

# AFRICAN JOURNAL OF LEGAL STUDIES

## The Protection of Human Rights in Uganda: Public Awareness and Perceptions

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### Abstract

*This article analyzes the results of a research study in Uganda aimed at determining the level of public awareness and the perceptions regarding the protection and enjoyment of such rights. The survey sought information on public knowledge or awareness of the bill of rights, violation or protection of various types of rights, and awareness and perceptions regarding human rights institutions. It was found that although human rights violations still abound in Uganda, there is a high level of public awareness of the Constitution and the human rights it contains, that human rights violations take place more in the rural areas than in urban areas and that Ugandans blame the government for most of these human rights violations. The article concludes that there are still several challenges facing the promotion and protection of human rights in Uganda and that any attempts to address these challenges must take advantage of the opportunities offered by the constitutional framework.*

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## **I. Introduction**

*Ignorantia iuris neminem excusat* (ignorance of the law is no excuse) is a common legal maxim. It is based on the presumption that all people are expected to know the law so as to safeguard themselves and to protect and enforce their rights. In the particular context of human rights, knowledge of the law is not only important for protection and enforcement of rights, but also for people to have some knowledge of the human rights obligations imposed on them by law. Consequently, there is no doubt that in order to enjoy these rights one has to have knowledge of them. One cannot enjoy or enforce rights that of which one is not aware. Accordingly, one of the main factors that determines the effective enjoyment or enforcement of human rights in any society is the level of public awareness of such rights and of the mechanisms and institutions through which they are enforced.

The purpose of this article is to determine and analyze the level of public awareness and the perceptions towards human rights in Uganda with a view to understanding what role such awareness and perceptions can and do play in the promotion and protection of human rights. To that end, a survey was conducted, the results of which will be discussed and analyzed further below. First, however, it is important to take a look at two other factors that have had a significant impact on human rights in Uganda, namely, politics and history.

## **II. Historical Perspectives and Political Dynamics**

Talking about the history and the politics of Uganda is like talking about the proverbial chicken and the egg. It is difficult to say with any level of certainty, whether the politics shaped the history or whether the history shaped the politics. What is quite clear, however, is that both politics and history have played a significant role in what are perceived to have been gross violations and abuses of human rights in that country over the years. The protection and promotion of human rights in Uganda, therefore, have to be seen in the general context of the political history of the country, a brief exposé of which now follows.

A detailed discussion of the pre-independence history of Uganda falls outside the parameters of this Article. Suffice it to say that between 1894 and 1962, Uganda was ruled by the United Kingdom as a British protectorate. Throughout that period there was no emphasis on the protection and promotion of human rights. Instead, the emphasis was on the development of a socio-economic and political system that would tie Uganda into a web of imperialist interests.<sup>1</sup> Moreover, some have argued that colonialism itself “was a negation of freedom [or human rights] from the point of view of the colonized”.<sup>2</sup>

On 9 October 1962, Uganda attained formal political independence and became a member of the Commonwealth.<sup>3</sup> With independence came the first

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<sup>1</sup> See M Ssenyonjo, ‘The domestic protection and promotion of human rights under the 1995 Ugandan Constitution’ (2002) 20 (4) *Netherlands Quarterly of Human Rights* 445, 448. See also M Mamdani, *Imperialism and Fascism in Uganda* (Heinemann Educational Books, London 1983) 6-7.

<sup>2</sup> See W Rodney, *How Europe Underdeveloped Africa* (Howard UP, Washington D.C. 1982) 223.

<sup>3</sup> See GW Kanyeihamba, *Constitutional and Political History of Uganda* (Centenary Publishing House, Kampala 2002) 73.

Ugandan written Constitution,<sup>4</sup> which was an annex to the Uganda Independence Act passed by the British Parliament in August 1962.<sup>5</sup> It is interesting to note that the 1962 Constitution included a chapter protecting a number of human rights and freedoms.<sup>6</sup> The chapter contained a list of mainly civil and political rights with no mention of economic and social rights besides the right to freedom from expropriation of property. Although the Constitution provided that the rights enshrined therein were to be enforceable by the High Court of Uganda, various cases that came before the courts demonstrated the impotence and inability of the justice system to enforce such rights.<sup>7</sup>

The period between 1962 and 1966 may be described as a period of drama in the constitutional development of Uganda.<sup>8</sup> According to Kanyeihamba, “it was a transitional period in which the independence constitution went on trial and was found to be unworkable”.<sup>9</sup> This may, in part, be attributed to the fact that the Constitution was devised by the British without much input from Ugandans and, therefore, was essentially a foreign constitution. Moreover, the independence constitution was intended to be a delicate compromise aimed at uniting the diverse peoples of the country – an objective which it failed to accomplish.

