEGED DETENTION PERIOD	NATURE OF COMPLAINT(S)
1.	Mudde Jamil -and- SIU-Kireka	Detained at SIU from the 9th March to 16th March 2018.	Torture
2.	Musa Kalema -and- CMI & SIU	Masaija Yasin, Rajab Musisi, Yunusu Kayondo & Seruwaji Awali were detained at CMI from 11th June 2018 until 25th June 2018 when they were transferred to SIU and further detained until 11th July when they were released on bond.	Personal liberty and torture
3.	Hadija Nakyejwe -and- SIU-Kireka	Abdulrahman Namwanja was arrested on 4th April 2018 and detained at SIU until 28th June 2018, then released on bond at the intervention of the Commission.	Personal liberty
4.	Tukamushaba Simpson -and- CMI	Tukamushaba Simpson was arrested on 16th June 2018 and detained at Kiira Road Police Station on orders from CID Headquarters until 17th August 2018 when he was released.	Personal liberty
5.	Wilson Kayabula -and- CMI	Bryan Kaya was arrested on 29th May 2018 and detained at CMI until 6th July 2018.	Torture and personal liberty
6.	Biira Dorika -and- SIU-Kireka	Nziaki Willy was arrested on 1st July 2018 and was by the end of 2018 still in detention at SIU.	Personal liberty
7.	Sebuufu Edward & Mutwe Eddie -and- CMI	Sebuufu Edward was detained at CMI from 24th August 2018 to 30th August 2018.	Personal liberty
8.	Kigongo Mugoya -and- SIU-Kireka	Waiswa Jimmy, Isabirye Daniel and Kasule Jimmy were arrested on the 6th August 2018 and detained at SIU until 20th September 2018.	Personal liberty
9.	Aman Sulaiman -and- CMI	Sami Gura was detained at CMI for two months (24th May to 24th July 2018), then transferred to Jinja Road Police Station where he is still in detention by 28th February 2019.	Personal liberty
10.	Ofwono John -and- CMI	Ofwono John was detained and allegedly tortured at CMI on 1st October 2018 before being transferred to Jinja Road Police Station.	Torture and personal liberty



11.	Rajab Kasole -and- CMI	Rajab Kasole was detained at CMI from the 27th July 2018 until 27th August.	Personal liberty
12.	Namukasa Jan -and- CMI	Senfuka Sulaiman was detained at CMI from 11th October 2018 to 10th November 2018.	Personal liberty
13.	Ssekitoleko Taibu -and- CMI	Walusimbi Baker was re-arrested when he was released from High Court on the 17th October and detained at SID Kireka to-date.	Personal liberty
14.	UHRC –and- CMI	Lukumbuka Brian Robert was arrested on 18th June and detained at CMI where he still was by the end of 2018.	Personal liberty
15.	Kamyufu Fauzia -and- CMI	Lubega Martin was arrested on 9th October 2018 by CMI operatives and detained at CMI where he still was by the end of 2018.	Personal liberty
16.	Kiyingi Bazira -and- CMI	Kiyingi Bazira was arrested on 7th November 2018 and detained at CMI where he still was by the end of 2018.	Personal liberty

### 1.3.2 Delayed police investigations

The Commission established that various reasons delayed investigations, thereby affecting access to justice. These included: lack of motivated, skilled and specialized human resource; lack of adequate equipment for investigations (like vehicles, motorcycles and computers); use of a manual system to store and retrieve files many of which went missing in the process; and corruption that affects the entire justice system in Uganda. Other causes were the inadequate use of scientific methods and modern technology in investigations such as DNA machines as well as fingerprint and lie detectors. The inadequate number of handwriting experts was also a factor in delayed police investigations.

In the case of sexual and gender-based violence (SGBV), police did not have enough capacity to carry out scientific investigations. This in a way affected defilement and rape cases. In addition, the government did not have enough police surgeons to examine victims of SGBV to provide medical evidence during trial.

The Commission noted that Government of Uganda had amended Police Form 3 (PF3) to allow for a wider category of health workers to fill it after examining victims of sexual violence and use it in courts of law as proof of medical evidence. Previously, Police Form 3 could only be filled by doctors and police surgeons. This was a challenge as some health units did not have doctors nor did all police stations have police surgeons. With the amendment, nurses or midwives and clinical officers were now mandated to fill in the form. Despite this, the Commission also established that only a few of the medical professionals were doing the medical examinations for fear of being asked to testify in courts of law.<sup>18</sup>

There were instances where the 48-hour rule was impracticable especially in complex cases of murder (mass murders), terrorism, corruption, embezzlement and aggravated robbery, among others.<sup>19</sup> Furthermore, the victims and complainants in SGBV cases who were mostly women and girls had to pay for the services of these medical practitioners for the examination to be done, even where government health facilities existed; so, affordability was a critical factor.

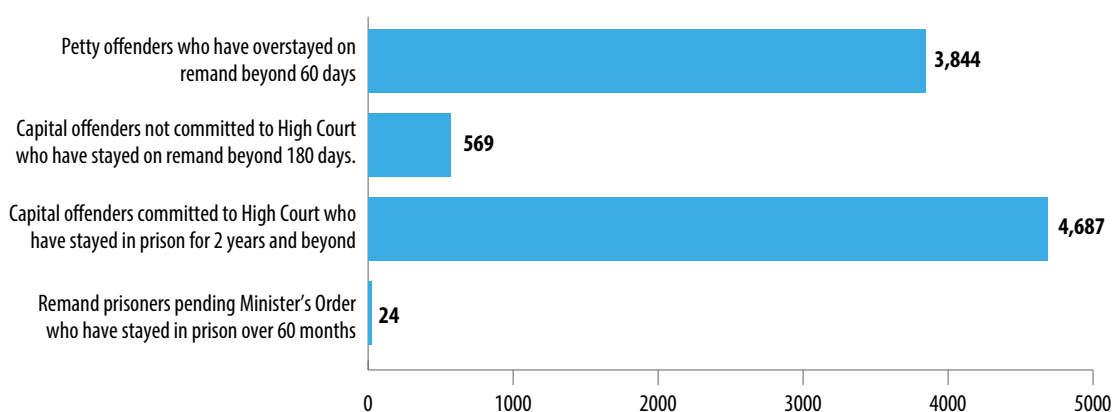
<sup>18</sup> Interview with a medical official at Buhinga Hospital, Fort Portal.

<sup>19</sup> Presentation by Barbara Kavuma of ODPP.

### 1.3.3 Prolonged detention on remand

In 2018, a total of **569** capital offenders had stayed on remand beyond the 180 days stipulated in the law without being committed to the High Court. The **4,687** capital offenders that had been committed to High Court stayed in prison for two years and beyond, even up to nine years on remand; while **3,844** petty offenders had overstayed on remand beyond 60 days.<sup>20</sup> Figure 2 below shows the status of remand inmates in 2018 according to Uganda Prisons Service.

FIGURE 2: STATISTICS OF INMATES THAT OVERSTAYED ON REMAND IN 2018



The Commission established that there were more pre-trial detainees in prisons in Uganda than those sentenced. A notable example is that of Thomas Kwoyelo, the alleged commander in the rebel group Lord's Resistance Army (LRA) who has been in prison since he was captured by the Ugandan army in 2009. He has been awaiting trial at the International Crimes Division (ICD) of High Court, one of Africa's first specially created chambers designed to try war crimes or crimes against humanity in the country in which they were committed.

Kwoyelo's trial has been characterized by many delays and complications. Pre-trial proceedings started in 2011, but the High Court ordered Kwoyelo to be released when his lawyers argued that he qualified for amnesty under the Amnesty Act. Arguably, the Act helped end the war between Uganda's army and the LRA, but at the time also allowed people responsible for serious crimes to avoid prosecution. The Supreme Court overturned the High Court decision in 2015 and although the case resumed in 2016, objections raised by Kwoyelo's lawyers such as the lack of funds to conduct the hearings and the late filings by the lawyers, among other factors, further delayed the case.

In 2018, the African Commission on Human and Peoples' Rights issued a communication ordering Government of Uganda to compensate Kwoyelo for failing to hold his trial within a reasonable time. By the time of compiling this report, he had not yet been compensated.



◀ *Thomas Kwoyelo in the Dock at the Opening of his trial at the International Crimes Division of the High Court in Gulu in 2011*

<sup>20</sup> Uganda Prisons Service statistics as at 31<sup>st</sup> December 2018.

The Commission's concern over prolonged detention on remand is that innocent people have fallen victim. It was established that some were acquitted after being detained for as many as seven years and were not compensated. On the other hand, some were convicted for years without considering the period spent on remand contrary to Article 23 (8) of the 1995 Constitution of Uganda. The article states: "Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment."

The Supreme Court in the case of *Rwabugande Moses V Uganda, Supreme Court Appeal No. 25 of 2014*, also held that taking into account the period spent on remand by a court is arithmetical because the period is known with certainty and precision and that consideration of the remand period should, therefore, mean reducing or subtracting that period from the final sentence. The Supreme Court noted that the period spent in lawful custody prior to the trial must be specifically credited to the inmate. The justices further emphasised that the constitutional provision makes it mandatory, and not discretionary, that a sentencing judicial officer accounts for the remand period.

### **Inmates pending ministerial orders**

In 2018, there were 24 remand prisoners pending ministerial orders who had stayed in prison for over five years. The Magistrates Courts Act cap 16 provides for the procedure of handling criminals with mental illness. Section 117 provides that if the accused is found guilty but erred due to insanity, the court shall make a special finding to the effect that the accused is not guilty of the act or omission charged by reason of insanity. The court shall report the case for the order of the minister and shall meanwhile order the accused to be kept in custody as a mental illness victim in such place and in such manner as the court shall direct. The minister may order any such person to be confined in a mental hospital, prison or other suitable place of safe custody. It is important to note that for the past four years, the Commission recommended to the ministry of Justice and Constitutional Affairs to establish an efficient mechanism for handling the cases that were pending ministerial orders.

Owing to the number of people spending years on remand awaiting ministerial orders, Justice Centres Uganda, a Judiciary project set up to provide free legal services to poor, vulnerable and marginalized persons, filed various applications in courts of law regarding specific cases. Notable among the applications was the case of *Bushoborzi Eric V Uganda HCT-01-CV-0011 of 2015* considering that the applicant had been on remand for 14 years awaiting ministerial orders.

In his judgment, Justice Batema N.D.A stated that such cases call for judicial activism on the part of judicial officers to make the law applicable to serve justice. He ruled that the mandate to grant orders in respect of persons to whom a special finding of "not guilty by reason of being mentally ill" was no longer with the minister of Justice, but with the Judiciary.

## **1.4 FACTORS CAUSING PROLONGED PRE-TRIAL DETENTION**

The Commission established from its engagements in 2018 over the matter that the following factors contributed to prolonged pre-trial detention of suspects in Uganda.

### **1.4.1 Gaps in the legal framework**

There are gaps in the legal framework in Uganda. The Constitution provides 180 days' remand for suspects of capital offences, while the Trial on Indictment Act provides 240 and 480 days for offences that attract a non death and death penalty respectively and the Prisons Act states 120 days. There is need to amend the laws to reconcile the different periods of remand provided for. Furthermore, the laws are also silent on how long one should be on remand after committal pending the commencement of his/her trial.

### 1.4.2 Inadequate number of judicial officers

Whereas the Supreme Court is fully constituted with 11 justices, the Court of Appeal has 12 justices of appeal out of the established structure of 15. However, several of them have been given international, regional and national responsibilities that are keeping them from active participation in court.<sup>21</sup> They include Hon. Justice Geoffrey Kiryabwire who serves as a justice at the East African Court of Justice; Hon. Justice Catherine Bamugemereire who is chairing the Commission of Inquiry into Land Matters; Hon. Justice Simon Mugenyi Byabakama, the chairperson of the Electoral Commission; Hon. Justice Solomy Balungi Bossa who is serving as a judge at the International Criminal Court. Recently, Justice Remmy Kasule retired from the court and was yet to be replaced.<sup>22</sup>



◀ Prisoners state their plight before Principal Judge Yorokamu Bamwine

Consequently, the Court of Appeal was left with only 11 justices to handle a workload of over 7,000 cases.<sup>23</sup> The High Court, by December 2018, had 52 judges to handle over 63,143 pending cases. Therefore, the workload per judge stood at 1,214 cases, requiring a disposal of 101 cases per month or five cases per day for 22 working days in a month.<sup>24</sup>

Following a decision of Cabinet, Parliament passed a resolution to increase the number of High Court judges from 52 to 82. The resolution, according to the Judiciary, could not be implemented due to lack of budgetary resources and yet the courts are saddled with increasing caseload and backlog.

The magisterial level had a deficit of 56 chief magistrates since only 44 out of the required 100 were available to serve all the gazetted Chief Magistrates Courts. The number of pending cases at this level stood at 66,885, implying that the workload per chief magistrate is 1,520 cases per annum requiring a disposal of 127 cases per month per chief magistrate or six cases per day.<sup>25</sup> The Judiciary had 423 gazetted Magistrate Grade I Courts with only 108 operational courts; which is about 26% only. By December 2018, magistrates grade 1 were 193 out of the required 423. This inadequacy in staffing has greatly affected access to justice as the few judicial officers can only handle a small percentage of the workload in the courts and cannot sufficiently meet the justice needs of the majority of Ugandans.

21 <http://judiciary.go.ug>. Accessed on 1st March 2019.

22 Ibid.

23 Speech of the Hon. Chief Justice at the opening of the 21st Annual Judges Conference, 2019 held on January 28th to 31st at Serena Hotel, Kampala.

24 Ibid.

25 Ibid.

**TABLE 2: NUMBERS OF JUDICIAL OFFICERS IN THE COUNTRY**

CATEGORY	FEMALE	MALE	TOTAL
Judges	30 (39.5%)	46 (60.5%)	<b>76</b>
Registrars	22 (46.8%)	25 (53.2%)	<b>47</b>
Magistrates	124 (45.4%)	149 (54.6%)	<b>273</b>
<b>TOTAL</b>	<b>176 (44.4%)</b>	<b>220 (55.6%)</b>	<b>396</b>

**TABLE 3: BREAKDOWN OF THE JUDICIAL OFFICERS IN THE COUNTRY**

CATEGORY	FEMALE	MALE	TOTAL
Supreme Court Justices	4	7	<b>11</b>
Court of Appeal/ Constitutional Court Justices	22 (46.8%)	25 (53.2%)	<b>47</b>
High Court Judges	4	8	<b>12</b>
Registrars	22	31	<b>53</b>
Deputy Registrars	2	6	<b>8</b>
Assistant Registrars	15	12	<b>27</b>
Chief Magistrates	5	7	<b>12</b>
Magistrates Grade I	24	23	<b>47</b>
Magistrates Grade II	92	101	<b>193</b>
<b>TOTAL</b>	<b>176</b>	<b>220</b>	<b>396</b>

### 1.4.3 Inadequacies in police investigations

The investigation of pre-trial detainees must be conducted according to the law which provides for adherence to the principles of the right to security of person, the presumption of innocence, the prohibition of arbitrary interference with privacy, the protection of honour and reputation, the absolute prohibition of torture and cruel, inhuman or degrading treatment, the respect of confidentiality of information, the right not to confess or testify against oneself and the right to fair trial.



◀ Chief Justice Bart Katureebe inspecting a guard of honour mounted by police during the opening of New Law Year at High Court

However, the practice in Uganda completely contravenes international human rights law, with suspects arrested before investigations are conducted; cases of malicious arrests; and those effected to settle personal grudges or conflicts.

In addition, the state attorney at Rakai revealed that when files are sent back to the police to rectify errors or provide additional information, they are not forwarded to the DPP on time. This delay also causes the said cases not to be cause-listed because of lapse of time.

#### 1.4.4 Minimal implementation of diversion of children from the formal justice system

A good practice of diversion of children from the formal justice system was minimally implemented and some children incarcerated over minor offences. The Children Act provides for diversion of children in conflict with the law, whose offences are petty. These should whenever possible be dealt with and assisted in their communities by Local Council Courts that exist at village, parish and sub-county levels, rather than being taken to the Family and Children Court.

Evidence showed that Government of Uganda was establishing more remand homes instead of implementing the diversion principle. The government, over the years, established remand homes in Gulu, Fort Portal, Naguru in Kampala, Kabale, Mbale, Arua, Ihungu in Masindi as well as a National Rehabilitation Centre at Kampirigisa in Mpigi district for the detention and rehabilitation of child offenders. By end of 2018, Moroto remand home was still under construction.

At Ihungu Remand Home, there were reported cases of prolonged pre-trial detention for juvenile offenders even for petty offences, owing to the lack of transport for them to go to court, lack of legal representation and lack of coordination between the probation office and the courts of law. Consequently, cases were cause-listed without the remand home's notice. A Senior Probation Officer at Ihungu Remand Home explained: *"The facility does not have adequate means of transportation to take children in conflict with the law to court and they improvise through hiring a vehicle; at times they use public means and other times they liaise with other government departments"*.

#### 1.4.5 Underfunding of DPP, UPF and the Judiciary

Uganda Police Force, Directorate of Public Prosecutions and Judiciary were underfunded and this constrained the effective implementation of their mandate. State briefs, for instance, were allocated at most UGX 1,000,000 yet this money was also expected to cater for other court expenses. The chief magistrate at Masaka revealed that cases on state brief which are all of a capital nature were sometimes represented but defendants did not have lawyers in simple cases like theft, assault or threatening violence. He further revealed that appearance of counsel on state brief also sometimes depended on their facilitation because in instances where they were not facilitated, they did not appear. Kalangala district had a unique challenge due to its geographical location and defendants at most did not have access to lawyers because of the costs associated with transportation and/or legal fees. This had affected access to justice for many people.

#### 1.4.6 Corruption in the formal justice system

Corruption was a problem both at national and local government levels and across sectors and government institutions, according to the report of the Auditor General<sup>26</sup> as well as other assessments which showed that Uganda's global ranking on corruption was getting worse. Specifically, the 2018 annual Corruption Perception Index (CPI) by Transparency International showed that out of 186 countries, Uganda had dropped 10 places from 139<sup>th</sup> in 2015 to 149<sup>th</sup> by 2018.<sup>27</sup>

Institutions in the Justice, Law and Order Sector (JLOS), especially police, were frequently cited as the most corrupt by local and international surveys. The proportion of citizens who saw most or all police officers as corrupt increased from 63% in 2012 to 71% by 2017 while for judges and magistrates, it increased from 29% in 2012 to 43% by 2017 (Afro Barometer, 2018).<sup>28</sup>

<sup>26</sup> Office of Auditor General, Annual Report 2015.

<sup>27</sup> Transparency International, 2019.

<sup>28</sup> Thomas Isbell and Dominique Dryding (2018). "Ugandans endorse rule of law, but distrust and perceived corruption mar views on courts", Afro Barometer Dispatch No. 253.

The JLOS Sector Development Plan (SDP) III (2012/13-2016/17) highlighted the fight against corruption as one of the key result areas. The strategy sought, among others, to mainstream the national zero tolerance to corruption policy in the delivery of JLOS services across all the member institutions. A notable example is that police bond is supposed to be free; however, the Commission findings indicate that it is paid for and hence also contributes to prolonged pre-trial detention when suspects fail to pay.

Poor remuneration of judicial officers was cited as one of the drivers of corruption in the Judiciary.<sup>29</sup> It was noted that the poor pay of judicial officers, poor facilitation and incessant budget cuts risked undermining the Judiciary and all the national efforts towards the fight against corruption.<sup>30</sup>

#### 1. 4.7 Lack of legal representation

Pre-trial detainees have a right to be assisted by legal counsel in order to prepare their defense and without undue hindrance.<sup>31</sup> The United Nations Human Rights Council (HRC) pointed out in a case where a pre-trial detainee had not had access to legal representation for a four-month period, that Article 9 (4) of the International Covenant on Civil and Political Rights (ICCPR) was violated since he was not afforded that opportunity in due time to obtain, on his own initiative, a decision by a court on the lawfulness of his detention.<sup>32</sup>



◀ *Principal Judge, Yorokamu Bamwine (C) with officers of court and lawyers during his inspection of Gulu High Court*

A detained person has the right to consult with and be assisted by a lawyer in connection with the proceeding to test the legality of the detention. Furthermore, international law provides that anyone shall be informed if they do not have legal assistance, which should still be assigned to him or her free of charge.<sup>33</sup>

The state brief system is designed to provide legal aid to serious matters in criminal sessions. Under this system, public funds are allocated by courts to advocates who are instructed to represent accused persons charged with capital offences.<sup>34</sup> However, it was established that the State Brief Scheme, Uganda's state-sponsored legal aid, was insufficient / inadequate, since it only covered guaranteed representation for capital offences.

In addition, the quality of representation was criticised as it was alleged that the state brief advocates did not effectively defend the accused persons due to lack of commitment caused by the poor pay and the lack of interest or experience. Accused persons often complained that state brief lawyers

29 Speech of the Hon. Chief Justice at the opening of the 21st Annual Judges Conference, 2019 held on January 28th to 31st at Serena Hotel, Kampala.

30 Ibid

31 Body of Principles, Principle 17.

32 Communication No. 248/1987, G Campbell v Jamaica (Views adopted on 30 March 1992), in UN Doc GAOR, A/47/40, 246, para 6.4.

33 ICCPR art 14 (3) (d).

34 <http://www.justicecentres.go.ug/index.php/publications-reports/policy-briefs/24-the-need-for-legal-aid-in-uganda/file>. Accessed on 26th February 2019.

did not adequately interact with them to get their version of events for effective defense and, as a result, they ended up messing cases and hindering justice at the end of it all.<sup>35</sup> The Commission established in 2018 that sometimes defence counsels only appeared in court to apply for bail and thereafter did not appear again. This, however, depends on the arrangement a defendant has with a lawyer.

#### 1.4.8 Limited awareness of judicial and police processes

Many Ugandans were not adequately aware about the judicial and police processes; and some were also afraid of the police and hence could not demand their rights in accessing justice. It was noted that laws are in English and a number of people could not understand them because of language barrier.

#### 1.4.9 Weak enforcement of mandatory bail

A general challenge of weak enforcement of mandatory bail in Uganda was noted. A case in point was the re-arresting of persons released on bail by courts of law, such as the Muslim cleric Dr. Ismail Kalule, despite the advice of the presiding justice to security organs to respect court orders.

#### 1.4.10 Inadequate skills to handle children in conflict with the law

Law enforcement agencies and persons that deal with children in conflict with the law exhibited limited knowledge and skills to handle them. Many probation and social welfare officers as well as police officers did not adequately appreciate the relevant laws. Some police officers, for instance, did not adequately appreciate the importance of corroborative evidence especially in defilement cases to avoid suspected offenders being released or over detained due to lack of evidence.

#### 1.4.11 Absence of a national legal aid policy and law

The absence of a legal aid policy was a hinderance to the government's fiscal and structural commitment to legal aid service provision. Consequently, most of the legal aid service was provided by civil society organisations (CSOs). Legal aid by the state was limited to capital offences and did not address the needs of and access by women and other vulnerable persons. The development of a policy on legal aid would enable the disadvantaged people access legal aid and assistance which in the long run would address the challenge of prolonged pre-trial detention. By the time of compiling this report, the policy and law were still before Cabinet.

#### 1.4.12 Lack of a witness protection law

Witnesses who testify in trials involving serious crimes, some of whom are likely to be direct victims, can face risks to their security and stability before, during and after giving testimony. They may confront direct threats to the safety of their families and be in need of ongoing psychosocial support in the aftermath of testifying about deeply traumatic events.<sup>36</sup> Thus the need for a law on witness protection to enhance access to justice and speedy and fair hearing.

The lack of a witness protection law hinders the realisation of a speedy and fair trial or hearing, causing prolonged pre-trial detention. Many witnesses fear to testify in certain cases of murder, terrorism, rape and defilement since government has no mechanism to guarantee their personal security and protection. In addition, the government budget that used to facilitate witnesses through the DPP's office had become too meagre.

<sup>35</sup> Information got from inmates in Jinja Main and Kigo prisons during one of the inspections.

<sup>36</sup> [https://www.hrw.org/sites/default/files/reports/uganda0112ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/uganda0112ForUpload_0.pdf). Accessed on 30th April 2019.



#### 1.4.13 Mentioning of cases in court

The Commission noted with concern the legal but absurd ritual whereby accused persons continued to be brought before courts just for mention of their cases when those courts did not have jurisdiction over the crimes the persons were accused of. As a result, people kept appearing in courts where they could not even apply and access their right to bail. Even if this is legally provided for in the Magistrates Courts Act cap 16, it had become a ritual which, on the face of it, could seem that an accused person was accessing justice by appearing before a court but which actually served to legitimise unnecessary pre-trial detention on remand. The main motive seemed to be to enable police officers avoid or end the illegal detention of the accused beyond 48 hours. This often had the effect of reducing the pressure on the investigating officers to provide evidence in a timely manner, knowing that the accused is under legal pre-trial detention.

Furthermore, the Magistrates Courts Act cap 16 under section 122 (1) provides that an accused person after ‘mention’ of his or her case may be remanded for 15 days or granted bail and for such hearings the adjournment should not be for more than thirty days.<sup>37</sup> During inspections of places of detention in 2018, the Commission noted that this procedure was not followed and suspects were remanded for even years after mention of their cases. It was also established that their cases may even not be cause-listed for hearing for a period of time even after mention. It was noted that the magistrate’s court lacked jurisdiction to handle most of the cases because they were capital in nature, thereby contributing to the challenge of pre-trial detentions. This procedure of mentioning cases is lawful but it is a major cause of prolonged pre-trial detention and deprives people their right to a fair and speedy hearing.

#### 1.4.14 Missing court files

In 2018, many inmates in prison suffered prolonged pre-trial detention due to missing court files that would enable the start of the hearing process. This contravened Article 28 (1) of the Constitution which provides for a fair, speedy and public hearing. In Jinja Main Prison, for example, the files of 51 inmates were missing. A concerned inmate also told the Commission: “...*attempts to secure our proceedings and judgment to enable us formulate the memorandum of appeal have been in vain*”. The prisoners had appealed to the Principal Judge to compel the concerned trial judges and registrars to trace and forward their files to the Court of Appeal to enable them start the process of hearing.

### 1.5 POSITIVE DEVELOPMENTS IN REDUCING PROLONGED PRE-TRIAL DETENTION

The Commission commends Government of Uganda for the various initiatives to address the issue of prolonged pre-trial detention including: introduction of plea bargaining, quick wins sessions and diversion of children in conflict with the law (juveniles) from the formal justice system, among others.

#### 1.5.1 Plea bargaining

Plea bargaining is the negotiation process between the accused and the prosecution, in which the former agrees to plead guilty in exchange for an agreement by the prosecutor to drop one or more charges, reduce a charge to a less serious offense, or recommend a particular sentence subject for approval by court.<sup>38</sup> It was put in place to enable the accused persons bargain for a plea to address some of the pressing challenges in the judicial system, such as case backlog, high costs and delays, among others.

<sup>37</sup> Section 75 (1) of Magistrates Courts Act.

<sup>38</sup> The Judicature (Plea Bargain) Rules, 2016.

The initiative by the Judiciary and the Office of the Director of Public Prosecutions (ODPP) was meant to reduce the time spent on pre-trial remand. Suspects are given an opportunity to approach the ODPP when ready and willing to plead guilty to the offence for a lesser sentence in consideration of not wasting court's time and the meager resources on a full trial. It was also introduced to ease prison congestion and improve justice outcomes for all, especially the inmates, who risk staying on pre-trial remand for long periods on account of lack of resources to hold regular sessions. Last year, courts disposed of **1,878** cases through plea bargaining alone.<sup>39</sup>

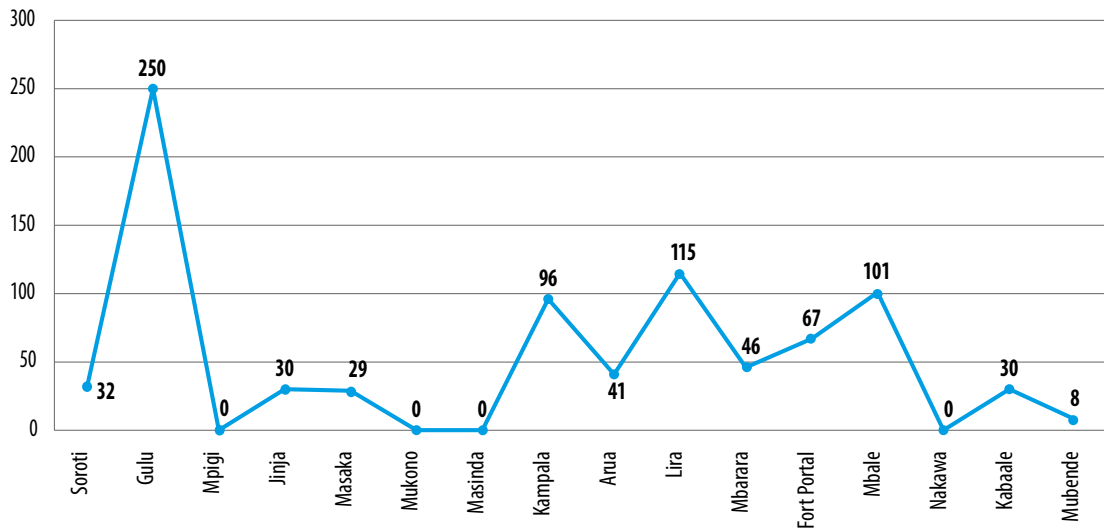
**TABLE 4: CASES HANDLED BY ODPP FROM JANUARY TO SEPTEMBER 2018**

ODPP REGIONAL OFFICE	AREAS COVERED BY THE REGIONAL OFFICE	COMMITTED CASES PENDING TRIAL	CASES COMPLETED AT HIGH COURT	NUMBER OF PLEA BARGAINING SESSIONS	CASES CONCLUDED THROUGH PLEA BARGAINING SESSIONS
Soroti	Soroti, Kaberamaido, Amuria, Kumi, Moroto, Kotido, Serere, Katakwi, Ngora, Bukedea, Nakapiripirit, Abim, Katakwi, Kaabong	239	120	1	32
Gulu	Gulu, Kitgum, Amuru, Pader, Patongo	484	92	3	250
Mpigi	Mpigi, Wakiso, Nsangi, Kakiri, Buwama and Butambala	312	58	-	-
Jinja	Jinja, Iganga, Kamuli, Bugiri, Kaliro, Mayuge, Namayingo, Buyende	782	71	1	30
Masaka	Masaka, Sembabule, Lyantonde, Rakai, Kalangala, Kalisizo, Mateete, Likaya, Kyazanga Butega Kakuto Kalungu and Lwengo	475	200	1	29
Mukono	Mukono, Njuru, Nakifuma, Lugazi and Kayunga,	534	113	-	-
Masindi	Masindi, Buliisa, Hoima, Kibaale, Kagadi and Kikuube	561	39	-	-
Kampala	Buganda Road, Makindye, Mwanga II, City Hall, LDC, Luweero, Nakaseke, Nakasongola, Wobulenzi	-	280	3	96
Arua	Arua, Nebbi, Moyo, Koboko, Paidha, Yumbe, Adjumani	259	92	1	41
Lira	Lira, Apac, Amolatar, Oyam, Dokolo, Otuke, Alebtong	330	42	1	115
Mbarara	Mbarara, Bushenyi, Buhweju, Ibanda, Kiruhura, Mitooma, Isingiro, Ntungamo, Sheema and Rubirizi	1,482	160	1	46
Fort Portal	Fort Portal, Kasese, Bundibugyo, Kyenjojo, Kamwenge, Kyegegwa and Bwera	508	69	2	67
Mbale	Mbale, Sironko, Budaka, Tororo, Kapchorwa, Manafwa, Bukwo, Pallisa, Malaba, Bududa, Butaleja	435	94	2	101
Nakawa <sup>40</sup>	Nakawa, Nabweru, Kiira, Kasangati, Kajjansi, Entebbe, Luzira, Matugga	-	-	-	-
Kabale	Kabale, Kisoro, Rukungiri, Kanungu	409	80	1	30
Mubende	Mubende, Kiboga, Busunju, Mityana	582	181	1	8
<b>Total</b>		<b>7,392</b>	<b>1,691</b>	<b>18</b>	<b>845</b>

<sup>39</sup> Presentation on the performance of High Court in Uganda by Principal Judge Hon Justice Yorakamu Bamwine.

<sup>40</sup> <http://judiciary.go.ug/data/news/535/Principal%20Judge%20Sensitises%20Stakeholders%20on%20Plea%20Bargains.html>. Accessed on 6th February 2019

FIGURE 3: CASES CONCLUDED THROUGH PLEA BARGAINING SESSIONS IN 2018



According to Office of the Director of Public Prosecutions, from January to September 2018, there were 845 cases handled under plea bargaining in 18 sessions. Principal Judge Hon. Justice Dr. Yorokamu Bamwine explained part of the advantage of plea bargaining: *“It is a cheaper process. The normal court trial costs UGX 1 million for one case; with plea bargaining only UGX 300,000 will do and it will save court’s time,”*<sup>41</sup>

The Judiciary also undertook sensitisation activities on the plea bargain initiative to explain the concept and address emerging concerns that detainees were being ambushed to plead guilty and sign plea bargain agreements without prior information or knowledge of the implications. One detainee told the Commission: *“We have got challenges with plea bargaining agreements. We are being ambushed in the courts to sign them. We ask you to make sure we are made to sign those agreements here in prisons, and not courts.”*<sup>42</sup>

According to the Judiciary, sensitization activities were held at the law faculty of the Uganda Christian University Mukono on 28<sup>th</sup> March 2018, as well as in Luzira and Kakiika Government Prisons.

### 1.5.2 Quick win sessions

Quick win sessions are special sessions held to address a pertaining challenge. Such sessions were held for especially juvenile offenders who had spent more than three months on remand without their trials commencing. In addition, in December 2018, special court sessions were held on sex crimes to cut the backlog and prosecute the SGBV cases throughout the country with the intention of having a specialised SGBVCourt established soon.

The Commission established that the Judiciary and JLOS in partnership with United Nations Population Fund (UNFPA) held sessions in the High Court and Chief Magistrates Courts as a precursor to the establishment of special courts to try SGBV offences. It was a pilot project testing the suitability and viability of establishing a special court for SGBV cases under the Criminal Division. In these sessions, **788** SGBV cases were concluded from the system.<sup>43</sup>

41 <http://judiciary.go.ug/data/news/535/Principal%20Judge%20Sensitises%20Stakeholders%20on%20Plea%20Bargains.html>. Accessed on 6th February 2019.

42 [https://www.newvision.co.ug/new\\_vision/news/1476945/forced-sign-plea-bargain-agreements](https://www.newvision.co.ug/new_vision/news/1476945/forced-sign-plea-bargain-agreements). Accessed on 6th February 2019.

43 Presentation on the performance of High Court of Uganda by Principal Judge Hon. Justice Yorakamu Bamwine at the 21st Annual Judges Conference, 2019 held on January 28th to 31st at Serena Hotel, Kampala.

### 1.5.3 Judiciary Score Card and toll-free customer feedback hotlines [0800-111-900 / 0417-892-900]

As noted earlier, corruption was contributing to pre-trial detention in Uganda. To intensify the fight against corruption, the Judiciary opened toll-free lines where errant staff could be reported to be investigated, in addition to implementing the Judiciary Score Card.<sup>44</sup> As a tool, the score card would enable the Judiciary measure its level of accountability and responsiveness towards the people.

## 1.6 HUMAN RIGHTS IMPLICATIONS OF PROLONGED PRE-TRIAL DETENTION OF SUSPECTS ON ACCESS TO JUSTICE

The Commission noted that prolonged pre-trial detention affected access to justice by undermining the principle of presumption of innocence; and violating the right to a fair and speedy trial guaranteed under Article 28. It was also costly as feeding one inmate in a year required UGX 1.35 million, which translates to over UGX 70 billion each year for all inmates. The estimated cost of conducting a trial of one inmate is UGX 1 million.<sup>45</sup>

### 1.6.1 Undermining the principle of presumption of innocence

The law provides that everyone is innocent until proven guilty. However, when applying for bail, the burden of proof is placed on the suspect to prove that he or she will not jump bail. In *FHRI V. AG (Const. Appeal No. 03 of 2009)*, the Supreme Court, citing the Kenyan Judiciary Guidelines on Bail and Bond of 2015, states that:

*“... the presumption of innocence also means that pre-trial detention should not constitute punishment and the fact that accused persons are not convicts should be reflected in their treatment and management.”*

### 1.6.2 Undermining the right to a fair and speedy trial

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. The duty to fulfill the right to a fair hearing in the context of criminal trials in Uganda lies with a cross-section of government ministries, departments and agencies in JLOS. The Commission noted that prolonged pre-trial detention not only undermines this right but also reduces the detainee's capacity to defend him or herself particularly when he or she is poor and cannot afford a lawyer. This increases the risk of a confession or statement being coerced out of him or her through torture or ill-treatment.

### 1.6.3 Impact on other human rights of detainees

Not only does prolonged pre-trial detention impact negatively on access to justice but also on other human rights that guarantee that the detainee enjoys family life and associates with his or her community; and is detained under human conditions.

Pre-trial detention has a damaging impact on detainees, their families and communities. Even when a person is acquitted and released, they may still have lost their home and job. They face the stigma of having been in prison when they return to the community.<sup>46</sup> Prolonged pre-trial detention causes congestion in prisons which also comes with challenges of a clean and healthy environment, health

44 The score card is meant to measure the performance of judicial officers from the perception formed by various stakeholders.

45 Presentation by Dr. Fred Ssekindi at Uganda Human Rights Commission consultative meeting in 2018.

46 <https://www.penalreform.org/priorities/pre-trial-justice/issue/> Accessed on 26th February 2019.

issues and adequate food, among others. All these increase government expenditure as it tries to institute mitigation measures. On the other hand, children get affected in a unique way because they have to face all these consequences yet they are already vulnerable on account of their age; and some cannot even continue with their studies. Most of the inmates, especially those legally married, are denied their conjugal rights since they overstay on remand. Most of them complain that their partners normally marry or get married to other people, leading to family breakdown.

## **1.7 RECOMMENDATIONS**

1. Judicial Service Commission and DPP should recruit more judicial officers and prosecutors to deal with issues of case backlog in the courts of law to expeditiously handle cases.
2. Government should finalize the process of developing the draft National Legal Aid Policy and related law.
3. Parliament should expeditiously enact the Witness Protection Bill to, among others, regulate conditions and procedures for providing out-of-court protection and assistance to a witness.
4. UPF and DPP's implementation of alternative dispute resolution (ADR) and the plea bargaining system shall help reduce the prolonged pre-trial detention.
5. The Ministry of Finance, Planning and Economic Development should adequately finance all institutions involved in the administration of criminal justice in Uganda.
6. The Ministry of Justice and Constitutional Affairs and the Judiciary need to urgently ensure that prisoners detained under ministerial orders have their cases urgently addressed to avoid long and arbitrary detention which is an infringement on their rights.

## **1.8. CONCLUSION**

Uganda's laws provide for the right to personal liberty and also prescribe the lawful periods for pre-trial detention. However, the Commission established that the right to personal liberty has been variously violated and in particular, the aspect of pre-trial detention which has become a national concern for jeopardising access to justice and the enjoyment of other human rights. The government needs to take action urgently to implement the proposed recommendations so that the justice system in Uganda can be responsive to the human rights of persons in pre-trial detention.

There is need to balance the right with the associated duties and responsibilities to spur development in Uganda, and to fight unnecessary and arbitrary restrictions that are counterproductive. The government should provide an environment that allows free exchange of ideas, opinions and information thus allowing members of the public to form and express their opinions on issues of public importance.

## CHAPTER 2

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# FREEDOM OF EXPRESSION AND RELATED HUMAN RIGHTS CONCERNS IN 2018

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## 2.0 INTRODUCTION

The right to freedom of expression is a cornerstone in the enjoyment of other human rights in any country<sup>47</sup>. It is indispensable in the formation of public opinion as it is closely related to other rights, including the right to information, the right to public participation, freedom of speech and expression that includes freedom of the media; freedoms of thought and conscience, assembly and association. Without free access to information and ideas and the right to express one's views freely, citizens may not effectively participate in decisions that affect their daily lives.

The Commission monitored the enjoyment of the freedom of expression in 2018 and identified areas of progress and challenges in its enjoyment. Some challenges arose from the existing legal framework, while others were institutional and operational in nature, especially where it involved misuse and abuse of the right by both rights holders and duty bearers. This chapter presents the findings of the Commission's monitoring and recommendations on what needs to be done to create a conducive environment for the enjoyment of the right to freedom of expression in Uganda.

## 2.1 UNDERSTANDING FREEDOM OF EXPRESSION

Freedom of expression is about the right of individuals and organisations to seek information, receive it and be an audience for the exchange of information, ideas and opinions. The right to freedom of expression, therefore, allows individuals and institutions the right to freely communicate opinions and ideas and share information in whatever form within the limits of the law.

The right to freedom of expression is broad in that it protects almost all the ways in which one can express him/herself, in both public and private spaces, for political, artistic or commercial purposes. Freedom of expression can, therefore, take the form of words, pictures and sounds communicated through various channels including printed material, films, cartoons, radio, television and social media. Freedom of expression can, for example, be enjoyed through publishing an article in a newspaper or magazine or internet portal, playing a song in public place, displaying an advertisement on a street or wearing attire expressing a certain idea.

However, freedom of expression as a right may not necessarily extend to guaranteeing unrestricted access to the means for expressing ideas, much as it protects from unjustified restrictions. A certain print media may, for example, justifiably refuse to publish an article or a social media company might remove a comment and this may not necessarily be interpreted as an affront on the freedom of expression. Furthermore, much as freedom of expression extends to access to information, this can also be restricted. For instance, members of certain groups or professions such as security agencies and medical practitioners are not at liberty to give out certain pieces of information received in the performance of their duties.

## 2.2 LEGAL FRAMEWORK

The right to freedom of expression is provided for in the 1948 Universal Declaration of Human Rights (Article 19); the International Covenant on Civil and Political Rights (ICCPR), 1966 (Article 19, sections 1 and 2); and the 1981 African Charter on Human and Peoples' Rights (ACPHR) (Article 9). In particular, Article 19 of the ICCPR explicitly guarantees everyone's right to hold opinions

<sup>47</sup> Both the United Nations Human Rights Council and the United Nations General Assembly have referred to freedom of expression as one of the essential foundations of a democratic society and one of the basic conditions for its progress and development (see Council resolution 21/12) and emphasized that a free media helps to build inclusive knowledge societies and democracies and foster intercultural dialogue, peace and good governance (see Assembly resolution 68/163). Both bodies have highlighted the critical importance of journalism in the above-mentioned resolutions and have affirmed that the same rights that people have offline must also be protected online, in particular freedom of expression (see Council resolutions 20/8, 26/13 and 32/13).

without interference and to seek, receive and impart information and ideas of all kinds, regardless of frontiers and through any media, including in the form of art. Furthermore, Article 9 of the ACHPR provides that:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

The Declaration of Principles on Freedom of Expression in Africa (2002) adopted by the African Commission on Human and Peoples' Rights adopted in Banjul, The Gambia gives a comprehensive outline of what needs to be done to achieve the right to freedom of expression to its fullness in both the private and public spheres.

The Constitution of Uganda under Article 29 protects the right to freedom of conscience, expression, movement, religion, assembly and association. Article 29 (1) provides for (a) freedom of speech and expression that includes freedom of the press and other media; and (b) freedom of thought, conscience and belief, including academic freedom in institutions of learning. Furthermore, Article 41 (1) of the Constitution guarantees every citizen the right of access to information in the possession of the state or any other organ or agency of the state except where its release is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person.

A number of legislations further provide for the right of freedom of expression and its regulation. They include: the Press and Journalist Act, 1995; the Access to Information Act, 2005; the Electronic Media Act, 1996; the Uganda Communications Act, 2012; the Regulation of Interception of Communications Act, 2010; the Penal Code Act, 1950; and the Computer Misuse Act, 2011.

### **2.3 LIMITATIONS ON FREEDOM OF EXPRESSION**

Despite the length and width of freedom of expression, enjoyment of this right may be limited/restricted. This may happen when enjoyment of the right by one person could lead to the violation of the rights of another person or the values of society as a whole. The limitations are provided for in the international human rights standards as well as regional and national standards. Article 19 (3) of the ICCPR provides that in the exercise of the rights, there are associated special duties and responsibilities that must be observed. Enjoyment of freedom of expression can be subjected to certain restrictions, which should be provided for in law; and necessary for the respect of the rights or reputations of others and for the protection of national security, public order, public health or morals.

Some public speeches, articles and other forms of expression have the potential of seriously harming or stirring up hatred or violence against others or group of persons. In such situations, the state can lawfully restrict or punish expressions that cause personal or public harm or disharmony. This could be in cases of violation of privacy, defamation, hate speech, obscenity, pornography, threats to individual privacy, perjury, public order, national security, classified information and copyright.

Article 43 of the Constitution of Uganda provides for limitations in enjoyment of rights. Article 43 (1) states that in the enjoyment of the rights and freedoms, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. However, clause (2) provides that public interest excludes (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms prescribed beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution.



## 2.4 PROGRESS IN REALISATION OF THE RIGHT TO FREEDOM OF EXPRESSION

Uganda is one of the countries in the world that have implemented the liberalisation/privatisation policy since the early 1990s. As a result of this policy, the information sector witnessed the proliferation of media houses including television and radio stations as well as print media. From 1993 when the first private radio station, Radio Sanyu, was opened, the country has witnessed the mushrooming of radio stations such that by 2018, over 300 registered radio stations with 292 FM stations were operational<sup>48</sup>. Uganda also has 33 operational TV stations, including eight pay TV service providers and 28 free-to-air service providers as at 30th June 2018.

**TABLE 5: NUMBER OF RADIO AND TV STATIONS IN THE COUNTRY**

	SEPTEMBER 2017	DECEMBER 2017	MARCH 2018	JUNE 2018
No. of operational TV stations	33	33	33	33
No. of pay TV service providers	8	8	8	8
No. of free-to-air (FTA) service providers	28	28	28	28
No. of licensed radio stations	292	292	292	292
Pay TV subscription	1,634,067	1,627,594	1,934,452	1,732,038

The presence of the channels and technology for communication has to some extent facilitated the enjoyment of the right to freedom of expression and related rights. The population has a number of choices to make as in what printed material to read, radio to listen to and TV to watch.

The positive developments in enjoyment of freedom of expression in 2018 include the the increasing internet access and usage, the expanding telephone usage, as well as the arrest and prosecution of suspects who allegedly abused the freedom of expression.

### 2.4.1 Increasing internet access and usage

Uganda has also witnessed unprecedented growth in internet access and usage which has facilitated enjoyment of the right to freedom of expression and related rights. As of March 2018, the number of mobile and fixed internet subscriptions had increased from 8,537,588 and 162,250 as at September 2017 to 13,422,128 and 172,560 respectively. Furthermore, data from the Uganda Communications Commission (UCC), the regulatory body, estimated that as of June 2018, the internet penetration rate was at 48.2 internet users per 100 inhabitants<sup>49</sup>.

The steady growth in internet users in the year 2018 could be attributed to the increasing use of mobile broadband for browsing as a result of growing 4G and 3G coverage, which has decreased bandwidth, smartphone and modem prices. All major telecoms had by the end of 2018 expanded their 4G services to cover upcountry areas<sup>50</sup>.

The internet revolution aided the enjoyment of the right to freedom of expression including the associated rights of the media and information, especially through the social media platforms. Social media can be regarded as one of the best platforms where the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in form of art or through any media of one's choice was enjoyed most without much restrictions. The Internet has a number of platforms that facilitated exchange of information, including e-mail, WhatsApp, Twitter, Facebook, Google Hangouts, Tinder, Instagram and Skype. The number of internet users in Uganda which has been growing over the years stood at 19,134,518 as at 31st

48 Uganda Communications Commission (UCC), 2018

49 Ibid.

50 Ibrahim Bbossa, UCC Presentation to the 21st Commission Annual Report Consultative meeting at Fairway Hotel Kampala, January 2018.

March 2018, up from 40,000 in the year 2000, a percentage increase of 47,400%. As of 2018, Facebook subscribers had grown to 2,600,000.

**TABLE 6: GROWTH IN INTERNET USAGE IN UGANDA SINCE 2000**

POPULATION (2018 EST.)	INTERNET USERS IN 2000	INTERNET USERS IN 2018	PENETRATION (% POPULATION)	INTERNET GROWTH % FROM 2000 TO 2018	FACEBOOK SUBSCRIBERS 2018
41,270,563	40,000	19,000,000	48.2%	47,400%	2,600,000

### 2.4.2 Expanded telephone usage

The telephone has become a basic modern equipment for communication. It can be used for texting, voice calls, social media platforms as well as radio and television for receiving and sending information. The findings of a survey by National Information Technology Authority - Uganda (NITA-U), 2017/18<sup>51</sup> revealed that 70.9% of Uganda’s population owns a mobile phone. There were, however, discrepancies between rural and urban dwellers with more urbanites (78.5%) owning mobile phones compared to their rural counterparts (65.7%) and with a gender bias showing a higher percentage of males (81.6%) owning mobile phones compared to females’ (63.2%). These findings were supported by data from UCC which indicated that there were 21,648,672 mobile subscriptions as of June 2018. Access and usage of mobile phones, therefore, greatly enhanced communication through internet, text messages and voice calls.

### 2.4.3 Arrest and prosecution of suspected abusers of freedom of expression

In a bid to protect the rights of others and in accordance with the law, Uganda Police Force stepped up arrests in 2018 of individuals who allegedly abused their right to freedom of expression. The arrests were made in line with the Penal Code Act, the Computer Misuse Act, 2011 and the Public Order Management Act, 2013 which have provisions on various offences relating to abuse of freedom of expression.

According to police, a number of suspects were arrested and prosecuted in the courts of law. Specific examples include a 23-year-old student of Uganda Christian University (UCU) Mukono who was convicted after pleading guilty to charges of broadcasting pornographic material and computer misuse, and a student at YMCA Jinja branch, Brian Isiko, who was convicted after he pleaded guilty to charges of cyber harassment and offensive communication. Another case is of a Makerere University lecturer, Dr. Stella Nyanzi, who was arrested on 2<sup>nd</sup> November 2018 and charged with offensive communication and cyber harassment to the person of the president.

## 2.5 HUMAN RIGHTS CONCERNS

### 2.5.1 Cyber bullying

Despite the internet’s advantages in facilitating the enjoyment of the right to freedom of expression, its misuse has had a negative impact on human rights. The internet has promoted cyberbullying or harassment. This is a form of bullying or harassment using electronic means, also commonly known as online bullying. It is mostly common among the youth and takes place mainly on social media sites. Some forms of cyberbullying are dehumanising, lead to low self-esteem and a variety of other emotional responses, including being scared, frustrated, angry or depressed. In the year 2018, there were many forms of cyberbullying that included posting of rumors, threats, sexual remarks, victims’ personal information and hate speech.

51 NITA-U (March 2018). National Information Technology Survey 2017/18.

Given the fact that social media in Uganda and the world over has become more popular than any traditional form of communication (newspaper, radio and TV), the impact of cyberbullying can be devastating to victims. Cases of leaking of nude photos of women by their jilted lovers on social media also increased. Not only was this an abuse to freedom of expression and media but it was also an affront on the dignity of women. In May 2018, for example, one socialite, Ms. Judith Heard, became a victim of cyber harassment when her nude photos were posted on various social media platforms by an anonymous person. This case is a manifestation of a new trend of gender-based violence against women using social media.<sup>52</sup>

### 2.5.2 Social media tax and the vulnerability of youth and PWDs

In June 2018, government took a decision to impose a social media over-the-top (OTT) tax of UGX 200 a day on the use of social media and communications apps, including WhatsApp, Twitter, Facebook, Google Hangouts, Viber, Tinder, Instagram and Skype. Access to the apps was blocked until the tax is paid; which can be on a daily, weekly or monthly basis. Government explained that the tax was introduced to improve the country's tax base.

The advent of internet and its social media platforms improved access to information and communication generally; but also specially for particular vulnerable persons including persons with disabilities (PWDs) especially those with visual and hearing impairments; as well as the youth. In case of PWDs, phones are installed with software that eases their communication and this improves their situation in times of emergencies and general access to services, going to school and employment. With limited physical information sources in the special formats that PWDs require, social media was a good alternative.

However, given the fact that the PWDs and the youth are significantly affected by poverty, the introduction of the social media tax had a disproportionate effect on them. On average, 43.6% of PWDs are living in poverty, surviving on less than US dollars 1.9 per day.<sup>53</sup> The situation of PWDs and youth is compounded by high levels of unemployment, illiteracy, lack of ICT skills and low awareness, among others. Their inability to afford the social media tax indirectly discriminates them to access and disseminate information on those platforms. Much of this information is educative, informative and transformative, lack of which has a general effect on their economic, social and political development.

### 2.5.3 Falsehoods and fake news on social media

Social media presented an opportunity to share and exchange information in real time. However, it has been turned into a source of fake news. Almost on a daily basis, many subscribers to the various social media platforms receive and share fake news without verifying the authenticity of the content. It has turned out that much of the information shared is false. Rumours, fake news and other data privacy issues have existed in the past; however, the emergence of social media amplified it. Unlike other media where some level of professionalism is required, it is not the case with social media as each individual can disseminate any kind of content without control as long as one has access to an internet connection.

The ease with which fake news and untrustworthy information was exchanged on various social media platforms has become a great concern for the Commission because it can harm an individual's reputation, national security and international relations. Some of the vivid examples were of news circulating on social media in November 2018 that some Rwandan women were being sold

52 Available at <https://edition.cnn.com/2018/11/10/africa/uganda-pornography-revenge-porn-asequals-africa-intl/index.html>

53 Uganda Communications Commission (December 2018). Report on Access and Usage of Information and Communications Technologies (ICTs) by People With Disabilities (PWDs) in Uganda.

off as brides in Mityana municipality at UGX 800,000 each; and the allegations that some Chinese businessmen had established a manufacturing plant for fake eggs in Uganda and were selling them cheaply on the Ugandan market. In August 2018, false news circulated that Hon. Francis Zaake, the member of Parliament for Mityana municipality, had died as a result of injuries sustained during the fracas that characterized Arua municipality by-elections. In October 2018, false news of a purported Cabinet reshuffle in Uganda circulated on social media. Investigating the source of false information on social media may require sophisticated technology, especially because of the level of anonymity and false identity that is common there.

#### 2.5.4 Institutional challenges of regulation

Uganda continued to face a number of institutional challenges in the enjoyment of the right to freedom of expression. The regulatory framework for the media in a way exerted a chilling effect on the enjoyment of the right to freedom of expression as some media practitioners had to first consider consequences of whatever they were to air out or publish. The regulatory bodies, including UCC, Uganda Media Council and Broadcasting Council, have formal overlapping mandate to control, monitor, discipline and/or sanction journalists and media houses. The existing legal and institutional framework in Uganda does not require these regulatory bodies to be independent of government interference and as such could expose the media, especially those critical of government, to the wrath of the state. A situation demonstrating this challenge of arbitrary action by state functionaries without regard to the law and the right to a fair hearing occurred in November 2018, when Lira-based Unity FM was switched off air by the District Police Commander of Lira on allegations of inciting violence.

#### 2.5.5 Ownership of media stations

Media stations in Uganda belong to either government or private institutions and individuals. Some media stations are owned directly by government via the public broadcaster, Uganda Broadcasting Corporation, or by the state corporation, the Vision Group, which is a conglomerate of many national and local radio and TV stations as well as newspapers. There are other radio stations privately owned by government officials, faith-based organisations, cultural institutions, parliamentarians and businesspeople.

Some programmes on radio and TV encourage participation of the listeners through calling in.

However, given the nature of ownership of media stations in Uganda, it was alleged by some opposition politicians that some people with views different from those of owners were denied space or airtime to share their views. In addition, staff working with such media stations were allegedly not allowed to run articles or host panelists with views contrary to those of the owners of the media houses. The problem was compounded by the allegation especially by some opposition politicians that some of the proprietors of the media houses themselves displayed partisan tendencies.

#### 2.5.6 Cases of irresponsible journalism

The media work for the benefit of society in keeping the public informed and making sure the public can scrutinise the work of government, politicians and other people who play an important role in society. However, these special rights and freedoms are not absolute and come with duties and responsibilities as well. Journalists have a special responsibility towards society to publish truthful and verified information. A journalist's freedom of expression may also be restricted if he/she oversteps the boundaries of other people's privacy and reputation or engages in hate speech.

There were some cases in 2018 where the media published information with details that invaded privacy while in other cases the allegations the media made had no factual basis. In 2018, the UCC

noted in a press release that there were increasing cases relating to sending of offensive and illegal content, sharing and/or otherwise broadcasting through electronic communication platforms. There were also instances where social and electronic media was used to perpetrate sectarianism, hate speech, inciting public violence and prejudice, and pornographic content, among others. In Lira for example, police arrested journalists of Unity FM in 2018 accusing them of inciting violence.

### 2.5.7 Restrictions on public assemblies and the right to freedom of expression

The right to freedom of assembly is provided for in Article 29 (1) which also guarantees the right to demonstrate together with others in a peaceful manner. Freedom of expression has a close relationship with freedom of assembly, given the interrelatedness of human rights. The enjoyment of the right to freedom of assembly facilitates also the enjoyment of freedom of expression. The right to freedom of assembly includes the right to hold public meetings and form associations without any undue interference. The Commission documented cases of brutality, arbitrary arrests, and use of teargas and live ammunition which resulted into bodily harm and destruction of property in Arua, Gulu and Kampala during assemblies.<sup>54</sup>

A notable example in 2018 was the Kyadondo East Member of Parliament Hon. Robert Kyagulanyi Ssentamu aka Bobi Wine who suffered a number of restrictions on his freedom of assembly and expression. Despite notifying them in advance of his music shows or performances, the police denied him permission to hold some of his shows in Kampala, Jinja, Kasese, Gulu, Wakiso and Mukono.

### 2.5.8 Infringement on media freedoms in Uganda

Cases of restriction of media freedom were also prevalent in 2018. Violence against journalists remained a very serious threat especially for those reporting on political issues, demonstrations, social problems, including organised crime or drug trafficking, voicing criticism of government or powerful people, reporting on human rights violations and corruption. The 2018 World Press Freedom Index issued by Reporters without Borders ranked Uganda 117th out of 180 countries, five places lower than in 2017.<sup>55</sup>

In 2018, there were a number of cases involving arrest, detention and torture of journalists. Specifically, during the Arua municipality by-elections, two NTV journalists were arrested and allegedly tortured. In the protests that followed, a number of journalists who were covering the protests became victims of human rights violations. They included James Akena of Reuters, Juma Kirya and Galiwango of NTV, Alfred Ochwo of *The Observer*, Julius Muhumuza (online publication) and Alex Esagala of *Daily Monitor*. Members of security agencies allegedly from the Special Forces Command (SFC) and Military Police were captured on camera beating up some journalists covering the demonstrations.



James Akena being beaten by the military

54 Available at <http://www.pmldaily.com/news/2018/08/gunshots-roads-close-in-kampala-as-security-quells-riots>. Accessed on September 9, 2018

55 Uganda is now ranked 117th out of 180 countries in Reporters without Borders' 2018 World Press Freedom Index, five places lower than in 2017.

The shutting down of *Unity FM* on 17th November 2018 and the arrest of its staff including Technical Director Charles Odongo, Assistant Station Manager Keneth Opio, Presenter Felix Ogwang, News Reporter Moses Alwala, News Anchor Micheal Ogwal, Producer Aaron Ebwola and clients Okello Emmanuel Zumulamai and Junior Engola are other regrettable incidents.

Violence against journalists also manifested in the police arrests of at least six journalists at Entebbe International Airport and detention for about four hours in addition to confiscating their equipment while covering the return of Hon. Kyagulanyi Robert Ssentamu from medical treatment abroad following the alleged torture during the Arua municipality by-elections. They were Henry Lubulwa of URN, Diana Kibuuka from *CBS Radio*, Eve Muganga from *Daily Monitor*, Charles Katabalwa from *Radio Sapientia*, Julius Luwamba from *New Vision* and Emmanuel Nkata from *Prime Radio*.

In July 2018, police in Katakwi arrested three journalists for covering a demonstration by local mobile money operators who were protesting against the newly introduced tax on mobile money. Those arrested included Kenneth Odere of NTV, Eddy Enuru of NBS TV and Simon Emwamu of *Daily Monitor* for reportedly covering an unlawful assembly.

Uganda Human Rights Commission registered three complaints relating to alleged torture and harassment of journalists at its Central Region office in 2018 alone. The complaints were regarding deprivation of their right to freedom from torture, their right to property and freedom of expression.

#### 2.5.9 Challenges of interpretation of the Public Order Management Act, 2013 (POMA) and the role of police in managing public assemblies.

The Public Order Management Act (POMA) gives powers to police to regulate public meetings. Under section 5 of the Act, an organiser is required to give notice in writing to the authorised officer of the intention to hold a public meeting, at least three days but not more than 15 days before the proposed date of the public meeting. The law only requires one to notify police but it subsequently gives police grounds upon which it can stop a meeting. These are if the owner of the venue denies the organisers permission to use it under section 6 (b), and where the officer considers the venue unsuitable for traffic and crowd control or interference with lawful business. The law requires the officer to write to the organiser within 48 hours, communicating that it is not possible to proceed with the meeting and invite him/her to discuss an alternative venue or date. Where the organiser is dissatisfied, he can appeal to a magistrate's court against the officer's decision. In addition, Section 12 of the Act establishes gazetted places and a minister may, "by statutory instrument declare that in any particular area in Uganda referred to as a gazetted area, it is unlawful for any person to convene a public meeting."

In view of the above legal requirements, there is no specific section in the POMA that gives powers to police to grant permission for the holding of a public meeting or assembly. The powers given to police under the Act rotate around regulating the conduct of public assemblies or meetings. Section 2 (2) of POMA defines the meaning of 'regulate' as "to ensure that the conduct or behavior of those who are gathered conforms to the requirements of the Constitution". Section 4 of the law defines a public meeting as "a gathering, assembly, procession or demonstration in a public place or premises held for the purpose of discussing, acting upon, petitioning or expressing views on a matter of public interest." Section 4 (2) (e) states that a public meeting shall not include "a meeting of the organs of a political party or organisation convened in accordance with the constitution of the party and held exclusively to discuss the affairs of the party."

In 2018, police refused to grant permission for a number of meetings, public assemblies and music concerts to take place. In some situations, police did not respond to the requests from the organisers and kept silent while in other situations it claimed it could not guarantee security at the venue. As already noted, police either blocked or refused to clear a number of music shows by Hon. Kyagulanyi in various parts of the country. Furthermore, in November 2018, police responded to

a request by Hon. Asuman Basalirwa, MP for Bugiri municipality, to hold a victory celebration by informing him that it was not possible for the police to provide security in an open ground, advising him to secure an enclosed venue. However, there seemed to be selective application of POMA by police since certain categories of politicians and musicians especially those who either belong to or associate with the ruling political party were allowed to organise the public assemblies freely, while others were restricted.

## 2.6 RECOMMENDATIONS

In view of the factors discussed above that affect the enjoyment of freedom of expression, the Commission makes the following recommendations:

1. The Ministry of Foreign Affairs should fast-track the ratification of the Budapest Convention on Cybercrime, an international treaty that seeks to address Internet and computer crime by harmonizing national laws on cybercrime, improving national capabilities for investigating such crimes, and increasing cooperation on investigations.
2. The Ministry of ICT and National Guidance, should come up with a policy that improves access and usage of ICTs by vulnerable groups including PWDs, youth and women to enable them participate fully and equally in national development.
3. The Uganda Police Force should expeditiously investigate cases of attacks on the media by security agencies and have suspects prosecuted in the courts of law.
4. The Ministry of ICT, should come up with a law regulating against the arbitrary actions of switching off media stations and closing of media houses without a court order.

## 2.7 CONCLUSION

The right to freedom of expression is a fundamental human right that reinforces most other rights and allows them to flourish. It allows human beings to speak freely on important issues that affect society, promotes accountability and facilitates free flow of information and socio-economic development. It is not absolute and can be subjected to lawful and justifiable limitations to safeguard the rights of others, public safety, public morals and national security.

There is need to balance the right with the associated duties and responsibilities to spur development in Uganda, and to fight unnecessary and arbitrary restrictions that are counterproductive. The government should provide an environment that allows free exchange of ideas, opinions and information thus allowing members of the public to form and express their opinions on issues of public importance.

## CHAPTER 3

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# SEXUAL AND GENDER-BASED VIOLENCE AND ITS IMPLICATIONS ON RIGHTS OF WOMEN IN UGANDA IN 2018

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### 3.0 INTRODUCTION

Sexual and gender-based violence (SGBV) is defined as any act that is perpetrated against a person's will and is based on gender norms and unequal power relations. It encompasses threats of violence, coercion and other deprivations of liberty occurring in public or private life. It can be physical (battering and sexual assault), emotional/ psychological (deprivation of liberty, verbal abuse, child pornography, coercion and humiliation), or sexual in nature (sexual harassment, rape, defilement and any attempt to do any of these). It can also take the form of economic violence like denial of resources such as property or access to services such as financial services as well as treatment of women as commodities; for instance, trafficking for sexual harassment. SGBV also includes harmful practices like female genital mutilation (FGM), and forced early and child marriages. It inflicts harm on women, girls, men and boys<sup>56</sup>.

SGBV entails wide-ranging human rights violations and is often linked to unequal gender relations within communities and abuse of power.<sup>57</sup> The human rights violated in 2018 include the right to health, freedom from torture, cruel, inhuman or degrading treatment or punishment, right to life, right to property, right to education, right to work and right to economic empowerment. SGBV denies the human dignity of the individual and hurts human development.

**This chapter focuses on the** implications of SGBV on specifically the rights of women because it is more prevalent against women than men. The Uganda Women's Network (UWONET) has reported that 56% of women aged 15 to 29 have experienced physical violence since the age of 15 and 28% of women have experienced sexual violence in their lifetime. This means that more than half of Ugandan women have been abused at home, school or work<sup>58</sup>. In Uganda, SGBV takes the form of physical violence, emotional or psychological violence, harmful practices such as female genital mutilation (FGM), forced and child marriages, sexual harassment, defilement and rape.

In 2018, the Commission monitored the state of SGBV and its implications on the rights of women in selected districts in the country to establish the underlying causes of SGBV, its implications on rights of women and access to justice for victims/ survivors and their families. The Commission also wanted to find out the challenges in dealing with SGBV cases and to make informed recommendations to government.

The sampled districts were Amuria, Soroti, Katakwi, Kumi, Serere and Kaberamaido in Teso sub-region; Kapchorwa and Kween in Sebei sub-region; Iganga, Kamuli, Mayuge and Jinja in Busoga sub-region; Sheema and Mbarara in Ankole sub-region; Kabale in Kigezi sub-region; Mityana, Mubende, Luweero, Buikwe, Mpigi, Kayunga and Nakasongola in Buganda; and Bulambuli in Bugisu sub-region.

### 3.1 LEGAL AND POLICY FRAMEWORK

At the international level of attention, the Universal Declaration of Human Rights, 1948 recognises that all human beings are born free and equal in dignity and rights<sup>59</sup>. Women have the right to non-discrimination and equality<sup>60</sup>, the right to housing<sup>61</sup>, the right to the highest attainable standard

56 <https://www.unhcr.org/sexual-and-gender-based-violence.html>-. Accessed on 8th February 2018.

57 <https://www.refworld.org/docid/4e01ffeb2.html>-. Accessed on 8th February 2018.

58 <https://www.uwonet.or.ug/the-state-of-womens-rights-as-a-national-concern-2018/>-. Accessed on 26th February 2019.

59 Articles 1 and 2 recognize that all human beings are born free and equal in dignity and rights and shall enjoy the rights without distinction.

60 ICESCR, art 2(2), 3; CEDAW art 2, 3, 4, 5.

61 ICESCR Article 11(1); CEDAW 14(h), 16(h).

of physical and mental health<sup>62</sup> and the right to food,<sup>63</sup> among other rights. The Convention on Elimination of all Forms of Discrimination against Women (CEDAW), which is the most comprehensive human rights instrument in this regard, provides the framework along which discrimination against women is addressed. Under this convention, violence against women is regarded as a form of discrimination and states parties are urged to take measures at eliminating discrimination against women<sup>64</sup>.

At the regional level, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol), 2003 is the main instrument for the protection of the rights of women and girls in Africa. Under this protocol, women have the right to dignity and protection from all forms of violence particularly sexual violence. The protocol imposes obligations on states parties to respect, protect and promote a legal and social environment that is conducive for women to exercise their sexual and reproductive rights<sup>65</sup>.

At the national level, Uganda has a progressive legal and policy framework for protection of women against SGBV. Articles 32 (1) and (2) and 33 (1) and (2) of the Constitution of Uganda provide for affirmative action and the rights of women respectively<sup>66</sup>. Furthermore, women in Uganda have an inherent equal right to personal dignity as men, and are not to be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment<sup>67</sup>. Government has enacted a number of laws aimed at eliminating SGBV including: the Domestic Violence Act 3 of 2010, the Prohibition of Female Genital Mutilation Act 5 of 2010<sup>68</sup>, the Prevention of Trafficking in Persons Act 7 of 2009<sup>69</sup>, the Penal Code Act cap 120, 1950,<sup>70</sup> the Penal Code (Amendment) Act 8 of 2007, the Children Act cap 59, the Employment Act 2006, the Employment Act (Sexual Harassment Regulations 15 of 2012)<sup>71</sup>, the Succession Act, the Marriage Act, the Divorce Act, and the Land Act<sup>72</sup>. In addition, a number of policies, guidelines<sup>73</sup> and regulations have been put in place with the aim of eliminating SGBV.

### 3.2 SITUATION ANALYSIS OF SEXUAL AND GENDER-BASED VIOLENCE IN UGANDA

Sexual and Gender-Based Violence exists in Uganda just as it does in all regions of the world. The global prevalence of SGBV is staggering and women are affected disproportionately. Available statistics at national, multinational and global levels make a compelling case for fighting SGBV<sup>74</sup> which is said to be largely rooted in individual attitudes that condone violence within the family, the community and the state. SGBV has been both a cause and consequence of the breakdown of family

62 ICESCR Article 11, 12; CEDAW Article 12, 14(b).

63 ICESCR Article 11; CEDAW Article 14(g)(h), 16(h).

64 Articles 1, 2, 5, 6, 11.

65 Article 14.

66 The Constitution of the Republic of Uganda, 1995, articles 33(1&2) and 32 (1&2).

67 The Constitution of the Republic of Uganda 1995, Articles 24, 33 (1), 44 (a); Section 2 of the Prevention And Prohibition of Torture Act 3 of 2012

68 Article 2 (2) Constitution of the Republic of Uganda 1995 says all cultures that are in contravention of the Constitution have been outlawed; sections 2 – 10 carrying out female genital mutilation is an offence. Culture and religion shall not be a defence for FGM.

69 Section 3 (1) (b) says any person who trafficks persons for purpose of prostitution, pornography or sexual exploitation commits an offence and is liable to imprisonment for 15 years.

70 Sections 136 to 139, give 167 provisions on assault or grievous bodily harm, indecent assault, defilement, rape and attempted rape. Penal Code (Amendment) Act 8 of 2007.

71 Section 7 of the Employment Act, 2006 protects women against sexual harassment at the work.

72 ACORD Uganda (September 2010). Protection and Restitution for Survivors of Sexual and GenderBased Violence in Uganda, page 6.

73 National Referral Pathway for Prevention and Response to Gender-Based Violence Cases in Uganda (2013); National Guidelines on Establishment and Management of GBV Shelters in Uganda , MGLSD has developed a National Referral Pathway, Guidelines for establishment and management of GBV shelters; National Strategic Plan on Violence against Children in Schools (2015 – 2020) developed by Ministry of Education and Sports; the Uganda Police Force has established a GBV Directorate at the Uganda Police Headquarters, developed guidelines to respond to GBV cases and established SGBV desks at police stations.

74 <https://www.usaid.gov/sites/default/files/documents/1865/USAID%20Toolkit%20GBV%20EG%20Final%20Section%202.pdf>. Accessed on 8th February 2019.

and community structures. It has also been perpetrated by some of the very people who have been entrusted with the task of protecting victims/survivors<sup>75</sup>.

As already stated, SGBV in Uganda can be physical, economic, emotional and psychological. Physical violence includes battering and beating as well as sexual violence that manifests as rape, marital rape, child sexual abuse, defilement and incest, sexual assaults, sexual harassment, forced prostitution and trafficking in women; harmful traditional practices such as female genital mutilation (FGM), early and forced marriages and dowry-related violence. Economic violence includes denial of assets and economic livelihoods while emotional and psychological violence manifests as verbal abuse, humiliation, confinement, as well as social violence such as denial of education especially for the girl child<sup>76</sup>.

Uganda Human Rights Commission found out at different police stations countrywide that denial of resources, opportunities and services, physical assault, psychological abuse and sexual abuse in that order were the most common types of SGBV<sup>77</sup>.

UHRC further established that sexual and gender-based violence was caused by rigid gender roles that allowed supremacy of men over women, making the latter vulnerable; cultural norms that are insensitive to human rights such as FGM and early child marriages that perpetuated SGBV; high poverty levels that made it difficult for families to meet their basic needs; alcoholism and drug abuse; and unresolved marital conflicts that escalated into physical and emotional violence, among others. Perpetrators are often current or former close family members or friends of the family while women and girls were primary victims/survivors due to unequal power relations<sup>78</sup>.

Although several laws have been enacted to improve the situation of women, their implementation is hindered by traditions and deeply entrenched patriarchal attitudes, especially in rural areas. There is widespread violence against women and perpetrators benefit from generalised impunity, in part due to widespread social attitudes condoning such violence. Law enforcement officials also rarely intervene in cases of domestic violence and wife beating is viewed as a husband's prerogative.

SGBV was said to have devastating effects and high prevalence of social problems such as social exclusion, psychological distress, mental and anxiety disorders, spread of HIV and STD infections, unwanted pregnancies and the trauma experienced by victims. It was also believed to have a direct negative impact on the dignity of victims and their productivity in general<sup>79</sup>. The prevalence of SGBV in Uganda underscores the importance of Sustainable Development Goal 5 (SDG5) which seeks to achieve gender equality and empowerment for all women and girls by 2030.

## COMMON TYPES SEXUAL AND GENDER BASED VIOLENCE IN UGANDA

### a) Physical violence and verbal abuse

Physical and verbal violence is the most, common form of SGBV against women in Uganda. It includes violence perpetrated against women and girls at the hands of either their intimate partners, co-habitants, or other family members such as fathers, uncles, or brothers. It includes physical violence, verbal insults, intimidation and psychological violence. Physical violence, especially wife battering/ beating is still widespread in Uganda and affects all people irrespective of their social, economic and

75 <https://www.refworld.org/docid/4e01ffeb2.html>-. Accessed on 8th February 2018.

76 [https://uganda.unfpa.org/sites/default/files/pub-pdf/15\\_03\\_18\\_Multi%20Media%20Strategy%20Against%20GBV%20Printed.pdf](https://uganda.unfpa.org/sites/default/files/pub-pdf/15_03_18_Multi%20Media%20Strategy%20Against%20GBV%20Printed.pdf) http-. Accessed on 14th February 2019.

77 [https://www.newvision.co.ug/new\\_vision/news/1464629/expert-family-breakdown-armed-conflict-driving-gender-violence-](https://www.newvision.co.ug/new_vision/news/1464629/expert-family-breakdown-armed-conflict-driving-gender-violence-) Accessed on 16th February 2019.

78 [https://www.facebook.com/mglsd/posts/gender-based-violence-in-uganda-and-its-impact-on-socio-economic-background-ugan/433961286747123/-](https://www.facebook.com/mglsd/posts/gender-based-violence-in-uganda-and-its-impact-on-socio-economic-background-ugan/433961286747123/) Accessed on 14th February 2019.

79 [https://www.facebook.com/mglsd/posts/gender-based-violence-in-uganda-and-its-impact-on-socio-economic-background-ugan/433961286747123/-](https://www.facebook.com/mglsd/posts/gender-based-violence-in-uganda-and-its-impact-on-socio-economic-background-ugan/433961286747123/) Accessed on 14th February 2019.

political status. It occurs in families, communities, workplaces and institutions. A 2015 national survey on violence showed that 56% of women that have ever married and 44% of men aged 15 to 49 had experienced some form of violence inflicted by the spouse or intimate partner. Furthermore, 28% of women and 9% of men experienced sexual violence annually. The national teenage pregnancy rate was 24.8% among girls aged 15 to 19<sup>80</sup>. Moreover, 35% of girls had experienced sexual violence<sup>81</sup>.

In 2018, domestic violence, particularly physical violence was most prevalent in the districts of Kyegegwa, Tororo, Lira, Kamwenge, Jinja, Mbarara, Kabarole and Busia while defilement was most prevalent in the districts of Lira, Mbale, Gulu, Kibuku, Serere, Kamuli, Mubende, Buyende and Mayuge. In some of the cases reported to police, victims were severely injured while other victims were subjected to permanent disabilities such as loss of eyes and limbs.

Death also resulted in some cases during the year. Domestic violence deaths were prevalent in the districts of Kamwenge, Kyenjojo, Mbarara, Rakai, Ntungamo, Sheema and Kyegegwa while rape was most prevalent in the districts of Amuria, Kakumiro, Nwoya, Apac, Wakiso, Mubende, Mbale, Mbarara and Omoro.

### **b) Rape and defilement**

Sexual violence in form of rape and defilement is another form of SGBV against women and girls in Uganda. The perpetrators often include intimate partners, family members such as fathers, uncles, or brothers, employers, teachers, and strangers. The Ugandan law defines defilement as the act of having sex with a girl under 18, while rape is having sex with a woman without her consent, usually by force. According to the 2018 police crimes report, defilement cases were the second topmost reported cases with an increase from 14,985 cases reported in 2017 to 15,366 defilement cases reported in 2018.

Rape and defilement can lead to unwanted pregnancies, infertility, trauma, contraction of HIV/Aids or other STDs, terminal illness and even death. Additionally, women who experience violence against them enjoy a lower quality of health overall, as the stress of experiencing violence lowers their immune systems

### **c) Forced marriages**

Certain marriage traditions such as forced marriage and the tradition of dowry also contribute to violence against women in the home. Forced marriage occurs any time an individual enters into marriage against their will and includes early marriage and child marriage. Girls entering into child or early marriages are more likely to quit school, to experience higher rates of abuse at the hands of their husbands, and are susceptible to health risks such as complications arising from early pregnancy and sexually transmitted diseases.

The remittance of dowry as a part of the marriage custom also plays a role in contributing to a home environment in which violence against women is more likely to take place. The term “dowry” refers to the money or goods paid by the family of the bride to the family of the groom as a part of the marriage contract. Although traditionally dowries were intended as celebratory gifts, the economic constraints in most families have resulted in this tradition becoming a means of profit making.

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80 Uganda Bureau of Statistics(March 2017). Uganda Demographic and Health Survey 2016.

81 Uganda Violence against Children Survey 2015, a presentation by Centre for Domestic Violence Prevention during the Commission's Annual Report consultative meeting.

#### d) Female genital mutilation (FGM)

Female genital mutilation describes any procedure where the female external genitalia are altered or removed (in part or totality) for non-medical reasons. The practice of FGM provides the woman with no health benefits and increases the risk of negative health consequences such as complications during childbirth, recurring urinary tract infections, cysts, infertility, increased risk for contracting HIV/AIDS, and obstetric fistula.

Female genital mutilation is most likely to be performed on females while they are between the ages of 4 and 14. The World Health Organization (WHO) describes reasons for subjecting women and girls to FGM as varying from group to group. In some groups, the clitoris is representative of masculinity and performing FGM is necessary for distinguishing the identity of women. In other groups, FGM is viewed as imperative for the preservation of virginity, which is necessary for women to be considered eligible for marriage. In these cases, women who do not undergo the procedure face social ostracism. Other reasons for FGM include the belief that it enhances the sexual experience for men, it enhances women's beauty, or that it is necessary for a woman to be considered clean or pure/mature

Although the practice of FGM is unlawful in Uganda, it was still being practiced in 2018. Female genital mutilation was still entrenched in cultural norms of the Sabiny in Sebei sub-region as a rite of initiating girls into womanhood. It was, therefore, being perpetrated by girls and women themselves who felt inferior without undergoing the rite. The girls and women felt incomplete without undergoing FGM and called for an alternative form of rite to initiate them into womanhood if the practice of FGM is to be abandoned. With the coming into force of the Prohibition of Female Genital Mutilation Act, 2010, there were concerted efforts in sensitisation of the masses against FGM and its dangers, which resulted into its decline in 2012, 2014 and 2016. However, in 2018, the practice resurfaced with girls and women openly preparing for mutilation accompanied by men who were armed with dangerous weapons like machetes ready to attack law enforcement officers.

The resurfacing of FGM is attributed to complacency in advocacy against FGM, unfulfilled presidential pledges such as free secondary school education for girls and provision of alternative livelihoods for surgeons as well as the attitude of some elders in Sebei sub-region who believe that FGM is a cultural norm that should be left to thrive.<sup>82</sup>



◀ Left: A girl being prepared for FGM in Kween district

Right: Human rights defenders fighting for girls/womens rights

82 Commission interviews with Joyce Kamuron, a police officer at Kapchorwa CPS; Dismas Malinga, Senior Probation & Welfare Officer for Kween district local government; and Grace Chellangat, the Regional CFPO, East Kyoga.

In addition, findings revealed that the supremacy of men over women leaving the latter in subordinate position manifested in many ways including women not participating in decisions affecting the home, the men selling farm produce and taking all the proceeds on behalf of the family without women's consent, among others. This subordination was found to be the basis of a popular saying found among Basoga in Eastern Uganda that *'Omwami kyakobba nzenha kyenkoba'* which means that what my husband says is what I also say, a connotation that a wife has no contrary opinion to that of her husband. Such cultural norms made women more dependent on men and vulnerable to SGBV. Indeed, noncompliance or questioning the status quo by women often resulted into commission of SGBV against women by their spouses. This was more common in Eastern Uganda.

#### **e) Deprivation and denial of basic services**

Many women and children are still heavily dependent on men to provide for their basic needs such as food, clothing, housing and other basic goods and services. The Commission notes that in many cases, men have used their role as providers of their families to intentionally refuse or neglect to provide food, health care, school fees, clothing or pay rent for their families. Women have on a number of occasions reported being thrown out of homes, assaulted when they demand for the basic needs which has left many homeless or at the mercy of their abuses.

#### **f) Reproductive violence**

In Uganda, women face violence related to reproductive rights. Article 16 (1,e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)(1979) affirms that the right of women to exercise autonomy over reproductive decisions, including the number of children and at what interval, is a human right. Despite this provision, women continue facing violence in the area of reproductive rights. In many families, husbands have been reported to force their wives or partners to have children even when they do not wish to do so. In other instances, women who are barren or not able to bear children have faced violence from spouses, in-laws and have been stigmatised by their communities. Many barren women are isolated and called names since they are not considered women.

#### **g) Sexual harassment**

Women also face violence outside of the home, hindering their ability to achieve social equality and their freedom to actively participate in the public sphere, including in the areas of employment and education. Sexual harassment and exploitation of women are two particularly prevalent forms of violence affecting women at the workplaces and in public life. Sexual harassment is: "any unwelcome sexual advance, request for sexual favor, verbal or physical conduct or gesture of a sexual nature, or any other behavior of a sexual nature that might reasonably be expected or be perceived to cause offense or humiliation to the female victim by a non-partner". While sexual exploitation refers to any situation in which an individual is forced or coerced by another individual to engage in sexual activity. In most cases, sexual harassment is never reported but it often interferes with women's work. Victims of sexual harassment feel intimidated and find the work environment hostile, which has led to many women leaving their employment.

Situations in which sexual exploitation may occur include forced marriage, sex tourism, forced or coerced prostitution, and abuse of domestic laborers. Domestic workers in Uganda are the major often victims of sexual exploitation. The employers or house husband are the biggest perpetrators of sexual exploitation where many girls/women have been raped and sexually exploited by their masters. Most of these cases go unreported due to the vulnerability of most house helps or domestic workers.

#### **h) Acid Attacks**

Acid attacks involve throwing acid onto the victim, typically in the face, and are often motivated by female rejection of a marriage proposal or romantic relationship, or marital disputes. More

recently, acid attacks have also been utilized to intimidate women from continuing with particular intimate partners or seeking a more active role in public life. Acid attacks are severely painful and result in permanent disfigurement, blindness and, in some cases, death. The physical effects of acid attacks are permanent, leave the victim stigmatized for life, and increase the social marginalization of female victims. The physical disfigurement often renders the victim unmarriageable, which bears significant social consequences for women. Additionally, the loss of eyesight significantly hinders women's educational and professional opportunities.

#### **i) Cyber bullying and harassment**

The Commission also noted an emerging form of SGBV against women in the form of cyber sexual harassment. This involves exposing or leaking women's nude photos in the print or social media. It also involves sending unwanted sexual messages to women through social media and text messages. In some cases, the perpetrators hack the victims' emails for sensitive personal content which is then used to intimidate, extort or blackmail their victims. In most of these cases, women have been the victims.

### **3.3 GOVERNMENT INTERVENTIONS**

The state under international human rights law has a tripartite obligation; namely, to respect, protect and fulfill human rights. In this regard, Uganda made commitments through various legal frameworks to take measures aimed at eliminating discrimination against women and to respect, protect and promote the rights of women. It assumed these obligations from the legal framework already outlined above, as well as the SDG5.

The policies in place to respond to SGBV include the National Gender Policy (2007), the National Action Plan on Women (2008), National Referral Pathway for Prevention and Response to Gender-Based Violence Cases in Uganda (2013), and the National Guidelines on Establishment and Management of GBV Shelters in Uganda.

To facilitate access to justice for survivors of SGBV and their families, Police Form 3 was reviewed by the Justice, Law and Order Sector to provide for registered midwives and clinical officers to examine a victim of SGBV in order to address the inadequacy of medical officers who were initially the only ones authorised to conduct this examination. A training manual to guide health workers in the management of SGBV survivors was developed; Grade 1 magistrates were mandated to try defilement cases and special High Court sessions were piloted for SGBV cases in Teso, Lango, Acholi and Karamoja sub-regions.

#### **3.3.1 Constraints to government interventions**

Despite the measures taken by the government, they are still constrained by some conflicts in the legal framework and ineffective enforcement of the law. There are conflicting provisions in laws governing marriage in Uganda with respect to the age of consent. While the minimum age for marriage under Article 31 (a) of the Constitution is 18 years, the Customary Marriage Registration Act and the Hindu Marriage and Divorce Act authorise the marriage of girls under 18 years of age, while the Marriage of Africans Act and the Marriage and Divorce of Mohammedans Act specify no minimum age for marriage.

The Marriage Bill that was aiming at making the age of consent consistent with the provisions of the Constitution, among others, was shelved. In addition, challenges still abound in enforcement of laws with some of the government departments like the District Probation and Welfare Office, the Child and Family Protection Unit of Uganda Police Force and the Judiciary that have the mandate to protect victims/survivors of SGBV having inadequate facilitation as well as low staffing levels thereby failing in their mandate.

### 3.3.2 CSO interventions

There were other interventions, by CSOs such as MIFUMI, Legal Aid Project, FIDA and Sebei Diocese, among others that provided psychosocial support, shelters, treatment, skills training and livelihood support programmes to victims, families and survivors of SGBV as well as sensitising communities against SGBV. Furthermore, such civil society organisations conducted mediations, held radio talk shows to educate the masses on the dangers of SGBV, implemented programmes for restitution and assisted in meeting costs incurred by the survivors and their families so as to promote fairness.

## 3.4 FINDINGS ON THE MAGNITUDE OF SEXUAL AND GENDER-BASED VIOLENCE AND ITS IMPLICATIONS ON WOMEN'S RIGHTS

### 3.4.1 The magnitude of SGBV against women

In 2018, the police crimes report indicates defilement was the second topmost reported criminal case with 15,366 cases reported, followed by domestic violence with 13,916 cases reported. Studies indicated that 50% of ever-partnered women aged 15 to 49 experienced intimate partner physical and/or sexual violence at least once in their lifetime. In addition, 40% of ever-partnered women aged 15 to 49 experienced intimate partner physical and/or sexual violence in the year preceding the survey.<sup>83</sup> While 30% of women aged 20 to 24 were first married or in union before age 18. It was also reported that 1% of girls and women aged 15 to 49 had undergone FGM/C.<sup>84</sup>

SGBV rates were highest in the Northern region at 48%, followed by the Eastern region at 41% while Western and Central had 5% and 6% respectively. The districts of Kampala, Wakiso, Mukono, Iganga, Rakai and Mbale recorded the highest cases of violence against women and girls.<sup>85</sup> Respondents said domestic violence was higher in rural areas than in the urban areas. Unfortunately, not all incidences are reported; for instance women aged 15 to 19, women in urban areas and those never married were less likely to report domestic violence.<sup>86</sup>

The Commission's findings of 2018 in the sampled 23 districts revealed that SGBV was rampant and remained a challenge in the country. It was mostly manifesting as sexual violence such as rape and defilement, physical violence such as battering and assault, harmful practices such as FGM and forced child marriages, emotional violence such as verbal abuse and humiliation and economic violence such as denial of access to land, domestic animals and farm produce.

The Commission got information from from police that defilement and domestic violence have been among the leading crimes reported to the police in the past five years. Moreover, deaths as a result of aggravated domestic violence accounted for 8% of homicide cases in 2017. The deaths were reported to be most prevalent in the districts of Kyenjojo, Mbarara, Rakai, Kagadi, Ntungamo, Sheema and Kyegegwa<sup>87</sup>.

Further, the findings at police stations countrywide indicated that SGBV mostly affected women (those with intimate partners and those without), children and domestic workers in the three age brackets of 11 to 20, 21 to 30 and 31 to 40. There were fewer cases of SGBV against women aged 60 years and above; only one case of a 60-year-old victim of rape was reported at Bwizibwera Health Centre in Mbarara district.

83 Uganda Bureau of Statistics and ICF International (March 2017). Uganda Demographic and Health Survey 2016. Kampala, Uganda.

84 UNICEF global databases 2017.

85 [https://www.newvision.co.ug/new\\_vision/news/1476380/empower-women-economically-fight-domestic-violence-](https://www.newvision.co.ug/new_vision/news/1476380/empower-women-economically-fight-domestic-violence-) Accessed on 14th February 2019.

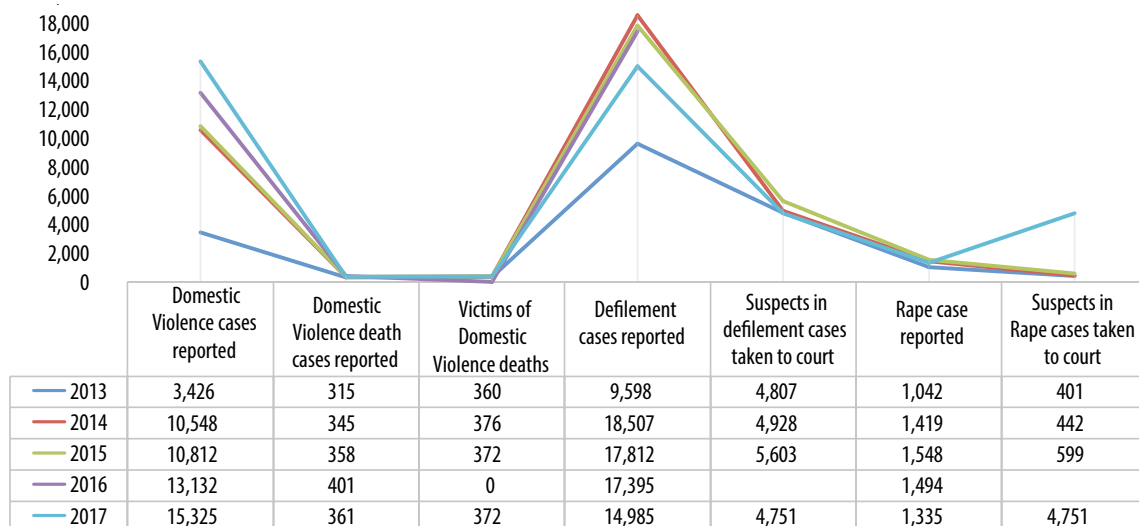
86 <https://www.monitor.co.ug/OpEd/Commentary/Women-Uganda-domestic-violence-men-assault-/689364-4333592-18v7cr/index.html-> Accessed on 14th February 2019.

87 <https://www.upf.go.ug/wp-content/uploads/2018/07/ANNUAL-CRIME-REPORT-2017.pdf> Accessed on 14th February 2019.



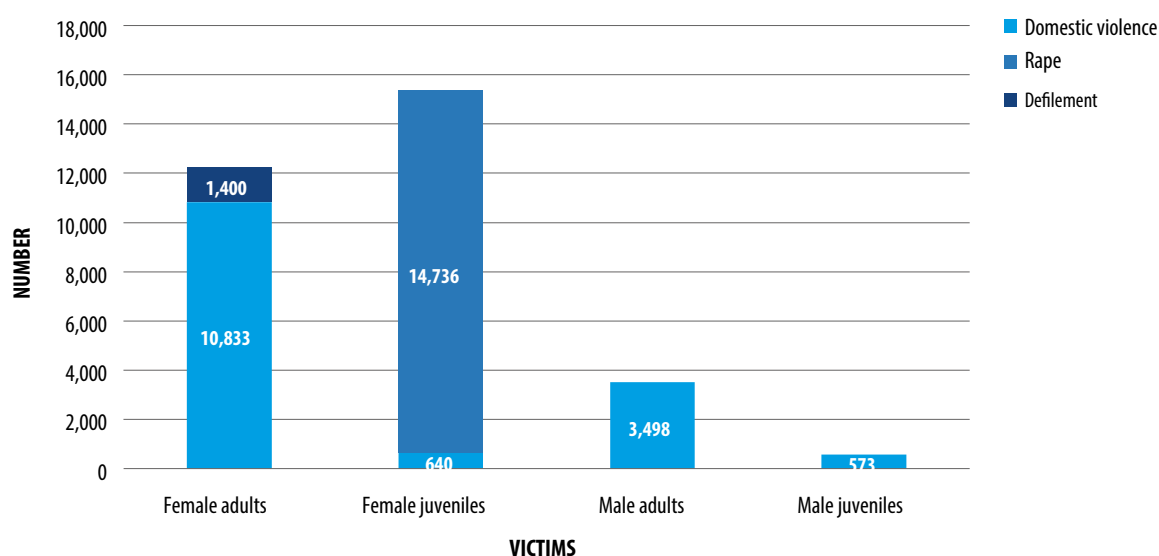
The perpetrators were mainly people known to the victims like their teachers, spouses, relatives and people in high authority. Drug addicts were also said to be among the common perpetrators.

FIGURE 4: SGBV CASES REPORTED AT POLICE FOR THE LAST FIVE YEARS



From the figure above, cases of domestic violence have been on the raise for the past five years, while domestic violence deaths registered 10% decreased in 2017, and defilement reduced by 14% as rape cases reduced by 11%. Whereas the analysis gives an impression that the prevalence of different forms of SGBV have reduced save for domestic violence, this is not true because many such cases go unreported due to survivors’ fear of being ostracised by their families or communities and prosecution is frustrated by insufficient facilities to dispose of the many SGBV-related cases<sup>88</sup>.

FIGURE 5: VICTIMS OF SGBV IN 2017<sup>89</sup> BY GENDER



88 <https://www.monitor.co.ug/OpEd/Commentary/Call-to-action-Stop-violence-against-women-Uganda/689364-4489514-101a32/index.html>- Accessed on 26th February 2019.

89 <https://www.upf.go.ug/wp-content/uploads/2018/07/ANNUAL-CRIME-REPORT-2017.pdf>- Accessed on 14th February 2019.

Statistics in the figure above indicate that both females and males were victims of domestic violence. However, more females (74%) were affected by domestic violence as compared to males (26%).

### 3.5. CAUSES OF SGBV

The root causes of SGBV lie in society's attitudes towards women and practices of gender discrimination which place women in a subordinate situation in relation to men<sup>90</sup>. The findings revealed the drivers of SGBV against women to include poverty, marital conflicts, breakdown of families, rigid gender roles, alcoholism/drug abuse, cultural norms, moral degeneration and impunity.

#### 3.5.1 Poverty

Twenty-five per cent of Ugandans are in wage employment where taxes are levied on their income and only 20% are engaged in non-agriculture enterprises. Majority of Ugandans in the labour force, therefore, work in the agriculture sector. Any shocks to the agriculture sector, therefore, means more Ugandans engaged in subsistence farming to earn a livelihood, majority of whom are women, will likely slide into poverty<sup>91</sup>.

The Commission established that there is a close relationship between poverty and unemployment or loss of jobs and domestic violence, especially in homes.<sup>92</sup> It further noted that poverty made women and girls dependent on men, thereby making the former more vulnerable to acts of SGBV while at the same time exposing many women and girls to sexual exploitation.<sup>93</sup>

Relatedly, all respondents cited poverty as one of the reasons why perpetrators committed SGBV against the survivors/victims. The poverty levels in Uganda kept most vulnerable persons, especially women and children, exposed to SGBV. Hence some of the victims/survivors of SGBV, specifically women, could not leave their spouses or partners who were perpetrators because they were too poor to afford a living on their own. Respondents pointed out that poverty drives men and women to alcoholism which eventually results into sexual and physical violence.

Furthermore, poverty as a result of unemployment or loss of a job, perpetuated the inability of men to provide for their families. Yet many women continued to demand provision from partners who were unable to provide for their families, causing the latter to subject the former to physical violence like battering, assaults as well as emotional violence like verbal abuse and humiliation. The Commission also found that poverty led to a general sense of helplessness and lack of meaning in life, which made it easy for perpetrators to commit SGBV crimes against women.

#### 3.5.2 Erosion of family values

**According to Clemence Byomuhagi, a psychologist, hard times due to breakdown of families in Africa are among the main drivers of sexual and gender-based violence.** Majority of the people have found themselves amidst hardships like lack of shelter and food, which was not the case when there were strong family bonds. Most African communities depended on family networks where they supported each other in extended family settings. Currently, everyone is on their own; women

90 [http://menengage.org/wp-content/uploads/2014/06/Sexual\\_and\\_Gender\\_Based\\_Violence\\_in\\_Uganda1.pdf](http://menengage.org/wp-content/uploads/2014/06/Sexual_and_Gender_Based_Violence_in_Uganda1.pdf)- Accessed on 16th February 2019.

91 <https://www.uwonet.or.ug/the-state-of-womens-rights-as-a-national-concern-2018>- Accessed on 14th February 2019.

92 [https://www.researchgate.net/publication/322593349\\_Domestic\\_Violence\\_and\\_Family\\_Values\\_in\\_Mitooma\\_District\\_Western\\_Uganda](https://www.researchgate.net/publication/322593349_Domestic_Violence_and_Family_Values_in_Mitooma_District_Western_Uganda)- Accessed on 16th February 2019.

93 [https://www.researchgate.net/publication/236231084\\_Domestic\\_violence\\_in\\_Gulu\\_Northern\\_Uganda](https://www.researchgate.net/publication/236231084_Domestic_violence_in_Gulu_Northern_Uganda)- Accessed on 14th February 2019.

and men no longer stay home, and children live on their own.<sup>94</sup> The UHRC established that there was a significant correlation between domestic violence and family values; and that the degeneration in family values made family members susceptible to domestic violence, which in turn resulted into unstable families.<sup>95</sup>

The Commission's findings revealed that sudden breakdown of families whereby family members disintegrated and could no longer protect one another from perpetrators was one of the drivers of SGBV. In a family setting, it is everyone's role to be a brother's/sister's keeper and it is the responsibility of adults to protect children and of men to protect all vulnerable members of the family that include women. However, once the family structure broke down, the safety nets that used to protect women from SGBV get broken too.

The Commission found that the situation had been made worse by the erosion of community values whereby the protection of vulnerable persons, which used to be a joint responsibility has been left to the 'smaller family'. That while it is every citizen's duty under article 17 (1) (c) of the Constitution to protect children and any vulnerable persons against any form abuse, harassment or ill treatment, people no longer concerned themselves with what transpired in other people's homes as that would be construed to be interference with their privacy.

### 3.5.3 Insensitive cultural norms

Ugandan society is characterized by strong patriarchal beliefs that value male supremacy and women's subordination. Moreover, women have remained the most deprived, discriminated and have been denied rights to own land, ancestral, before marriage, in marriage and out of marriage. Some *cultures still consider women as property to be inherited*. These have often made rural women and girls more inferior, vulnerable and marginalized in both public and private spheres.<sup>96</sup>

Further, prevalence of child marriage in Uganda stands at 40%. It is highest in Northern Uganda, estimated at 59%, followed by Western region (58%), Eastern region (52%), East-central (52%), West Nile (50%), Central (41%), Southwest (37%) and lowest in Kampala (21%). In addition, 25 percent of adolescents aged 15 to 19 have begun childbearing and 19 percent of women aged 15 to 19 have given birth. Adolescent childbearing is more common in rural areas than in urban areas (27 versus 19 percent, respectively) while 56% of women aged 15 to 29 have experienced physical violence since the age of 15 and 28 percent of women have experienced sexual violence in their lifetime. Hence more than half of Ugandan women have been abused at home, at school, or at work.<sup>97</sup>

The estimated prevalence of FGM in girls and women aged 15 to 49 in Uganda was 1.4%, according to the UDHS for 2011. It is practiced in Kapchorwa, Kween and Bukwo districts and among the Tepeth people in Karamoja. The practice is high among the Pokot and Kadama at 95% and the Sabinu and Tepeth at 50%.<sup>98</sup>

The Commission found that cultural norms and practices such as male supremacy over women, FGM, early and forced child marriages and dowry infringed on the human rights of women and were causes of SGBV. Findings revealed that the patriarchal society that allows supremacy of men over women resulted into domination of the women by men, thereby making the latter vulnerable to SGBV. UHRC established that it was generally accepted that once a woman got married, it meant

94 [https://www.newvision.co.ug/new\\_vision/news/1464629/expert-family-breakdown-armed-conflict-driving-gender-violence-](https://www.newvision.co.ug/new_vision/news/1464629/expert-family-breakdown-armed-conflict-driving-gender-violence-) Accessed on 16th February 2019.

95 [https://www.researchgate.net/publication/322593349\\_Domestic\\_Violence\\_and\\_Family\\_Values\\_in\\_Mitooma\\_District\\_Western\\_Uganda-](https://www.researchgate.net/publication/322593349_Domestic_Violence_and_Family_Values_in_Mitooma_District_Western_Uganda-) Accessed on 16th February 2019.

96 <https://www.facebook.com/mglisd/posts/gender-based-violence-in-uganda-and-its-impact-on-socio-economic-background-ugan/433961286747123/> Accessed on 14th February 2019.

97 <https://www.uwonet.or.ug/the-state-of-womens-rights-as-a-national-concern-2018/> Accessed on 14th February 2019.

98 [https://www.unfpa.org/sites/default/files/admin-resource/Uganda\\_Case\\_Study-](https://www.unfpa.org/sites/default/files/admin-resource/Uganda_Case_Study-) Accessed on 14th February 2019.

that the husband enjoyed conjugal rights whenever needed and as such any denial of the same on whatever grounds was met with resistance that often resulted into sexual or physical violence against the wife.

The Commission also established that the practice of child marriage was a cause of SGBV in Uganda partly due to the fact that girl brides are neither strong enough to defend themselves against violence nor are they mature enough to independently make important decisions that affect their lives while in marriage. The situation was perpetuated by their lack of economic empowerment owing to their little education having dropped out of school to get married. Moreover, women aged 15 to 19 were less likely to report recent experience of sexual violence than older women.<sup>99</sup> Hence the high likelihood of reoccurrence of the violence. It should be noted that early and forced child marriage is in itself a form of SGBV with a potential to perpetuate other forms of SGBV; it is both a cause and consequence of SGBV as well.

Further, the Commission found that bride price, also known as bride wealth, which is an amount of money or property or wealth paid by the groom or his family to the parents of a woman upon the marriage of their daughter to the groom was a cause of SGBV especially in Eastern Uganda. Bride price is a cherished custom among African societies since time immemorial.<sup>100</sup> UHRC found that the practice of bride price oftentimes reduced women to be treated like property of their spouses, making them vulnerable to SGBV. In Eastern Uganda, a refund of bride price was a requirement upon dissolution of a marriage.

This requirement made it impossible for brides whose families could not afford to refund the bride price to leave their abusive marriages. The requirement for bride price as a precondition for a valid customary marriage and the demand for refund upon dissolution undermines the dignity and status of women and is hence inconsistent with the Constitution.<sup>101</sup> The practice still went on especially in Teso sub-region. According to the Regional State Attorney, Soroti, bride price was the major cause of SGBV in Teso.<sup>102</sup>

#### 3.5.4 Drug abuse/alcoholism

A study conducted about marital behavior revealed that women whose partners often drink before sex experience risks of violence almost five times higher than women with non-drinking partners. That 52% of women who reported recent domestic violence stated that their partners had consumed alcohol at the time the violence was committed while 27% said their partners had frequently consumed alcohol.<sup>103</sup>

The Commission found that drug abuse, especially alcoholism, has in most cases caused perpetrators to commit acts of SGBV against their wives, children and even domestic workers. It found that many men especially in Eastern Uganda left their homes for trading centres in the morning without leaving any provisions for the day at home. They stayed in the centers drinking alcohol the whole day only to return home in the night to demand a meal that they never provided and noncompliance resulted into battering, assaults and verbal abuse of their wives and oftentimes children. In some instances, UHRC found that both men and women engaged in excessive drinking. According to the district speaker of Amuria district who is also a councilor of Olwa sub-county, alcohol abuse by both men and women was one of the causes of SGBV in the district.<sup>104</sup>

99 [https://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/Uganda\\_DHS\\_2016\\_KIR.pdf](https://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/Uganda_DHS_2016_KIR.pdf) - Accessed on 14th February 2019.

100 [https://www.academia.edu/7599705/BRIDE\\_PRICE\\_AND\\_CONSTITUTIONAL\\_LAW\\_IN\\_UGANDA](https://www.academia.edu/7599705/BRIDE_PRICE_AND_CONSTITUTIONAL_LAW_IN_UGANDA)- Accessed on 4th March 2019.

101 Constitutional appeal No: 02 of 2014 (2015) UGSC 13 (6 August 2015)- MIFUMI (U) Ltd & Anor Vs Attorney General.

102 Commission interaction with Mr. Brian Kalinaki, Regional Officer, DPP's Office, Soroti in February 2019.

103 <https://www.who.int/bulletin/Koenig0103.pdf>- Accessed on 16th February 2019.

104 Commission's interaction with the District Speaker, Amuria during a road show in Olwa sub-county in February 2019.

### 3.5.5 Marital conflicts

The Commission's findings revealed that marital conflicts often resulted from denial of maintenance for the family by the heads of the family who in most cases were men. As a result of this, the women retaliated by denying the men conjugal rights, thereby resulting into physical and sexual violence. UHRC's findings further revealed that denial of conjugal rights severely affected men's egos with dire consequences to their wives and children. Findings also established that denial of access to family resources like land, farm produce and domestic animals, which is economic violence, resulted into marital conflicts that culminated into physical violence, especially battering.

### 3.5.6 Rigid gender roles

Women are usually assigned rigid roles and responsibilities and placed in a subordinate position in relation to men. There are several sayings that undermine women's capabilities and teach them to subordinate their own needs, wills and sexual desires in order to please and serve men. In most cultural settings, women are regarded as the property of their fathers, husbands, brothers, uncles and even sons. They are owned and controlled by families and clans. At the death of a husband, the woman becomes a commodity to be inherited, or the subject of torture, as relatives grab family property as if she and the children are of no consequence.<sup>105</sup>

The Commission found that women and men have roles that are ascribed to them; for instance, men as heads of their families were not only expected to provide but also to make unilateral decisions in respect of sale of family farm produce and other family assets without consent of other members of the family. The women, on the other hand, have to be subordinate to men by relinquishing their power over their bodies, property and even freedom of thought, conscience and worship. Hence women who resisted the injustices brought about by male supremacy and questioned the status quo were considered by members of the community who included fellow women as undisciplined and in most cases ended being subjected to SGBV.

Further, UHRC found that the supremacy of men in our patriarchal society required that they provide for their families, and in instances where they were economically unable and yet women and children continued to demand for maintenance, this often resulted into violence.

### 3.5.7 Moral degeneration

The influence of mass media, for instance pornographic literature and magazines with illicit pictures and movies [blue movies] had a great impact on the sexuality of the youth. The Commission found that majority of the youths in both rural and urban areas were constantly idle and spent most of their time either betting or watching movies that are relatively cheap and easily accessible. The movies exposed them to sexual scenes and the only outlet of the sexual stimulation would be through sexual violence.

In addition, owing to limited accommodation especially in urban areas, parents shared small housing units such as bedsitters and two rooms with their children. This lack of privacy exposed children to sexual activities, making them vulnerable to higher risk of SGBV like rape, incest and defilement, among others.

<sup>105</sup> <https://www.uwonet.or.ug/download/handbooks/MANAGING-GENDER-BASED-VIOLENCE-PREVENTION-A-Guide-To-Prevention-And-Response-2012..pdf> Accessed on 16th February 2019.

### 3.6 HUMAN RIGHTS IMPLICATIONS/ EFFECTS OF SGBV ON WOMEN'S RIGHTS

Gender-based violence leaves long-lasting physical and emotional scars and hinders the ability of individuals, especially women and girls, to participate fully in their families and communities; economically, politically and socially. It also holds back women and girls from getting an education, earning an income and fully contributing to their societies.<sup>106</sup>

The findings revealed that SGBV had implications on the rights of women and lasting negative impacts on the families of the victims and their communities that ranged from ill health, poor education, early and child marriages, social and psychological stigma, loss of life, lack of economic empowerment and increased vulnerability to the victims, their families and community in general.

#### 3.6.1 Deprivation of the right to health

The right to health means that everyone has the right to the highest attainable standard of physical and mental wellbeing, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions and a clean environment.<sup>107</sup> The Commission's findings revealed that SGBV had implications on the health of women. The health consequences of SGBV ranged from physical injury, chronic pain, disability, mental and emotional disorders like anxiety and depression to serious effects like suicide.

Further, the fear of violence infringed on women's sexual and reproductive health. Women lived in fear of violence which prevented many of them from using contraceptives or proposing condom use, thus increasing their risk of unwanted pregnancies and sexually transmitted infections including HIV.

UHRC also found that childhood sexual abuse often leads to risky behaviors in adolescence and adulthood such as multiple sexual partners and unprotected sex which is risky for their lives. Furthermore, deprivation of the right to health as an effect of SGBV against women, negatively impacted on their right to work. Various studies have shown that the violent behaviors by perpetrators affect women's capability to perform well at work. Victims report feeling distracted, extremely exhausted and unwell, needing to take time off for medical or legal reasons, being late for work and being too upset to work.<sup>108</sup>

Therefore, given the fact that human rights are interdependent and interrelated, deprivation of the right to health for women as a result of SGBV had a negative impact on their enjoyment of other rights like the right to work and earn a living and the right to property, thereby making them more vulnerable to further SGBV against them.

The National Action Plan on the Elimination of Gender-based Violence focuses on implementing the country's laws and policies on domestic violence and marital rape, providing health services for survivors, raising awareness and training police and health workers on how to respond. However, whereas some health workers, care providers, community leaders and workers in the judicial system have been trained on how to deliver services to survivors of violence, practical gaps still exist in equipping health facilities in the country to provide a minimum initial package of care to survivors of rape, including emergency contraception, HIV post-exposure prophylaxis and mental health support – as recommended by WHO guidelines.

106 <https://observer.ug/viewpoint/59344-fighting-gender-based-violence-should-be-everyone-s-concern-> Accessed on 14th February 2019.

107 <https://www.nesri.org/programs/what-is-the-human-right-to-health-and-health-care-> Accessed 18th February 2019.

108 [https://www.researchgate.net/publication/323508059\\_CAUSES\\_AND\\_EFFECTS\\_OF\\_DOMESTIC\\_VIOLENCE\\_A\\_CONCEPTUAL\\_MODEL\\_ON\\_THE\\_PERFORMANCE\\_AT\\_WORK\\_Syazliana\\_Astrah\\_Mohd\\_Idris\\_Johor\\_Empowerment\\_of\\_Intellectual\\_Women\\_Association\\_Ministry\\_of\\_Women\\_Family\\_and\\_Society](https://www.researchgate.net/publication/323508059_CAUSES_AND_EFFECTS_OF_DOMESTIC_VIOLENCE_A_CONCEPTUAL_MODEL_ON_THE_PERFORMANCE_AT_WORK_Syazliana_Astrah_Mohd_Idris_Johor_Empowerment_of_Intellectual_Women_Association_Ministry_of_Women_Family_and_Society) - accessed on 16th February 2019

### 3.6.2 Deprivation of the right to education

SGBV caused exclusion from education owing to stigmatization of its victims/survivors in the community, which resulted into the person's loss of self-confidence and, consequently, isolation from the community. This resulted into girls dropping out of school.<sup>109</sup> Further, sexual violence against girls was reported to be widespread with 77.7% of the primary school children and 82% of the secondary school students reported to have experienced sexual abuse while at school.<sup>110</sup> The violence was found to occur at school, on the way to or from school and the perpetrators included teachers, students and community members.

The findings revealed that SGBV has had an impact on the right to education of women in that girls who experienced SGBV suffered physical and psychological harm, decline in academic performance, loss of self-esteem, irritability, fear, posttraumatic stress, irregular attendance of class school dropout, early marriages, pregnancy and infections like STDs and HIV. In addition, girls that dropped out of school eventually ended up in child marriages which is in itself a form and effect of SGBV with dire consequences on women as these girls ultimately grow up and become women.

Further, it should be noted that the education level of women is an important factor in SGBV, with lower incidences of domestic violence reported in persons with secondary education and higher.<sup>111</sup> Hence deprivation of the right to education for survivors /victims of SGBV lowered their chances of accessing employment and decent income-generating activities that made them less empowered economically, thereby exposing them to further risk of SGBV.

Whereas the government has put in place Universal Primary and Secondary Education, the retention of girls in school remains a challenge. Compared to boys, girls' retention and completion rates continue to remain low. This is attributed to persistent socio-cultural and economic barriers that keep girls out of school. The situation is worse for girls in rural areas.<sup>112</sup>

### 3.6.3 Early and forced child marriages

Girls who marry as children are particularly at risk of violence from their partners or their partners' families. They are more likely to be beaten or threatened by their husbands than girls who marry later. The greater the age difference between girls and their husbands, the more likely they are to experience intimate partner violence. Often married to much older men, child brides are more likely to believe that a man is sometimes justified in beating his wife than women who marry later.<sup>113</sup>

The national prevalence of child marriage is 40%. Prevalence of child marriages is highest in northern Uganda, estimated at 59%, followed by Western region (58%), Eastern region (52%), East-central (52%), West Nile (50%), Central (41%), Southwest (37%) and lowest in Kampala (21%). Further, 25 percent of adolescents aged 15 to 19 have begun childbearing and 19 percent of women aged 15 to 19 have given birth. Adolescent childbearing is more common in rural areas at 27% than in urban areas at 19%.<sup>114</sup> Moreover, women who become sexually active younger than 15 years faced almost twice the risks of sexual and gender-based violence as those who became sexually active at or after 18 years.<sup>115</sup>

109 <https://reliefweb.int/sites/reliefweb.int/files/resources/BEFB77D29CC17FE74925702200095601-unicef-uga-15jun.pdf>- accessed 16th February 2019

110 [https://www.education.go.ug/files/downloads/National\\_Strategy\\_and\\_Action\\_Plan\\_on-VACiS.pdf](https://www.education.go.ug/files/downloads/National_Strategy_and_Action_Plan_on-VACiS.pdf)- accessed on 14th February 2019

111 <https://www.monitor.co.ug/OpEd/Commentary/Women-Uganda-domestic-violence-men-assault-/689364-4333592-18v7cr/index.html> - Accessed on 14th February 2019.

112 <https://www.uwonet.or.ug/the-state-of-womens-rights-as-a-national-concern-2018/> - Accessed on 26th February 2019. <https://www.uwonet.or.ug/the-state-of-womens-rights-as-a-national-concern-2018/> - Accessed on 26th February 2019.

113 <https://www.girlsnotbrides.org/why-is-child-marriage-a-form-of-violence-against-women-and-girls/>- Accessed on 18th February 2019.

114 <https://www.uwonet.or.ug/the-state-of-womens-rights-as-a-national-concern-2018/> Accessed on 14th February 2019.

115 <https://www.who.int/bulletin/Koenig0103.pdf>- Accessed on 16th February 2019.

Early and child marriages which are in themselves a form of SGBV as well as a cause and effect of SGBV perpetuated other forms of SGBV such as physical, emotional, economic and psychological violence against girls and their children.

Relatedly, early and children marriages exposed women to the risk of becoming child mothers and consequently suffering complications during pregnancy and during childbirth, contracting HIV/AIDS, having more children in their lifetime, leaving school and living in poverty.

Further, women engaged in early marriage were likely to experience intimate partner violence as well as pressure from their own families and in-laws resulting into curtailed decision-making power and freedom hence limiting their ability to make decisions about their own lives and bodies. These problems extend to their children, households, communities and societies, thwarting their ability to reach their economic potential. SGBV had intergenerational impacts in that child brides gave birth to children who as a result of vulnerability never went to school or dropped out of school and became child brides and suffered the same consequences of SGBV.

Despite the fact that the age of consent for marriage under Article 31(1)(1) of the Constitution is 18 years, the presence of conflicting laws on marriage as indicated in section 1.3 under government interventions present challenges in enforcement.

#### 3.6.4 Social and psychological stigma

Stigma is usually a negative perception about oneself, feeling of shame, dishonor, unworthiness, disgrace, humiliation, social isolation and rejection as a result of humiliation, social isolation and rejection which are a consequence of the experience of SGBV. SGBV led to stigmatization of women who experienced fear, shame, insecurity, self-blame, mistrust of others, inability to concentrate, social rejection and isolation, acute fear of future violence, withdrawal from social and community participation, and damage to their confidence resulting in fear of venturing into public spaces which could limit their ability to participate in income-generating activities.<sup>116</sup>

It is a fact that rape and other forms of sexual violence can amount to torture and ill-treatment.

The severe physical trauma, the mental pain and suffering inflicted on victims are often exacerbated by the social stigma they faced in the communities. The Commission found that survivors found it difficult to report SGBV and seek help from their families and communities due to fear of shame and exclusion. For instance, a woman in Olwa sub-county in Amuria district who was frequently battered said that whenever she would report the matter to the area Local Council I chairperson, the entire community would rise up against her, stopping her from following up the matter because her husband was perceived as an important person in that community.<sup>117</sup>

Stigma also prevented victims from reporting, seeking medical care, disclosing diagnosis from a doctor and adherence to treatment follow-up. Also because of stigma, women suffered acute fear of future violence, isolation and loss of self-esteem. They consequently withdrew from political, economic, social and community participation that limited their chances of engaging in income-generating activities that could liberate them from the perpetrators or lessen their risk of exposure to SGBV given that economically empowered women suffered less compared to those that were not empowered.

Whereas a national policy on GBV and a National Guidelines for the Provision of Psychosocial Support for Gender-Based Violence Survivors/Victims are in place as well programs such as shelters

116 <https://www.facebook.com/mglsd/posts/gender-based-violence-in-uganda-and-its-impact-on-socio-economic-background-ugan/433961286747123/> Accessed on 14th February 2019.

117 Commission interaction during road shows in Olwa sub-county, Amuria district in February 2019.



for survivors of SGBV and their families manned by the government and civil society organisations like MIFUMI, Centre for Domestic Violence Prevention, ActionAid Uganda and Uganda Women's Network, among others, their coverage in terms of geographical scope remains inadequate.

### 3.6.5 Deprivation of right to life

The right to life is protected by Article 22 of the Constitution of the Republic of Uganda. Police reports indicated that 341 women and girls were killed in domestic scuffles between 2015 and 2016.<sup>118</sup> Death through domestic violence alone accounted for 361 cases in 2017 compared to 401 cases in 2016. Out of these deaths, women and girls accounted for 44.6% and these were mainly in the districts of Kamwenge, Kyenjojo, Mbarara, Rakai, Kagadi, Ntungamo, Sheema and Kyegegwa.<sup>119</sup>

The Commission established that some women were deprived of their right to life as a result of physical violence; they committed suicide as result of depression caused by psychological trauma and social stigma, among others. Gender-related killings were found to be the extreme manifestation of existing forms of violence against women. Such killings were not isolated incidents that arose suddenly and unexpectedly but were, rather, the ultimate act of violence which is experienced in a continuum of violence. Women subjected to continuous violence and living under conditions of gender-based discrimination and threat were among inmates on death row in prisons across the country having murdered their spouses in defense or revenge.

Whereas some deaths were a primary consequence of SGBV with defined perpetrators, some were secondary such as deaths due to poorly conducted or clandestine abortions, maternal mortality and deaths from harmful practices such as FGM.

In spite of the progressive legal and institutional framework, women in Uganda still live under the yoke of oppression and exploitation. While some laws exist, they are not effectively enforced. While institutions are in place, they are not well equipped and facilitated to implement the legal and policy provisions for the elimination of discrimination against women, protection of the rights of women and the attainment of gender equality.<sup>120</sup>

### 3.6.6 Economic disempowerment

Economic empowerment is the capacity of women and men to participate in, contribute to and benefit from growth processes in ways that recognise the value of their contributions, respect their dignity and make it possible to negotiate a fairer distribution of the benefits of growth. Economic empowerment increases women's access to economic resources and opportunities including jobs, financial services, property and other productive assets, skills development and market information.<sup>121</sup> Economic empowerment is a human right.

The Commission found that SGBV and women's economic empowerment were closely interlinked. Violence at home and workplace hindered women to effectively participate in productive work such as farm work and other income-generating activities. SGBV in many instances resulted into loss of income and increased costs for women who experienced violence due to the costs of accessing services. It also lowers profitability of businesses through higher turnover, individual's work performance, increased health expenses, absenteeism and lateness to work.

118 [https://www.newvision.co.ug/new\\_vision/news/1476380/empower-women-economically-fight-domestic-violence](https://www.newvision.co.ug/new_vision/news/1476380/empower-women-economically-fight-domestic-violence)- Accessed on 14th February 2019.

119 <https://www.upf.go.ug/wp-content/uploads/2018/07/ANNUAL-CRIME-REPORT-2017.pdf>- Accessed on 14th February 2019.

120 <https://www.uwonet.or.ug/womens-rights-access-justice/>- accessed on 26th February 2019

121 <http://www.oecd.org/dac/gender-development/womenseconomicempowerment.htm>- Accessed on 18th February 2019.

In some cases, women who suffered domestic violence never had the opportunity to make decisions with regard to sale of their farm produce or domestic animals and other jointly owned family assets let alone sharing in the proceeds. A woman in Olwa sub-county, Amuria district wondered whether it was not a human rights violation for her husband to sell their domestic animals without her consent and in her absence. She had this to tell the Commission, *"While I was away, my husband sold our goat to somebody in the community and when I went to claim back the goat, I was accused of having stolen it."*<sup>122</sup>

This negatively impacted on women's economic empowerment, significantly impeding their ability to fulfill their true potential. Findings revealed that SGBV significantly undermined women's education, employment opportunities, income earning capability and advancement at work, all which ultimately negatively affected their economic empowerment, making them more vulnerable to more violence. It should be noted that economic empowerment can both decrease and increase SGBV.

Whereas there are government programs in place that include Uganda Women Entrepreneurship Program, Operation Wealth Creation and Youth Livelihood Program that would empower women and lessen their vulnerability to SGBV, they are still limited to a few groups, leaving out the majority of women. Besides, accusations of corruption such as the officials taking a certain percentage of the funds from the groups, disbursing the funds to nonexistent groups as well as partiality in selecting the beneficiaries of the programs abound.

### 3.7 ACCESS TO JUSTICE FOR SGBV SURVIVORS/VICTIMS AND THEIR FAMILIES

The right of access to justice for women is essential to the realisation of all the rights protected under CEDAW and access to justice has fundamental elements of rule of law and good governance.<sup>123</sup> Access to justice is critical to the full enjoyment of women's human rights and to effectively addressing gender discrimination struggles that women experience in all spheres of life. In the absence of access to justice, people, and particularly women, are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.<sup>124</sup> Formal and informal justice systems work closely in promoting the rights of women affected by sexual and gender-based violence.

#### 3.7.1 Formal justice system

Formal justice systems derive their structure and power from the laws, policies and regulations as indicated in the legal framework. They operate as part of the government and are funded by the state. The formal justice systems include the courts, the police, the prisons and local council courts. They also include non-judicial mechanisms such as arbitration, mediation or restorative justice.<sup>125</sup> The Penal Code (Amendment) Act, 2007 provides for compensation and reparations in section 129B and later it leaves it to court to determine the actual amount of compensation to award.<sup>126</sup> Gender-based violence accounts for at least 50% of the cases within the criminal justice system, implying that gender-based violence cases contribute significantly to the case backlog in the justice system.<sup>127</sup>

122 Complaint raised by a woman participating in a road show organized by the Commission in Olwa sub-county, Amuria district on 5th February 2019.

123 CEDAW General Recommendation No. 33 (2015) on Women's Access to Justice.

124 <https://www.uwonet.or.ug/womens-rights-access-justice/> Accessed on 26th February 2019.

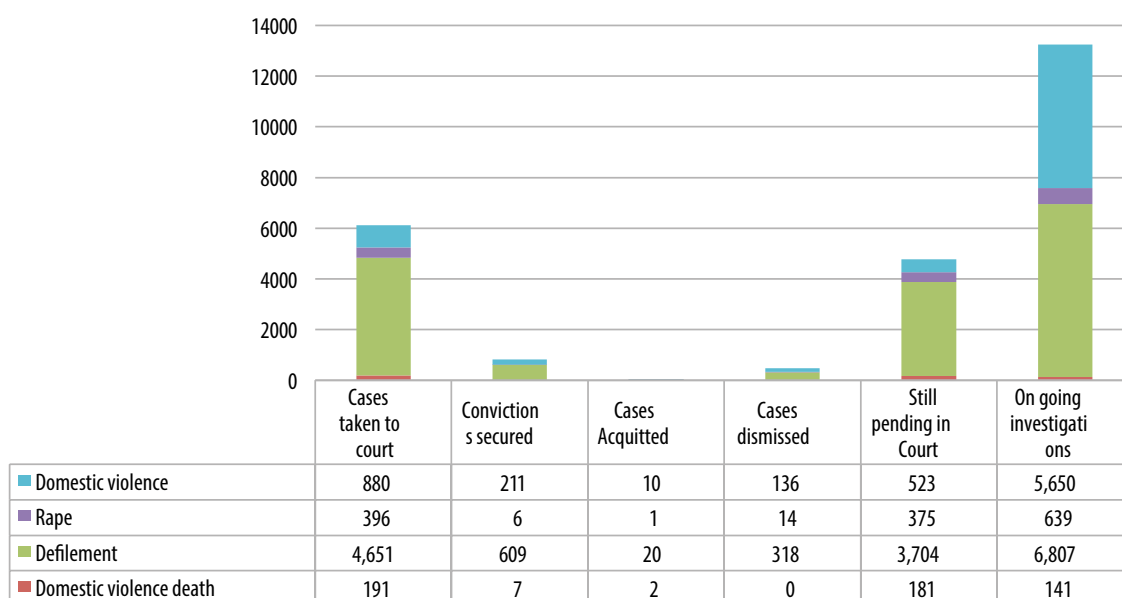
125 Working with the Justice Sector to End Violence Against Women and Girls, Justice sector module 2011, page 9.

126 ACORD Uganda (September 2010). Protection and Restitution for Survivors of Sexual and Gender-based Violence in Uganda, page 7.

127 [https://uganda.unfpa.org/sites/default/files/pub-pdf/UNFPA%20ANNUAL%20REPORT%202017%20WEB%20REVISED\\_0.pdf](https://uganda.unfpa.org/sites/default/files/pub-pdf/UNFPA%20ANNUAL%20REPORT%202017%20WEB%20REVISED_0.pdf) Accessed on 14th February 2019.

The findings revealed that there were formal redress mechanisms available for victims/ survivors of SGBV that included the probation and welfare office, the police, courts of judicature and local council courts.

FIGURE 6: SGBV CASES HANDLED BY POLICE AND COURTS OF JUDICATURE IN 2017



From the figure above, the conviction rate was quite low; below 30% in all the four forms of SGBV. The highest conviction rate was for domestic violence, at 24%, followed by defilement at 13.1%, domestic violence death at 3.7% and rape at 1.5%.

### 3.7.1.1 Challenges in accessing justice in the formal systems by SGBV survivors and their families

Whereas the mechanisms for accessing justice were found to be available, they had many challenges that impeded justice for the survivors and their families. These included:

- 1. Financial inaccessibility:-** Majority of the survivors and their families could not afford to pay for medical examination fees or legal fees to hire a lawyer.
- 2. Lack of legal representation for most SGBV victims;** Uganda lacks a legal aid policy, and there are still very few institutions and CSOs that provide free legal aid services or pro bono services.
- 3. Parents opting for negotiations:-** Owing to high poverty levels, many parents of victims of rape, defilement and SGBV, preferred to negotiate with perpetrators so as to settle matters out of court, which acts have often left victims without any form of redress.
- 4. Challenges in reporting:-** The long distances travelled by the victims and or their families to report SGBV, coupled by stigma from the community and discouragements by the Community Development Officer at the sub-county or Probation and Welfare Officer at the district local government headquarters often discourages victims from lodging their complaints.
- 5. Lack of facilitation to handle SGBV cases:-** Majority of offices mandated to handle SGBV cases such as the police and Probation and Welfare Office lack facilitation and accommodation / facilities to keep SGBV victims. Funding from local revenue at the district is not adequate to facilitate the probation and welfare office.

6. **Lack of skills and knowledge on how to handle SGBV cases:-** Majority of the Probation and Welfare officers as well as police officers charged with handling SGBV cases are not adequately trained or skilled handling these cases.
7. **Unfriendly environment in court;** many victims and survivors of SGBV are intimidated by courts of law and the formal justice process. The language used in court, the masculine court environment coupled with lengthy trials and processes have many times left victims and witnesses intimidated and therefore hesitant to testify, which has led to the loss of many SGBV cases.
8. **Weaknesses in enforcement of existing laws geared towards the elimination of SGBV:** - The continued failure to enforce existing laws that address SGBV has led to the continued escalation of SGBV cases and resulted in impunity by the perpetrator. It has also made victims and survivors of SGBV to lose hope in the criminal justice system.
9. **Reluctance of medical practitioners to examine victims:** - Some medical practitioners are reluctant to conduct medical examinations and assessments on victims of SGBV, for fear of testifying in courts of law, thus creating a challenge with obtaining expert evidence to adduce before court.
10. **Mistrust of the judicial system:** - There is continued mistrust of the criminal justice system arising from alleged and perceived corruption, which has made many victims hesitant to report their cases.

### 3.7.2 Informal or non-state justice mechanisms

Informal justice mechanisms, on the other hand, derive their power from social groups or community structures and are not part of government.<sup>128</sup> They include specific ethnic or faith communities, rituals or traditions, indigenous governance systems or local community organisations and they normally operate in community gatherings.<sup>129</sup>

Informal justice systems use identification of suspects, reconciliation and punishments depending on the kind of wrongdoing and the gravity of the matter as some of the methods for conflict resolution.<sup>130</sup> Informal justice mechanisms available were administered by civil society organisations, faith-based institutions, family and clan elders. The Commission found that the informal justice mechanisms were quick, accessible, used local language, had limited costs and followed procedures that were understood by all. It was also noted that the informal justice systems often aimed at the restoration of peace within communities by reconciling the parties to the dispute and the wider community. However, despite the advantages, the informal justice mechanisms were found to have the following challenges:

1. Acceptability of SGBV; wife battering is widely accepted, with 58% of women and 44% of men believing that it is justified for a man to beat his wife.<sup>131</sup>
2. Traditional structures in place were weak and easily corrupted.
3. Fear of shame by the affected parties that appeared in the informal redress mechanisms hindered survivors from accessing justice.

<sup>128</sup> Working with the Justice Sector to End Violence Against Women and Girls, justice sector module 2011, page 10.

<sup>129</sup> ACORD Uganda (September 2010). Protection and Restitution for Survivors of Sexual and Gender-based Violence in Uganda, page 8.

<sup>130</sup> *ibid*

<sup>131</sup> <http://noneinthree.hud.ac.uk/wp-content/uploads/2018/06/Uganda-policy-briefing-Apr18.pdf> Accessed on 14th February 2019.

### 3.8 RECOMMENDATIONS

There is need for strict enforcement of the Prohibition of Female Genital Mutilation Act of 2010 and laws against child marriages by UPF.

1. There is need for continuous sensitization of the masses at all levels about the dangers of SGBV and the need to refrain from it by both government and non-state actors.
2. The Ministry of Education and Sports should provide the basic necessities to facilitate girls' retention in school and completion, including the provision of food at school, provision of sanitary towels and sanitary facilities.
3. Government should adequately fund the criminal justice institutions like the Uganda Police Force, courts of judicature, probation and welfare offices and the directorate of Public Prosecutions, and provide adequate staffing. Funding from local revenue at the district is not adequate to facilitate the probation office.
4. Ministry of Health should spearhead training of health workers on how to handle victims of SGBV.
5. Government should, through the Ministry of Finance, Planning and Economic Development and the Ministry of Gender, Labour and Social Development, increase funding for Uganda Women Entrepreneurship Program, Youth Livelihood Program and other livelihood programs.
6. Ministry of GLSD and local governments at all levels should encourage survivors of SGBV to report their cases.

### 3.9 CONCLUSION

While gender inequality and discrimination were found to be the root cause of all forms of SGBV, various factors that included poverty, rigid gender roles, negative cultural norms, drug/alcohol abuse and moral degeneration also influenced the gravity and form of SGBV as they increased the risk and vulnerability of women to SGBV. Besides, SGBV is not a single kind of activity but it is a phenomenon that involves many activities that share some common features that ultimately have negative implications on a wide range of rights of women. It should also be noted that SGBV has intergenerational impacts. Therefore, beyond legal and policy changes, violence against women and girls can only end when societies challenge and condemn the norms and practices that propagate the act. Hence efforts to address SGBV and mitigate its impacts on the rights of women must take a human rights-based approach.

## CHAPTER 4

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# QUALITY OF FOOD IN UGANDA AND THE HUMAN RIGHTS CONCERNS

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## 4.0 INTRODUCTION

The right to food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The principal obligation in this right, is primarily upon the state to respect, protect and fulfill.<sup>132</sup> Over 95% of the households in Uganda access food items from the market at least once a year. The common traded foods include fresh fruits, vegetables, fresh staple foods, meat products, cereals, primary processed food flours, paste, ghee, honey, spices, frozen foods, imported processed foods, beverages, soft and hard drinks and baby foods.<sup>133</sup> The common places where food is sold in Uganda include local food markets along streets and highways, grocery stores, kiosks, supermarkets and at social events such as funerals, weddings and school events, among others.

Any person or company in Uganda, whether farmer or trader, is allowed to sell food items. However, cases of food adulteration and contamination have been reported in Uganda and these include presence of chlorine and microbial contamination in beverages and soft drinks, drug residues and formaldehyde in milk, pesticide residues in fruits and vegetables, coffee products mixed with husks and substandard agro inputs.<sup>134</sup>

This chapter will highlight the legal framework on the right to food, the human rights concerns on the quality of food in Uganda as well as the challenges and recommendations realized in ensuring that the food in Uganda is safe and fit for human consumption.

## 4.1 LEGAL AND POLICY FRAMEWORK

The right to food is enshrined in the international, regional and national legal framework. The main international and regional instruments that provide for the right to food include the Universal Declaration of Human Rights,<sup>135</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>136</sup> the United Nations Convention on the Rights of the Child<sup>137</sup> and the African Charter on Human and Peoples' Rights.<sup>138</sup>

The key pieces of legislation at the national level include the Constitution of the Republic of Uganda, 1995;<sup>139</sup> the Food and Drugs Act, 1959; the Agricultural Chemicals (Control) Act, 2006; the Uganda National Bureau of Standards Act, 1983; and the External Trade Act, 1953. Uganda also has numerous policies and sector plans of relevance to food quality and these include the Uganda Food and Nutrition Policy, the National Health Policy, the National Grain Policy, the National Standards and Quality Policy, the National Agriculture Policy, the Animal Feeds Policy, the National Environment Policy, the Uganda Nutrition Action Plan, the Agriculture Sector Strategic Plan, the Health Sector Strategic Plan, the Trade Sector Strategic Plan and the National Food Safety Strategic Plan.

The Commission monitored the right to quality food and emerging human rights concerns in selected districts in Uganda which included Kampala, Luweero, Mubende, Nakasongola and Mityana. Respondents included officials from the ministry of Health, KCCA, UNBS, Ministry of Local Government, market authorities and food vendors' local communities. The UHRC monitoring sought to analyse the situation of the right to food in Uganda and emerging human rights concerns.

132 CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), sections 6 and 15.

133 Presentation by Executive Director, Food Rights Alliance Uganda during the Commission's 21st Annual Report Stakeholders Consultative Meeting in January 2019.

134 Presentation by Acting Manager, Standards Department, UNBS during the Commission's 21st Annual Report Stakeholders Consultative Meeting on 14th January 2019.

135 Article 25 (1) of the Universal Declaration of Human Rights.

136 Article 11 of the International Covenant on Economic, Social and Cultural Rights.

137 Article 16 (2) of the International Covenant on the Rights of the Child.

138 Article 16 (2) b of the African Charter on Human and Peoples' Rights.

139 Objectives XIV (b), XXI, XXII and XXVII.

## 4.2 HUMAN RIGHTS CONCERNS ON THE QUALITY OF FOOD IN UGANDA

During the World Food Summit of 1996, the Food and Agriculture Organisation of the United Nations noted that “Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life”.

As a country, Uganda’s legal and policy framework shows its commitment towards ensuring that the food eaten by the people is safe and of good quality. The Uganda National Bureau of Standards (UNBS) was established with its main objective being to formulate and promote the use of national standards and to develop quality control and quality assurance systems that enhance consumer protection, public health and safety, industrial and commercial development and international trade, among others.<sup>140</sup> The objectives of the standards set by UNBS,<sup>141</sup> are to facilitate the production and distribution of products to enhance technology transfer and to protect life or health and safety of human beings, animals or plants and the environment at large.



◀ Variety of food in the market

Despite the existence of favorable policies and institutional frameworks for ensuring good food control systems, human rights concerns on food adulteration keep emerging from different parts of Uganda, putting the health lives of the people at risk. The key quality food factors arising from the common food markets include management at production, management at processing and value addition, management of storage and marketplaces, management of food imports and management of places of food preparation. The following are some of the key human rights concerns on the right to food quality noted by the Commission in year 2018.

### 4.2.1 Food adulteration and contamination

During visits to some of the markets, the Commission noted that generally Uganda is blessed with fresh foods such as vegetables and fruits, but unfortunately the quality is often compromised by the way the foods is handled. In an interview with an officer in charge of the directorate of Public Health and Environment at Kampala Capital City Authority (KCCA) under the unit of market and school inspections, the Commission noted that the quality of food especially fresh foods in the markets is good, only that it is poorly handled. The officer noted that while it is not possible to avoid the use of pesticides by farmers for various reasons, several other aspects lead to food adulter-

140 <http://www.eac-quality.net/the-sqmt-community/national-bodies/uganda-unbs.html>

141 'Uganda Standards Catalogue as at 31 December 2017'

<https://www.unbs.go.ug/attachments/menus/27/Uganda%20Standards%20Catalogue%20as%20at%2031%20December%202017.pdf>



ation and contamination such as carriage and transportation, among others. He further noted that most times, food is transported in open vehicles and that in an effort of trying to save space and accommodate more passengers, foods like vegetables and fruits end up being sat on during transportation to markets which is the beginning of adulteration and contamination.

In some markets visited by the Commission, tomatoes and vegetables especially cabbages and tomatoes, contained laced chemical residue of pesticides, putting the lives and health of consumers at risk. In an interview with a vegetable seller in Nakawa Market, she said, *“My role is to sell, and not to wash vegetables. It’s upon the buyers to make sure that they wash these residues that you see laced on the tomatoes. It is not possible to wash a whole truck of tomatoes. That would be an extra cost of water on my side”*.

In an interview with Dr. Tim Mateeba, a Senior Nutritionist at the ministry of Health, he noted that while there is a target on food vendors, market authorities and relevant MDAs to ensure that the quality of food is maintained, the community, as end consumers, should get back to the basics of regularly washing all fruits and vegetables before consumption. He said proper handling of food such as fruits and vegetables is important to avoid consumption of pesticide residues, adding that if this is not taken care of, pesticides are likely to lead to diseases such as cancer, leukemia and asthma, among others.

An official from KCCA stated that they often do street inspections to ensure that vendors do not sell food in ungazetted areas. However, even with the massive operations by KCCA, vendors still sell food in places that are often have high risks of food adulteration and contamination. Vendors continue to cook and sell food along sanitary lanes and septic tanks which pose high risks of food contamination and exposure to diseases like cholera and typhoid. Places noted for high poor food handling in Kampala included Kalerwe, Nansana and Arua Park, among others.



▲  
*Tomatoes laced with chemical residue of pesticides on display ready for sale in the market*



▲  
*Butcherries at Wobulenzi Market*

The Commission's findings also show that streets are common places where fruits are sold. Much as the fruits may contain nutritious value, there are a lot of risks posed with regard to adulteration and contamination, considering that these fruits are exposed to dust and germs all day. Poor hygiene by food vendors and manufacturers can also result into food adulteration and contamination on Uganda's market hence leading to loss of lives. For instance, in May 2018, at least five people died of cholera across the country after an outbreak had been confirmed in Kampala (Makindye division).<sup>142</sup>



◀ Vendors selling fruits and foodstuffs along the streets of Kampala

#### 4.2.2 Use of formalin in butcheries and substandard products on market

The media has been awash with stories of existence of food products unfit for human consumption on the Ugandan market raising key human rights concerns on the health of the people in the country. In December 2017, it was reported in the media that meat vendors / butcher shops especially in Kampala were using dangerous chemicals especially formalin commonly used to preserve dead bodies in hospitals. The beef traders were using formalin to preserve meat and keep flies away. An independent investigation was then conducted<sup>143</sup> which confirmed the allegations and revealed that a number of high-profile supermarkets which sell fresh beef were also found to be using inorganic salts and sodium metabisulphite, a commonly used disinfectant, to keep the meat 'fresh' by maintaining its reddish colour.

The Commission's interaction with KCCA officials on the issue of the use of formalin in butcheries revealed that KCCA had made efforts to make independent investigations in order to find out the chemicals allegedly being used by most butcheries. That during their operations, KCCA confiscated chemicals being used by meat vendors in several butcheries and later took the chemicals to the government analytical laboratory to test and establish whether indeed they were formalin. Authorities established that some butcheries were using an agricultural pesticide used to kill flies called 'clofenvinfos' disguised under the brand name 'Sumani'. The tests also revealed that relative amounts of the chemical were in the meat samples.

KCCA officials further informed the Commission that after the operations in most butcheries within Kampala, six people were arrested from Nakasero and Ndeeba markets and the suspects were taken to courts. Some of them were prosecuted and sentenced to eight months' imprisonment which was a deterrent measure call for other meat vendors to desist from the vice. KCCA has also embarked on a mass sensitisation for traders on the risk of using chemicals in butcheries.

142 "Cholera outbreak confirmed in Kampala". The Observer, 7th May, 2018. <https://observer.ug/news/headlines/57630-cholera-outbreak-confirmed-in-kampala.html>

143 "Butchers treating meat with drugs meant for dead bodies" in New Vision of 4th January 2018. <http://www.newvision.co.ug>

In an interview with a veterinary doctor at Kampala City Abattoir, Dr. Deborah Namugenyi, she noted that there are five doctors stationed at the said abattoir to ensure that beef inspections are done on a daily basis and to ensure that the animals slaughtered are in good condition and free from disease.

Both antemortem and postmortem inspections are conducted because the animals are brought from almost every part of the country. Every animal must have a movement permit. Verification is made by respective districts on the health of the animals and after slaughtering, the meat is stamped. According to Dr. Namugenyi, meat that is condemned is immediately banned and sent to the incinerator. She added that the use of chemicals like formalin probably happens in the butcheries, but not in the abattoirs.

In 2018, KCCA arrested attendants in two butcheries in Ntinda, a suburb of Kampala, after being found with a chemical they claimed was used to keep flies away.<sup>144</sup> Eleven butcheries were closed for failing to adhere to the established meat hygiene standards thus putting customers at risk of infections such as typhoid and diarrhea. Nine of the eleven butcheries were in Kalerwe, a Kampala suburb, at a busy roadside marketplace on Gayaza road, while the other two were in Ntinda, Nakawa division.<sup>145</sup>

Reports from the media raised key human rights concerns on the right to health and life of the people consuming the adulterated and contaminated food products. Media reported that eating food contained with chemicals like formalin can cause irritation to the stomach, vomiting, dysentery and cancer while ingesting high amounts of pure sodium metabisulfite may cause nausea, vomiting, diarrhea, abdominal pains, circulatory disturbance and central nervous system depression.<sup>146</sup>



*Top: a sample of stale meat retrieved from the supermarket store by KCCA team*

*Bottom: One of the unregulated preservatives used on meat*



*KCCA Inspectors examine meat at the market*

<sup>144</sup> Daily Monitor newspaper of 5th January 2018.

<sup>145</sup> Daily Monitor newspaper of 5th January 2018.

<sup>146</sup> "Butchers treating meat with drugs meant for dead bodies" New Vision, 4th January 2018. <http://www.newvision.co.ug>

### 4.2.3 Processed foods in shops and supermarkets

According to KCCA Public Health office, most supermarkets comply with national standards regarding quality control. According to the KCCA officials, they constantly monitor the supermarkets to ensure that they comply with standards. However, KCCA indicated that they are not able to do this on a daily basis due to inadequate human resource.

During an interview with a customer, one anonymous buyer in a supermarket, she noted, “Much as we may question the quality of food on the Ugandan market, most times we do not even know what is entailed on the labels. As Ugandans, we never even bother to know what components or ingredients are contained in food, especially the processed foods that we consume. Worse still, we are not keen to even check on expiry dates for goods. For example, right now I have just picked items from the shelf and put on the trolley. Most times one discovers an expiry date or a spoiled item after they have long reached home.”

In another random interview with a supermarket attendant who sought to remain anonymous for the safety of her job, she said, “Supermarkets just like any other businesses do not want to make losses; therefore, sometimes they hire people purposely to change expiry dates in order for the goods to have a longer shelf life. They bought special pens to inscribe new dates. In as much as we as workers know that this is hazardous to life, just because I want my job, the best I can do is just watch and keep quiet about it”.

The Commission’s findings also show that with the emergence of social media and smartphones, the public has been very helpful in alerting and causing alarms about supermarkets or shops that sell food with molds, or damaged food. In an interview with one of the supermarket supervisors, he noted that the best way to constantly preserve food is to ensure it is refrigerated. He also noted that in this era of smartphones, we are too cautious of keeping anything that is spoiled in the supermarket because before too long, you will find it on social media which is very dangerous for business.

In May 2017, KCCA closed the meat section of Shoprite Supermarket at Lugogo mall following an impromptu inspection at the supermarket’s cold room, processing room and the shelves by the authority’s public health team. Findings revealed that the supermarket kept, in its cold room, stale meat which was not fit for human consumption.<sup>147</sup> **On 2nd October 2018, UNBS closed Sunshare factory, makers of Lucky brand of juices, over failure to comply with** set standards in its production processes.<sup>148</sup> Laboratory analysis carried out by UNBS on product samples submitted for testing indicated high levels of free chlorine in the juice, contrary to the standard requirements of having juices and non-carbonated drinks free from chlorine. High levels of chlorine results in production of toxic substances that may lead to damage of internal body organs.<sup>149</sup>

### 4.2.4 Chemicals in food products

The National Environment Act, 1995 defines a chemical as a substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature. It says chemicals include industrial chemicals, pesticides, fertilizers and drugs. Chemicals if not used well, end up in food products in different forms from the time the food is produced in the farms, processed in homes, factories, industries and marketed to the general public for consumption.<sup>150</sup> Majority of the population in Uganda are not conscious about the dangers of chemicals and, consequently, they neither have respect for them nor knowledge on how to handle them appropriately.<sup>151</sup>

147 Daily Monitor newspaper of 17th May 2017.

148 Daily Monitor newspaper of 4th October 2018.

149 Ibid.

150 Survey report on hazardous consumer products on Uganda market by National Association of Professional Environmentalists (NAPE).

151 NAPE (May 2010). National Assessment Report on Policy and Legislation of Chemicals Management in Uganda.

#### 4.2.5 Chemicals in agricultural products

**The Control of Agricultural Chemicals Act** defines agricultural chemicals to include; a pesticide, chemical fungicide, insecticide, nematocide, herbicide, acaricide, bactericide, rodenticide, molluscicide, avicide, fertiliser, growth regulator or any other chemical or material used for agricultural purposes. Farmers in Uganda use chemicals such as herbicides to kill weeds or prevent their normal growth because the use of chemicals offers a cheaper and faster way of killing weeds.<sup>152</sup> Pesticides are used to kill pests, including insects, rodents, fungi and unwanted plants (weeds), while fertilizers, on the other hand, are used by farmers to help boost their yields. Despite the advantages of agricultural chemicals, there are disadvantages associated with their use. It has been reported<sup>153</sup> that when wrongly used, herbicides are harmful to the soil and toxic in nature and can cause eye, skin and respiratory problems; they can also pollute water sources when they are carried by runoff rainwater or go into the soil and eventually find their way into the water sources.

Some farmers use unauthorized pesticides or fertilizers that contain heavy metals including lead and cadmium while other farmers use excessive fertilizers like nitrogen which can result in nitrogen accumulation in crops and as a result become harmful to consumers, leading to health complications such as vitamin A deficiency and cancers. Research conducted by Research Gate<sup>154</sup> in Wakiso and Pallisa districts found out that farmers thereof used pesticides which when used wrongly pose health hazards to people.

#### 4.2.6 Processed foods, preservatives, sweeteners and artificial colors in food products

Manufacturers use preservatives such as nitrites, sulfites and salt in processed foods and meat products to limit the growth of microorganisms and increase shelf life. The Commission's findings show that the ministry of Health (MoH) encourages addition of some nutrients in some foods in order to counter the problem of micronutrient deficiencies majorly due to the insufficient intake of vitamin A, iron and iodine from the local diet. According to Dr. Mateeba, for the ministry to manage the problem of micronutrient malnutrition within the population, it is important to encourage the increased intake of key nutrients through the provision of fortified foods, which are consumed as part of the local diet, and that this is in conformity with the Food and Drugs (Food Fortification) Regulations, 2005. He added that it is, therefore, important for producers to add adequate amounts of vitamins and nutritious minerals and that they should use appropriate nutrient forms as provided for in the national standards. He, however, noted that most businesses want to maximize profits and; so, most times the appropriate measurements are not used yet many go without close monitoring of their factories or businesses thus causing the danger of compromising the quality of the food, which may be dangerous for human consumption.

Dr. Mateeba also said that much as there are no direct statistics which show the number of people who have died as a result of eating processed and packed foods, artificial substances such as sweeteners, oils, colours and preservatives are a public concern. He said sweeteners mostly contain sugars which essentially contain empty calories with no single nutritional value and some of these items are harmful to the heart and the digestive system which is one of the triggers for diabetes, fatigue and heart diseases. Over consumption of preservatives increases health risk and, according to Cleveland Clinic,<sup>155</sup> sulfites have been implicated as a cause of asthma symptoms that range from mild wheezing, to potentially life-threatening asthmatic reactions. Wrong use of chemicals in different stages of food production can lead to loss of life. For instance, in April 2010, 80 people died

152 Daily Monitor newspaper of 9th October 2013.

153 <https://www.monitor.co.ug/Magazines/Farming/What-farmers-need-to-know-about-using-herbicides/689860-2024308-13xjlv5/index.html>

154 [https://www.researchgate.net/figure/Classification-of-pesticides-used-by-small-scale-farmers-in-Wakiso-and-Pallisa-Districts\\_tbl1\\_266974312](https://www.researchgate.net/figure/Classification-of-pesticides-used-by-small-scale-farmers-in-Wakiso-and-Pallisa-Districts_tbl1_266974312)

155 "Sulfite Sensitivity" See <https://my.clevelandclinic.org/health/articles/11323-sulfite-sensitivity>

of methanol-laced gin in Kabale kistrict after local brewers mixed large amounts of methanol in waragi, a gin extracted from bananas.<sup>156</sup>

millions of lives at risk.<sup>158</sup>

#### 4.2.7 Fishermen using poison to catch fish

There are concerns that Ugandans are at the risk of suffering from gastric cancer due to consuming suspected poisoned fish from lakes Victoria, Albert and Kyoga as fishermen have resorted to using poison to catch fish.

According to the Uganda People’s Defense Forces Fish Protection Unit report, it was stated that “Chemicals are used to lure the fish to a particular area within the lake and in the process; they die and float on water before they are picked by the fishermen.”<sup>157</sup> that the report blamed weak enforcement operations at the border points of Uganda that had promoted illegal fishing in the waters as a result of the flooding of poor fishing gear into the country especially from China. The types of illegal fishing gears reportedly imported from China include monofilament nets, which cost about UGX 75,000. These are chemically made nets with an electric spark, which once cast into the water, attracts all sorts of fish.



*Maize and groundnuts contaminated with aflatoxins*

#### 4.2.8 Presence of aflatoxins in foodstuffs

Aflatoxins are poisons or highly toxic substances produced by moulds or fungus which grow on grains once the grain is not properly stored under proper conditions of temperature and moisture. These moulds contaminate foodstuffs and feeds such as maize, groundnuts and soybeans, particularly in the tropical and sub-tropical regions, including Uganda. People are exposed to aflatoxins by eating contaminated plant products or by consuming meat or dairy products from animals that ate contaminated feeds. A report released by the Partnership for Aflatoxin Control in Africa (PACA) indicates that 45% of grains produced in Uganda are contaminated with aflatoxins, during transportation and poor post-harvest handling at farm level, putting

Despite the government’s efforts to step up countrywide campaigns led by the ministry of Agriculture, Animal Industry and Fisheries, the continued damage caused by aflatoxins, has an economic impact to the country.

156 “80 people die of methanol-laced gin in Uganda” <https://www.reuters.com/article/ozatp-uganda-alcohol-idAFJ0E63M0HL20100423>, 23rd April 2010.

157 “Fishermen using poison to catch fish – marine officer”. Daily Monitor newspaper of 7th November 2017.

158 <http://www.panafrican-med-journal.com/content/series/27/4/11/full>

According to the International Agency for Research on Cancer (IARC) of the World Health Organisation (WHO), the biggest and best known health effect of aflatoxin is liver cancer and up to 28.2% of the annual global liver cancer cases are attributable to aflatoxin exposure and 40% of these cases occur in Africa, making liver cancer the top cause of cancer mortality on the continent.

The Uganda Aflatoxin Control Action Plan has been developed to leverage available strengths and plug the weaknesses/challenges, thereby contributing towards effective management of aflatoxin along the food and feed value chains.

**TABLE 7: AFLATOXINS IN BABY FOODS IN DIFFERENT MARKETS IN UGANDA**

INFANT FOOD	AFLATOXIN (PPB)
Maize/soya/fish	20 – 50
Whole millet	10 – 20
Conflakes (Imported)	10 – 20
Cerelac (Imported)	0
Gnut pastes	0 – 65
Soya/millet	0 – 35
Gnuts/simsim	0 – 48
Instant maize flour	0 – 18
Bagiya	0 – 34
Rice porridge	0 – 5
Nkejje flour	0 - 16

Ministry of Health is making efforts to ensure that baby foods are regulated especially in the regulation of food supplements that are likely to hinder mothers from breastfeeding. Dr. Tim Mateeba, a Senior Nutritionist at the ministry of Health, noted that most times weaning of children is not done well because children get introduced to unhealthy and non-nutritious foods at a tender age which introduces them to poor eating habits which they tend to carry on even as adults. He said the supplements should not be detrimental to the health of children. He noted that it is no wonder that children as young as five years are reported with diabetes, high blood pressure and poor sight, although sometimes this is attributed to poor eating.

### 4.3 CHALLENGES IN ENFORCEMENT OF THE RIGHT TO QUALITY FOOD IN UGANDA

#### 4.3.1 Inadequate provisions in the food safety and regulatory framework

The Food and Drugs Act, 1959 is outdated and does not respond to current challenges regarding food safety. The law carries the thinking of the 1950s; a time when the technology, environment and health effects had not become so prominent and little was known about these issues. The legislation is, also in many areas, outdated and patchy in dealing with present-day problems in consumer protection. There are also no regulations, guidelines and standards in place to address the issues regarding the right to food. The law therefore suffers from inadequate penalties for the offences it creates. A fine of two thousand shillings to date is meaningless and does not deter any criminal activities.

The drug component was operationalized in 1994 but efforts to operationalize the food component have not been successful for over 25 years. There are no regulations, guidelines or standards in place and we lack of a list of prohibited chemicals for the purposes of consumer protection.

#### 4.3.2 Institutional weaknesses

Uganda National Bureau of Standards (UNBS) was established with the main objective of

formulating and promoting the use of national standards and developing quality control and quality assurance systems that enhance consumer protection, public health and safety, among others. Over 900 Ugandan standards have been developed to cover all value chains and farm-to-table, putting emphasis on hygiene and good agricultural and manufacturing practices and quality and safety parameters specified to protect consumers. According to UNBS, there has been a significant improvement for the last 15 years as indicators are provided in standards. However, the free market has resulted into importation of substandard products while a number of local producers do not apply standards. UNBS has stepped up measures to ensure the realisation of adequate food quality and these include mandatory certification effective January 2019.

UNBS has made efforts to fight fake products on the Uganda market. However, these efforts are a drop in the ocean since the implementation of its mandate is inadequate. UNBS still faces challenges of inadequate staff, weak infrastructure and inadequate consumer awareness in demanding quality products and services. The UNBS Strategic Plan 2015-2020 recognizes these challenges and efforts are geared at removing the bottlenecks in order to meet UNBS’ vision and mission.<sup>159</sup>

There is no specific institution in place to handle the food aspect in Uganda. Even though UNBS does some selected work relating to food quality, little is achieved since monitoring of quality and safety of food is not its only responsibility. It was only the drug component that got operationalized, under the Food and Drug Act by creating the National Drug Authority. Unfortunately, no food authority was created, which left food with no regulatory body to adequately monitor it. The ministry of Agriculture, Animal Industry and Fisheries ensures food production, but food quality is not emphasized; there are no safety requirements and standards put in place.

The Food and Nutritional Bill 2007 is intended to provide for: the enjoyment of the right to food; the establishment, objects, functions and composition of the Food and Nutrition Council; the establishment of food and nutrition committees at district and sub-county levels and for their functions; and the roles of the various public authorities in the implementation of the act and for other related matters. The bill also outlines the line ministries which will compose the Food and Nutrition Council, which is a positive step by the country to address the issue of food quality. Unfortunately, the Food and Nutrition Bill has taken too long to be enacted.

#### 4.3.3.1 Limited awareness by the population

The level of awareness regarding food safety is low. The population is largely unaware of the dangers of the chemicals present in the products they use or consume and are equally ignorant of their roles in the control of the use of these chemicals.



◀ Chapati and rolex stalls in dusty and unhygienic surrounding

#### 4.3.3.2 Poor coordination of institutions at the national level

159 UNBS Annual Report FY 2016 - 2017.



The Commission notes that limited implementation of laws and policies regarding food safety by the relevant bodies can be mainly attributed to uncoordinated interventions among agencies, weak inspection capacities and lack of clarity on roles and responsibilities of various MDAs. The key institutions involved are Ministry of Trade, Tourism and Industry; Ministry of Health; Ministry of Agriculture, Animal Industry and Fisheries; Ministry of Gender, Labour and Social Development; National Drug Authority; Uganda National Bureau of Standards; and National Environment Management Authority. All these institutions are inadequately funded and inadequately staffed, which makes the monitoring of food safety hard to implement.

#### **4.4 RECOMMENDATIONS**

1. Parliament should amend the Food and Drugs Act (1959) and the Food and Nutrition bill should be put into law.
2. There is need for a realistic, far-reaching and influential national policy on chemicals research in reference to their toxicology.
3. There is need for more cooperation and collaboration between the various bodies whose mandate affects the right to quality food and to establish a clear structure for collaboration.
4. There is need for continued sensitization and advocacy to citizens on their right to food (quality food) by responsible MDAs including UNBS, MoH, Ministry of Agriculture and civil society organizations.
5. Farmers and all value chain actors should ensure good agricultural practices (GAPs) such as timely planting, timely weeding, adequate pest and disease control, proper harvest and post-harvest handling practices, along the value chains to ensure quality.
6. A specific government institution dealing with food should be established to take care of food quality issues in Uganda.
7. Uganda National Bureau of Standards should be equipped with high technology to deal with food quality in Uganda.

#### **4.5 CONCLUSION**

The right to quality food stretches to a broad spectrum of rights including the right to life, right to health and right to human dignity. Ensuring food quality and safety in the country's food system is everyone's responsibility. However, the principal obligation in this right lies primarily upon the state which has to respect, protect and fulfill this right.

## CHAPTER 5

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# THE RIGHT TO ADEQUATE HOUSING IN SELECTED DISTRICTS OF UGANDA IN 2018

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## 5.0 INTRODUCTION

The Commission's 14<sup>th</sup> annual report (2011) to Parliament of Uganda reported on the state of the right to adequate housing in Uganda, within the context of rural-urban migration.<sup>160</sup> The report contained, among others, concrete actionable recommendations to various relevant stakeholders for improvement of the state of the right to adequate housing in the country. Seven years after the recommendations, the Commission monitored the progress on the state of the right in 2018 in line with Goal 3 of the Sustainable Development Goals.

The assessment was conducted in 20 districts in the four regions of Northern, Central, Western and Eastern Uganda.<sup>161</sup> The assessment was preceded by two UBOS surveys; National Population and Housing Census (NPHC) 2014 and Uganda National Household Survey (UNHS) 2017 which reports provide qualitative and quantitative information on the subject under assessment. During this survey, the Commission targeted households in both the rural and urban settings and different interest groups such as women, PWDs, older persons and children, among others, to enable appreciation of unique peculiarities and experiences by different groups.<sup>162</sup>

This chapter, therefore, presents the Commission's findings on the state of the right to adequate housing in selected districts in Uganda and it is structured as follows: the meaning and scope of the right to adequate housing; the international, regional and national legal and policy framework; analytical discussion on the right to adequate housing and human rights concerns; positive developments that took place after the 2011 report; and challenges and recommendations to the various stakeholders to improve the state of this right in the country.

## 5.1 MEANING AND SCOPE OF THE RIGHT TO ADEQUATE HOUSING

The right to adequate housing means the right to live somewhere in security, peace and dignity.<sup>163</sup> It is integrally linked to other human rights. The Global Strategy for Shelter to the Year 2000 of the UN Commission on Human Settlements states, "Adequate shelter means more than a roof over one's head: it means adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost"<sup>164</sup>. The UN Special Rapporteur on adequate housing defined adequate housing as "*the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity*".<sup>165</sup>

Therefore, the right to adequate housing is not restricted to merely having shelter to the exclusion of interrelated rights such as health, property and protection of the family. Human rights are indivisible and interdependent; so, the right to adequate housing cannot be separated from the other rights such as sanitation, water, education and healthcare.<sup>166</sup>

Thus, housing is not adequate if its occupants lack security of tenure against forced evictions, harassment and other threats; if its occupants do not have safe drinking water, adequate sanitation and energy for cooking, heating, lighting, food storage or refuse disposal; if its cost threatens or

160 Chapter 10 of UHRC's 11th Annual Report submitted to Parliament of Uganda.

161 The Commission monitored the right to adequate housing in these 20 districts: Gulu, Amuru, Kole, Lira, Kitgum, Lamwo, Pader and Agago for Northern Uganda; Kayunga, Mpigi, Gomba and Buikwe in Central region; Bugiri, Bududa, Luuka, Mayuge and Jinja in Eastern Uganda; and Kagadi, Kakumiro and Kiryandongo district in Western region.

162 A total of 130 persons were interviewed; 56 were from the rural areas; 23 of whom were female and 33 male. In the urban centres, 74 were interviewed: 27 females and 47 males. Overall, 50 females were interviewed in this process.

163 CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant). Paragraph 7.

164 See UN Commission on Human Settlements' Global Strategy for Shelter to the Year 2000.

165 Miloon Kothari, former United Nations Special Rapporteur on adequate housing (2000 to 2008).

166 South African Human Rights Commission. The Right To Adequate Housing - Fact Sheet, paragraph 2.

compromises the occupants' enjoyment of other human rights; if it does not guarantee physical safety or protection against the cold, damp, heat, rain, wind or other threats to health and structural hazards; if the specific needs of disadvantaged and marginalized groups are not taken into account; if it is cut off from employment opportunities, health-care services, schools, childcare centers and other social facilities; if it is located in polluted or dangerous areas; and if it does not respect and take into account the expression of cultural identity.<sup>167</sup> Therefore, in order to assess the right to adequate housing, all these components must be considered as part and parcel of the right to adequate housing.

## 5.2 INTERNATIONAL, REGIONAL AND NATIONAL LEGAL/POLICY FRAMEWORK

The right to adequate housing is provided for in a number of international human right instruments. Article 25 of the UDHR recognizes the right to an *adequate standard of living including housing*. Article 11 (1) of the ICESCR reiterates the provision in the UDHR and further provides for the 'continuous improvement of living conditions'. Article 5 (e) (iii) of the CERD<sup>168</sup> prohibits discrimination on the basis of race, colour, national or ethnic origin in regard to the right to housing. Article 8 (1) of the Declaration of the Right to Development provides for the state to take measures to realise the right to development which includes equal opportunity to access housing.

Furthermore, Article 14(2) (h) of the CEDAW provides for non-discrimination in enjoying 'adequate living conditions particularly in relation to housing'. Article 27(3) of the CRC requires the state to provide material assistance and put in place support programmes particularly with regard to the right to adequate housing for children.

Regionally, although the right to adequate housing is not explicitly provided for in the ACHPR, it has been interpreted as an 'outcome' of the enjoyment of the best attainable standard of physical and mental health, the right to property and the protection of the family which are construed from articles 14, 16 and 18 of the ACHPR read together. Article 20 (2) (c) of the African Charter on the Rights and Welfare of the Child reiterates Article 27 (3) of the CRC. Article 16 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa expressly provides for the right of women to access adequate housing.

Nationally, Objective XIV of the National Objectives and Directive Principles of State Policy departs from the international standards relating to 'adequate housing'. Instead, it provides for the right for all citizens to enjoy access to 'decent shelter'. This is a narrow and restricted interpretation that excludes the other critical aspects of security, peace and dignity which are essential components of the right to adequate housing.