All of these events culminated, in 1966, in the then Prime Minister (Apollo Milton Obote) suspending the independence constitution, deposing the president (Edward Mutesa), declaring himself executive president and imposing an interim constitution.<sup>10</sup> Announcing the constitution to a hastily summoned parliament, Obote is quoted as saying, “This is now the provisional Uganda constitution till another enactment... If you go down to your pigeon holes you will find your copies of the new constitution.”<sup>11</sup> The constitution was from then on sarcastically referred to as the “pigeon-hole” constitution. Interestingly, the “new” constitution retained a bill of rights, but the enormous powers that the constitution vested in the president were inevitably inconsistent with any meaningful protection and promotion of human rights. On the contrary, there was a marked increase in human rights violations and abuses mainly characterized by the suppression of dissenting views and criticism against the government.<sup>12</sup> All attempts to challenge the legality of the Constitution, however, were unsuccessful as demonstrated by the case of *Uganda v Commissioner of Prisons, ex parte Matovu*<sup>13</sup> in which the High Court sitting as a Constitutional Court, held that the abrogation of the 1962 Constitution and its replacement by the 1966 Constitution amounted to a “victorious revolution” which established a legitimate new legal order.<sup>14</sup>

Armed with the judicial support and endorsement of the events of 1966, Obote’s government proceeded to draft and promulgate the 1967 Constitution, which

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<sup>4</sup> Constitution of Uganda 1962.

<sup>5</sup> *The domestic protection and promotion of human rights* (n 1) 448.

<sup>6</sup> Chapter 3.

<sup>7</sup> See for example *Grace Ibingira and Others v Attorney-General* [1966] EALR 306.

<sup>8</sup> *Constitutional and Political History of Uganda* (n 3) 73.

<sup>9</sup> *Ibid.*

<sup>10</sup> See D Mukholi, *A Complete Guide to Uganda’s Fourth Constitution: History, Politics and the Law*, Kampala (Fountain Publishers, Kampala 1995) 16.

<sup>11</sup> *Ibid.*

<sup>12</sup> See *The domestic protection and promotion of human rights* (n 1) 450.

<sup>13</sup> [1966] EALR 514.

<sup>14</sup> *Shabane Opoloto v Attorney-General of Uganda* [1969] EALR 631, which endorsed the extensive powers of the president as enshrined in the 1966 Constitution.

was basically an amended version of the 1966 Constitution. This new Constitution effectively abolished existing kingdoms, declared Uganda a republic, vested enormous powers in the president and greatly centralized political power.<sup>15</sup> More importantly, it watered down the Bill of Rights that had originally been conceptualized and included in the 1962 independence Constitution. As a result, a state of emergency was soon declared and all opposition political parties were banned in 1969, making Uganda a one-party state.<sup>16</sup>

In January 1971, Obote's government was overthrown by the armed forces led by Idi Amin Dada thereby plunging Uganda into a military dictatorship that was to last for eight years – a period that undoubtedly constituted the darkest era in the history of Uganda. Upon assuming power, Idi Amin declared himself president, dissolved the Parliament and suspended key provisions of the Constitution thereby giving himself absolute power. From then on, Uganda was governed on the basis of decrees and Amin became the supreme law.