In spite of this divergence, Article 45 of the Constitution permits the interpretation and application of other rights not expressly provided for in chapter IV of the Constitution. On this basis, the broad interpretation and application of international standards on the right to adequate housing is applicable to Uganda given that she is signatory to international instruments stated above. Other national legislations related to the right to adequate housing such as the Land Amendment Act and the Rent Restriction Act are inadequate. However, the National Housing Policy, 2016 stands to bridge the gap in the legislation as highlighted below.

167 CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), paragraph 8.

168 The Convention on Elimination of All Forms of Racial Discrimination, 1966.

### 5.3 OVERVIEW OF THE NATIONAL HOUSING POLICY, 2016

The National Housing Policy, 2016 is the principal policy document on the right to adequate housing in Uganda. It is envisioned to promote “access to adequate housing for all”. The sole goal of the policy is “to provide a framework within which to provide adequate housing for all”. The policy is progressively framed to achieve the following specific objectives:

1. To increase the production of adequate housing for all income groups, from the current 60,000 to 200,000 housing units per annum to meet the housing need by 2022.
2. To improve the quality of the existing housing stock.
3. To promote efficient utilization of energy and other resources in housing.
4. To increase access to affordable housing.
5. To improve security of land tenure.
6. To improve the mechanisms for development and management of real estate industry.

The policy recognizes “adequate housing” as a human right that must be realised for all and it imposes obligations on Government of Uganda to provide an enabling environment to stimulate housing development as well as to directly intervene in housing production for specifically targeted groups. Additionally, the policy also recognizes the role of different players including individual households and the private sector in attainment of this right. It furthermore recognizes the positive contribution of housing in the socio-economic development of Uganda.

The policy stresses the need to preserve the environment in delivering the right to housing and promotes the use of local building materials and technologies that are environmentally sound with low carbon footprint. It also aims to harness private partnership in delivery of the right to housing in Uganda in line with Goal 17 of the Sustainable Development Goals. The policy seeks to promote densification of housing in urban areas and aims to integrate gender, HIV/AIDS, vulnerability and the environment into account in the course of housing development. Other pertinent policies in Uganda include the National Land Use Policy (2013), the National Slum Upgrading Strategy and Action Plan (2008).

### 5.4 POPULATION AND THE HOUSING SITUATION IN 2018

The Commission established that the general state of the right to adequate housing in the selected districts is progressively improving in both rural and urban areas.<sup>169</sup> Significant improvement in quality and quantity of housing was reported and observed in all the three regions (20 districts). This finding correlates with Uganda Bureau of Statistics’ Uganda National Household Survey, 2017 finding which indicates significant increase in the number of housing units from 6.7 million in 2014 to 7.2 million in 2017. In terms of quality, demonstrated effort by most households to construct new or improve on existing housings (from mud-wall grass-thatched housing to brick-wall iron sheet-roof housing) was observed in most assessment areas in 2018. According to UBOS, the proportion of housing units with iron sheet roof increased from 69% in 2014, to 75% in 2017 and the proportion of housing units with brick walls increased from 44% in 2014 to 67% in 2017; and this has had a corresponding reduction in the proportion of housing with walls of mud and poles from 46% in 2014 to 23% in 2017.<sup>170</sup>

169 UHRC interviews with respondents in the various regions.

170 UBOS (2017). Uganda National Household Survey.

This positive trend continued in 2018 in rural and urban areas in all the districts monitored. For instance, there was evident increase in the number of housings with iron sheet roof in the districts of Kampala, Jinja, Mpigi, Kagadi, Kakumiro, Luuka, Gulu, Lira, Oyam and Apac. This conforms to UBOS finding which indicates that the number of housing with iron sheet roof increased in rural areas from 65% in 2014 to 69% in 2017.

However, the Commission noted the uneven trend in improvement where majority of housing in districts such as Amuru, Nwoya, Lamwo, Agago, Otuke, Alebtong and Kwanja were grass-thatched. Although there was improvement in walling of most housing in those districts, (from mud and poles to brick walls<sup>171</sup>), the inclination towards grass-thatched roof was attributed by many respondents to the need to keep the housing cool from the harsh sunshine during the dry season.

The above improvements notwithstanding, the housing situation in the country remains inadequate in terms of quality and quantity in both rural and urban areas. In regard to quantity, currently, there are 37.7 million people in Uganda, predominantly rural-based (76%) and urban dwellers at 24% consisting of an estimated 7.3 million households<sup>172</sup> living in 6.2 million housing units.<sup>173</sup> In 2016, the ministry of Lands, Housing and Urban Development estimated housing backlog<sup>174</sup> in Uganda at 1.6 million housing units with about 210,000 housing units required in urban areas while 1.395,000 million units were required in rural areas.<sup>175</sup> It is projected that by 2022, Uganda's population will be about 45 million people.<sup>176</sup> With the current average household size of five persons, the housing need resulting from population growth will be about three million housing units. It is estimated that it will take Uganda 20 years to meet the housing needs of all citizens if the current policy estimate of 200,000 new housing units per year is strictly observed and fully funded. This reflects a much slower pace than expected, considering the current need.

In 2014, close to half a million people were enumerated as homeless/floating population.<sup>177</sup> The magnitude of this concern was estimated to have increased to about 800,000 people in 2018 given the population increase from 34.6 million in 2014 to about 37.7 million in 2017. This mirrors a fraction of the population who dwell on streets and in stores and car garages in major towns such as Jinja, Gulu, Lira, Mpigi, Kayunga and Kampala Metropolitan Area.

The Commission also established the existence of many substandard housing units in most towns especially in the informal settlements (slums) in the districts of Jinja, Lira, Gulu, Kagadi, Mpigi, Kayunga, Bugiri and Kampala Metropolitan Area. According to the ministry of Lands, Housing and Urban Development, an estimated 900,000 housing units are substandard and need replacement or upgrading.<sup>178</sup>

Other than being substandard, such informal settlements lack many other essential components of the right to adequate housing including availability and accessibility of social services. This, therefore, calls for slum upgrading.



◀ Left: view of substandard housing units found at Katanga in Wandegaya, Kampala city.

Right: Houses in Kisenyi slums

171 Ibid

172 Household means a group of persons who normally live and eat together sharing the same basic amenities and services.

173 UBOS. Uganda National Household Survey, 2016/2017, page 20.

174 Housing backlog refers to the difference between the housing need and the existing housing stock.

175 Uganda National Housing Policy, 2016, pages 5 and 24.

176 The Uganda National Housing Policy, 2016.

177 National Population and Housing Census main report, 2014, page 47.

178 The Uganda National Housing Policy, 2016, page 5.

## 5.5 AN ASSESSMENT OF THE HOUSING SITUATION IN UGANDA

As noted in part 2 of this chapter, the right to adequate housing consists of essential pillars that must be comprehensively and holistically addressed for the right to be realised. Each of the pillars is discussed below in light of the Commission findings.

### 5.5.1 Legal security of tenure

Legal security of tenure is a right that seeks to guarantee legal protection against forced and arbitrary evictions, harassment and other threats.<sup>179</sup> This applies to all forms of housing, including private ownership, rented accommodation, community ownership, cooperative housing and informal housing.<sup>180</sup>

Legally, the protection against forceful or arbitrary eviction is deeply rooted in the Constitution. Article 26 recognizes the right of every person to privately own property (including land) and prohibits arbitrary deprivation of property<sup>181</sup> while Article 237 vests ownership of land to citizens. According to UBOS' UNHS 2017, 72% of households in Uganda live in owner-occupied dwellings (83% in rural areas and 44% in urban areas) and this was confirmed by respondents in all the districts under consideration. Women and other marginalized groups have been accorded special security of tenure in articles 32 to 35 which prohibit discriminatory practices that undermine this protection. UBOS in its Women and Men in Uganda: Facts and Figures 2016 report indicates that 64% and 59% of women individually owned a house and land respectively compared to their male counterparts at 39% and 43% respectively.

The above female dominance is only confined to financially able urban women with stable income. Otherwise, only 10% of rural women own land while 90% only enjoy user rights (usufruct rights). Majority of rural women were reported to be susceptible to home eviction by their spouses or in-laws in the case of widows and their land sold off for economic gain.

This was reported to be very common in districts of Acholi and Lango sub-regions and in the eastern districts of Bugiri and Luuka. Furthermore, the Land (Amendment) Act<sup>182</sup> provides for spousal security of occupancy on family land in regard to any land transaction. Although spousal informed consent is legally required, very few rural women know and utilize this legal protection.

Additionally, the Land (Amendment) Act 2010 protects *bona fide* and *lawful* occupants (squatters) from eviction from private or public land without prior compensation being paid or resettlement.<sup>183</sup> However, households who live on public land such as government ranches and protected areas such as game and forest reserves were less secure and often faced eviction, harassment and intimidation by state agencies.<sup>184</sup> Similarly, the households who live on private land or private *Mailo* also faced forced eviction without due consideration of the safeguards provided for in the Land (Amendment) Act 2010 as shall be seen in the next section.

Regarding rental housing, the Rent Restriction Act, 1959 and the Distress for Rent (Bailiffs) Act, 1933 are obsolete and outdated, and unable to provide the required protection. According to UBOS 2017, 22% of the households in Uganda live in rental housing with (48%) in urban areas and (11%) in rural areas. UBOS established that landlords were "*lords*" and as such wielded unchecked power and imposed unfair tenancy terms including making the decision on when to increase rent and mode of payment, including *payment in United States dollars*.

179 CESCR, General Comment No. 4.

180 Amnesty International (2010). Haki Zetu Handbook: ESC Rights in Practice: The Right to Adequate Housing, page, 10.

181 The Constitution of the Republic of Uganda, 1995, Article 26.

182 Sections 38A and 40 (1) of the Land (Amendment) Act.

183 2016 | Uganda UPR factsheet 3: HOUSING, URBANIZATION AND LAND RIGHTS:

184 Amnesty International (15th May 2018). "Urgent action: Hundreds left homeless by forced evictions".

The Commission established<sup>185</sup> that house evictions by landlords were common in most urban centres and majorly affected the youth who lacked regular income. Unregulated and non-procedural evictions (eviction without adequate notice) were reportedly conducted by landlords in many towns including Kagadi, Gulu, Kampala, Jinja, Mpigi and Kayunga. In Onyapooyere village, Odokomit, Lira municipality in Lira district, a landlord reportedly violently evicted 06 households without notice. In Kagadi town, the Commission established that most victims of house evictions lacked knowledge on their rights and obligations under the tenancy agreements.

### 5.5.2 Forced evictions in 2018

Eviction is the consequence of lack of security of tenure and it amounts to a human rights violation if conducted forcefully in disregard to set standards. Forced eviction refers to forceful removal of one or more people against their will from homes or land that they occupy either permanently or temporarily without being provided with alternative housing, compensation and resettlement or access to productive land whether or not they have legal title to the house or land.

International human rights law establishes standards which forced evictions must conform to and the noncompliance results into human rights violations. This includes consultation with affected persons, availability of remedies and compensation and a series of procedural requirements.

Despite the legal security of tenure discussed above, there were many incidences of small-scale and mass forced evictions orchestrated by private actors or government or caused by natural disasters/calamities in both rural and urban areas. These negatively impacted on the right to adequate housing. Key to highlight in this report was a series of forceful evictions of Apaa community in Adjumani district allegedly by Uganda Wildlife Authority (UWA), a government agency. This resulted into displacement of people and destruction of over 5,000 huts by July 2018. Other related forced evictions in 2018 included the eviction of hundreds of households from Maruzi/Atera ranch in Apac district and Aswa ranch in Pader district. The eviction of households from Kyangwali refugee

settlement in Hoima district was another forced eviction which undermined the right to adequate housing in 2018. It is imperative to note that these evictions did not only result into displacement and homelessness but also undermined the human dignity of the persons affected.<sup>186</sup>

Additionally, in March 2018, more than 5,000 families were rendered homeless after forceful eviction in Kiryandongo and Kitwara sub-counties by two private companies, Agilis Partners Limited, a seed dealing company, and Kiryandongo Sugar Limited. In December, 2018 about 12,000 people were forcefully evicted by floods and landslides in Bukalasi and Buwali sub-counties in dududa district. This left over 500 people homeless. The terrain in Bududa poses significant amount of threat to life and on

this account, housing in the risk-prone areas of Bududa were found to be inadequate.



*Top: A makeshift structure constructed by a female victim after the Apaa evictions in 2018.*

*Bottom: A section of homeless Apaa residents after their houses were set ablaze during evictions by Uganda Wildlife Authority.*

<sup>185</sup> Interviews with 88 respondents in various sampled districts.

<sup>186</sup> Photos obtained from Daily Monitor newspaper.





◀ Ms. Jackline Ashaba, one of the victims of the Lusanja evictions, shelters her family in a temporary structure

The controversial Lusanja forced eviction in Wakiso district was one of the urban evictions that negatively affected the right to housing in 2018. The forced eviction was conducted by a private owner on Private Mailo Block 206, Plot 671, (measuring about 9.6 acres) along Mpererwe-Kiteezi Road in October, 2018. Without delving into the controversy surrounding it, the eviction resulted into destruction of several buildings, leaving more than 300 families homeless.

These forced evictions and many others were conducted in total disregard of international standards relating to forced evictions which states must heed before, during and after evictions, including consultation with affected persons, availability of remedies and compensation and a series of procedural requirements.

Lack of a specific law or guidelines to regulate the conduct of evictions is one critical factor negatively impacting on the right to adequate housing. This raised concern and prompted judicial activism. In the case of *James Muhindo and Others Vs Attorney General Misc Cause 127/2016*, His Lordship Musa Ssekaana<sup>187</sup> observed that unregulated evictions violate human rights and he accordingly compelled government to develop comprehensive guidelines governing land evictions before, during and after the fact and to report to court within seven months from 25<sup>th</sup> January 2019.

This commendable judicial action demonstrates judicial commitment to enhancing legal security of tenure and ensuring compliance with human rights standards relating to adequate housing. It is also recommended that the proposed guidelines should be accompanied with a specific legislation to give it effect of law.<sup>188</sup>

### 5.5.3 The state of homelessness in the selected districts

The Commission established that homelessness is real and exists in both rural and urban areas of some of the districts monitored. Homelessness is defined as *lack of physical housing and a loss of a sense of social belonging*. This is a serious human rights concern related to the right to adequate housing. The Commission verified the existence of homelessness in major towns of Gulu, Lira, Mpigi, Kitgum, Kayunga and Jinja but more visibly in Kampala Metropolitan Area. No case of homelessness was reported in Kagadi, Kakumiro, Luuka and Bugiri. In Kampala city, homeless people sleep along major streets and corridors including Ben Kiwanuka Street, Namirembe Road, William Street and Lwum Street. In Jinja, the Commission verified that the homeless, mainly consisting of street children, do sleep in corridors of Main Street, Lubas Road, Spire Road and Allidina Visram Road.



◀ Homeless street children in Mbale town

187 Judgment delivered on 25th January 2019.

188 Observation of Musa Ssekaana in the case *James Muhindo and Others Vs Attorney General*: "I wish to note that although the guidelines are to be made, the government should come up with a clear legislation with sanctions that would address the current problem of illegal land evictions in Uganda by both the state and private actors".

In other towns such as Gulu, Lira, Kitgum, Mpigi and Kayunga, homelessness largely consist of street underage (popularly known as street children) and youth who dwell in corridors and car garages. For the case of Gulu, Kitgum and Lira, majority of children/youth (boys and girls) who live on streets consist of children born during the Lord's Resistance Army (LRA) war and who lost sense of social belonging since they were born during the internally displaced persons (IDP) camps situation.

Particularly in Kampala city, the Commission established that a number of homeless people mainly consist of vulnerable persons such as children, older persons, PWDs and women who sleep in sacks on verandas and corridors. During daytime, they spread to different parts of Kampala city to look for handouts from people. In some towns like Jinja, Gulu, Lira and parts of Kampala city, homeless children were reported to be the source of insecurity, and snatching people's property.



◀ Homeless people sleeping along Ben Kiwanuka Street in Kampala city

Rural-urban migration stimulated by economic hardships in the rural areas was the major push factor behind the increasing number of homeless people in Kampala city. The Commission's interaction with the homeless people found on Ben Kiwanuka Street revealed that majority of them move from their homes in Northern region, Karamoja and Teso. It was established that majority of this group lack financial capacity to pay rent as they rely on handouts, begging to sustain themselves. Mr. Gligorio Otim, the chairperson of homeless people along Ben Kiwanuka Street in Kampala, said: *"We left our homes in rural areas to come here with the hope of getting better life through begging. Unfortunately, life has become unbearable here. We cannot afford to pay rent because it is so high. We sleep on the veranda every day. Sometimes we are chased away by the shop owners and we hop from one place to another."*

The Commission observes that homelessness in urban areas could be minimized by tackling the pull and push factors that compel people to move to urban centres.

Within the rural settings, many instances of temporary homelessness were reported following numerous cases of land eviction that destroyed homes and displaced people in Apaa in Adjumani district, in Aswa in Pader, Maruzi ranch in Apac, Kyangwali in Hoima and in Kiryandongo district in 2018. Additionally, there were also few cases of youth homelessness due to sale of residential land. In Pader district, the police revealed there were homeless boys who hop from one home to another, sleeping in people's kitchens because they sold their homes (land) and misused the proceeds. However, UHRC noted that the magnitude of homelessness was less in rural areas than in urban centres.

#### 5.5.4 Availability of social services

The Commission established that Government of Uganda has made significant strides to ensure availability of social service centres within easy reach of every household in the country. In the rural areas, 90% of the households in the districts monitored accessed clean and safe drinking water, health centers, schools within reach, firewood and charcoal, pit latrines, rubbish pits and refuse disposal facilities, to mention but a few. However, many water sources in Agago, Pader,

Lira and Kole were reportedly not safe for human consumption. Many households suffered from waterborne diseases such as diarrhea, typhoid and stomachache as a result of drinking unclean water. The outbreak of waterborne diseases was also experienced in Agago district where residents of Lakwa and Agirikaca occasionally suffer from cholera. In Opyelo Jungle village, Patongo town council, households suffered from typhoid.

In the urban centres, except for waste or refuse disposal facilities which were challenging, all the other services such as schools, health facilities, water, etc. were readily available. Refuse management were found grossly lacking in most towns in the districts monitored. For instance, in Kagadi district, management of waste water was reported to be very poor especially in slum areas. Households dug open trenches to dispose dirty water due to lack of sewerage disposal facilities. In other informal settlements like those found in Kampala, waste water is disposed of on the road and in open trenches, which undermines the right to adequate housing because of the likely outbreak of communicable diseases such as cholera in such areas.



◀ Left: Uncollected solid refuse in a Kampala suburb,

Right: Wastewater.

### 5.5.5 Affordability of housing

The Commission noted the inability of many households to afford housing, building materials, land and rental levies due to high poverty levels observed during the assessment.

The Commission established that real estate business is progressively developing in Uganda with readily available housings for sale on the open market. However, most of the housings are urban-based and are very expensive for an average Ugandan. It was reported that depending on the size and location, an average adequate housing unit cost between UGX 300 million and UGX 500 million in Kampala and from UGX 40 million to UGX 100 million in other urban centres.

Similarly, land has increasingly become a profitable commodity that has attracted a lot of investment and interest. Due of its lucrative nature, prices set by forces of demand and supply are usually high within urban centres. Because land is invariably linked to housing, many household desired to purchase land for housing but lacked the financial ability to acquire the same. The asset financing schemes offered by banks required high-level security which many rural households lack. In the rural areas, although land is cheap and readily available, it is usually located very far away from employment centres and this undermines one of the core elements of adequate housing.

For rental housing, respondents reported the amount of rent per month to be quite high in the urban areas compared to rural areas. In 2018, there was general increase in rental rates in the urban areas due to high demand. Whereas average monthly rental fare for an adequate housing in the rural areas ranged from UGX 50,000 to UGX 150,000 shillings, rental fare for an average adequate housing in the urban centres ranged from UGX 300,000 to UGX 500,000. Tenants who could not match the rates were evicted by landlords. This largely affected the youth who lacked regular incomes.

The high cost of building materials limited affordability in 2018. There was general increase in prices of essential construction materials in 2018 and this negatively impacted on the capacity of majority households to purchase essential building materials. For instance, in March and April 2018, cement prices increased by over 79 percent from an average of UGX 28,000 to more than UGX 50,000 for a 50kg bag.<sup>189</sup> Although this was a one-off increase, it negatively impacted on the ongoing construction projects, causing a stall. Rural households were greatly affected compared to the urban counterparts due to income disparity.

Similarly, the cost of other construction materials such as sand, thatching grass, stones, bricks and tiles also increased by approximately 15 percent on account of high inflation in fuel costs which was 10.3% in May and 15.1% in June, 2018. The result was noted on drop of housing affordability among the low and middle-income segments of the population.

189 Centre for Affordable Housing Finance in Africa. Housing Finance in Africa Yearbook 2018, page 266.

### 5.5.6 Habitability

Adequate housing must be habitable by providing the inhabitants with adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors.

In 2018, the Commission established that most housing in the rural areas was fit for human habitability compared to the housing in the slums in urban areas. Most inhabitable houses in rural setting were houses occupied by vulnerable groups of persons such as older persons, PWDs and widows, to mention but a few. One example case was that on 78-year-old Mr. Jackria Amoné in Kitgum municipality who had been abandoned by relatives. His house was very old, dirty and the thatching grass was blown off by wind in some parts.

Habitability of housings in major urban centres was found to be of great concern. Particularly in Kampala Metropolitan Area, Jinja, Mubende and Mityana, majority of housing units are found in the informal settlement (slums) located in low-lying areas; as such, they often suffer from floods when it rains, thereby causing damp and cold. For example, housing units found in Bwaise I, Bwaise II, Bwaise III, Kalerwe, Kanyanya, Katanga, Kisenyi, Lower Naguru, Kawempe I, Kazo-Angola, Kifumbira and Kyebando-Kisalosaló, all in Kampala city, among others, had signs of dampness while others were surrounded by stagnant water.



*The interior and exterior parts of Amoné's house* ▲



*Houses/settlement in Bwaise I and III in Kampala flooded by rainwater* ▲

The Commission established that majority of housing units are not disability-friendly in nature and, therefore, access to most housing including some public offices by PWDs was difficult. This is because of lack of specific provisions for PWDs such as ramps and hand rails, among others, during the design and construction of most public facilities. Most of the old buildings in Kampala are supposed to be upgraded to include specific aspects such as signage, ample parking, ramps, disability-friendly toilets with grab bars and tactile markers to guide PWDs and the visually impaired. The Commission notes that once the upgrading is done, it will be in line with the Building Control Act, 2013 and the National Physical Accessibility Standards, 2010.

Additionally, Uganda Human Rights Commission verified that accessibility of housing, especially in slums, was very difficult due to poor road network as a result of congestion. Below is a photographic comparison of accessibility in rural and urban areas.



◀ *Left: Congested slum housing situation in Katanga in Kampala,*  
*Right: Accessibility of housing in Palabek, Lamwo district.*

### 5.5.8 Location

Adequate housing must be in a location which allows access to socio-economic services such as schools, gainful livelihood engagements, health-care services, childcare and youth centres, and other social facilities. The Commission established that most housing in urban areas was located close to social services such as markets, schools, health facilities and security facilities like police posts and stations. However, in the rural areas, some households were located very far away from social service centres. For instance, in Pader district, the team established that residents of Loyocak village in Ogom sub-county, Pader district were 6km away from the nearby school, 10km away from the health centre and 10km away from a police post.

## 5.6 KEY INTERVENTIONS TO IMPROVE THE RIGHT TO ADEQUATE HOUSING

In order to provide conducive environment for the enjoyment of the right to adequate housing, Government of Uganda, singularly and in collaboration with other key stakeholders, made the following commendable strides by 2018:

1. There was considerable effort by Government to provide access to electricity to many households through the rural electrification programme. There was also evident good road network in many communities in districts where assessment was conducted. This promoted accessibility to social service centres for many households.
2. Government of Uganda passed and began implementing the National Housing Policy, 2016. In May 2016, Ministry of Lands, Housing and Urban Development formulated and began implementing this housing policy. This was in compliance with the Commission's recommendations contained in the 2011 report.
3. In a bid to entrench security of tenure, the ministry of Lands, Housing and Urban Development in 2013 began implementing the land information and management reforms, including decentralization of land registration offices to regions. This has facilitated land registration, hence entrenching security of tenure.

4. There were demonstrated Government commitment and efforts towards ensuring availability, accessibility and affordability of essential building materials by all in 2018. The Government launched initiatives aimed at increasing the quantity of cement production in Uganda by encouraging more foreign investment. For instance, Hima Cement in 2018 began producing cement from its new US\$ 40m plant in Tororo district. The new plant, which has a capacity of approximately 800 tonnes, boosted production. Additionally, two new cement plants were opened in Tororo in 2018; namely, Tororo Cement and Simba Cement. The three new plants increased cement production to 6.8 million tonnes a year, almost double the 3.6 million tonnes at the beginning of 2018. With local demand currently at 2.4 million tonnes a year, the oversupply is expected to drive down the cost of cement.
5. Government of Uganda began implementing public-private partnership in providing housing schemes in Uganda. There was evident public-private partnership in delivering low-cost housings for citizens in Uganda in selected districts monitored. For instance, Action Plan and Habitat for Humanity Uganda were involved in the construction of low-cost housing for vulnerable groups such as the elderly, PWDs and orphans in districts in Northern and Eastern Uganda.
6. Government promoted increased access to housing financing schemes through financial institutions such as banks in providing housing loans at a low and affordable interest rate to interested clients.
7. Additionally, Government of Uganda began implementing low-cost housing alongside construction of staff houses at government-owned schools and hospitals to cater for staff housing and to improve their lives.
8. In 2010, the government in collaboration with Uganda National Action on Physical Disability (UNAPID) launched the National Physical Accessibility Standards that were adopted to inform architects and engineers when drawing plans for new buildings.
9. Parliament passed and the president assented to the Building Control Bill, 2013, which requires all buildings to be constructed in line with the National Physical Accessibility Standards.

## **5.7. CHALLENGES IMPEDING THE ATTAINMENT OF THE RIGHT TO ADEQUATE HOUSING**

Uganda Human Rights Commission noted the following impediments to the attainment of the right to adequate housing:-

1. Lack of laws or guidelines to regulate eviction of people from house or land resulting into violation of human rights in 2018. Majority of evictions conducted in 2018 violated international standard relating to evictions. Similarly, obsolete and outdated laws such as the Rent Restriction Act provide inadequate protection.
2. Inadequate number of housing units to accommodate the entire population, which leads to homelessness of a sizeable section of the population.
3. The ever-increasing number of informal settlements in most urban centers resulting into increase in number of substandard housings.
4. Low budgetary allocation for the implementation of the National Housing Policy, 2016. For instance, out of the entire budget for MLHUD in financial year 2018/2019, the housing sector was allocated only 0.8%.<sup>190</sup>

<sup>190</sup> National Housing Policy, 2016.

5. The high poverty levels manifested in the rather low levels of household incomes have made access to adequate housing an elusive dream to the majority of the population especially those living below the poverty line.
6. Inadequate supply of essential building materials in the market which has enhanced competition resulting into high prices for the few available building materials.

## **5.8. RECOMMENDATIONS**

1. The Ministry of Lands, Housing and Urban Development (MLHUD) should expedite the process of enacting eviction laws and/or guidelines and a tenant-landlord law to guarantee security of tenure and protect households from illegal and forceful eviction.
2. Additionally, MLHUD should initiate the process of formulating and enacting the law housing, to give effect to the housing policy in Uganda.
3. The Ministry of Lands, Housing and Urban Development (MLHUD) and Ministry of Gender, Labour and Social Development should establish and document the magnitude of homelessness in Uganda.
4. The Ministry of Finance, Planning and Economic Development should revise tax regimes on building materials by reducing levies on essential building materials to ensure affordability by all categories of households as well as the regular supply at all time.
5. The Ministry of Lands, Housing and Urban Development should establish and implement low-cost housing schemes to enable majority of households' access adequate housing at subsidized costs on affordable terms.
6. The Ministry of Finance should prioritize and adequately allocate financial resources toward the implementation of the National Housing Policy of 2016, including funds to upgrade the state of housing in the informal settlements/slums.

## **5.9. CONCLUSION**

The state of the right to adequate housing in the selected districts has progressively improved over the years. Despite that fact that Uganda has housing backlog, the quality and quantity of housing has improved in the recent past and this is attributed to not only the strong legal framework but also the progressive policies including the foresighted National Housing Policy, 2016. However, forced evictions and homelessness are some of the human rights concerns which tend to impede the attainment of the right to adequate housing. This calls for more concerted efforts and commitment by the government to ensure that all Ugandans live in peace and dignity.

## CHAPTER 6

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# ACCESS TO CREDIT AND HUMAN RIGHTS CONCERNS

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## 6.0 INTRODUCTION

While financial institutions continue to thrive in Uganda, many Ugandans continue to be attacked and threatened by some of the players in the financial sector who sometimes, especially moneylenders, operate outside any legal framework. In the same vein, illegal moneylending has become a profitable business in the country, resulting into defrauding people of their property. Desperate borrowers tend to get trapped in a cycle of debt. They are often defrauded by “loan sharks” who ask borrowers to stake movable and immovable property and sign transfer deeds.

At the slightest default, they proceed to grab a borrower’s assets. According to some complaints, the dirty deal starts with a sweet hook. All the lender asks you for is a post-dated cheque or a simple loan agreement. Trouble starts when, as the lender knows already might happen, a borrower fails to pay according to the stipulated terms. Bailiffs raid the borrower’s home, office, or business and stake their property. In some instances, some microfinance institutions and moneylenders have used police to arrest defaulters, something that contravenes the law, as loan-related obligations are civil, not criminal, matters.

Other than the members of Parliament who have been targeted, majority of the most affected are often the poor rural and urban communities many of whom have been arrested and imprisoned, or lost their properties in addition to being evicted from their land or homes. The situation in the formal financial sector is not all that rosy either. Interest rates remain high to the exclusion of the poor, requirements for accessing credit constitute a major barrier and there isn’t enough information available to borrowers to make informed decisions, among other inhibiting factors.

This chapter considers the legal framework, the operations of various lending institutions including banks, microfinance institutions, Saccos and moneylenders, and the attendant human rights and policy concerns.

## 6.1 LEGAL FRAMEWORK

At the international level, with exception of CEDAW, access to credit is not expressly mentioned in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights although it is implied in both instruments. The Universal Declaration of Human Rights,<sup>191</sup> for example under article 22, states that “everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

The International Covenant on Economic, Social and Cultural Rights<sup>192</sup> places an obligation on state parties to recognize the right of everyone to social security, which also includes social insurance. Another international legal provision<sup>193</sup> is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>194</sup> which stresses the importance of women’s access to credit.

The Beijing Platform for Action under Strategic Objective A.2 urges governments to undertake all the necessary administrative and legislative reforms to give women equal access to economic resources, including the right to access credit and the need to revise laws that discriminate against women in accessing such services.

191 Article 22.

192 Article 9.

193 Other provisions include the Beijing Platform for Action and the UN Resolution 53/223 on the Role of Micro Credit in the eradication of poverty.

194 Articles 13 and 14.

At the regional level, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa recognizes the right of access to credit to women.<sup>195</sup>

Legislation on access to credit in Uganda is provided for in a number of laws which include the 1995 Constitution<sup>196</sup> under the National Objectives and Directive Principles of State Policy XIV. Other laws include the Tier 4 Microfinance Institutions and Money Lenders Act, 2016, The Financial Institutions (Amendment) Act, 2016 and the Cooperative Societies Act, 1991.

## 6.2 SITUATION ANALYSIS ON ACCESS TO CREDIT IN UGANDA

In assessing access to credit, it merits to analyse the various modes/methods of operation of lending institutions. From formal financial institutions, such as banks, to semi-formal and informal institutions such as microfinance institutions, Saccos and moneylenders, access to credit is largely, influenced and determined by the nature of operations of these institutions. Uganda Human Rights Commission set out to assess the operating environment of these institutions vis-à-vis access to credit. Selected financial institutions in randomly selected districts were interviewed accordingly. This section presents the situation analysis of access to credit in Uganda.

### 6.2.1 What is credit?

Credit is the provision of resources, material or financial, by a party to another and with an arrangement for the return or repayment of such at a later date. Credit may also refer to a contractual agreement in which money or goods are advanced to a household or households by an individual, organisation or a financial institution with an arrangement to pay at a later date usually with interest.<sup>197</sup> Credit is an important source of additional finance for households. Access to credit, therefore, includes services such as opening bank accounts, bank transactions, or transactions on mobile money. It also includes the ability to access loans from formal, semi-formal and informal financial institutions or insurance products that allow people to manage their financial risks.

### 6.2.2 Reasons for seeking credit

People seek credit for a range of reasons and purposes. For the credit and financial institutions interacted with, UHRC learnt that some of the reasons include, among others, to start up businesses or boost their existing businesses; to engage in farming or cattle trading; to invest in home developments (acquire land or build homes); to pay school fees; for asset financing, that is, to acquire assets; and to pay medical bills.



◀ Ugandan currency

<sup>195</sup> Article 19(d).

<sup>196</sup> National Objectives and Directive Principles of State Policy No. XIV.

<sup>197</sup> [https://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/UNHS\\_VI\\_2017\\_Version\\_I\\_%2027th\\_September\\_2017.pdf](https://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/UNHS_VI_2017_Version_I_%2027th_September_2017.pdf). Accessed on 21st November 2018.

While borrowing is largely associated with investing in and financing productive ventures as alluded to above, people do also seek credit for consumption and social/lifestyle needs; for example; to buy cars, to finance wedding or introduction ceremonies. This is mainly associated with the 'middle-class' category of people, whose major requirement to access credit is proof of salary income.

### 6.2.3 Requirements for accessing credit

Majority of financial institutions always demand collateral to act as security before a loan transaction is concluded. This applies to majority of lending institutions, in the formal and semi-formal/informal sectors. The security required is often in the form of houses or deed to some immovable assets; proof of salary payments for the civil servants and other salaried employees; car and motorcycle log books; land titles/land sales agreements; home appliances (for small loans of less than UGX 500,000); shops/businesses; ATM cards (this was the case with all the moneylenders interviewed).

By implication, therefore, failure to satisfy the above requirements, one would not be able to access credit.

### 6.2.4 Clients' financial education

The soundness of a decision made in matters to do with finances is largely influenced by the depth of one's financial education. The institutions the Commission interviewed noted that the clients are always provided with enough information prior to the required service and this enables them to make informed decisions. With exception of one of the microfinance institutions which stated that the client is given financial education for two weeks before the credit is advanced, the rest of the respondent credit institutions testified to giving instant financial education to the clients at the time of processing the loan. In their own opinion, they noted that the nature of financial education information being provided was insufficient to make borrowers evaluate their choices on the best financial decision to make.

### 6.2.5 Women's access to credit

While both men and women face similar barriers in accessing credit, available evidence suggests that these barriers are higher for women. The reasons for this include culture, lack of traditional collateral (such as land or property which is often registered in men's names), women's lower income levels relative to men's and financial institutions' inability to design appropriate products and outreach strategies targeting women.<sup>198</sup>



◀ Beneficiary of a pride business loan

198 <https://siteresources.worldbank.org/EXTGENDERSTATS/Resources/SushmaNarain-AccessstoFinanceAnalyticalPaper.doc> Accessed 5th February 2019.

The institutions interviewed by the Commission reported that there wasn't any preferential treatment with regard to access to credit for men or women. Women do obtain or access credit with an average of 40% borrowers being women and in some cases more women do access credit; for example, Premier Credit in Mityana reported that 60.36% of the borrowers were women in 2018. Holistically though, this finding does not suppose that women do not face barriers in access to credit.

#### 6.2.6 Available regulatory mechanisms of financial institutions

All the respondent institutions that the Commission interviewed are regulated and monitored by certain bodies. The banks are regulated by Bank of Uganda, the microfinance institutions are regulated by Uganda Microfinance Regulatory Authority and Microfinance Support Centre. The Saccos are regulated by Uganda Cooperative Savings and Credit Union and other subsidiary organs formed by the Saccos themselves. All the credit institutions are required to report to the District Commercial Officers on a monthly basis, while those in the municipalities do report to the Municipal Commercial Officers.

Parliament passed the Tier 4 Microfinance Institutions and Money Lenders Act, 2016 which prohibits one to engage in moneylending without a licence.<sup>199</sup> However, there are individuals in hundreds, perhaps thousands, operating without a licence, with no physical address – but engaging in moneylending. They operate outside the available regulatory mechanisms and this is where much of the abuse takes place. Agreements are written in a manner that incapacitates the borrower to repossess their property staked as collateral. Loan agreements are crafted as “sale agreements” and witnessed by LCI chairmen. The implication of such transaction would be takeover of borrower's property upon failure to clear the outstanding loan obligation, which is always the likely outcome of such transactions.

#### 6.2.7 Dispute resolution mechanism

Where grievances and disputes arise between the clients and the credit institutions, among the available dispute resolution mechanisms include courts of law, use of complaints/suggestion boxes, LCIII or sub-county structures for the case of Saccos and administrators for civil servants.

However, as noted above, the effectiveness of any dispute resolution mechanism is to the extent the financial institution in question is regulated by law and there is a structured, formal monitoring process. In the informal lending sector, there is little or nothing at all; for instance, courts of law can do nothing to remedy any wrong that may have occurred where loan agreements, for instance, read as sales agreements.

### 6.3. HUMAN RIGHTS AND POLICY CONCERNS

While access to credit and other financial services is touted as being instrumental in the enjoyment of a host of human rights, there isn't an explicit mention of access to credit in either the Universal Declaration of Human Rights or the International Covenant on Economic, Social and Cultural Rights.<sup>200</sup> Yet the role played by access to credit, particularly in the attainment of economic and social rights, is evidently clear. In September 2015, the United Nations adopted 'The 2030 Agenda for Sustainable Development' with 17 Sustainable Development Goals (SDGs). Four of these SDGs; that is, ending extreme poverty and hunger, promoting gender equality, enabling access to healthcare and promoting inclusive economic growth are closely interlinked with access to financial services. Yet financial services are not nearly as accessible as they ought to be to make a meaningful global impact across these fields.<sup>201</sup>

<sup>199</sup> Section 84 (1).

<sup>200</sup> [https://www.jstor.org/stable/40294642?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/40294642?seq=1#metadata_info_tab_contents). Accessed on 7th November 2018.

<sup>201</sup> <https://www.weforum.org/agenda/2015/09/5-reasons-why-we-need-financial-services-for-the-poor/>. Accessed on 8th November 2018.

Uganda's current financial services sector is fraught with practices inimical to general observance and enjoyment of human rights. This section presents the human rights and policy implications of access to credit in Uganda.

### 6.3.1 The cost of credit and the enjoyment of human rights

Majority of Ugandan adults - over 10 million out of 18.8 million, cannot access credit<sup>202</sup> as a result of the cost of credit mirrored in the high interest rates charged on loans. In comparison with the Central Bank Rate (CBR), commercial banks continue to charge high interest rates on their loans. Bank of Uganda reduced the CBR from 9.5% fixed in December 2017 to a record low of 9% for February 2018.<sup>203</sup> In the same period, however, interest rates charged by commercial banks stood at an average of 20.28% (*ibid*). The high interest rates mainly affect micro borrowers compared to large corporates who enjoy rates which are more or less within the CBR – commercial bank benchmark lending rate (*ibid*). As earlier noted, four sustainable development goals are closely interlinked with access to financial services. Costly credit through high interest rates has a negative effect on livelihood – food security, education, housing, trade and generally human dignity. The consequence is perpetuation of the cycle of poverty and inequality.

### 6.3.2 Violation of family economic rights

Collective victimisation is a common phenomenon in the event of failure to repay a loan, where the effects are not only felt by the loan defaulter but the entire family. The Commission heard numerous stories of families that have lost everything as a result of a loan transaction having gone bad. The result is always loss of family property – land, house, etc. – the very basic sources of livelihood for average households. Loss of property affects all family members, children and women inclusive, manifested in loss of decent accommodation, shortage of food and other rights including the right to education and the right to medical care. The Commission's Masaka Regional Office received a complainant whose situation aptly illustrates this phenomenon:

#### THE STORY OF MR. KA, KIWANGALA SUB-COUNTY, LWENGO DISTRICT

“ I borrowed six million shillings from a one Namanyanja (a moneylender) and I staked my piece of land as security. The amount was payable in six months. Orally, we agreed that I would pay back eight million although in writing it was 10 million (she told me not to worry about what had been recorded). I got some challenges and was unable to pay in time as we had agreed. Namayanja did not give me any chance; instead, she maliciously destroyed the entire plantation on my land. She went ahead and reported me to police and I was arrested and detained together with my family members. I was later released after being forced to sign another agreement that I had given Namayanja a land title which I had deposited with Centenary Bank, Masaka as security of an outstanding loan of UGX 10m. Because of the dire circumstances my family and I had been subjected to at the police station, I was compelled to sign the agreement to regain our freedom. Namayanja thereafter went to Centenary Bank, cleared the outstanding loan and got possession of my land title. She then gave me only one month to clear her, an amount which had now accumulated to UGX 20m. I had no way out; my entire family was evicted from the house and the land, leaving us with nothing but to seek refuge with relatives. ”

202 ActionAid Uganda.

203 <https://www.monitor.co.ug/Business/Prosper/Why-dropping-central-bank-rate-does-benefit-small-borrowers/688616-4320566-hiq9k2/index.html> Accessed on 21st February 2019.

### 6.3.3 Inequality in access to credit



▲ Beneficiaries exchanging money

While there has been a relatively increased spread of formal, semi-informal and informal financial services across the country, access to credit continues to exclude a sizeable part of the population. Collateral is a major constraint to access credit since majority of the households and those engaging in small and medium enterprise businesses cannot afford. For the banks that require land for security, the poor and landless persons would not be able to access credit from such institutions. The micro-finance institutions and moneylenders who require ATM cards as security mean that a poor person who has no bank current account cannot access credit.

Majority of women with no claim to land ownership are excluded in accessing credit, thus running contrary to the spirit of CEDAW, which provides for the right of women to access bank loans, mortgages and other forms of financial credit. People living in rural areas have limited access to credit compared to those in urban areas, hence perpetuating financial exclusion and marginalisation of the rural population.

### 6.3.4 Denial of information to inform decision-making

To make sound decisions in financial matters, consumers have a right to get thorough information about the products and services offered by the financial institutions. Such information could include total cost of credit; namely, insurance fees, monitoring, loan processing fees, collateral, registration fees and interest rate, among others.<sup>204</sup>

In a bid to protect consumers, Bank of Uganda in 2011 issued the Financial Consumer Protection Guidelines whereby guideline 2 (a) on provision of information, provides that “prior to a consumer choosing a product or service, a financial services provider shall explain clearly in plain language the key features of the range of products and services that the consumer is interested in so as to enable the consumer to arrive at an informed decision about these products and services, including any charges and fees which would be incurred”. However, as the Commission found out, consumers are only given instant financial education just to conclude the transaction on the day of processing loans, which period would not amount to adequate time a consumer needs to take a sound decision.

The scenario of Mr. Samuel Kato underscores the importance of information in financial decisions. Samuel Kato, for two years, saved with a leading commercial bank and he was able to acquire a loan payable in four years.<sup>205</sup> However, the terms and conditions of the loan undertaking were not adequately explained to him.

*“I am paying back almost twice the amount I borrowed – no one explained to me how interest was calculated.”*

Some of the effects of inadequate information available to consumers include entrapment in debts through multiple borrowing in turn leading to high defaulting cases, failure to appreciate the effect of interest rates on their operations, and non-observance of the loan contractual obligations to service loans in a timely manner, to mention a few.

204 <http://ugandabankers.org/consumers-rights-and-responsibilities/>

205 [https://www.newvision.co.ug/new\\_vision/news/1488682/financial-education-improve-uganda-economy](https://www.newvision.co.ug/new_vision/news/1488682/financial-education-improve-uganda-economy) Accessed on 13th February 2019.

### 6.3.5 Denial of property through undeclared loan costs

Through the Commission's interactions with various respondents, they reported that clients do not receive the actual amount of money requested, as there are deductions like processing fees, application fees and others, which are always embedded within the loan amount requested. Whereas the practice appears to have been 'normalised', it is not supported under any law or financial policy.

### 6.3.6 Criminalisation of civil matters by police

Loan contractual obligations are by their nature civil matters and provide no ground whatsoever for police, let alone to arrest but detain those who fail to meet their loan obligations, except where the arrest and detention are about enforcement of a court order. As the incident of Mr. KA alluded to earlier demonstrates, police officers most times collude with microfinance institutions and moneylenders, to arrest and detain loan defaulters as one way of intimidating them to clear their outstanding loan obligations. This is an outright abuse of the due process by police to criminalise an otherwise civil matter which should be handled under civil procedures.

### 6.3.7 Denial of personal liberty over loan contractual obligations

Prison facilities across the country occasionally detain civil debtors on grounds of failure to meet loan obligations, as Uganda Human Rights Commission's annual reports have documented over the years. Detention of civil debtors, though, runs contrary to the ICCPR which provides that "no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation".<sup>206</sup> As Fred Muwema opines, contractual obligations under widely accepted interpretation include civil debts.<sup>207</sup> Uganda is a state party to the ICCPR which it acceded to unconditionally and is, therefore, bound by its provisions in entirety.

**TABLE 8: LENDING RATES OF SELECTED FINANCIAL INSTITUTIONS**

DISTRICT	RESPONDENT INSTITUTION	TYPE OF INSTITUTION	LENDING RATE	MEMBERSHIP/BORROWERS
Bugiri	Bayport Services	Microfinance	3.27% to 3.53%	Civil servants
	Fin Credit	Microfinance	4%	Civil servants
	Brac (U)	Microfinance	13% to 25%	Peasants
	East Nile Financial Services	Moneylender	20%	Civil servants
	Barone General Agencies	Moneylender	15% to 20%	Civil servants
	Kutaasa Investments	Moneylender	12%	Civil servants
	Crested Trust Finance Limited	Moneylender	18% to 20%	Civil servants
	Uganda National Teachers' Union	SACCO	1.25%	Member teachers in government schools only
	Bugiri Small-Scale Traders	SACCO	4%	Members only
	Bugiri Boda Boda Sacco	SACCO	5%	Members only

<sup>206</sup> Article 11 of ICCPR.

<sup>207</sup> <https://nilepost.co.ug/2018/05/05/fred-muwema-to-jail-or-not-to-jail-a-civil-debtor>.

DISTRICT	RESPONDENT INSTITUTION	TYPE OF INSTITUTION	LENDING RATE	MEMBERSHIP/BORROWERS
	Ndifa Kulya Twisa Kirala	SACCO	5%	Members only
	Bugiri Rural	SACCO	3%	Members only
	Mwananchi SACCO	SACCO	2%	Members only
	Bugiri District Village Health Team	SACCO	5%	Members only
Kaliro	Brac (U)	Microfinance	12% to 25% depending on the loan period	General public
	Premier Credit	Microfinance	2% to 15% depending on the loan duration	Civil servants
	Wapeera Investments	Moneylender	1.5%	Civil servants
	Bulangira Farmers	SACCO	4%	Traders, businesspersons but must be members
	Kaliro United Taxi Drivers	SACCO	1.5%	Drivers that are members
	Kaliro Technical Institute	SACCO	3%	Fully paid up members and the general public that meet the requirements
	Kaliro District Teachers	SACCO	3%	Fully paid up members
	Tropical Bank	Commercial bank	25% but depends on the market forces	All members of the public
Luuka	Power Micro Finance	Micro finance	4%	Business community
	Robuda	SACCO	3%	Members only
	Bugadde SACCO	SACCO	2.5%	Members only
	Buyunze SACCO	SACCO	3%	Members in the business community and students
	Bigeme SACCO	SACCO	3%	Members only
	Luuka District Teachers SACCO	SACCO	3%	Members only
	Success SACCO	SACCO	3%	Members only
Jinja	Bayport Financial Services	Microfinance	2%	Civil servants
	Platinum Credit	Micro finance	4%-6%	Car owners only
	Nakanyonyi Good Shepherd SACCO	SACCO	1% - 3%	Members only
	Savenet SACCO	SACCO	1% - 3%	Members only
	Kasanvu SACCO	SACCO	5%	Members only
	Tukwa SACCO	SACCO	3%	Members only
	Jinja, Rubaga Traders SACCO	SACCO	1.5%	Members only
	Stewards Association	Savings, credit and investment	3%	Members only
	Jinja Municipal Council Teachers SACCO	SACCO	4%	Members only
Mityana	Mityana Integrated Sacco Ltd	SACCO	10%	Farmers & teachers



DISTRICT	RESPONDENT INSTITUTION	TYPE OF INSTITUTION	LENDING RATE	MEMBERSHIP/BORROWERS
	Premier Credit Mityana Branch.	Microfinance	Ranging 4% to 20% per month (the more money borrowed, the lower the interest)	General Community (but must be members)
Mubende	Platinum Credit - Mubende Branch	Credit only	3.7% - 10% per month	Only Civil Servants
	Cashier Money Lending Services- Mubende	Credit only	15% per month	General Public
Nakasongola	Nakasongola Rural Sacco Ltd.	SACCO	3%	General community
	Wabinyonyi Sub County Cooperative Saving & Credit Society Ltd.	SACCO	2.5% per month; 30% per annum	General community but must subscribe as members
Luweero	Luweero Teachers Saving & Credit Cooperative Society Ltd.	SACCO	28% Per annum	Only teachers
	Advance Uganda, Wobulenzi Branch	Microcredit	4% per month & 48% p.a	Only Business people
	Sao Luweero Savings & Credit Cooperative Society Ltd.	Microfinance	3% per month	General community but must be subscribe as members
Kayunga	Post Bank	Deposit institution	22%	All categories of people
	Letshego Uganda Ltd.	Microfinance credit	25% to 36% depending on the product	Farmers, businesspeople and salary earners
Mpigi	Suubi Women Development Link	Village saving and loaning association	10% monthly	Members only
	Vision Fund	Microfinance credit	3% monthly	Individuals and groups
	Letshego Uganda Ltd.	Microcredit-taking institution	2.25%	Both men and women and civil servants
	UGAFODE Microfinance	Microcredit-taking institution	2.5%	Farmers and businessmen
Gomba	Gomba Teachers Development SACCO	Teachers' fund	15%	Teachers
Kumi	Goralin Financial Services - Kumi town	Moneylending institution	3% per month	
	Letshego Uganda Limited	Micro deposit	1.5% per month	Farmers, business people and salary earners
	Vision Fund	Microfinance	2.5% to 3% per month	Farmers, businesspeople and salary earners
	Centenary Bank	Commercial bank	21% per month	All categories of people
	Some Money Limited	Micro deposit	10%	Farmers, business people and salary earners
Serere	Kateta - Omagara SACCO	SACCO	5%	Members only

DISTRICT	RESPONDENT INSTITUTION	TYPE OF INSTITUTION	LENDING RATE	MEMBERSHIP/BORROWERS
	Olio SACCO	SACCO	3%	Members only
	IYALEDI SACCO	SACCO	5%	Members only
	Serere District Teachers' SACCO	SACCO	2%	Members only
Katakwi	Katakwi District Teachers SACCO	SACCO	15%	Members only
	Engaranakinos Bonik Egbo SACCO	SACCO	10%	Members only

**TABLE 9: COMPARISON OF THE VARIOUS LENDING INSTITUTIONS**

BANK	MICROFINANCE	SACCO	MONEYLENDER
A bank is a company and just like all companies, it aims at making profits for shareholders.	They operate as companies and NGOs. They aim at majorly improving the lives of the poor community or informal sector.	Customers of a SACCO are members and they own it. These do not function to earn a profit from their daily activities but when profits are made, they are passed on to members.	They operate as companies and just like a company, they aim at making profits for the shareholders or individuals.

In general, Saccos have fewer (or no) fees when compared to other sources of loans; however, not everyone can access credit from them especially if you are not a member of that Sacco.

Banks have products that Saccos, microfinances and moneylenders do not have. When it comes to large loan amounts (say UGX 100 million and above), accessibility, networks, to mention but a few, other lenders are less likely to provide such facilities than banks.

Hard moneylenders are preferred by some borrowers because of the convenience and period at which loan approval and loan funding takes place. In many cases the approval for the hard money loan can take place in just one day. Their loans need only a few requirements compared to bank loans. However, their loan interest rates are always going to be higher than any other loan's. The higher interest rate is due to the increased risk for the lender and the convenience to the borrower of having immediate access to capital.

Microfinances extend small loans, savings and other basic financial services to people that do not currently have access to capital. Banks simply won't extend loans to those with small or no assets and generally don't engage in small sizes of loan that are typical with microfinancing.

The situation or need at that time of seeking credit is a key determining factor on the best kind of lender a prospective borrower should consider. By evaluating the lenders' terms and conditions, a borrower should be able to narrow their search among the many options available and discover which lender suits their circumstances.

### 6.3.8 Duties and responsibilities while contracting loans

- a) Borrowers should satisfy themselves that they are able to abide by the contractual terms, bearing in mind their income and financial obligations. One should borrow only what they need and are able to repay.
- b) Borrowers should read and understand everything before appending their signatures; in particular, the repayment schedule, the interest rate charged and the fees applicable. The lenders are required to explain the terms of a loan to the prospective borrowers in a language the latter understand and to provide them with a copy of the loan agreement. Borrowers shouldn't sign any blank documents.
- c) It is best practice that different lenders are explored for the most favourable terms. One should not rush and commit themselves to a loan until they are satisfied with the terms and conditions, for the reason that lenders differ in the services they offer to their clients.
- d) A potential borrower should not overstate their income, assets or collateral security.
- e) They should not provide false supporting documents.

## 6.4 RECOMMENDATIONS

1. The Government should, through Ministry of Finance, Planning and Economic Development, further regulate the interest rates of the credit institutions to accommodate the poor.
2. Government should extend its credit facilities and also reduce the borrowing conditions for the most vulnerable persons to enable them to access credit and thus eradicate poverty.
3. There should be strict enforcement of the law to prohibit moneylending without licences.
4. Financial institutions should ensure that borrowers get thorough information to ensure that they make sound financial decisions.

## 6.5 CONCLUSION

A properly regulated financial sector provides potential for transforming lives, particularly by uplifting millions out of poverty, which is a key global priority as championed in the 2030 Agenda for Sustainable Development. In the Ugandan context, efforts have been made to spread financial services across the country. The full potential of these efforts has, however, not been realised owing to a myriad of operational processes of financial institutions that continue to exclude many in the financial sector.

Interest rates remain high for majority of the poor to afford; the requirements to seek credit exclude majority of the potential borrowers; inadequate financial information at the disposal of borrowers doesn't ensure informed decisions by potential borrowers; and informal moneylending is characterized by predatory practices, to mention a few challenges.

To guarantee and ensure a financial system that is responsive to the concerns of the majority of those living on the fringes of poverty will require conscientious measures and enhanced commitment by the government, as the primary regulator, and other players, to ensure that the operations of financial institutions are aligned to government's efforts to promote financial inclusion.

## CHAPTER 7

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# THE PLIGHT OF REFUGEES IN UGANDA AND THE CONCERNS OF THE HOST COMMUNITIES

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## 7.0 INTRODUCTION

A refugee is a person who has been forced to flee his or her country of origin due to justifiable fear of persecution. This persecution may be grounded on race, religion, nationality, membership of a particular social group or political opinion.<sup>208</sup> (See the *Refugee Convention 1951 as modified by its 1967 protocol*<sup>209</sup>). Uganda acceded to the Refugee Convention and the 1967 Protocol Relating to the Status of Refugees on 27<sup>th</sup> September 1976.<sup>210</sup> The Organisation of African Unity expanded the definition of refugee under the convention to fit the African context by including people who flee their country of origin due to external aggression, occupation, foreign domination or events seriously disturbing public order.<sup>211</sup> The term refugee and asylum seeker are at times used interchangeably and confused to mean the same. However, an asylum seeker is a person who has applied for international protection under the 1951 Refugee Convention, but whose application has not been fully decided by the country he/she applied to. Not every asylum seeker is admitted as a refugee, but all refugees have been initially asylum seekers.<sup>212</sup>

There has been a significant increase in the number of refugees fleeing into Uganda since 2013, making Uganda the largest refugee-hosting country in Africa. According to UNHCR and OPM, the total population of refugees in Uganda by end of December 2018 was 1,190,922, majority coming from the surrounding countries affected by different forms of conflicts, such as South Sudan, Democratic Republic of the Congo, Burundi, Somalia, Rwanda, Eretria, Sudan and Ethiopia.

Implementing its mandate of protecting and promoting human rights, in particular under Article 52 (1) (h) of the 1995 Constitution,<sup>213</sup> the Commission monitored the human rights situation in selected refugee settlement centres, with a view of assessing the plight of refugees and the concerns of their host communities. The settlements monitored were Nakivale and Oruchinga in Isingiro district, Nyumanzi, Mungula, Baratuku, Mirieyi, Elema, Pagirinya I and Pagirinya II in Adjumani district, Rwamwanja in Kamwenge district, Kyaka II in Kyegegwa district, Palabek in Lamwo district, Bidibidi in Yumbe district, and Rhino Camp, Odubu and Omugo (extensions of Rhino Camp settlement) in Arua district.

This chapter provides the refugee population in Uganda, highlights the plight of refugees in the settlements centres, outlines the government development interventions intended to improve the conditions and highlights the human rights issues of concern, and then finally provides recommendations.

## 7.1 LEGAL FRAMEWORK

At the international level, the 1951 Refugee Convention<sup>214</sup> and the 1967 Protocol<sup>215</sup> are the main international legal instruments on refugees. The convention is shaped by Article 14 of the Universal Declaration of Human Rights. Article 22 of the Convention on the Rights of the Child, 1989 provides for protection of child asylum seekers and refugees.

208 Article 1 of the Convention Relating to the Status of Refugees, 1951 adopted by United Nations Conference in July 1951, as modified by Article 1(2) of the 1967 Protocol Relating to the Status of Refugees.

209 Protocol Relating to the Status of Refugees, 1967.

210 United Nations High Commissioner for Refugees, <https://www.unhcr.org/3b73b0d63.pdf> Accessed on 29th January 2019.

211 Article 1 (2), OAU Convention Governing Specific Aspects of Refugee Problems in Africa, 1969.

212 Amnesty International. <https://www.amnesty.org.au/refugee-and-an-asylum-seeker-difference/> Accessed on 12th February 2019.

213 Constitution of the Republic of Uganda, 1995.

214 Convention relating to the Status of Refugees, adopted by United Nations Conference in July 1951. The convention defines a refugee and sets out their obligation to conform to the laws and regulations of the host country.

215 Protocol Relating to the Status of Refugees, 1967. It modifies the definition of refugees to suit the African context.

At the regional level, the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969 is the main regional legal instrument on refugee protection and it builds on the international instruments i.e. the 1951 convention and its 1967 protocol.<sup>216</sup> The African Charter on Human and Peoples' Rights also grants persons being persecuted, the right to seek and obtain asylum in other countries.<sup>217</sup> In Uganda, chapter 4 of the 1995 Constitution provides for a range of human rights that apply to all people in Uganda whether they are nationals or non-nationals. It guarantees equal rights between all people in the country including refugees without any form of discrimination.<sup>218</sup> The specific laws on refugees are the Refugee Act, 2006 which is guided by the 1951 Refugee Convention and the other international instruments,<sup>219</sup> and the Refugee Regulations, 2010, which outline the process of determining refugee status.

## 7.2 SITUATION ANALYSIS OF THE REFUGEE SETTLEMENTS IN UGANDA AND THE CONCERNS OF THE HOST COMMUNITIES

### 7.2.1 Refugee settlement centres in Uganda

Refugees are received from collection points and taken to reception centres as they await allocation to resettlement centres. At the refugee settlement centres, the refugees are settled and allowed to integrate as per Uganda's refugee policy. The settlement centres are located in 11 districts as listed in the table below.

**TABLE 10: LIST OF REFUGEE SETTLEMENTS IN UGANDA**

S/N	REFUGEE SETTLEMENT/VILLAGE	DISTRICT
1.	Nyumanzi Refugee Settlement	Adjumani
2.	Mungula Refugee Settlement	Adjumani
3	Mungula II Refugee Settlement	Adjumani
4	Baratuku Refugee Settlement	Adjumani
5.	Mirieyi Refugee Settlement	Adjumani
6.	Elema Refugee Settlement	Adjumani
7.	Pagirinya Refugee Settlement	Adjumani
8	Oliji Refugee Settlement	Adjumani
9	Alere II Refugee Settlement	Adjumani
10	Maaji I Refugee Settlement	Adjumani
11	Maaji II Refugee Settlement	Adjumani
12	Maaji III Refugee Settlement	Adjumani
13	Ayilo I Refugee Settlement	Adjumani
14	Ayilo II Refugee Settlement	Adjumani
15	Boroli Refugee Settlement	Adjumani
16	Olua I Refugee Settlement	Adjumani
17	Olua II Refugee Settlement	Adjumani

216 Preamble of the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa; expands the definition of refugees under the 1951 Convention as amended by the 1967 protocol, to fit the African context.

217 Article 12 (3) of the African (Banjul) Charter on Human and Peoples' Rights, adopted in 1981 and entered into force 1986. The right should be enjoyed according to the laws of the countries where the asylum is sought and international conventions.

218 Objective XXVIII of the National Objectives and Directive Principles of State Policy; and Article 21 (1) (2) 1995 Constitution of the Republic of Uganda as amended.

219 Sections 28 and 29 of the Refugee Act, 2006 grant refugees same rights as nationals and bring out a number of rights to be enjoyed by the refugees, as well as their duties and responsibilities while in Uganda.

18	Agojo Refugee Settlement	Adjumani
19	Palorinya Refugee Settlement	Moyo
20.	Bidibidi Refugee Settlement	Yumbe
21	Palabek Refugee Settlement	Lamwo
22	Rhino Camp Refugee Settlement	Arua
23	Rhino Extension (Omugo)	Arua
24	Imvepi Refugee Settlement	Arua
25	Kiryandongo Refugee Settlement	Kiryandongo
26	Kyangwali Refugee Settlement	Hoima
27	Kyaka II Refugee Settlement	Kyegegwa
28	Rwamwanja Refugee Settlement	Kamwenge
29	Nakivale Refugee Settlement	Isingiro
30	Oruchinga Refugee Settlement	Isingiro
31	Lobule Refugee Settlement	Koboko

### 7.2.2 Uganda's progressive refugee policy

Uganda's refugee policy is basically inscribed under the Refugee Act, 2006, which opens doors to asylum seekers without discrimination and allows for the integration of refugees within the host communities, giving them the same rights to enjoy services as nationals. The policy does not lodge refugees in camps but, rather, in settlement centres, providing them with more rights and freedoms beyond the international standards. For instance, refugees have the freedom of movement, the right to own property and the right to work. Furthermore, under the policy, each refugee family is given a piece of land for settlement and farming so as to provide for their livelihood, sustain themselves and become self-reliant other than just being dependent on relief. However, much as this policy is taken as a role model, self-reliance and sustainable livelihood are difficult to achieve among the refugees with war-related injuries or disabilities.

### 7.2.3 Procedure for registration of refugees

The Office of the Prime Minister (OPM) and United Nations High Commissioner for Refugees (UNHCR) are responsible for registration of all the asylum seekers upon entry to Uganda from various border points. The asylum seekers report to the commandant, after which they are screened and fully registered through the biometric system upon arrival at the reception centre and considered for determination of their refugee status. They are either granted prima facie refugee status or await an interview for determination of refugee status by a subcommittee of the refugee eligibility committee (REC).

Upon approval of refugee status, the Office of the Prime Minister allocates a plot of land per family and the family is provided with basic assistance and relevant documents such as the Attestation Card, Identification Card, Ration Cards and verification forms with reference numbers that entitle them to food and non-food items. However, the Commission noted that there are some asylum seekers who sneak into the settlements without the knowledge of the OPM registration team.<sup>220</sup> This means that they are not fully registered and, therefore, face a challenge of accessing both food and non-food items since they do not have the necessary documents. The challenge here is that they share with other family members whatever little food is there, thus food portions become inadequate for the families.<sup>221</sup> It also means that when they are not registered, they are denied having refugee status as required by the Ugandan policy.

<sup>220</sup> Interviews with Riak Ayuen, cluster leader at Nyumanzi Settlement; Bull Grand, Refugee Welfare Council 1 (RWCI) chairperson, Baratuku Settlement; and Mark Aluzio Dracile, Block C leader.

<sup>221</sup> Interview with Charles Adraku, Assistant Camp Comandat, Pagirinya I and II.

#### 7.2.4 The biometric identity management system

The biometric identity management system is currently being used for registration of new-arrival asylum seekers and updating refugee population changes in all settlements. Despite the use of the system, there are still some delays in registration mainly when the asylum seekers come in huge numbers. This process takes one to three days depending on the refugee numbers arriving at a particular centre.<sup>222</sup> The delay is attributed to the small number of staff especially registration assistants who are inadequate although local measures seeking the services of volunteers for such emergency to overcome the challenges in registration are being undertaken as mitigation measure.<sup>223</sup> The biometric system is managed by the UNHCR and in case the Office of the Prime Minister (OPM) wants any data, its Kampala office writes to UNHCR requesting for it.<sup>224</sup> The Commission found this to be a serious security threat to Uganda as the host country as the government does not have direct control over information, details or numbers of the refugees yet it is supposed to settle and plan for the refugees and the host communities.

Previously, this biometric system was not used and there had been allegations of senior officials from OPM colluding with those of UNHCR to have the numbers of refugees inflated so as to mismanage the funds meant to support refugees. A verification exercise was carried out using the biometric identity verification for refugees and asylum seekers and it recorded 75% of the population that had sought asylum in Uganda before the verification date. This reduction in the numbers previously reported was attributed to the movement of refugees around the country and beyond, but also multiple registrations were noted during the influxes of South Sudanese refugees.<sup>225</sup>

### 7.3 REFUGEE AND ASYLUM SEEKERS' POPULATION AS OF 30<sup>TH</sup> DECEMBER 2018

#### 7.3.1 Population by country of origin

When categorized by country of origin, the highest number of refugees in Uganda, as of 31<sup>st</sup> December 2018 was from South Sudan, with a population of 789,099, followed by Democratic Republic of the Congo with a population of 312,699, Burundi with 34,981, Somalia with 23,633, Rwanda with 14,613, Eretria with 9,522, Sudan with 3,149, Ethiopia with 2,383 and the others having a population of 843. Adjumani, Yumbe, Moyo, Arua and Lamwo districts hosted refugees from South Sudan, while Koboko district hosted refugees from Democratic Republic of the Congo (DRC). Isingiro, Kyegegwa and Kamwenge districts hosted refugees mainly from Rwanda, Burundi, Somalia, Ethiopia and the Democratic Republic of the Congo. Among the total population of refugees, Bidibidi Settlement had the highest number of refugees with 19% of the refugees, followed by Adjumani with 17%, Palorinya had 10%, Nakivale and Rhino Camp had 8% each, Kyangwali and Kyaka II had 7% each, Imvepi, Kampala, Kiryandongo, Rwamwanja had 5% each, Palabek had 3%, Oruchinga had 0.6% and Lobule had 0.4%.<sup>226</sup>

#### 7.3.2 Refugee population and host community population

Uganda Human Rights Commission thought its visits into different refugee settlements established that the refugee population in some refugee settlements was higher than the population of host communities as illustrated in the table below.

222 UHRC interview with the OPM Regional Desk Officer (RDO) of Adjumani in February, 2019.

223 Interview with Alex Omeja, Deputy Commandant, OPM, Palabek Settlement.

224 Interviews with OPM Regional Desk Officer of Arua and OPM RDO of Adjumani.

225 Joint statement by UNHCR and OPM on preliminary results of refugee verification exercise. Accessed at <https://www.unhcr.org/afr/news/press/2018/11/5be4016a4/joint-statement-by-unhcr-and-opm-on-preliminary-results-of-refugee-verification.html> on 18th February 2019.

226 <https://data2.unhcr.org/en/documents/download/67595> Accessed on 13th February 2019.



**TABLE 11: REFUGEE POPULATION AND HOST COMMUNITIES BY DISTRICT AS OF 31ST DECEMBER 2018**

DISTRICT	REFUGEE POPULATION	HOST COMMUNITY POPULATION
Yumbe	222,960	584,221
Adjumani	202,382	170,029
Arua	153,545	846,491
Moyo	118,504	147,997
Isingiro	109,483	492,721
Kikuube	87,906	625,568
Kyegegwa	79,842	349,067
Kamwenge	65,071	429,236
Kampala	54,977	1,482,676
Kiryandongo	54,700	277,444
Lamwo	34,877	139,093
Koboko	5,035	236,900
Others	1,640	

As of 31<sup>st</sup> December 2018, the population of refugees in Adjuman district had outnumbered the host communities which caused social and economic tension in the district. This influx has both positive and negative impacts. For instance, host communities got jobs with NGOs like Windle Trust International and War Child Canada, which have recruited teachers and trained caregivers from the communities.<sup>227</sup> The refugees also provide labour to the host communities when they move out of the settlements to exercise their right to work.<sup>228</sup> Similarly, there are negative impacts of the influx of refugees to the host community and district.

The Commission heard complaints that refugees in Uganda compete with nationals for the scarce resources, due to the integration policy of Uganda. The refugees put a strain on the local resources such as water, trees, housing, energy, schools, health facilities and they overwhelmed infrastructure such as roads. The communities were concerned that the big numbers of refugees place a burden on social and administrative services.<sup>229</sup> There are also negative economic aspects of the influx such as making the nationals economically vulnerable.<sup>230</sup>

As the refugees and host communities compete for natural resources, such as land for agriculture, grass for thatching their houses and trees for building houses and for firewood (energy), they cause a threat to the environment. Both groups, for instance, cut down trees which largely affects the weather. This does not only cause destabilisation to the weather but also causes conflict among the refugees and host communities. For example, there is conflict in Lamwo district between the refugees and host communities over trees. The nationals allege that they provided their land for settlement of refugees who ended up depleting the environment yet cutting down trees was not part of the agreement.<sup>231</sup>

There is also a threat to security within the district because the security measures in place were originally intended for a small population and, therefore, are not commensurate with the population as increased by the influx of refugees. It is common for a big population with different ethnicities to have conflicts. The settlements do not have enough police structures and manpower. For example, Bidibidi Refugee Settlement has the biggest population of 287,228 refugees, but it has only three police posts in three zones, leaving two zones without any police post, which is a security threat.

227 Commission interview with Refugee Welfare Council 1 (RWCI) chairperson, at Elema Refugee Settlement, December 2018.

228 Commission interview with RWCI vice chairperson at Mirieyi Refugee Settlement, December, 2018.

229 Commission interview with the local leaders at the various settlement centres.

230 Commission interview with Mali Sunday, LC I chairperson of Pagirinya I in December 2018.

231 Chairperson of the Land Owners Association, Palabek, January 2019.

Whereas most of the refugee population in Uganda is in settlement centres, there is a growing tendency of refugees moving to urban areas in search of employment and better services thus creating a significant number of urban refugees. In Arua, for example, the Commission learnt that there are roughly 2,000 to 3,000 urban refugees.<sup>232</sup> According to UNHCR and OPM, urban refugees in Kampala are registered with the Office of the Prime Minister and given identification cards and letters outlining their right to work. They are provided with temporary support when they are in situations of particular hardship. The urban refugees are supposed to be able to meet their own costs and, therefore, ineligible for humanitarian assistance. Nonetheless, they find challenges in affording the high standard of living and some of them register in the settlements but rent in towns so that they may often return to the settlements for food distribution.

## 7.4 RESPONSE TO EMERGENCIES

According to OPM officials interviewed by the Commission at the various settlements, the government provides emergency responses in a timely manner. However, Government of Uganda through the Office of the Prime Minister provides settlement area, security, road network, education and health services and works with other partners to provide other services.

Other organisations providing emergency responses or relief to the refugee influx include UNHCR, Save the Children, Catholic Relief Services, War Child Canada, Danish Refugee Council, World Food Programme, Medical Teams International, Caritas, Windle Trust International, Lutheran World Federation, Action Against Hunger and Plan International, among others.

OPM coordinates and monitors the work and responsibilities of the implementing partners. Most of the refugees in the settlement centres have access to social services such as Schools, hospitals, clean water, food and non-food items. However, the challenge is that there is a big population in the centres and yet the services are meant for less numbers. This, therefore, calls for an analysis of the enjoyment of the rights to social services by the refugees and the concerns of host communities.

### 7.4.1 Government's development response to effects of refugee influx

Government borrowed US\$ 50 million from World Bank for the Development Response to Displacement Impacts Project (DRDIP) being implemented in the 10 refugee-hosting districts with settlement centres, since 2017.<sup>233</sup> The project is intended to improve access to basic social services, expand economic opportunities and health management in the districts, with the primary beneficiaries being the nationals in the host districts. The project has so far made progress in a way that the district leadership were trained on its implementation and 83 sub-projects were already being implemented by January 2019. The sectors in which the sub-projects are focused include education, health, roads and bridges and water.<sup>234</sup> Majority of the projects are under education and health services which were noted to cause a threat to the relationship between refugees and host communities.

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<sup>232</sup> Commission interview with Solomon Osakan, the OPM RDO for Arua, February, 2019.

<sup>233</sup> Presentation by Innocent Ndahirirwe, Refugee Integration and Legal Matters at OPM, held at Fairway Hotel, Kampala, January 2019.

<sup>234</sup> Ibid

TABLE 12: NUMBER OF SUB PROJECTS BY SECTOR AND DISTRICT

DISTRICTS	NUMBER OF SUB PROJECTS				TOTAL SUB PROJECTS
	EDUCATION	HEALTH	ROADS & BRIDGES	WATER	
Adjumani	03	03	01	0	07
Arua	03	02	00	0	05
Hoima	06	03	02	0	11
Isingiro	06	01	01	0	08
Kamwenge	04	01	02	0	07
Kiryandongo	05	00	01	0	06
Koboko	04	02	00	0	06
Kyegegwe	02	03	01	01	07
Lamwo	01	05	00	0	06
Moyo	07	04	00	0	11
Yumbe	04	05	00	0	09
TOTAL	45	29	08	01	83

## 7.5 HUMAN RIGHTS CONCERNS AT THE SETTLEMENT CENTRES

### 7.5.1 Shelter and infrastructure

Most refugees reside in either tents or grass-thatched houses. However, persons with special needs (PSNs) i.e. disabled persons, widows, children and elderly are given special consideration with some being provided with permanent houses or housed in special tents. Nevertheless, some of the widows at Imvepi and Bidibidi settlements decried the inadequate assistance given to them in terms of erecting tents for shelter.

### 7.5.2 Right to food

Food is provided by the World Food Program (WFP) at the settlements. Refugees receive a monthly food ration amounting to 12kg of maize flour, 1.5 kilogrammes of beans and one litre of cooking oil per person. The refugees, however, alleged that sometimes, they receive whole grain cereal and have to take up the responsibility of grinding it. Due to lack of Ugandan currency, many are forced to sell some of the grain in order to get money for grinding. This, therefore, leaves them with inadequate food rations to feed their families until the next month's supply. In rebuttal, the officials from UNHCR attribute the issue of inadequate food to the non-registered asylum seekers, who join the registered families thus affecting the quantity of the food supplied to them. It should be noted that only registered refugees receive a food ration and no matter how needy a non-registered refugee or asylum seeker is, he or she cannot receive a ration. This prompts some members of the host communities to register as refugees in order to get rations, but they are most times identified through the immunization marks on their bodies then reported to police after which they are arrested and prosecuted.<sup>235</sup>

<sup>235</sup> Commission interviews with ASP Denis Acirocan, the O/C Station, Nakivale Police Station and Pascal Ajusi, the Deputy Refugee Desk Officer, Adjumani and Moyo.



◀ Refugees receiving food at Oruchinga Settlement

The other concern of refugees regarding the right to food is that some refugees are allowed to opt for cash payment instead of in-kind food rations and receive UGX 40,000. However, there were recent amendments in the amount that they are paid, reducing it to UGX 31,000. This has also caused tension among the refugees who are not allowed to change back to the in-kind food rations.

Additionally, the long distance to the food distribution centres is a matter of concern. Refugees move between seven and 10 kilometers to pick food and walk the same distance to carry the food back to their homes. This is irrespective of whether the refugee is a person with special needs or not. They are all required to collect the food in person and have to follow the queue for long hours due to the big numbers being supplied.<sup>236</sup> According to the Refugee Desk Officer (RDO) of Adjumani, access to food distribution centres is a real challenge since the verification process. He said that before that, OPM used to have numerous food distribution points located less than 3km from the settlements but the responsibility of distribution was removed from OPM and now the distribution centres are very far to the extent that some refugees have to hire boda bodas to the distribution centres.<sup>237</sup> The RDO noted that the boda bodas also exploit the refugees by charging them expensively. It is important to note that in December 2018, at Bidibidi refugee settlement, the refugees raised the issue of long distances to food distribution centres. The refugees became violent and beat up a staff of UNHCR, attacked the head of UNHCR Arua office, damaged two vehicles and also broke into the World Food Programme store.

The right to adequate food is realised when every man, woman and child, alone or in a community with others, has physical and economic access at all times to adequate food or means for its procurement.<sup>238</sup> The long distance to the food distribution facility, coupled with the lack of choice but to sell part of the food for money to grind it, leaves the refugees with inadequate food and difficulty in accessing food, thus hindering the realisation of the right to food.

<sup>236</sup> Commission interview with RDO of Adjumani.

<sup>237</sup> Commission interview with OPM RDO Adjumani, February, 2019.

<sup>238</sup> General Comment 12 of the United Nations Committee on Economic, Social and Cultural Rights (The Right to Adequate Food).

### 7.5.3 Access to clean and safe water

The right to water is a requirement for the realisation of other human rights and entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. The water must be adequate for human dignity, life and health and should be sustainable.<sup>239</sup>

The Office of the Prime Minister (OPM) and United Nations High Commissioner for Refugees (UNHCR) work with other agencies to ensure that they respond to the right to clean and safe water for the refugees. A number of water sources including water tanks and boreholes (both motorized and local) are available at various points of the settlements. For instance, in Isingiro district, Isingiro District Local Government provided clean water by drilling boreholes within the settlements which are shared by both refugees and nationals.

However, the available water sources at the settlements are still inadequate to serve the high refugee numbers and the host community within the centers, thus access to water still remains a challenge though not a very serious one as it was before. For instance at Oruchinga settlement, each village has a borehole, and Bidibidi settlement has over 100 boreholes. At Palabek settlement, there was no water trapping and this led to a water shortage.<sup>240</sup> At Nakivale settlement, water is pumped from the lake though it may not be adequate as it is pumped in phases targeting different parts of the settlement. Boreholes are equally spread across the settlement.<sup>241</sup> Nevertheless, although efforts have been made to improve the right to water, it is still inadequate. For example, at Bidibidi settlement, the boreholes were opened at 3:00pm and closed at 4:00pm because the dry spell had lowered the water levels



◀ A woman and children fetching water from a tap at Palabek Refugee Settlement

### 7.5.4 Right to health

The right to health was first articulated in the 1946 Constitution of the World Health Organisation (WHO), whose preamble defines health.<sup>242</sup> The 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights provide for the right to health as part of the right to an adequate standard of living. The right to health requires that the services must be available, accessible both physically and financially to all, acceptable both medically and culturally and should be scientifically and medically appropriate and of good quality.

239 General Comment No. 15 of the UN Committee on Economic, Social and Cultural Rights, 2002 (The Right to Water).

240 Commission interview with Alex Okurut, Assistant Settlement Commandant – OPM, Palabek, January 2019.

241 Commission interview with Jack Twebere, Water Officer, Isingiro District Local Government, November 2018.

242 The constitution of WHO, in the preamble, defines health as “A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Accessed at [https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf) in February 2019.

Government of Uganda through the Office of the Prime Minister together with other agencies such as Medical Teams International (MTI) and Office of the High Commissioner for Human Rights provide health care services at the settlement centres. The settlements have both private and public health facilities. The refugees and nationals are treated in the same manner and they pay for the services rendered in facilities that are not government-owned if they opt to go there rather than to public facilities.<sup>243</sup>

Generally, the health situation at the settlements has improved in terms of structure. For instance, Bidibidi Refugee Settlement alone has 15 health centres III though most of them are still in temporary structures and two health centres. At Palabek, there are four health centres II and one health centre III.

However, although the health facilities exist, due to the influx, the services provided are inadequate in that there are drug shortages and shortage of staff<sup>244</sup>, thus affecting the right to health of both the refugees and nationals. Some refugees that the Commission team<sup>245</sup> interviewed complained that due to drug shortages, they are in most cases referred to private clinics by the health centres yet they can not afford the health services offered there.

#### 7.5.5 Access to education

The right to education is a fundamental right proclaimed under Article 26 of the UDHR,<sup>246</sup> and recognized by a number of international legal instruments.<sup>247</sup> The right encompasses free and compulsory primary education, available and accessible secondary education, equal access to higher education on basis of capacity and quality education, among others.

Children of ages between five and 17 years comprise the highest number of refugees in the settlements.<sup>248</sup> OPM and UNHCR, working with partners like Windle Trust International, ensure that the schools are available for both the refugees and nationals' children. Schools have been established with both temporary and permanent structures in place in refugee settlements.

The Commission noted that the schools comprised early childhood development centres (ECDs) as well as primary, secondary and vocational schools. The refugee settlements have more primary schools but less secondary schools and tertiary institutions, causing congestion in the few available secondary schools and tertiary institutions. For example, Bidibidi Refugee Settlement in Yumbe district has over 27 primary schools and five secondary schools. Refugees from Rwamwanja refugee settlement have to share the only secondary school within Kataryebwa town council together with the host community members and this has brought about congestion in the school. In Nakivale, there are eleven government primary schools, 30 private primary schools and only one secondary school. Palabek settlement has one secondary school called Ogili Refugee Secondary School, one vocational school by Don Bosco and seven primary schools.<sup>249</sup> The secondary, vocational and four of the primary schools have permanent structures.

The other factor that poses a challenge to the enjoyment of the right to education is that the schools are also very far from the communities thus children have to walk long distances to access secondary education. For example, in Bidibidi settlement, Obubu primary school serves a big population from

243 Commission interview with Sr. Agnes Manirafasha, Enrolled Comprehensive Nurse, Kyabirukwa Health Centre III, November 2018; and interview with Tusiime Fortunate Nabanja, Senior Nursing Officer, Rwekubo Health Centre IV, November 2018.

244 Commission interview with Tusiime Fortunate Nabanja, Senior Nursing Officer, Rwekubo Health Centre IV, November 2018.

245 Interviews with refugees at Bidibidi settlement, December 2018.

246 Universal Declaration of Human Rights, 1948.

247 For example CESC, 1966 and CRC, 1989.

248 Commission interview with UNHCR and OPM officials at the different settlement centres.

249 Commission interview with Alex Omeja, Deputy Settlement Commandant – OPM, at Palabek, January 2019.

several clusters within the settlement and some of its pupils had to cross a river to access the school. Additionally, the facilities and services for adult education are few. At Imvepi Settlement Centre, one of the female refugees expressed her disappointment saying she was interested in pursuing further studies but was told that she was too old and not fit to be in a class with young children.

The above factors hinder the enjoyment of the right to education for both the refugees and their host communities.



◀ Vocational training center in Palabek Resettlement Centre

The schools in the refugee host districts treat both nationals and refugees the same way without discrimination although some refugees are sometimes timid owing to their status of being refugees.<sup>250</sup> Mr. Odong Oloya, Director of Studies at Ogili SS, informed the Commission that the school admitted both refugees and children from host communities but refugee admissions were at 80%.

However, although there are efforts to ensure non-discrimination, there are circumstances where some refugees are discouraged from pursuing secondary education due to the fact that they do not speak English. For instance, at Nakivale settlement, the French speaking refugees stated that they are discouraged from pursuing secondary education because the lessons and all communication are conducted in English which affects their enjoyment of the right to education.

### 7.5.6 Access to justice

The refugees, like the host community, are not exceptional when it comes to criminal activities; they too do commit criminal offences within and outside their respective settlements. There are a number of humanitarian agencies working with the government justice institutions such as police and Judiciary to ensure access to justice. According to the police and OPM officials, the most common offences committed are theft, SGBV in form of rape and defilement, and common assault.

The conflict resolution mechanisms comprise the use of community leaders, district leaders, cultural leaders and police. Leadership structures at the settlements were also established to deal with disputes such as the refugee welfare councils I, II and III in that order of ascending authority. These are the initial or just points of contact when a dispute occurs and they often inform the OPM in case of any crime or dispute and they work based on block zone and settlement structures. There is also community policing by police and dialogues by different agencies coupled with a complaints desk.<sup>251</sup> The criminal offences are committed not only against refugees themselves but also against the host

250 Commission interview with Apophia Busingye, the Head Teacher, Kabahinda Primary School.

251 Commission interviews with RWCS, RDOs, UNHCR and OPM officials at various settlements visited.

community members. For example in Adjumani, the refugees on 7<sup>th</sup> August, 2018 lynched a female pastor who had gone to preach in the refugee settlement on allegations that she was performing fake miracles.<sup>252</sup> The female pastor was from Moyo district and had gone to preach at Pagirinya II refugee settlement. The ringleaders of the mob action were arrested and are now in Adjumani Prison. This issue brought a lot of tension between the host community and the refugees to the extent that the host community wanted to attack the refugees but police was heavily deployed to man security.

Some refugees interviewed<sup>253</sup> claimed that they find challenges with the laws in Uganda which are different from those in their home countries. For instance, the law in Uganda sets the age of consent for girls at 18 years yet in South Sudan it is at 16 years. They allege that some refugees come into Uganda with their wives who are 16 years old and in Uganda, this amounts to defilement. Sometimes they just want to marry off their girls at 16 years as this is within the laws of their countries, but in Uganda it is a crime. They thus find it challenging to adjust to the Ugandan laws and when they are caught on the wrong side of the law or when they report their complaints to police, the police overcharges them for processing their case files and sometimes mismanages them due to language barrier. However, the OPM, UNHCR and the Commission are sensitizing the refugees on the Ugandan laws.

#### 7.5.7 Access to land

Refugees are allocated a sizeable piece of land for settlement and farming.<sup>254</sup> Some refugees interviewed said although they had been allocated land to grow their own food, the land is too small to enable them cultivate food that can sustain them without relying on handouts. Many of them, therefore, hire land outside the settlement to supplement. They, however, accuse some members of the host community for not being honest to the extent that when the refugees hire/ rent land from the host community members for a certain amount of money, after clearing the land, the members of the host community chase the refugees away and they take back their land.

The land in some refugee settlements belonged to the community members who provided it for the refugee settlement with some promises to benefit.<sup>255</sup> The land in West Nile sub-region (Arua, Koboko, Yumbe, Moyo and Adjumani) and Northern region of Uganda is given by the community members.<sup>256</sup> At the beginning, host communities were informed about the indirect benefits in terms of social services such as roads, schools, health care and water. However, they misunderstood it for compensation and, therefore, want to benefit directly.<sup>257</sup> An example is the land of Lamwo and Adjumani which belongs to the people. The agreements by the government with these people seem not to be clear or the community seems not to understand them. Some of the landowners were afraid that the land might not be returned to them even when the refugees' situation normalized. They asserted that political interference and violation of the agreement had already started.<sup>258</sup>

The individuals that provided their land for refugee settlement are not supported by the government in any way and yet they already gave out their land. The people in the host communities asserted that they are refugees in their own land and more vulnerable than the refugees since the refugees live a better life than them.<sup>259</sup> This shows that although there seems to be no visible conflicts between

252 Commission interview with OPM RDO Adjumani, February 2019.

253 Commission interviews with refugees at Pagirinya, Imvepi and Mirieyi settlements.

254 COMMISSION interview with Ocan Robert, RWC 3 at Palabek Refugee Settlement, January 2019

255 Refugee settlements in Northern Uganda and West Nile.

256 Commission interviews with RDO of Arua, RDO of Adjumani and Deputy Settlement Commandant - OPM at Palabek Settlement.

257 Commission interview with Robert Ocan, Refugee Welfare Council III, Palabek Settlement, January 2019.

258 Commission interview with some of the people who provided land for the settlement in Lamwo.

259 Commission interview with host community members at Palabek, Pagirinya and Mirieyi settlements.



refugees and host communities, there is tension brewing between the two groups. However, some of the community members do not regret giving their land to the refugees, but they want the OPM/ Government to fulfill the promise of 30% benefit to the community.<sup>260</sup>

According to the Refugee Desk Officer of Adjumani, the landlords who gave out their land for the refugees to settle have been demanding some form of appreciation from the OPM (the government) yet OPM had no answer to such kind of demands. The Commission heard that the World Bank and UNHCR gave some money for the host communities in the refugee-hosting districts in West Nile and that the money has been given to the districts for disbursing with the priority being given to landlords who gave out their land for the refugee settlement.<sup>261</sup>

### 7.5.8 Security

There are no major security threats in the various settlements because of the mechanisms in place to ensure security in the refugee resettlements such as police stations and police posts. At every entry point and reception centers of the settlements, screening is done by the police and members of the refugee community; the existing leadership structure too plays a role in security.<sup>262</sup> However, despite the prevailing security in the refugee settlements, tribal conflicts exist in some camps such as Rhino Camp refugee resettlement where the Dinka and the Nuer, both from South Sudan, attacked each other in 2018. It was during World Cup in July, 2018, when a fight arose between a Dinka and a Nuer over a chair. The Nuer community later took the matter beyond and hacked four Dinkas to death. However, the situation was contained before it escalated further. Uganda Police Force is working closely with the refugee leadership to ensure peace within the settlements and within the host communities.

Similarly in Bidibidi, there was some insecurity in 2018 as a result of the reduction of food distribution centres where refugees allegedly beat up officials from World Food Programme.



◀ The police office, vehicles and motorcycles at Palabek resettlement site

## 7.6 SOCIAL RELATIONSHIP BETWEEN REFUGEES AND HOST COMMUNITIES

The social relationship between the host communities and refugee community is generally good in that the two communities interact on different forums without discrimination, which brings

260 Host community members in Adjumani and Lamwo.

261 Commission interview with RDO Adjumani.

262 UHRC interview with Refugee Commandants at Rhino Camp and Bidibidi Refugee Settlement centres, January 2019.

out the intention of integration. There are a number of social engagements between the refugees and their host communities; for example, they freely mix in places of worship, at burials, marriage ceremonies and some international day celebrations. In some settlements,<sup>263</sup> some refugees speak the local languages such that it is difficult to know who is a refugee and who is not.<sup>264</sup> For example, many refugees from South Sudan speak Acholi. The social relationship between refugees and host communities in Lamwo district is considered the best compared to all other settlements in Uganda.<sup>265</sup>

The host communities were reported to have received, accepted and co-existed peacefully with the refugee community in their area. This is attributed to a number of factors, including the already existing historical similarity between the refugees and host communities given their historical origin from South Sudan; the language similarity between the host community and majority of refugees i.e. Acholi-speaking people from Pajok in South Sudan hence common language spoken; social ties such as intermarriages between the two communities and participation of the refugees in some host communities social events such as the 2018 Acholi Cultural Festival in Gulu district, among other factors.<sup>266</sup>

Although there seems to be peaceful co-existence between refugees and their host communities, in addition to overwhelming the social services, there still exists tension between refugees and host communities mainly fueled by competition for the limited resources such as jobs and misunderstandings due to cultural and religious differences.<sup>267</sup> Conflicts have been reported over land degradation, firewood collection and grazing rights.

## 7.7 RECOMMENDATIONS

1. Office of the Prime Minister (OPM) should streamline the policy of land ownership and related benefits for the host communities before, during and after occupation by refugees.
2. OPM should create its own biometric system of registration of refugees or attain control over the UNHCR system.
3. Government should, through the Office of the Prime Minister, support the host communities who have already given out their land for refugee settlements and have nowhere to sustain their livelihoods.
4. The Government of Uganda should, through the Office of the Prime Minister, conduct massive awareness raising among the host communities on the terms and conditions on which their land was donated to the government for settlement of refugees As well as on how to tap the benefits arising from refugee population such as utilizing them as labour and market for produce.)
5. OPM, UNHCR and World Food Programme should revise the food distribution system in the settlements with a view to ensuring that food is not distributed very far away from the families.
6. The Government should, through the Office of the Prime Minister, ensure that more schools, especially secondary schools, and health centres are set up within the settlement or in areas close to the households.

<sup>263</sup> Rwamwanja, Kyaka II and Palabek.

<sup>264</sup> Commission interview with Steven Niragire, Subcounty Chief, Nyakande sub-county, Kanyabukungu village. November 2018.

<sup>265</sup> Commission interview with Mr. Blaze Rodrigez, the Field officer- UNHCR, January 2019. He said the host and refugee communities' relationship in Palabek resettlement was the best compared to other sites in Uganda. He noted that the host communities were reported to have received and accepted and co-existed peacefully with the refugee community in their area.

<sup>266</sup> UHRC interviews with Jimmy Bongomin, Field Assistant, Peaceful Coexistence - UNHCR; and Alex Omeja, Deputy Commandant – OPM at Palabek Settlement Centre, January 2019.

<sup>267</sup> UHRC interviews with refugee leaders and local council leaders of host communities; for example, RWCI chairpersons of Nyumanzi, Baratuku and Elema settlements; and LCI chairpersons of Mlrieyi, Pagirinya and Elema settlements.

7. OPM and development partners should increase on water supply by installing a bigger water system to lessen the problem of inadequate water.
8. OPM should establish tertiary/vocational training institutions for the refugees and host communities to help the people, especially the youth, attain some skills.
9. The Government should open up more police posts in the refugee settlements and deploy more police officers in these settlements.
10. Government and other implementing partners should consider opening up some adult classes/ education for the adult refugees who are interested in it.

## **7.8 CONCLUSION**

Uganda has an outstanding refugee policy and is living to its implementation pledges to continue this settlement approach towards refugees, thus living to its international obligations. The use of a biometric system in registration of refugees paved way for focused interventions based on reliable data. For instance, knowing that refugees in Adjumani district have outnumbered the nationals will guide on the nature of intervention to be taken. However, this would be more reliable if managed by Uganda, which is the host community. Despite government and some partners' interventions to improve the social services in the refugee host districts, the influx of refugees is making the services increasingly scarce because their numbers are not determined at the planning level. As the plight of refugees is being considered for improvement by the government and other stakeholders, it is important to equally address the concerns of host communities in order to eliminate the different tensions that exist between the two groups. However, this can only be implemented if Office of the Prime Minister is financially well facilitated and concerted efforts received from partners to fully achieve adequate and sustainable positive results.

# THE PLIGHT OF HEALTH WORKERS AND ITS EFFECT ON ACCESS TO HEALTH CARE IN 2018

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## 8.0 INTRODUCTION

The right to the highest attainable standard of health is one of the fundamental human rights and freedoms guaranteed under various national, regional and international human rights frameworks. To fully realise this right, there is need to have adequate and well-trained health professionals at all levels. This implies that the conditions under which health workers operate contribute to the effective realisation of the right to the highest attainable standard of health.

In recognition of the constitutional provisions on the right to health, Ministry of Health adopted the Patients Charter, 2009 that describes the need for clients to receive client-focused, quality and equitable, professional and transparent services without discrimination and thus practising a rights-based approach to health care, so as to improve the quality of life of all Ugandans. Ministry of Health further recognizes the clients' rights to include the right to health services, information, non-discrimination, participation, being treated with respect and courtesy, informed consent, confidentiality, timely intervention, privacy and working in a safe environment.

Similarly, the Employment Act, 2006 protects health workers' rights to include entitlement to wages,<sup>268</sup> weekly rest and length of working hours which shall be a maximum of forty-eight hours per week. Other guaranteed rights include annual leave, sick leave, maternity leave and paternity leave.<sup>269</sup> While these initiatives are put in place to ensure quality health care and the realisation of the right to health, glaring concerns remain visible. This is more so in regard to the working conditions of the health workers in Uganda which, among others, include low wages, long working hours, shortage of staff, delayed salaries and lack of accommodation.

In line with Article 52 of the 1995 Constitution of the Republic of Uganda, Uganda Human Rights Commission conducted an assessment on the plight of health workers in eight districts of the country in the year 2018 to establish factors affecting access to health care and to provide effective measures to improve the conditions of health workers as a means to enhance access to health care in Uganda.

## 8.1 LEGAL FRAMEWORK ON THE PLIGHT OF HEALTH WORKERS IN UGANDA

Uganda is party to a number of international legal instruments that protect the rights of workers including health workers. These include the Universal Declaration of Human Rights (UDHR) which recognizes the right of every person to work, freely choose employment, just and favorable conditions of work and protection against unemployment.<sup>270</sup> The UDHR mentions the right to work as also including the right to just and favorable remuneration and social protection.<sup>271</sup> The right to just and favorable conditions of work is a right of everyone, without distinction of any kind. The reference to 'everyone' highlights the fact that the right applies to all workers in all settings, regardless of gender, as well as young and older workers, workers with disabilities, workers in the informal sector, migrant workers, workers from ethnic and other minorities, domestic workers, self-employed workers and unpaid workers, among others.

The International Covenant on Economic, Social and Cultural Rights provides that everyone has the right to work and this includes work that one freely chooses or accepts.<sup>272</sup> Member states are further called upon to achieve the full realisation of this right through technical and vocational guidance. The Convention on the Elimination of All forms of Discrimination against Women (CEDAW) requires

<sup>268</sup> Section 4 Employment Act, 2006.

<sup>269</sup> Section 56 and 57 Employment Act, 2006.

<sup>270</sup> Article 23 (1) of the Universal Declaration of Human Rights.

<sup>271</sup> Article 23 (3) of the Universal Declaration of Human Rights.

<sup>272</sup> Article 7 of the International Covenant on Economic, Social and Cultural Rights.

states to protect women's right to work and to ensure that women have the same training and employment opportunities as men.<sup>273</sup>

At the regional level, the African Charter on Human and Peoples' Rights provides for the enjoyment of rights and freedoms without discrimination as well as the right of workers to work under equitable and satisfactory conditions and the right to receive equal pay for equal work.<sup>274</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) requires states to adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic activities.<sup>275</sup>

At the national level, the Constitution provides for the protection of workers' rights which include the right to work under satisfactory, safe and healthy conditions and to ensure equal payment for equal work without discrimination.<sup>276</sup> Article 8A (1) of the Constitution provides that Uganda shall be governed based on principles of national interest and common good as entrenched in the National Objectives and Directive Principles of State Policy. Specifically under objective XX, the state commits to take all practical measures to ensure the provision of basic medical services to the population and the right to access health services. These measures include creating a conducive environment for the operation of health workers.

Other national laws and policies that protect the rights of health workers include the Employment Act, 2006; the Workers Compensation Act, 2000; the Occupational Safety and Health Act, 2006 and the Uganda National Health Policy.

## **8.2 SITUATION ANALYSIS OF THE PLIGHT OF HEALTH WORKERS IN SELECTED DISTRICTS**

In 2018, the Commission monitored 42 health facilities and these included four hospitals, seven HCIVs, 18 HCIIIs and 11 HCIs. The monitoring exercise was carried out in six selected districts of Sheema, Kaabong, Kisoro, Adjumani, Insingiro and Mabarara. The Commission also visited Mulago National Referral Hospital and Ministry of Health.

The categories of persons interviewed included doctors, clinical officers, hospital administrators, human resource officers, nursing officers, laboratory assistants, enrolled midwives, enrolled nurses and nursing assistants.

The monitoring exercise was carried out in the selected districts to make a comparative analysis of the plight of health workers across the country. Due to limited funds, Uganda Human Rights Commission failed to carry out monitoring in all regions of the country. The facilities monitored were mainly health centres II, HCIIIs and HCIVs, and these were situated in both urban and rural areas where health workers could easily be interacted with.

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273 Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women.

274 Article 15 African Charter on Human and Peoples' Rights.

275 Article 15 of the Maputo Protocol.

276 Article 40 (1) (b) of the 1995 Constitution.

**TABLE 12: CATEGORIES OF HEALTH WORKERS INTERVIEWED BY UHRC**

TITLE/DESIGNATION	NO. OF HEALTH WORKERS	GENDER	
		FEMALE	MALE
District health officers	1	-	1
Hospital administrators	3	1	2
Human resource officers	2	1	1
Medical doctors	7	-	7
Senior nursing officers	2	1	1
Senior clinical officers	5	2	3
Nursing officers	5	4	1
Clinical officers	10	1	9
Laboratory technicians	1	-	1
Enrolled midwives	4	4	-
Enrolled nurses	16	11	5
Laboratory assistants	1	1	-
Nursing assistants	3	3	-
Total	60	29	31

### 8.2.1 Number and gender of the respondents

There were 30 female health workers of the 61 respondents interviewed, representing 49.1%. Female health workers were majorly found in Sheema and Mbarara districts. This indicates that the health sector has promoted the participation of women in decision-making in the health service delivery which is critical in advancement of rights of women seeking health service at health facilities including the right to privacy. Male health workers were 31, representing 50.8% and these were majorly situated in district hospitals and referral hospitals.

The service period for most health personnel was from two to five years with 33 out of the 61, representing 54%, having served for that period. Some 25 health staff served for more than five years, representing 40.9%. This indicated that the personnel had experience to provide quality health service to patients.

In line with the UDHR, CEDAW and Maputo Protocol, Uganda has made considerable efforts in employment and involvement of women in the management and decision-making in the health service sector as shown by the findings above, which places the role of women in the health service delivery at 49.1%.

### 8.2.2 Staffing levels in health facilities

The Commission established that the staffing levels in majority of the health facilities visited did not meet the numbers required. It noted that out of the total staff requirement of 63,038 for all health facilities in Uganda, only 47,610 were actively employed, leaving a staffing gap of 15,428. For instance at Moroto regional referral hospital, out of the 378 staff required, only 160 positions were filled, leaving a gap of 218 unfilled. Mulago national referral hospital which had an established staff structure of 3,075, only had 1,715 filled, leaving a gap of 1,360. In addition, out of the 15,408 positions for the entire 1,712 health centres II in the country, only 8,534 are filled, leaving a gap of 6,874. Each health centre II is required to have nine staff. The Commission established that for the 991 health centres III with established staff structure of 19 each, which would have made a combined total manpower of 18,829, only 15,155 were filled, leaving a gap of 3,674. The Commission noted

the only exception at Butabika national referral hospital, where out of the 418 positions, 423 were filled, giving an excess of five staff. The implication of not filling the approved staff structure is that the available staff is overstretched and hence cannot effectively attend to all the patients.

Some health workers indicated that due to unfilled gaps in the human resource structures at the health facilities, they were overburdened with patients. They were at times overwhelmed by the numbers of patients since most of the health facilities have big areas to cover compared to the manpower at the facilities. Examples of health facilities with limited manpower included, among others, Nyamitanga HCIII in Mbarara district where health workers indicated that they receive between 70-80 patients daily at the service of seven staff; the special clinic (diabetes) at Mbarara regional referral hospital receives between 70 and 100 patients every Thursday at the service of only four staff; Mbarara Municipal Council HCIV receives about 100 patients daily in the outpatient department at the service of four staff whereas Kasaana HCIII receives 30 to 40 patients daily at the service of seven staff inclusive of support staff.

### 8.2.3 Discrepancies between actual and approved wage bill

The Commission established that majority of the health facilities did not receive adequate funds to meet the approved wage bill. This, therefore, means that they are unable to meet the wage demands of all the staff. It was noted that while the total wage bill for Mulago National Referral Hospital with enhanced salaries should be UGX 67 billion per year, the approved wage bill is currently UGX 56 billion per year, which is less than the required bill by 11 billion shillings and yet of the approved UGX 56 billion, the hospital receives only UGX 33 billion.

The Commission noted that failure to provide the approved wage bill has affected the recruitment of health workers and left the existing staff overstretched and working beyond the recommended eight hours, which is risky for both patients and health workers. The absence of adequate health workers has many times resulted in some patients being unattended to and lack of access to health care.

The other implication of the low wage bill for hospitals and health facilities is that patients who can afford have resorted to calling upon their specialised private doctors and health workers to attend to them in government hospitals or facilities. These health workers are commonly university lecturers from Makerere University Medical School.

### 8.2.4 Low salaries for health workers

The Commission established that there was general acknowledgement of timely payment of salaries across the districts and health facilities monitored, except for eight health personnel at Kabwohe HCIV in Sheema district, Kihunda HCIII in Sheema district and Kisoro Main Hospital where delays in payment of individual staff salaries were reported. UHRC also noted delay in salary payment in Kaabong district and this was attributed to changes in the human resource personnel department.

The health personnel in Kaabong and Adjumani districts reported an increment in their salaries. The general view, however, was that the salaries were inadequate compared to the cost of living within the areas of work. One result of this, as revealed by health personnel, was that some of them had to use their working hours to engage in other businesses to generate extra income to meet daily economic demands. This, therefore, directly impacted on access to service delivery.

The circular standing instruction No. 5 of 2018 on the salary structure for financial year 2018/2019 issued on 29<sup>th</sup> June 2018 by Ministry of Public Service, presents salaries of health workers as indicated in the table below:



**TABLE 13: MONTHLY SALARIES FOR GOVERNMENT HEALTH WORKERS**

DESIGNATION	SALARY SCALE	MONTHLY PAY (UGX)
Director	U1SE	3,600,000
Deputy Director	U1SE	3,300,000
Commissioner	U1SE	3,050,000
Deputy Commissioner	U1SE	2,700,000
Assistant Commissioner	U1E	2,700,000
Principal Officer	U2	2,400,000
Senior Officer	U3	2,300,000
Scientist	U4	2,200,000
Scientist (Scientist other than medical personnel in U5)	U5	1,200,000
Director General Health Services	U1S	6,000,000
Deputy Director (Medical)	U1SE	4,600,000
Principal Medical Officer	U2	3,750,000
Health Worker other than Medical Officer, Dental Surgeon and Pharmacist in U2	U2	3,500,000
Senior Medical Officer/Dental Surgeon/Pharmacist	U3	3,300,000
Health Worker other than Medical Officer/Dental Surgeon/Pharmacist in U3	U3	3,100,000
Medical Officers/Dental Surgeon/Pharmacist	U4	3,000,000
Health Worker other than Medical Officer/Dental Surgeon/Pharmacist in U4	U4	2,200,000
Health Worker in U5 (Clinical Officers, Nursing Officers)	U5	1,200,000
Health Worker in U6 (Laboratory Technicians)	U6	850,000
Health Worker in U7 (Enrolled Nurse, Enrolled Midwife, Laboratory Assistant)	U7	613,000
Nursing, Theatre, Laboratory and Dental Assistants	U8	313,000

Source: Ministry of Public Service (2018)

Uganda Human Rights Commission further established that whereas health workers are paid on time and despite the fact that government had enhanced their salaries in July 2018, their salaries were still very low, compared to the cost of living. Consequently, health workers were still dissatisfied with the meager salaries and many had resorted to having private clinics alongside serving in public facilities, which left them with minimal time to attend to patients in the public facilities. Other health workers have also sought for greener pastures out of the country to enable them access financial growth which they cannot attain in Uganda with the limited remuneration available.

The Commission established that senior health workers in administrative and medical work are paid less compared to their juniors who are deployed in wards. For instance, an Assistant Commissioner gets less pay compared to a Principal Nursing Officer because it is assumed that the Assistant Commissioner does more of administrative work than medical practice. However, this is different for the Executive Director who is the chief administrator of the hospital but paid as a medical practitioner. This has demoralized the senior health workers and they no longer want to attend to patients and this affects quality access to health care. Despite the fact that this discrepancy was brought to the attention of Ministry of Public Service, nothing has been done to address the anomaly.

The Commission also noted discrepancy between medical and non-medical workers' salaries. It observed that whereas a Nursing Officer gets approximately 2.2 million shillings a month, a Human Resource Officer earns UGX 700,000, yet both have a minimum of a bachelor's degree and are deployed to work as a team and ensure better health care. The Commission noted this as one reason for the demotivation of non-medical workers in health facilities as they feel that their right to equal pay for equal work is not observed.

As a mitigating measure to reduce the burden on the health workers, some hospitals prepare meals for all the workers and in-patients such as those at Mulago National Referral Hospital. However, many health workers still find it difficult to survive on salary and this results into absenteeism which ends up affecting health care.

#### 8.2.5 Career development of health workers

Majority of the health workers revealed that they were not well versed with new technologies and had limited access to technology yet most medical check-ups require modern technologies such as use of computers, scanning and screening equipment, CT scans, magnetic resonance imaging (MRI), X-ray machines and others which have not been provided. The Commission established that career progression within the health sector was in accordance with the Uganda Public Service Standing Orders and the Hospital Human Resource Manual. However, this is constrained by funds which cannot enable health workers to go for further studies. Majority of the health workers who are studying are nurses but they are restricted to studying from the institutions around the health facilities where they work.

#### 8.2.6 Sanitation and medical sundries

The Commission findings indicated that medical personnel in six health facilities of Bunagana HCII, Nyakinama HCIII in Kisoro district, Kasaana HCIII, Kakoma HCIII, Kamukuzi HCII and Nyamitanga HCIII shared disposal facilities with patients. This poses great health risks to health personnel especially at Bunagana HCII which is often faced with the influx of refugees from Democratic Republic of the Congo with potential risks of outbreak of contagious diseases such as Ebola.

However, at Mulago National Referral Hospital, it was noted that the general working condition was fair and that the physical environment which could be infectious had been controlled through maintenance of proper sanitation. Disinfectants are always provided as well as face masks, goggles and gloves. However, the Commission noted the problem of inadequate funding for medical supplies in most of the hospitals and other lower health facilities visited. In Mulago National Referral Hospital for instance, while the approved budget for medical sundries and drugs was 101 billion shillings in 2018 only 14.36 billion shillings was released, leaving a funding gap of UGX 86.64 billion. There was, therefore, inefficient supply of medical sundries due to inadequate budget allocation which meant that the patients had to buy their own medicines and drugs.

#### 8.2.7 Working environment for health workers

The Commission findings indicate that majority of the hospitals had accommodation for their staff. However, the adequacy of accommodation for the staff remained a big challenge. In Kaabong district, staff who come from outside the district were accommodated by the hospital while those from within the district were required to rent. In Nebbi district, personnel of Rose of Sharon Meternity Centre and NERF Hospital have their rent paid by the health facilities, while health workers in government health facilities are required to find accommodation or rent on their own.

Health facilities with decent accommodation included Kihunda HC-III, Kitagata Hospital, Kisoro Hospital, St Francis Hospital Mutolere, Nyakabande HCII, Nyamuyanja HCIV, Nshungyezi HCIII, Mbarara Regional Referral Hospital, Mbarara Municipal Council HCIV, Kakoba HCIII, Rubaya HCIII, Kakoma HCIII, Rwekubo HCIV, Nyakinama HCIII and Nyamitanga HCIII while those with old and dilapidated structures with cracked floors, poor aeration and limited working spaces included, among others, Kabwohe HCIV, Bugongi HCIII, Kyeibanga HCII, Zindiro HCII, Karera HCII, Bunangana HCII, Kasaana HCIII, Mabona HCIII, Kamukuzi HCII, Rwekubo HCIV, Bwizibwera HCIV and Biharwe HCIII.

Mulago National Referral Hospital, for example, had only 110 units that house 250 staff out of 1,715 staff available at the hospital. The Commission further noted that apart from a block of staff units that is under construction at Muago, other staff houses are dilapidated. Duty station houses were not enough and this had an implication on the attendance of staff to night duty. With the increasing number of patients, many were left unattended to during the night because the health workers live far from the hospitals or health facilities.



◀ *Newly constructed structure at Rubaya Health Centre III in Mbarara district.*

### 8.2.7 Rights of health workers

Health workers' rights include weekly rest, amount of working hours (40 hours per week), annual leave, sick leave, maternity leave and paternity leave. The Commission established that majority of health workers worked for eight hours in regional referral hospitals, HCIVs and a few HCIIIs and HCII where shifts are practiced. This was found at Kabwohe HCIV, Rwekubo HCIV, Biharwe HCIII, Mbarara Municipal Council HCIV and Mbarara Regional Referral Hospital, Bugongi HCIII, Kihunda HCIII, Zindiro HCII, Nyakabande HCII, Kakoma HCIII, Kaabong Hospital and Rose of Sharon, while in majority HCIIIs and HCII, staff generally worked for more than eight hours because shifts were not common. Examples of facilities where staff worked for more than eight hours included Kyeibanga HCII, Karera HCII, Kitagata Hospital, Kisoro Hospital, Bunangana HCII, Nyakinama HCIII, St Francis Hospital Mutolere, Kasaana HCIII, Nyamuyanja HCIV, Mabona HCIII, Kamukuzi HCII, Kakoba HCIII, Nyamitanga HCIII, Bwizibwera HCIV and Biharwe HCIII.

The Commission interviewed midwives from different health facilities and they revealed that they work both under tough conditions and beyond the required time without resting. That sometimes they work without supplies such as gloves, mama kits and electricity on top of walking long distances to and from work due to lack of accommodation at the health facilities. They noted that this makes it hard for them to deliver their services as required. They further revealed that they sometimes do not get the requirements on time which also affects service delivery. That they are sometimes forced to make mothers buy gloves and mama kits from other health facilities because of stockouts. The midwives revealed that they sometimes improvise and use their own money to help mothers, but that they are overwhelmed by the number of deliveries.

The Commission established from health practitioners that in most cases, the health centers do not have funds to fuel the ambulances in case of referrals and that it's the patients or attendants who sometimes provide the fuel to transfer patients to the referred health institutions.

### 8.2.9 Sick leave, maternity or annual paternity leave and annual leave

UHRC established that leave (*sick and maternity/paternity*) of staff is duly respected. The health workers are, however, required to apply for leave in line with the leave roster. All health facilities had leave rosters and leave was granted according to the rosters. However, the presence of more female health workers in child-bearing age bracket who at times go for maternity leave, created a serious manpower gap especially at health centres II where female health workers are the majority.

FIGURE 7: DUTY ROTA AT KITAGATA HOSPITAL IN SHEEMA DISTRICT

The image shows a handwritten duty roster for Kitagata Hospital in Sheema District. The roster is a grid with columns for days of the week (Sun, Mon, Tue, Wed, Thu, Fri, Sat, Sun) and rows for staff members. The staff members listed are: Nurse, Midwife, Pharmacist, Lab. Asst., and Health Officer. The roster is filled with handwritten initials and dates. At the bottom of the roster, there are fields for 'Prepared by' (G. N. N. N.), 'Approved by' (M. M. M. M.), 'Date' (11/12/18), and 'Time' (08:00/18:00). A circular official stamp is visible on the right side of the roster, dated 03 DEC 2018.

### 8.2.10 Health workers' benefits

Commission findings established that health workers had a range of benefits that included free medical care but not health insurance, transport allowance, lunch, housing and for government employees; these benefits were consolidated in the monthly salary.

### 8.2.11 Freedom of expression and association

The Commission noted that there are ten recognized unions and associations for health workers which monitor the quality of health workers in their profession. These include Uganda Medical Association, Uganda Nurses and Midwives Union and Allied Health Professionals Council, among others. These are also responsible for verifying and issuing licenses and certificates to health workers. All health workers are required to enjoy their right to freedom of expression and association and to freely express their concerns such as low payment, internal conflict among themselves, working overtime and lack of motivation incentives, among others.

Some of the channels of complaint handling in the health facilities monitored included staff monthly meetings in respective health facilities where concerns/grievances are addressed, use of suggestion boxes and health unit management committees.

### 8.3 INTERVENTIONS MADE BY THE GOVERNMENT /HEALTH SECTOR

- i) Ministry of Health has endeavored to have health workers acquire the right knowledge, skills and resources where needed. Majority of health workers from the different health facilities revealed that the ministry of Health has tried to equip health workers with right knowledge and skills through seminars and workshops relevant to their qualifications/areas of operation where needed.
- ii) Increment of health workers' salaries. All the health workers interviewed indicated that with effect from financial year 2017/2018, the government considered increment of their salaries by a certain percentage from their initial salary scale.
- iii) Introduction of digital technology. Government of Uganda is trying to introduce digital technologies such as computers and other technologies so as to improve on the health services offered across the country.
- iv) On-site mentorship of health workers. At the various health facilities visited, health workers revealed that they sometimes have on-site mentorship sessions by senior health workers and specialists who through internal seminars mentor junior officers on the various medical skills, knowledge and ethics.

### 8.4 RECOMMENDATIONS

1. Government should at all levels adopt the Abuja Declaration of having 15% of the budget on health provision.
2. The Ministry of Health should recruit more health workers, especially doctors and midwives, to solve the problem of understaffing and inadequate manpower.
3. The Ministry of Health, in conjunction with the National Medical Stores, should provide adequate drugs in line with the demand of the health facilities and also monitor the use of drugs by the health service providers to curb the stealing of drugs.
4. The Ministry of Health should train health workers and provide modernized technologies such as computers to ease data management in all health facilities.
5. The Ministry of Health should ensure provision of adequate work equipment, especially protective gears and digital technologies for screening patients especially for health workers.
6. The Ministries of Health and Public Service should address the plight of staff who are non-medical workers by enhancing their salaries.
7. The Ministry of Health should strengthen the referral system across the country in order to relieve and preserve the national referral hospitals to attend to only serious referred cases.

### 8.5 CONCLUSION

From UHRC's assessment on the plight of health workers in Uganda, it is evident that health workers face a number of challenges, and these in turn affect the realization of the right to health across the country. The starting point for addressing these challenges is to ensure adequate remuneration for all health workers and provision of necessities such as accommodation, transport and increase in number of staff, among others. The welfare of health workers is important in guaranteeing their commitment to the provision of quality health services to the general public.

## CHAPTER 9

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# OPERATING ENVIRONMENT OF HUMAN RIGHTS DEFENDERS

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## 9.0 INTRODUCTION

The UN Declaration on Human Rights Defenders defines a human rights defender as “Any person who, individually or in association with others, acts or seeks to act to promote or strives for the protection and realisation of human rights and fundamental freedoms, at the local, national, regional and international levels using non-violent means”.<sup>277</sup> Human rights defenders (HRDs) are characterized by the nature of work that they carry out, and not who they are. HRDs could be ordinary people, civil society organisations (CSOs), non-governmental organisations (NGOs) or state actors (such as police).

A HRD can deal with and concentrate on any human rights concerns. HRDs are obliged to carry out their work peacefully. HRDs in Uganda should retain their neutral or unbiased role in defending and promoting human rights and should also know their duties and responsibilities.

There has been increased importance of various HRDs in Uganda in respect to the promotion and protection of the rights of the people in Uganda. However, there has been noticeable volatility in the working environment of some of the HRDs. There are various challenges that limit the operating space for human rights defenders in Uganda including the lack of a specific legislation to protect their rights as HRDs, office break-ins, the restrictive legislative environment, torture and harassment, among others.

Focusing on HRDs including women, journalists and CSOs, among others, this chapter presents the legal framework and protection mechanisms for human rights defense and highlights the achievements that have been made in the working environment of HRDs as well as the risks they faced in their work and the implications. Recommendations are also made to address the issues raised.

## 9.1 LEGAL FRAMEWORK ON HUMAN RIGHTS DEFENDERS

The Universal Declaration of Human Rights, ICCPR and the CESCR provide for rights of individuals. In effect, since individuals could be HRDs, the rights stipulated are applicable to HRDs. A key instrument for protecting HRDs is the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of the Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms which was adopted by the UN General Assembly on 9th December 1998 (UN Declaration). The UN declaration on HRDs is not legally binding but it has provisions that demonstrate a strong international commitment to protect the rights of HRDs.<sup>278</sup>

Further, the United Nations Human Rights Council and the General Assembly have adopted several resolutions that reflect the states’ resolve to protect and promote the rights of HRDs.<sup>279</sup> A significant protection mechanism is the Special Rapporteur on the situation of HRDs, who is an independent expert with the mandate from United Nations Human Rights Council to report and advise on the situation of HRDs.

277 Article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

278 The Declaration provides for HRDs as having the right to participate in the government, the right to an effective remedy, the right to participate in peaceful activities and the right to solicit, receive and utilize resources.

279 [www.ap.ohchr.org/Documents/E/HRC/d\\_res\\_dec/A\\_HRC\\_22\\_L13.docA/HRC/22/L.13](http://www.ap.ohchr.org/Documents/E/HRC/d_res_dec/A_HRC_22_L13.docA/HRC/22/L.13) This resolution, amongst other things, reminds state parties of their responsibility to protect human rights defenders and urges states to create a safe and enabling working environment for human rights defenders, free from insecurity. Most importantly, the resolution urges state parties to refrain from using legislation to criminalize the work of HRDs. In November 2013, the General Assembly adopted a resolution on women human rights defenders, which is a cornerstone in acknowledging and supporting the important and legitimate work done by women defenders and those who work on women’s rights and gender issues.

The ACHPR provides for rights that are applicable to the protection of HRDs as well as the protective mechanisms of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.<sup>280</sup> Under the African Commission, a Special Rapporteur on HRDs has been established with a mandate, among other things, to seek, receive, examine and act upon information on the situation of HRDs in Africa; submit reports at every ordinary session of the African Commission; and raise awareness and promote the implementation of the UN Declaration on HRDs in Africa.<sup>281</sup>

The Constitution of Uganda under the National Objectives and Directive Principles of State Policy provides that the state shall guarantee and respect the independence of NGOs which promote and protect human rights. In addition, the Constitution provides for rights that are applicable to all including HRDs such as the right to life,<sup>282</sup> right to personal liberty<sup>283</sup>, right to security of person,<sup>284</sup> right to own property,<sup>285</sup> as well as the freedom of conscience, expression, movement, religion, assembly and association,<sup>286</sup> among others. Article 38 provides for the rights of citizens to participate in the affairs of the government and the right to participate in peaceful activities through civic education.

## 9.2 CHALLENGES HUMAN RIGHTS DEFENDERS FACED IN 2018

There were various challenges that human rights defenders faced in 2018. These challenges affected the operating environment of HRDs in Uganda and included restrictive legislative environment, absence of effective remedies, and alleged cases of torture, cruel or inhuman or degrading treatment or punishment, among others.

### 9.2.1 Restrictive legislative environment for HRDs

The Commission noted the use of restrictive legislation to stifle fundamental freedoms such as the Non-Governmental Organisations Act, 2016 and the Public Order Management Act, 2013.

#### a) Non-Governmental Organisations Act, 2016

The Non-Governmental Organisations Act, 2016 (NGO Act, 2016) was enacted with its objectives stated as: to repeal and replace the Non-Governmental Organisations Act Cap. 113; to provide a conducive and enabling environment for the non-governmental organisations sector; to strengthen and promote the capacity of non-governmental organisations and their mutual partnership with government; to make provision for the corporate status of the National Bureau for Non-Governmental Organisations and provide for its capacity to register, regulate, coordinate and monitor non-governmental organisations' activities; to provide for the board of directors; to provide for the establishment of branch offices of the Bureau, District Non-Governmental Organisations Monitoring Committees, Sub-county Non-Governmental Organisations Monitoring Committees; to make provision for special obligations of non-governmental organisations; and to provide for other related matters.

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280 These provisions include right to liberty and the security of a person and right to receive information, among other rights.

281 Special Rapporteur on Human Rights Defenders; Special Mechanisms; African Commission on Human and Peoples' Rights. Available at <http://www.achpr.org/mechanisms/human-rights-defenders/> Accessed on 14th February 2019.

282 Article 22.

283 Article 23.

284 Article 23.

285 Article 26

286 Article 29.



However, the Act poses a threat to the right to freedom of association for HRDs. For instance, section 44 of the Act prohibits NGOs from carrying out activities in any part of the country unless they have approval from the District Non-Governmental Monitoring Committee (DNMC) and the local governments are required to sign a memorandum of understanding (MoU) to that effect. NGOs are restricted from extending their their operations to new areas unless they have received a recommendation from the National Bureau for NGOs through the DNMC of that area.

Furthermore, the Act requires NGOs to have MoUs with all donors, sponsors, affiliates and foreign partners and also required to specify the terms and conditions of ownership, employment, resources mobilised for the NGO and any other relevant matter. In addition, section 5 establishes a National Bureau for NGOs which is granted broad powers under section 7 including the power to revoke an NGO's permit. It is considered by many HRDs in Uganda that the process of registration of NGOs is complex<sup>287</sup> given the documentation required.<sup>288</sup>

Section 44 also stipulates that CSOs must be non-partisan and not engage in any acts prejudicial to the security or interests and dignity of the people of Uganda. These provisions are very broad and leave considerable scope for selective interpretation and misinterpretation.

#### **b) Public Order Management Act, 2013 (POMA) and its effects on freedom of expression**

In addition, the Public Order Management Act, 2013 (POMA) imposes restrictions on public meetings and assemblies, with the exception of town hall meetings. For instance, according to section 5 (2) (c) of the Act, public gatherings other than town hall meetings are only allowed between 7am and 7pm.

In cases of spontaneous public meetings, the POMA empowers authorized officers to disperse the meeting if the officers consider the venue not suitable for purposes of traffic or crowd control, or if a meeting may interfere with lawful business. Security forces also have powers to prevent meetings that are held contrary to the provisions of the Act. The main challenge with the POMA is the alleged biased manner in which it is implemented. Groups and organisations that are critical of the government or which demand for accountability for government actions are at risk of being targeted.<sup>289</sup>

In 2018, HRDs had challenges in regard to their safety and security. The year was characterized by alleged deprivation of personal liberty; alleged torture, cruel or inhuman degrading treatment or punishment; and women human rights defenders deprived of their freedom to peacefully demonstrate.

#### **9.2.2 Closure and office break-ins in 2018**

In 2018, *Red Pepper* newspaper was shut down and eight directors and editors were arrested and detained over stories related to national security. The eight appeared in court and were charged with publication of a news story prejudicial to national security and defamation. This was deprivation of their personal liberty.

On 9<sup>th</sup> February 2018, nine unidentified individuals allegedly broke into the Kampala office of Human Rights Awareness and Promotion Forum (HRAPF). The two guards on duty were beaten with iron bars and batons and sustained severe injuries. The intruders were blocked from accessing

287 A letter of recommendation written by Local Council One chairperson (LCI). On the same letter, the chairmen of LCII and LCIII and Resident District Commissioner (RDC) should each endorse their signatures and stamp. The organisation should have written recommendation of two sureties or recommenders who should each write separately recommending the organisation, among other requirements.

288 <https://www.hg.org/legal-articles/legal-requirements-for-registration-of-ngos-in-uganda-30275> Accessed on 14th February 2019.

289 <http://www.icnl.org/research/monitor/uganda.html> Accessed on 14th February 2019.

senior management offices by a heavy metal door and did not steal any of the electronic equipment readily available in the reception area and resource centre. This was the second time the HRAPF offices were being broken into as the first one had taken place on March 22, 2016, in the wee hours of the morning, where unidentified thugs brutally murdered the night-duty guard, the late Emmanuel Arituha (RIP).

On 13<sup>th</sup> February 2018, the Resident District Commissioner (RDC) of Gulu district in Northern Uganda, Capt. Santos Okot Lapolo, recommended the closure of Radio Maria, a Catholic Church-owned media house on allegations that it was causing disunity among the people.

In 2018, *Unity FM* radio based in Lira was shut down on 17<sup>th</sup> November, 2018 when the Lira District Police Commander (DPC) Joel Tubanone allegedly stormed the radio station with heavily armed police personnel and military officers, switched off the radio and picked six staff on allegations of inciting violence.

On 18<sup>th</sup> May, 2018, Karambi Action for Life Improvement (KALI), a grassroots organisation based in Kasese, was broken into. At that time, KALI had a project on accessibility to justice against human rights violations by armed forces in the Rwenzori sub-region.

On 6<sup>th</sup> August, 2018, unidentified burglars broke into the offices of Isis-Women's International Cross-Cultural Exchange (Isis-WICCE) in Ntinda, Kampala and stole computer processors, internal and external hard disks and cash. The incident was reported to police and up to now investigations have not been concluded.

On 3<sup>rd</sup> July, 2018, women human rights defenders (WHRDs), in a peaceful demonstration, gathered to demand answers and accountability after the murders of more than 40 women in Uganda. The space for WHRDs in Uganda continues to get narrow. The restrictions to peaceful assembly have affected WHRDs' freedom of expression, assembly and work.

It should be noted that over the years there have been office break-ins CSOs in Uganda; for instance on 5<sup>th</sup> May 2014, HURINET-U office was broken into occasioning immense losses including a server, 29 computers, office cameras, safes and surveillance cameras, among other items. Other CSOs that faced a similar fate in 2014 include Women and Girl Child Development Organisation in February and September 2014; Action Group for Health Advocacy in January 2014; AFFORD Kasese in February 2014; Human Rights Focus (HURIFO) in Gulu in December 2014; and Ecological Christian Organisation Kamwokya in October 2014.

Then in 2015, similar break-ins were reported at Uganda Land Alliance, Anti-Corruption Coalition, Human Rights Network for Journalist- - Uganda and Foundation for Human Rights Initiative. The Commission then noted with concern that police investigations of these break-ins had not been concluded which has caused discomfort and suspicion among HRDs.



◀ Human rights activists hold a press conference to condemn the violent break-in at Human Rights Awareness and Promotion Forum (HRAPF)

### 9.2.3 Alleged torture, cruel, inhuman or degrading treatment or punishment and deprivation of personal liberty

The Commission noted with concern the alleged cases of torture, cruel inhuman or degrading treatment or punishment of human rights defenders in Uganda that contravened human rights standards.

“ The year was characterized by several attacks on media houses and journalists. Human Rights Network for Journalists documented over 100 cases of attacks and abuses especially those covering political events by the opposition. A case in point was during the Arua by-elections and the post-elections period. During this season we saw journalists including female journalist Nalwadda Nsanji Maria aka Sweet Mari being physically attacked, their gadgets confiscated and some gadgets destroyed by security officers. It was unfortunate that little was done in regard to access to remedy for the victims of the human rights violations. Much as the army reached out to some victims of these human rights violations, it has not yet brought the perpetrators to book, hence promoting impunity for crimes committed against journalists. I know UPDF apologized and undertook to punish the errant UDPF officers but that has not yet happened to the best of my knowledge. UDPF has also concealed who the exact perpetrators were’, *said Mr. Robert Sempala of Human Rights Network for Journalists-Uganda.* ”

Some of the examples of alleged torture, cruel, inhuman or degrading treatment or punishment and deprivation of personal liberty include:

- a) On 13<sup>th</sup> February 2018, three journalists including *New Vision* journalist Charles Etukuri were allegedly kidnapped and held incommunicado by unknown assailants.
- b) In April 2018, journalists were allegedly blocked from covering proceedings against the late ASP Muhammad Kirumira (RIP), subsequently issuing a boycott of coverage of security agencies’ court proceedings.
- c) As chaos erupted in August 2018 during the Arua by-election campaigns, two journalists were allegedly arrested and tortured. NTV’s Herbert Zziwa and a cameraman Ronald Muwanga were allegedly attacked by security officers under the watch of the Uganda Police Force while reporting live from Arua town about a scuffle at Pacific Hotel and the shooting to death of Yasin Kawuma, a driver of Robert Kyagulanyi, the Kyadondo East Member of Parliament. They were detained at Gulu Central Police Station where the charges of inciting violence and malicious damage were preferred against them.
- d) On 20<sup>th</sup> August 2018, security officers allegedly tortured and detained four journalists covering protests in Kampala, and confiscated and damaged their equipment. These included Alfred Ochwo from *The Observer* newspaper, Ronald Galiwango and Juma Kirya from NTV, Joshua Mujungu from NBS TV and James Akena from Reuters International. James Akena was severely beaten and forced to delete all the footage in full view of television cameras.
- e) On 25<sup>th</sup> June, 2018, the Kabale District Local Council 5 chairperson, Mr. Keihwa Patrick Besigye, was on the spot for allegedly slapping a Voice of Kigezi radio journalist, Mr. Emmanuel Arinaitwe at the Voice of Kigezi offices in Kabale town.

- f) In July 2018, students of St. Augustine's College Kayunga in Wakiso beat up George Williams Mutyaba of Bukedde TV under the orders of one of the teachers. Mutyaba had gone to cover a fire breakout in the school. He was allegedly beaten because he was suspected to have caused the fire. An arson case was reported against him at police. He also reported a case at Wakiso Police Station but investigations have not yet been concluded.
- g) On 12<sup>th</sup> February, 2018, army officers attached to Kimaka army barracks allegedly tortured Ivan Lubega, a Jinja-based journalist attached to Kiira FM and Bukedde TV. He sustained injuries on his right hand and his camera was destroyed in the process. Lubega was covering a scuffle in Jinja that had ensued over land in Kimaka which was next to the military barracks.
- h) On 15<sup>th</sup> January, 2018 Twaha Mukiibi, a television journalist working with NBS, was brutally assaulted by policemen in uniform and civilian attire around midday at Rose Gardens in Kyengera, Wakiso district, during an exclusive interview with a notorious self-confessed criminal gang.
- i) On 13<sup>th</sup> February, 2018, Mr. Charles Etukuri, a journalist from Vision Group, was abducted by security operatives for close to a week, allegedly over a story he published in *Saturday Vision* about the death of a Finnish national in one of the city hotels. Although Mr. Etukuri was released without charges, he was reportedly ordered to reveal his sources and explain his involvement in the case.<sup>290</sup>



▲ George Williams Mutyaba of Bukedde TV after he had been assaulted by the students of St Augustine's College Wakiso in 2018.



▲ Twaha Mukiibi admitted in hospital

“Policemen stormed the venue during an interview and started beating everyone at the scene. They hit me with a baton on the legs and I immediately put up my hands pleading that I was a journalist hoping that it would save me, but it made matters worse as others joined in the beating with batons, kicks and pepper spray. Another officer who seemed to be their commander ordered them to shoot. ‘Shoot, shoot...!’ the officer shouted out his order. This made me so scared and went silent out of fear for my life. The beating went on until one of them ordered them to stop. I survived being shot by the police. They left me in very severe pain. I don't remember how I was taken to hospital,” Twaha Mukiibi said.<sup>291</sup>”

290 <http://www.hrcug.org/publications/file/human%20rights%20defenders%20annual%20report.pdf> Accessed on 3rd May 2019.

291 Interview done by HRNJ-Uganda. <https://hrnjuganda.org/?p=4107> Accessed on 4th February 2019.

#### 9.2.4 The increased overlapping roles and mandates of Uganda Police Force and Uganda People's Defense Forces

The increased overlapping roles and mandates of Uganda Police Force and Uganda People's Defense Forces made it more challenging for HRDs to demand for accountability. The Commission notes that it was usually very difficult to know who exactly the perpetrator of the alleged violation was for the violation committed. It was also very hard to know who was doing what though the law grants both UPF and UDPF to work together in some operations.

On 13th August, 2018, two journalists Herbert Zziwa and Ronald Muwanga from NTV were allegedly arrested and assaulted by security personnel (there was difficulty in the identification of security officers/operatives who allegedly tortured these journalists) while covering violent clashes in Arua ahead of the parliamentary seat by-election. Also that same night, security personnel allegedly assaulted and harassed Julius Bakabaage, John Kibalizi and Benson Ongom, journalists of NBS TV who were also reporting live the shooting of Kyadondo East legislator Robert Kyagulanyi's driver, Yasin Kawuma.

The Commission noted that journalists reporting in crisis zones should do so without fear that the security personnel who are supposed to look out for their safety will turn against them and assault them.

#### 9.2.5 Absence of effective remedies

The Commission noted that though NGOs have reported incidents of office break-ins to the Uganda Police Force, investigations were still ongoing or inconclusive. For instance, in the case of Human Rights Awareness and Promotion Forum (HRAPF), the first break-in was in 2016 and the findings by police investigation was that it was 'masterminded' by HRAPF and these investigations have never been concluded. For the second break-in which occurred in February, 2018, Mr. Edward Mwebaza, the Deputy Executive Director, HRAPF, said one suspect was arrested but released on bond and that to date, there was no remedy. He added that the last time they went to Old Kampala Police Station to check the status of both cases, the files could not be traced. Investigations into the breaking into the offices of Isis-Women's International Cross Cultural Exchange (Isis-WICCE) in Ntinda, Kampala have also never been concluded and no one has been prosecuted for the criminal offences committed.

It should be noted that the journalists reported their case of alleged torture, cruel or inhuman degrading treatment or punishment. For instance, Mr. Herbert Zziwa and Ronald Muwanga lodged their complaints at the Central Regional Office of Uganda Human Rights Commission and investigations into these cases are still ongoing. Other journalists reported their cases to police and investigations too are still ongoing. The Commission notes that the absence of effective remedy was a great human rights concern for human rights defenders in Uganda.

#### 9.2.6 Self-censorship

The Commission notes that self-censorship not only affected HRDs such as journalists working in mainstream media, but it also has the potential to affect information availed on social media. An increasing number of HRDs censored themselves due to alleged threats against them and in order to remain below the radar and hence minimize risk of harassment and/ or closure.

When ActionAid Uganda office was raided, the Country Director, Arthur Larok, said that police actions threatened them and other civil society organisations, thus demoralized them and forced them into self-censorship, thus weakening the overall resolve. *He added that the said actions provide a justification for further actions such as halting activities of civil society under the pretext that investigations are still going on. That when ActionAid offices were closed from September to December, 2017, at least two field activities were halted.*<sup>292</sup>

<sup>292</sup> [www.actionaid.org/ug](http://www.actionaid.org/ug) Accessed on 8th February 2019.

### 9.2.7 Censoring of some HRDs

In July 2018, the Electoral Commission suspended the Citizens' Coalition for Electoral Democracy in Uganda (CCEDU) from observing elections in the country. In his letter to CCEDU, the Electoral Commission (EC) chairperson, Simon Mugenyi Byabakama, said they had resolved to suspend CCEDU as partners in disseminating voter education messages and as an election observer for being partisan. EC also accused CCEDU of shunning the Women Council elections and calling them a sham despite the big voter turnout.



◀ A CCEDU official observing Kyadondo East by-election in Wakiso 2018.

Byabakama accused the CCEDU officials of going to the media and discrediting the then ongoing electoral processes. *“Many times CCEDU has acted outside the election observance guideline as set by the Electoral Commission; this undermines the objectivity and commitment in adhering to the laid-down standards of engagement as far as election-related activities are concerned,”* the 4<sup>th</sup> July letter read. EC thus suspended the accreditation of CCEDU not to observe elections as well as to conduct voter education until further notice.<sup>293</sup> However, CCEDU believes that exposing good practices and shortcomings will ensure a free and fair election. CCEDU describes itself as a coalition that brings together over 800 similar-thinking civil society organisations and over 8,000 individuals who advocate for electoral democracy in Uganda.<sup>294</sup>

### 9.2.8 Limited resources

The Commission in its interactions with various HRDs, especially the National Coalition for Human Rights Defenders, established that most HRDs in 2018 faced the challenge of limited financial and human resources and concluded that there was need for capacity building to facilitate resource mobilisation and compliance with the laws and regulations governing human rights work.

293 By the time of writing this report, the government had lifted the sanctions against CCEDU.

294 <https://observer.ug/58124-partisan-ccedu-suspended-by-ec-from-observing> accessed on 8th February 2019.

### 9.3 WOMEN HUMAN RIGHTS DEFENDERS

Women human rights defenders make essential contributions to the effective promotion, protection and realisation of international human rights law and play an important role in raising awareness and mobilizing civil society in identifying human rights violations and in contributing to the development of genuine solutions that incorporate a gender perspective.

Despite the large number of HRDs in Uganda, there were specific categories of HRDs who faced consistent harassment, discrimination, risk and disadvantages especially during the year 2018. Women HRDs face typical challenges due to their gender. They often faced gender-specific threats and violence in most instances targeting their reputation, sexuality and their role in the cultural setting. On the International Women Human Rights Defenders Day held on 29<sup>th</sup> November 2018, states were called upon to live up to their commitments to protect women human rights defenders, who are increasingly under attack and inadequately protected.<sup>295</sup>

*“The available space for women human rights defenders in Uganda continues to shrink, the restrictions to peaceful assembly affected women’s freedom of expression, assembly and work. For example, there were instances where there was excessive use of force against women HRDs during assemblies including violent means, and gender-based violence being used to disperse peaceful gathering. A case in point was in May 2018 when police arrested seven (7) women activists for protesting over rampant women killings and kidnaps in the country. The WHRDs wanted police to give them a report on their investigations,”* Ms. Brenda Kugoza, the Coordinator of WHRDN-U, said.

According to Women Human Rights Defenders Network - Uganda (WHRDN-U), in 2018, women HRDs continued to face risks and attacks because of their work and for who they are. The following were some of the events reported at WHRDN-U in 2018:

#### a) WHRDs defending minority rights

According to WHRDN-U, WHRDs who are defending minority rights, received attacks and threats due to their human rights work and because of their gender identity and sexual orientation. In Northern Uganda, WHRDs working on LGBTI were attacked on 4th June 2018 during one of their field activities (“Moonlighting for VCT and community dialogue on GBV/HIV/AIDS”). They were attacked and one of their colleagues was raped and physically assaulted in plain sight with the rapist promising to deal with the rest of them. They immediately lodged a case at Lira Central police station, reference number SD REF: 53/04/06/2018, and also referred to the police doctor for examination and expert report. The perpetrator was arrested and held in police custody as the police continued to investigate and interview witnesses.<sup>296</sup>

#### b) WHRDs defending working in extractives and land rights

According to WHRDN-U, WHRDs were denouncing actions of oil and extractives and land rights violations faced specific risks and attacks that prevented them from their work. For instance, in July 2018, women human rights defenders were attacked due to their work, and they sought refuge for temporary shelter at the premises of one of the steering committee members of the WHRDN-U, based in Gulu district. The WHRDs supporting victims of the land conflict in Apaa village and fighting against the ongoing evictions, in Itirikwa sub-county, Adjumani and Amuru districts face ongoing risks. The WHRDs said that because of their intervention, they have been labelled as ringleaders, inciting violence, and opposing government programmes.

<sup>295</sup> “Women human rights defenders must be protected, say UN experts”. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23943&LangID=E> Accessed on 4th February 2019.

<sup>296</sup>

In March 2018, in Karamoja sub-region, the WHRDs working in mining and peace support, mobilised women for a meeting but the elders violently stormed the meeting to prevent them from speaking to the women in the limestone mining communities to get health and safety gear such as gloves, gumboots, etc. The elders accused the WHRDs of inciting violence and told them that women do not have rights. The WHRDs stopped the meeting and later reported to police that intervened in the matter. The reason the WHRDs were attacked was because they wanted to sensitise the women about the violation of their rights by the Tororo Cement Company (TCM) management and the community elders.

WHRDs have denounced the violations from the community elders and the TCM who are partners in mining lime in the community. TCM use elders to threaten and attack WHRDs. They have discredited their work. The elders have used the cultural and social norms to attack the WHRDS, saying that they do not have values and that they are destroying traditional values; they have demonized WHRDs saying that they are the spoilt women, that they want women to behave and think like men. They warned them to stop sensitizing the communities about women's rights and to stop advocating the mining and land rights for women.

On 16<sup>th</sup> January 2018, in Karamoja, where gold mining is a major source of livelihood for communities, two WHRDs were attacked for mobilizing a meeting on sensitizing women about their land rights, sensitizing the women on the danger of mercury to their health, and asking men owners of the gold pits to provide the women with protective equipment for their health such as gumboots, gloves and overall coats. One man, known as the director of the group mining gold in the community, came leading a rowdy group and attacked the WHRDs, ordering them to close the meeting and stop spoiling their business and inciting women. The men threatened to evict the entire community saying that after all, the community members have no land titles. The community women that WHRDs had mobilised fled for two days because they were also told that they would be raped. This incident greatly impacted the WHRDs and one of them had to stop working with the organisation because the husband told her that if she was to continue with the work, then he would abandon her.

In June 2018, the women human rights defenders who were attacked reported to WHRDN-U that the ongoing oil development programs had continued to lead to displacement and denial of freedoms to human rights defenders. That the earmarked central processing facility of the oil in Buliisa has led to continuous human rights violations. This was the reason why the women human rights defenders organized to meet the persons affected by the Central Processing Facility (CPF) at Kasinyi, Buliisa district and give women guidance on how to demand adequate and fair compensation and have a fair joint bargaining power on access to compensation for crops and disturbance allowance.

### 9.3.1 Female journalists

Of major concern is that female journalists face a double burden of the attacks based on the profession and gender as a result of being journalists and women. With many more users spending more time online, the ways in which journalists get compromised on the Internet have gotten more numerous and sophisticated. Women face a potentially huge cyber security problem since technology has now been used to create spaces where women feel marginalized and threatened based on their gender.<sup>297</sup>

This online abuse is often compounded by the traditional sexual harassment that women can face in the newsroom and out in the field and, as a result, women retreat from the public sphere, leaving the male-dominated field of journalism with even fewer female voices. The rise of online harassment

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297 Uganda Media Women's Association. A Situation Analysis Report: Online and Offline Violence, Abuses and Related Safety Risks Encountered by Female Journalists in Uganda, page 6.



and trolling is becoming a greater threat to women journalists than their male counterparts and needs urgent attention. Some steps are being taken into the direction for female journalist safety. For example, the International Federation of Journalists (IFJ) has launched the *Byte Back* campaign, an awareness campaign on social media using the hashtag #DefendMyVoiceOnline to encourage women not to abandon this virtual space when faced with abuse.<sup>298</sup>

The IFJ-led campaign launched in Asia Pacific, involving unions and press freedom organisations, calls for strong action to stop cyber-bullying and online harassment of women journalists. Journalists of all genders, their unions, media houses, moderators of social media platforms, the public and governments must take firm steps towards ensuring women's rightful place in the digital world, without harassment, abuse and cyber-violence.<sup>299</sup> In 2018, women rights activists who had planned to hold a peaceful demonstration against the rampant killings of women and kidnaps in Wakiso were blocked from holding their gathering by the inspector general of police of Uganda. This was an indicator of a violation to the right to freedom of assembly.<sup>300</sup>

## 9.4 PROGRESS MADE TO ENHANCE AND PROTECT THE RIGHTS OF HUMAN RIGHTS DEFENDERS

The work of human rights defenders in Uganda has made tremendous progress with massive and countless actors and activities which fulfill and advance the purposes and principles of the universality of rights. Some of the efforts by government to enhance the rights of human rights defenders include the following:

### 9.4.1 Draft National Action Plan on Human Rights

The initiative by Ministry of Justice and Constitutional Affairs to develop the draft National Action Plan on Human Rights; and a draft Civic Education Plan (with Commission playing the lead role) provides guidelines for interventions by HRDs. In a nutshell, once the draft NAP is adopted by Cabinet, it will provide a framework within which HRDs will operate without any intimidation and harassment as they promote and protect human rights in the country.

### 9.4.2 Passing of the Data Protection and Privacy Bill (2015)

The Data Protection and Privacy law was drafted in response to the growing need for a comprehensive law on data protection and privacy in Uganda.<sup>301</sup> This was a positive development as the law is aimed at protecting the privacy of individuals and personal data by regulating the collection and processing of personal information.<sup>302</sup> According to professors Daniel Solove and Paul Schwartz, *'Information privacy concerns the collection, use and disclosure of personal information. Information privacy is often contrasted with 'decisional privacy,' which concerns the freedom to make decisions about one's body and family...but information privacy increasingly incorporates elements of decisional privacy as the use of data both expands and limits individual autonomy'*<sup>303</sup>

298 <https://www.ifj.org/actions/ifj-campaigns/byte-back.html>.

299 Uganda Media Women's Association. A Situation Analysis Report: Online and Offline Violence, Abuses and Related Safety Risks Encountered by Female Journalists in Uganda, page 7.

300 See "IGP Ochola blocks planned women protest against kidnaps, murders" in Daily Monitor of Wednesday June 27, 2018.

301 The law incorporates key principles of data protection which include accountability, lawful and fair processing, data relevancy, adequacy, data quality, legality, transparency (including information and notification of the data subject) and the duty to maintain confidentiality.

302 The main objective of this law is to address concerns relating to the right to privacy of the individual and of personal data by regulating the collection and processing of personal data by both the public and private sector. The law also seeks to outline the rights of individuals whose data is collected, and the obligations of data collectors and processors.

303 Daniel J Solove and Paul M Schwartz (2005). Information Privacy Law.

More importantly, the law seeks to facilitate compliance with Article 27 (2) of the 1995 Constitution which guarantees the right to privacy of a person's home, correspondence, communication or other property. Article 27 provides that *'No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.'*

#### 9.4.3 Enactment of the Prevention and Prohibition of Torture Act, 2012 (PPTA) and the Whistle Blowers Act, 2010

Government enacted the Prevention and Prohibition of Torture Act, 2012 (PPTA) and the Whistle Blowers Act, 2010, and also passed the PPTA Regulations. The Commission notes that this will enhance and guide the implementation or enforcement of the Act. In addition, the above-mentioned laws will contribute to an enabling environment for HRDs to carry out their work without fear of reprisal by the institutions while ensuring accountability and service delivery.

#### 9.4.4 Improved capacity for state actors involved in human rights defense

Uganda Police Force (UPF) established a Directorate of Human Rights and Legal Services that handles, among other things, complaints about human rights violations carried out by police officers. In addition, UPF also restructured and reshuffled the Flying Squad Unit and ordered the redesignation of the infamous Nalufenya 'Special Forces Operations Base' back to a regular Police Station.

This move was a welcome intervention by the government since it was one of the detention sites that were notorious for incommunicado detention and alleged torture, cruel, inhuman or degrading treatment or punishment of detainees. The Commission hopes that the Directorate of human Rights and Legal Services will address the many cases of torture of detainees and prolonged pre-trial detention for suspects including HRDs. The Commission heard allegations that police would beat detainees with batons, sticks, glass bottles, bats, metal pipes, padlocks, table legs and other objects, often to force a confession and suspects reportedly spent months or even years locked up at Nalufenya Police Station in Jinja.



◀ Hon Med S.K. Kaggwa, Chairperson of Uganda Human Rights Commission, addressing the public and human rights defenders at the 20th anniversary of the International Human Rights Defenders Day that coincided with the 70th anniversary of the Universal Declaration of human rights

#### 9.4.5 Vibrant civil society

Establishment of specific coalitions to advance rights of specific defenders such as Coalition of Women Human Rights Defenders and the National Coalition of Human Rights Defenders – Uganda (NCHRDs-U). NCHRDs-U is currently operating as an independent entity and through it, journalists have proved to be strong and dynamic; they have monitored, reported and spoken out on violations of rights of journalists they go through while carrying out their duties.

#### 9.4.6 Establishment of human rights desks or directorates in some MDAs

It should be noted that Government of Uganda has established human rights desks in some MDAs such as Uganda Prisons Service, Ministry of Finance, Planning and Economic Development and Ministry of Justice and Constitutional Affairs. Some other MDAs such as UPF and UPDF have directorates or departments of human rights.

### 9.5 UGANDA HUMAN RIGHTS COMMISSION INTERVENTIONS

In carrying out its constitutional mandate of promoting and protecting human rights, Uganda Human Rights Commission made some interventions in respect to improving and enhancing the working environment of HRDs as follows:

1. Following the established of the Human Rights Defenders Unit, the desk has since specifically engaged with HRDs by tracking their complaints within the Commission, monitoring and reporting on issues concerning HRDs and acting as an intermediary between HRDs and state actors, amongst other things.
2. The Commission received and investigated complaints of human rights violations from HRDs including from the media during 2018.
3. The Commission held two workshops for the media fraternity on Human Rights-Based Approach in which human rights standards were emphasized.
4. The Commission reviewed the Data Protection and Privacy Bill to ensure it complies with human rights standards and submitted its position to Parliament in 2018.
5. Engaged Parliament and other state organisations like courts to outlaw some provisions in certain laws that are inconsistent with the UDHR.

### 9.6 RECOMMENDATIONS

1. The Ministry of Internal Affairs and the National Bureau for NGOs (NGO Bureau) should review the laws concerning the registration of non-governmental organisations and ensure that they are conducive and facilitative of the work of human rights defenders.
2. The Uganda Law Reform Commission should review the Public Order Management Act 2013 to bring it in line with human rights standards.
3. The Uganda Police Force should speed up and conclude all investigations concerning violations against human rights defenders, and bring the perpetrators to justice.
4. HRDs need to strengthen partnerships by doing joint advocacy and collaboration, networking for purposes of mutual support and also reducing exposure to risk, harassment and retaining objectivity.

### 9.7 CONCLUSION

The Commission notes that Government of Uganda has made some efforts to ensure that there was an enabling environment for HRDs in the promotion and protection of human rights. However, there are various challenges that limit the operating space for human rights defenders including the lack of a specific legislation to protect their rights as HRDs, the office break-ins, the restrictive legislative environment, torture and harassment, among others.

## CHAPTER 10

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# EMERGING HUMAN RIGHTS CONCERNS

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## 10.0 INTRODUCTION

Uganda Human Rights Commission took note of certain occurrences in 2018 that raised pertinent human rights concerns. Some of these human rights issues emerged in the period under review although others were recurrent concerns which had been flagged in the previous annual reports but had persisted.

In this chapter, the Commission is putting the spotlight on those human rights issues; raising the red flag so that relevant actors can take them up, study them comprehensively and expeditiously act to address them. The human rights standards and the legal framework relevant to each specific emerging issue raised are highlighted as the basis of the obligations that Government of Uganda has.

The human rights concerns flagged are: kidnaps in 2018, the plight of ethnic minorities in Uganda, insecurity in Karamoja sub-region and its human rights implications, the 2018 elections (LCI and Parliamentary) human rights implications and the Commission's intervention, and the Bududa landslides.

## 10.1 KIDNAPS IN UGANDA IN 2018 AND THEIR HUMAN RIGHTS IMPLICATIONS

### 10.1.0 Introduction

Kidnapping is the act of abducting someone and holding them captive. It can also be interpreted as the act of illegally taking away a person by force, usually in order to demand money or something in exchange for their release.<sup>304</sup> *Kidnap is, therefore, a serious crime and human rights violation* which negatively impacts on the enjoyment of human rights by the victim, family and society. In 2018, the country witnessed an increase in the number of kidnappings in urban areas, and mainly in Kampala. Information from the police Kidnap Response Centre (KRC) established that by May 2018, there were 74 reported cases of kidnaps, of which 49 were from Greater Kampala Metropolitan Area (GKMA).<sup>305</sup>

### 10.1.1 Legal framework

The crime of kidnap and its effects are prohibited under international, regional and national legal frameworks that include the UN Resolution of 2009/24<sup>306</sup> which calls for international cooperation to prevent, combat and eliminate kidnappings and to provide assistance to the victims of kidnappings; the UDHR (1948); ICCPR (1966); the ICESCR (1966); Article 35 of the CRC (1990); the ACHPR (1981); and Article 16 (1) of the African Charter on the Rights and Welfare of the Child (ACRWC) 1990 which obliges states to protect children from all forms of torture, inhuman or degrading treatment, physical or mental injury or abuse. Others are Article 4 (1) of the Protocol to the ACHPR on the Rights of Women in Africa which provides for respect of women's right to life, integrity and security of her person, exploitation, cruel, inhuman or degrading punishment and treatment; the 1995 Constitution of Uganda, especially articles 22 on the right to life, 23 on personal liberty, 24 on protection from torture, cruel, inhuman or degrading treatment and 26 on the right to property; and sections 242 to 247 of the Penal Code Act Cap 120 which prescribe sentences for perpetrators of kidnappings ranging from 10 years to death upon conviction.

304 Oxford Advanced Learner's Dictionary, 9th Edition pages 858 and 859.

305 Presentation by the Uganda Police Force during UHRC's 21st Annual Report Consultative Meeting.

306 Titled: International cooperation to prevent, combat and eliminate kidnapping and to provide assistance to victims of kidnapping.

### 10.1.2 Kidnap cases in 2018

In early 2018, both the print and electronic media were awash with reported cases of kidnaps although some of them turned out to be self-kidnaps. According to police, the Kidnap Response Centre (KRC) received 74 cases of kidnaps, 49 of which were from Greater Kampala Metropolitan Area (GKMA). Out of the 74 kidnap cases received, ransom was demanded in six of the cases, while the other 68 were later categorized as disappearances, self-kidnaps and lawful arrests some of which included the following cases:

- i) **Susan Magara** was murdered after some ransom was paid. Nine suspects were remanded while three were still at large.
- ii) **Lin Yu Yun's** case was later found to be an arrest conducted unprofessionally by police officers, and not a kidnap.
- iii) **Samuel Wati**, a 12-year-old who reported to Bulambuli Police Station that he had escaped from his alleged kidnappers which turned to be false.
- iv) **Gloria Masika**, 20 years old, reported as an alleged kidnap and rape victim. By the time of writing this report investigations were still ongoing to verify the claim.
- v) A threat to kidnap a one **Daniel Salube** aged 50 from Kamuli district was reported and was still undergoing investigations at the time of writing this report.
- vi) **Sarah Ndagire** reported a case of alleged kidnap to Naggalama Police Station using the station's toll-free lines. She later confessed that she was not kidnapped but was testing the toll-free lines to confirm whether they were working.
- vii) A murder case of a one **Christine Namale Birungi** from Luweero region aged 12 years whose body was found in a nearby bush was reported and two suspects were arrested and the file sent to DPP for prosecution.
- viii) Alleged kidnaps of **Aminah Mirembe** aged 22 and **Christine Nabasumba** aged 26 from Kampala later turned out to be self-kidnaps. Both of them were arrested and taken to court.
- ix) The kidnap of 17-year-old **Shamusa Nakasujja** from Mukono. She was later recovered and two of the suspects were arrested while one was still at large.<sup>307</sup>

According to police records, the people kidnapped were five males (three adults and two children) and 15 females (eight adults and seven children). Out of these cases, 11 of the victims were murdered, while eight were recovered and one was still missing at the time of writing this report.

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307 Ibid.

**TABLE 14: KIDNAP CASES REPORTED IN THE PRINT MEDIA IN 2018**

S/N	DISTRICT	DATE/MONTH OF ALLEGED INCIDENT	NAME OF THE VICTIM(S)	AGE	GENDER OF THE VICTIM	STATUS OF THE VICTIM
1.	Kampala	7 <sup>th</sup> Febraury 2018	Susan Magara	28 years old	Female	Murdered
2.	Kampala	13 <sup>th</sup> Febraury 2018	Isaac Makubuya	27 years old	Male	Missing
3.	Luweero	19 <sup>th</sup> Febraury 2018	Rahia Nakato	5 years old	Female	Recovered by police
4.	Luweero	19 <sup>th</sup> Febraury 2018	Sumayia Babirye	5 years old	Female	Recovered by police
5.	Kampala	22 <sup>nd</sup> March 2018	Charity Kyohairwe	33 years old	Female	Raped and murdered
6.	Wakiso	24 <sup>th</sup> April 2018	Nakitende	3 years old	Female	Rescued by police
7.	Mbarara	April 2018	Anolyne Asasira	11 years old	Female	Recovered (after payment of ransom)
8.	Kisoro	April 2018	Zainab Mahoro	Adult	Female	Recovered (after payment of ransom)
9.	Mbarara	12 April 2018	Lowena Murungi	2 years old	Female	Murdered
10.	Kampala	10 <sup>th</sup> May 2018	Rose Nakisekka	17 years old	Female	Murdered
11.	Kampala	14 <sup>th</sup> May 2018	Brinah Nalule	19 years old	Female	Murdered
12.	Mbarara	April 2018	Juliet Twebaze	Adult	Female	Murdered
13.	Mbarara	15 <sup>th</sup> November 2018	Joshua Nabimanya	7 years old	Male	Rescued by police
14.	Wakiso	18 <sup>th</sup> May 2018	Halima Nabawanuka	Adult	Female	Murdered
15.	Wakiso	18 <sup>th</sup> May 2018	Israel Namalego	4 years old	Male	Murdered
16.	Wakiso	18 <sup>th</sup> May 2018	Dorcus Nakiwunga	2 years old	Female	Murdered
17.	Mukono	2 <sup>nd</sup> June 2018	Christine Biwaga	26 years	Female	Rescued by an individual
18.	Wakiso	27 <sup>th</sup> April 2018	Abel Katende	Adult	Male	Murdered
19.	Wakiso	28 <sup>th</sup> July 2018	Allen Nakiyingi <sup>310</sup>	28	Female	Murdered
20.	Mayuge	29 <sup>th</sup> March 2018	Denis Alenyo <sup>311</sup>	33	Male	Recovered

**TABLE 15: REPORTED CASES IN THE MEDIA WHICH TURNED OUT TO BE SELF-KIDNAPS IN 2018**

S/N	DISTRICT	DATE/ONTH OF ALLEGED INCIDENT	NAME OF THE PERPETRATOR(S)	AGE	GENDER OF THE PERPETRATOR(S)	REASON FOR SELF-KIDNAP
1.	Kampala	16 <sup>th</sup> /2/2018	Phillip Tumwebaze Wabwire	27 years old	Male	Unknown
2.	Hoima	/3/2018	Godfrey Katusiime	50 years old	Male	Extortion
3.	Kampala	/4/2018	Mariam Uwase	21 years old	Female	Extortion
4.	Bushenyi	15 <sup>th</sup> /4/2018	Peace Ansiimirwe	19 years old	Female	Extortion
5.	Isingiro	17 <sup>th</sup> /4/2018	Meloni Nabaasa	45 years old	Female	Extortion
6.	Kampala	/5/2018	Grace Kyosimire	27 years old	Female	Extortion
7.	Kampala	25 <sup>th</sup> /5/2018	Christine Nabasumba	25 years old	Female	Extortion
8.	Kampala	26 <sup>th</sup> /5/2018	Aminah Mirembe	23 years old	Female	Test her husband's love for her.
9.	Kayunga	/5/2018	Rebecca Birabwa	32 years old	Female	Justify her absence from home.
10.	Mbarara	16 <sup>th</sup> 5/2018	Evans Ariho	29 years old	Male	Extortion
11.	Masaka	23 <sup>rd</sup> /11/2018	Zahara Nakafeero	14 years old	Female	Extortion
12.	Kampala	6/6/2018	Mariam Kusuubira <sup>312</sup>	Adult	Female	Extortion

308 New Vision newspaper, Monday August 6th 2018, page 10.

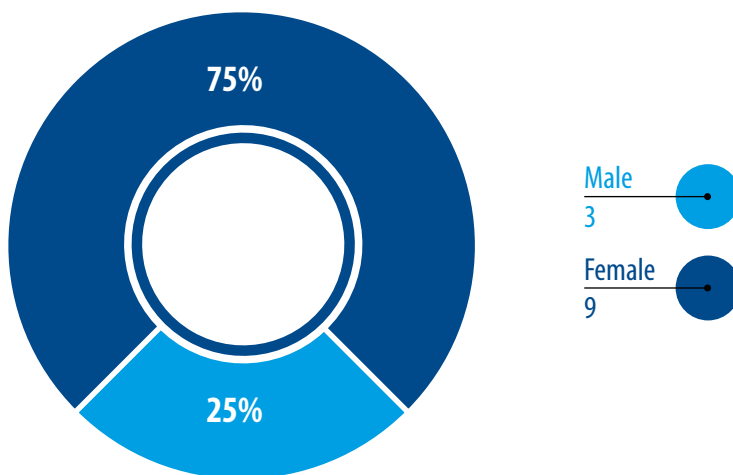
309 <https://www.monitor.co.ug/News/National/Kidnappers-son-chemical--UPDF-Colonel-police-Ongia> Accessed on 6th March 2019.

310 [https://www.newvision.co.ug/new\\_vision/news/1479523/pastors-wife-faked-kidnap-arrested](https://www.newvision.co.ug/new_vision/news/1479523/pastors-wife-faked-kidnap-arrested) Accessed on 6th March 2019.

The table above shows that there were 12 reported cases of self-kidnaps. Among these, it was alleged that nine of the cases were aimed at extorting money from relatives/friends, one was committed with the intention of testing the husband's love, another one was intended to justify the perpetrator's absence from her marital home and the police were yet to find the motive for the twelfth case.

The Commission noted that nine of the alleged perpetrators in self-kidnaps were females while three were males.

FIGURE 8: GENDER OF PERSONS INVOLVED IN SELF-KIDNAPS



### 10.1.3 Groups affected by kidnaps

The Commissions’s findings show that the most affected groups were women and children although some men were also victims. The police also noted that by mid-2018, the kidnappers had resorted to waylaying unsuspecting women and young girls.

The Commission also found that initially it had been rich families and individuals who were targeted such as in the Susan Magara case, but the perpetrators later resorted to humble families such as in the case in Sembabule district where a man was forced to borrow money and sell his land in a futile attempt to secure the freedom of his daughter.<sup>311</sup> Similarly one Rose Nakisekka aged 17 and a daughter to Fred Kasagga, a resident of Kigo, Villa-Maria in Kalungu district, was also killed by her kidnappers after her family failed to raise a ransom of UGX 5 million. Even when the amount was reduced to UGX 1.5 million, the family still failed to raise the money and only managed to raise UGX 1 million; she was killed! The victim’s father, Mr. Kasagga, was quoted to have stated that the family’s hope of seeking help from the police was further daunted when police requested for

fuel to speed up the investigations which they could not afford.<sup>312</sup>



▲ Two-year-old Lowena Murungi who was kidnapped on 12<sup>th</sup> April 2018 and killed a week later despite prompt payment of the ugx 5 million ransom.

311 UHRC’s press statement on the state of insecurity in the country issued on 25th May 2018.

312 Daily Monitor newspaper, Wednesday 16th May, 2018, page 6.



## 10.1.4 Causes of kidnaps in Uganda in 2018

### a) Unemployment

The high unemployment rate in the country, especially among the youth, was cited as one of the reasons that enticed people, especially the youth, into engaging in acts of kidnap. It should be noted that Uganda has the world's youngest population with over 78 percent of its population below the age of 30.<sup>313</sup> With just under eight million youth aged 15 to 30, the country also has one of the highest youth unemployment rates in Sub-Saharan Africa. According to statistics from UBOS, the unemployment rate among the youth in Uganda increased to 2.10 percent in 2017, from two percent in 2016.<sup>314</sup>

### b) Ritual sacrifice

Some of the kidnap cases were linked to ritual sacrifice especially those where body parts of the victims were severed. Police investigations into the kidnap and murder of Rose Nakisekka of Kampala and Halima Nabawanuka of Wakiso in May 2018 revealed that they were murdered after they were found to be unsuitable for ritual sacrifice. In his maiden security briefing in May 2018 after assuming office in March 2018, the new Inspector General of Police, Martins Okoth-Ochola, stated, *"We arrested suspects and a witchdoctor in the kidnap and murder of Nabawanuka and Nakisekka. The witchdoctor allegedly wanted virgin girls and the victims were killed after they were rejected for the rituals"*.<sup>315</sup>

313 <https://www.independent.co.ug> Accessed on 6th March 2019.

314 [www.youthpolicy.org/factsheets/country/uganda/](http://www.youthpolicy.org/factsheets/country/uganda/) Accessed on 6th March 2019.