The history of Uganda during the Amin era is well documented. All commentators agree that Amin's eight-year rule was mainly characterized by drastic economic decline, widespread social disintegration and massive human rights violations.<sup>17</sup> As a result, "Uganda became internationally notorious for human rights violations including killings, disappearances, torture, arbitrary arrests, and discrimination as evidenced by Amin's expulsion of 'non-citizens' – Asians."<sup>18</sup> It is estimated that more than 500,000 Ugandans lost their lives during Amin's reign of terror and murder mainly through arbitrary executions and disappearances at the hands of government agents.<sup>19</sup>

In 1979, Idi Amin was overthrown by a combination of Tanzanian forces and Ugandan exiles. After Amin's removal, there were a number of successive governments,<sup>20</sup> all of which were unsuccessful in bringing stability to Uganda. These governments were mainly characterized by massive violations of human rights, particularly by Milton Obote's second government and the short-lived military regime that followed his removal.<sup>21</sup>

In January 1986, the National Resistance Army (NRA) led by Yoweri Museveni captured Kampala and set up a broad based government of the National Resistance Movement (NRM).<sup>22</sup> Some stability returned to the country accompanied

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<sup>15</sup> *A Complete Guide to Uganda's Fourth Constitution* (n 10) 18.

<sup>16</sup> *Ibid.*

<sup>17</sup> See 'History of Uganda' <<http://www.answers.com/topic/history-of-uganda>> accessed 2 April 2005.

<sup>18</sup> See B Twinomugisha, 'Uganda' in C Heyns (ed), *Human Rights Law in Africa* 1997 (Kluwer Law International, The Hague 1998) 293; A Omara-Otunnu, *Politics and the Military in Uganda* (MacMillan Press, London 1987) 77; and generally, International Commission of Jurists 'Uganda and Human Rights, Report of the UN Convention on Human Rights' Geneva (1997) (All quoted in M Ssenyonjo (n 1) 452).

<sup>19</sup> See E Kiddu-Makhubuya, 'Uganda' <<http://www.uu.nl/content/12-09.pdf>> accessed 6 April 2005.

<sup>20</sup> From 1980 to 1986, Uganda was ruled, in succession, by Yusuf Lule, Godfrey Binaisa, Paulo Muwanga, Milton Obote and Tito Okello.

<sup>21</sup> Obote was overthrown by two of his generals and one of them, Tito Lutwa Okello, ruled the country from July to December 1985.

<sup>22</sup> See BJ Odoki, 'The Challenges of constitution-making and implementation in Uganda' in J Oloka-Onyango (ed), *Constitutionalism in Africa: Crating Opportunities, Facing Challenges* (Fountain Publishers, Kampala 2001) 266.

by a slow improvement in the economic, social and human rights situations in Uganda. The NRM government introduced a political blueprint in the form of a Ten-Point Programme. Of relevance to this discussion was the inclusion in that programme of a commitment to the establishment of democracy, the restoration of security, the elimination of all forms of sectarianism and, in co-operation with other African countries, the defense of human and democratic rights.<sup>23</sup>

Although many changes have taken place since 1986, the NRM government still remains in power. Over the years, the main political characteristic of this government has been its adherence to the “movement” or “no-party” system, which has essentially prohibited political activity other than under the banner of the NRM. There have been many arguments for and against this rather strange political philosophy, but it is generally agreed that it is undemocratic.

Among the many relevant developments that took place during Museveni’s rule was the establishment of certain institutions such as the office of the Inspector-General of Government (IGG) and the Human Rights Commission. The most important constitutional development, however, was the drafting and enactment of the 1995 Ugandan Constitution. It is to this Constitution, in the context of human rights, that we now turn our attention.

### **III. The 1995 Constitution and Human Rights**

The process of formulating the 1995 Ugandan Constitution started in 1988 when a Constitutional Commission was established with the mandate to collect views and make proposals for the enactment of a national constitution. To that end, the Commission was required to formulate and structure a draft that would form the basis of the new Constitution. In December 1993, the Commission presented a Draft Constitution to the President. In March 1994, a Constituent Assembly was elected with the mandate to scrutinize, debate and prepare a final draft of the constitutional text, and to enact and promulgate the new Constitution.<sup>24</sup> The Constituent Assembly finished its work in October 1995 and a new Constitution of Uganda was promulgated.<sup>25</sup>

The preamble to the Constitution recalls Uganda’s history as having been “characterized by political and constitutional instability”.<sup>26</sup> It also recognizes the “struggles against the forces of tyranny, oppression and exploitation”.<sup>27</sup> In that regard, the words of Van Dijkhorst J. in the South African case of *De Klerk and Another v Du Plessis and Others*<sup>28</sup> would seem quite appropriate. Referring to South Africa, the learned judge said:

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<sup>23</sup> For the full list of the key points of the programme, see *A Complete Guide to Uganda’s Fourth Constitution* (n 10) 261.