315 Daily Monitor newspaper, Thursday May 24th 2018, page 5.

### c) Extortion

Uganda Human Rights Commissions's findings indicated that most of the self-kidnap cases were driven by the desire to extort money from relatives and friends, with the alleged perpetrators being mainly housewives and students. For example, 19-year-old Peace Ansiimirwe faked her own kidnap on 15<sup>th</sup> April 2018 in order to extort UGX 3.5 million from her parents.

One Meloni Nabassa aged 45 faked her own kidnap on 17<sup>th</sup> April 2018 in order to extort UGX 3.5 million from her brother, while 21-year-old Mariam Uwase did the same in order to extort UGX 25 million from her boyfriend. In June 2018, Mariam Kusuubira, a wife to Pastor Shadrach Kusuubira, also faked her own kidnap to extort UGX 50 million from her husband.



▲  
Top: Meloni Nabaasa displays part of the money she collected from her brother after faking her own kidnap on 17th April 2018 Bottom: The pastor's wife, Mariam Kusuubira, at Katwe Police Station following her arrest for self-kidnap.



#### d) Moral degeneration

Some of the incidents were attributed to moral degradation in the country, unlike the past generation where people cared for each other and had great respect for their families and the society at large. It is, therefore, not surprising that most of the kidnaps were done by people well known to the victims' families. On the other hand, the self-kidnap cases were done with the intention of extorting money from family members. The alleged perpetrators were mainly women and students. The kidnap and eventual murder of Abel Katende was, for instance, masterminded by his wife and children over a family dispute.<sup>316</sup>

▲ A police woman leading Grace Kyosimire into the cells at Katwe Police Station after she was arrested for self-kidnap

316 above

### 10.1.5 Human rights implications of kidnaps

#### 10.1.5.1. Deprivation of the right to freedom from torture or cruel, inhuman or degrading treatment or punishment



▲ Susan Magara before her kidnap and murder

Torture is prohibited by the UN Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) of 1984, Article 7 of the ICCPR, Article 5 of the ACHPR, articles 24 and 44 of the Constitution of Uganda and the Prevention and Prohibition of Torture Act, 2012.

The Commission findings show that in some cases, victims were tortured either to extort money from their families or for fun. Information obtained from police shows that by mid-2018, kidnappers had resorted to waylaying unsuspecting women and young girls, leading them to strange places and consequently raping or defiling them. For instance, **Charity Kyohairwe** was kidnapped on 22<sup>nd</sup> March 2018 raped and later murdered.

The captors of Susan Magara cut off two of her fingers and sent them to her family to hasten the payment of their ransom before killing her.

A few days after kidnapping her, the assailants called her family and directed them to a place along Entebbe Road where they had hidden a certain envelope. According to Mr. Lenny Muganwa, Magara's grandfather, the envelope contained two fingers cut off from the deceased and a video clip showing how the fingers were cut off as she was watching and crying.<sup>317</sup>

Likewise, a few days following three year-old Nakitende's kidnap on 24<sup>th</sup> April 2018, her alleged kidnappers cut off her hair, undressed her and put the dress and hair in a polythene bag, which they dumped near her father's house. They also left their telephone number saying they have the child.

Finally when they were arrested, they confessed that they had sedated her with valium to prevent her from crying. This was further confirmed by the victim's grandfather, Mr. Charles Serunjogi, the mayor of Kampala Central Division, who told the media that she took long to recover because she had ingested a lot of valium.<sup>318</sup>

Apart from physical torture, the negative psychological effects of the kidnaps on both the victims and their families are dire and long-lasting. These may include disturbing thoughts, denial, impaired memory, decreased concentration, being overcautious and aware, confusion or fear of the event happening again, shock, numbness, anxiety, guilt, depression, anger, a sense of helplessness, withdrawal, and avoidance of family, friends and activities due to lack of trust.<sup>319</sup>

#### 10.1.5.2 Deprivation of the right to life

The right to life is provided for under Article 6 (1) of the ICCPR, Article 4 of the ACHPR and Article 22 of the Constitution of Uganda. Article 22(1) of the same Constitution prohibits the deprivation of life except in execution of a sentence after a fair trial. Police records and media reports show that some of the victims lost their lives.

For instance, table 14 above shows that of the 20 kidnap cases that were reported in the media in 2018, 11 of them resulted into death of the victims regardless of whether a ransom was paid or not. The dead were Susan Magara, Brinah Nalule, Rose Nakisekka, Charity Kyohairwe, Juliet Twebaze, Halima Nabawanuka, Abel Katende, Israel Namalego, Dorcus Nakiwunga, Lowena Murungi and Allen Nakiyingi.



◀ Brinah Nalule at her mother's home in Njeru, Buikwe district before her kidnap and murder

317 <https://nilepost.co.ug/2018/02/28/kidnappers-cut-off-magaras-fingers-as-she-watched-and-wailed-sent-video> Accessed on 6th March 2019.

318 <https://observer.ug/news/headlines/57792-city-mayor-how-my-girl-was-kidnapped-rescued> Psychological trauma/torture Accessed on 15th February 2019.

319 [https://en.wikipedia.org/wiki/psychological\\_trauma](https://en.wikipedia.org/wiki/psychological_trauma), [https://en.wikipedia.org/wiki/psychological\\_torture](https://en.wikipedia.org/wiki/psychological_torture)

### 10.1.5.3 Deprivation of the right to own property/livelihood

The right to property is provided for under Article 14 of the ACHPR and Article 26 of the Constitution of Uganda. Article 26 (2) of the Constitution further provides that; “no person shall be compulsorily deprived of property or any interest in or right over property of any description except if the taking or acquisition is necessary for public use or in interest of defence, public safety, public order, public morality or health”. Information from police revealed that some of the kidnappers had resorted to stealing other people’s property such as phones, national identification cards and mobile telephone sim cards which they would place at scenes of crime to divert police investigations, destroy to avoid detection or use to extort money from the victims’ families. In most of these cases, the alleged kidnappers asked for huge amounts of ransom which the respective families found difficult to raise. As earlier noted, a man in Sembabule was forced to borrow money and sell his land in a futile attempt to secure the freedom of his daughter. In the case of Susan Magara, kidnappers demanded UGX 3 billion and by the time she was murdered, the family had only raised UGX 720 million.

### 10.1.5.4 Deprivation of the right to personal liberty and security of person

Article 9 of the ICCPR prohibits arbitrary arrest and detention, or any limitation on individuals’ right to personal liberty, unless it is done on grounds and procedures established by law. Article 6 of the ACHPR provides that “every individual has the right to liberty and to security of person” and reiterates that this right can only be constrained “for reasons and conditions previously laid down by law”. Article 23 of the Constitution of Uganda provides that the right can only be limited upon reasonable suspicion of having intention or being about to commit a criminal offence, in execution of a court order, public safety or security and the person should be kept in a place authorized by law. Kidnappers often forcefully take away their victims against their will and confine them until such a time when they have achieved their purpose but in some instances they may be denied this right forever especially where the victims are killed by the kidnappers.

Similarly, the right to security of a person is guaranteed as a basic right under Article 3 of the UDHR, 1948 along with the right to life and liberty. It is the first substantive right protected under the declaration, thus indicating its profound importance for individuals and society as a whole. It is further provided for under Article 9 of the ICCPR and UN General Comment No. 35 of 2014 on the same article which stipulates that security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained. It is the duty of the state to ensure security of all persons in accordance with these international human rights standards.

### 10.1.5.5. Rights of women

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa reinforces the need to protect women’s rights. Article 4 (1) of the Charter provides that every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited. As earlier noted, most of the kidnap victims were women and children. Out of the 20 cases reported in the media (*see table 15 above for details*) eight were women.

#### 10.1.5.6. Rights of children

Article 16 (1) of the African Charter on the Rights and Welfare of the Child (ACRWC), 1990 obliges state parties to take specific legislative, administrative, social and educational measures to protect children from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. The findings indicate that most of the victims were women and children.



◀ Savannah Regional Police Commander, Mr. Edward Kyaligonza (R), handing over a set of twin sisters to their parents after they were rescued from suspected kidnapper in February 2018

#### 10.1.6 Challenges police faced in investigating kidnap cases

##### i) Inadequate technology

It must be noted that perpetrators of serious crimes like kidnappings have been changing. While appearing before the Parliamentary Committee on Human Rights in May 2018, the police leadership, led by State Minister for Internal Affairs Mario Obiga Kania, was tasked by legislators to explain why kidnaps of mostly women and children had continued. In his response, Kania conceded that police lacked sufficient technology to track kidnappers.

During the same meeting, Kampala Metropolitan Police Commander Moses Kafeero, in whose policing region most of the killings had occurred, informed MPs that some of the kidnappers used the victims' phones as it was in Rose Nakisekka's case to demand money which made it difficult to know their identity while others were using the existing gaps in technology such as unregistered mobile telephone sim cards. He added, "The system of tracking we have works when the phone is on; so, you keep tracking the masts. As soon as the phone is off, you [the suspect] can travel anywhere and the mast cannot detect".<sup>320</sup> Former police spokesperson Emilian Kayima had similar sentiments when he observed, "We do the best we can and we keep improving but crime keeps changing shape and colour and somehow it slips through".

##### (ii) Alleged corruption by some police officers

The alleged corruption by some police officers coupled with the perception that some of them could have been conniving with the kidnappers affected the expeditious handling of some of the cases. The president of the Republic of Uganda on several occasions stated that the police had been infiltrated by criminal elements thus providing fertile ground for vices like kidnaps, contract killings and high-end robberies. In his state of security address on 15<sup>th</sup> September 2018, the president reiterated the same and assured the country that such elements were "being cleaned out of the force".<sup>321</sup> Three police officers attached to Wandegeya Police Station and a former operative of the Chieftaincy of Military Intelligence were on 14<sup>th</sup> January 2018 arrested over the kidnapping of Dr. Kenneth Amok, a dentist attached to Mulago Hospital, on 20<sup>th</sup> December 2017 and extorting UGX

320 <https://chimpreports.com/police-admits-inadequate-technology-to-track-kidnappers> last Accessed on 7th March 2019.

321 [https://www.newvision.co.ug/new\\_vision/news/1485791/museveni](https://www.newvision.co.ug/new_vision/news/1485791/museveni) Accessed on 7th March 2019.

5.4 million from him. And on 18<sup>th</sup> September 2017, the Flying Squad Unit of the police rescued Mr. Gerald Yashaba who had been kidnapped by a superintendent of police.<sup>322</sup>

### (iii) Alleged delayed action by police

Some of the affected families felt betrayed by the police whom they accused of ignoring their cases. For instance Mr. Katende, father to three-year-old Nakitende who was kidnapped at Kiteezi in Wakiso district on 24<sup>th</sup> April 2018, stated that he lodged a case of kidnap at Kiteezi Police Station but the officers did nothing. They neither visited his home nor looked at the exhibits of the cut-off hair and the dress which the captors had dropped.<sup>323</sup> In the case of Abel Katende, one of his sons told the media that as soon as he learnt about his father's disappearance on 27<sup>th</sup> April 2018, he reported the matter to Masuulita Police Station but he did not receive any help for four days until he reported the matter to the Flying Squad operatives who arrested the suspects, who happened to be his mother and siblings. The suspects later confessed to having committed the crime and led the operatives to a pit latrine where the victim's body was found.<sup>324</sup>

### (iv) Inadequate facilitation

The poor facilitation of police incapacitated their ability to adequately respond to some of the kidnap cases reported to them and they had to rely on the victims' family in one way or the other to facilitate their investigations. For instance, while investigating her granddaughter's case, Mr. Charles Serunjogi the mayor of Central Division Kampala, stated that he had to provide food and transport to the two Flying Squad operatives who were handling the case until the victim was rescued.<sup>325</sup> Similarly, Mr. Fred Kasagga, a resident of Kigo, Villa-Maria in Kalungu district whose 17-year-old daughter Rose Nakisekka was kidnapped and killed after failing to raise UGX 5 million, accused police authorities at Old Kampala of requesting him to provide fuel in order to expedite investigations into his daughter's case.<sup>326</sup>

### (v) Lack of confidence in the justice system

The general lack of confidence in the justice system in the country impeded police work as some people kept away from reporting and chose to work directly with the kidnappers or the media. Juma Nsereko, whose twin daughters were kidnapped in Luweero, for instance, acknowledged that he had little hope in police and mainly dealt with the media whom he credited for highlighting his plight that led to the recovery of the twins. The situation was aggravated by the fact that as all these incidents were happening, the police failed to promptly update the public on the progress of their investigations until later when the president assured the country and directed them to begin giving regular updates on the situation.<sup>327</sup>

### (vi) Threats from some of the kidnappers not to report to police

Some of the victim's families feared to report to police for fear of reprisals from the alleged kidnappers who had warned them of serious repercussions should they ever report their cases to the police. While informing the family of Charity **Kyohairwe about her death, the kidnappers had this to say: "The money has come. Do not send more. Since you decided to work with police, go to the mortuary at Mulago and pick your body".**<sup>328</sup>

322 Sunday Monitor newspaper of 24th January 2018, and <https://www.reuters.com/article/us-uganda-security> 16th April 2018 Accessed on 18th February 2019.

323 n 9 above last accessed on 6th March 2019.

324 n 21 above

325 n 9 above.

326 n 13 above.

327 The president's national address on the state of security in the country on 9th and 15th September 2018.

328 n 8 above.

### (vii) Alleged bickering among some security officers

There was some perceived bickering among some security officers or agencies which affected the handling of some of the high-profile cases including kidnaps during the year until mid-year when some changes were made and the security agencies started working jointly.<sup>329</sup>

### 10.1.7 Government interventions

In the spate of the kidnaps and the resultant murders, the government came up with a number of security measures including:

#### (i) Registration of mobile telephone sim cards

The government through Uganda Communications Commission (UCC) directed mobile telecom companies to register all mobile sim cards and link them with the national bio-metrics data center operated by the National Identification and Registration Authority (NIRA) to prevent the perpetrators from using unregistered sim cards to communicate after investigations revealed that some of them were using the cards to commit crime.<sup>330</sup> In the case of Susan Magara, for instance, police investigations reportedly revealed that her kidnappers had used up to 17 different mobile telephone sim cards to communicate with her family to demand UGX 3 billion.<sup>331</sup> The government also banned the sale of airtime scratch cards which took effect in July 2018.<sup>332</sup>

#### (ii) Installation of closed-circuit television cameras (CCTVs)

By September 2018, Government of Uganda had embarked on the installation of 5,552 new CCTV cameras on roads, streets and major highways. One thousand of the cameras had already been installed in GKMA following the president's nine-point plan issued on 20<sup>th</sup> June 2018 to curb crime in the country.<sup>333</sup>



◀ Street camera at Jinja Road traffic lights. Similar cameras have been installed in and around Kamapla and Wakiso to reduce crime in the city

329 <https://observer.ug/news/headlines/56937-museveni-downplays-cmi-police-fight-fears>

330 Daily Monitor Wednesday May 9th 2018 pg. 8

331 <https://www.monitor.co.ug/News/National/UCC-telecoms-under-fire-illegal-SIM-cards> last accessed on 7th March 2019.

332 <https://observer.ug/news/headlines/57309-ucc-bans-airtime-scratch-cards.html> last accessed on 7th March 2018.

333 Daily Monitor newspaper, 21st June, 2018, page 1. Also New Vision newspaper, Wednesday 5th September 2018, page 5.

### (iii) Recruitment of Local Defence Unit personnel (LDUs)



◀ LDU recruits undergoing training

The president directed that 24,000 Local Defence Unit personnel (LDUs) be recruited starting October 2018. Some 6,000 were passed out in March 2019 and others are still undergoing training to enhance the capacity of the police in Kampala and Wakiso.

This follows the president's directive in his state-of-the-nation address on 9<sup>th</sup> September 2018 following the spate of murders and kidnaps in the country.<sup>334</sup>

### (iv) Joint security operations

The government instituted joint security operations. For instance, police in collaboration with the Chieftaincy of Military Intelligence in April 2018 arrested nine suspects in the Susan Magara case which was a major breakthrough since her kidnap and eventual murder in February 2018.<sup>335</sup> They also started holding joint intelligence meetings on how to handle such matters better including those they had with the president on 12<sup>th</sup> June 2018.<sup>336</sup>

### (v) Establishment of Kidnap Emergency Response Centre at police headquarters

The centre had a 999-rescue service and all police facilities were directed to handle kidnap cases with the urgency they deserve. Through the centre, 74 cases were received, some of which were taken to court.

### (vi) Mobilization of the public to be vigilant

The government and the police in particular encouraged the public to be vigilant and be cautious of their safety and promptly report any kidnap cases as soon as they happen. They did this through the media and community policing.<sup>337</sup>

### (vii) Government pledged to increase the number of detectives and adopt better technology to expedite investigations of crimes

The government plans to build a modern forensic laboratory to collect DNA samples from the population to facilitate identification of suspects, besides thumb and palm prints.<sup>338</sup>

334 Daily Monitor newspaper, Friday 14th September, 2018 page 5.

335 New Vision newspaper, Wednesday, 2nd May, 2018 and Friday, 4th May, 2018, pages 6 and 4 respectively.

336 New Vision newspaper, Thursday, 24th May, 2018, page 4. Also Daily Monitor newspaper, 13th June 2018, page 4.

337 New Vision newspaper, Friday 11th May, 2018, page 5.

338 New Vision newspaper, Friday, 22nd June, 2018 page 5.



### 10.1.8 Recommendations

#### To Uganda Police Force

1. Heighten security presence, foot patrols and community policing.
2. Continuous capacity building to cope up with the modern trends in technology in as far as crime prevention and management are concerned.
3. Officers involved in unprofessional conducts should be made accountable for their actions.
4. Officers should be adequately facilitated with the required tools and equipment to effectively investigate cases.

#### To Government

1. Job creation especially for the youth.
2. Creation of meaningful poverty eradication programmes.
3. Rehabilitation centres should be established to give a new lease of life to some of the surviving victims.

### 10.1.9 Conclusion

It should be noted that towards the end of the year this vice had largely been contained which was attributed to beefing up of security coupled with better cooperation among the various security agencies, increased vigilance by both the police and the public, increased media awareness, and arrests and prosecution of some of the perpetrators, among others.

## 10.2 PLIGHT OF ETHNIC MINORITIES IN UGANDA IN 2018

### 10.2.0 Introduction

Ethnic minorities are people who differ in race or color or in religious, nationality or cultural origin from the dominant group (often the majority population) of the country in which they live. The different identity of an ethnic minority may be displayed in any number of ways, ranging from distinctive customs, lifestyles, language or accent, dress and food preferences to particular attitudes, moral values and economic or political beliefs espoused by members of the group.<sup>339</sup>

Uganda is home to a large number of various ethnic and linguistic groups; however, they continue to be disproportionately affected by a number of challenges, including uneven development and inadequate health care and poor education provision. They include the Aliba, Bahehe, Bamba, Babwisi, Banyabindi, Bagungu, Banyabutumbi, Basongora, Batwa, Gimara, Ik, Lendu, Mening, Mvuba, Maragoli, Ngikutio, Nyangia, Reli, Shana, Tepeth, Ethur and the Vonoma. The others are the Benet, the Banyara, Batuku, Paluo (Chope), Babukusu, Kebu, Bagwe, Barundi, Bagangaizi, Bayaga, Basese, Meru, Mwangwar, Bakingwe, Banyanyanja, the Kuku and the Bahaya.

This chapter focuses on the plight of selected ethnic minorities in Uganda including the Ik, Ethur, Tepeth, Benet and Batwa that have suffered discrimination and marginalization over years. The chapter highlights the legal framework and highlights the human rights concerns the above-mentioned minorities face and makes recommendations to address them.

339 <https://www.scholastic.com/teachers/articles/teaching-content/ethnic-minorities> Accessed on 5th February 2019.

### 10.2.1 Legal framework

Article 2 of the Universal Declaration of Human Rights (UDHR), states that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>340</sup>

The International Covenant on Civil and Political Rights (ICCPR) provides for a right to self-determination for all peoples. It further provides that by virtue of that right, people freely determine their political status and freely pursue their economic, social and cultural development.<sup>341</sup> Article 27 states that “In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.<sup>342</sup>

According to the African Charter on Human and Peoples’ Rights (ACHPR), all people have a right to existence, self-determination and to pursue their economic and social development. Besides, the charter also guarantees all people the right to economic, social and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.

The Constitution of Uganda lays out some groundwork for the protection of ethnic minorities/indigenous groups. National Objectives III and VI in the Constitution of Uganda, 1995 prescribe a culture of cooperation and tolerance for the various customs and traditions resident in the country as well as the gender balance and fair representation of marginalized groups on all constitutional and other bodies. Marginalization of ethnic minority groups (EMGs) is prohibited under Article 32 (1) while Article 36 assures specific protection of the rights of minorities. Article 180 (2) (c) provides for affirmative action and participation on local governments for all marginalized groups referred to in Article 32 of the Constitution.

#### a) Laws of Uganda on indigenous and ethnic minorities in Uganda

Schedule 3 of the Ugandan Constitution (1995) refers to 56 indigenous communities in the country. Both the Batwa and Karimojong are among the 56 communities named in the schedule as indigenous peoples. However, the Ugandan Constitution’s understanding of the term “indigenous” is one in which “all Africans are indigenous to Africa”. This is, however, not the manner in which the term “indigenous peoples” is understood by the African Commission on Human and Peoples’ Rights nor by international law.

The African Commission identifies indigenous peoples according to the following characteristics: *“The overall characteristics of groups identifying themselves as indigenous peoples are that their cultures and ways of life differ considerably from the dominant society and that their cultures are under threat, in some cases to the point of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional lands and the natural resources thereon. They suffer from discrimination as they are regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated and suffer from various forms of marginalization, both politically and socially. They are subjected to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. This discrimination, domination and marginalization violate their human rights as peoples/communities, threaten the continuation of their cultures and ways of life and prevent*

<sup>340</sup> <https://www.jus.uio.no/lm/un.universal.declaration.of.human.rights.1948/2.html> Accessed on 6th February 2019.

<sup>341</sup> Article 1 of the International Covenant on Civil and Political Rights (ICCPR).

<sup>342</sup> <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> Accessed on 6th February 2019.

*them from being able to genuinely participate in decisions regarding their own future and forms of development”.*<sup>343</sup>

Groups in Uganda which fall under these criteria for indigenous peoples are nomadic or semi-nomadic hunter-gatherers or pastoralists, such as the Batwa, Benet and Karimojong. There is, therefore, a gap between the manner in which the Ugandan government perceives the term “indigenous peoples” and the manner in which it is employed by the African Commission and by international organisations such as the UN agencies.

Despite the disparate understanding of the term “indigenous peoples”, Uganda Human Rights Commission and other organisations like Care Uganda and Ministry of Gender, Labour and Social Development undertake specific work focusing on vulnerable ethnic minority groups. Indigenous peoples (as the term is understood by the African Commission) are included in the work on vulnerable communities.<sup>344</sup>

### 10.2.2 Selected ethnic minority groups in Uganda

In Uganda, out of the 65 officially indigenous communities in Uganda as per the 3rd Schedule of the 1995 Constitution of Uganda, 21 are small ethnic groups, with fewer than 25,000 people. They include Tepeth, Banyara, Batuku, Paluo (Chope), Babukusu, Banyabindi, Lendu, Basongora, Ik, Batwa, Bahehe, Dodoth, Ethur, Mening, Jie, Mvuba, Nyangia, Napore and Venoma, among others. They collectively represent about one per cent of the national population, or slightly more than 200,000 citizens.

The Third Schedule of the Uganda Constitution lists several other minority groups, including the Bamba, Babwisi, Bagwe, Bagungu, Bakenyi, Kebu, Nubi and the Ngikutio. There are a number of ethnic minority groups that are not recognized in the Constitution of Uganda and as a result experience a sense of exclusion and marginalization. They include, but not limited to, the Benet, Bakingwe, Bahaya, Bagabo, Banyanyanja and the Maragoli. Their rights to an ethnic and cultural identity, self-determination, heritage and participation continue to be ignored.

The Commission in 2018, monitored the rights of selected ethnic minorities including Benet, Ik, Batwa, Tepeth and Ethur. Below is a brief on each of these five ethnic minority groups in Uganda.

#### (a) The Benet

The Benet, also referred to as the Ogiek or Ndorobo, are an indigenous community that has lived in Mt. Elgon forests in Eastern Uganda from time immemorial. They derive their livelihood from pastoralism, hunting and wild gathering. However, around 1940, Mt. Elgon was gazetted as a forest reserve by government. Due to high demand for land for agriculture, government in 1983 allocated about 6,000 hectares to the Benet community.

This resulted into the expelling of the Benet from their indigenous homes, forcing them to adapt to new ways of life and ending their traditional ties to the forest. However, some people did not benefit from the 6,000 hectares; so, they ended up being squatters on the forest land which is under the management of Uganda Wildlife Authority (UWA). So, they are unable to freely access the forest for economic, spiritual and social activities. The Benet population is around 20,000 people and they currently occupy the districts of Kapchorwa, Kween and Bukwo.<sup>345</sup>

343 [http://www.achpr.org/files/sessions/43rd/missionreports/uganda/misrep\\_specmec\\_indig\\_uganda\\_2006\\_eng.pdf](http://www.achpr.org/files/sessions/43rd/missionreports/uganda/misrep_specmec_indig_uganda_2006_eng.pdf)

344 [http://www.achpr.org/files/sessions/43rd/missionreports/uganda/misrep\\_specmec\\_indig\\_uganda\\_2006\\_eng.pdf](http://www.achpr.org/files/sessions/43rd/missionreports/uganda/misrep_specmec_indig_uganda_2006_eng.pdf) Accessed on 11th February 2019.

345 Benet Lobby Group. Baseline Study on the Land Rights of Indigenous People (Benet) in Districts of Kapchorwa, Kween and Bukwo in Uganda.

## (b) Batwa

The Batwa, or Twa people, are one of the last groups of short-statured people also known as pygmies and until Bwindi rainforest was gazetted as a national park, they lived a hunter-gather lifestyle in the forest. As the original dwellers of this ancient jungle, the Batwa were known as “The Keepers of the Forest.” The history of these small-statured people is long and rich. The Batwa survived by hunting small game using arrows or nets and gathering plants and fruit in the rainforest.

They lived in huts constructed of leaves and branches, moving frequently in search of fresh supplies of food. The Batwa lived in harmony with the forest and its creatures, including the mountain gorillas, for millennia. They are now some of the poorest people in the world with a high infant mortality rate and low life expectancy.<sup>346</sup>

This deprivation of land and dispossession was due to the creation of national parks such as Bwindi Impenetrable Forest and Mgahinga Gorilla national parks in areas traditionally occupied by Batwa people.

Typically, no or little compensation has been provided for the displaced Batwa, be it in terms of cash or as alternative land. According to the 2002 population census, the Batwa population in Uganda is about 6,000, with the majority living in the southwestern districts of Kabale, Kisoro, Kanungu, Bundibugyo and Rukungiri.

According to the Bwindi Mgahinga Conservation Trust (BMCT) Batwa Population Census Report of 2016, there are 3,463 Batwa in the Bwindi Mgahinga Conservation Area (BMCA) (1,685 males and 1,778 females). There are also 766 Batwa households in the Bwindi Mgahinga Conservation Area and majority of Batwa are in Kisoro district.<sup>347</sup>



◀ Batwa community singing to guests

## (c) Ethur

The Ethur are believed to have come from Abyssinia (present-day Ethiopia) through Somalia, to Kenya (Turkana) and then to Uganda. The Ethur are inhabitants of Abim district in Karamoja sub-region and are divided into six groups; namely, Kakoka, Eparagot, Emenkeko, Kanyipa, Oporoth and Emonyanga groups. Whereas they are mainly living in Abim district, others are also spread to other districts within Karamoja sub-region. Their language is called Leb Thur. According to the 2014 Population and Housing Census, the total population of Ethur was estimated to be 56,000 people.<sup>348</sup> The Commission could not ascertain their exact population for 2018.

346 <https://ugandatourismcenter.com/place/batwa-people-and-their-culture/>

347 Bwindi Mgahinga Conservation Trust (BMCT) Batwa Population Census Report of 2016.

348 Uganda Bureau of Statistics. Population and Housing Census 2014.

#### (d) Tepeth

The Tepeth are found on the lowlands of Mt. Moroto in Moroto district though others can be found in other parts of Karamoja like on Mt. Napak in Napak district. The Tepeth are subsistence farmers who also rear cows, goats and sheep. Their language is called Soo, but somehow it is becoming extinct since it is not being spoken and there are very few people who can still speak it. Very few of them are educated and in terms of population, they are approximately 25,288 people only.<sup>349</sup>

#### (e) Ik

The Ik people are mainly found in Kaabong district in Kamion sub-county and Lokwakaramoe plus Morungole which are yet to be made sub-counties, and the parishes of Timu, Lokinene, Kapalu Kokosowa, Tulutul, Loitanet, Nawadou and Usake to mention but only a few. Their Language is called Ik.

Looking at the above, it is clear that most ethnic minority groups reside in places that are gazetted by government mainly around forests and mountain areas and this has led to many being landless. This has in a way taken away their cultural identity which they seem to attach a lot of importance to.

### 10.2.3 Human rights concerns of these selected ethnic minorities

#### a) Exclusion, marginalization, discrimination and negative attitude towards ethnic minorities

According to Commission findings, ethnic minority peoples face a number of problems in some health facilities where health workers exhibit negative attitude towards them, most especially describing them as dirty. This is common with the Batwa. As minority and indigenous people's health facilities are mostly located in remote areas without enough drugs, they find it difficult to buy drugs for themselves from private drug shops due to poverty.

The Batwa face discrimination with non-Batwa referring to them as forest people who should go back to the forest. These derogatory terms have contributed to their inferiority complex.

The Batwa have often been ostracized by their neighbors, considered underdeveloped, backward and in some respects sub-human. Furthermore, the Batwa women are often used as sexual objects under a myth that sleeping with them heals backache and HIV/AIDS. The discrimination on the basis of sex and gender is rampant among women who are more socially and economically deprived. In general, the Batwa are shunned as partners by other ethnic groups.<sup>350</sup>

Discrimination against minority groups is attributable mainly to the failure on the part of the state to recognize and identify ethnic minorities and to adopt policies that are expressly directed affirmative action to address the special needs of these people.

#### b) Forced assimilation

The education policy requires that pupils should be taught in their mother tongue from primary one to primary three claiming that the use of English as a method of instruction perpetuates passive learning.

According to the Commission's findings, the current primary school curriculum is designed in such a way that the language of the majority community is taught at the detriment of the language spoken by the minority, hence depriving children the opportunity of fully learning their mother tongues. This kind of forced assimilation is experienced, for example, by the Basongora and Banyabindi in Kasese district who are obliged to learn Lukonzo instead of Rusongora and Runyabindi, their mother tongues.

349 Uganda Bureau of Statistics, 2016.

350 International Labour Organisation and African Commission on Human and Peoples' Rights, 2009.

This forced assimilation, according to the Commission's findings, was also found among the Ethur in Karamoja. In the elders' meeting/Karamoja elders' forum, the Ethur do not speak their language because there is no interpreter; so, they are compelled to speak Ngakarimojong. Furthermore, the Tepeth language is almost extinct and has been replaced by Ngakarimojong which is spoken by the neighbouring Matheniko people. What is even worse is that it is only the elderly people who speak it and there is no written literature in Tepeth.

Additionally, the traditional language of Rutwa has long been subsumed under Rukiga and Rufumbira or Kinyarwanda, the languages of the dominant ethnic neighbours.<sup>351</sup> The Commission notes that forced assimilation affects their right to identify and self-determination. When the right to an identity is not upheld, bigotry/prejudice and abuse can flourish.<sup>352</sup>

### c) Limited access to health facilities

The Commission established that the ethnic minorities and indigenous peoples access same health facilities together with the other communities. However, the Benet in Eastern Uganda are still leaving on the national park land and, therefore, face a big challenge since no health facilities can be constructed on such land. They have to go down the mountain for health services which poses a great risk in case of emergencies such as maternal-related services or outbreak of an epidemic.

Among the Ik, the government had built a health centre in Lokinene in 2005 but never equipped it; so, it was abandoned. However, some gentleman took it up and refurbished it. Later, the administration of Kaabong district took it up as a health centre II. However, the facility has no midwives; so, expectant mothers are referred to traditional birth attendants in the villages.

### d) Lack of disaggregated data on ethnic minorities

Although all communities in Uganda access available social services without discrimination, notably there is limited statistics on the levels of access and use of them by ethnic minorities. No disaggregated data on access to social services by ethnic minorities is readily available to inform health and other programmes. Given their locality and peculiar circumstances, access to these services by ethnic minorities like the Benet and Batwa is appalling. Most of the ethnic minorities, therefore, rely on traditional herbs. They are very much attached to these medicines.

### e) Deprivation of land

According to Uganda Human Rights Commission's findings, most of the minority and indigenous peoples were evicted from their ancestral land with an aim of creating national parks. In this process, the principles of meaningful consultation, participation and prior and free consent were never applied to these communities. This has resulted into persistent landlessness, extreme poverty conditions, isolation, exclusion and discrimination, affecting their economic livelihoods and social cultural lifestyles.

These communities live as squatters on other people's land; for example, some Batwa in Kisoro and Kabale, and some Banyabindi in Kasese.

The Batwa have been made landless and resource-poor since their forceful eviction from the Bwindi-Mgahinga Game Park. Currently, the Batwa engage in a wide range of economic activities. Around 9.4% of the Batwa occupy land belonging to the government and 10% are living on Church of Uganda land while 80% live on land belonging to private landlords.<sup>353</sup> They have no security of tenure because the land titles were never given to them.

351 Ministry of Gender, Labour and Social Development (April 2017). Uganda Management of Social Risk and Gender-based Violence Prevention and Response Project: The 5-year Indigenous Minority Peoples Plan, page 18.

352 <https://www.amnesty.org.uk/blogs/stories-and-rights/why-we-have-right-identity> accessed on 18th February 2018

353 [http://www.achpr.org/files/sessions/43rd/missionreports/uganda/misrep\\_specmec\\_indig\\_uganda\\_2006\\_eng.pdf](http://www.achpr.org/files/sessions/43rd/missionreports/uganda/misrep_specmec_indig_uganda_2006_eng.pdf)

All the Batwa interviewed expressed the fact that they would like to have access to the forest mainly for food to supplement the poor quality of food they are now getting and also to access fuel wood and indigenous medicinal herbs, which are essential for their well-being.

The Benet hunter-gatherers were evicted from the Kapchorwa Protected Area during the early 1970s and in 2005, they commenced successful legal action against the Uganda government. The Benet case, supported by both ActionAid International Uganda and the Uganda Land Alliance, is the most significant legal case involving indigenous peoples' land rights in a country whose judiciary has been perceived as having a measure of independence from the executive.

This case greatly encouraged the Batwa and other indigenous communities that it is possible to fight for their rights through legal means. The Benet still live in a camp-like arrangement on a portion of Mt Elgon National Park awaiting resettlement.



◀ One of the dilapidated structures where Batwa in Kisoro live

#### f) Poverty as a result of deprivation of land

The historical rampant poverty among minority and indigenous peoples emanating from lack of land which limits economic opportunities has negatively affected them. Their children do not attend school regularly and experience high school dropout rates since they cannot afford the cost of education such as school uniform and scholastic materials, among others. Lack of income makes it impossible for them to afford quality education majorly offered in private schools which are concentrated in urban areas and very expensive.

#### g) Limited access to water

Water is a human right and is also inextricably related to the right to the highest attainable standard of health. Whereas the right to water applies to everyone, most ethnic minorities have challenges accessing clean water for domestic use especially due to the fact that majority of them do not have access to and control of land and natural resources from where they could access natural springs with clean water.

A case in point is the Ik who face a problem of lack of water and the district has not done enough to help them. For example, Timu parish has only one borehole which is shared by a school, a health centre and the community members.



▲ A Mutwa man giving water to a child

#### **h) Limited political representation**

Majority of the ethnic minorities are not represented in political or decision-making positions apart from the Ik, Tepeth and Ethur. This leads to little attention to their particular needs in terms of policymaking and implementation.

#### **i) Social discrimination**

This is common in the communities where ethnic minorities live especially at health centres. The Batwa are below average height, being less than one metre of height even as adults and thus look like small children. This natural fact has led to the Batwa being discriminated against. They further face prejudice and discrimination from the dominant society, which refers to them as 'pygmies'. This humiliates them and makes them feel less human.

According to a health official at Nyakabande Health Centre II interviewed by the Commission staff, the Batwa are usually diagnosed with urinary tract infections and upper respiratory tract infections. The health workers Commission interviewed mentioned that while conducting health outreaches, most of the Batwa present with the following symptoms: poor hygiene, failure to bathe and they also suffer from jigger infestations. The Batwa also suffer from inferiority complex because of poor hygiene which makes them fear to face the nurses.

*"Batwa communities are regarded as dirty and because of our natural physical appearance, they are discriminated against especially in accessing services,"* one of the local leaders said.

#### **j) Deprivation of right to education**

Government introduced UPE and USE to cater for all and there hasn't been any direct exclusion for ethnic minorities from accessing these programmes. However, the ethnic minorities have not adequately benefited from the said programmes because they haven't been granted special consideration and as such, there is need for government to put in place special measures to elevate the education levels of the minority and indigenous peoples in order to attain realisation of their right to education. In addition, almost most of the schools are near urbanized parts of Uganda where the rural poor ethnic minority groups do not live.

In addition, there still remains considerable confusion about the language content of education; most schools still teach in English and the teaching of minority languages remains virtually untouched. There is no or little attempt to teach minority pupils about the culture, history or traditions of their own people, or about minority rights.

For example, education among the Ik is limited because in the past, the administration of Kaabong district would avail scholarships to the Ik children for primary level only. However, this was scrapped, leaving most of the Ik children not going to school.

Among the Tepeth, the entire constituency has only four coded primary schools yet it is expected that every parish should have at least one primary school. Some NGOs such as Italian Cooperation and Development, Save the Children Uganda and BRAC are the ones helping in paying school fees for the children of the Tepeth.

Furthermore, according to the Batwa Census Summary report, 49.2% of school-going children do not attend school and 95% of Batwa have not had any formal education. While the Batwa children are enrolled in UPE and some in USE schools, these statistics were unavailable and thus the exact number could not be ascertained.



Instruction for pupils under the thematic curriculum is Rufumbira as there are no Rutwa-speaking teachers.<sup>354</sup> The main reasons for non-attendance and abandonment of school appear to be: lack of funds to buy uniforms, school materials and lunch; harassment from other learners; lack of land and housing; and the need to support their families in meeting urgent basic needs.<sup>355</sup>

The UN Committee on the Rights of the Child has acknowledged the extreme deficiencies in Batwa children's enjoyment of their rights to education and healthcare in Uganda and recommended in 2005 to the government to:<sup>356</sup>

- i) Undertake a study to assess the situation and the needs of Batwa children and to elaborate a plan of action, involving leaders of the Batwa community, to protect the rights of those children and ensure access to their social services; and
- ii) Adopt adequate means and measures to ensure that Batwa communities, including children, are provided with information regarding birth registration procedures, and access to health care facilities and education.

According to a baseline study by the Benet Lobby Group, 40% of the Benet people have never been to school and only 19.1% of the Benet people have been able to attend and complete primary education, followed by 7.6% said to have completed lower secondary (O-level). Only 2.5% of the Benet in Kapchorwa are reported to have completed tertiary or university education.<sup>357</sup>

#### k) Access to justice

In 2018, the Commission established that the Batwa community members freely reported cases to police but according to the Uganda Police Force Kisoro District CID officer, they face a number of challenges while dealing with complaints by or against the Batwa. "In defilement cases, explaining to them the need for medical examination is a challenge," the CID officer said.

This coupled with lack of birth certificates to prove date of birth makes prosecution of defilement cases a challenge. The CID officer also noted that because of inferiority complex among some of them, they do not report cases to police and in some cases they refuse to sign or thumbprint their statements. Among the Ethur, access to justice remains a challenge because there is no resident magistrate in Abim district (which is occupied by the Ethur) as it is in other districts like Kotido and Moroto.

The Commission also notes that the lack of legal aid and witness protection laws also hinders access to justice for all including ethnic minorities or indigenous persons.

#### l) Gender aspects among the ethnic minority groups

Women from ethnic minority communities suffer double discrimination as they are not normally included in decision-making and their gender interests are never accorded priority even in the national policies and programmes.

Ethnic minority groups do not consider women in resource ownership and always expect only the men to voice their concerns. This is normally aggravated by lower levels of literacy and **education among women**.<sup>358</sup> While a significant level of diversity exists among them, ethnic minority women

354 Among the Batwa, they are taught in Rufumbira or Rukiga, and not Rutwa.

355 Ministry of Gender, Labour and Social Development (April 2017). Uganda Management of Social Risk and Gender-Based Violence Prevention and Response Project: The 5-year Indigenous Minority Peoples Plan, page 18.

356 UN Doc. CRC/C/UGA/CO/2, 23 November 2005, paras 30, 81 and 82.

357 Benet Lobby Group (September 2018). Baseline Study on the Land Rights of Indigenous People (Benet) in Districts of Kapchorwa, Kween and Bukwo in Uganda.

358 <https://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/JS6-JointSubmission6-eng.pdf> Accessed on 18th February 2018.

tend to suffer doubly; they are often marginalized and refused access to any property rights. Most women in Uganda never inherit property and land including ethnic minority women. Gender division of labor and cultural roles attached to each gender and other specific circumstances do exist.

#### 10.2.4 Positive developments in the advancement of rights of ethnic minorities

Government of Uganda has made some progress to enhance protection and promotion of fundamental human rights of minority groups, as listed below:

##### **d) Development of the National Social Protection Policy framework**

The National Social Protection Policy (NSPP), which was put in place in 2013, provides a framework for legislation, coordination and programming for social protection. The Social Assistance Grants for Empowerment (SAGE) Scheme under the Expanding Social Protection Programme initially piloted direct income support grants for the senior citizens (65 years and above but lowered in the case of more vulnerable Karamoja sub-region to 60 years). By 2015, the SAGE programme was in only 15 districts but it was later extended to cover 40 districts from financial year 2015/2016 to 2019/2020. However, some ethnic minority groups are not on the list of the beneficiary districts. This is because the criterion for selecting the grant beneficiaries is simply based on one's age and most of the ethnic minorities' life expectancy is very low.

##### **a) Political inclusion/participation**

Regarding political participation, two parliamentary constituencies within the ethnic minority communities in Karamoja were created. The first two members of parliament to represent the Ik and the Tepeth were elected in February 2016 to represent their constituents in the 10th Parliament to date. The Ethur were also granted their own district called Abim in 2006 and they are represented by two members of parliament. The Commission also found out that in 2018, 11 Batwa were elected to various positions in local councils in the eight districts where they are resident. United Organisation for Batwa Development in Uganda (UOBDO) also facilitated the formation of committees within their communities whose members were trained in case recording and mediation of matters that do not amount to crimes.

##### **b) Establishment of the Equal Opportunities Commission (EOC)**

Government established the Equal Opportunities Commission (EOC), under the Equal Opportunities Act of 2007 which is mandated to provide a framework for redressing imbalances that exist against the marginalized groups while promoting equal opportunities for all. The Act gives effect to the state's constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on the grounds of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability and to take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them.<sup>359</sup>

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<sup>359</sup> Equal Opportunities Act 2007.

### 10.2.5 Commission's interventions

#### a) National Dialogue on indigenous peoples and extractive industries

The Commission in conjunction with the African Commission in December 2018 organized a National Dialogue on indigenous peoples and extractive industries. Key recommendations from the Dialogue to Government of Uganda included:

Government together with mining companies should develop and implement national public participation and consultation models for affected populations including indigenous communities based on the principle of Free, Prior and Informed Consent (FPIC); adopt international standards in recognizing, promoting and protecting the rights of indigenous populations in the country; integrate the traditional knowledge and practices of indigenous peoples into policies and programs to mitigate the impact of climate change in Uganda; share information with indigenous communities on a regular and continuous basis and in a transparent manner; and ensure that there is an adequate access to justice for indigenous populations and provide training to them on the same.

#### b) Training of duty bearers

In 2018, the Commission with support from GIZ conducted a training of duty bearers on the human rights-based approach.

#### c) Monitoring and reporting

The Commission has always monitored and reported on the plight of indigenous persons and made appropriate recommendations to Parliament.

### 10.2.6 Recommendations

1. The Ministry of Education and Sports should develop inclusive and intercultural educational provisions and curricula, which will ensure that all ethnic minority groups have an understanding of their multi-cultural society.
2. Parliament should address the gaps in the legal and policy frameworks particularly by amending the Constitution of Uganda to ensure that all ethnic minorities and indigenous people in Uganda receive due recognition as ethnic groups in Uganda under the law.
3. The Ministry of Foreign should ratify the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
4. Ministry of Lands, Housing and Urban Development should fast-track the resettlement process of all minority communities who were evicted from their ancestral lands so that they can fully engage themselves in income-generating activities.
5. The Uganda Bureau of Statistics should compile comprehensive statistical data on the social, economic and political status of the indigenous minorities in Uganda.

### 10.2.7 Conclusion

The Commission acknowledges the efforts the government has made to ensure that the rights of ethnic minorities in Uganda are promoted and protected. Despite the fact that the government has done commendable work, there are still many challenges including deprivation of right to education and land and social discrimination, lack of political participation, exclusion and marginalization, among others. Uganda needs to put in place legislative, administrative as well as practical remedies to address the plight of ethnic minorities in Uganda.

## 10.3 INSECURITY IN KARAMOJA SUB-REGION AND ITS HUMAN RIGHTS IMPLICATIONS

### 10.3.0 Introduction

Karamoja sub-region of North-Eastern Uganda has for a long time been riddled by the problem of illicit arms and light weapons and the resultant insecurity, manifested in raids and counter raids, road ambushes and extrajudicial killings of civilians, amongst others. These raids also affected districts neighbouring Karamoja as well as across the borders to Kenya and South Sudan. Successive Ugandan governments have tried to address this problem through a number of approaches, all aimed at removing these illicit arms from the hands of the Karimojong and to create an avenue where peace and development can prevail.

Following years of insecurity, the government of Uganda successfully carried out a disarmament exercise, beginning in the year 2001, to rid the locals of illegal guns.<sup>360</sup> While relative peace has been realised in the sub-region over the last ten years following the successful disarmament of the Karimojong warriors, recent developments threaten to erode the gains so far made in as far as the pacification of Karamoja is concerned. In 2018 specifically, cases of insecurity in Karamoja sub-region, fuelled by attacks by the Turkana of Kenya and the Toposa and Didinga of South Sudan, were prevalent during the year, with reported loss of lives and property on both sides.

Aware of the likely implication of this insecurity on fundamental human rights and freedoms, Uganda Human Rights Commission monitored the security situation in Karamoja sub-region in 2018. The objective of the monitoring was to assess the extent of the insecurity in Karamoja and how it impacts on the enjoyment of fundamental human rights and freedoms. The Commission conducted key informant interviews with relevant stakeholders including the Uganda People's Defence Forces (UPDF), Uganda Police Force (UPF), local leaders, civil society organisations and the affected communities. To augment its findings, the Commission also reviewed secondary literature and press reports on the same.

This sub-chapter presents the findings from the Commission's monitoring of the security situation in Karamoja sub-region during the year 2018. It includes the major incidents of insecurity, the main parties, areas most affected, effects of the incidents and their human rights implications. The section also includes efforts that are already in place to address the problem as well as policy recommendations to various government entities.

### 10.3.1 Findings by Commission on cross-border insecurity

#### 10.3.1.1. Areas most affected

The Commission's assessment of the insecurity incidents revealed that the districts of Kaabong and Kotido were the most affected. Kotido district shares a border with Kenya while Kaabong shares a border with both Kenya and South Sudan. In Kaabong district, the most affected sub-counties were Kamion, Kalapata, Loyoro and Kawalakol while in Kotido, Nakapelimoru and Losilang sub-counties have been most affected due to their locations at the border with Turkana county of Kenya. The other Karimojong district that shares a border with Kenya is Amudat district. However, the Commission established that there were no major incidents of insecurity in Amudat. This is primarily because the Pokot of Amudat in Uganda and those of Kenya consider themselves as brothers and their culture does not permit a Pokot to kill a fellow Pokot.

<sup>360</sup> (Human rights watch report on mining in Karamoja 2014:36).

### 10.3.1.2 Communities involved

Communities affected by the insecurity are mostly the Karimojong<sup>361</sup> and Pokot of Uganda versus the Turkana of Northwestern Kenya, the Karimojong and the Toposa and Didinga of South Sudan. These parties live primarily in arid and semi-arid areas and depend on livestock including cattle, sheep, goats and camels for their livelihood. They rely on access to pasture and water for the survival of their livestock. Such resources are scarce and under increasing pressure.

### 10.3.1.3. Incidents of cross-border insecurity in 2018

In the course of its monitoring, the Commission documented some incidents of insecurity. However, most of the respondents interviewed estimated that the number the incidents between the month of January and December 2018 were more than 50. Respondents further reported that the number of animals lost during these raids could be in thousands while the number of people who lost lives as a result of the incidents was reported to be about 30. The table below shows some of the documented incidents of insecurity during the reporting period.<sup>362</sup>

**TABLE 16: DOCUMENTED CASES OF INSECURITY IN KARAMOJA SUB-REGION DURING THE YEAR 2018**

S/N	DATE	INCIDENT
01	January 2018	In January 2018, it was alleged that the Jie of Kotido, the Dodoth of Kaabong and the Turkana of Northwest Kenya stole livestock from each other and this brought about cross-border conflicts.
01	7 <sup>th</sup> March 2018	37 goats and sheep belonging to Paul Lokidi of Ngolepak village, Kokoro parish, Kawalacol sub-county in Kaabong district were stolen and driven towards South Sudan by suspected Toposa rustlers. By the time of reporting, the goats and sheep had not been recovered.
03	15 <sup>th</sup> March 2018	32 goats and sheep belonging to Lomodo Lonyok, of Matakwar village, Lomanok parish, were stolen by suspected Turkana and driven towards Kenya.
04	23 <sup>rd</sup> March 2018	Suspected Toposa warriors from South Sudan stole 14 goats belonging to Longok, son of Popo of Natingayan village, Naooyagum parish, Kawalacol sub-county in Kaabong district. Nine goats were recovered by the LDUs while the rest had not been recovered by the time of compiling this report.
05	30 <sup>th</sup> October 2018	A man by names Paul Lokwang, aged 29, from Namatenge village, Namatenge parish, Kawalacol sub-county in Kaabong district was shot on the left-hand side to the upper part of the scapula by 03 suspected Turkana of Kenya. He was still receiving treatment at Kaabong hospital by the time of reporting.
06	27 <sup>th</sup> November 2018	Suspected Turkana warriors stole 180 goats belonging to Logwee Luka Lowarimoe, Lobo Naitakwang, Lodukuni John Loduchi and Lokwang. The animals were not recovered.
07	November 2018	A group of traders from Kitgum were ambushed within Kidepo Valley National Park by warriors suspected to be Didinga and Toposa from South Sudan.
08	November 2018	A local leader in Amudat was killed by unknown people and his motorcycle taken away. The suspects are still on the run but the motorcycle was recovered in Namutumba district.
09	November 2018	An LDU soldier was beaten seriously by suspected Pokot warriors in Loroo sub-county, Amudat district. The motive of the beating is not known.
10	November 2018	Suspected Pokot warriors from Uganda allegedly stole camels belonging to the Pokot of Kenya. The suspects were arrested and the camels recovered.
11	10 <sup>th</sup> December 2018	A suspected Turkana warrior from Kenya was arrested in Nakiloro area, Rupa sub-county in Moroto district on suspicion that he wanted to steal cattle.

<sup>361</sup> While generally, the name Karimojong is used by most people to refer to all people within the geographical location of Karamoja, it is important to note that strictly speaking, the word Karimojong refers only to the Matheniko, of Moroto district, the Bokora of Napak and the Pian and Chekwi of Nabilatuk and Nakapiripirit districts respectively.

<sup>362</sup> The actual number of incidents could be more than what has been presented in the table since not all incidents were documented.

12	15 <sup>th</sup> December 2018	Suspected Turkana of Kenya attacked Lodinyang village, Naoyagum parish in Kawalakol sub-county, Kaabong district and stole 128 goats belonging to Nicholas Longuramoe. A one Philip Lokine Lokwang was allegedly beaten by the UPDF when he reported the incident.
13	18 <sup>th</sup> December 2018	03 goats and sheep belonging to Lomer were stolen by suspected Turkana warriors from Kenya. The suspects were ambushed and 04 were killed and two guns were recovered.
14	19 <sup>th</sup> December 2018	60 goats and sheep belonging to Lepuge Largo, the LCI chairperson of Morungoel village, Kokoro parish in Kawalakol sub-county, Kaabong district were stolen by suspected Toposa of South Sudan. The animals had not yet been recovered by the time of reporting.
15	20 <sup>th</sup> December 2018	12 goats belonging to Looatan Lomoe of Lodinyang village, Naoyagum parish in Kawalakol sub-county, Kaabong district were stolen by suspected Turkana warriors from Kenya. The animals were not recovered.
16	27 <sup>th</sup> December 2018	15 goats belonging to Napeyok Peter Lokol of Kocholo village, Lomej parish, Kawalakol sub-county in Kaabong district were stolen by suspected South Sudanese herdsmen. They were pursued by the UPDF soldiers and only 04 goats were recovered.
17	25 <sup>th</sup> December 2018	A man of 24 years was killed on Christmas day 2018 in Kalapata sub-county in Kaabong district.
18	December 2018	During the month of December, 03 cases of killing by Turkana men were reported in Kaabong.
19	28 <sup>th</sup> December 2018	07 suspected South Sudanese warriors raided 8 goats from Kawalakol sub-county.

### 10.3.2. Major drivers of cross-border insecurity

#### a) Porous borders

One factor which was cited by most of the respondents interviewed by the Commission is the porous borders between Karamoja sub-region and the neighbouring countries. Due to minimal presence of government structures along the border points, there are few designated border crossing points. For instance, the Commission learnt that much as there are known border crossing points between Uganda and South Sudan within Karenga sub-county in Kaabong district, the large expanse of the border line gives an opportunity to the armed elements on both sides of the border to cross from any point, hence evading the security deployments at the known border points. The same applies to the border with Kenya.

One case that was brought to the attention of the Commission, which arose from the existence of porous borders, was of Eritreans who crossed into Karamoja sub-region through Kotido district, claiming to be seeking asylum.<sup>363</sup> The Commission also learnt that nine South Sudanese and two Burundians were arrested and detained in Kaabong police station for illegal entry into the country. It wasn't clear how the Burundians found their way into Kaabong district yet Kaabong does not share a border with Burundi.<sup>364</sup> This is reportedly a worrying trend, considering that such avenues could be used by terrorist to destabilise Uganda.

One reason for the lack of vigilance across the border points is the minimal government presence on Uganda's borders with Kenya and South Sudan along Karamoja sub-region. On the Kenyan side, the nearest administrative structures, where a semblance of government presence can be felt, are in Kakuma in Kenya, a distance of about 70 kilometres away from the border point with Kotido district. This, therefore, means that there is lack of effective government control on that side of the Kenyan border, creating a vacuum that gets exploited by armed groups to freely cross into Uganda with their guns and cause disturbance.

<sup>363</sup> The Commission got this information during an interview with the Regional Police Commander, Kidepo region, on 28th December 2018.

<sup>364</sup> This was revealed by OHCHR Karamoja field office during a joint coordination meeting with the Commission on 14th February 2018.

The same applies to the Ugandan border with South Sudan, where majority of the border points lie within Kidepo Valley National Park. Inadequate policing and state security arrangements give chance to both the Turkana and the Karimojong to raid each other and as a result it leads to conflicts. Security on both sides of Uganda and Kenya was noted to be very weak and inadequate. These loopholes, therefore, gave a chance to the pastoralist communities to raid each other.

Another consequence of the porous borders and minimal government presence along the border points is that it is easier for small arms and light weapons to be easily smuggled into Karamoja sub-region. Most of the respondents interviewed by the Commission intimated that while the Ugandan government successfully disarmed the Karimojong of illegal guns, the same was not done for the Turkana and Pokot of Kenya and the Toposa and the Didinga of South Sudan. The Commission was informed that one of the reasons why the Karimojong acquired arms in the past was because they felt the need to protect themselves from external aggression by the Turkana, Pokot, Didinga and the Toposa. This was at a time when the government of Uganda had minimal presence in Karamoja sub-region and the Karimojong were exposed to raids and attacks by their counterparts across the borders.

With the successful disarmament on the Ugandan side, the Karimojong feel more vulnerable to attacks by the neighbours from across the border since the government security apparatus has not been able to seal off all the border points. There is, therefore, low trust between the Karimojong and the Turkana and this is both a driver of conflict in itself and a brake on responses to conflicts caused by other factors.

#### **b) Climate change and the resultant struggle for natural resources**

Climatic change is one of the drivers of the cross-border conflicts. As earlier on mentioned, most pastoralist communities live in arid and semi-arid areas. They experience prolonged dry spells and subsequently, most pastoralists from Kenya and South Sudan tend to enter into Uganda to seek greener pastures and water for their animals during the dry season. For example, the Commission learnt that in January 2018, over 3,000 Turkana and Toposa pastoralists from Kenya and South Sudan respectively entered Kaabong district coming with over 50,000 livestock in search of water and pasture.

The Karamoja sub-region is always strained with scarce water resources and pasture, yet the residents are expected to share the little they have with the pastoralist from the two neighbouring countries of South Sudan and Kenya. The host districts of Karamoja sub-region are not prepared to manage the pressure from incoming nomads in cases where the dry spell persists. The Commission further heard that the recent drought in Turkana county, Kenya and Kapoeta county in South Sudan forced the people to move into Karamoja sub-region of Uganda in search of pasture and water. This contributed to conflicts over dwindling resources and led to increased livestock theft, murders and sometimes rape.

#### **c) Ignorance and disregard of law among pastoralist communities**

Ignorance and disregard of the law among the pastoralists has contributed to insecurity in Karamoja sub-region. Most of the respondents interviewed by the Commission pointed out that in most cases, the Turkana and those from Kapoeta County in South Sudan enter into Uganda and occupy people's land without any regard for the Ugandan legal requirements. Article 237(1) of the Constitution of Uganda, 1995; "land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this constitution." When these pastoralists enter into Uganda and start abusing the laws in place, it forces the native pastoralists to invade them and raid their cattle. More so the Karimojong are ignorant about Kenyan laws. All this intensifies conflicts among the pastoralists.<sup>365</sup>

<sup>365</sup> This was during an interview with the Intelligence Officer, UPDF 405 Brigade in Kotido.

#### **d) Pastoralist lifestyles**

The mode of life of the pastoral communities in Karamoja, that include the Dodoth, Jie, Bokora, Pokot and Matheniko of Uganda and that of the Turkana and Pokot of Kenya, Toposa and Didinga of South Sudan contribute to the occurrence of conflicts. For example, the Karimojong consider it their inherent right to graze their cattle anywhere and also to have access to watering points and other resources. Raiding each other is part of their nomadic lifestyle. This leads to infringements between the groups and ends up in conflicts. Some respondents have attributed the culture of raiding among the pastoralist communities to the supremacy battles among the pastoralist ethnic groups. This is in as far as one ethnic group wants to show that they are superior to the other and this can be demonstrated through raids. The need for prestige as well as getting animals to pay dowry also contributed to cattle raids and the resultant insecurity in the region.

#### **10.3.3 Human rights implications of insecurity in Karamoja sub-region**

Due to the failure of the state and other agents to fulfil their duties as per Article 20 (2) of the 1995 Constitution of the Republic of Uganda plus other factors, human rights violations are bound to occur as a result of the insecurity. The Commission notes that insecurity in Karamoja sub-region has had very negative and severe impacts on the communities that are involved. These impacts are both long-term and short-term as explained below.

##### **a) Deprivation of the right to life**

Conflicts have led to abuse and violation of the right to life as provided for in Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights and Article 22 (1) of the 1995 Ugandan Constitution. A number of people were killed during the raiding and counter raiding incidents. Most of these cross-border incidents are violent and as result, innocent lives have been lost. It is important to note that the loss of lives was not only reported on the side of the civilians but also among the security agencies. In Kaabong district, for example, four UPDF members were reportedly killed by suspected Turkana.<sup>366</sup> Another UPDF officer was allegedly killed by suspected Didinga from South Sudan. According to the UPDF 405 Brigade, an estimated 36 warriors were killed during 2018 while four UPDF soldiers also lost their lives.

##### **b) Deprivation of the right to property**

One of the key outcomes of the insecurity in the sub-region is the loss of property by the different ethnic groups. The Commission learnt that close to 600 goats from one sub-county alone in Kaabong district had been stolen during the year. This is in contravention of Article 26 of the Constitution of the Republic of Uganda in respect to the right to property.

##### **c) Denial of liberty and security of persons**

Cross-border conflicts are threatening the hard-earned peace in the region. It took very many years for both the Kenyan government and the Ugandan government to bring about the peace on their borders; so, these conflicts contradict and bring about a negative impact on the relationship of both states on their borders. In regard to personal liberty, the Commission established that due to the influx of illegal guns in the region due to the porous borders already alluded to above, there has been a resumption of cordon-and-search operations by the UPDF especially in Kaabong district, where people suspected to be in possession of guns are rounded up and detained in army detention facilities for more than 48 hours. Some of the people arrested in these operations have reported cases of torture.

<sup>366</sup> Interview with the District Police Commander, Kaabong district.



#### **d) Deprivation of livelihoods**

Insecurity in the sub-region has led to disruption of socio-economic activities and livelihoods at the borders, mostly at the Ugandan-Kenyan border. Trade among the members of the East African Community was disrupted whereby commodities such as maize could not be easily transported into Kenya that provides the largest market and goods from Kenya could not easily reach Uganda either. There was a reduction in the flow of goods amongst the East African countries. Properties such as houses and animals destroyed or stolen. This has brought about increased economic hardships as a result of loss of livelihood, thus affecting the economy of the countries affected.

#### **e) Deprivation of the right to adequate food**

The Commission established that insecurity within Karamoja sub-region has also contributed to starvation and malnutrition in the regions. The sources of food have been destroyed during conflicts whereby gardens are cut down, livestock stolen or killed, leaving the locals with nothing to feed on. This is one of the reasons why Karamoja sub-region is hit more among the sub-regions of Uganda with starvation and malnutrition. The Commission learnt that in the year 2018, due to loss of animals to the raiders from Turkana and South Sudan, many families who used to survive on animal products like milk and beef were left with nothing to feed on. This is compounded by the fact that the region is semi-arid and crop cultivation is not tenable in most parts.

#### **f) Disharmony among warring communities**

Insecurity in Karamoja sub-region has also had a spill-over effect on other neighbouring communities within Uganda. This has exacerbated hatred among communities. Whenever a conflict arises and a side loses much, there will always be the need to revenge for the loss. The need to revenge keeps on burning which in a short run brings about hatred against the other communities. Currently, due to the several conflicts, the Turkana of Kenya have developed hatred towards the Karimojong of Uganda. Due to the cross-border conflicts, the Karimojong pastoralists have moved into Sebei, Teso and Lango sub-regions, especially the districts of Kween, Katakwi and Otuke.<sup>367</sup> This has brought about discontent among the Lango leaders against Karimojong pastoralists' entry into their areas with allegations of food theft and fear of cattle rustling.<sup>368</sup> This was noted in the districts of Otuke and Alebtong which share borders with Karamoja sub-region.

#### **g) Interventions by government and other actors**

As per Article 20 (2) of the 1995 Constitution of the Republic of Uganda, the state plus other agencies and organs have the obligation to respect, uphold and promote the rights and freedoms of the individual and groups enshrined in chapter four. This obligation places a duty on the state to not only ensure that its agents protect and promote human rights, but to also prevent third parties, including private individuals, from infringing on the rights and freedoms of others. In this regard, the Ugandan government and other agencies have taken steps to mitigate cross-border conflicts as shown below:

- i) One of the key interventions by the security agencies has been to quickly respond to the reported incidents. The UPDF informed the Commission that since January 2018, they were able to recover up to 400 animals. In addition, they also recovered 22 guns suspected to have been smuggled illegally into Uganda.
- ii) The Commission established that security on the Ugandan side has been beefed up as a response to the increasing incidence of cross-border insecurity. In Kaabong district, for example, the Commission learnt that an extra battalion was deployed by the UPDF 3<sup>rd</sup> division. The army and the police have tightened their vigilance in those districts that have reported incidents of cross-border insecurity by deploying the LDUs in the kraals to protect animals against raiders.

367 <https://www.monitor.co.ug/SpecialReports/Teso-Karamoja-dialogue-GIZ-Moroto--Palam-Usuk-Ongongoja/688342-4172160-157rtj3/index.html> Accessed on 14th February 2019.

368 [https://www.youtube.com/watch?v=3gxf7CWs\\_BY](https://www.youtube.com/watch?v=3gxf7CWs_BY) Accessed on 14th February 2019.

- iii) Cross-border peace dialogues, facilitated by the governments of Uganda and Kenya with support from local community-based organisations within Karamoja and Turkana county of Kenya have been ongoing. The Ugandan government and the Kenyan government have reached mutual agreements relating to matters of cross-border conflicts. This has been arrived at through mediation and reconciliation. Through these mutual agreements, negotiations on peace and unity have been reached. For example, in January 2018, the Turkana Governor Mr. Josphat Nanok leading other West Pokot governors from Kenya met the Ugandan delegation led by the Prime Minister Dr. Ruhukana Rugunda. However, it appears that these initiatives have not borne any fruits since cases of insecurity still persist.
- iv) Danish Demining Group has conducted capacity building activities with local stakeholders. These included conflict management education for community members, advanced conflict management and conflict sensitivity training for security providers, administrators and community chiefs. Danish Demining Group has organized several dialogues. They also organized a dialogue between the local communities and security providers designed to build trust and understanding between the two which typically was at a very low level. These dialogues, workshops and conferences were participatory in nature and both the Turkana community and the Karimojong benefited from them.
- v) Local government officials and community leaders engaged in workshops, dialogues and conferences aimed at mitigating the conflicts. In a workshop organized by Danish Demining Group in 2017, security providers, local authorities and community leaders were trained in community engagement, people-centred border management and differences in cultures and administrative systems.
- vi) Cross-border dialogue meetings between Kenya and Uganda have been organized. For instance, on 17th to 18th February 2018, a meeting was organised in Lodwar, Kenya and was opened by Mr. Camlus Omogo, the Director of Conflict Early Warning and Response Mechanism (CEWARN). Resolutions were reached at; such as the construction of water dams that will minimize movement of pastoral communities, pastoralists must abide by the law of the country they are crossing to, and efficient coordination and information sharing among the security agencies, among others.

#### 10.3.4 Recommendations

1. Ministry of Foreign Affairs should hold high-level engagements within the framework of the East African Community to ensure that all armed groups within the East African region are disarmed.
2. While UPDF and other security agencies have worked hard to ensure that the people and their properties are safe, police should deploy more forces at national borders to ensure that armed groups do not cross into Uganda to disturb border communities.
3. The Ministry of Foreign Affairs should engage with the Kenyan and South Sudanese governments jointly cooperate and control the theft of animals across the borders.
4. All stakeholders involved in peace initiatives in Karamoja sub-region need to reevaluate their strategies to ensure that the peace dialogues are effective in addressing the insecurity situation in the area.

#### 10.3.5 Conclusion

In conclusion, attempts to address the insecurity in Karamoja sub-region have put much emphasis on their political dimension without regard to the root socio-economic and ecological causes. As a result, they have not effectively resolved the insecurity. The strategies should aim at resolving economic, ideological, social differences and environmental stress and resource scarcity.

## 10.4 THE 2018 ELECTIONS (LOCAL COUNCIL AND PARLIAMENTARY) HUMAN RIGHTS IMPLICATIONS AND COMMISSION'S INTERVENTION

### 10.4 Introduction

In the year 2018, a series of elections were organized by the Electoral Commission to fill up vacancies for Members of Parliament, Local Government Council I, II and V and Women Council committees. Specifically, elections were conducted in new constituencies of Bugiri and Sheema municipalities as well as by-elections to fill the vacant seats in Sheema County North; Arua, Ibanda, Nebbi, Apac, Kotido and Rukungiri municipalities; Jinja Municipality East; Ruhaama County; Igara County East; and Busia and Butebo districts.

The Commission monitored human rights observance in electoral processes focusing on the period before, during and after the polling days in some areas. This chapter focuses on election-related activities which include display and update of national voters register; the nomination of candidates; consultations and campaigns; the actual polling days; and the period after the elections.

The Parliamentary by-elections were held in accordance with Article 81 (1) which obliges the Electoral Commission (EC) to hold elections within 60 days after the declaration of the vacancy while Local Government Council V elections were held in accordance with Article 183,<sup>369</sup> and the Local Council I and Local Council II elections were conducted under Section 111 (2) of the Local Governments Act.<sup>370</sup>

#### 10.4.1 Legal framework

The right to take part in the government of the country directly or through a freely chosen representative is provided for under Article 21 of the Universal Declaration of Human Rights. The essential elements of free, fair, genuine, periodic, universal suffrage, secret ballot and expression of the will of the people are further provided under articles 21 (3) and 25 of the Universal Declaration. Article 13 of the African Charter on Human and Peoples' Rights restates Article 21 of the UDHR. The 1995 Constitution provides for the right to vote for every citizen aged 18 and above and provides for other rights that facilitate the right to vote such as freedom to associate, including through political parties. Other rights such as freedom of expression, non-discrimination, freedom of assembly and association and access to justice are also catered for.<sup>371</sup>

Fair elections should, therefore, be free from discrimination based on grounds such as political opinion or affiliation; and ensure equitable access to information and state and private media without unreasonable limitations.<sup>372</sup> Political parties must enjoy fundamental rights and freedoms to hold and express opinions, freedom of assembly, movement and association without interference. Voters should be able to access information about the electoral processes, parties, candidates and their political messages, manifestoes and programmes, unbiased voter information and comprehensive non-partisan civic education.

369 Universal adult suffrage through secret ballot.

370 Local Government (Amendment) Act, 2015 provides lining up behind the candidate.

371 Article 59 of the Constitution; articles 7, 13, 19 and 20 of the UDHR; articles 7, 9 and 19 of the ICCPR; articles 3,5,18, 21 and 29 of the CRPD; Article 5 (d) (i), (vii) and (ix) of the CERD; articles 1, 2 and 4 of the UN CAT; articles 2,5,6,9 and 10 of the ACHPR; and articles 21-24 and 29 of the Constitution.

372 Article 12 of ICESCR.

## 10.4.2 Local council elections

### a) Background to the local council elections

On the 26th of January 1986, the National Resistance Army/Movement (NRA/M) ascended to power. NRM redefined participatory democracy by introducing a new system of Resistance Councils (RCs)<sup>373</sup> and Committees at village, parish, sub-county, district, town and municipal and national Levels. RCs began as organs of political resistance in 'Luwero Triangle' and later developed into organs of administration empowered to maintain law and order in society.<sup>374</sup> With the promulgation of the 1995 Constitution, RCs were revised to Local Councils (LCs) under chapter 11<sup>375</sup> and operationalized under the Local Governments Act.<sup>376</sup>

Uganda last held administrative units, councils and committee elections in 2001. In 2006, government seemed ready to hold these elections under the defunct Movement system yet Uganda had transitioned into a multiparty political system.<sup>377</sup> Maj (Rtd) Rubaramira Ruranga, then a member of the opposition Forum for Democratic Change (FDC), challenged the legality of the incumbent local councils which had been elected under the Movement system on the basis that Uganda had embraced the multiparty system. Court upheld his petition, nullified the Local Councils and ordered fresh elections under the multiparty system.<sup>378</sup> However, this was not complied with because villages and parishes had increased as alluded to by Hon. Adolf Mwesige, the then minister of Local Government.<sup>379</sup>

Local Councils I and II are empowered to keep law and order, advise members of Parliament, resolve problems in the villages and monitor service delivery, among others.<sup>380</sup> Since 2007, Local councils I and II have been defunct following Constitutional Petition No. 21 of 2006. It was inevitable for Uganda to conduct the elections to operationalize these administrative units that had illegally held office for over 12 years.

On the 10<sup>th</sup> day of July 2018, the Electoral Commission conducted Local Council I, II and Women Council elections countrywide. The mode of this election was lining up behind a candidate rather than the usual secret ballot system. This method of voting was adopted during the second reading of the Local Governments (Amendment) Bill 2014. The minister of Local Government urged Parliament to invoke Article 68 (6) of the Constitution, which empowers Parliament to exempt any public election, other than the presidential or parliamentary elections, from the requirement of voting by secret ballot. The rationale for the electorate lining behind the candidate was to reduce on government expenditure since the secret ballot election was considered expensive.<sup>381</sup> Uganda Human Rights Commission was, however, concerned that the said mode of election would not amount to an equivalent free voting procedure because of the likely harassment and intimidation that would hinder free expression; and that the rushed passing of the Local Government Amendment Act limited consultation.<sup>382</sup>

373 Resistance Councils are what come to be referred to as Local Councils (LCs) with the commencement of the Local Governments Act, 1997.

374 See Guidelines on Constitutional Issues by the Uganda Constitutional Commission, March 1991, page 31.

375 1995 Constitution.

376 Sections 45 to 51.

377 Referendum and Other Provisions Act 2005.

378 Rubaramira Ruranga versus Electoral Commission and Attorney General, Constitutional Petition No.21 of 2006.

379 "House approves voting by lining up in LC elections". Reported at [www.parliament.go.ug](http://www.parliament.go.ug)

380 Section 48 of Local Governments Act cap 243.

381 "House approves voting by lining up in LC elections". Reported at [www.parliament.go.ug](http://www.parliament.go.ug)

382 See UHRC's 18th Annual Report of 2015, page 147.

The Commission, as an observer at the Local Council I, II and Women Council elections in 2018, deployed staff from its regional offices to cover the polling stations spread out in their regions. The observations of the Commission encompassed both an assessment of the environment in which the right to vote was realised and how in turn it facilitated the right to take part in government, directly or through a nominated representative; as well as all other attendant rights and their impact on the election exercise.

The Commission also observed areas of concern and challenges that curtailed full enjoyment of electoral rights and freedoms. This section is a summary of our findings, intervention and recommendations.

### 10.4.3 Commission's observations during LC I and II and Women Council elections

#### a) Inadequate voter education

Voter education takes place to assist the election administration in its task of delivering a free, fair, efficient and cost-effective election. It encompasses the basic voter information that every voter must have in order to arrive at the voting station prepared and vote on the dedicated voting day(s).

Voter education sensitises the electorate on the importance of participating in elections, provides the background attitudes, behavior and knowledge among citizens that stimulate and consolidate democracy. During an election, this education ensures effective organisation and activism by citizens in support of parties and causes, behavior by citizens that is appropriate to a peaceful election, acceptance of results and tolerance of the competition and opposition. The Electoral Commission is mandated to carry out voter education.<sup>383</sup>

The Commission observed that there was inadequate voter education judging from interactions with most voters in the different polling stations visited by our teams within the Central region and the districts of Soroti, Jinja and Arua. The Commission observed that the voters were informed that verification of the registers would precede the voting; however, to their dismay they were given a piece of paper and told to wait. This forced some people who couldn't wait for others to finish the verification process to leave without voting whereas in some areas some other people refused to line up after the verification.<sup>384</sup> At Budhumbuli West village, School Zone polling station in Jinja district, the polling official was forced to waive the verification process and allowed only those with national identity cards to vote.

Adequate voter education would have enabled voters to make an informed decision and not be intimidated by other people and join the lines of their choice given the mode of election adopted. Some candidates became chaotic after seeing other candidates' lines longer than theirs and this chaos prompted the EC to postpone the elections. For example, at Wandegeya Mosque polling station, it was alleged that Mr. Kirabo pushed for the cancellation of the elections because his opponent's line was longer.<sup>385</sup> This intimidation was attributed to inadequate voter education.

The Commission also noted that efforts by the EC to provide continuous voter education in order to empower citizens to meaningfully participate in the electoral process were equally inadequate due to funding constraints.

383 Article 61 (1) (g) of Constitution of the Republic of Uganda, 1995.

384 Nakabugo village, Nakabugo parish, Busiro East, Wakiso district.

385 <https://www.newvision.co.ug>

## b) Voter turn-out

The Commission observed that many people exercised their right to vote in most polling stations. The high voter turnout at most polling stations resulted into chaotic scenes in some areas like Kinawataka, a Kampala suburb, where the polling station was too small to accommodate the overwhelming numbers of residents who had turned up to vote. This prompted the voters to riot; police and UPDF personnel were deployed to quell the rioters.<sup>386</sup> Notwithstanding this, some areas still had a low turnout such as in Madirisa village LCI, Makindye II parish, Makindye division, Kampala. At Cell G. polling station in Central ward, Eastern division, Soroti municipality, out of 168 registered voters, only 72 voters voted for two candidates.

## c) Unidentifiable polling officials

The Commission observers noted with concern that a number of polling officials manning the polling stations were not up to the task. The Commission also observed that some of the polling officials neither had uniforms nor identification tags, making them undistinguishable from other voters. This issue, if not addressed, may result into chaos in the future. This was more evident in the Central region in polling stations of Buloba, Bunwa, Kapeeka and Bulaga A. village of Nakabugo parish, Wakiso district.

## d) Polling stations with incidents of chaos/violence

The Commission noted that voters became rowdy due to the cancellation of elections at their polling stations without being notified. For example, at Railway Grounds polling station in Nkrumah village, Central division, Kampala, voters protested on allegations that 'wrong registers' had been delivered and accusations that one candidate had ferried 500 voters from Kisenyi to vote. This prompted the police to use teargas to disperse the chaotic crowds. These allegations prompted the EC to postpone the election.

## e) Polling stations with accessibility challenges for persons with disabilities (PWDs) and the elderly

Uganda Human Rights Commission observed that most polling stations were located on open grounds; so, they were easily accessible to PWDs and other vulnerable persons. However, the mode of election did not favor the PWDs. The reality is that the law did not make special provision for special groups including the elderly and expectant mothers who may have wanted to exercise their right to vote. The law focused on the order at the venue as opposed to the best possible mode to include the vast categories of the electorate with special regard to those special interest groups.

The Commission noted that most polling stations lacked sign language interpreters or guides for persons with visual impairments; and some polling stations had long ques that did not favour PWDS to exercise their right to vote .The Commission noticed only one PWD who made an attempt to vote at Lubas village, Jinja municipality as indicated below.



◀ A PWD at Lubas village, Jinja municipality waiting to line up behind his candidate after having his name verified

#### 10.4.4 Parliamentary elections

##### a) Background

The EC conducted elections in new constituencies of Bugiri and Sheema municipalities as well as by-elections to fill the vacant seats in Arua, Ibanda, Nebbi, Apac, Kotido and Rukungiri municipalities, Jinja Municipality East, Ruhaama county and Igara County East.<sup>387</sup> The vacancies occurred following the death of the Arua MP, nullifications by court and creation of new districts.

The mode of voting in these by-elections was secret ballot. It is annoying to note that elections continued to be conducted under a less satisfactory legal framework and the recommendations of the Supreme Court in the case of *Amama Mbabazi vs. Kaguta Museveni & Others, Presidential Election Petition No. 1 of 2016* remain unimplemented even after the lapse of the deadline given by the court.

Most Parliamentary elections were peaceful while others were tainted with several incidents of violence, including loss of life particularly reported during the Bugiri and Arua municipalities' elections. Several other reported incidents of human rights abuses included torture, cruel, inhuman or degrading treatment, detention, prohibition of movement, infringement of freedom of expression (including media freedoms) and association. These violations compromised the rights of people to freely choose and elect their leaders.

##### b) Law governing campaigns for members of Parliament

The Parliamentary Elections Act<sup>388</sup> is the law that governs the campaigns of contesting members of Parliament. The Electoral Commission is tasked with the duty of gazetting the campaign programme indicating the dates on which the campaigns commence and end; candidates are tasked to submit their campaign programme to the returning officer who ensures that different candidates' campaign rallies don't coincide in the same parish. The campaigns must commence after nominations; must be conducted freely and accordance to the law; candidates are at liberty to use the local language of the area; and security must be accorded to them at the expense of the state.<sup>389</sup> Furthermore, candidates are entitled to protection and immunity, have rights to access state-owned communication media, print and publish campaign material, desist from sectarianism during campaigns, interfering with electioneering activities of other persons and using government resources.<sup>390</sup>

In 2018, it was a common practice for sitting members of Parliament to cross and campaign in other constituencies. The Parliamentary Act and the Campaign Guidelines for Parliamentary Candidates, 2016 are silent about this issue. The presence of some members of Parliament in other constituencies campaigning for candidates caused havoc which resulted into gross human rights violations such as right to life, freedom from torture, right to property, and freedom of expression, among others.



◀ Kyadondo East MP Robert Kyagulanyi (R) campaigning for Arua municipality candidate Kassiano Wadri

387 <http://www.ec.or.ug/?q=by-elections>

388 Parliamentary Elections Act of 2005.

389 Section 20 of Parliamentary Elections Act of 2005.

390 Sections 21 to 25 of the Parliamentary Elections (Amendment) Act 2010.

#### 10.4.5 Local Council V by-elections

The Electoral Commission conducted by-elections for District Chairperson in Busia and Butebo districts in 2018. The Chairperson vacancy in Busia resulted from court nullifying the 2016 elections while the one in Butebo resulted from the creation of a new district. The mode of this election was universal adult suffrage.<sup>391</sup> The Commission observed that these elections were peaceful, without any form of violence.

#### 10.4.6 Human rights violations resulting from the 2018 elections

##### a) Right to life

The right to life is guaranteed under Article 22<sup>392</sup> of the Constitution. However, this right is not absolute;<sup>393</sup> therefore, deprivation of life can be a lawful and legitimate state action.<sup>394</sup> The right to life acts as a substantive guarantee that people will not be deprived of their life unlawfully. Deprivation of life is only allowed if it is carried out in accordance with the law.

The Commission noted that some Local Council elections were chaotic but did not result into the death of people unlike some parliamentary elections which were tainted with violence and resulted into the violation of the right to life. The right to life was violated in Bugiri and Arua municipalities' by-elections where Hon. Asuman Basalirwa's supporter Ramanthan Walyendo (RIP) succumbed to gunshot wounds which he sustained during a campaign rally along Saza Road in Bugiri municipality.<sup>395</sup> Similarly, on 13<sup>th</sup> August 2018, Yasin Kawuma (RIP), Hon. Robert Kyagulanyi's driver who had accompanied the Member of Parliament to campaign for Hon. Kassiano Wadri, was shot dead following the alleged stoning of the president's car.

In the aftermath of the Arua municipality by-elections in 2018, riots were witnessed in different parts of the country as a result of the alleged torture of civilians and legislators in Arua district. It was reported that a vehicle carrying football fans to Mukono district for the Buganda kingdom's football tournament was caught up in the violent riots in Mityana and shot at by police, killing a one Samuel Ssekiziyivu (RIP) and injuring many others.<sup>396</sup>

##### b) Freedom from torture, disrespect for human dignity and inhuman treatment

Articles 24 and 44 (a) of the 1995 Constitution prohibits torture, inhuman or degrading treatment or punishment and this is reinforced by the Prevention and Prohibition of Torture Act, 2012 that criminalizes torture in any form. Uganda is a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

There were no reports of torture of people in the Local Council V elections in Busia and Butebo districts and Local Council I and II elections. Individuals enjoyed their freedom from torture as guaranteed by the above-mentioned laws. Similarly, in most parliamentary by-elections people enjoyed their freedom from torture except in Arua municipality by-election where it was alleged that some people were tortured including some members of Parliament that had traveled there to campaign for Hon. Kassiano Wadri. The report from the adhoc committee of Parliament noted that several supporters of Hon. Kassiano Wadri and other members of Parliament were tortured. It was alleged that Hon. Francis Zaake was tortured by unknown people.