<sup>24</sup> See ‘Parliament, the Republic of Uganda’ <<http://www.parliament.go.ug/history.htm>> accessed 2 April 2005.

<sup>25</sup> *Ibid.*

<sup>26</sup> See Preamble to the 1995 Constitution of the Republic of Uganda.

<sup>27</sup> *Ibid.*

<sup>28</sup> [1994] BCLR 124 (T).

“When interpreting the Constitution and more particularly the bill of rights, it has to be done against the backdrop of our chequered and repressive history in the human rights field.”<sup>29</sup>

It is in the light of Uganda’s history that, like its predecessors, the 1995 Constitution was drafted to include a bill of rights contained in Chapter Four entitled “Protection and Promotion of Fundamental and other Human Rights and Freedoms.” It has to be mentioned that the Bill of Rights in the 1995 Constitution is fundamentally different from the 1962 and 1967 versions both in the catalogue of rights protected and the mechanisms of implementation. For example, the opening Article of Chapter Four states that “[fundamental] rights and freedoms of the individual are inherent and not granted by the State”.<sup>30</sup> Not only does this provision have no equivalent among earlier Ugandan constitutions, it also signals a departure in so far as the protection of fundamental rights and freedoms is concerned.<sup>31</sup>

The bulk of the rights contained in Chapter Four of the 1995 Constitution belong to the category known as first-generation rights (which include the traditional civil and political rights). These are rights generally included in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to which Uganda is a party.<sup>32</sup> Briefly, the civil and political rights protected in the Constitution include the right to equality and freedom from discrimination,<sup>33</sup> the right to life,<sup>34</sup> personal liberty,<sup>35</sup> respect for human dignity and protection from inhuman treatment,<sup>36</sup> prohibition of slavery, servitude and forced labour,<sup>37</sup> the right to privacy,<sup>38</sup> the right to a fair hearing<sup>39</sup> and freedom of conscience, expression, movement, religion, assembly and association.<sup>40</sup> Also protected are the rights of certain groups including women, children, persons with disabilities, and minorities.<sup>41</sup> In addition, the Constitution protects the rights of citizens to participate in the affairs of government<sup>42</sup> and the right of access to information.<sup>43</sup>

In so far as economic, social and cultural rights are concerned, it is interesting to note that despite Uganda’s accession to the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>44</sup> the 1995 Constitution pays minimal attention to such rights. In this category of so-called second and third generation rights, the

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<sup>29</sup> *Du Plessis and Others* (n 29) 128.

<sup>30</sup> Article 20(1).

<sup>31</sup> See PM Walubiri, *Uganda: Constitutionalism at Crossroads* (Uganda Law Watch Centre, Kampala 1998) 3.

<sup>32</sup> Uganda acceded to the ICCPR on 21 June 1995 and to the First Optional Protocol to the ICCPR on 14 November 1995.

<sup>33</sup> Article 21.

<sup>34</sup> Article 22.

<sup>35</sup> Article 23.

<sup>36</sup> Article 24.

<sup>37</sup> Article 25.

<sup>38</sup> Article 27.

<sup>39</sup> Article 28.

<sup>40</sup> Article 29.

<sup>41</sup> Articles 33, 34, 35 and 36.

<sup>42</sup> Article 38.

<sup>43</sup> Article 41.

<sup>44</sup> Uganda acceded to the ICESCR on 21 January 1987.

only rights provided for under the Constitution are the protection from deprivation of property,<sup>45</sup> the right to education,<sup>46</sup> the right to work and participate in trade union activity,<sup>47</sup> the right to a clean and healthy environment<sup>48</sup> and the right to culture.<sup>49</sup> Other important social and economic rights that should ordinarily be included in the Bill of Rights are laid down in the National Objectives and Directive Principles of State Policy,<sup>50</sup> making them unenforceable and, therefore, not justiciable. Such rights include the right to health, water, sufficient food, natural resources and, arguably, the right to development.