391 Article 183 of the Constitution and section 12 of the Local Governments Act cap 243.

392 Constitution of the Republic of Uganda, 1995.

393 Article 44 of the Constitution of the Republic of Uganda.

394 Article 22(1) of the Constitution.

395 <https://www.monitor.co.ug/News/National/Basalirwa-bodyguard-dies-hospital-after-being-shot/688334-4673100-81qyamz/index.html>

396 UHRC (2018). "Statement on emerging human rights issues in the country following the Arua Municipality by-election held on Wednesday 15th August 2018" See [ug/statement-emerging-human-rights-issues-country-following-arua-municipality-elections-held](http://ug/statement-emerging-human-rights-issues-country-following-arua-municipality-elections-held)





◀ Alleged tortured suspects at Gulu Chief Magistrate's Court

### c) Right to personal liberty

The right to personal liberty is one of the most fundamental human rights as it affects the vital elements of an individual's freedom. Personal liberty is a fundamental condition, which everyone should generally enjoy. This right is stipulated in international human rights instruments<sup>397</sup> as well as the Constitution.<sup>398</sup> However, this right is not absolute; therefore, deprivation of liberty can be a lawful and legitimate state action. The right to liberty acts as a substantive guarantee that arrest or detention will not be arbitrary or unlawful. Deprivation of liberty is only allowed if it is carried out in accordance with the law.

There were no cases reported to our offices and in the mainstream media of instances where people were arrested and held incommunicado in the chairperson LCV elections, or the Local Council I and II elections. Instances of deprivation of the right to liberty were only reported in the Arua municipality Parliamentary by-elections. Although the Constitution provides that persons arrested should be produced in court within 48 hours, this provision continued to be disregarded. For example, the Parliamentary report on torture indicated that 33 people who were arrested in Arua during the Parliamentary by-elections were not produced within 48 hours as required by the Constitution. In addition, other rights including the right to seek urgent medical attention, the right to inform their next of kin and right to access to their lawyers were violated.<sup>399</sup>

This unconstitutional delay exposed the suspects, especially those that were brutally tortured, to grave danger to their health and well-being. These violations triggered protests across the country and around the world, calling for the respect of the rule of law, human rights and democracy, as well as release of the detainees.

### d) Freedom of speech and press

Article 29 (1) (a) of the 1995 Constitution of Uganda guarantees that every person shall have the right to freedom of speech and expression. The International Covenant on Civil and Political Rights, which Uganda is party to, also states in Article 19 (2) that everyone has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds.

The Commission noted that media freedoms were violated during and in the aftermath of pPrliamentary by-elections while these freedoms were enjoyed in the Local Council I, II and V elections in 2018. During the Arua municipality by-elections, it was reported in the mainstream media that some journalists were attacked during their covering of elections and related processes. Herbert Zziwa and Ronald Muwanga, both NTV news reporters, were arrested during a live coverage on Akawungeezi programme and detained at Gulu police station.<sup>400</sup>

397 ICCPR, UDHR, ACPHR

398 Article 23.

399 Report of the adhoc committee on the investigation into the condition of members of parliament and other suspects arrested in the run-up to the by-election for the Arua municipality parliamentary seat August 2018.

400 <https://thetowerpost.com/2018/08/13/ntv-journalist-herbert-zziwa-goes-missing-in-arua/>



◀ Photo of journalists - Herbert Zziwa and Ronald Muwanga after being released on police bond in Gulu

In the aftermath of the elections, we witnessed the brutality by the army against journalists

especially James Akena of Reuters, Juma Kiirya of NTV, Alfred Ochwo of *The Observer*, and NBS journalists who were covering the quelling of protests in Kampala and their equipment damaged or lost in the course of their work.<sup>401</sup> The violation of press freedoms infringes articles 24 and 29 of the 1995 Constitution of Uganda, in addition to several international instruments on press freedoms, many of which Uganda subscribes to.

The Commission calls upon journalists to take into consideration their obligations and responsibilities when covering news and should not put themselves in compromising positions.

401 UHRC (2018). "Statement on emerging human rights issues in the country following the Arua Municipality by-election held on Wednesday 15th August 2018". See [ug/statement-emerging-human-rights-issues-country-following-arua-municipality-elections-held](https://www.uhrc.org/ug/statement-emerging-human-rights-issues-country-following-arua-municipality-elections-held)

#### e) Freedom of assembly

Freedom of assembly is defined as the right to hold public meetings and form associations without undue interference by the government. Article 29's subsections (a), (d) and (e) of the Constitution guarantee everyone the right to freedom of expression, peaceful assembly and association. The statutory framework for regulating public meetings is the Public Order Management Act, 2013 (POMA); the Police Act (as amended in 2006) and the Penal Code Act cap. 120 (as amended in 2007).

POMA defines a public meeting as a "gathering, assembly, procession, or demonstration in a public place or premises, held for the purposes of discussing, acting upon, petitioning, or expressing views on a matter of public interest". Section 6 of the Act grants the police powers to stop or prevent a public meeting from taking place on grounds of unsuitability of the venue and receipt of earlier application by another person to hold a meeting on the same day or time. This implies that the police should not prohibit a public assembly in their own discretion but they should regulate the time, place and manner of a peaceful assembly provided constitutional safeguards are met.

The Commission noted that during the parliamentary by-elections, Local Council I, II and V elections, candidates were granted ample time to campaign without any disruptions except in Bugiri where supporters of Hon. Asuman Basalirwa wanted to forcefully hold a rally at Busoga University playgrounds instead of Saza grounds as indicated in the campaign schedule of the candidate. This prompted the police to use tear gas and live bullets to disperse the crowd, leading to the death of a one Ramathan Walyendo.<sup>402</sup>

Furthermore in the aftermath of the Arua municipality by-elections, riots were witnessed in many parts of the country and it was noted that the police used excessive force while trying to disperse the assemblies. Cases of brutality, arbitrary arrests, use of tear gas and live ammunition and destruction of property were reported in Bugiri, Arua, Mityana and Kampala during assemblies.

402 <https://www.monitor.ug> 21st July 2018 last accessed in February 2019

#### **f) Right to property**

The Commission, through its inspection visits to prisons after the Arua municipality by-election, received complaints of loss and abuse of suspects' property during arrest. Some suspects alleged that they had lost huge sums of money and phones on arrest which were taken away from them without signing the Acknowledgement of Prisoners' Properties (APP) form as required by law. We also received complaints of suspects' phones taken by security personnel as exhibits being used to call their contacts who were allegedly summoned and they too end up being arrested. This violates their right to own property which is guaranteed under Article 26 of the Constitution of Uganda. The Commission received complaints from victims whose property was taken during the Arua municipality by-elections

#### **g) Irresponsible use of social media**

The Commission has also observed the growing irresponsible use of social media by sections of the public. We have noted comments that tend to propagate ethnic and tribal sentiments. Some statements like "when you see a Munyankore, you box them" were uttered on social media platforms such as WhatsApp and Facebook. This promoted discrimination contrary to Article 21 (2) of the Constitution which promotes equality and freedom from discrimination.

#### **10.4.7 Interventions by UHRC during the Arua violent clashes**

The Commission monitored the pre and post-election situation of the by-election for the Member of Parliament of Arua municipality. Following the violent clashes in Arua, the Commission monitored the state of human rights and opened files for further investigations of human rights violations for some of the victims who sustained injuries during the scuffle. We made an inspection visit to Gulu Central Police Station to monitor the condition of 34 suspects that had been transferred from Arua and proceeded to Uganda Government Prison, Gulu to physically assess the condition of the remanded 31 inmates in order to ensure that their rights as provided under Article 23 (2), (5) (a), (b) and (c) were respected. These rights require that suspects are detained in a gazetted place; information regarding their arrest is provided to their next of kin; and that they are accessed by their next of kin, lawyers and personal doctors.

Furthermore, the Commission established the whereabouts and condition of Honourable Robert Kyagulanyi aka Bobi Wine of Kyadondo East and Hon. Francis Zaake of Mityana municipality following contradictory reports in the mainstream media and on social media that Hon. Kyagulanyi was at Makindye Military Barracks to where he had been remanded. We secured initial access to Hon. Kyagulanyi for his close family members led by his wife and brothers, as well as two of his lawyers and personal doctor who finally saw him in accordance with Article 23 (5) of the Constitution.

In respect to Hon. Francis Zaake who had been reported missing, the Commission established on Friday, 17th August 2018 that he had been hospitalized in Lubaga Hospital, Kampala. Our team which had set out to establish his whereabouts was informed by the Executive Director of the hospital that Hon. Zaake was in great pain due to multiple injuries on the head, arms and legs and although he had been put on oxygen, he was able to talk. The hospital executive director informed the Commission that Zaake's family had requested for him to be given time to recuperate before he could start receiving visitors. The developments were also shared during the press briefing that the chairperson addressed on Friday, 17th August 2018.

#### 10.4.8 Recommendations

1. The DPP should institute criminal proceedings against police officers suspected to have shot dead Ramanthan Walyendo, Samuel Ssekiziyivu and Yasin Kawuma when they fired live bullets to disperse the crowds.
2. The Uganda Police Force and UPDF should desist from the use of live bullets and other dangerous weapons on unarmed demonstrators and non-violent suspects.
3. Government should expeditiously streamline the modalities of joint security management during processions and public demonstrations to ensure that police is appropriately equipped, adequately resourced and supported to effectively play its constitutional role in keeping law and order.
4. DPP should expedite the prosecution of officers of Uganda Police Force and UPDF who assaulted, tortured and damaged the property of journalists and suspects as they covered the Arua by-elections and the recent demonstrations.
5. In line with the Prevention and Prohibition of Torture Act, the Directorate of Public Prosecutions (DPP) should prosecute individually security officers who tortured suspects during the Arua fracas.
6. Security agencies should respect the freedom of expression and media freedoms and allow journalists to perform their legitimate role without undue interference.
7. The public should ensure responsible use of social and other forms of media to guard against prejudice tendencies.
8. Electoral laws should be proposed and implemented to promote voter protection in the communities with stringent measures against voter intimidation.

#### 10.4.9 Conclusion

Whereas this chapter highlights the role that the Commission played in monitoring the periods immediately preceding the elections; during the polling days for the various elections and after those elections; as well as the extent to which human rights standards were complied with by the various stakeholders during the processes, it also notes commendable achievements that facilitated the realisation of the right to vote. Some of the salient issues that curtailed enjoyment of human rights during the electoral processes were highlighted.

Government institutions, the EC, security agencies, political players, non-state actors and all other stakeholders, both rights holders and duty bearers, must implement the Commission's recommendations to improve the next elections. This chapter highlights the Commission findings and recommendations but the Commission had earlier published a comprehensive report of its monitoring of the electoral processes for the 2016 general elections.<sup>403</sup>

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403 Protection and promotion of human rights in electoral processes for the 2016 General elections published in June 2016

## 10.5 THE BUDUDA LANDSLIDES

### 10.5.0 Introduction

On 11<sup>th</sup> October 2018, four sub-countries in Bududa district in Eastern Uganda were hit by mudslides, leading to deaths, displacement of people and destruction of property. Following the incident, Uganda Human Rights Commission embarked on a fact-finding mission to the affected district to assess the magnitude of the problem. The objective of the assessment was to establish the extent to which the human rights of the community had been affected and the nature of the response to the disaster.

The Commission interviewed the Deputy Chief Administrative Officer of Bududa district, who is also the Chairperson of the District Disaster Management Committee (DDMC), the LCV Chairperson Bududa, the District Police Commander (DPC) Bududa and the Resident District Commissioner (RDC) Bududa. The Commission also visited the affected villages and held meetings with some of the victims of the disaster. In addition, the Commission made an on-site visit to the proposed area in Bulambuli district where the government intends to relocate the affected communities.

This section presents the findings of the Commission based on the information obtained during the fact-finding visit to Bududa and Bulamuli districts in Eastern Uganda. It includes an assessment of whether there was adequate disaster early warning, a description of the disaster incident, effects of the disaster on the communities and the human rights implications therein, disaster response and recommendations to the relevant ministries, departments and agencies.



◀ The Commission team, led by Commissioner Katebaliwe Amooti Wa Irumba (Dr.) (R), getting a brief from the LCV Chairperson, Bududa district

### 10.5.1 Background to Bududa mudslides

The occurrence of landslides and floods in Bugishu sub-region in eastern Uganda has been common over the past decades with its impacts affecting the lives of those communities. The Elgon sub-region is reported to have the highest occurrence of landslides and floods in Uganda, making this area vulnerable.<sup>404</sup>

Legend has it that these disasters used to occur once in every 30 years.<sup>405</sup> The Commission heard that after every two or three years, a natural disaster occurs in Bududa and this is mostly during the rainy season; and that since 1953, the disasters tend to follow the same trend, only that they used to occur in areas where there were no human settlements. Previous occurrences included that of the year 2010, where due to flooding on the banks of River Manafwa, over 500 individuals were displaced and 400 lives lost.<sup>406</sup> Similarly, in 2012, a landslide occurred in Bududa and claimed 11 lives, and displace about 300 people.<sup>407</sup>

404 PLOS Currents (July 2016). Coping Strategies for Landslide and Flood Disasters: A Qualitative Study of Mt. Elgon Region, Uganda See <http://currents.plos.org/disasters/index.html%3Fp=27968.html>

405 Interview with the deputy CAO, Bududa district.

406 PLOS Currents. As above. See <http://currents.plos.org/disasters/index.html%3Fp=27968.html> Accessed on 16th February 2019.

407 The Guardian newspaper. Available at <https://www.theguardian.com/world/2012/jun/26/uganda-landslides-dead-villages-destroyed> Accessed on 16th February 2019.

The disaster of 2018 happened around 11<sup>th</sup> October 2018 when four sub-counties of Bududa district were hit by mudslides. The affected sub-counties were Bukalasi, Buwali, Nalwanga and Bubiida. Media reported that River Suume burst its banks in Bududa at about 2:30pm following a heavy rainfall, causing mudslides. It rolled big boulders through a village in Bukalasi sub-county, killing several people. The Bududa mudslides followed three days of consistent and heavy rainfall in the areas around Mount Elgon National Park in Bukalasi sub-county.

The Commission learnt that this was the 9<sup>th</sup> disaster occurring in Bududa district in 2018 alone; except that the previous eight disasters were low and moderate and did not attract media attention. The landslides reportedly started from Mount Elgon National Park where boulders rolled down the valley and blocked river tributaries blocking a dam which later burst its banks, eventually carrying everything on the way including rocks, boulders, debris hence destroying lives and property as far as seven miles away.



◀ Part of the area affected by the mudslides

### 10.5.2 Disaster early warning

In order to mitigate the effects of disasters like the one that occurred in Bududa, there was need to have an effective early warning system. The Commission sought to ascertain whether there existed an early warning and disaster preparedness plan prior to the occurrence of the mudslides.

The overall responsibility for preventing and responding to disasters rests with Office of the Prime Minister, which has a minister in charge of Relief, Disaster Preparedness and Refugees. The ministry has a department in charge of Disaster Preparedness and Management whose responsibilities include enhancing the country's capacity to contain and minimize the effects of disasters, addressing disaster vulnerabilities of the community and alleviating human suffering from disasters, preventing, mitigating and preparing the country against disasters, guiding government disaster preparedness and management and maintaining a national warehouse for food and non-food items and procuring relief items.<sup>408</sup>

Prior to the disaster, the Commission learnt that the department of Disaster Preparedness and Management had established a Landslide Early Warning System in the five districts prone to landslides in Mt Elgon sub-region involving the use of smartphones, megaphones, motorcycles, bicycles, SMS and FM radios.<sup>409</sup>

District authorities informed the Commission that residents were advised according to the laws. The community was reportedly sensitised about the dangers of settling near the cracks where such disasters are likely to occur. The district adopted what they called community-responsive early warning mechanism.

408 <https://opm.go.ug/disaster-preparedness-and-management/> Accessed on 5th March 2019.

409 Statement to Parliament of Uganda by the minister of Disaster Preparedness and Refugees.

However, the local leadership of Bududa district noted that there was a tendency of people not following the warnings. They, for instance, highlighted the fact that it was a requirement that people should not carry out any developments 30 meters from the river banks but this is not adhered to.

In addition, the Commission also learnt that based on the experiences from similar incidents in the past, the government, through Office of the Prime Minister, had developed plans of relocating the affected persons from 1,200 households to a safer location. The district authorities pointed out that people were vigilant and once a crack was seen somewhere, they no longer took things for granted, they alerted others and that was how some five families were saved. Further still, as part of disaster preparedness, the Commission heard that in 2017, a team was established by the district leadership to register people who were at risk of being affected by disasters to facilitate their relocation. As a result, 1,200 households were registered.

The Commission has, however, established that while the structures for disaster early warning are in place, they are not very active. The Deputy Chief Administrative Officer of Bududa pointed out that the District Disaster Management Committee is not well funded and this affects its effectiveness to prepare and respond to the disaster.

### 10.5.3 Findings by the Commission

#### a) Lives lost and people injured

Whereas earlier reports by the media had indicated that the number of people who had died as a result of the disaster was 40,<sup>410</sup> the district authorities informed the Commission that the actual number of people who had died was 54. In addition, 60 people were reportedly injured and an estimated eight to 12 people were reportedly still missing by the time of compiling this report.<sup>411</sup>



◀ *Dr. Katebalirwe Amooti Wa Irumba, a member of the Commission, listening to survivors of the Bududa mudslides*

#### b) Property destroyed

The Commission learnt that the mudslides destroyed a number of properties including houses and crops. It was reported that part of Shiteteyi Primary School building and a local church were destroyed. It was also reported that the mudslides destroyed all the food crops within the affected area, leaving the residents with nothing to feed on.



◀ *A house destroyed by the mudslides*

410 <https://observer.ug/news/headlines/58896-mudslides-kill-25-in-bududa-400-missing> Accessed on 5th March 2019.

411 It was not possible to verify this figure by the time of compiling this report.

### c) Environmental degradation

One other effect of the disaster was environmental degradation. The Commission observed that the mudslides had washed away most of the top fertile soils and created deep excavations that can no longer support agriculture. This also heightened the risk of soil erosion and other forms of natural disasters. Due to excess soil erosion, it was feared that acres of crops in Bududa district were at risk of being swept away by mudslides in the near future. The Commission further learnt that water sources were contaminated, making them unsafe for drinking.

### d) People affected

The Commission established that total numbers of 186 households were affected by the landslides. While the district leaders informed the Commission that only about eight to 12 people were still missing, earlier reports from the media indicated that up to about 400 people from the villages of Suume, Nyekhe, Malila, Lwanda and Nanyinza were reported to be missing. These include schoolchildren, women and men. Other accounts estimate that up to 12,000 people have been affected by flooding and landslides in Bukalasi and Buwali sub-counties in Bududa district since 11<sup>th</sup> October 2018 up to the time of writing this report.

This, therefore, called for urgent humanitarian assistance in form of shelter, food, healthcare and non-food items. It was also reported that ten more villages were at risk of landslides.



Some of the displaced members of the community standing next to a temporary shelter provided by Catholic Relief Services

James Kiwumi, one of the survivors, narrated his ordeal thus:

“I was coming from the market; I went up to a place called Angenua and it started drizzling. I was together with my wife and other 13 people. So, we decided to take shelter at Angenua. As we were leaving, we heard a blast; out of curiosity, we looked around to find out where the sound came from only to see mudslides just next to us. We tried to run but the mudslides were faster than us and they ended up catching up with us. We fell down and the people I was with all died. It was only two of us; me and my wife Jennifer Nandudu, who survived because she held the roof of the house that eventually fell on her. The iron sheets cut her and she continued to feel pain all over her body. As for me, I was trapped in the mud and drank some in my stomach. I was later rescued and that is when I discovered I had sustained a fracture on my left leg. I went to the hospital and got treatment. I can't walk and yet I have nine children who I could support when I was fine but now I cannot go anywhere to engage in any productive work so as to provide for the family. We have no food, no shelter and only rely on relief and handouts from relatives. We were aware of the disasters because we are sensitised but we didn't anticipate. However, we are willing to be relocated.”

Another survivor, Fred Wandugwa, narrated his experience as follows:

“Water came and I did not think it was serious. Some people lost their lives while others were injured. I survived but my wife is among those who died. I only survived because the water carried me up to where there was a rock. My child was also rescued and taken to the hospital and the doctors say he got a brain injury. I was living in a rented house which was destroyed by water and right now I am staying at a relative's place.”



#### e) Sanitation and hygiene

Sanitary facilities such as pit latrines were all washed away. This exposed the community to the risk of contracting diseases such as cholera and other waterborne diseases.

#### 10.5.4 Response to the disaster

Whereas natural disasters are caused by acts of nature, with some human action contributing to them, it is important that when they do occur, human rights protection needs are taken into consideration. Response to disaster should thus take into account the human rights principles. Such responses should include both measures to reduce the risks of disasters and to enable an effective response when disasters do happen. The Commission is cognizant of the fact that Bugisu sub-region, and specifically Bududa district, is prone to natural disasters and in this regard assessed the level and nature of response by the government and other actors, as highlighted below:

The Commission noted that there were quick emergency responses from the government. The minister of Disaster Preparedness and Refugees under the Office of the Prime Minister, Hon. Hilary Onek, and other top government officials were immediately on the ground to assess the magnitude of the disaster and also to coordinate the response.

The Commission also noted that government, through Office of the Prime Minister, catered for the burial expenses of those families who lost their loved ones. It was reported that each of the bereaved families were given 500,000 shillings as government's contribution for burial expenses. All the 54 families were reported to have benefited. In addition, the president of the Republic of Uganda gave each of the bereaved family UGX 5,000,000 (five million shillings) and two million shillings to each of those who were injured. Those who were injured were required to present medical records to prove their injuries prior to accessing the said money. It was also established that food relief for one month had been distributed to the affected people.

The Commission also acknowledged the coordinated response and pooling of resources by different government agencies to help mitigate the effects of the disaster. It noted that ministries, departments and agencies like National Environment Management Authority, Ministry of Works and Transport, Ministry of Education and Sports, and Uganda Wildlife Authority (UWA) were quick to respond to the disaster. Since the disaster occurred during a time when schools were about to start their Primary Leaving Examinations, the ministry of Education and Sports made arrangements to ensure that pupils who were candidates did not miss their exams.

The Commission also took note of the contribution of several NGOs like UNICEF, World Vision, Red Cross, BRAC and CRS together with Caritas. UPDF, UPF, local NGOs and CBOs like Bugisu Cooperative Union (BCU), churches and the community, and politicians such as the opposition Forum for Democratic Change party gave both food and non-food items and support to the victims.

As a long-term measure, the Commission notes the government's decision to secure four blocks of land in Bunambutye sub-county in Bulambuli district to resettle the affected communities. The affected communities will only be relocated after all amenities have been provided and that government was planning to build 250 homesteads in the first phase. The Commission takes note of the government's position that resettlement was the only solution to the Bududa mudslides. The government had already secured 32 billion shillings for resettlement of Bududa people in Bunambutye sub-county. The Commission hopes that by the time the affected communities are relocated, all the necessary social amenities will be in place at the new settlement.

The district leaders have positively welcomed the resettlement plan and are only waiting for government to implement it. Bududa district leadership has agreed to sensitise the people on the dangers of staying in high-risk areas and whoever was willing to relocate will be relocated. The Commission notes that so far over 100 households have registered to relocate.

#### a) 10.5.4.1 Proposed relocation of the disaster-affected communities

Drawing on experiences from the previous disasters and subsequent attempts to relocate the affected communities, government established a cabinet sub-committee which recommended that people of Bududa should be relocated within Bugisu sub-region since earlier attempts to relocate them to Kiryandongo district had been resisted by some sections of the community. Consequently, government identified land in Bulambuli district to relocate the people who are at risk of being affected by disasters in Bududa district.

The Commission team visited the proposed resettlement site and established that government had secured 2,800 hectares of land that is block 93 and 94 in Bunambutye sub-county. The team interviewed local leaders, security agencies and some of the people already settled on the said land.

During the site visit, the Commission learnt that government had promised to resettle the affected communities by building for them houses, schools, health facilities and providing land. One of the residents, Bosco Magawa, who was interviewed by the Commission team stated thus:

“The landslides have been continuous occurrence until of recent where we have seen the government get serious to resettled people. At first the government would only give relief yet people would continue to die of disasters. We came here in 2004 as we were victims of landslides in Sironko. In 2008, President Museveni came to Buyaga and advised all those who are willing to leave disaster-prone areas to leave. He promised that the government would buy land in Bunambutye.

“In 2004, when I came here, the land belonged to individuals but the government bought it in 2014. We have never bought this land but we just came and resettled on it. At that time when government was buying it, there was land dispute between the Bagishu and the Sabiny but I believe the matter could have been resolved. The minister of disaster preparedness in 2016, Hilary Onek, came up to here and showed us the plan of the area. This land has already been surveyed. The current squatters are people who ran from their homes because of disasters. No one is claiming ownership.”

The Commission observed that whereas some parts of the land are swampy, much of the area is suitable for farming and indeed people had already started cultivating crops such as watermelon, maize, onions, rice, cabbage, tomatoes and sunflower, and fishing in the swamp.

However, we also noted a number of concerns in this new settlement and these include issues to do with inadequate water, where it was established that the whole area has only one borehole, too much sunshine which destroys most crops compared to Bududa which is cool, schools were very far, with the nearest primary school, Cheptuyi, being 5km away. The only secondary school in the area is in Buyaga which is six or seven kilometers away from the new settlement. In addition, the nearest health centre is four kilometers away.

Another issue of concern the Commission noted was that as government was preparing to resettle victims of the Bududa mudslide disaster at the land at Mabaale village, Bunambutye sub-county in Bulambuli district, some sections of the host communities were claiming ownership of the said land and demanded that government should pay them before the displaced people are resettled. The claimants that comprise 18 clans say their quest for justice has been frustrated by Office of the Prime Minister and other government authorities.<sup>412</sup>

<sup>412</sup> This was also reported in the Daily Monitor newspaper. See <https://www.monitor.co.ug/News/National/Inside-battle-land--resettle-Bududa-victims/688334-4809216-10kiocv/index.html>

### 10.5.5 Human rights concerns

The Commission assessed the extent to which the natural disaster had impacted on the human rights of the affected communities. In conducting the assessment, the Commission considered civil and political rights as well as economic, social and cultural rights in line with the international guidelines on protecting people in situations of natural disasters.

The Commission believes that whenever disasters occur, the imperative to protect the lives, security and physical integrity of persons affected by disasters and to uphold family unity should be paramount. Attention, therefore, should be directed to lifesaving measures, such as evacuations and protection against the secondary impacts of natural disasters.

There is an imperative to protect rights related to the provision of food, health, shelter and education in the aftermath of a disaster and to do so in ways that uphold the rights of affected people. In this regard, the Commission paid particular attention to groups which were particularly vulnerable and marginalized to ensure that assistance was provided to people on the basis of need, and was not discriminatory in nature.

#### a) The right to life

The right to life was one of those rights affected as a result of the disaster. OPM established that up to 54 people lost their lives during the mudslides.<sup>413</sup> In addition to those who were killed, 33 people were injured. These included women, schoolchildren and men. Although there were media reports that pupils were killed, the Commission established that this was not true.

#### b) Right to food

The Commission established that most crops were washed away by the mudslides, hence exposing majority of the affected communities to hunger and starvation. In the interim, the immediate food needs were addressed by the various humanitarian actors but in the long run, if no sustainable means is devised to ensure that the affected communities get access to food, they may face starvation.

#### c) Right to housing

Following the mudslides, several homes were washed away and many people were left homeless. These people's right to adequate housing is, therefore, at stake as many of them have been forced to take shelter in nearby institutions like schools, health centres and some were hosted by other community members who had not been affected by the disaster.

#### d) Right to education

The Commission found out that as a result of the mudslides, one primary school was destroyed, leaving many schoolchildren with nowhere to study. This in away affected the realisation of the right to education.

### 10.5.6 Challenges

The Commission's research found that lack of coordination of the responses was one of the key challenges arising from the Bududa disaster. The Commission heard that although the office of the Chief Administrative Officer of Bududa District was designated as the central response coordination unit, there were some institutions that did not want to go through the district structures, but chose to work directly with the local communities. These included the Church of Uganda, Bugisu

<sup>413</sup> Office of the Prime Minister. Statement to Parliament issued on 21<sup>st</sup> November 2018. Available at <https://www.google.com/search?q=statement+to+parlimant+on+bududa&oq=sta&aqs=chrome.3.69i60l2j69i-57j69i59j69i60j69i59.3324j0j7&sourceid=chrome&ie=UTF-8> Accessed on 5<sup>th</sup> March 2019.

Cooperative Union and some political leaders. The effect of this was that they could not identify the exact beneficiaries and yet the District Disaster Management Committee (DDMC) had compiled a comprehensive list of those affected. However, the Commission learnt that the responses surpassed the humanitarian need.

#### 10.5.7 Recommendations

1. The Office of the Prime Minister should expedite the process of resettling the affected communities to avoid future disasters.
2. The proposed resettlement should ensure that all the social amenities are in place before people are relocated.
3. The Ministry of Finance, Planning and Economic Development should ensure that adequate financial resources are allocated to the district disaster management committee so as to enable it effectively prepare and respond to future disasters.
4. The Ministry of Education and Sports should work hand in hand with Bududa district local government to ensure that the schools destroyed by the disasters are rehabilitated.
5. The Government should establish a disaster management commission as provided for under the Constitution to effectively prepare and respond to all natural disasters.
6. Government should, through the Ministry of Lands, Housing and Urban Development, expeditiously settle the ownership claims on the proposed resettlement site.

## CHAPTER 11

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# UHRC's POSITION ON SELECTED BILLS BEFORE PARLIAMENT

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## 11.0 INTRODUCTION

Uganda Human Rights Commission has a mandate under Article 52 (h) to monitor Government of Uganda's compliance with international treaty and convention obligations on human rights and make recommendations to Parliament on effective measures for promotion and protection of human rights. In view of this, the Commission reviews and analyses bills, laws and policies in order to ensure that they comply with human rights standards.<sup>414</sup> In accordance with this obligation, in 2018, the Commission presented to Parliament its position on bills as highlighted in this chapter.

The Commission reviewed the following four bills:

- a) The Administration of the Judiciary Bill, 2018
- b) The Indigenous and Complementary Medicine Bill, 2015
- c) The Data Protection and Privacy Bill 2015
- d) The Sexual Offences Bill, 2015

### 11.1 THE ADMINISTRATION OF THE JUDICIARY BILL, 2018

**Legislation in Uganda governing the Judiciary includes, among others,** the Constitution of Uganda 1995, the Judicature Act cap 13 of 1996, the Magistrates Courts Act cap 16 of 1971 and the Judicial Service Act cap 14 of 1997. Apart from the Constitution, these laws make no express reference to the administration of the Judiciary and retirement benefits of the judicial officers. The Constitution in Article 150 mandates Parliament to make a law operationalising chapter 8 which is on the Judiciary and administration of justice. However, Parliament has not enacted such a law since 1995 and consequently, the Judiciary was placed under the ministry of Justice and Constitutional Affairs.

#### 11.1.1 Critical human rights considerations

The Commission welcomes this legislative initiative by the ministry of Justice and Constitutional Affairs. Nevertheless, there are critical human rights issues concerning the institutional, administrative and financial independence of the Judiciary; the place of specialised courts, particularly the military court; and the general administration and personnel of the Judiciary, all of which should be put into consideration when debating and passing the bill as expounded on below.

##### a) Independence of the Judiciary

The independence of the Judiciary is a core component of democracy, the rule of law and good governance. It should, therefore, be strengthened both in an institutional manner like other branches of power, as well as in an individual manner. Any law that seeks to protect the independence of the Judiciary becomes useless if there is no commitment to respect and enforce it. It is on this basis that the Commission urges the government and all stakeholders to demonstrate commitment to this endeavor by providing adequate infrastructure, facilities and material resources to the Judiciary to perform its duties as well as allocate adequate proportion of the national budget to the justice sector.

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<sup>414</sup> UN Paris Principles relating to the Status of National Institutions, section 3 (a) (i).

The Commission was impressed that the bill provides for administrative, institutional and financial independence of the Judiciary, which is critical as indicated below:

**i) Institutional independence**

The Judiciary should be independent of the other branches of government; namely, the Executive and Parliament, with respect to matters that relate directly to the exercise of the judicial function. This means that institutional relations with the other arms of government must not interfere with judicial functions. Therefore, in order to secure actual independence of the Judiciary from the other two branches of government, it is necessary for this independence to be guaranteed, preferably by the Constitution; or, failing this, by other legal provisions. This is also in accordance with Principle 1 of the 1985 UN Basic Principles on the Independence of the Judiciary, which states that: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”

**ii) Administrative independence**

The Judiciary must be able to handle its own administration and matters that concern its operation in general. This includes “the assignment of cases to judges within the court to which they belong”, a matter which, as stated in Principle 14 of the UN Basic Principles on the Independence of the Judiciary, “is an internal matter of judicial administration.” Similarly, the 1982 International Bar Association Code of Minimum Standards of Judicial Independence (IBA Code) provides under Principle 8 that “Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court-level judicial administration.”

**iii) Financial independence**

The provision of sufficient resources to the Judiciary is necessary to ensure that it performs its functions properly. This is also necessary so that the public can have full confidence in the ability and competence of the Judiciary to carry out its functions in an independent and impartial manner. As noted by the UN Special Rapporteur on the independence of judges and lawyers, in order to be able to function efficiently and independently, the Judiciary must have a sufficient operating budget and financial autonomy vis-à-vis the executive and legislative powers. If this is not the case, corruption and other similar practices, such as patronage, are liable to develop. This budgetary independence must be accompanied by an effective external audit.<sup>415</sup> In this regard, Principle 7 of the UN Basic Principles states: “It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.” Similar provisions are echoed in the IBA Code.<sup>416</sup>

The importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.<sup>417</sup>

***The Commission, therefore, urges government to demonstrate commitment to the respect and enforcement of these principles when the bill is passed into law.***

415 Report on Civil and Political Rights, Including the Questions of Independence of the Judiciary, Administration of Justice, Impunity, E/CN.4/2004/60, 31 December 2003, page 13. Available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C10B0148AECDD27585256E53006DE6D2>

416 IBA Code, Principle 10 states, – “It is the duty of the State to provide adequate financial resources to allow for the due administration of justice”.

417 UN Office on Drugs and Crime (September 2007). Commentary on the Bangalore Principles of Judicial Conduct.

## b) Specialised courts

Specialised courts are tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are referred.<sup>418</sup> They are established to handle specific subject matters by subject-matter experts. In Uganda, specialised courts include, among others, the Tax Appeal Tribunal, Labour Court, Military Court, Anti-Corruption Court and the various divisions of the High Court: Land, Commercial, Civil and Family Divisions.

These specialised courts follow specific laws applicable to them and the rules of procedure and evidence. The commissioners, chairpersons or judges of these specialised courts are appointed by their respective ministries on a contract basis. Specialised courts have merits like efficiency both in the judicial system and legal systems, expertise, uniformity, improved case management, elimination of conflict and increased flexibility. The demerits of these courts include judicial isolation, being captives of narrow focused professional groups, and limited public access, among others. Our emphasis will be placed on the military court which seems to have many controversies on its jurisdiction, appointment of its judicial officers, law applicable to them and their hierarchy in the judicial courts system.

The military courts are established as disciplinary courts under the Uganda People's Defence Forces Act, 2005. Military justice should be an integrated part of the general judicial system because over the time, these courts have been empowered to carry on judicial service. Therefore, it is important to situate the development of military justice within the framework of the general principles of administration of justice. Jurisdiction of the military court has been a contentious matter over the time. There are several cases in which the jurisdiction of the General Court Martial has been disputed, such as; *Attorney General versus Uganda Law Society, Constitutional Appeal No. 1 of 2006* and *Attorney General versus Joseph Tumushabe, Constitutional Appeal No. 3 of 2005*.

In the latter case, the issue in contention was whether the General Court Martial was a subordinate court. The justices of the Supreme Court held that the General Court Martial had concurrent jurisdiction with the High Court but noted that the concurrent jurisdiction per se was limited, thus the court martial is not an equivalent of the High Court since the General Court Martial does not have powers to make the prerogative orders.

Secondly, the appointment of persons to head the various military courts needs to be addressed by the bill. In the General Court Martial, the High Command appoints the persons to chair the court whereas for the Court Martial Appeal Court, the chairperson ought to be an advocate who qualifies to be a High Court judge. In this case, especially the General Court Martial, there is a likelihood of appointing persons with no legal background, which could cause havoc in the administration of justice. ***The Commission, therefore, recommends that the Military Courts be integrated in the normal court system and that the appointment of legal personnel to head these courts is done by the Judicial Service Commission with the help of the commanding officers so that the independence of the judiciary is preserved. Furthermore, this bill should address the issue of specialised courts in the country in terms of their jurisdiction, appointment of the judicial officers, and law applicable to them. In relation to the above, the bill should address the issues of civilians being tried in military courts since it has been a common practice in recent times.***

## c) Access to justice

Access to justice is a right recognised under the major international and regional human rights instruments including: the UN Charter, the UDHR, the ICESCR, the ICCPR, the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC). The core instruments on the issue, the UDHR and the ICCPR, state that everyone has "the right to effective remedy against violations of fundamental

418 Markus B Zimmer (2009). "Overview of specialized courts" in International Journal for Court Administration, 2(1), pages 46-60.



rights". Access to justice is a term used for a whole series of procedural and institutional matters like access to court, counsel, legal aid, dispute resolution modalities other than courts, access to interpretation in order to understand the rights and remedies available to a litigant. Special focus was put on the right to interpretation.

The Constitution makes English the first official language and Swahili the second.<sup>419</sup> In Uganda, the language of court is English. Save for the Civil Procedure Act, 1929 which adopted English as the language of court,<sup>420</sup> there is no other law that explicitly provides for the language of court. The National Bureau of Statistics in its report<sup>421</sup> noted that the literacy levels in urban centres were high compared to rural areas where it is difficult to communicate in English. Uganda as a country is blessed with diverse languages of the over 65 tribes.<sup>422</sup> This situation has made communication difficult for those who are not conversant with English. The Constitution under Article 28 guarantees the right to interpretation of an accused person in the language they understand. The Commission has noted that the bill is silent about the language of court. This may hinder the litigants to access remedies availed to them under the law. ***The Commission recommends that this bill takes into consideration the language of court. Furthermore, in the selection of this language, flexibility should be considered.***

### 11.1.2 General concerns in relation to the bill

#### a) Part 1 Preliminary

The bill concerns the Administration of the Judiciary but even under **Clause 1, the interpretation section**; it does not define the Judiciary. ***The Commission recommends that the definition of the Judiciary should be included in the interpretation section as "a system of courts that interprets and applies the law in the name of the state".***

**Clause 1** the definition of the judicial officer includes "such other person holding any office connected with court as may be prescribed by law". This part is ambiguous and raises questions like "who are these persons?" ***The Commission recommends that this definition be amended to expressly provide for "such other persons" because inference to these other persons can be drawn to commissioners, chairpersons of specialised courts or acting judges.***

Furthermore, the definition of a judicial officer excludes the Chief Magistrates and this might result into unnecessary constitutional interpretation or amendments to include them. ***The Commission recommends that the position of Chief Magistrate should be included in the definition of judicial officer.***

#### b) Part II Administration of the Judiciary

**Clause 3 (1) and (2)** grant the Chief Justice powers and functions as the administrative officer of the Judiciary; which powers are limited. ***The Commission recommends that these powers be broadened to allow the Chief Justice to interdict judicial staff, and then forward the matter to their respective appointing bodies for action. This would help with the regeneration of the image of the Judiciary. The Commission further recommends that it should be mandatory for the Chief Justice to consult the Judicial Service Commission to avoid conflict between the two constitutional bodies and that the wording of clause 3 (1) should be amended from may to SHALL.***

The creation of the Judiciary Advisory Committee, which will serve an advisory function to the Chief Justice, provides a viable checks and balances mechanism that is commendable. This committee will

419 Article 6 (1) and (2) of Constitution of the Republic of Uganda, 1995.

420 Section 88 of the Act reads, "The language of all courts shall be English. Evidence in all courts shall be recorded in English. Written applications to the courts shall be in English." See <https://ulii.org/ug/legislation/consolidated-act/71>

421 UBOS (November 2017). Education: A means for population transformation pages 51-62.

422 Third schedule of the Constitution of the Republic of Uganda, 1995.

involve participation of relevant actors in government as well as representatives from the public, which is in line with the participation of people in the administration of justice set forth in Article 127 of the Constitution and reflects a rights-based approach in institutional decision-making processes.

Under **Clause 4 (1)**, the composition of members of the Judiciary Advisory Committee is very big and some institutions have been represented twice; therefore, the Committee should be reduced to save on the operational costs. ***The Commission recommends that the number of members on the Judiciary Advisory Committee should be reduced.***

***It is further recommended that the sub-clauses of (d), (e), (f) and (i) of clause 4 should be deleted because the Principal Judge and the Chief Registrar would ably represent the upper and lower benches while the Solicitor General would be represented by the ministry of Justice.***

Under clause 3 (1), the Chief Justice has the obligation to consult the Judicial Service Commission and yet in clause 4 (1), it is not included on the membership of the Judiciary Advisory Committee. ***The Commission recommends that the Judicial Service Commission be added on the membership of the Judiciary Advisory Committee as well as other offices that help in the dispensation of justice such as the Directorate of Public Prosecutions and legal aid service providers.***

Regarding procedure, since the Chief Justice chairs the Judiciary Advisory Committee, there is a likelihood of him/her, while chairing the sessions, to interfere with the advice that he/she would otherwise be getting. ***The Commission recommends that the Chief Justice be removed from the position of chairperson of the committee and that the Deputy Chief Justice should chair the Committee sessions.***

The bill is silent about the quorum for the Committee to proceed with its business.

***The Commission recommends that the quorum should be stated in the bill or be provided for under the regulations to guide the procedure of meetings.***

**Clause 6** establishes subcommittees whose composition is unknown and the bill makes no mention of regulations to cater for the composition, administration, compensation and procedure of these subcommittees. The subcommittees, when established, would increase the expenses of the Judiciary. ***The Commission recommends that the Judiciary Advisory Committee be merged with the subcommittees to save on the costs. However, if this is not possible, some members of the Judiciary Advisory Committee should head the subcommittees so that they implement what was suggested in the Judiciary Advisory Committee meetings.***

***The Commission further recommends that regulations should be made to cater for the administration, composition and compensation of these subcommittees.***

### **c) Part III The Inspectorate of Courts**

This is an adhoc institution created under the Constitution (Inspectorate of Courts (Practice) Directions No. 15 of 2015. In Uganda, practice directions are not binding on persons and courts. It is a good gesture to have included the Inspectorate in the bill so that its legality and authority are not questioned.

The formal establishment of the Inspectorate of Courts under clause 8 to handle complaints against staff of the Judiciary provides a framework for regulating judicial conduct and a grievance mechanism that is crucial for ensuring accountability of judicial officers. Accountability is one of the

core principles of the human rights-based approach and is a concept inherent to the rule of law.<sup>423</sup> It is also important to note that the procedures for discipline need to ensure fairness to the judge or other staff member, including adequate opportunity to respond. This has been implied under clause 9 (2) of the bill, which states: “In the performance of its functions, the Inspectorate shall observe the principles of equity, natural justice and impartiality”. ***Nevertheless, the Commission recommends that this principle of fairness should also be explicitly mentioned in clause 8.***

## **COMPOSITION OF THE INSPECTORATE OF COURTS**

Clause 8 does not provide any indication of the composition of the Inspectorate and falls short of mentioning how the Inspectorate of Courts is constituted. According to the Judiciary official website,<sup>424</sup> the Inspectorate of Court is currently manned by three Registrars; namely, The Inspector of Courts, the Deputy Inspector of Courts and the Assistant Inspector of Courts. They are assisted by eight support staff; namely, the Personal Secretary, the Office Supervisor, the Research Assistant, the Records Assistant, two Drivers, the Process Server and the Office Attendant.

***The Commission recommends that clause 8 should have more details on the composition of the Inspectorate as it is currently for consistency.***

**Clause 8 (2)** provides for the appointment of the Supreme Court judge to head the Inspectorate. This would create a gap within the Supreme Court which might result into backlog of cases. ***The Commission recommends that this sub-clause be rephrased to state that “the inspectorate shall be headed by a Chief Inspector who shall be an advocate, acting Judge qualified for appointment as a Justice of the Supreme Court.”***

**Clause 9,** provides for the functions of the Inspectorate; the major one being to register and investigate complaints against the Judiciary staff. The Judicial Service Code is self-regulatory and not binding on judicial officers. This Code ought to be given enforcement by gazetting it into law. ***The Commission recommends that the Inspectorate should not listen to matters it has investigated, but forward the complaints to the Judicial Service Commission. Furthermore, that the functions of the Inspectorate of Courts set out under clause 9 of the bill need to be harmonised with the functions of the Judicial Service Commission set out in the Constitution.***

***Clause 9 (f) should be deleted because this function interferes with the Judicial Service Commission mandate.***

**Clause 9** provides for the types of inspections. These types of inspections are limiting; therefore, the bill should include a sub-clause (g) to provide any other inspections within the mandate of the Inspectorate. There is no provision specifying the conduct of investigations to be undertaken by the Inspectorate in respect to its functions under Clause 9. In particular, no mention is made on who is eligible to lodge a complaint to the Inspectorate and how to do so. A general provision is also missing on the requisite Rules of Procedure to govern the conduct of investigations, including who is responsible for their development and adoption. ***The Commission recommends the inclusion of supplementary provisions relating to the development of Rules of Procedure to govern the conduct of investigations in respect of the Inspectorate functions laid out under Part III, Clause 9; as well as specifying in the bill the eligibility to lodge a complaint. Furthermore, the regulations to be developed under clause 36 (2) can be expanded to include Rules of Procedure for conducting investigations under the proposed bill, which would cover complaints procedure and format. A cross reference to the Inspectorate of Government Act, 2002 should be made in this regard.***

<sup>423</sup> The UN Basic Principles on the Independence of the Judiciary, in principle 8, establish that “judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary”. Principle 18 further states that judges should be suspended or removed only for reasons of incapacity or behavior that renders them unfit to discharge their duties. Similarly, the Bangalore Principles of Judicial Conduct provide an international standard for the ethical conduct of judges, to provide guidance on universal judicial ethics and to strengthen judicial integrity.

<sup>424</sup> <http://judiciary.go.ug/data/mmenu/116/4/Inspectorate.html>

#### d) Part IV Judiciary service

Clause 13 established the Judiciary Service to include both judicial officers and the support staff. This clause grants powers to the Judicial Service Commission to appoint both judicial and support staff, which is a positive aspect. However, the Public Service laws should be amended to remove from it the responsibility of appointing support staff for the Judiciary.

**Schedule 1** provides for persons in the Judiciary Service; however, **part 4** of the first schedule is ambiguous as it provides for court drivers. This can raise a question like “does anyone driving to court amount to a court driver?” The functions of the Judiciary Service are not provided for whereas **clause 14** provides for the standard of service of the Judiciary Service in discharge of their functions. ***The Commission recommends that these functions should clearly be stated in the bill.***

***The Commission further recommends that the Judiciary Service should be headed by the Chief Registrar and the bill should also state the functions of the Principal Judge such as establishing circuits, constituting benches.***

**Clause 16** provides for the responsibilities of the registrars. On several occasions, their powers and functions have been questioned like in the case of *Lukwago versus Attorney General and Another, Misc. Application 445 of 2013* where two registrars issued two different contradictory orders concerning the same matter. ***The Commission, therefore, recommends that clause 16 expressly provides for the functions and jurisdiction of the Registrars.***

The position of **Secretary to the Judiciary** will compromise the independence of the Judiciary because the President who is the head of the Executive is the appointing officer for the secretaries. The functions and responsibilities of the Secretary in clause 17 (2) are the same functions given to the Chief Registrar in clause 15 (2). ***The Commission, therefore, recommends that this position should be deleted to avoid conflict of roles; or the Chief Registrar should be appointed as the Secretary to the Judiciary to preserve its independence.***

#### e) Part V Performance management system

Performance management system is not defined in **clause 18** and this leaves the provision vague. ***The Commission recommends that performance management systems be defined and broadened, and the term computer be defined according to the Computer Misuse Act. In order not to limit performance management systems to computers only, the Commission further recommends that the reference to ‘computer’ should be replaced with the term technology.***

***The Chief Justice should prescribe Regulations concerning this matter.***

#### f) Part VI Judicial Training Institute

**Clause 19** establishes the Judicial Training Institute. **Clause 19** sub-clause **2** states that the Institute shall provide specialised and continuous education to Judiciary Service. The formal establishment of the institute is a crucial development for institutional capacity building and performance. However, the clause does not provide for the management, administration, composition and functions of the Institute as well as who ought to be trained and in what. According to schedule 1, court drivers and attendants are entitled to training from the institute which could raise questions of what specialised training a driver could get from the institute. ***The Commission recommends broadening of clause 19 to provide for the issues raised above. The Institute should train Local Council I members on alternative dispute resolution and consider integrating capacity building on human rights within the Performance Management System envisioned under clause 18.***

#### g) Part VII Service in other institutions

The service of judicial officers in other government institutions is on the rise and it is good that the bill provides for it in clause 20. However, the appointment of judicial officers in other institutions will create a gap in the Judiciary or compromise and conflict the person's duties as a judicial officer. The time period within which a judicial officer is expected to serve in other institutions is long. The clause is also silent about the benefits of the judicial officers appointed to different institutions. ***The Commission recommends that the appointment of judicial officers in others institutions should be in consultation with the Chief Justice and the period of service in other institutions should be reduced to two years according to the Public Service Standing Orders. In addition, the Commission recommends that clause 20 (4) should be mandatory to avoid inaccessibility of justice by the public. Therefore, the wording should change from 'may' to 'shall'; and their benefits should cease for the time period they are out of office.***

#### h) Part VIII Retirement benefits for judicial officers

Clauses 21 to 28 provides for the retirement benefits to judicial officers right from the Chief Justice level to Magistrate Grade Two but the bill has not taken into consideration the inflation rate. It provides for a monthly allowance of the retired judicial officers that is equivalent of a basic salary payable to the sitting judicial officers. The bill is silent about the time frame within which a retired judicial officer should continue to receive the benefits after service and incase of their death the time frame within which their beneficiaries are supposed to claim. ***The Commission recommends that the clause on retirement benefits should put into consideration inflation by stating that the payment rates shall be revised after a period of five years. The monthly allowance of a retired judicial officer should be reduced to a quarter of the basic salary of a sitting judicial officer in order not to discourage the sitting judicial officers from performing their work. The retirement benefits should cease if the person after retiring is convicted of abuse of office.***

#### i) Part XI Finances

Article 128 (6) of the Constitution of Uganda provides that the Judiciary shall be a self-accounting arm of government only answerable to the ministry of Finance in relation to its finances. This has been operationalised in clauses 29 (a) and 30 of the bill. Without adequate funds, the Judiciary will not only be unable to perform its functions efficiently, but may also become vulnerable to undue external pressures and corruption. ***The Commission recommends that certain safeguards be put on auditing of the Judiciary Fund and that any sources of funds that may compromise judicial independence should be excluded.***

The clause does not expressly state how the funds of the Judiciary shall be managed; just like how this was specified for instance under the IGG Act, 2002 Section 31 (7). It explicitly states that "... all funds provided to the Inspectorate under this Act shall be administered and controlled by the Secretary who shall be the accounting officer in accordance with the Public Finance Act." ***The Commission, therefore, recommends that a similar provision on the control and administration of the funds to the Judiciary be provided for under the bill.***

#### j) Part X Miscellaneous

The bill is silent about most issues affecting the Judiciary like case management, records of court, performance of staff and property and buildings of court.

## 11.2 UHRC'S POSITION ON THE INDIGENOUS AND COMPLEMENTARY MEDICINE BILL, 2015

The Commission welcomes the Indigenous and Complementary Medicine Bill to regulate and monitor the quality, safety and efficacy of indigenous and complementary medicine practitioners in Uganda. However, there are contentious issues to address in the bill which are raised and recommendations made.

### 11.2.0 Background to the Indigenous and Complementary Medicine Bill

Traditional or complementary medicine has formed the basis of health care in Uganda and throughout the world since the earliest days of mankind; is still widely used; and has considerable importance to communities. Recognition of its clinical, pharmaceutical and economic value is still growing, although this varies widely between regions and countries. In all parts of Uganda, a large proportion of the population relies heavily on traditional practitioners and medicinal plants to meet primary healthcare needs. Modern medicine is available in all regions, but herbal medicine have often maintained popularity for historical and cultural reasons.

Despite the heavy reliance on indigenous and complementary medicine by majority of Ugandans, the practices and the medicine are not regulated or monitored. Currently, Uganda has no legislative control in respect of medicinal plants, which has left many people duped and cheated with fake herbs, while others have lost lives or even been poisoned or injured by wrong herbal products or have been subjected to harmful cultural practices. Uganda has also grappled with gruesome acts of ritual murders, child sacrifice, rape, kidnap and manipulation by some complementary medicine practitioners. In view of these challenges and violations, the Commission appreciates the need to regulate and monitor the quality, safety and efficacy of herbal medicines or medicinal plants; particularly the usage, exploitation and exportation of this medicine in Uganda; as well as regulation of the practitioners.

### 11.2.1 General concerns and recommendations on the bill

There are some contentious clauses of the bill that raise pertinent issues as discussed below:

The bill makes provisions for the indigenous and complementary medicine practitioners but does not take into consideration issues regarding the quality, safety and efficacy of indigenous and complementary medicine in Uganda. A few herbal medicines have withstood scientific testing, but majority are simply used for traditional reasons to protect, restore or improve health. Assurance of the safety, quality and efficacy of medicinal plants and herbal products is a key issue in the protection of people's lives and right to health. Majority herbal medicines, therefore, need to be studied scientifically, even though the experience obtained from their traditional use over the years should not be ignored.

***The Commission recommends that since there is not enough evidence produced by common scientific approaches to answer questions of safety and efficacy about most of the herbal medicines now in use, there is need for the bill to widen its scope to provide for appropriate scientific studies of these products and thus the development of criteria for such studies.***

- a) Indigenous and complementary medicines or herbal medicines on the market are not regulated, registered or controlled.

***The Commission recommends that the bill be broadened in scope to make provision for the marketing of the products for quality control in terms of licensing, dispensing, manufacturing and trading to ensure their safety, quality and efficacy.***

Most herbal medicines still need to be studied scientifically to help ensure the safety, quality and efficacy of the products. This is best done if there is an integrative healthcare system of regulation

for assessment of efficacy including the determination of pharmacological and clinical effects of the active ingredients, cultivation and collection of the medicinal plants and labeling which includes a quantitative list of active ingredient, dosage and contraindications.

The Commission recommends that the National Drug Authority and Uganda National **Bureau of Standards should be brought on board to examine and sanction the herbs on market. Furthermore, the bill should be broadened in scope to facilitate the integration of traditional medicine into national health care systems and should promote the rational use of traditional medicine through the development of technical guidelines and international standards in the field of herbal medicines.**

b) Uganda currently has the Witchcraft Act, 1957 and there is a pending child sacrifice private member's bill.

**The Commission recommends reconciliation of the current law and the impending bills i.e. the Witchcraft Act; the Indigenous and Complementary Medicine Bill; as well as the child sacrifice private member's bill.**

#### Other general recommendations

- **A comprehensive evaluation of Uganda's traditional systems of medicine should be done; to make a systematic inventory and assessment (pre-clinical and clinical) of the medicinal plants used by traditional practitioners and by the population and thereafter introduce measures for the regulation and control of medicinal plant products as well as the establishment and maintenance of suitable standards.**
- **Medicinal plants or remedies derived from them, which have a satisfactory efficacy/side-effect ratio should be identified and included in national formularies or pharmacopoeias.**
- **The bill should provide for the role of local councils which often interface with complementary medicine practitioners who mostly work within communities.**

#### 11.2.2 Concerns and recommendations on specific provisions of the bill

##### 10 Clause 21- Temporary registration of non-citizens

Clause 21 does not specify whether non-Ugandans should have all the requirements under sub-clauses (a) to (d), or should have only one of the requirements.

**11 Clause 21 (c)** requires that a person who is not a citizen may be temporarily registered as a practitioner where he or she "has a good working knowledge of English or an indigenous Ugandan language". Having a good knowledge of English or an indigenous Ugandan language is not a plausible ground for one to be a practitioner in Uganda.

**12 Clauses 24 and 25** – Grounds for suspension and cancellation of registration. The Commission recommends that the following grounds be incorporated:

1. Where a practitioner has been convicted of criminal offences, gross negligence, bad character, immorality or misconduct relating to their work.
2. Where a practitioner abuses the authority granted through his license or practices beyond the authority of his license, he should lose his license.
3. Where a practitioner has participated in the fraudulent procurement of the license for oneself or another person. This should also include a situation where the practitioner has allowed another person to use their license.

4. Where a practitioner has repeatedly and willfully followed a course of conduct which can be considered unethical or unprofessional, the practitioner should no longer be deemed competent to assume, perform or be entrusted with duties and responsibilities that are generally expected from a licensed practitioner or a registered practitioner.

### **13 Clause 36 (1)**

Police may not have capacity to inspect and identify issues regarding complementary medicine practitioners. The clause makes provision for the “council authorising the police”. However, police has a mandate under the Police Act to search any person or place in case a crime has been committed or where it suspects that crime has been committed. In this case, police does not need authorisation by the Council.

***The Commission recommends the presence of a Council member during the inspection. Furthermore, the provision for authorisation should be deleted. Instead of using the words: “a police officer”, the bill should use ‘the police’.***

## **11.3 UHRC’S POSITION ON THE DATA PROTECTION AND PRIVACY BILL, 2015**

The Commission welcomes as timely, the initiative of Parliament enacting a law to protect data and privacy of persons, considering that technology is developing at a rapid speed and at the same time making it risky for data users to protect their information. Uganda currently lacks a comprehensive law to protect personal data in conformity with Article 27 of the Constitution on the right to privacy. The proposed bill is intended to complement the existing laws on electronic transactions, communications and access to information by providing for the protection and privacy of personal data.

### **11.3.0 Background to the bill**

The Data Protection and Privacy Bill was drafted in response to the growing need for a comprehensive law on data protection and privacy in Uganda since currently there are a few legal provisions relating to data protection and privacy. These include the Constitution of Uganda; the Access to Information Act, 2005; the Uganda Communications Act 2013; the Computer Misuse Act, 2011; and the Regulation of Interception of Communications Act, 2010.

According to Professors Daniel Solove and Paul Schwartz: *“Information privacy concerns the collection, use and disclosure of personal information. Information privacy is often contrasted with ‘decisional privacy,’ which concerns the freedom to make decisions about one’s body and family...but information privacy increasingly incorporates elements of decisional privacy as the use of data both expands and limits individual autonomy.”*<sup>425</sup>

Currently there is no distinct right to data protection under international laws, as the right is closely linked to the right to privacy and private life guaranteed under the various international human rights instruments. Specifically, privacy is protected under Article 12 of the UDHR, Article 17 of the ICCPR, the UN General Assembly Resolution on Privacy and Surveillance, and the Human Rights Committee General Comment No. 16 (1988).

### **11.3.1 Human rights concerns arising from the bill and recommendations on improving it**

#### **a) Lack of judicial review**

The bill confers judicial powers to NITA-U and the minister of Information and Communications Technology. Under clause 27, an aggrieved data subject and data collector or controller may make

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<sup>425</sup> Daniel J Solove and Paul M Schwartz (2005). Information Privacy Law (2<sup>nd</sup> edition).



a complaint about any violation or non-compliance to the Authority. Under clause 28, the Authority conducts investigations and may direct the data collector, data processor or data controller to provide an appropriate remedy for the damage or distress.

This clause, therefore, gives the Authority both investigative and judicial powers which is against the doctrine of separation of powers. This provision also compromises the complainant's and the accused person's right to fair proceedings.

#### **b) Limited scope of remedies**

Remedies provided for in the bill are limited to administrative levels with no provision for lodging complaints or petition in national courts of law. The remedies also do not extend to or refer to judicial appeals.

#### **c) Retention of records of personal data**

Clause 14 provides for the retention of records of personal data. The bill provides that, "a person who collects personal data shall not retain the personal data for a period longer than is necessary to achieve the purpose for which the data is collected and processed". The bill is ambiguous on the period required for retaining data and, therefore, there is a risk of abuse of collected data.

In addition, the clause makes an exception to retention of personal data for the prevention, detection, investigation or prosecution, national security purposes and law enforcement. There is no limit to the retention of personal data for these specified purposes, which could be open to abuse and interference with privacy and data protection.

#### **d) Length of time to possess data**

Under clause 3 (d), the bill does not provide for the length of time that data handlers should be in possession of personal data. There is fear that personal data could be kept longer than necessary, making it susceptible to malware and hacking by malicious persons.

#### **e) Gender-specific provisions**

The bill lacks a gender-specific provision that protects women from invasion of their privacy. It also lacks clear provisions for the privacy and protection of other vulnerable groups such as children, the elderly and sexual minorities.

#### **f) Access and registration of data**

Clause 26 of the bill which provides for access to the data register by the public does not specify whether such access would be free or conditional on payment of a fee. The bill also does not make mention of a register of all persons collecting personal data.

#### **g) Security data with government**

The bill does not emphasise the need to include security of personal data that is in the hands or possession of government, private institutions and individuals.

### 11.3.2 Recommendations

In view of the concerns identified above, **the Commission recommends that:**

1. The law on data protection should be developed in a participatory and consultative manner by ensuring that the general public is aware of the provisions of the bill and the extent to which their right to privacy can be protected.
2. The bill should be discussed, taking into consideration human rights standards in the international and regional instruments that Uganda has ratified including the UDHR<sup>426</sup>, the ICCPR<sup>427</sup> and the African Charter<sup>428</sup>; as well as the Constitution of Uganda.
3. The bill should ultimately reconcile the right to access information and the legal requirements of protection of data.
4. The Bill should clarify the period required for retaining data so as to prevent abuse of collected data
5. The Bill should be very clear and specific on the nature of public access to the data registry.
6. **Clause 3 (g)** should be broadened to identify the security organs responsible for protecting personal data and their roles in protecting sensitive information.
7. **Clause 25** of the bill should specify the responsible persons authorised to register personal data.
8. A gender perspective should be integrated into the bill to provide for special protection for women and girls' privacy as well as the rights of vulnerable persons such as persons with disabilities, the elderly and sexual minorities.

## 11.4 UHRC'S POSITION ON THE SEXUAL OFFENCES BILL, 2015

The Commission welcomes the Sexual Offences Bill, 2015 to consolidate all laws relating to sexual offenses, to combat sexual violence; provide for punishment of sexual offenders; provide for procedural and evidential requirements during trial of sexual offences and for other related matters in Uganda. Enactment of these provisions would go a long way in ensuring constitutionalism, promoting access to justice and human rights especially for victims of sexual assault in Uganda. The notable areas of concern and the recommendations on how to improve the bill are presented below.

### 11.4.0 Background to the bill

The government of Uganda through the ministry of Justice and Constitutional Affairs in partnership with the Uganda Law Reform Commission conducted a study regarding why the rate of sexual crime had increased in Uganda, since the coming into force of the Penal Code (Amendment) Statute 1990. From this study, Uganda Law Reform Commission made a recommendation for a proposed bill entitled Sexual Offences (Miscellaneous) Bill, proposing the amendment of certain legislation to give effect to the findings and recommendations. Some of the legislations that this bill would amend included the Penal Code Act, cap 120; the Magistrates Courts Act, cap 16; the Trial on Indictments Act, cap 23; the Evidence Act, cap 6; and the Venereal Diseases Act, cap 284, among others.

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426 Article 12 provides that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence.... Everyone has the right to protection against such interference."

427 Article 17 provides that "No person shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."

428 Article 9 provides that "(1) every individual shall have the right to receive information. (2) Every individual shall have the right to express and disseminate his opinions within the law."

#### 11.4. General concerns on the bill and recommendations for its improvement

The bill defines a sexual act as “a direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person and any other part of body of another”. These are not sexual organs as defined in the bill and mere contact with those body parts should not amount to an offence. According to the draft bill, sexual organ is defined as a vagina or penis; therefore, a sexual act should be restricted to contact with the sexual organ. This definition is vague and could easily be misunderstood.

***The Commission, therefore, recommends that a clear definition of sexual action be included in the bill.***

##### 11.4.2 Human rights concerns in the bill and recommendations to address them

###### a) Definition of sexual offences

The bill from clause 2 to 22 provides for sexual offences in an attempt to redefine and widen the definition of sexual offences. Offences related to internet and cybercrimes are still missing despite the increase in internet-related sexual offences that need urgent attention since the country has shifted to digital migration.

###### b) Death penalty

Section 3 of the bill under aggravated rape proposes a death penalty for a perpetrator upon conviction. The use of death penalty is not consistent with international human rights standards as it deprives the individual of his right to life. Uganda is a signatory to the Rome Statute which, among many provisions, mandates countries to abolish the death penalty. In this regard, the underpinning violation of the non-derogable right to freedom from torture, cruel, inhuman or degrading treatment, should inform amendment of Article 22 (1) of the Constitution of Uganda.

***The Commission recommends that internationally accepted human rights standards including those on abolition of the death penalty be upheld in any legislation process before Parliament.***

###### c) Marital rape

Currently, sexual intercourse without a woman’s consent can only be unlawful if it is done outside marriage. The law exempts a husband from the offence of raping his wife as consent is presumed from the fact of marriage with an exception of where a decree *nisi* has been pronounced in divorce proceedings.<sup>429</sup> What is important to note is that the bill recognises marital rape as a form of sexual violence under section 2(2) (a), stating conditions under which a spouse may refuse consent to a sexual act including poor health or medical condition, among others.

***The Commission recommends that the bill should be amended so that marital rape is not categorised as a separate offense from rape with a heightened standard of proof.***

Under the bill, the marriage relationship may be used as defense unless it is shown that the victim spouse was sick, the accused spouse had an STI, one spouse deserted or the accused spouse used violence or threats. However, unlike other forms of rape, the penalty for marital rape is lenient. This tones down the crime and makes it less important yet it has life-threatening impacts. Furthermore, the limitation of the definition of the term ‘spouse’ to mean only husband and wife may be problematic to partners who are not legally married yet over 40% of Ugandans are cohabiting.<sup>430</sup> This means that if the definition is left as it is, it will exclude many of the intended beneficiaries.

429 Reg.vs R (1992) 1AC.612 recognised rape within marriage.

430 Uganda Demographic and Health Survey (UDHS) report, 2013.

#### d) Mandatory medical examination

Section 24 provides for mandatory medical examination testing for HIV once a person is charged with aggravated defilement. The provision does not specifically indicate whether or not consent of the person to be tested in these cases is necessary. This could be read as suggesting that the testing would be mandatory. International standards require HIV/AIDS testing to be confidential, accompanied by counselling and to be conducted with voluntary and informed consent.<sup>431</sup>

Mandatory testing without consent, counselling and confidentiality violates the right to equality and non-discrimination and could harm victims of sexual crimes and expose women to risk of domestic violence and abandonment. Moreover, mandatory testing of drug users and sex workers will discourage them from seeking treatment and care. Mandatory testing of persons charged with sexual offences does not serve any forensic purpose because it is difficult to establish HIV status where the offender is tested during the window period when infection cannot be detected because HIV antibodies are not yet present.

As recommended by the World Health Organisation (WHO) and The Joint United Nations Programme on HIV/AIDS (UNAIDS) where effective prevention and treatment services that include anti-retroviral therapy are assured, health care providers can be required to make routine offers of HIV testing during or as part of medical checks to certain categories of patients.<sup>432</sup> HIV testing without consent weakens confidentiality protection for people living with HIV.

***The bill should be amended to remove mandatory testing, and provisions on HIV/AIDS testing should specifically provide for confidentiality, counselling, voluntary and informed consent.***

#### e) Classification of defilement

The classification of defilement under section 23, in terms of age, is problematic in a way and has resulted in leniency in sentencing. Perpetrators have been convicted of less extensive form of defilement to avoid longer sentencing. The Commission notes that defilement remains a crime no matter the age of the child.

***The Commission recommends that age should not be used to classify the nature of defilement, especially for children above 14 years.***

#### f) Minimum sentencing

There are several clauses providing for minimum mandatory sentences such as clauses 8, 9, 10, 11, 13, 14, 18, 22, 27, 28, 29 and 30 despite the fact that mandatory sentences were declared unconstitutional by the Constitutional Court in the case of **Attorney General v Susan Kigula & 417 Others (Constitutional Appeal No.3 of 2006)**.

***The Commission recommends that, for the bill to be consistent with other criminal laws, it should instead propose maximum sentences or propose a range of punishments, i.e. minimum and maximum years or penalties for judicial officers to choose from.***

#### g) Provisions violating the constitutional presumption of innocence

The presumption of innocence is provided for under Article 28 (3) (a) of the Constitution. Clauses 21 (2), 22 and 29 of the bill presume the person's guilt before trial.

431 See UNAIDS/WHO (June 2004). 'UNAIDS/WHO Policy Statement on HIV Testing' and UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights.

432 According to the UNAIDS/WHO Policy Statement on HIV Testing, a routine offer of HIV testing should be made by health care providers in the following situations: (1) patients who are being assessed for sexually transmitted infections; (2) in the context of pregnancy if antiretroviral prevention of mother-to-child transmission therapy is available; (3) patients being seen in clinical and community-based health service settings where HIV is prevalent and antiretroviral treatment is available.

***The Commission recommends that the word “guilty” should be replaced with “commits an offence”.***

#### **h) Ambiguous definitions**

Some definitions in the bill are ambiguous; take for example, Section 18 which creates an offence of incest and tries to define the different relations covered under this section. However, the definitions are confusing and need to be clearly redefined. Secondly, the bill does not list stepchildren, stepparents and foster parents, hence rendering it discriminatory in nature.

#### **i) Permission to publish sexual offences**

The bill under section 33 gives court the mandate to publish cases of sexual violence in the media and the public and gives the discretionary power to the court official to decide which cases are published. This provision is problematic since it does not consider the survivor’s safety and needs. This may in the long run be a hindrance to attaining justice as many survivors may shy away from courts for fear of being published.

#### **j) Affirmative action for persons with disabilities**

The bill has created affirmative action for PWDs under section 9, most especially people unable to give consent to sex. However, the penalty of three years is lenient and quite dehumanising for PWDs, but disability is not a ground for aggravated defilement. Considering the gravity of the offence, disability should be included as a ground and carry the same sentence as aggravated rape/defilement.

#### **k) Unnatural offences**

The bill under section 16 (a) (c) seeks to criminalise unnatural sexual offences which include consensual same-sex relations. There is also a provision for criminalising consensual anal sex and warrants a life sentence yet the offence of marital rape carries a lenient sentence of one year. This is a double standard and contrary to the international human rights standards and the Constitution that protects the rights of minorities.

The definition of unnatural offences in the bill also poses challenges and can instead be used to harass, intimidate and victimise LGBTI persons. However, in the same provision, there is no offence for forced anal sex. The Commission recommends that the law limits itself to forced anal sex rather than consensual same-sex relationships. The terms “carnal knowledge” and “performing a sexual act” should be clearly defined.

### **11.4.3 Recommendations**

In view of the concerns identified above, ***the Commission recommends that:***

1. The bill be improved with inclusion of services for survivors of violence such as a full range of comprehensive, gender-sensitive health services including emergency contraception and post-exposure prophylaxis to protect against HIV infection.
2. The bill covers important new forms of sexual violence in relation to internet and cybercrimes.
3. The interpretation section should be revised to harmonise the definitions therein with existing definitions in other laws including the Penal Code Act and the Domestic Violence Act, among others.
4. The fines and penalties provided for in the bill need to be harmonised with the existing laws on fines and penalties (Law Revision Fines and other Financial Amounts in Criminal Matters Act No.14 of 2008).
5. Some clauses/proposals in the bill should be reconciled with the following laws: The Evidence Act cap 43, the Trial on Indictments Act, Penal Code Act, the Magistrates Courts Act, the Children Act as amended, etc.

## CHAPTER 12

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# GOVERNMENT'S COMPLIANCE WITH UHRC'S RECOMMENDATIONS MADE IN THE 20TH ANNUAL REPORT

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Recommendations.....204



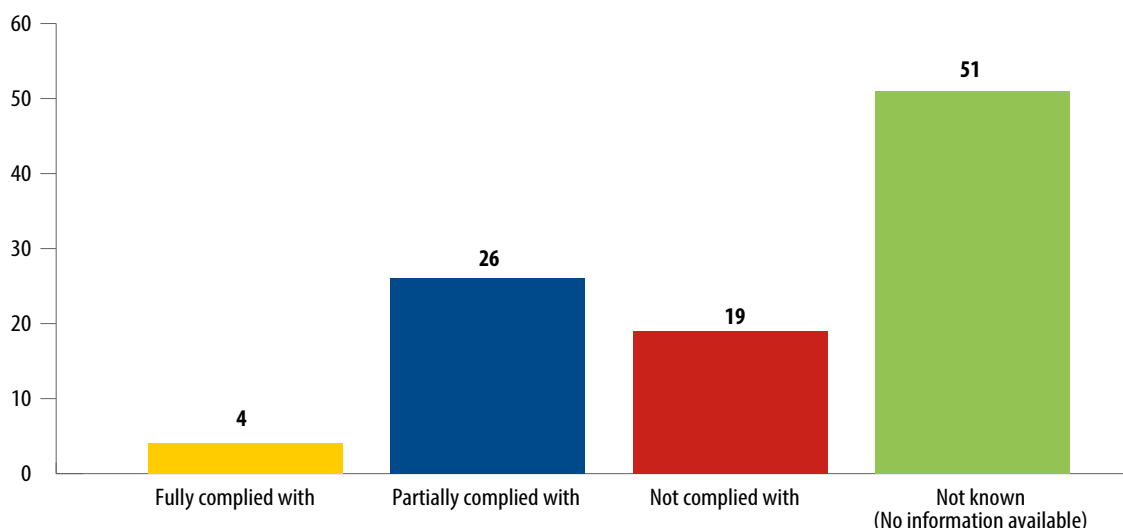
Over the past years, the Commission has been making recommendations to various MDAs, aimed at improving the human rights situation in the country. In every Annual Report to Parliament, the Commission makes recommendations on the human rights issues raised for the period in question and also highlights those carried forwarded from previous years. This chapter highlights the level of Government of Uganda’s compliance with recommendations presented in the 20<sup>th</sup> Annual Report.

Government compliance was at 4% for full compliance; 26% for partial compliance; and 19% for non-compliance. For the majority of the recommendations (51%), the Commission was unable to get any updates or information from the responsible entities. The Commission is concerned that majority of its recommendations remain unimplemented as indicated in Table 17 below.

**TABLE 17: SUMMARY OF COMPLIANCE STATUS**

COMPLIANCE STATUS	GIVEN COLOUR	NUMBER	PERCENTAGE
Fully complied with	Yellow	4	4%
Partially complied with	Blue	24	26%
Not complied with	Red	17	19%
Not known (No information availed)	Green	46	51%
<b>TOTAL</b>		<b>91</b>	<b>100%</b>

**FIGURE 9: LEVEL OF GOVERNMENT COMPLIANCE WITH THE COMMISSION RECOMMENDATIONS IN THE 20TH ANNUAL REPORT IN PERCENTAGES**



**TABLE 18: GOVERNMENT COMPLIANCE WITH RECOMMENDATIONS IN THE COMMISSION'S 20TH ANNUAL REPORT**

NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH	NOT KNOWN
Recommendations of the 20 <sup>th</sup> Annual Report						
	Government should formulate policies to ensure sufficient food production, accessibility, affordability and storage.	Policies formulated, i.e. National Agriculture Policy and Strategy; Fertilizer Policy; Seed Policy; Irrigation Policy.				
	Ministry of Finance, Planning and Economic Development should increase funding the ministry of Agriculture, Animal Industry and Fisheries (MAAIF) and should establish a National Agricultural Bank.	The process of establishing an Agricultural Finance Home at MOPPED was on in 2018. A multi-stakeholder task force chaired by the National Planning Authority had been put in place with one of its key objectives of developing the Agricultural Finance Policy and Strategy for Uganda under which the issue of the agricultural bank would be addressed.				
	The ministry of Agriculture, Animal Industry and Fisheries should develop a harmonised policy on agricultural extension services.	A National Agricultural Extension Policy and the Strategy to support its implementation were in place and a number of guidelines and extension materials had been developed and disseminated.				
	The ministry of Agriculture, Animal Industry and Fisheries (MAAIF) should provide adequate facilitation to agricultural extension workers.	MAAIF was in advanced stages of purchasing 117 motor vehicles and 950 motorcycles for the district local government extension workers under the Agricultural Technology and Agribusiness Advisory Services Project (ATAAS)				
	Office of the Prime Minister (OPM) together with the ministry of Agriculture, Animal Industry and Fisheries should construct national food reservoirs.	Government continued to provide an Agricultural Extension Conditional Grant which stood at UGX 39.6 billion to facilitate extension workers at the District Local Government level and the Ministry had also provided guidelines and manuals in the delivery of effective extension services.				
	District Local Governments should undertake empowerment of households to construct granaries for food storage.	In 2018 there were plans of constructing National Food Reservoirs in collaboration with the private sector and the ministry of Trade, Industry and Cooperatives as the lead. A proposal was to be developed for government to provide a fund where the private sector could purchase and store on behalf of government at a fee in conformity with government policies on privatisation.				
	MAAIF should undertake to provide subsistence farmers with good-quality seeds, fertilizers and pesticides at a subsidy.	No information was provided on the status of implementing the recommendation.				
	MAAIF should undertake to introduce village agriculture volunteers like the case is with the village health teams (VHTs) under the Health ministry.	MAAIF, through the NAADS/OWC initiative, supplied seeds, planting, breeding and stocking materials to smallholder subsistence farmers. However, the Commission could not establish the equivalent of this support in monetary terms and how many subsistence farmers were beneficiaries in the last two financial years.				
	Operation Wealth Creation (OWC) should extend its focus to food crop production.	In FY2018/19, MAAIF in collaboration with District Local Governments promoted the Village Agent Model (VAM) whereby each Agricultural Extension Service Provider should work with at least five village agents to promote priority enterprises as well as implementing good agricultural practices.				
	MAAIF should enforce agricultural zoning and undertake to sensitise farmers on which crops should be grown in a particular area.	In 2018, the process of amending the NAADS Act, 2001 was ongoing, to give legal status to Operation Wealth Creation activities under the new NAADS mandate.				
		MAAIF by 2018 was in the process of reviewing the zoning strategy, putting into consideration climate, ecological and environmental issues.				



NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH	NOT KNOWN
	MAAIF should enforce the sugar policy.	No information was provided on the status of implementing the recommendation.				
	Ministry of Finance, Planning and Economic Development should review the liberalisation policy to allow for stabilisation of farm produce prices.	No information was provided on the status of implementing the recommendation.				
	Ministry of Water and Environment should adequately equip the Uganda National Meteorological Authority so as to be thorough in its forecasts.	No information was provided on the status of implementing the recommendation.				
	Parliament should pass the Food and Nutrition Bill, 2009 into law.	Still under review by Cabinet.				
	Ministry of Health should expedite the passing of the National Palliative Care Policy in order to streamline the provision and regulation of palliative care in Uganda.	No action taken.				
	Ministry of Health should institute clear monitoring and evaluation strategies for palliative health care services.	No information was provided on the status of implementing the recommendation.				
	Ministry of Health should consider reinstating the legal instrument allowing specially trained nurses to prescribe morphine.	No information was provided on the status of implementing the recommendation.				
	Ministry of Finance, Planning and Economic Development should consider increasing the budgetary allocations to the Health ministry to cater for palliative care services.	No information was provided on the status of implementing the recommendation.				
	Ministry of Health should ensure that the proposed National Health Insurance Scheme should cover palliative care.	No information was provided on the status of implementing the recommendation.				
	Ministry of Health should implement the various United Nations resolutions on provision of palliative care.	No information was provided on the status of implementing the recommendation.				
	Ministry of Health should scale up training of palliative care human resource.	No information was provided on the status of implementing the recommendation.				
	Ministry of Health should strengthen national district coordination mechanisms for the provision of palliative care services.	No information was provided on the status of implementing the recommendation.				
	Integrate palliative health care service professionals into the mainstream public service structure.	No information was provided on the status of implementing the recommendation.				
	Ministry of Finance, Planning and Economic Development should adequately finance all institutions involved in the administration of criminal justice in Uganda.	No action taken.				
	Government (Parliament) should approve the National Legal Aid Policy.	No action taken.				
	Government should fill up all vacant judicial officer positions.	Following a decision of Cabinet, Parliament passed a resolution to increase the number of High Court judges from 52 to 82. The resolution, according to the Judiciary, could not be implemented due to lack of budgetary resources.				
	The Judiciary should operationalise all the magisterial areas to improve access to court by all.	No information was provided on the status of implementing the recommendation.				

NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLETED WITH	PARTIALLY COMPLETED WITH	NOT COMPLETED WITH	NOT KNOWN
	The Judiciary should scale up the sensitisation of the public and people in conflict with the law on plea bargaining.	The Judiciary carried out a sensitisation drive on plea bargain in 2018 in law schools and prisons.				
	Uganda Police Force (UPF) should prioritise the welfare of police officers and their training in specialised and scientific criminal investigations.	In 2018, a total of 300 officers were passed out from Kabalye Police Training School after a CID induction course.  UPF was in the process of installing an automated fingerprint identification system and the DNA profiling machine to support investigations.  20 police officers were undergoing expert training in the field of questioned documents, toxicology and cybercrime.  15 police officers were scheduled to undertake a diploma in human rights at LDC.				
	Uganda Police Force should desist from parading suspects before the media.	It was implemented in some police stations but the Commission established that suspects were still being paraded in others.				
	Government should provide adequate remuneration to all civil servants.	In 2018, Cabinet approved the pay policy principles and five-year pay target for Public Service. Cabinet also approved pay enhancement for FY 2018/19 to the following categories of public officers: medical workers, scientists, legal professionals and prosecutors, teachers, chairpersons of the District Service Commission, Local Government political leaders, UPF and UPS, among others.  Cabinet directives were implemented as follows in respect to inadequate remuneration:  Funds amounting to UGX 525,190,155,918 was allocated to pay enhancement to public officers under phase one in FY 2018/19 based on the ratio approved by Cabinet.  Salaries of all scientists except teachers were enhanced. Parliament directed a uniform 20% enhancement and recruitment of teachers.  Ministry of Public Service signed a collective Bargaining Agreement with the Private Service Labour Unions. A planned strike was averted and a roadmap agreed on towards implementation of the pay target.  Communicated the salary structure for FY 2018/19; prepared Guidelines on implementation of payroll, wage bill, pension and gratuity management for FY/2018/19.				
	The Justice, Law and Order Sector (JLOS) secretariat should engage with the various justice actors to address the issue of adjournments.	No information was provided on the status of implementing the recommendation.				
	The JLOS secretariat should spearhead the strengthening and rollout of self-representation by petty offenders to all prisons.	No information was provided on the status of implementing the recommendation.				

NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH	NOT KNOWN
	Uganda Police Force should increase security presence and foot patrols in the villages and highly populated places.	No information was provided on the status of implementing the recommendation.				
	Uganda Police Force should adequately facilitate its officers with the required tools and equipment to effectively perform their duties.	No information was provided on the status of implementing the recommendation.				
	The Criminal Investigations Directorate of Uganda Police Force should investigate and conclude all pending high-profile cases.	No information was provided on the status of implementing the recommendation.				
	Uganda Police Force should adopt modern technology like CCTV cameras and modern forensic investigation technology to curb and prevent violent crimes.	UPF introduced an integrated Ballistic Information System, to enable police experts develop a database for all firearms in the country so as to easily identify/detect any firearm involved in the commission of crime. The system was to be linked to Interpol to interface with data bases of other countries that have a similar system.				
		136 Scene-of-Crime kits and various consumables like cameras were procured. The kits were for homicide investigation, master crime scene, sexual assault, and personal protection.				
		Trained personnel in advanced forensic science courses.				
		Construction of a state-of-the-art forensic laboratory at Naguru, Kampala was scheduled to commence.				
	Uganda Police Force should strengthen and adequately facilitate the Professional Standards Unit.	No information was provided on the status of implementing the recommendation.				
	The Criminal Investigations Directorate should undertake evidence-led investigations as opposed to mass arrests.	No information was provided on the status of implementing the recommendation.				
	UPF should release its current and previous annual crime reports.	No information was provided on the status of implementing the recommendation.				
	UPF should conduct refresher courses and training especially for investigators.	No information was provided on the status of implementing the recommendation.				
	UPF should undertake security deployments that optimize human resource utilisation.	No information was provided on the status of implementing the recommendation.				
	UPF should make physical regular inspection and audit of firearms in all security agencies.	No information was provided on the status of implementing the recommendation.				
	As a matter of urgency, the Electoral Commission should organise the lower local council elections.	Elections were held in 2018.				
	Security should properly scrutinize civilians being recruited in their ranks.	Clear guidelines were put in place for any form of recruitment in security services. One requires recommendations from LCs, District Intelligence Officers (DISOs) and RDCs to ascertain the citizenship discipline of the person in addition to academic qualifications.				
	National Security Council should urgently harmonize and streamline the roles of the various security agencies in the country.	No information was provided on the status of implementing the recommendation.				

NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLETED WITH	PARTIALLY COMPLETED WITH	NOT COMPLETED WITH	NOT KNOWN
	Ministry of Security should put in place mechanisms for increased collaboration and coordination amongst security agencies and the general public.	Efforts were ongoing to enhance coordination of security agencies through Security Committees at national and sub-national levels. This was enhanced by establishment of Joint Operations Committees (JOC) and Joint Intelligence Committees (JIC) for purposes of command and control also from the National to Sub-County levels. The public is now involved in security mobilisation. Village security committees to be revived after the election of LC leaders.				
	Government should increase remuneration of security officers, judicial officers and prosecutors and adequately facilitate them to effectively do their work.	No action taken.				
	Ministry of Trade, Industry and Cooperatives should consider reviewing the Lotteries and Gaming Act, 2016.	No action taken.				
	The Lotteries and Gaming Regulatory Board should open regional branches and widely disseminate the Lotteries and Gaming Act to the masses.	No action taken.				
	Ministry of Finance, Planning and Economic Development should increase the budgetary allocations of Lotteries and Gaming Regulatory Board so as to effectively perform its regulatory functions.	No action taken.				
	Ministry of Finance, Planning and Economic Development should facilitate the Lotteries and Gaming Regulatory Board with adequate equipment to perform its functions.	No information was provided on the status of implementing the recommendation.				
	Ministry of Trade, Industry and Cooperatives should develop the responsible gambling policy to reinforce the existing law on lotteries and gaming of 2016 as well as the regulations of 2017.	No information was provided on the status of implementing the recommendation.				
	Ministry of Gender, Labour and Social Development should consider the plight of the Maragoli by verifying their situation and redressing their plight.	No action taken.				
	National Identification and Registration Authority (NIRA) should expedite the process of national identification acquisition for all qualified people.	No information was provided on the status of implementing the recommendation.				
	Parliament should expeditiously respond and address the concerns raised in the petition made by the Maragoli concerning their citizenship status.	No action taken.				
	Ministry of Internal Affairs and the Directorate of Citizenship and Immigration Control should verify the issue of migration of the Maragoli.	No action taken.				
	Parliament should put in place a legal framework for implementing Operation Wealth Creation.	In 2018, the NAADS Act, 2001 was being amended to take care of the legal status of implementing Operation Wealth Creation activities under the new NAADS mandate.				
	The OWC should ensure that quality standards are met when procuring inputs to be supplied to farmers.	No information was provided on the status of implementing the recommendation.				
	Ministry of Agriculture, Animal Industry and Fisheries and Ministry of Local Government should carry out proper needs assessment and enterprise selection before inputs are supplied.	NAADS designed new framework contracts for supply of agricultural planting and stoking, materials from locally based suppliers starting January 2019. This will ensure efficiency, cost effectiveness, better quality, flexibility and timely delivery. The arrangement shall include local/district-based registration of nursery operators and distribution within districts.				

NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH	NOT KNOWN
	Ministry of Agriculture, Animal Industry and Fisheries should recruit more extension workers/staff to monitor the Operation Wealth Creation Programme.	No information was provided on the status of implementing the recommendation.				
	Ministry of Agriculture, Animal Industry and Fisheries, in conjunction with the Uganda National Bureau of Standards, should ensure that all seed companies are certified and proper mechanisms for follow-up with beneficiaries after the seeds have been delivered to verify the inputs are in place.	The ministry through the department of Crop Inspections and Certification, intensified inspections of agro-input dealers through certification of seeds, stocks and exports. The ministry reported that it has put in place a multi-sectoral task team comprising MAAIF, UNBS, MoH, MIA and NDA to enforce compliance in dealing with agro-inputs.				
	Ministry of Agriculture, Animal Industry and Fisheries should recruit more technical personnel with competence to carry out extension work.	No information was provided on the status of implementing the recommendation.				
	Ministry of Agriculture, Animal Industry and Fisheries should review the progress of Operation Wealth Creation.	No information was provided on the status of implementing the recommendation.				
	Members of Parliament should exercise restraint while debating and resolving contentious issues of national interest.	No information was provided on the status of implementing the recommendation.				
	Security agencies should observe and respect human rights in the performance of their functions as required of them under Article 221 of the Constitution and preserve the sanctity of Parliament as an independent arm of government.	No information was provided on the status of implementing the recommendation.				
	Ministry of Finance, Planning and Economic Development should provide adequate financing to the Education sector and the ministry of Education and Sports to effectively monitor the safety of children in schools.	No information was provided on the status of implementing the recommendation.				
	Ministry of Education and Sports should fast-track the implementation of the National Strategic Plan on Elimination of Violence Against Children in Schools (NSP VACiS).	No information was provided on the status of implementing the recommendation.				
	Ministry of Education and Sports as well as Ministry of Gender, Labour and Social Development should devise and strengthen partnerships and coordination to address issues of sexual violence in schools.	No information was provided on the status of implementing the recommendation.				
	Ministry of Education and Sports should strengthen the regular collection of up-to-date and disaggregated data on violence against children.	No information was provided on the status of implementing the recommendation.				
	Parliament should ensure that the Education (Pre-Primary, Primary and Post-Primary) Act, 2008 should be amended to ensure that girls who get pregnant while in school complete their studies.	No information was provided on the status of implementing the recommendation.				
	Ministry of Education and Sports should ensure that teachers who are perpetrators of sexual violence are punished as a deterrence measure.	No information was provided on the status of implementing the recommendation.				
	Uganda Police Force, Directorate of Public Prosecutions and the ministry of Justice and Constitutional Affairs in conjunction with the ministry of Local Government should ensure speedy prosecution of perpetrators of sexual violence.	No information was provided on the status of implementing the recommendation.				
	Ministry of Finance, Planning and Economic Development should increase funding to ministries, departments and agencies (MDAs) responsible for state reporting.	No information was provided on the status of implementing the recommendation.				

NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH	NOT KNOWN
	Ministry of Foreign Affairs, Ministry of Gender, Labour and Social Development, as well as Ministry of Justice and Constitutional Affairs should implement the voluntary pledges and recommendations made by treaty bodies.	No information was provided on the status of implementing the recommendation.				
	Parliament should make it a mandatory requirement for MDAs appearing before it to report on the progress of implementation of the recommendations of the Commission and UN-UPR.	In 2018, five MDAs were summoned to give status on implementation of the Commission's recommendations.				
	The Ministry of Justice and Constitutional Affairs should handle matters proposed for amicable settlements in a timely manner.	The ministry handled some cases for amicable settlements.				
	Uganda Police Force should ensure that it equips its officers with the necessary skills required to enable them execute their duties in compliance with human rights standards.	A number of trainings were carried out in 2018.				
	All responsible MDAs should ensure that rights of inmates and staff are respected, including the improvement of staff facilities and conditions.	No information was provided on the status of implementing the recommendation.				
	Increase funding to Uganda Prisons Service (UPS) to invest in mechanisation of agriculture to enable it become self-sufficient in growing their food.	No action taken.				
	Review the civil procedure rules to include a provision prohibiting the detention of civil debtors.	No action taken.				
	Ministry of Internal Affairs and Ministry of Gender, Labour and Social Development should ensure that juveniles are separated from adult offenders in all detention facilities.	No action taken.				
	The Judiciary should implement the diversion guidelines and strengthen the mechanism for diversion of children away from the criminal justice system.	The development of National Diversion Guidelines for Juvenile Justice was initiated in 2018.				
	Uganda Prisons Service and UPF should completely phase out the bucket system.	A number of prisons have phased out the bucket system. All police facilities still use the bucket system.				
	UPF should ensure that suspects in their custody are given three meals a day.	No action taken.				
	Government should, through Ministry of Finance, Planning and Economic Development, increase funding for the Commission's civic/human rights education programmes.	Through the non-wage recurrent budget allocation, MoFPED made available funds for civic education in FY 2017/2018 and the Commission continues to receive civic education funds from government.				
	Government should, through Ministry of Internal Affairs, prevail on Uganda Police Force to adhere to the constitutional requirements under articles 20 and 23.	No information was provided on the status of implementing the recommendation.				
	Civil society organisations should join hands with the Commission in educating and urging Ugandans to fulfill their duties and responsibilities as they enjoy their rights.	Civic society organisations also execute civic education activities in the country.				
	As recommended in the previous report, the ministry of Justice and Constitutional Affairs should fast-track the approval of the National Civic Education Policy.	No action taken.				

NO.	RECOMMENDATION	SUMMARY OF ACTION TAKEN	STATUS			
			FULLY COMPLIED WITH	PARTIALLY COMPLIED WITH	NOT COMPLIED WITH	NOT KNOWN
	Parliament, Ministry of Public Service, and Ministry of Finance, Planning and Economic Development should enhance the salaries for members and staff of the Commission to match those earned by staff and members in other statutory institutions.	No action taken.				
	Ministry of Justice and Constitutional Affairs should fast-track the appointment of Members of the Commission to fill the vacant positions.	Only two Commissioners were appointed.				
	Ministry of Finance, Planning and Economic Development should make deliberate efforts to improve on the Medium-Term Expenditure Framework for wage, non-wage and capital development.	No information was provided on the status of implementing the recommendation.				
	Ministry of Finance, Planning and Economic Development should implement the president's directive to fully fund the Commission to avoid donor dependency.	Some progress in funding the Commission as revealed in the past two financial years.				

## RECOMMENDATIONS

1. The Commission urges all MDAs to implement its recommendations and also to use its database to help track progress of implementation.
2. Government should, through the Ministry of Finance, Planning and Economic Development, amend the Public Finance Management Act 2015, to grant the Commission powers to issue a certificate of human rights compliance upon review of the budget of each MDA to ensure that they integrate the Human Rights-Based Approach to Development.

## CHAPTER 13

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# HIGHLIGHTS OF UHRC'S INTERVENTIONS IN 2018

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## 13.0 INTRODUCTION

This chapter presents highlights of the interventions made by Uganda Human Rights Commission in 2018, in fulfilment of its mandate as stipulated in Article 52 of the Constitution of Uganda. The chapter covers interventions under complaints, investigations and legal services; monitoring and inspections of detention facilities; human rights and civic education; as well as finance and administration.

### 13.1 COMPLAINTS MANAGEMENT IN 2018

Article 52 (1) (a) of the 1995 Constitution of Uganda mandates the Commission to “investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right”. Article 53 (1) gives the Commission powers of a court to issue summons or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission; to question any person in respect of any subject matter under investigation before the Commission; to require any person to disclose any information within his or her knowledge relevant to any investigation by the Commission; and to commit persons for contempt of its orders.

The Constitution also gives the Commission powers to order payment for compensation or order for any other legal remedy or redress in the event of a human rights violation. This section provides highlights on complaints management by the Commission in 2018.

#### 13.1.1 Complaints received and registered

The Commission received<sup>433</sup> a total number of **4,926** complaints in 2018, down by 2% from the 5,021 received in 2017. The slight decrease could be attributed to the Commission’s continued human rights education activities through which people were informed about the Commission’s mandate, including the complaints it can or cannot handle.

Out of the 4,296 complaints received, **746** were registered as complaints raising alleged human rights violations as guided by the Commission’s admissibility criteria. This was a 9.4% increase from the 682 registered in 2017. Complainants whose matters did not fall within the Commission’s jurisdiction were given advice accordingly or referred to other institutions for the appropriate management of their complaints.

Table 19 below shows the number of complaints received in 2018, while Table 20 shows the number of complaints registered<sup>434</sup> by the various regional offices of the Commission in 2018.

**TABLE 19: NUMBER OF COMPLAINTS RECEIVED**

ARUA	CENTRAL	FORT PORTAL	GULU	HOIMA	JINJA	MASAKA	MBARARA	MOROTO	SOROTI	HEAD OFFICE	TOTAL
318	306	609	568	250	302	397	993	167	407	609	4,926

**TABLE 20: NUMBER OF COMPLAINTS REGISTERED BY THE COMMISSION REGIONAL OFFICES**

ARUA	CENTRAL	FORT PORTAL	GULU	HOIMA	JINJA	MASAKA	MBARARA	MOROTO	SOROTI	TOTAL
62	99	70	152	59	19	76	62	79	68	746

<sup>433</sup> The complaints received represent all matters reported to the Commission whether admissible or not.

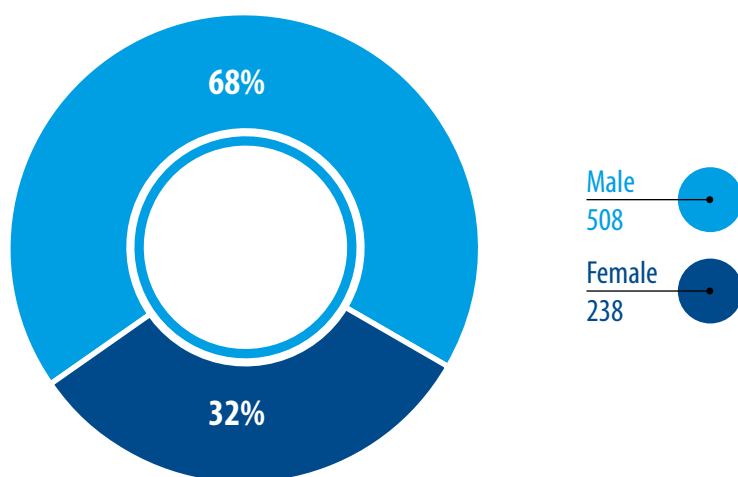
<sup>434</sup> Complaints registered are those that meet the admissibility criteria of human rights violations handled by the Commission.

There was an increase in the number of complaints registered by both Arua Regional Office at 62 (55% increase from 40 registered in 2017) and Gulu Regional Office at 152 (126.8% increase from 67 registered in 2017). The increase in number of complaints registered by Arua Regional Office was attributed to complaints lodged subsequent to the fracas that erupted during and after the by-election for MP Arua Municipality in August 2018 whereby several people were detained and allegedly tortured. Gulu Regional Office conducted mobile legal aid clinics in prisons during the period under review, hence the increase in complaints registered since the bulk of them (77 out of the 152) were from inmates during this exercise.

#### a) Complainants disaggregated by gender

The Commission registered a total of **746** complainants in matters that raised human rights violations, of which the majority were male as was the case in the previous years. Of the 746 complainants whose matters were registered by the Commission, **508** were men and **238** women as illustrated in Figure 10 below. One of the reasons why more males reported their complaints to the Commission than women could be that the nature of alleged violations that are mostly reported to the Commission (torture and personal liberty) are mostly experienced by men. Most complaints registered by women were related to family matters or children’s rights.

FIGURE 10: GENDER OF COMPLAINANTS AS REGISTERED BY THE COMMISSION



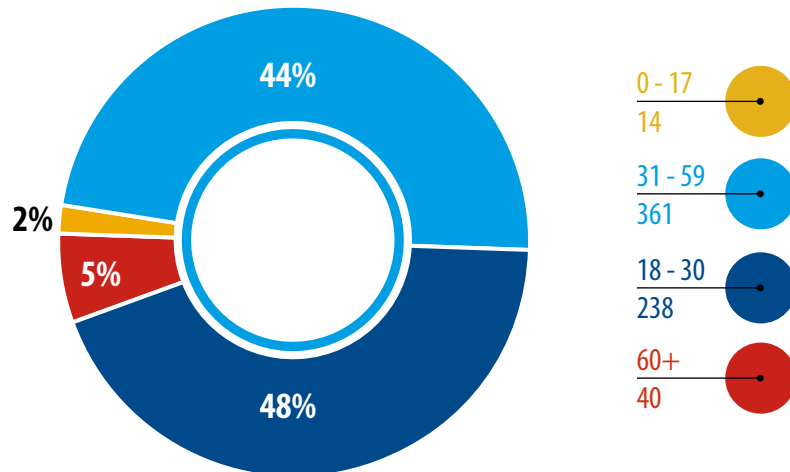
#### b) Complainants disaggregated by age

A total of 361 complainants (the majority, at 48%) who registered their complaints with the Commission were in the age category of 18 to 30 years as shown in Table 21 and Figure 11. This is the age category of youth who are often vigilant about claiming their rights. Furthermore, the youth are most often in conflict with the law and thus more susceptible to human rights violations.

TABLE 21: COMPLAINANTS DISAGGREGATED BY AGE

	AGE CATEGORY	TOTAL
1.	0 – 17	14
2.	18 – 30	361
3.	31 – 59	331
4.	60+	40

FIGURE 11: NUMBER OF COMPLAINANTS BY AGE



Only 14 children (2% of all the complainants) in the age category of 0 – 17 years filed complaints. This could be attributed to the fact that children rarely reported on their own; most times complaints involving children were reported by adults, especially their parents or guardians.

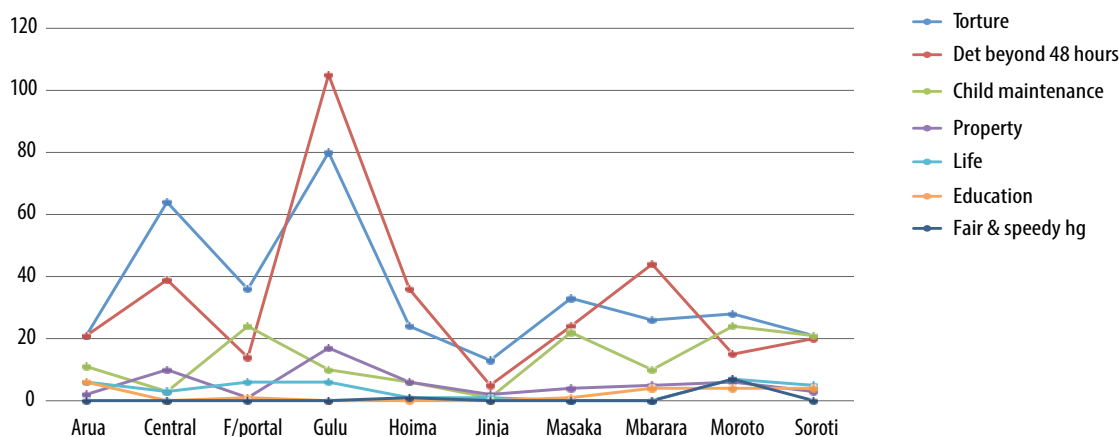
### c) Nature of alleged human rights violations registered

The alleged violation of the freedom from torture ranked highest at **346** complaints registered in 2018. This was a 13% increase from the 306 complaints registered in 2017. This was followed by complaints alleging the violation of personal liberty, specifically detention beyond 48 hours at **323** complaints. This was a 16.6% increase from the 277 complaints registered in 2017. Table 22 and Figure 12 below show the nature of complaints registered at each Commission regional office in 2018. It should be noted that the totals in Table 21 above vary from those in Table 22 because a single registered complaint may have more than one alleged human rights violation.

TABLE 22: VIOLATIONS REGISTERED IN 2018 PER REGIONAL OFFICE

ALLEGED VIOLATION	ARU	CTR	FPT	GLU	HMA	JJA	MSK	MBR	MRT	SRT	TOTAL
Torture, cruel, inhuman or degrading treatment or punishment	21	64	36	80	24	13	33	26	28	21	<b>346</b>
Detention beyond 48 hours	21	39	14	105	36	05	24	44	15	20	<b>323</b>
Denial of child maintenance	11	03	24	10	06	01	22	10	24	21	<b>132</b>
Deprivation of property	02	10	01	17	06	02	04	05	06	03	<b>56</b>
Deprivation of life	06	03	06	06	01	01	-	-	07	05	<b>35</b>
Denial of basic education	06	-	01	-	-	-	01	04	04	04	<b>20</b>
Denial of remuneration	-	-	02	-	02	-	06	-	-	02	<b>12</b>
Violation of the right to a fair and speedy trial	-	-	-	-	01	-	-	-	07	-	<b>08</b>
Denial of social and economic rights	-	02	-	-	-	-	-	-	-	-	<b>02</b>
Denial of access to information	-	01	-	-	-	-	-	-	-	-	<b>01</b>
Unlawful administrative decisions	-	-	-	-	-	-	-	-	01	-	<b>01</b>
<b>TOTAL</b>	<b>67</b>	<b>122</b>	<b>84</b>	<b>218</b>	<b>76</b>	<b>22</b>	<b>90</b>	<b>89</b>	<b>92</b>	<b>76</b>	<b>936</b>

FIGURE 12: NUMBER OF VIOLATIONS REGISTERED PER REGIONAL OFFICE



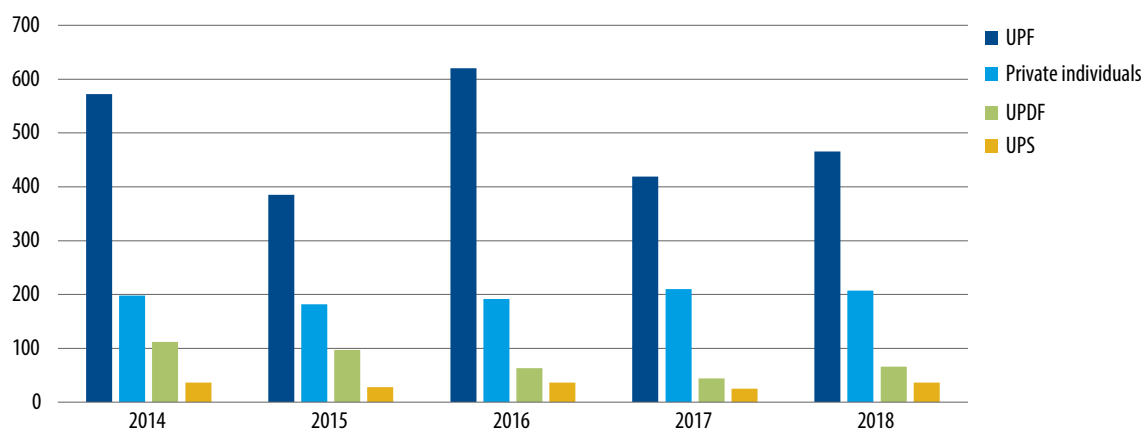
Gulu Regional Office registered the highest number of complaints (105) on alleged violation of personal liberty (detention beyond 48 hours) as well as the highest number of complaints (80) on alleged violation of freedom from torture. Moroto and Fort Portal Regional Offices recorded the highest number of complaints (24 each) on violation of the right to child maintenance.

**d) Respondents in human rights complaints registered**

Most of the complaints registered were against Uganda Police Force (UPF) with a total of **466** (62%). This was followed by complaints against private individuals with a total of **207** (27.7%) complaints, most of which concerned the denial of child maintenance. Complaints against Uganda People’s Defence Forces (UPDF) were **66** (8.8%) while Uganda Prisons Service (UPS) had **36** (4.8%). Private business companies had **24** complaints against them. The number of complaints against UPF increased by 11% from the 419 registered in 2017; against UPDF’s increase of 50% from the 44 registered in 2017; while for UPS, the complaints increased by 44% from the 25 complaints lodged in 2017).

Private individuals have consistently been the second most reported against category of respondents for the past five years. Most of the complaints against them were in respect of denial of child maintenance. Figure 13 below shows this trend for the past five years. The Commission has noted that some men have reneged on their responsibility to take care of their children hence the consistent high number of complaints involving the alleged violation of the right to child maintenance.

FIGURE 13: RESPONDENTS MOST REPORTED AGAINST FROM 2014 TO 2018



UPF had the highest number of complaints registered against it regarding the alleged violation of freedom from torture (296) and the alleged violation of the right to personal liberty (203). Gulu Regional Office registered the highest number of cases of torture against UPF (51) followed by Central Regional Office with 46. Gulu Regional Office also registered the highest number of cases of personal liberty (detention beyond 48 hours) against the UPF. Moroto Regional Office registered the highest number of cases of torture against the UPDF at 11. This was attributed to the fact that in Moroto the UPDF were involved in several operations that brought them into contact with the civilian population including disarmament and detention of suspects found in possession of illegal firearms. Table 23 below shows the categorisation of respondents per regional office, while Tables 24 and 25 below illustrate the alleged violations against specific respondents.

**TABLE 23: CATEGORISATION OF RESPONDENTS BY REGIONAL OFFICE AND NUMBER OF COMPLAINTS AGAINST THEM**

RESPONDENT	ARU	CTR	FPT	GLU	HMA	JJA	MSK	MBR	MRT	SRT	TOTAL
Uganda Police Force	36	83	27	118	58	12	33	36	30	33	466
Private individuals	16	05	42	23	09	03	29	24	30	26	207
Uganda People's Defence Forces	09	08	04	14	-	01	05	01	22	02	66
Uganda Prisons Service	01	06	05	08	04	01	-	03	05	03	36
Private business companies	-	07	04	02	-	-	03	06	-	02	24
Education institutions	07	-	02	-	-	-	03	-	-	02	14
CMI	-	12	-	-	-	-	-	-	-	-	12
Local Governments	-	-	-	01	01	01	03	-	-	01	07
Statutory agencies	02	03	-	-	-	-	-	-	-	-	05
Clan leaders	-	-	-	04	-	-	-	-	-	-	04
KCCA	-	03	-	-	-	-	-	-	-	-	03
Private security companies	-	-	-	-	01	-	02	-	-	-	03
UWA	-	-	01	-	02	-	-	-	-	-	03
Judiciary	-	-	-	-	-	-	-	-	02	-	02
ISO	-	02	-	-	-	-	-	-	-	-	02
Health institutions (Hospitals, HCII & HCIII)	-	-	-	-	-	-	01	-	01	-	02
Member of Parliament	-	-	-	-	-	-	01	-	-	-	01
Resident District Commissioner	-	-	-	-	-	-	-	-	01	-	01
ASTU	-	-	-	-	-	-	-	-	-	01	01
Religious institution	-	-	-	-	01	-	-	-	-	-	01
<b>TOTAL</b>	<b>71</b>	<b>139</b>	<b>85</b>	<b>170</b>	<b>76</b>	<b>18</b>	<b>80</b>	<b>70</b>	<b>91</b>	<b>70</b>	<b>860</b>

**TABLE 24: VIOLATIONS REPORTED AGAINST UGANDA POLICE FORCE**

ALLEGED VIOLATION	ARU	CTR	FPT	GLU	HMA	JJA	MSK	MBR	MRT	SRT	TOTAL
Deprivation of the right to personal liberty (detention beyond 48 hours)	21	29	14	99	35	08	21	36	13	20	296
Freedom from torture, cruel, inhuman or degrading treatment or punishment	09	46	09	51	19	07	23	14	11	14	203
Deprivation of life	04	02	03	03	-	01	-	-	-	03	16
Deprivation of property	02	04	01	08	03	01	-	02	01	01	23
Violation of the right to fair and speedy trial	-	03	-	-	-	-	03	02	05	-	13
<b>TOTAL</b>	<b>36</b>	<b>84</b>	<b>27</b>	<b>161</b>	<b>57</b>	<b>17</b>	<b>47</b>	<b>54</b>	<b>30</b>	<b>38</b>	<b>551</b>

**TABLE 25: VIOLATIONS REPORTED AGAINST UGANDA PEOPLE'S DEFENCE FORCES**

ALLEGED VIOLATION	ARU	CTR	FPT	GLU	HMA	JJA	MSK	MBR	MRT	SRT	TOTAL
Deprivation of the right to personal liberty (detention beyond 48 hours)	00	01		05	-	-	02	04	02	-	14
Torture, cruel, inhuman or degrading treatment or punishment	08	06	03	10	-	01	05	-	11	01	45
Deprivation of property	-	01	-	05	-	-	02	01	04	01	14
Deprivation of life	02	-	01	02	-	-	-	-	07	-	12
Denial of fair hearing	-	-	-	-	-	-	-	-	02	-	02
<b>TOTAL</b>	10	08	04	22	00	01	09	05	26	2	87

### 13.1.2 Investigations

In fulfilment of its constitutional mandate to investigate violations of human rights, the Commission investigated **1,444** complaints on human rights violations. Of these, **648** (45%) were investigated to completion, while **796** (55%) were partially investigated. For complaints where investigations were concluded, some were forwarded to the Commission Tribunal for hearing, while others were closed for various reasons, including lack of merit, insufficient evidence to sustain the allegations, false allegations and lack of jurisdiction.

**TABLE 26: COMPLAINTS INVESTIGATED PER REGIONAL OFFICE**

REGIONAL OFFICE	BACKLOG (2017 BACKWARDS)		FRESH COMPLAINTS RECEIVED IN 2018		TOTAL
	FULLY INVESTIGATED	PARTIALLY INVESTIGATED	FULLY INVESTIGATED	PARTIALLY INVESTIGATED	
Arua	53	08	26	17	104
Central	36	86	16	83	221
Fort Portal	40	24	12	46	122
Hoima	63	16	18	10	107
Gulu	65	38	11	41	155
Jinja	19	37	03	16	75
Masaka	69	33	30	46	178
Mbarara	72	43	14	48	177
Moroto	28	30	05	13	76
Soroti	56	122	12	39	229
<b>Total</b>	<b>501</b>	<b>437</b>	<b>147</b>	<b>359</b>	<b>1,444</b>

### 13.1.3 Referrals made to other institutions

The Commission referred **3,738** complaints, with complaints related to land disputes topping the list at **420**, followed by family matters at **412**. The land disputes and family matters constituted **832** complaints, accounting for **22%** of the complaints which were referred.

**TABLE 27: COMPLAINTS REFERRED IN 2018**

ARUA	CENTRAL	FORT PORTAL	GULU	HOIMA	JINJA	MASAKA	MBARARA	MOROTO	SOROTI	HEAD OFFICE	TOTAL
256	67	539	416	191	283	321	831	88	137	609	3,738

### 13.1.4 Mediations

The Commission mediated in **108** complaints during the period under review. Most of the complaints involved family disputes, denial of child maintenance, denial of basic education as well as the denial of terminal benefits and remuneration. In all matters successfully mediated, parties signed memoranda of understanding showing details on how they had agreed to resolve their disputes. Table 28 below shows the number of complaints mediated by the Commission per regional office.

**TABLE 28: COMPLAINTS RESOLVED THROUGH MEDIATION IN 2018**

ARUA	CENTRAL	FORT PORTAL	GULU	HOIMA	JINJA	MASAKA	MBARARA	MOROTO	SOROTI	HEAD OFFICE	TOTAL
15	01	12	16	08	01	23	09	06	17	00	108

### 13.1.5 Resolution of complaints through the Commission Tribunal

The Commission Tribunal disposed of **94** complaints in 2018. This number was less than the 172 disposed of in 2017 owing to the lack of quorum of Members of the Commission which led to the halting of Tribunal hearings from July to December 2018.

Out of the **94** complaints, the Commission Tribunal awarded compensation in **66** and dismissed or closed **21** while **seven** were amicably settled by the parties. The majority of the complaints disposed of related to the violation of the right to freedom from torture and the right to personal liberty. On the other hand, most of the awards were against the Attorney General for violations perpetrated by UPF and UPDF.

#### a) Tribunal awards

A total of **UGX 1,002,395,000** was awarded to victims of human rights violations in 2018. Out of this, **UGX 948,795,000** was awarded by the tribunal after full hearing of the complaints while **UGX 53,600,000** was agreed upon by the parties through amicable settlements.

#### b) Compensation of complainants through amicable settlements with the UPDF

Some complaints against the UPDF filed in 2009 and 2010 that the Commission's Tribunal sitting at Moroto Regional Office was hearing were redirected to a mediation process. The mediations were successful and the UPDF paid compensation to the complainants. A formal event to acknowledge the compensation was held at Moroto Regional Office. In attendance were the complainants, the LCV Chairperson Moroto, Mr. Andrew Napaja Keem, representatives from the UPDF, representatives from Ministry of Justice and Constitutional Affairs and staff of the Commission. Through the mediations, the complainants received redress for the human rights violations they had suffered during the second phase of the disarmament exercise in Karamoja sub-region that was conducted by the UPDF. Table 29 below shows the details of the compensation. At the compensation event, some of the complainants made the following comments:

"Although I was disabled as a result of the violation, I am very happy that I have been compensated. I have forgotten about what happened and I have forgiven everyone that was involved."

"We thank the Commission for registering our complaints because that is the only way we have been able to get this money."

"I will be able to pay school fees for my grandchildren and maybe I might build a house."

**TABLE 29: DETAILS OF COMPLAINTS AND COMPENSATION**

	PARTICULARS OF COMPLAINT	COMPENSATION AMOUNT
1.	Mrt 8/2010 Lokoro Rita and Naduk Lucia – and - UPDF 405 Brigade Kotido	Shs. 14,000,000
2.	Mrt 82/2009 Ikonga Madelena – and – UPDF 503 Brigade	Shs. 6,700,000
3.	Mrt 37/2010 Abur Maria – and – UPDF 49 BTN Kaabong	Shs. 15,000,000
4.	Mrt 30/2010 Loyangan Simon – and – UPDF	Shs. 1,500,000



◀ A group photo of those who attended the compensation event at the Commission's Moroto Regional Office

### c) Decentralisation of compensation awards

Government, through the ministry of Justice and Constitutional Affairs, decentralised the payment of court/tribunal awards and compensation to line ministries, departments and agencies (MDAs) effective 1<sup>st</sup> July 2015. All court/tribunal awards made against government agencies after 1<sup>st</sup> July 2015 are not paid by the ministry of Justice and Constitutional Affairs/Attorney General as was the case before. MDAs are now charged with payment of court/tribunal awards against them from their respective budgets. This was a welcome intervention as MDAs would be keen to prevail over their officers not to violate human rights in order not to have their budgets affected by the payment of the Commission Tribunal awards made against them.

However, since the decision was operationalised, some complainants have been facing challenges in following up payments of Tribunal awards made by the Commission against various MDAs. The MDAs claimed that they did not have the finances to make the payments since they were not budgeted for. This led to delays in access to justice for victims of human rights violations.

### d) Tribunal status as at 31<sup>st</sup> December 2018

As at 31<sup>st</sup> December 2018, the tribunal caseload stood at **1,039**, which was 7% increase from the annual closing case load of **967** in 2017. The increased caseload was as a result of the aforementioned lack of quorum of Members of the Commission. Of the 1,039 complaint files, **398** were pending allocation to Presiding Commissioners for hearing, **257** were pending hearing while **384** were part-heard.<sup>435</sup> Table 30 below summarises the number of complaints pending at the Commission Tribunal.

435 Includes cases being heard, those pending amicable settlement and those pending submissions and/or decision.



**TABLE 30: SUMMARY OF COMPLAINTS PENDING AT THE TRIBUNAL BY 31ST DECEMBER 2018**

STATUS OF COMPLAINTS	ARU	CTR	FPT	GLU	HMA	JJA	MSK	MBA	MRT	SRT	TOTAL
Complaints files pending allocation	47	48	55	113	20	05	32	38	07	33	398
Complaints pending hearing	25	60	50	24	22	05	21	10	22	18	257
Complaints part-heard <sup>438</sup>	39	77	28	57	14	52	26	36	08	47	384
Tribunal case load as of 31th Dec 2018	111	185	133	194	56	62	79	84	37	98	1,039

The part-heard complaints are those where evidence is still being adduced by the respective parties, while the ones pending hearing are those that are yet to be heard for the first time. Files pending allocation are those yet to be allocated to a specific hearing Commissioner.

In 2018, the Commission disposed of a total number of **850** complaints, out of which 108 were successfully mediated; 648 fully investigated; and 94 disposed of at Tribunal level, as indicated in Table 31 below.

**TABLE 31: TOTAL NUMBER OF COMPLAINTS DISPOSED OF BY THE COMMISSION IN 2018**

DISPOSED-OF COMPLAINTS	TOTAL
Through mediations	108
At investigations	648
At the Tribunal	94
Total	850

### 13.1.6 Challenges

1. The Commission was not able to conduct Tribunals in the latter half of the year (July to December 2018) due to lack of quorum of the Members of the Commission. This led to an increase in the Tribunal backlog and affected access to justice for the concerned complainants.
2. Delayed conclusion of matters for amicable settlement especially in matters involving the Attorney General. The delay was caused by the elaborate processes through which matters proposed for amicable settlement had to go to be sanctioned by the Office of the Attorney General. Ultimately, this led to delays in reparations for victims of human rights violations.

### 13.1.7 Recommendations on complaints management

1. Government should, through the ministry of Justice and Constitutional Affairs and the Attorney General, handle matters proposed for amicable settlement in a timely manner and ensure that victims of human rights violations are compensated expeditiously.
2. Government should, through the ministry of Justice and Constitutional Affairs, facilitate the expeditious appointment of more Members of the Commission to enable the Commission expeditiously dispose of its tribunal backlog.
3. Government should, through the ministry of Justice and Constitutional Affairs, streamline the process of decentralisation of payment of tribunal awards by the MDAs. The ministry should act as a focal point to coordinate the process and follow up with the concerned MDAs to ensure that payments are made to the victims of human rights violations.

436 Includes cases being heard, those pending amicable settlement and those pending submissions and/or decision.

## 13.2 CONDITIONS IN PLACES OF DETENTION

The Commission continued to monitor the human rights situation in the various places of detention, to assess the conditions of suspects and inmates in accordance with its constitutional mandate. This monitoring and inspection of places of detention was also done to assess government's compliance with national, regional and international human rights standards with regard to persons deprived of liberty.

### 13.2.1 Legal framework regarding persons deprived of liberty

People deprived of their personal liberty are vulnerable because of being cut off from the outside world. They become solely dependent on the detaining authorities for the most basic needs and rights. The recognition of this, among others, formed the basis for the adoption and implementation of the international, regional and national legal instruments aimed at ensuring the protection of the human dignity for persons deprived of personal liberty.

At the international level, Uganda is a party to a number of international instruments that not only provide for the treatment of detainees but also those that advance and promote the rights of persons in detention. The ICCPR<sup>437</sup>, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>438</sup>, the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>439</sup> and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>440</sup> are some of the international instruments that provide for the protection of the rights of detainees.

At the African regional level, the African Charter on Human and Peoples' Rights (ACHPR) guarantees the rights of detainees in more or less the same manner as the international instruments.<sup>441</sup> The African system also imposes obligations on states to extend special protection to women and children in places of detention, consistent with the Protocols to the African Charter on Human and Peoples' Rights on the Rights of Women and the African Charter on the Rights and Welfare of the Child respectively. Equally important are the Robben Island Guidelines<sup>442</sup> which provide for the prohibition and prevention of torture, cruel, inhuman or degrading treatment in detention in Africa.

At the national level, the 1995 Constitution guarantees the respect for human dignity, and protection from inhuman treatment<sup>443</sup> for everyone including people in places of detention. The Constitution also provides for the protection of persons deprived of their personal liberty and the circumstances under which one's personal liberty may be suspended. In addition to the Constitution, human rights guarantees for detainees are found in other laws such as the Uganda Police Force Act (Cap 303), the Uganda People's Defence Forces Act, 2005 (Cap 307), the Uganda Prisons Act (2006), the Penal Code Act (cap 121), the Trial on Indictments Act (cap 23) and the Children's Act (cap 59), among others. Some of these laws guarantee the rights of detainees as well as provide for the management, treatment and care of inmates in places of detention.

437 Articles 7 to 11, of the International Covenant on Civil and Political Rights.

438 Article 4, Article 10 and Article 13 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

439 United Nations Standard Minimum Rules for the Treatment of Prisoners, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), United Nations Rules for the Protection of Juveniles Deprived of Liberty (JDL Rules), United Nations Guidelines for Prevention of Juvenile Delinquency (Riyadh Rules), United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules).

440 UN Doc. A/43/173, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

441 Articles 3 to 7 of the African Charter on Human and Peoples' Rights.

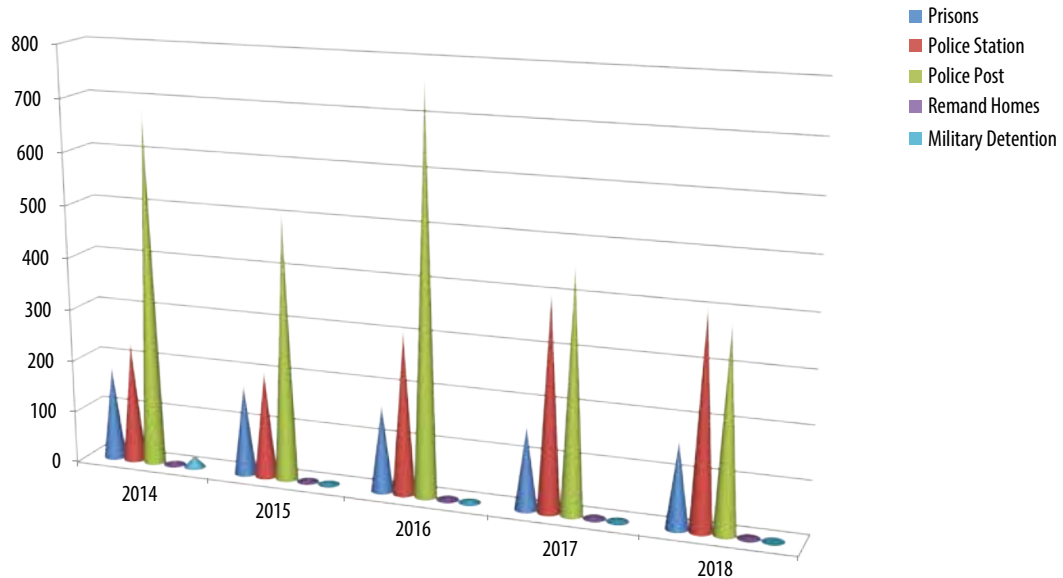
442 The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment.

443 Articles 23 to 24 and Article 28 of the Constitution of the Republic of Uganda (1995).

### 13.2.2 Places of detention inspected by the Commission in 2018

In 2018, the Commission conducted 962 inspection visits to places of detention that comprised 409 police stations, 384 police posts, 163 government prisons, five remand homes and one military detention facility. Figure 14 below shows the total number of detention facilities the Commission inspected over the last five years.

FIGURE 14: TOTAL NUMBER OF DETENTION FACILITIES THE COMMISSION INSPECTED IN THE LAST FIVE YEARS



### 13.2.3 Key findings in places of detention inspected in 2018

During inspections, the Commission noted that progress had been made in some areas, while in others a number of human rights issues still existed. Here below is a highlight of the Commission's findings in the detention places it inspected during the year.

#### a) Registration and records management

Well-kept records which have the information required for the effective protection of detainees' rights contribute to the efficient management of places of detention. The existence of official registration in places of detention is also an important element in guaranteeing transparency and protection of those detained.

The majority of the 962 places of detention the Commission inspected in 2018 had registers which were regularly used and updated, save for a few isolated cases mainly at police posts, where the registers were not updated. The registers inspected included: lock-up, station diaries, admission, release, property register, transfer of detainees registers, gate registers, exhibits registers, medical registers, as well as medical treatment records. The existence of updated registers demonstrated that majority of detainees the Commission assessed had an admission trail, an inventory of their property and information regarding their judicial processes. However, poor storage of records was noted in instances where the registers got filled up.

## b) Separation of categories of detainees

Human rights standards require that different categories of prisoners are kept in separate places of detention, taking into account their sex, age, criminal record and reasons for detention.<sup>444</sup> As a matter of law,<sup>445</sup> women should be separated from men, minors from adults, and untried detainees from convicted detainees. Migrants detained in connection with their migrant status should also be separated from convicted persons and held in conditions as far removed from a prison regime as possible. Persons imprisoned for debt and other civil prisoners should be kept separate from persons detained for criminal offenses.

The primary purpose of separation is to ensure protection and safety of persons deprived of liberty and for optimal management of prisons. It is also a measure to preserve the principle of the presumption of innocence of untried persons as well as providing the most appropriate prison conditions for each category of detainees. Below is what the Commission observed regarding categorisation.

### (i) Separation of females from the males in cells

In all the 962 detention places inspected, the Commission noted that female inmates were separately detained from the males. This was in conformity with the required standard that men and women should as far as possible be detained in separate facilities.<sup>446</sup> This in principle means that male and female inmates should be detained in different facilities but at the worst, when held in the same facility, should be in cells that are physically separate.

### (ii) Juveniles detained with adult offenders

It is a requirement that juveniles should be separated from adults while in detention.<sup>447</sup> During inspections, the Commission found cases where juveniles were in detention with adult offenders. These were found mainly at police stations such as Kibibi in Butambala district, Kayunga, Luweero Central, Kasangati in Wakiso district, Kiboga, Bombo in Luweero district and Mutetema in Mityana district. Other cases were found at police posts such as Makulubita in Luweero district, Kisiizi and Bwambara in Rukungiri district, and Rukarara in Kanungu district. The detention of juveniles with adult offenders in police cells was mainly attributed to the lack of juvenile cells in police facilities and the continued failure to ascertain the correct age of suspects.

### (iii) Remand and convicted inmates

Prisoners on remand should be kept separate from convicted prisoners.<sup>448</sup> The Commission noted that in most facilities inspected, prisoners on remand shared cells with convicts, contrary to Section 66 of the Prisons Act, 2006 which provides for separation of the two categories. However, in some prisons such as Luzira and Kigo, inmates on remand were detained in separate cells from convicts and also had different uniforms for identification.

## c) Civil debtors

Article 11 of the ICCPR to which Uganda is a state party prohibits the incarceration of people for failure to honour contractual obligations. The Commission found civil debtors<sup>449</sup> in various prisons, including Gulu Government Prison, Lira Government Prison, Kwanja Prisons Farm, Apac Government Prison, Mubuku Government Prison in Kasese district, Katojo Government Prison in Kabarole

444 Rule 8 & 11 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

445 ICCPR; United Nations Standard Minimum Rules for the Treatment of Prisoners; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

446 Rule 8(a) of the UN Standard Minimum Rules for the Treatment of Prisoners.

447 ICCPR, Article 10.2.

448 Rule 8(b) of the UN Standard Minimum Rules for the Treatment of Prisoners.

449 According to UPS, there were 390 civil debtors.

district, Kamuge Prison in Pallisa district, Sembabule Government Prison, Rakai Government Prison, Mbale Main Prison and Kyazanga Government Prison in Lwengo district, among others. It was also noted that the requirement<sup>450</sup> to separate civil debtors from inmates on criminal charges was not observed. Inmates were only separated based on their gender due to limited space.

#### d) Mothers incarcerated with their children

Mothers incarcerated with their children are entitled to have their physical, emotional, social and psychological needs provided for by the authorities. Some of the children found with their incarcerated mothers were between one month and three years, which in some cases was below the authorised statutory age of 18 months. The Commission heard that the reason for incarcerating mothers with their children was mainly due to the unwillingness or lack of relatives to take care of the children while the mothers were in detention.<sup>451</sup>

Some of the prisons in which the Commission found toddlers and breastfeeding mothers whose babies were too young to be separated from them included Mbarara, Bushenyi, Rukungiri and Kiruhura Government Prisons as well as Ndorwa in Kabale district and Nyabuhikye in Ibanda district. By 31<sup>st</sup> December 2018, there were 242 babies staying with their incarcerated mothers.<sup>452</sup>

### 13.2.4 Accommodation of inmates

The Commission noted that by July 2016, UPS had a total number of 48,000 prisoners countrywide. By January 2018, this number had risen by 8,788 people to 56,788 prisoners. Table 32 below shows the categories of the prisoner population. The total prisoner population was found to be overwhelming on the facilities and resources available to UPS at the time.

**TABLE 32: PRISONER POPULATION AS AT 31ST DECEMBER 2018**

CATEGORIES	MALE	FEMALE	TOTAL
Convicts	27,432	1,282	28,714
Remands	26,287	1,154	27,441
Debtors	314	76	390
Grand Total	54,033	2,512	56,788

The Commission noted that efforts were being made to renovate or construct new facilities. However, despite these efforts, the infrastructure in many facilities largely remained the same as the following findings indicated.

#### a) Overcrowding

It is a requirement that detention accommodation should provide adequate cubic content of air, floor space, lighting, heating and ventilation.<sup>453</sup> However, the Commission noted that overcrowding in prisons remained a challenge, with some prisons housing twice or up to three times their designed capacities, oftentimes with the male inmates most affected. The Commission found overcrowded prison facilities at Nakapiripirit, Moroto, Namalu (Nakapiripirit district) and Amita (Abim district) Government Prisons. Overcrowding was mainly attributed to the limited size of the cells; the delay by prosecutors to sanction files; as well as the absence of magistrates from duty stations, which affected the judicial process. In Moroto Government Prison, the Commission learnt that

<sup>450</sup> Rule 8(c) of the UN Standard Minimum Rules for the Treatment of Prisoners.

<sup>451</sup> Section 59 (4) of the Prisons Act, 2006.

<sup>452</sup> UPS statistics of 31st December 2018.

<sup>453</sup> Rule 13, UN Standard Minimum Rules for the Treatment of Prisoners.

overcrowding was due to the absence of a prison in Napak district. The Commission was concerned that overcrowding greatly impacts on prisoners' health and safety particularly and also increases their risk of being subjected to acts of physical torture by fellow inmates, as well as developing communicable diseases.

### b) Poor ventilation and lighting

Poor lighting in cells and poor ventilation still remained a challenge in most police stations inspected, some of which were very dark and small. Police detention facilities found with poor lighting and poor ventilation were Loro Police Station, Cheptakoyo Police Post and Chepkararat Police Post, all in Amudat district; Kalapata Police Station in Kaabong district, Iriir Police Station in Napak district, Nakapelimoru Police Station in Kotido district and Tokora Police Post in Nakapiripirit district.



◀ Far left: A police cell at Lemusui Police Station in Nakapiripirit district with no ventilation

Right: Commission staff inspecting police cells at Koch Goma Police Station in Nwoya district whose ventilation was sealed off

### c) Old dilapidated buildings

The Commission found a number of detention facilities with old, derelict, run-down and dilapidated buildings or facilities. These included police stations such as Isunga in Kabarole district, Kyakaba-diima in Kabale district, Kagadi, Kigumba and Diika in Kiryandongo district. The Commission found that suspects at Kitobo Police Station in Kalangala district were left in chains while in the police cells, due to the poor structure of the facility from which suspects sometimes escaped during the night. Other police posts found with dilapidated facilities included Karuma and Diima police posts in Kiryandongo district, while Bugiri Police Post, Busitema Police Post and Naluwerere Police Post, all in Busia district, had no cells.



◀ Police cell at Itojo Police Post in Ntoroko district

In Masindi district, the facilities that the Commission found with old and dilapidated buildings were Kiryandongo Government Prison and Ihungu Remand Home as well as Bwijanga, Ntooma, Kigulya, Nyangahya, Bulima and Kijunjubwa police posts. Majority of these dilapidated buildings were old, poorly ventilated, with inadequate sewage systems and they posed a threat to life.



◀ Left: A cell at Chepkarat Police Post in Amudat district

Right: A Commission staff talking to a police officer at Cheptakoyo Police Post in Amudat district

The Commission also noted the misuse of the government facility in Agago, keeping goats in the exhibit store as shown in the pictures below.



◀ Goats being kept in the exhibit store at Agago Police Station

#### d) Newly constructed and renovated facilities

Despite the persistent overcrowding, the Commission noted the continuous efforts by UPS and the UPF to improve the accommodation facilities for detainees. In 2018, a number of detention facilities had newly constructed buildings and renovated facilities including offices, cells, stores and wards for inmates. Some newly constructed structures were found in Government Prisons such as Kabasanda in Butambala district, Kanoni in Gomba district, Kangulumira in Kayunga district as well as Lotuturu Prison in Lamwo district and Orom Tikao Prison Farm in Kitgum district. The Commission found such facilities at the following Police Stations: Kangulumira and Kitimbwa in Kayunga district, Luweero Central, Nakasongola, Lugore in Gulu district, in addition to Amuru and Kaladima both in Amuru district. At Kamwenge Prison, the prison authorities had constructed a new male ward with a capacity to accommodate over 100 inmates. The officer in charge at Kamwenge noted that this had reduced the congestion.

The Commission noted that in most of the prisons, inmates were engaged in the construction of the cells and staff houses. This not only helped them address issues of overcrowding, but also gave inmates building skills which they could later use after serving their sentences.



▲ Top: Renovated building at Mbale Remand Home  
Middle: Inmates laying bricks at Orom Tikao Prison Farm in Kitgum district  
Bottom: Inmates constructing a hall at Rakai Prison

### 13.2.5 Access to adequate food

Uganda Human Rights Commission registered progress on the inmates' access to food in prisons, in terms of frequency, quality and quantity. Provision of adequate food is key to maintaining the health and strength of detainees especially those with HIV/AIDS, the sick, breastfeeding mothers, juveniles and infants.<sup>454</sup> In most of the prisons, inmates had at least two meals a day, consisting of porridge for breakfast and lunch/supper comprising of foods such as cassava, posho or sweet potatoes and beans. At most prison farms, the meals for inmates were supplemented with green vegetables, potatoes and cassava, depending on what was grown by the inmates themselves. Despite efforts made by Uganda Prisons Service, it was not the case for police. In a number of police stations and posts visited, the Commission found that the police was struggling to provide detainees with even a single meal a day.



◀ *Vegetable garden at Mateete Prison in Sembabule district*

In assessing whether there was adequate access to food in detention facilities, the Commission considered several elements including the quality and quantity of the food provided. In addition, the Commission focused on the food given to particular vulnerable persons such as the HIV-positive as well as the lactating mothers. While some prisons inspected provided their detainees with three meals a day comprising breakfast of porridge, then lunch and supper; the majority served porridge for breakfast then lunch and supper were served at once. On quantity, the Commission learnt from most of the detainees in prisons that they found the helpings of food adequate.

The Commission also noted that a number of prisons endeavoured to provide additional nutrients to the staple diet of posho and beans, especially for detainees with specific health conditions such as HIV/AIDS or the pregnant and lactating mothers. In some facilities, there were gardens of vegetables that helped the detainees supplement their diet. In other facilities, the detainees hired out for labour got an opportunity to change diet where they were given fish or meat. In various prisons, the inmates were permitted to prepare their own meals, which the inmates welcomed.



◀ *Inmates preparing their food at Lugore Government Prison in Gulu district*

With regard to police, most suspects in custody continued to have only one meal a day or none at all. This finding had previously been reported on in the Commission's annual reports. The Commission found such a situation in police posts in Buyende district and in Kamuli district at Kamuli, Namasagali,

454 Rule 22 of the Nelson Mandela Rules aka UN Standard Minimum Rules for the Treatment of Prisoners.



Bulopa and Balawoli police stations as well as Kisozi and Kitayunjwa police posts. Officers at police stations such as Kyotera, Sembabule and Rakai indicated that they received imprest for feeding suspects on a quarterly basis which imprest was not sufficient. The Commission also learnt that in many police stations and posts, food for suspects was sometimes sourced from relatives and complainants.

### 13.2.6 Access to health services and HIV/AIDS treatment

Access to medical services has improved in most prisons compared to the previous years. The Commission noted that prisons that lacked internal health facilities were reportedly accessing health services from the nearby government health centres. However, although there is now a patient referral system and medical care provision in prisons is better than the national average, there still remains the problem of inadequate drugs. It was also noted that some prisons have emergency health kits which help in emergency medical response to staff and inmates. The emergency health kits are only used to resolve small, uncomplicated emergencies, while complex cases of inmates are referred to nearby government health facilities for treatment. Some detention facilities have health care personnel attached to them.



◀ Health Centre III facility at Orom Tikoa Prison Farm in Kitgum district

The Commission also found that in some facilities, the nearest government health facilities are a distance away from the prisons, making it hard for the inmates to easily access treatment.

### 13.2.7 Clothing and beddings for inmates

Prison facilities registered an improvement in clothing and beddings for inmates. Most inmates at the prisons that the Commission inspected had uniforms at the time. UPS reported that the majority of inmates had been supplied with uniforms even though they were still inadequate. The prison authorities attributed their inability to provide all the inmates with two pairs of uniforms to inadequate funding. Regarding beddings, every prisoner was provided with one or two blankets.

However, the Commission found that in most police facilities inspected, inmates slept on bare floors or on torn blankets. This was observed at Rubirizi and Kirugu police stations in Rubirizi district as well as Igorora, Nyamarebe, Keihangara and Bugarama police stations in Ibanda district



◀ Left: Blankets for detainees at Bukomansimbi police

Right: Boxes improvised as beddings at Abim Police Station

### 13.2.8 Sanitation and personal hygiene

In the newly constructed and renovated prisons, inmates enjoyed good standards of basic hygiene. Where running water and flush toilets were installed especially in majority of central police stations, the personal hygiene of inmates had greatly improved.

#### a) Bucket waste disposal system

The bucket system refers to suspects or inmates easing themselves in a bucket in their cells due to lack of indoor toilet facilities. The Commission found that in facilities without flush toilets, inmates still used pit latrines during daytime and the 'bucket' at night, which they would empty during the day. The practice of human beings sharing a room with their waste is not only degrading and dehumanising but also unhygienic; for example, many inmates would not be able to survive an outbreak of an epidemic like cholera due to such unhygienic living situations. Majority of the detention facilities inspected which still used the 'bucket system' were for UPF, some of which were: Mbarara and Bushenyi police stations as well as Rwentuuha Police Station in Bushenyi district.



◀ Left: A police officer escorts a suspect to empty the bucket found in the cell at Palabek Kal Police Station in Lamwo district.

Right: Bucket of human waste found in a police cell.



◀ Jerrycan full of urine in a male cell at Amudat Central Police Station

The Commission noted that the bucket system had been eliminated in a number of facilities. However, despite these efforts, the use of the bucket system continued in some other Government Prisons such as Bigasa (Bukomansimbi district), Ntuusi (Sembabule district), Arocha (Apac district), Otuke and Kaladima (Amuru district), Kole and Lotuturu (Lamwo district), Aber (Oyam district), Kiruhura and Sanga (Kiruhura district), Kiburara (Ibanda district) and Bushenyi. Uganda Prisons Service, however, informed the Commission that by June 2018, only 21 prisons would be still using the bucket system as interventions had been ongoing to completely eliminate the use of the bucket system in all the 158 prisons that had been using it by end of 2011.

**TABLE 33: PROGRESS ON PHASING OUT THE BUCKET SYSTEM IN PRISONS**

FINANCIAL YEAR	PRISONS USING BUCKET SYSTEM	PRISONS WHERE BUCKET SYSTEM WAS PHASED OUT	REMAINING PRISONS DURING THE FINANCIAL YEAR
2011/12	158	20	138
2012/13	138	45	93
2013/14	93	20	73
2014/15	73	20	53
2015/16	53	11	42
2017/18	42	21	21

Source: Uganda Prisons Service



◀ Left: A self-contained female unit cell at Namalu Government Prison in Pader district

Right: Latrine currently used at Lapul Police Post in Pader district after the old one collapsed

#### b) Access to sanitary towels

The Commission found that all prisons visited availed female inmates with sanitary towels. UPS further confirmed that most of the prisons with female inmates provided sanitary towels. The Commission confirmed this at the government prisons of Kaliro, Ikulwe (in Mayunge district), Bugiri, Iganga, Buyinja (in Bugiri district) and Kiyunga in Kayunga district. However, the Commission found that there were no sanitary towels provided to females in custody in all police facilities inspected.

#### 13.2.9 Access to clean and safe water

In 2018, the Commission observed that majority of inmates could access clean and safe water thorough various sources such as harvested rainwater, water taps, boreholes, wells, swamps, springs and dams which sometimes had unclean water that was not safe for drinking. In most of the facilities visited, the inmates boiled water which they stored in small jerrycans and kept in their cells. Other facilities without available sources of water had to buy water from hawkers.

Police stations with access to clean water included Kyenjojo, Gombe in Wakiso district and Kabasanda in Butambala district. However, at Butungama (Butambala district), Rwangara (Ntoroko district) and Kibuku police posts, the nearest water sources were ponds with dirty water, while at Kanara Police Post, the nearest water source was Lake Albert with water deemed unsafe for human consumption. The prisons we found without access to clean water included Kabasanda (Butambala district), Amuru and Kanoni (Gomba district) Government Prisons.

#### 13.2.10 Right to work

Regulation 107 (1)-(6) of the Prisons Regulations 2012 prescribes circumstances under which remand prisoners may be employed and their remuneration. The regulations stipulate that any remand prisoner interested in working who participates in any work should be remunerated. The Commission found that inmates' labour was used on prison farms and workshops or hired out on private farms to generate income. The most common form of work for prisoners included carpentry

and joinery, building construction, handicrafts, brick-making, livestock farming and crop farming or gardening. At all the prison facilities inspected, inmates worked from Monday to Friday for –six to eight hours each day and on Saturday, did light work around the prison premises.



◀ *Inmates of Kakuuto Prison in Rakai district working in a shamba*

The Prisons Act, 2006 recognises prisoners’ right to undertake meaningful remunerated employment. Work for prisoners serving sentences is helpful in as far as it enables them to acquire meaningful and useful skills, which would benefit the inmates to earn honest livelihoods after release. In fact, work for prisoners helps to maintain or improve the vocational qualifications of the inmates as well as offering them meaningful occupation.

The Commission noted that all the prisoners who worked were paid an earning ranging from UGX 100 for unskilled labour, UGX 250 for semi-skilled labour to UGX 500 per day for skilled work in most regions. However, prison farms such as Dokolo Prison, Lugore Prison in Gulu district, Arocha Prison in Apac district, Alebtong Prison, Patongo Prison in Kitgum district, Orom Tikoa Prison in Kitgum district and Lotuturu Prison in Lamwo district were reported to be overworking the inmates. However, Uganda Prisons Service later reported that they have since made proposals<sup>455</sup> for an increment in prisoners’ earnings as indicated in Table 34 below.

**TABLE 34: PROPOSED RATES FOR PRISONERS EARNINGS**

PRISONER'S CATEGORY	ORIGINAL RATES PER DAY (UGX)	REVISED RATES PER DAY (UGX)
Skilled	500	1,398
Semi-skilled	250	699
Unskilled	100	280
Gratuity	3,000	8,386

### 13.2.11 Disciplinary measures

The disciplinary and orderly measures used in most detention facilities included appearing before a disciplinary committee, collecting water, cleaning cells and toilet facilities, doing garden work, loss of remission, caning, demotion in cases of *katikkiros* (prefects), institution of new charges, caution, cleaning the compound, counselling and warnings to the offender. According to human rights standards, discipline and order within a detention facility should be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life.<sup>456</sup>

The prison disciplinary measures are provided for under the Prisons Regulations 2012. However, the Commission noted with concern that caning was still erroneously meted out on inmates by either prefects or errant officers despite not being sanctioned by any administrative or governing body of prisons.

455 The proposed new rates of prisoner’s earning scheme were submitted to the first Parliamentary Counsel for approval.

456 Rule 8 of the Nelson Mandela Rules aka UN Standard Minimum Rules for the Treatment of Prisoners.

### 13.2.12 Access to information

Access to information provides inmates with information and knowledge about the current affairs, laws, legal practices, politics, religion, developmental issues, health issues and general knowledge about their cases,<sup>457</sup> which could be beneficial to the inmates. The Commission found that detainees were able to access information through sources such as televisions, newspapers, books and radios.



◀ An inmate reading newspapers at Kakuuto Prison in Rakai district

A number of Uganda Prisons Service facilities allowed detainees to have radios and newspapers and other sources of information. Prisons such as Soroti, Mbale, Serere and Ngora government prisons had TVs for inmates. On the other hand, inmates in police facilities were not allowed to access any information from any media.

### 13.2.13 Selected cases of long and arbitrary detention

The Commission noted with concern the continued long and arbitrary detention of suspects in police custody which negatively affected their right to fair and speedy trial. Some suspects were found to have been detained for weeks and even months in police custody without being produced before court. The justifications given by police for this long and arbitrary detention included ongoing investigations, delays by state attorneys to sanction files, irregular court sittings and the absence of judicial officers.

In prisons, the period ranged between three and twelve years on remand during the pre-trial detention. The reasons advanced for the long period of remand included lack of resident magistrates in places such as Kabale and Rukiga districts; few High Court sessions and lack of transport to take detainees to court. Other reasons were delayed police investigations, delays by persecutors to sanction files, failure of the witnesses to turn up for court, frequent adjournment of cases, lack of enough High Court sessions to handle the capital offences, and the absence of doctors and resources to handle postmortem; all of which impeded inmates on remand from accessing speedy trials.

457 Nelson Mandela Rules aka UN Standard Minimum Rules for the Treatment of Prisoners.

### 13.2.14 Human rights committees

Majority of the prisons inspected in 2018 had established Human Rights Committees for both staff and inmates. These committees especially for inmates helped in educating inmates about their rights and bringing to the attention of the officers in charge complaints such as on the quality and quantity of food; issues of overstay on remand; and the general welfare of inmates.



◀ A Commission staff interacting with inmates at Kotido Government Prison

The human rights committees were one of the complaints and grievance procedures put in place by UPS, in order to strengthen transparency and accountability mechanisms by ensuring that human rights concerns are brought to the attention of the authorities and are promptly addressed. The fact that human rights committees have been instituted in the majority of prisons was an indication of their effectiveness. However, the Commission noted that a number of human rights committees were not functional.

### 13.2.15 Staff conditions

Conditions of service of staff were also marred with challenges such as inadequate staffing levels, inadequate accommodation and delayed payments.

#### a) Staffing levels

The Commission found that a number of detention facilities had inadequate staffing levels and this critically affected the effectiveness of the police and prisons service. Frequent staff transfers contributed to shortage of staff. Understaffing was found at both police stations and police posts such as Otuke (Gulu district), Apac, Kawania and Potika (Lamwo district) police stations. At Agwiciri police post in Kwania district, the team found that the police post had been abandoned because the only officer deployed there had fallen sick and gone home unreported. To make matters worse, the police office had been left open for three weeks. When the Commission intervened, three personnel were immediately deployed at the post.

In the case of prisons, understaffing was not a major challenge but was reported in isolated cases such as at Kyegegwa and Butiiti government prisons.

#### b) Staff accommodation

Staff accommodation in prisons and police facilities remained a challenge in 2018, with many staff either living in dilapidated housing or renting from neighbouring communities. Prisons had made efforts in providing accommodation for their staff and the Commission found good staff accommodation at Orom Tikao Prison Farm in Kitgum district and Lugore Prison in Gulu district.



◀ Staff houses at Orom Tikoa Prison Farm in Kitgum district

On the other hand, police officers continued to live in a sorry state with old and dilapidated staff accommodation in most of the regions. A number of staff houses inspected were grass-thatched, dilapidated and lacked basic sanitation facilities.



◀ Dilapidated police accommodation at Kitgum Police Station

### c) Salaries

Even though both prisons and police officers indicated that they received salary on a monthly basis, majority expressed dissatisfaction with its adequacy. They expressed concern that their salaries were not commensurate with the ever-increasing inflation and the high cost of living. In addition, both police and prisons staff complained of delays in promotions which limited their career growth.

### d) Transport

In all the facilities visited, prisons and police officers indicated a challenge of lack of transportation for inmates and suspects respectively. Prisons officers stated that they had to trek long distances to take inmates to court, hospitals, water sources or workplaces due of absence of vehicles. Concerns were raised that the long walks with inmates put the security of officers at risk of being attacked by inmates and also created temptation for prisoners to escape.



◀ A new police vehicle for Abim Central Police Station

Prisons such as Amolatar, Amuria, Soroti, Serere, Kumi, Bukedea, Ngora, Lira, Alebtong, Dokolo and Katakwi did not have any means of transport. It was noted at Apac Prison, that inmates had to travel 4km to get to court, while those in Kole Prison travelled 7km. Even for prisons like Mutufu and Bubulo in Manafwa district which had lorries, they were old and broke down regularly.

#### e) Office stationery, furniture and equipment

In a number of facilities inspected, officers complained about the lack of office stationery such as books, equipment including printers and communication gadgets, furniture such as tables, as well as fuel for office operations. The Commission noted that other than uniforms and guns, most police stations lacked the basic office equipment to facilitate their law enforcement activities. Police posts such as Kicece, Nyabbani, Rwenjaza and Kakinga in Kamwenge district, even reported that they had no handcuffs.

Majority of the police officers informed the Commission that due to lack of stationery, they often requested complainants to provide books or to photocopy police forms. They also indicated that most of the police officers used their personal mobile phones for official communication.

#### 13.2.16 Rehabilitation of inmates

All prisons provided rehabilitation programmes such as counselling, guidance, psycho-social support, as well as education whereby inmates could study from primary to university level if they so wished. Vocational training was also available, through which inmates were taught various skills such as carpentry, building, gardening and tailoring, among others. The inmates could receive a portion of the proceeds when their products were sold to the public.

The Commission learnt that for any convict to engage in production activities, they had to have completed the vocational training phase. UPS reported that inmates work up to six hours per working day for both production and rehabilitation.



5th certificate award ceremony for inmates that graduated

#### 13.2.17 Challenges of facilities in hard-to-reach areas

The Commission noted that police officers in hard-to-reach areas such as Kalangala isles faced unique challenges. At Kitobo and Kachanga police stations in Kalangala district, police officers informed the Commission that they lacked accommodation and were never given any hard-to-reach allowance. The police cells at Kitobo Police Station were also found to be in such a poor state that suspects were reported to regularly escape during the night.



Police officers in all the stations on the islands also informed the Commission that they had no life jackets for themselves or the suspects, yet they had to cross by boat to the mainland while taking suspects to court. This often put their lives at risk. They were concerned that the court did not have special considerations for suspects on the islands during hearings and continued to regularly adjourn cases. In the end, travelling became expensive and tiresome since they have to travel long distances on land and water.

### 13.2.18 Recommendations

1. Ministry of Finance, Planning and Economic Development should increase funding to Uganda Prisons Service and Uganda Police Force to enable them build better structures so as to have facilities suitable for human habitation and stop overcrowding.
2. Uganda Law Reform Commission and Ministry of Justice and Constitutional Affairs should review the civil procedure rules to include a provision prohibiting the detention of civil debtors.
3. Ministry of Internal Affairs and Ministry of Gender, Labour and Social Development should ensure that juveniles are separated from adult offenders in all detention facilities and that children who are incarcerated with their imprisoned mothers are catered for.
4. Uganda Prisons Service and Uganda Police Force should completely phase out the bucket waste disposal system.
5. Uganda Prisons Service and Uganda Police Force should stop the torture of detainees in their custody.
6. Uganda Police Force should adequately facilitate all its stations and posts with the necessary stationery, equipment and transportation to enable officers do their policing work well.

## 13.3 CIVIC/ HUMAN RIGHTS EDUCATION IN 2018

### 13.3.0 Introduction

In fulfillment of its mandate to promote human rights in Uganda, the Commission continued to reach out to various categories of people to create awareness on human rights. This was in recognition of the right of everyone to know, seek and receive information about all human rights and fundamental freedoms and to have access to human rights education and training. Human rights education is essential for the promotion of universal respect for and observance of all human rights and freedoms for all in accordance with the principles of universality, indivisibility and interdependence of human rights.<sup>458</sup>

The Commission's efforts were also in furtherance of global efforts aimed at developing a universal culture of human rights in which everyone is aware of their own rights and responsibilities in respect of the rights of others and promoting the development of the individual as a responsible member of a free, peaceful, pluralist and inclusive society.<sup>459</sup>

Cognisant of the ongoing World Programme for Human Rights Education which was adopted by the UN General Assembly on 10<sup>th</sup> December 2004,<sup>460</sup> and building on its human rights education (HRE) interventions undertaken in 2017, the Commission continued to conduct human rights education

458 Article 1 of the UN Declaration on Human Rights Education and Training, 2011.

459 Article 4 (b) of the UN Declaration on Human Rights Education and Training, 2011.

460 UN General Assembly Resolution 59/113.

activities aimed at preventing occurrence of human rights violations. Potential human rights violators were, therefore, equipped with knowledge and information to enable them promote and respect human rights in their day-to-day operations. The HRE activities were also intended to empower rights holders to claim their rights from the duty bearers while fulfilling their duties and responsibilities.

### 13.3.1 Legal Framework

A number of international, regional and national human rights instruments ratified by Uganda have provisions on HRE. These include the UDHR (Article 26); the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (Article 7); the ICESCR (Article 13); the CAT (Article 10); the CEDAW (Article 10); the CRC (Article 29); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (Article 33); and the CRPD (Articles 4 and 8).

The importance of HRE is further enshrined in some international commitments such as the Vienna Declaration and Programme of Action (Part I, paras. 33–34 and Part II, paras. 78–82); the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001 (paras. 95–97 and paras. 129–139 of the Programme of Action); the Outcome Document of the Durban Review Conference, 2009 (paras. 22 and 107); and the 2005 World Summit Outcome (para. 131).

At the regional level, the African Charter on Human and Peoples' Rights, though not specific on HRE, provides for the right to education under Article 17, which in principle and practice encompasses the right to HRE. Similarly, Article 11 of the African Charter on the Rights and Welfare of the Child (ARWC) provides for the right to education.

At national level, the right to education including HRE is provided for under the 1995 Constitution of Uganda under Objective XVIII of the National Objectives and Directive Principles of State Policy, and articles 30 and 52 (1), c, e, f and g.

### 13.3.2 The Commission's civic and human rights education interventions

The Commission made significant strides in HRE and training in 2018. Interventions were largely premised on its mandate as provided for in the legal framework and in its 2015/16-2019/20 Development Plan. The interventions targeted a cross-section of the people including duty bearers and rights holders in the informal and formal sectors.

The Commission applied a wide range of human rights education methods appropriate for the different audiences that were targeted in 2018. These included use of baraza, road shows, television and radio talk shows, spot messages, debates, workshops, advocacy through commemoration of selected human rights days, music, dance and drama, and information, education and communication (IEC) materials. The Library and Documentation Centre of UHRC was also accessed by members of the public which enhanced their understanding of human rights.

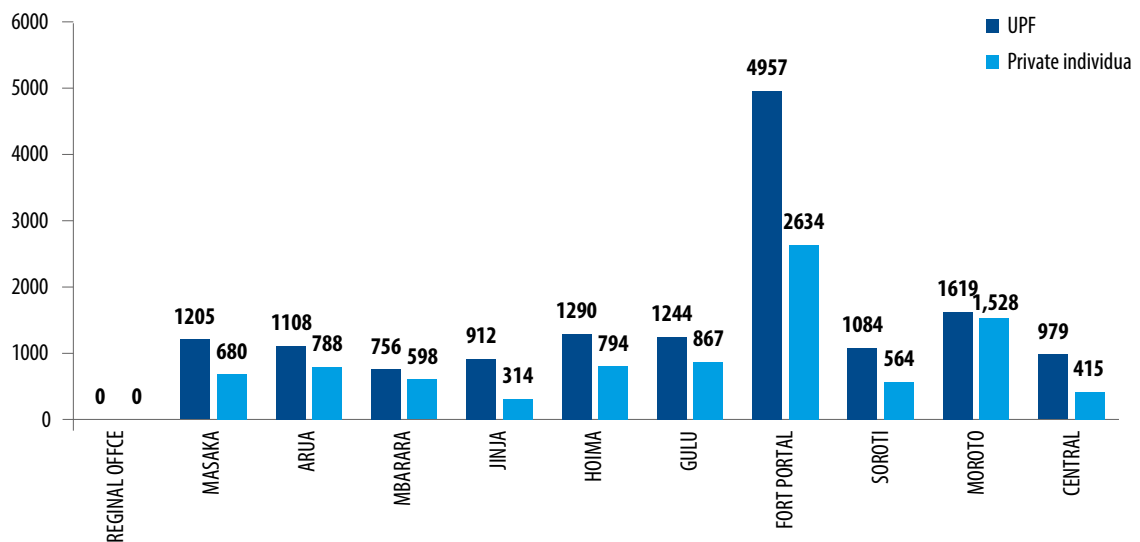
The interventions targeted the police, UPDF, prisons, staff of government ministries, department and agencies, members of Parliament, academia, media (editors and reporters), civil society organisations (CSOs), cultural and religious leaders, head teachers, teachers, patrons and matrons of human rights and peace clubs in secondary schools, staff of Uganda Human Rights Commission, staff of district local governments and the general public.

### a) Human rights education through baraza

In 2018, the Commission conducted baraza (public meeting used as a platform for creating awareness and instantly responding to issues) in 67 districts compared to 56 districts that were covered in 2017. The baraza strategy enabled the Commission to penetrate hard-to-reach rural, semi-rural, urban and remote parts of the country with appropriately targeted human rights messages and a chance to answer immediately the audience’s questions on human rights issues.

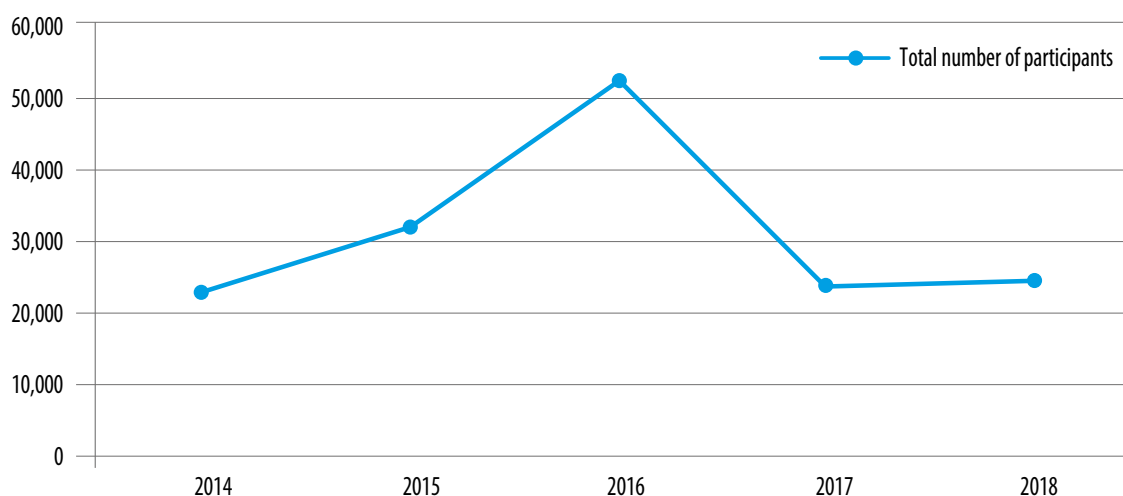
A total number of 24,336 people were sensitised, out of whom 15,154 were male and 9,182 female. There was a 3.6% increase in the number of people reached through baraza compared to the 23,469 sensitised in 2017. The total number of participants reached through baraza increased by 3.6%, although there was a general decline in women participation by 8.3% compared to 10,124 females who participated in baraza in 2017. In terms of women’s participation in baraza in 2018, Fort Portal and Moroto regional offices registered the highest attendance while Jinja, Central and Soroti regional offices registered the lowest. The wide gap in low attendance to the Commission baraza by women compared to their male counterparts could be attributed to the patriarchal nature of the Ugandan society. Figure 15 below shows the gender disaggregation of participants to baraza in 2018 while Figure 16 shows the trend of attendance over the last five years.

FIGURE 15: NUMBER OF PARTICIPANTS IN BARAZA IN 2018 DISAGGREGATED BY GENDER PER REGIONAL OFFICE



Community sensitisation (baraza) at Katugo Trading Centre in Kyankwanzi district.

FIGURE 16: ATTENDENCE OF BARAZA OVER THE LAST FIVE YEARS 2014 - 2018



Participants who attended the Commission baraza raised a number of salient issues for the attention of various stakeholders, including state and non-state actors as summarised below:

- i) Corruption was rampant in government institutions especially among some police officers who demanded money to grant police bond to suspects, close files, exaggerated transport fees to effect arrests of suspects and airtime to facilitate their communication to process files.
- ii) Delay in disposal of cases by the Justice, Law and Order Sector institutions such as Uganda Police Force, Directorate of Public Prosecutions and courts of judicature.
- iii) Rampant domestic violence was raised as a major human rights concern across all regional offices. There were concerns that men were not given redress whenever they reported cases of domestic violence to the police.
- iv) There was a general concern about exploitation of people by microfinance institutions and specifically in Iganga district where some microfinance staff were accused of torturing guarantors of debtors who failed to honour their loan obligations.
- v) There was a general concern about limited appreciation of duties and responsibilities by a number of citizens. A number of people had a tendency of only focusing on their rights without due attention to the rights of others and their obligation to respect them.
- vi) In most areas reached by the Commission, participants decried high rates of criminal activities by the youths and increasing cases of mob action.
- vii) Child and forced marriages were equally a matter of serious concern in most communities. In Kole district, it was reported that to evade the law, some parents and clan leaders had devised a trick of exchanging cows in the market under the guise of selling and buying of cows when in fact they were being exchanged as bride wealth after agreeing to marry off their children.
- viii) Female genital mutilation (FGM) was said to have resurfaced especially among the illiterate girls and women. Some people were reportedly conducting FGM clandestinely in Sebei and Karamoja sub-regions. It was noted that women who underwent FGM intimidated those who did not, referring to them as less of women.

The Commission was able to provide instant feedback to the participants on the issues raised and registered others for further management. Some issues were responded to by partners from the Justice, Law and Order Sector with whom the Commission conducts baraza. The Commission closely followed up the issues of delays in the administration of justice, exploitation of people by microfinance institutions and moneylenders, and increasing cases of domestic violence, hence their inclusion in this 21<sup>st</sup> Annual Report to Parliament.



◀ The District Lands Officer, Agago presenting a paper on land-related rights to a baraza at Lamiyo

#### b) Human rights education through road shows

The Commission conducted mobile human rights sensitisation activities using civic education vans to penetrate the deeper, remote and hard-to-reach geographical areas of Uganda from one village and/or town to another. Commission staff teamed up with other duty bearers such as the police, district local government officials, among others, to disseminate information on human rights and freedoms. The Commission sensitized grassroots communities about their rights, duties and responsibilities; and this enhanced the Commission's visibility. The Commission was also able to acquaint itself with firsthand human rights concerns at the grassroots and give immediate feedback/answers to the communities about those concerns. Road shows were characterised by live educative drama, music presentations on various human rights issues, interactive question-and-answer sessions on human rights and provision of legal advice.

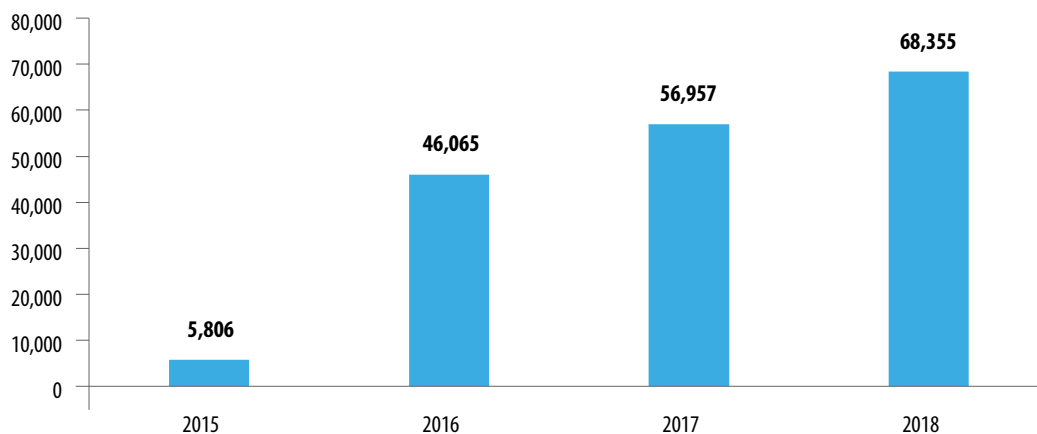
Using the road show strategy, the Commission reached a total of 68,355 people, out of whom 42,831 were male and 25,524 female from all regions of Uganda in 82 districts, as indicated in Table 35 below.

**TABLE 35: ROAD SHOWS CONDUCTED PER REGIONAL OFFICES**

SN	REGIONAL OFFICE	DISTRICTS COVERED
1	Moroto	Amudat, Nakapiripirit, Napak, Moroto, Nabilatuk, Napak, Abim
2	Central	Wakiso, Kayunga, Buikwe, Mukono, Gomba, Butambala, Mubende, Nakasongola, Nakaseke, Mityana
3	Fort Portal	Kamwenge, Kyenjojo, Kyegegwa, Ntoroko, Kabarole, Bunyangabu, Bundibugyo, Kasese
4	Gulu	Agago, Amuru, Otuke, Alebtong, Apac, Lamwo, Dokolo
5	Masaka	Kalungu, Lyantonde, Bukomansimbi, Lwengo, Kyotera, Rakai, Kalangala, Masaka, Sembabule
6	Jinja	Namayingo, Mayuge, Bugiri, Kaliro, Kamuli, Namutumba, Pallisa, Kibuku, Budaka
7	Soroti	Bukedea, Kapchorwa, Manafwa, Sironko, Kumi, Bulambuli, Mbale, Serere, Ngora
8	Hoima	Kagadi, Kiryandongo, Buliisa, Masindi, Kyankwanzi, Hoima, Kibaale, Kakumiro
9	Arua	Arua, Koboko, Maracha, Pakwach, Yumbe, Nebbi, Zombo
10	Mbarara	Buhweju, Ibanda, Mitooma, Rubirizi, Sheema, Rukungiri, Isingiro and Ntungamo.

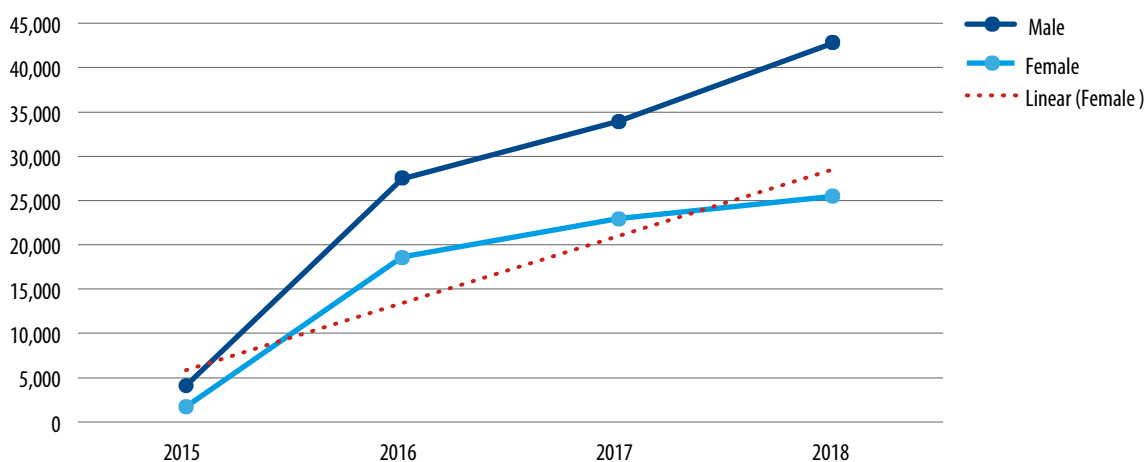
Compared to 2017, there was a 20% increase in the number of people reached from 56,957 in 2017 to 68,355 in 2018 and a 13.8% increase in the number of districts covered from 72 to 82. This was attributed to effective timing (seasons with minimal economic activities, time of the day when people are settled in towns/points of the road shows and specific targeting of market days where so many people are found). The topics handled in the different areas covered were equally of great relevance to the local problems. Figure 17 below shows the number of participants reached through road shows over the past four years since the the Commission adopted the strategy.

FIGURE 17: NUMBER OF PARTICIPANTS REACHED THROUGH ROAD SHOWS FROM 2015 TO 2018



It should be noted that the Commission reached more people through the road shows than the documented ones because some either refused or were too busy to register or were unable to register. Failure to register was partly attributed to the nature of the road shows where most people attended while standing or continuing with their activities such as selling items in the markets or in their shops. To some extent though, it was also because people were not expecting any monetary rewards to sign for at the end of the road show. The participants in the road shows also helped to disseminate information to others and especially the IEC materials that were distributed thereby causing a multiplier effect in the delivery of human rights messages. Despite women still being fewer in attendance than men, their participation was steadily increasing over the years as presented in Figure 18 below.

FIGURE 18: PARTICIPANTS IN ROAD SHOWS FROM 2015 TO 2018 DISAGGREGATED BY GENDER



Some of the messages disseminated during the road shows were: the establishment and mandate of Uganda Human Rights Commission; rights of vulnerable persons (women, children, suspects, refugees, PWDs, persons living with HIV/AIDS); dangers associated with early and forced marriages; land-related rights in the cultural and legal perspectives; domestic violence and its human rights implications; succession rights; juvenile justice; duties and responsibilities of citizens; property rights generally focusing on acquisition and ownership of land; and mob action. Others were the right to personal liberty; freedom from torture (PPTA, 2012); Public Order Management Act, 2013; the right to found a family and the roles of individuals; roles and responsibilities of local leaders in promoting and protecting human rights; right to education; gender-based violence; defilement; child labour; constitutionalism with particular emphasis on articles 1 (1-4), 17, 31 and 34 of the Constitution of Uganda; writing a will, right to life; and the Commission's complaints handling procedures.



◀ *The Acting Regional Human Rights Officer, Fort Portal Regional Office, Mr. Chrispus Kateeba (in green shirt) and the Batwa king, Omukama Nzito, on his right, pose for a photo with some members of the Batwa community after addressing them on Human rights issues in Bundibugyo district*

During the road shows, the people raised several recurrent concerns including child neglect especially by men; domestic violence; succession rights; high rates of defilement; land conflicts; high consumption of alcohol; early and forced marriages; lack of and or inadequacy of social services (health facilities, infrastructures, education etc.); high rate of corruption among public servants; and ignorance about the various mandates and jurisdiction over complaints handled by various government institutions. Others were over detention of suspects in police cells; increasing cases of torture of journalists and other people by security personnel; violation of the rights of vulnerable persons; rampant killings of people without arresting the culprits; misinterpretation and application of the concept of human rights by many community members; and cultural beliefs that contravene human rights standards, among others.

### c) Workshops/ dialogues conducted

#### i) Dialogue on state accountability and fighting impunity for human rights violations

The Commission organised a dialogue in June 2018 to discuss state accountability and fighting impunity in six sectors; namely, education, health, justice, information, security and the defence of human rights. It was aimed at identifying the gaps/ obstacles in state accountability; discussing the causes and effects of inadequate accountability and impunity; and identifying pertinent / emerging issues for consideration in engaging with and guiding government entities to enhance accountability and fight impunity.

A total of 89 participants (63 male and 26 female) drawn from government ministries, department and agencies, security agencies, development partners, academia, media and civil society attended the dialogue held at Golf Course Hotel, Kampala and televised live on NBS Television.

At the end of the dialogue, the following issues emerged:

- Participants raised, as a hindrance to state accountability, the challenge of having a very good legal framework with constitutional guarantees on human rights but which is not effectively implemented.
- The principle of separation of powers (executive, parliament and judiciary) was faced with enormous challenges and was not a reality in Uganda. Failure to adhere to the principle of separation of powers had an indirect negative impact on the protection and promotion of human rights.
- The need for citizens to aggressively demand and at the same time fight for respect of the existing constitutional safeguards for the protection and promotion of human rights through peaceful means.
- Despite the constitutional guarantee and recognition that power belongs to the people, Ugandan citizens were largely still disempowered, inactive and often indifferent and, therefore, not utilising the existing platforms for holding government accountable.
- In elections, selection and appointment of leaders in the sectors examined, the question of merit was largely disregarded. Consequently, accountability is generally not to the rights holders that the leaders are expected to serve but to the interests of a few individuals.

#### **ii) National dialogue on the rights of indigenous peoples and extractive industries**

Uganda Human Rights Commission, in conjunction with the International Work Group for Indigenous Affairs and the African Commission on Human and Peoples' Rights (the African Commission) through its Working Group on Indigenous Populations/Communities in Africa (the Working Group) organised a National Dialogue on the impact of extractive industries on indigenous communities, from 27<sup>th</sup> to 28<sup>th</sup> November 2018 in Kampala, Uganda. The National Dialogue was attended by 62 participants from the Working Group, represented by its chairperson, Honorable Commissioner Soyata Maiga, the ministry of Gender, Labour and Social Development, the chairperson of the Human Rights Committee of the Parliament of Uganda, the Equal Opportunities Commission, the Justice, Law and Order Sector Secretariat, indigenous people's organisations, civil society organisations based in Uganda, the International Work Group for Indigenous Affairs and the media.

The dialogue mentioned above ended with a communiqué which can be accessed on <http://www.achpr.org/news/2018/12/d362/> for details.

#### **d) Media engagement activities**

The Commission organised a training workshop for editors and reporters as well as a meeting with media managers, both of which were aimed at strengthening the Commission's partnership with the media for enhanced protection and promotion of human rights.

The media engagement activities were organised to enhance the knowledge of media practitioners on the concept of human rights and the human rights-based approach (HRBA); to enhance their appreciation of their role in protection and promotion of human rights and rejuvenate their commitment to their role as human rights defenders.

Engagements with media managers and editors re-awakened and reminded them of the importance of prioritising human rights in the media. The concerted efforts necessary to enhance effectiveness in human rights reporting were discussed as well as ways in which media owners could support reporters to be effective human rights defenders.

From the discussions, the following actions were recommended for the partnership between the Commission and the media to enhance promotion and protection of human rights.



- i) Review of the human rights training manuals for security agencies to specifically provide for press freedoms so as to enhance the respect for rights of journalists by security agencies.
- ii) Identify all legislative provisions; for example, sections 53 and 179 of the Penal Code Act; the Press and Journalist Act, 2000; the Access to Information Act, 2005; and the Access to Information Regulations, 2011, and the Uganda Broadcasting Corporation Act, 2005, among others, that criminalise media work, and advocate to parliament to repeal the obsolete sections.
- iii) Engage respective stakeholders to fast-track a law on minimum wage to ensure that economic rights of journalists are promoted and protected.
- iv) Engage media enterprises, owners and broadcasters, among others, to ensure that issues of remuneration, security (provision of safety equipment e.g. bulletproofs) and medical care/insurance are addressed.
- v) Recommend to Parliament to draft a law that mandates media houses to have safety gears for journalists to ensure that their rights are protected.
- vi) Influence partnerships with development partners to invest in human rights investigative stories since they are costly for various media houses.
- vii) Engage with media training institutions and law schools to consider teaching Human Rights Journalism so as to ensure that those practising journalism are knowledgeable about human rights and fundamental freedoms.
- viii) Engage with Uganda Communications Commission to establish a tribunal to handle complaints against journalists before any other course of action is enforced as stipulated in section 60 of the Uganda Communications Act.
- ix) Oblige journalists to maintain and observe their ethical Journalism Code of Conduct and avoid infringing on other people's rights by ensuring the right to privacy, providing accurate information and avoiding hate speech, promotion of violence, plagiarism/intellectual theft and conflict of interest, among other ills.

#### e) Engagements with students and teachers through the human rights and peace clubs

The Commission continued to form human rights and peace clubs and strengthen the already existing ones through continued monitoring, training, facilitation with logistics and training materials, as well as engaging in human rights debates. Trainings were also conducted for patrons, teachers and head teachers on the HRBA to development.

Specific and general human rights education was also conducted through debating competitions on topical issues such as the role of human rights in development and dialogues on electoral democracy.



◀ HRPC members of Iceme Girls S.S in Lira district. On the left are the head teacher, Sr. Clare, Commission staff and the HRPC patron of the school

In 2018, through the efforts of the Commission regional offices, 72 new human rights and peace clubs were formed in 72 schools in 18 districts. Executive members of the clubs were duly elected and the patrons nominated/designated officially by the head teachers of the respective schools as required by the guidelines.

#### **f) Human rights training for teachers and headteachers on HRBA**

The Commission's interventions for school and human rights clubs were largely focusing on students over the years. Over time it was established that some teachers and school administrators lacked basic appreciation on the concept of human rights and HRBA. The Commission, therefore, organised trainings in HRBA for selected teachers and school administrators which were attended by a total of 315 teachers and head teachers of schools with human rights and peace clubs. The trainings were conducted by the Commission's regional offices of Central, Mbarara, Jinja, Hoima, Gulu, Masaka, Arua, Soroti, Moroto and Fort Portal in 2018.

The emerging issues from the Commission's engagements with school human rights and peace clubs are summarised below:

- i) There was still a negative attitude by some school administrators towards human rights and that was why some schools were yet to establish the clubs for fear that human rights knowledge was bound to make schools ungovernable.
- ii) Despite corporal punishment being outlawed, it was still applied by so many teachers in a number of schools. This was pointed out as one of the key challenges affecting children in schools.
- iii) There is need to integrate HRBA in decision-making processes in schools to guard against infringing on the rights of students, teachers and parents.

#### **13.3.4 Commemoration of international, regional and national human rights days.**

The Commission joined the rest of the world and the country in commemorating selected international, regional and national human rights days with a cardinal aim of evaluating strides made in the protection and promotion of human rights associated with the specific days. Commemoration events served as crucial platforms for raising awareness, making advocacy, highlighting achievements, documenting challenges and coming up with proposals to enhance the protection and promotion of human rights.

In 2018, the Commission, together with its partners, commemorated World Press Freedom day on 3<sup>rd</sup> May, the UN International Day in Support of Victims of Torture on 26<sup>th</sup> June, the Constitution Day on 8<sup>th</sup> October and the International Human Rights Day on 10<sup>th</sup> December.

#### **a) World Press Freedom Day (3<sup>rd</sup> May)**

The Commission partnered Uganda Journalists Association, African Centre for Media Excellence, Uganda Media Women's Association, OHCHR, the National Commission for UNESCO in Uganda and other civil society organisations to commemorate the World Press Freedom Day under the theme **'Keeping Power in Check: Media, Justice and the Rule of Law'**. The commemoration activities attended by 210 (125 males and 85 females) participants from the media fraternity, academia, MDAs and the general public were presided over the Speaker of Parliament Rt. Hon. Rebecca Kadaga. She called for respect for the rights of journalists and freedom of the media. She also pledged Parliament's commitment in enacting laws that enhance press freedom.

### b) UN International Day in Support of Victims of Torture (26<sup>th</sup> June)

In conjunction with ACTV, OHCHR and other partners under the Coalition Against Torture, the Commission commemorated the International Day in Support of Victims of Torture under the theme **'Rehabilitate survivors, bring perpetrators to account'**. The commemoration was attended by 180 people, of whom 101 were males and 79 females.

The Commission, ACTV and the Refugee Law Project held legal and medical aid clinics through community outreaches, offering legal and medical aid to victims of torture. Two community outreaches were held in Kampala on 21<sup>st</sup> June 2018 at Old Kampala S.S playground and on 22<sup>nd</sup> June 2018 at Kitintale Kampala Capital City Authority (KCCA) grounds as a way of mobilising torture survivors to access remedies. Two others were held in Gulu and Kotido targeting torture survivors in Acholi and Karamoja sub-regions respectively.

Joint media advocacy campaigns against torture and awareness creation on the PPTA were carried out from 21<sup>st</sup> to 30<sup>th</sup> June 2018 through electronic, print and social media platforms.

### c) Commemoration of Constitution Day (8<sup>th</sup> October)

The Commission commemorated the anniversary of the promulgation of the Constitution of Uganda through a series of interventions which included radio and television talk shows on constitutionalism and the rule of law in Uganda, district dialogues, debates by members of human rights and peace clubs, peaceful procession, a baraza and a national dialogue.

A one-day dialogue was held in 10 districts by each of the Commission's regional offices with a special focus on decentralisation as a means of empowering people to play a role in their governance at the local levels. The dialogues were held by discussing a keynote speech on the topic, **'Decentralisation has enhanced the people's constitutional power to participate in democratic governance'**.

Members of the human rights and peace clubs were equally engaged to reflect on constitutionalism in Uganda. Secondary school students held debates on the topic, **'To what extent have periodic elections in Uganda reflected the people's power?'**

The commemoration events were crowned with a national dialogue, under the theme **'Sovereignty of the people; rights, duties and responsibilities of stakeholders'**, at Sheraton Hotel, Kampala on 5<sup>th</sup> October 2018. The national dialogue was preceded by a peaceful procession in Kampala city and a baraza at the Constitution Square on 3<sup>rd</sup> October 2018 on the theme, **'Upholding the rule of law, constitutionalism and human rights: A responsibility for all'**.

Arising out of the Constitution Square commemoration activities, the following issues emerged:

- i) The urgent need to implement recommendations on electoral reforms.
- ii) Opening up the process of appointing judges in Uganda.
- iii) Amending the Constitution of Uganda to clearly define the word "people" as citizens of Uganda.
- iv) The need for all Ugandans to respect the Constitution and its provisions relating to the amendment of the Constitution.
- v) The need to enforce strict adherence to Article 221 of the Constitution which requires security officers to respect human rights in the course of executing their duties.
- vi) Promoting dialogue as the most effective means for resolving all conflicts such that war should never be supported by anyone.
- vii) The Judiciary not effectively playing its role to check the Legislature and the Executive arms of government.
- viii) People of Uganda not having the means to exercise their residual powers upon the elected leaders.



◀ Dignitaries pose for a group photo during the Constitution Day dialogue on 5th October 2018 at Sheraton Kampala Hotel

#### d) International Human Rights Day (10<sup>th</sup> December)

The Commission, in partnership with, among others, the OHCHR and human rights CSOs, commemorated the International Human Rights Day on 10<sup>th</sup> December 2018. The Comemoration activities were carried out by the Head Office together with Arua, Gulu, Central and Soroti regional offices. The entire commemoration activities attracted 1,193 participants (732 female and 461 male) from government departments, JLOs institutions, security agencies, the judiciary, legislature, CSOs, development partners, foreign missions, international agencies, political and civic organisations, the media, sister commissions, educational institutions, minority groups (albinos), professional bodies and associations. The day also marked the 70<sup>th</sup> anniversary of the adoption of the Universal Declaration of Human Rights and was commemorated under the theme: **‘Stand up 4 rights’** with three major objectives: **To promote; to engage; and to reflect.**



◀ A peaceful procession during commemoration of the International Human Rights Day in Soroti town

As part of the commemoration activities, the Commission organised a Human Rights Drawing/ Painting competition based on any article of choice in the UDHR. It targeted young people aged 10 to 18 to encourage them develop an interest in human rights and enhance their knowledge to enable them engage in the promotion and respect of human rights. It was intended to showcase children’s talent, creativity, skill and imagination and their contribution to the promotion of human rights discourse in their schools, at home and the communities in which they live. A total of 96 entries (art pieces) were received from across the country from 61 females and 35 males. A selection of the best drawings/paintings was compiled into a child-friendly compendium and some of them were published in the December 2018 *Tooto Magazine* editions of the *New Vision* newspaper.

A human rights essay competition was also held targeting the youth in high schools, universities, tertiary institutions and those who may have completed university. They were required to submit essays on any article of their choice in the UDHR. The main objective of the essay competition was to encourage the youth to develop interest and enhance their knowledge in human rights to enable them to engage in the promotion and respect of human rights. It was also intended to gauge their understanding of the UDHR and its applicability in the promotion of human rights in their academic institutions, homes, communities and the entire country. A total of 200 entries from 130 males and 70 females were received.

The essay competition was won by Mr. Ronald Okiring (from the male category), a law student at Makerere University, whose essay was entitled, '**A bird's view of the UDHR: A refugee woman's perspective**'. It was based on Article 7 of the UDHR which provides for equality and protection for all before the law. Ms. Pearl Kyomuhendo, a human resource undergraduate student of Makerere University Business School, emerged best in the female category. Her essay was a reflection on Article 1 of the UDHR under the topic, '**The truism in the enjoyment of fundamental human rights in modern days**'.

The two winners were awarded a trip to the African Union Secretariat in Addis Ababa, which they made in January 2019.



◀ Gulu RHRD, OHCHR Head of Office Gulu and Deputy RDC Gulu leading the march to Kaunda grounds for the commemoration of the International Human Rights Day.

The Commission and partners also decided to set up a Human Rights Museum/Gallery in Uganda. Considering that the UDHR has been in existence for 70 years and in an effort to enhance awareness about its provisions among various categories of the public, it was decided that the diversity of art be used as an innovative way of communicating and illustrating the human rights themes contained therein.

The Human Rights Museum/Gallery is a long-term project of various phases and the first phase was the launch of the campaign to collect art pieces. A call was circulated to interested artists to contribute to the historic event of establishing the first-ever Human Rights Museum/Gallery in Uganda by contributing artworks illustrating any of the 30 articles of the UDHR through paintings, poetry, sculptures, photography and videography. These were displayed at the mini-exhibition on 10<sup>th</sup> December 2018 during the main celebrations at the Railway Grounds, Kampala and would later be used to establish the Human Rights Museum/Gallery.

A total of 39 artists (30 male and nine female) responded and submitted a total of 57 art pieces on various human rights themes that were displayed at the mini-exhibition. The art pieces illustrated various human rights themes ranging from the right to a fair hearing; freedom from torture, cruel, inhuman or degrading treatment; right to culture; freedom of expression; freedom of movement; right to a family; right to property; and the right to participate in government, among others.



◀ Hon. Chief Justice Bart Katureebe, the chief guest, Hon. Jovah Kamateeka, Mr. Med S. K. Kaggwa inspecting the Human Rights Gallery during the commemoration of International Human Rights Day 2018 at Railway Grounds in Kampala.

### 13.3.5 Media-based human rights education

The media continued to play a pivotal role in the Commission's dissemination of human rights messages to a wide range of stakeholders. The Commission used talk shows and spot messages on both radio and television, press conferences on topical and emerging human rights issues in the country and newspaper supplements to communicate human rights messages.

#### a) Radio and television talk shows

A total of 214 radio talk shows were conducted in the major languages spoken in the country including Runyankore, Rukiga, Rutooro, Runyoro, Luganda, Lusoga, Luo, Ateso, Lugbara, Ng'akari-mojong and English. The talk shows were mainly conducted at peak hours attracting a total number of 1,439 callers, of whom 1,155 were male and 284 female. The low participation by women could be a reflection of patriarchal tendencies in which women are yet to fully realise their potential in terms of equality and non-discrimination. Women could have been occupied with household chores at the time of the talk shows; might have had no airtime; could have been discouraged from listening or calling in by their husbands; or as a result of their history of lagging behind.

The topics covered included the establishment and mandate of the Commission; the rights of vulnerable persons (women, children, suspects, refugees, PWDs, persons living with HIV/AIDS); the dangers associated with early and forced marriages; domestic violence and its human rights implications; succession rights; duties and responsibilities of citizens; mob action; the right to personal liberty, freedom from torture (PPTA 2012); Public Order Management Act; the right to a family and the roles of individuals; and child labour. Other topics were constitutionalism with particular emphasis on articles 1 (1-4) and 17 of the Constitution, the right to life, and the Commission complaints handling procedure, among others. Radio talk shows further offered another forum through which the public asked questions to the Commission staff about its operations, their rights and status of their complaints.



◀ Mr. Baldwin Karugaba, a moderator at NTV, UHRC Chairperson Hon. Med Kaggwa (C) and Director Research, Education and Documentation Mr. Kamadi Byonabye conducting a television talk show on NTV in commemoration of Constitution Day, 2018.

On the other hand, six television talk shows were conducted on NBS, NTV and TV West. They focused on popularising the Commission’s 2017 Annual Report; commemoration of the promulgation of the Constitution and the International Human Rights Day in addition to other general human rights issues.



◀ Commissioner Dr. Katebalirwe Amooti Wa Irumba (L) together with Ms. Theopista Twembi sensitising listeners of TV West on the mandate of the Commission

#### b) Radio and television spot messages

Radio and television spot messages continued to be aired to the public on a regular basis as part of the Commission’s continuous programme of human rights education. The use of spot messages helped the public to be constantly reminded of key human rights messages vital for the observance of human rights in Uganda, be notified and or reminded of the existence of the Commission and how to access its services at all its service points across the country.

In 2018, some 7,885 radio spot messages were aired, up from the 6,713 aired in 2017. Major topics covered included equality and non-discrimination, mob action and its human rights implications, early and forced marriages, shared parental responsibilities for child care and maintenance, the right to freedom from torture and cruel inhuman degrading treatment or punishment, the right to liberty, right to property, children’s rights, and equality and non-discrimination, among others. The Commission also aired out 150 TV spot messages on the same topics.

#### c) Media briefings, newspaper supplements and exhibitions

In order to respond to the emerging human rights issues, advise the government, create awareness, and keep the country posted on the latest developments in the human rights landscape, the Commission held seven press conferences focusing on the following:

- i) Emerging human rights concerns on police brutality against journalists; prolonged detention of suspects without trial; allegations of cases of incommunicado detention of suspects; increased incidence of lawlessness; and crimes resulting in some incidents of unexplained deaths. Others were attacks on some policemen by unknown assailants; mysterious deaths of foreign nationals; land wrangles and their impact on citizens; increased road accidents; threats of climate change and its effect on natural disasters; and shortage of blood supply in hospitals and its impact on the right to health.
- ii) Joint statement with members of the Coalition Against Torture (CAT) and other partners to launch activities to commemorate the UN International Day in Support of Victims of Torture.
- iii) Impromptu press briefing by the Commission to inform the country of its findings following a visit by a team led by the Chairperson to Makindye Military Barracks and Lubaga Hospital,

Kampala to ascertain the whereabouts and assess the condition of the members of Parliament (Hon. Robert Kyagulanyi and Hon. Francis Zaake) who had been detained on 17/08/18 in Arua following a fracas during the by-election in Arua municipality.

- iv) The Commission's detailed statement on emerging human rights concerns following the fracas that followed the Arua municipality by-election held on 15<sup>th</sup> August 2018 and to condemn the subsequent human rights violations.
- v) Joint statement by the Commission and other partners who included Public Interest Law Clinic (PILAC), Equal Opportunities Commission and MGLSD to announce and popularize the 5<sup>th</sup> National Conference on Economic, Social and Cultural Rights held at Makerere University, Kampala on the theme '**Leaving no one behind: Leveraging the SDGs to realise economic, social and cultural rights in Uganda**'.
- vi) The Commission's position on the prevailing human rights concerns in the country included alleged human rights violations of suspects during arrest and detention; incidents of brutal arrests and allegations of holding suspects incommunicado; human rights violations during the rampant land evictions; and Bududa landslides. The statement also communicated the Commission's interventions in some of the incidents reported.
- vii) Joint press release by the Commission and UNICEF to announce the launch of their joint report on findings of an assessment of Uganda's legislation against the UN Convention on the Rights of the Child.

#### **d) Newspaper supplements and exhibitions**

Supplements were published to further inform, sensitize and educate the public on special events and thematic human rights issues, as detailed below:

- i) Congratulatory message on the 28<sup>th</sup> Anniversary of the National Day of German Reunification on 3<sup>rd</sup> October 2018;
- ii) Congratulatory message on Uganda's 56<sup>th</sup> Independence Day Anniversary on 9<sup>th</sup> October 2018;
- iii) The Commission's mandate and highlights of its achievements;
- iv) Highlights of the Commission's 20<sup>th</sup> Annual Report to Parliament; and the
- v) Statement to clarify on an earlier story published by the *New Vision* newspaper on 6<sup>th</sup> September 2018 on the Commission's mandate to visit military detention facilities.

The Commission took part in two crucial exhibitions; one on the Human Rights Expo organized by the Makerere University Ethics and Human Rights Association to commemorate the UDHR, in which students were sensitized on the mandate of the Commission and the relevance of each of the articles of the UDHR. The other one was the second Annual Taxpayers Appreciation Expo organised by URA for all MDAs which was held at Kololo Independence Grounds under the theme '*Stronger Together*'. The public was informed about the Commission's mandate and staff provided legal aid services. During the expo at Kololo, 41 complaints of human rights violations were received for further processing. The Commission got an opportunity to receive feedback from the public on its services and also provide immediate responses and clarifications on the issues raised.

#### **13.3.6 Commission Library and Documentation Centres**

The Commission's Library and Documentation Centres (LDCs) at Headquarters and at the regional offices continued to operate in 2018. They were accessed by staff of the Commission as well as the public for reference. They served users with academic, general research and information needs, specifically on human rights but also generally.



A total of 539 users who included students and researchers, visited the LDCs in 2018. Of these, 448 were male and 84 female. There was a noticeable decline in the number of walk-in clients from the 718 who accessed the LDCs in 2017 partly due to the continuous evolving technology in the digital era where access is not tagged to geographical space. The LDCs also received a total of 450 textbooks on human rights and related subjects in the year. In addition, the LDC subscribed to the Uganda Online Law Library and Uganda Printing and Publishing Corporation (UPPC) to ease clients' access to the Laws of Uganda and Consortium of Uganda University Libraries (CUUL) to enhance access to digital collections by staff and clients in all libraries.

### 13.3.7 Human rights awareness through IEC materials

The use of information, education and communication (IEC) materials is one of the visual and pictorial methods employed by the Commission to buttress its human rights education efforts. Human rights messages are presented through materials such as posters, brochures, flyers, billboards, magazines, T-shirts, calendars, talking compounds and banners, among others. In 2018, the Commission produced a total of 208,139 IEC materials which included 11,997 badges, 124 talking compounds, 150,000 flyers, 10,000 laminated posters, 3,500 handbooks and 2,147 T-shirts. These were distributed to members of the human rights and peace clubs, key Commission stakeholders as well as members of the general public.

Some of the messages on the IEC materials implored members of the public to desist from mob action; urged students to emulate and nurture a culture of respect for human rights; called upon the police to respect the right to personal liberty; and provided the public with the toll-free lines through which to report to the Commission in case of a violation of rights.



◀ IEC materials on different human rights

### 13.3.8 Challenges faced by the Commission in providing human rights education

1. Inadequate funding remains a major hindrance to sustain continuous human rights/civic education.
2. It requires protracted engagements for some people to appreciate the fact that some cultural beliefs and practices violate human rights.
3. Whereas many Ugandans are increasingly demanding their rights, many are silent on the fact that human rights are enjoyed in tandem with duties and responsibilities.
4. The lack of a National Civic Education Policy continues to negatively affect coordination, harmonisation, funding and delivery of civic education in Uganda.

### 13.3.8 Recommendations

1. Government should approve the draft National Civic Education Policy.
2. As recommended in the previous reports, Government should, through Ministry of Finance, Planning and Economic Development, increase funding for civic education in Uganda.
3. Government should, through the ministry of ICT and National Guidance, design a strategy of inculcating a spirit of respect for the rule of law and value systems vital for fulfillment of duties and responsibilities by the people.
4. The Ministry of Education and Sports should put in place mechanisms to eradicate the use of corporal punishments in schools.

## 13.4 FINANCE AND ADMINISTRATION IN THE FINANCIAL YEAR 2017/2018

Administration and support services rendered during FY 2017/2018 enabled the Commission achieve its strategic objectives as well as strengthened systems and accountability to enhance effective service delivery. Financial resources were mobilised from both Government of Uganda (GoU) and development partners; human resources maintained at the necessary level to accomplish planned activities; client charter reviewed; the anti-corruption strategy printed and distributed; and international engagements undertaken.

*In this section, activities are reported on for the calendar year while the financial information is based on the FY 2017/18. The reason for this variation is because funding is provided for a financial year and any attempt to report on finances in a calendar year could cause distortions in the figures.*

### 13.4.1 Funding

During the FY 2017/2018, GoU remained the major funding source for the Commission and it was supplemented by contribution from development partners. The development partners included Democratic Governance Facility (DGF); Justice, Law and Order Sector (JLOS); German Cooperation for International Development (GIZ); United Nations Development Programme (UNDP); and United Nations International Children's Fund (UNICEF).

The total funding that was available to the Commission during the financial year under review was UGX 22,670,000,000. Of this, the GoU contributed 85% while donor contribution was 15%. The GoU proportion is based on amounts appropriated, and not the budget proposals that the Commission submitted for consideration.

While the contribution of GoU was much more than that of the donors, only 11% of GoU funds were spent on the core activities of the Commission (Complaints handling, Investigations, and Tribunals, Civic education and documentations and inspections). The remainder 89% was used to fund support and administration activities including operational expenses for the head office, 10 regional offices and 12 field offices, such as staff costs, rent, utilities, maintenance of motor vehicles, equipment, oils and lubricants, and travel.

#### a) GoU funding

The total GoU appropriation for FY 2017/2018 was UGX 19,274,000,000. This included wage recurrent expenditure of UGX 5,590,000,000, non-wage recurrent expenditure of UGX 7,510,000,000 and capital development of UGX 412,000,000. By comparison, the overall increase in funding from GoU over the last five years from 2013/2014 of UGX 9,780,000,000 to UGX 19,274,000,000 was 51%. Table 36 below shows the trend in both GoU and donor funding for the Commission in the last five years.

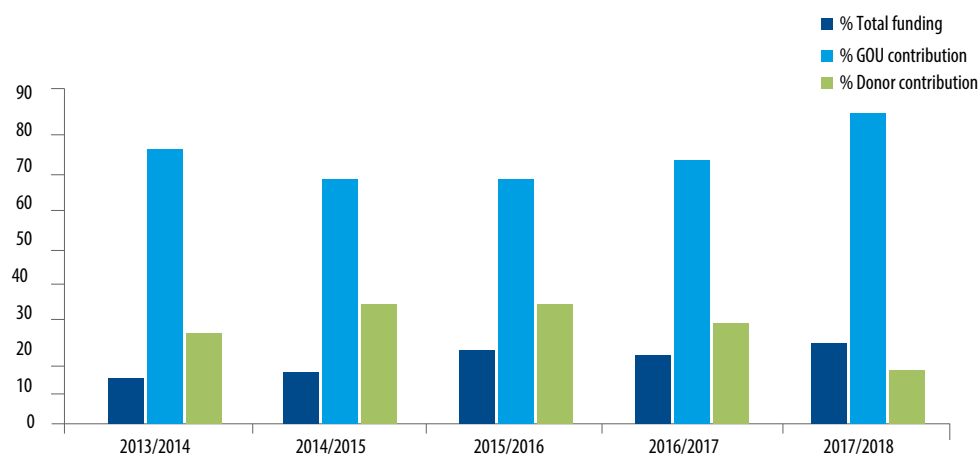
**TABLE 36: FUNDING OVER THE LAST FIVE YEARS**

EXPENDITURE ITEM	2013/2014 UGX IN BILLIONS	2014/2015 UGX IN BILLIONS	2015/2016 UGX IN BILLIONS	2016/2017 UGX IN BILLIONS	2017/2018 UGX IN BILLIONS
Wage	3.59	3.59	5.59	5.59	6.595
Non-wage	5.95	5.95	7.41	7.51	12.267
Domestic Development	0.14	0.14	0.701	0.701	0.412
Taxes on machinery	0.1	0.1	0	0	0
<b>Total funding from GoU</b>	<b>9.78</b>	<b>9.78</b>	<b>13.701</b>	<b>13.8</b>	<b>19.274</b>
External sources	3.28	4.9	6.8	5.433	3.397
<b>Total funding from GoU excluding external sources</b>	<b>13.06</b>	<b>14.68</b>	<b>20.501</b>	<b>19.233</b>	<b>22.671</b>
% of GoU contribution	75	67	67	72	85
% of Development partner's contribution	25	33	33	28	15

While the percentage contribution of funding from development partners fluctuated and was reducing, that of GoU continued to rise. This is an indication of commitment by the government to continuously improve on funding despite the fact that amounts appropriated remained inadequate to meet the growing needs of the Commission. This inadequacy has resulted into overreliance on donor funds to finance core activities but this is risky as donor funds are characterised by changing priorities and uncertainty in terms of amounts and timing.

Figure 19 below shows the comparison between GoU and donor contribution over a period of five years.

**FIGURE 19: PERCENTAGE FUNDING CONTRIBUTION BY GOU AND DONORS**



### b) Donor funding

The total donor funds received during the FY were UGX 3,396,500,000, comprising contributions from DGF of UGX 1,800,000,000; JLOS, UGX 1,200,000,000; GIZ, UGX 355,500,000; UNICEF, UGX 12,000,000; and UNDP, UGX 49,000,000. Funding from development partners was for core activities which included human rights tribunal, investigations, monitoring and inspections, human rights education, development of IEC materials and staff capacity development as highlighted in this annual report.

### 13.4.2 Human resource management

The Commission staffing levels remained low both at the head office and in regional offices. Out of the 220 positions in the approved structure, only 179 (81.3%) were filled. The staff on the approved structure comprised the Chairperson, two members of the Commission, Secretary and 175 substantive staff. This was supplemented by 60 volunteers, bringing the entire team to 239 persons as at 31<sup>st</sup> December 2018. The volunteers were funded by DGF. A total of 41 positions remained unfilled due to inadequate wage bill. The staffing gap as per the existing structure is spread as follows: five for head office, eight for Lira Regional Office, eight for Kabale Regional Office and 20 for the other current ten regional offices.

#### a) Death, expiry of contract and appointment

In July 2018, the Commission lost a dedicated member of the Commission, the late Mr. Joseph A. A Etima (RIP). The late Mr. Etima served the Commission for two terms, a total of nine consecutive years from April 2009 till the time of his death.

The Commission also suffered another setback when the contract of a member of the Commission, Col. Stephen Basaliza, expired in June 2018. The absence of the two members of the Commission resulted into lack of a quorum to enable the Commission transact its tribunal function. This contributed to case backlog at tribunal as highlighted earlier on in this chapter.

On a positive note, the president appointed Ms. Victoria Rusoke Businge as a member of the Commission and she took up office in late December 2018 and the Commission became fully constituted again in accordance with the Constitution that provides for a Chairperson and at least three other members.

### 13.4.3 Capacity development

In a bid to strengthen the Commission and institutional accountability, staff were trained and equipped with functional skills to enable them improve their performance to enhance effective service delivery. The trainings were done both locally and abroad as highlighted below.

#### a) Training of staff on HURIS

A total of 37 staff (10 male, 27 female) were trained on how to use the already existing online Human Rights Information System (HURIS). Staff were equipped with knowledge on the functionalities of HURIS and thereafter were able to upload files on the HURIS system.

#### b) International workshops and seminars

Staff attended international engagements on various human rights aspects including corporate governance; monitoring and reporting on regional human rights treaties; counter terrorism; and capacity development of National Human Rights Institutions in advancing sexual and reproductive health rights in East and Southern Africa.

#### c) Training of trainers workshop on SDGs

Directors, regional heads and senior human rights officers were trained on Sustainable Development Goals (SDGs), with financial support of GIZ. The training was intended to develop the capacity of trainers to be able to cascade the knowledge and skills to the rest of the staff of the Commission.

### 13.4.4 Commission regional coverage

The Commission maintained 10 regional offices in the year 2018. On the other hand, the number of field offices increased from 10 to 12. The regional offices were Gulu, Arua, Soroti, Jinja, Fort Portal, Mbarara, Masaka, Moroto, Central and Hoima, while the field offices were Kaberamaido, Kapchorwa, Kotido, Nakapiripirit, Pader, Kitgum, Lira, Moyo, Kalangala, Buvuma, as well as the newest offices of Bundibugyo and Kasese which were established with funding from DGF.

The regional offices are headed by a Principal Human Rights Officer and coordinated by the Directorate of Regional Services. The regional offices are responsible for implementing all the planned activities of Commission. To ease implementation of activities, the functions of each directorate are replicated in each of the regional offices. The field offices supplement the efforts of the regional offices in reaching the grassroots to deliver human rights services. Each field office is manned by two volunteers who are supervised by the regional head. Table 37 below shows the regional coverage of the Commission.

**TABLE 37: COMMISSION REGIONAL AND DISTRICT COVERAGE**

NO.	REGIONAL OFFICE	FIELD OFFICE	DISTRICTS COVERED
01	Arua	Moyo	Adjumani, Arua, Koboko, Maracha, Moyo, Nebbi, Yumbe and Zombo.
02	Fort Portal	Bundibugyo and Kasese	Buliisa, Bundibugyo, Kamwenge, Kabarole, Kyenjojo, Kasese, Kyegegwa and Ntoroko.
03	Gulu	Pader, Kitgum and Lira	Agago, Alebtong, Amuru, Apac, Dokolo, Gulu, Kitgum, Lira, Nwoya, Otuke, Oyam, Lamwo, Kole and Pader.
04	Jinja		Bugiri, Busia, Namutumba, Butaleja, Buyende, Iganga, Jinja, Budaka, Luuka, Namayingo, Kaliro, Kamuli, Mayuge, Tororo and Pallisa.
05	Mbarara		Buhweju, Bushenyi, Ibanda, Isingiro, Kabale, Kanungu, Kiruhura, Kisoro, Lyantonde, Mbarara, Mitooma, Rubirizi, Rukungiri, Ntungamo and Sheema.
06	Moroto	Nakapiripirit and Kotido	Abim, Amudat, Kaabong, Kotido, Moroto, Nakapiripirit and Napak.
07	Soroti	Kaberamaido and Kapchorwa	Amolatar, Amuria, Bukedea, Bududa, Bukwo, Kaberamaido, Kapchorwa, Katakwi, Kumi, Manafwa, Ngora, Serere, Sironko, Kween, Bulambuli, Mbale and Soroti.
08	Masaka	Kalangala	Kalangala, Kalungu, Masaka, Rakai, Sembabule, Bukomansimbi, Lyantonde and Lwengo.
09	Central	Buvuma	Buikwe, Buvuma, Kampala City (with its 5 divisions of Kampala Central, Nakawa, Lubaga, Makindye, Kawempe), Kayunga, Mpigi, Mukono, Gomba, Mubende, Wakiso, Nakaseke, Nakasongola, Luweero, Mityana, Kiboga and Butambala.
10	Hoima		Kibaale, Hoima, Buliisa, Masindi, Kyankwanzi and Kiryandongo.

#### 13.4.5 Strengthening institutional accountability

Two key interventions were undertaken in a bid to strengthen institutional accountability; namely, review of the client charter and printing and distribution of the anti-corruption strategy as highlighted below:

##### a) Review of the Commission client charter

The Commission carried out a review and evaluation of its client charter with the objective of assessing the success of its implementation. It was established that both internal and external stakeholders were not well versed with the client charter but were aware of the services offered by the Commission; their rights and responsibilities as stakeholders.

The lack of adequate knowledge about the Commission client charter as an accountability tool presented an opportunity for the Commission to carry out more sensitisation on the client charter to enable the stakeholders have adequate information on the services offered by the Commission and the clients' responsibilities as stakeholders. It also enabled the Commission to address expectations and provide a clear picture of its complaints handling mechanism.

#### b) Printing and distribution of anti-corruption strategy

The Commission finalised the printing of 200 copies of the anti-corruption strategy and distributed to staff at head office and regional offices. The strategy is intended to strengthen the capacity of staff to deal with corruption, integrity, transparency and effective service delivery. The strategy was prepared in line with the international and national obligations and the JLOS anti-corruption strategy.

#### 13.4.6 Challenges

- a) High dependency on donor support for the core activities of the Commission contrary to Principle 5 of the Paris Principles on NHRIs which provides for financial autonomy of NHRIs and the requirement that state funding should be sufficient for the functioning of the national human rights institutions.
- b) High rate of staff turnover due to lack of competitive emoluments.
- c) The Commission is constrained in terms of geographical coverage of the country and as a result, many people at the grassroots level are not being reached. The number of districts covered by each of the ten regional offices ranges from seven to 17. This stretches the existing human resource which is inadequate; the transport and technical equipment; and the financial resources available for the day-to-day operations and in turn affects the effectiveness of the Commission's human rights education and complaints handling outreach.

#### 13.4.7 Recommendations

1. Ministry of Finance, Planning and Economic Development should make deliberate efforts to improve on the Medium-Term Expenditure Framework to address the recurring underfunding of the Commission to enable it to:
  - a) Pay a competitive wage to staff to address the challenge of high staff turnover.
  - b) Stop depending on donors for funding of core activities.
  - c) Implement the approved structure which includes opening of two new regional offices in Lira and Kabale which was approved by Ministry of Public Service in June 2016.
2. Ministry of Finance, Planning and Economic Development should specifically consider making adequate budgetary provision for capital expenditure to construct the Commission headquarters and regional offices and procure transport equipment over the medium term.

#### 13.4.8 Conclusion

The Commission noted many positive developments in the human rights situation as it implemented its mandate on complaints, investigations and legal services; monitoring and inspections of detention facilities and human rights and civic education. It was also able to deliver human rights services to the population during the period because of the funding from both GoU and development partners as well as committed human resource. Nonetheless, there were still numerous challenges that negatively affected the full achievement of the objectives of the Commission's interventions which require urgent action to address them so that protection and promotion of human rights of all Ugandans becomes a reality. Government of Uganda should endeavor to fulfill its commitment to adequately resource the Commission; act on its recommendations and support it in all ways if its interventions are to protect and promote human dignity of all in Uganda.

## CHAPTER 14

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# STATUS OF UGANDA'S REPORTING TO INTERNATIONAL AND REGIONAL HUMAN RIGHTS MECHANISMS

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## 14.0 INTRODUCTION

The state reporting process is a fundamental component in monitoring the implementation of a treaty or human rights instrument. States that have acceded to or ratified a human rights treaty, are required to submit an initial report within one or two years after the entry into force of the treaty and, thereafter, periodic reports at intervals specified in the relevant treaty or by the treaty body.<sup>461</sup> In most cases, the treaty explicitly sets out a timetable for the submission of initial and periodic reports — commonly referred to as the “reporting periodicity”. This reporting periodicity is usually based on the date of entry into force of the treaty for the specific state party.

Uganda has signed and ratified core international and several regional human rights instruments. By this, the state undertook to promote, protect, respect and fulfill the obligations under the instruments which include submitting initial and periodic reports on the measures undertaken to implement the recognised rights.

The Constitution of Uganda, under Article 52 (1) (h), mandates Uganda Human Rights Commission to monitor government’s compliance with international treaty and convention obligations on human rights.<sup>462</sup> In this regard, therefore, in 2018 the Commission monitored Uganda’s reporting obligations to the committees on the various treaty bodies ratified. The Commission monitored the state’s report compilation processes before the reports were submitted to the various committees at the international and regional levels.

This chapter also covers the status of implementation of the recommendations accepted from the Universal Periodic Review (UPR) processes and the recommendations received from the committee overseeing the implementation of the provisions of the Convention on the Rights of Persons with Disabilities (CRPD) by the various ministries, departments and agencies. The chapter also presents the status of the National Action Plan on Human Rights (NAP) and highlights challenges of treaty body reporting before making appropriate recommendations for improvement.

The Commission monitors these processes to track progress on the protection and promotion of human rights in the country, with a view of making appropriate recommendations to the state on how to enhance compliance with obligations and standards in the implementation of the human rights instruments.

On the other hand, state reporting serves a number of important functions including, but not limited to, taking stock of measures undertaken by the state party towards compliance with its obligations under the treaty and identifying problems and obstacles to the full implementation of the treaty. Technical assistance from UN agencies, multilateral and bilateral donors and NGOs may be available. The reporting process provides an opportunity for constructive engagement of the state party with the international and regional mechanisms in order to benefit from their concrete recommendations.<sup>463</sup>

Without an enforcement mechanism, the state reporting process is the strongest means through which the committees can monitor state compliance with international and regional treaty obligations and engage in constructive dialogue with other states towards recommendations for concrete actions at the national level including domesticating the instruments.<sup>464</sup>

461 United Nations. “Compliance by States parties with their reporting obligations to international human rights treaty bodies: Note by the Secretariat” Available at <https://www.ohcr.org/documents/HRBodies/TB/.../Compliancestatesparties.docx>

462 Article 52 (1) (h), the Constitution of the Republic of Uganda, 1995.

463 Centre for Human Rights, University of Pretoria (Women’s Rights Unit) “state Reporting” Available at <http://www.chr.up.ac.za/wru-projects/state-reporting> Accessed on 31st January 2019.

464 As above.



## 14.1 STATUS OF REPORTING TO INTERNATIONAL AND REGIONAL HUMAN RIGHTS SYSTEMS

Uganda is signatory to most core international and regional human rights treaties without reservations save for sections of Article 14 of the Maputo Protocol which concern the health and reproductive rights of women. Article 14 (1) (a) of the Maputo Protocol is in respect to women’s right to control their fertility; interpreted to mean that women entirely have the right to control their fertility regardless of their marital status.<sup>465</sup> Article 14 (2) (c) is interpreted in a way as conferring an individual right to abortion or mandating a state party to provide access thereto. Uganda as a state is not bound by this clause unless permitted by domestic legislation expressly providing for abortion. Tables 38 and 39 below summarise Uganda’s new ratifications of 2017 and 2018 and the status on reporting obligations to the treaty bodies under the ratified treaties.

**TABLE 38: NEWLY RATIFIED TREATIES IN 2018 AND LATE 2017<sup>466</sup>**

	TREATY	DATE OF RATIFICATION
1	The World Trade Organisation Trade Facilitation Agreement	28th May 2018
2	The East African Community Protocol on the Privileges and Immunities of the East African Community	21st July 2018
3	Agreement for the Establishment of the Eastern Africa Standby Force	4th February 2018
4	Framework Agreement of International Solar Alliance	1st February 2018
5	The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled	1st March 2018
6	The Protocol on the Amendment to the Statute of the African Court of Justice and Human Rights	9th March 2018
7	The Kigali Protocol to the Montreal Protocol on Substances that Deplete the Ozone Layer	23rd August 2018
8	Agreement for the Establishment of the East African Community Protocol on Cooperation in Defence Affairs	19th November 2018
9	Agreement Establishing the African Continental Free Trade Area	20th November 2018 <sup>468</sup>

<sup>465</sup> Lucy Asuagbor .“Status of Implementation of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa”. Available at <http://www.peaceau.org/uploads/special-rapporteur-on-rights-of-women-in-africa-presentation-for-csw-implementation.pdf> Accessed on 7th February 2019.

<sup>466</sup> Ministry of Foreign Affairs presentation at the Commission 21st Annual Report Consultative Meeting held at Fairway Hotel on 16th January 2019.

Uganda ratified nine international treaties and the details are in the table below.

**TABLE 39: RATIFIED TREATIES AND UPDATED STATUS ON THE REPORTING OBLIGATIONS AS OF DECEMBER 2018**

INTERNATIONAL TREATY	DATE OF RATIFICATION	REPORTING STATUS	FREQUENCY OF REPORTING	REMARKS
International Covenant on Civil and Political Rights ( <b>ICCPR</b> )	21 <sup>st</sup> June 1995	1 <sup>st</sup> report -14 <sup>th</sup> February 2003 <sup>469</sup>	State parties are required to submit reports one year after acceding to the covenant and thereafter submit periodic reports every four years.	2 <sup>nd</sup> report pending since February 2008 (three reports pending). However, our findings indicated that preparations for the pending reports are underway. <sup>470</sup>
International Covenant on Economic, Social and Cultural Rights ( <b>CESCR</b> )	21 <sup>st</sup> January 1987	Initial report submitted in 2015 <sup>471</sup>	State parties are required to submit reports two years after acceding to the covenant and then periodic reports every five years.	The report submitted consolidated previous reports; there is no report pending till 2020.
Convention on the Elimination of All Forms of Discrimination against Women ( <b>CEDAW</b> )	22 <sup>nd</sup> July 1985	1 <sup>st</sup> and 2 <sup>nd</sup> reports -1992, 3 <sup>rd</sup> report - 2002, 4 <sup>th</sup> – 7 <sup>th</sup> reports-2009, 8 <sup>th</sup> report due in 2014.	State parties are required to submit initial reports within one year of acceding to the convention and then periodic reports every four years	Report pending since October 2014 Our research indicates that the 8 <sup>th</sup> Country report to the committee is being prepared. <sup>472</sup>
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ( <b>CAT</b> )	3 <sup>rd</sup> November 1986	1 <sup>st</sup> report -2004. Next report due in 2008.	State parties are required to submit initial reports within one year of entry into force of the convention and thereafter submit periodic reports every four years.	Report pending since 2008, (two reports pending). Our research findings indicate that the pending report is being prepared.
Convention on the Rights of the Child ( <b>CRC</b> )	17 <sup>th</sup> August 1990	1 <sup>st</sup> report -1996, 2 <sup>nd</sup> report – 2003, 3 <sup>rd</sup> report 2012.	State parties are required to submit initial reports within two years of entry into force of the convention and thereafter submit periodic reports every five years.	The 3 <sup>rd</sup> report has been pending since March 2012. Research findings indicate that the draft report to CRC committee is before Cabinet for consideration and approval. <sup>473</sup>
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict ( <b>OP-CRC-AC</b> )	6 <sup>th</sup> May 2002	Initial report submitted in 2008.	State parties are required to submit initial reports within two years after entry into force of the protocol and thereafter submit periodic reports every five years.	Report pending submission since 2013. Draft to the committee is before Cabinet for approval. <sup>474</sup>
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography ( <b>OP-CRC-SC</b> )	30 <sup>th</sup> November 2001	Report submitted in 2008.	State parties are required to submit initial reports within two years after entry into force of the protocol and thereafter submit reports every five years.	Report has been pending since 2013.
Convention on the Rights of Persons with Disabilities ( <b>CRPD</b> )	25 <sup>th</sup> September 2008	1 <sup>st</sup> report -2013. 2d report April 2016.	State parties are required to submit initial reports within two years after entry into force of the convention and thereafter submit subsequent reports every four years.	Next report is due in October 2020.

467 UNOHCHR. UN Treaty Body Database. Available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=45&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=45&DocTypeID=29) Accessed on 4th February 2019.

468 n(6) above.

469 United Nations Committee on Economic, Social and Cultural Rights. "Concluding observations on the initial report of Uganda". Available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/UGA/CO/1&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/UGA/CO/1&Lang=En) Accessed on 7th February 2019.

470 Ministry of Foreign Affairs presentation at the Commission 21st Annual Report Consultative Meeting held at Fairway Hotel on 16th January 2019.

471 Ministry of Foreign Affairs presentation at the Commission 21st Annual Report Consultative Meeting held at Fairway Hotel on 16th January 2019.

472 As above.

INTERNATIONAL TREATY	DATE OF RATIFICATION	REPORTING STATUS	FREQUENCY OF REPORTING	REMARKS
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	21st November 1980	1 <sup>st</sup> report-1984, 2 <sup>nd</sup> -10 <sup>th</sup> reports – 2001.	State parties are required to submit initial report within one year after entry into force of the Convention and the subsequent ones every two years and whenever the Committee requests.	Five reports (11 <sup>th</sup> – 14 <sup>th</sup> ) have been pending since 2005.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	14 <sup>th</sup> November 1995	1 <sup>st</sup> report submitted in 2015.	State parties are to submit initial reports within one year after entry into force of the Convention and thereafter periodic reports every five years.	First report was submitted in 2015. Next report is due 2020.
African Charter on Human and Peoples' Rights (ACHPR) also known as the Banjul Charter	10 <sup>th</sup> May 1986	1 <sup>st</sup> report -2000, 2 <sup>nd</sup> report - 2006, 3 <sup>rd</sup> report - 2008, 4 <sup>th</sup> report - 2011, 5 <sup>th</sup> report – 2015, 6 <sup>th</sup> report, November 2017.	State parties are required to submit reports every two years from the date the African Charter came into force.	The 6 <sup>th</sup> report was submitted in November 2017. Next report is due 2020. The findings of our research also indicated that preparations for the next report are underway. <sup>475</sup> <i>As had been indicated in the Commission's previous annual report, the government is commended for being up to date with reporting obligations under the Banjul Charter. There is only one overdue report under the Maputo Protocol since the state ratified the regional instrument.</i> <sup>476</sup>
African Charter on the Rights and Welfare of the Child	17 <sup>th</sup> August 1994	1 <sup>st</sup> report -2007, 2 <sup>nd</sup> report 15-19 March 2010. <sup>477</sup>	State parties are required to submit reports to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) within two years of entry into force of the Charter and thereafter submit periodic reports every three years.	Report still pending since 2010. Next report for submission to the ACERWC is before Cabinet for consideration and approval.
The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).	22 <sup>nd</sup> July 2010 <sup>478</sup>	Initial report due July 2012	State parties are required to submit one report every two years to the African Commission as per Article 62 of the Banjul Charter and Article 26(1) of the Maputo Protocol <sup>479</sup> (from the time the Charter came into force).	Our findings indicated that the initial report to the African Commission on Human and Peoples' Rights is under preparation. <sup>480</sup>

473 Ministry of Foreign Affairs presentation at the Commission's 21st Annual Report Consultative Meeting held at Fairway Hotel on 16th January 2019.

474 Uganda Human Rights Commission. The 20th Annual Report to the Parliament of the Republic of Uganda (2017), page 176.

475

476 African Commission on Human and Peoples' Rights. "Ratification Table: The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa". Available at <http://www.achpr.org/instruments/women-protocol/ratification/> Accessed on 31st January 2019.

477 Ibid.

478 Ann M Nyakato (January 2019). "Ministry of Foreign Affairs Presentation at the Commission's 21st Annual Report Consultative Meeting."

### 14.1.1 Observations

The status quo on submission of overdue reports to the international and regional treaty bodies remains the same as reported in the Commission's previous reports. However, our findings during data collection for the 21<sup>st</sup> annual report indicate that there are a lot of consultations and documentation taking place at the national level by the various MDAs to get the pending reports ready for submission.

## 14.2 STATUS OF IMPLEMENTATION OF THE RECOMMENDATIONS FROM THE UPR PROCESSES

### 14.2.1 Introduction

The Universal Periodic Review (UPR) is a state-level process managed by the United Nations Human Rights Council through which the human rights situations in each of the UN member states is reviewed and assessed based on a four-year cycle.<sup>479</sup> It is a voluntary process based on cooperation and interactive dialogue which gives the state under review the opportunity to show steps taken to improve its human rights record and to address challenges encountered in the course of protection and promotion of human rights. By November 2016, all the 193 states including Uganda had been considered in the last two cycles (first cycle was 2008 to 2011; second cycle 2012 to 2016). The third cycle of the UPR is now in progress (2017-2021) and Uganda will be reviewed in 2021.<sup>480</sup>

It must be noted that recommendations accepted by Uganda and voluntary pledges made in the two cycles have been implemented to a certain extent. These include: The development of the National Action Plan (NAP) on Human Rights, adoption of the legal framework prohibiting torture, as well as the creation of vital institutional mechanisms like the Parliamentary Standing Committee on Human Rights and human rights focal points/desk officers in various MDAs to coordinate the implementation of the commitments, among others. As a national human rights institution, the Commission continued to follow up on the status of implementation of the accepted recommendations from the UPR processes. Table 40 below shows the status of implementation of the accepted UPR recommendations at as end of December 2018 while Table 38 shows the status of implementation of recommendations from the Committee on the CRPD.

479 UN Human Rights Council. "Basic facts about UPR". Available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (accessed on 15 February 2019)

480 As above.

**TABLE 40: STATUS OF IMPLEMENTATION OF THE UPR RECOMMENDATIONS<sup>481</sup>**

THEMATIC AREA AND RECOMMENDATIONS	IMPLEMENTATION STATUS
<p><b>International instruments</b></p> <p>Continue to ratify and domesticate international human rights instruments.</p> <p>Continue to consider ratification of more international human rights instruments.</p> <p>Continue to harmonise its domestic legislations with those international human rights instruments that Uganda is a party to.</p>	<p>Nine treaties were ratified in the reporting year as indicated in Table 38.</p> <p>The assessment of the compatibility of national legislation with the CRC was done. The findings/the report was launched in July 2018 and now the regional-level dissemination is being done.</p> <p>The Uganda Registration Services Bureau (URSB) was working with stakeholders to develop and implement a strategy to domesticate the Marrakesh Treaty.</p>
<p><b>Persons with disabilities</b></p> <p>Increase the job quota for PWDs.</p> <p>Intensify efforts to raise public awareness on the rights of PWDs.</p> <p>Promote and respect the basic rights of PWDs without distinction</p> <p>Implement legal provisions for better protection of PWDs.</p>	<p>Repealed the 1964 Mental Health Act and enacted a new Mental Health Act in 2018. The new Act repealed the use of ‘mental disorder’ and instead adopted ‘mental illness’.</p> <p>The process was in the final stages to review the 2006 Persons With Disabilities (PWDs) Act, which is expected to be repealed by the pending 2014 PWDs Bill once enacted.</p> <p>The 2015 Sexual Offences Bill seeks to repeal the use of derogatory language against PWDs, as used in the Penal Code Act.</p> <p>The 2016 Children (Amendment) Act entrenches the protection of the rights of children with disabilities, imposing duties and responsibilities on parents for their protection.</p> <p>The 2015 Registration of Persons Act repealed some of the offending provisions of the 1970 Immigration Act and the 2009 Uganda Citizenship and Immigration Control Act.</p> <p>The 2015 Registration of Persons Act makes it compulsory for all persons to be registered at no cost.</p> <p>Uganda ratified the Marrakesh Treaty on April 23, 2018 and it came into force on July 30, 2018. Uganda Communications Commission encourages investment in research into the development and use of new ICTs, including those that improve access to information to persons with hearing impairments.</p> <p>The ministry of Justice and Constitutional Affairs was working with the ministry of Gender, Labour and Social Development in developing the 2018 Persons with Disabilities Bill which includes an exhaustive list of disabilities and also provides for the amendment of the Trial on Indictments Act and the Magistrates Courts Act on insufficient surety for persons with mental disabilities.<sup>483</sup></p>
<p><b>Freedom of association and peaceful assembly; Freedom of opinion and expression.</b></p> <p>Ensure that the enforcement and implementation of laws is in compliance with the Constitution and the country's obligations under international and regional law to respect and protect the right of everyone in Uganda to exercise their human rights to freedom of expression and peaceful assembly.</p> <p>Take measures to guarantee the right to peaceful assembly and avoid abuses in police activities and, if such abuses occur, ensure that they do not go unpunished.</p> <p>Ensure the full respect of the freedom of association and peaceful demonstrations in compliance with the international commitments of Uganda, in particular in the implementation of the Public Order and Management Act of 2013.</p>	<p>The Commission continued to receive and handle complaints of violation of freedom of assembly and demonstrations. The Commission also, through its department of Research, Education and Documentation, engaged and trained security agencies to respect human rights in the course of their duties.</p> <p>The Commission chairperson, on many occasions, came out to condemn human rights abuses against media practitioners and abuses during demonstrations. This was during press conferences that the Commission organises and holds monthly on pertinent human rights issues.</p>

481 Report on the national feedback meeting on the implementation of the concluding observations to the United Nations Convention on the Rights of Persons with Disabilities in Uganda. 16th October 2018 last accessed in February 2019

THEMATIC AREA AND RECOMMENDATIONS	IMPLEMENTATION STATUS
<p><b>Recommendation on the rights of minorities</b> Continue to strengthen the country's successful social policy in favor of the most vulnerable sectors of society, ensuring that they have assistance and cooperation of the international community that the country requires.</p> <p>Continue efforts to protect the rights of marginalized and vulnerable populations.</p> <p>Take concrete measures to eradicate harmful practices against women and children, especially children with albinism.</p>	<p>In financial year 2017/18, the ministry of Gender, Labour and Social Development rolled out the Expanding Social Protection Programme, putting in place a national social protection system in line with the National Social Protection Policy that benefits the poorest as a core element of Uganda's national policy, planning and budgeting processes. The programme reached beneficiaries in 47 districts.<sup>484</sup></p> <p>The Commission funded by GIZ, continued to protect the rights of minorities, through sensitisation of duty bearers on the Human Rights-Based Approach to development that ensures, among others, the participation of rights holders in the development programmes.</p> <p>The Commission through the line directorate of Research, Education and Documentation continued to create awareness of rights holders through IEC materials like T-shirts and abridged versions of the Constitution.</p>
<p><b>Rights of the internally displaced persons</b> Continue tirelessly to address the issue of resettlement of IDPs including by putting in place resources in provisions of basic services and infrastructure development.</p> <p>Continue its efforts to improve the livelihood of refugees and IDPs by taking measures aimed at further improving the health care system in refugee settlements, ensuring that all refugees attain the highest level of access to health services.</p>	<p>In June 2018, the government, through the OPM, rolled out an updated settlement policy framework aimed at improving access to social services, expanding economic opportunities and enhancing environmental management for host and forcibly displaced households in the targeted areas of Uganda.<sup>485</sup></p> <p>The government of Uganda, through OPM and through Development Response to Displacement Impacts Project (DRDIP) was implementing 83 sub-projects in the sectors of education, health, roads and water in refugee-hosting districts worth UGX 32.9bn to improve the livelihood of refugees, IDPs and host communities.<sup>486</sup> The outcomes so far include educational facilities, and five OPDs, 7 wards and 13 staff accommodation in the health sector.<sup>487</sup></p>
<p><b>Recommendations on the National Action Plan</b> Continue to implement the National Action Plan on Human Rights to, among other things, strengthen the capacity of the government and of citizens when it comes to protection and promotion of human rights. Strengthen and ensure the effective implementation/application of the National Action Plan on Human Rights.</p> <p>Enhance efforts to implement the National Action Plan on Women, in particular their participation and integration in the economy.</p> <p><b>Migrant workers and refugees</b> Continue efforts to improve the livelihood of refugees and IDPs by taking measures aimed at further improving the health care system in refugees' settlements, ensuring that all refugees attain the highest level of access to health services.</p> <p>Take active measures to eliminate gender-based violence against women, specifically refugee women, and take immediate appropriate measures to eliminate all forms of discrimination against women in line with the provisions of CEDAW.</p> <p>Seek necessary assistance for its efforts to improve human rights in its territory, particularly the rights of migrants and asylum seekers.</p>	<p>The final draft of the NAP was awaiting presentation to Cabinet for consideration and approval.</p> <p>Still pending action.</p>

**THEMATIC AREA AND RECOMMENDATIONS****IMPLEMENTATION STATUS****Elections and press freedom**

Enact electoral reforms to address problems noted by multiple observers during February 2016 elections, including by making the process for appointment to Electoral Commission more inclusive and transparent.

Conduct full and transparent investigations into the alleged cases of excessive use of force by security agents, especially during and after the 2016 elections, ensuring accountability for possible human rights violations.

Improve the transparency for electoral process.

Provide equal conditions for all candidates.

Prevent obstruction of the media and the internet

Ensure the independence of the Electoral Commission and impartial investigations of allegations of election fraud and violence.

Implement meaningful electoral reform to ensure the transparency and independence of the Electoral Commission and its adherence to democratic principles; and prevent the misuse of state resource for campaign financing.

Carry out the electoral reforms proposed by the Supreme Court of Uganda and independent observers to ensure future elections can be held while respecting human rights.

The Constitutional Review Commission to consider various constitutional reforms was named, though it was yet to be effected.<sup>488</sup>

482 Ministry of Gender, Labour and Social Development. Available at <http://www.mglsd.go.ug/programmes/expanding-social-protection-programme.html> Accessed on 7th February, 2019

483 Office of the Prime Minister. "Updated Resettlement Policy Framework - RPF June 2018" Available at <https://opr.m.go.ug/download/updated-resettlement-policy-framework-rpf-june-2018/> Accessed on 7th February, 2019.

484 Innocent Ndatirirwe. Office of the Prime Minister's presentation at the Commission's 21st Annual Report Consultation Meeting held at Fairway Hotel on 16 January 2019.

485 As above.

486 Stephen Kafeero. "Government names 14 on constitutional review team", Daily Monitor newspaper, Tuesday, 20th November 2018. Available at <https://www.monitor.co.ug/News/National/Government-names-14-constitutional-review-team-/688334-4860180-n4bjju/index.html> Accessed on 26th February 2019.

TABLE 41: STATUS OF IMPLEMENTATION OF RECOMMENDATIONS FROM THE COMMITTEE ON THE CRPD BY VARIOUS MDAS<sup>487,488,489</sup>

THEMATIC AREA	RECOMMENDATIONS	STATUS
<p><b>GENERAL PRINCIPLES AND OBLIGATIONS</b></p>	<p>Harmonisation of definitions of disability in various laws and policies and systematic review of all legislations with a view of bringing them in line with the Convention.</p>	<p><b>Parliament</b></p> <p>The Constitution provisions use the phrase ‘persons with disabilities’ under articles 21, 35 and 78 (1) (c). Being the supreme law in terms of hierarchy of laws in Uganda, the principle of ‘supremacy of the Constitution’ means that terms used in other statutes must be consistent with the Constitution and not in any contradiction to it. In this regard, the nomenclature as far as they exist in earlier statutes that predate the 1995 Constitution, must be interpreted with such modifications, adaptation, qualifications and exception as may be necessary to bring them into conformity with the spirit of the Constitution.<sup>489</sup></p> <ul style="list-style-type: none"> <li>• The draft <b>Persons with Disabilities Bill, 2014</b> is intended, if enacted, to repeal the 2006 Persons with Disabilities Act and incorporate several principles under the Convention on the Right of Persons with Disability.</li> <li>• <b>The Mental Health Act, 2018</b> that was passed in September 2018, repealed the use of the phrase “mental disorder” and instead adopted “mental illness”</li> </ul>
	<p>Adopt measures to amend and/or repeal legislation with derogatory terminology against persons with disabilities.</p>	<ul style="list-style-type: none"> <li>• The <b>Sexual Offences Bill, 2015</b> currently before the Committee on Legal and Parliamentary Affairs seeks to repeal use of the words “idiots” and “imbeciles” which are currently used in the Penal Code Act, Cap. 120, Laws of Uganda, in reference to having a sexual relationship with a person incapable of giving consent.<sup>490</sup></li> </ul>
	<p>Repeal legislation and eliminate practices that allow for deprivation of legal capacity on the basis of disability and adopt measures to prohibit deprivation of legal capacity on customary basis.</p>	<ul style="list-style-type: none"> <li>• The right to equal recognition as a person before the law is a long-established human rights principle reflected in <b>Article 21 of the Constitution of the Republic of Uganda 1995</b>.</li> <li>• The <b>Children (Amendment) Act, 2016</b> under section 10 entrenches the protection of the right of children with disability, in effect, imposing duties and obligations on parents to recognize them. The Act further recognises the legal capacity of children with disabilities and prohibits discrimination against them.</li> <li>• The <b>Traffic and Road Safety Act</b> prohibits denial of a driving permit on the basis of disability.</li> <li>• The <b>Equal Opportunity Act, 2006</b> and the <b>Employment Act (No. 6), 2006</b>, both prohibit discrimination of persons in employment based on disability.</li> <li>• Section 4 of the <b>Education (Pre-Primary, Primary and Post-Primary) Act 2008</b> makes basic education compulsory and available to all persons as a right without discrimination.</li> <li>• The <b>Mental Health Act, 2018</b> has new provisions in section 9 and 10 on the admission or confinement of PWDs and these provisions prohibit arbitrary detention and deprivation of liberty of PWDs.</li> </ul>
	<p>Repeal legislative and other provisions that allow for detention of persons with disabilities and permit indefinite postponement of criminal proceedings while ordering incarceration which unduly discriminate against persons with disabilities and do not allow for fair trial standards on an equal basis with others.</p>	<ul style="list-style-type: none"> <li>• The <b>Mental Health Act, 2018</b> has new provisions in section 9 and 10 on the admission or confinement of PWDs and these provisions prohibit arbitrary detention and deprivation of liberty of persons with disability.</li> <li>• Whereas the Act does not deal specifically with criminal proceedings in respect of persons with mental illness, it nonetheless has positive provisions to guarantee due process in criminal procedure where a person is suffering from a mental illness.<sup>491</sup></li> </ul>

<sup>487</sup> The national feedback meeting on the implementation of the concluding observations to UNCRPD in Uganda, held on 16th October 2018 at Hotel Africana, Kampala.

<sup>488</sup> As above.

<sup>489</sup> As above.



THEMATIC AREA	RECOMMENDATIONS	STATUS
	<p>Repeal provisions in the Uganda Citizenship and Immigration Control Act (2009) and the Immigration Act (1970) that restrict the right to movement and liberty and acquisition of citizenship of persons with disabilities, particularly persons with psychosocial and intellectual disabilities.</p>	<ul style="list-style-type: none"> <li>The <b>Registration of Persons Act, 2015</b> repealed some of these offending provisions.</li> </ul>
	<p>Ensure registration of all children with disabilities.</p> <p>The Committee recommends the state party to take all necessary steps to ratify and implement the Marrakesh Treaty as soon as possible.</p>	<ul style="list-style-type: none"> <li><b>Section 28 of the Registration of Persons Act, 2015</b> makes it compulsory for all births in Uganda to be registered freely. There is no discrimination based on disability.</li> <li>The Treaty was ratified on 23<sup>rd</sup> April 2018 and came into force on 23<sup>rd</sup> July 2018.</li> <li>The <b>Uganda Communications Act, 2013</b> provides for the promotion of research into the development and use of new communications techniques and technologies, including those which promote accessibility of hearing-impaired people to communication services.</li> <li>The Uganda Registration Services Bureau led the ratification process of the Marrakesh Treaty that was achieved in early 2018. The Bureau was working with stakeholders to develop and to implement a strategy to domesticate the treaty.</li> <li>It commenced the processes of amending provisions of the <b>Copyright and Neighboring Rights Act</b> to allow for reproduction of written content to ease access for PWDs.</li> <li>It sought partnership with World Intellectual Property Organisation and UNESCO to develop an implementation plan for the Marrakesh Treaty, to inform actions of all stakeholders in the implementation process.</li> <li>The <b>Registration of Persons Act, 2015</b> repealed some of these offending provisions.</li> </ul>
	<p>Repeal provisions in the Uganda Citizenship and Immigration Control Act (2009) and the Immigration Act (1970) that restrict the right to movement and liberty and acquisition of citizenship of persons with disabilities, particularly persons with psychosocial and intellectual disabilities.</p>	

THEMATIC AREA	RECOMMENDATIONS	STATUS
<p><b>WOMEN WITH DISABILITY</b></p>	<p>Adopt a systematic approach to the rights of women and girls with disabilities and mainstream such rights across all laws, policies and programmes and collect data disaggregated by gender and disability.</p> <p>Take specific measures to tackle multiple and intersectional discrimination against women with disabilities in the state party and particularly women with psychosocial and/or intellectual disabilities, including through financing, developing and supporting schemes which increase their economic and social independence.</p> <p>Ensure that gender as well as disability policies address the situation of women with disabilities and allocate appropriate human, technical and budgetary resources to promote the development, advancement and empowerment of women with disabilities.</p>	<p><b>National Women's Council</b></p> <ul style="list-style-type: none"> <li>The structures of the Council provide for representation of persons with disabilities.</li> <li>The Council's five-year strategic plan seeks to address issues of women with disabilities, despite the fact that there is limited coordination with the Disabled Women's Council.</li> </ul> <p><b>Equal Opportunities Commission</b></p> <ul style="list-style-type: none"> <li>The Commission was yet to disseminate the National Regulations on Recruitment and Employment of Persons with Disabilities.</li> <li>The Commission was making continuous engagements to make its work known to persons with disabilities, through establishing equal opportunity forums at district levels, mainstream media and IEC materials, among others.</li> <li>The Commission was supporting the implementation of the <b>Building Control Act, 2015</b> and made reference to the recently concluded assessment on accessibility in Kampala city.</li> <li>Ministry of Gender, Labour and Social Development (MGLSD) developed new targets on disability and included the same in the implementation frameworks of the Uganda Women Entrepreneurship Program and the Youth Livelihood Programme.</li> <li>Uganda Law Reform Commission reviewed the Penal Code Act and recommended for the use of gender-sensitive language and language that upholds the dignity of persons with mental impairments.<sup>492</sup></li> </ul>
<p>Provide for legal protection against disability-based discrimination, multiple and intersectional forms of discrimination facing persons with disabilities.</p> <p>Incorporate the concept of reasonable accommodation in its legislation as defined in Article 2 of the Convention and recognise the denial of reasonable accommodation as a form of discrimination based on disability.</p> <p>Make the work of the Equal Opportunities Commission widely known among persons with disabilities.</p>	<p><b>Equal Opportunities Commission</b></p> <ul style="list-style-type: none"> <li>The Commission is yet to disseminate the National Regulations on Recruitment and Employment of Persons with Disabilities.</li> <li>The Commission was making continuous engagements to make its work known to persons with disabilities, through establishing equal opportunity forums at district levels, mainstream media and IEC materials, among others.</li> <li>MGLSD was involved in a comprehensive study to establish the situation of persons with albinism in the country.</li> <li><b>Public Service Commission</b> was practising affirmative action in recruitment, especially where persons with disabilities were identified as applicants, though this was not supported by law or policy. Affirmative action was through providing extra time to aptitude tests, oral and written interviews.</li> <li>The Commission boasts of articulating disability issues during induction of all District Service Commissioners and providing representation of persons with disabilities at the District Service Commissions.</li> <li>The Commission initiated an online application platform for new recruits and this makes it easier for persons with disabilities to apply for various available jobs at the Commission.</li> <li>The Commission was constrained by the lack of braille equipment, support persons and sign language interpreters to support persons with disabilities in employment.<sup>493</sup></li> </ul>	

THEMATIC AREA	RECOMMENDATIONS	STATUS
<b>ELECTORAL PROCESS</b>	<p>Repeal discriminatory legal provisions that restrict persons with disabilities from exercising their right to stand for elections.</p> <p>Provide voter education and awareness to persons with disabilities and adopt measures to ensure that the electoral process is accessible to voters with disabilities including voter registration, accessible polling centres and materials and assistance to vote by persons of their choice.</p> <p>Inform persons with disabilities on their right to vote, provide financial support to organisations of persons with disabilities to conduct the election processes of Persons with Disabilities in a transparent manner.</p>	<p><b>Electoral Commission</b></p> <ul style="list-style-type: none"> <li>• There was an ongoing debate by stakeholders to waive nomination fees required of PWDs to stand for elective positions.</li> <li>• The Commission was consulting with NUDIPU and NCD with benchmark from Namibia on the use of braille and tactile ballot papers for the upcoming election.</li> <li>• Registration of voters by the Commission was being done jointly with the National Information Registration Authority (NIRA) and taken up to parish levels to allow for registration of PWDs, though sometimes limited by logistical requirements.</li> <li>• The current election law prescribes open ground polling centers which are usually accessible to PWDs.</li> <li>• All financing for electoral processes was provided by central government and the challenge was that financing for local government elections is always insufficient.<sup>494</sup></li> </ul>
<b>INSTITUTIONAL REFORMS AND STRENGTHENING</b>	<p>Expedite the process of appointing focal points within ministries and other government bodies, with sufficient funding, to enhance implementation of the provisions of the Convention and ensure accountability of government departments to mainstream rights of persons with disabilities.</p> <p>Strengthen the capacity of the Uganda Human Rights Commission with sufficient budgetary allocation and human resources to fulfil its mandate effectively and ensure the full participation of persons with disabilities and their representative organisations in the monitoring process, including by providing the necessary funding.</p>	

490 The national feedback meeting on the implementation of the concluding observations to UNCRPD in Uganda, held on 16th October 2018 at Hotel Africana, Kampala.

491 As above.

492 The national feedback meeting on the implementation of the concluding observations to UNCRPD in Uganda, held on 16th October 2018 at Hotel Africana, Kampala.

### 14.2.2 Observations

The Commission established that the various MDAs were doing a lot of work in implementing the recommendations Uganda received from the UN Committee on the Rights of Persons with Disabilities as reflected in the interventions summarised above.

## 14.3 STATUS OF THE NATIONAL ACTION PLAN ON HUMAN RIGHTS

One of the voluntary pledges made by Uganda during the first UPR review process was the development of a National Action Plan (NAP) on Human Rights. As mentioned in our previous reports and in the preceding sections, the Commission has been at the forefront of this process. The draft NAP was finalised and validated in April 2018, when the ministry of Foreign Affairs convened the relevant MDAs to approve it. The draft was subsequently shared with the permanent secretaries in June 2018 and approved. By the end of 2018, it was awaiting presentation to Cabinet for consideration and approval.<sup>493</sup>

## 14.4 CHALLENGES TO PROMPT TREATY BODY REPORTING

The Commission points out the following challenges to prompt treaty body reporting:

1. The growing number of human rights mechanisms at the international and regional levels, pose a heavy burden of prompt reporting on the state. Treaty body reporting requires adherence to specific timeframes as per the treaty or treaty body yet hitches like inadequate finances and big numbers of recommendations on a member state pose a big burden in terms of compliance despite high levels of commitments by the state.
2. There are quite a number of overdue reports. These include reports to the committee on CERD, Human Rights Committee (ICCPR), and the Committees on CAT, CRC and CEDAW.<sup>494</sup>
3. Uganda's engagement with special procedures like the special rapporteurs on specific mandates is very low. For example, the last time Uganda accepted the inquiry procedure under the CRPD was on 25<sup>th</sup> September 2008.<sup>495</sup> There is, therefore, need for improvement.

493 MoFA presentation at the 21st Commission's Stakeholders Annual Report Consultation meeting held from 14th to 16th January 2019 at Fairway Hotel Kampala.

494 UNOHCHR presentation at the Commission's Stakeholders Annual Report Consultation meeting held from 14th to 16th January 2019 at Fairway Hotel Kampala.

495 UNOHCHR. "Reporting Status for Uganda", available at [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=UGA&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=UGA&Lang=EN) Accessed on 7th February 2019.

## 14.5 RECOMMENDATIONS

1. The Ministries of Foreign Affairs; Gender, Labour and Social Development; and Justice and Constitutional Affairs should continue following up on implementation of the Government's voluntary pledges and recommendations accepted from the UPR and treaty bodies to enhance the promotion and protection of human rights in the country.
2. It is also recommended that Uganda makes a declaration allowing direct access to the court as per Article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, (the Protocol) for the court to accept cases from individuals and NGOs with observer status before the African Commission (direct access), since it has already ratified the protocol.

## 14.6 CONCLUSION

Uganda has an obligation to report on treaties and conventions that it has ratified. There is evident commitment to comply. However, there is need for improvement by addressing the prevailing challenges in order to keep up to date with the reporting requirements of each of the treaties and treaty bodies, especially the regularity of reports.





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