Quite apart from the substantive rights contained in Chapter Four of the 1995 Constitution, there are a number of observations that may be made about that chapter. To begin, the rights in the Constitution are subject to two limitations. The first is a general limitation contained in Article 43 which provides that:

- (1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
- (2) Public interest under this article shall not permit –
  - (a) political persecution;
  - (b) detention without trial;
  - (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided is in this Constitution.

The second limitation applies during a state of emergency and is contained in Article 46(1) which provides that:

An Act of Parliament shall not be taken to contravene the rights and freedoms guaranteed in this Chapter, if that Act authorizes the taking of measures that are reasonably justifiable for dealing with a state of emergency.

Under Article 46(3), a law enacted in accordance with Article 46(1) “may make provision for the detention of persons where necessary for the purposes of dealing with the emergency.”

Another important observation relates to the enforcement of rights and freedoms by the courts. In that regard, Article 50(1) provides that:

Any person who claims that a fundamental or other right or freedom...has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

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<sup>45</sup> Article 26.

<sup>46</sup> Article 30.

<sup>47</sup> Article 40.

<sup>48</sup> Article 39.

<sup>49</sup> Article 37.

<sup>50</sup> The National Objectives and Directive Principles of State Policy are a set of objectives set forth in the preamble of the Constitution which are supposed to guide all organs of the State or non-state actors in applying or interpreting the Constitution or any other law.

It is not quite clear what is meant by a “competent court” as this is not defined in the Constitution. It has been opined, however, that “for purposes of the enforcement of human rights it is understood to mean the High Court.”<sup>51</sup>

Article 50(2) broadens the *locus standi* provision by allowing “any person or organization [to] bring an action against the violation of another person’s or group’s human rights”, and Article 50(3) provides for the right of appeal to an “appropriate court.” It can safely be assumed that “appropriate court” means the Court of Appeal, and, in case of a further appeal, the Supreme Court.

It is interesting to note that no mention of the Constitutional Court is made in Chapter Four although such a court is provided for elsewhere in the Constitution. Article 137(1) provides that “any question as to the interpretation of the Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.” This rather strange phenomenon of the Appeal Court doubling up as a constitutional court is somewhat unique to the Ugandan Constitution, and it is opined that such an arrangement limits the traditional role of a Constitutional Court in the enforcement of human rights.

It is not only the courts of judicature that are mandated with the enforcement of human rights in Uganda. Other relevant institutions include the Uganda Human Rights Commission, the Inspectorate of Government, the Electoral Commission, the National Planning Authority and the Service Commissions (on health and education). For purposes of the discussion in this article we will only focus on the Human Rights Commission and the Inspectorate of Government and it is to these that we now turn our attention.

Provision is made under Article 51(1) for the establishment of the Uganda Human Rights Commission. Article 51(2) spells out the functions of the Commission which include, *inter alia*,

- investigating complaints relating to violations of human rights;
- visiting jails, prisons and other places of detention to assess and inspect conditions of inmates and to make recommendations;
- establishing a continuing programme of research, education and information to enhance respect for human rights;
- recommending to Parliament effective measures to promote human rights;
- creating and sustaining within society, awareness of the Constitution and the law of the country;
- educating and encouraging the public to defend the Constitution against all forms of abuse and violation; and
- monitoring the Government’s compliance with international treaty and convention obligations on human rights.

The Human Rights Commission began operations in 1997.<sup>52</sup> It is important to note that the Commission has the powers of a court and indeed since its inception it has exercised these judicial powers by making decisions regarding claims of human

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<sup>51</sup> See The Fundamental Rights and Freedoms (Enforcement Procedures) Rules 5.1.26 of 1992 as quoted in *The domestic protection and promotion of human rights* (n 1) 476.

<sup>52</sup> See J Oloka-Onyango, *Economic and Social Human Rights in the Aftermath of Uganda’s Fourth Constitution: A Critical Reconceptualisation*, Working Paper No. 88/2004 (Centre for Basic Research, Kampala 2004) 39.

rights violations.<sup>53</sup> The debate as to whether the Commission has succeeded in executing its mandate or indeed whether it is a viable institution, falls outside the parameters of this discussion. Suffice to say that it is a constitutional organ that plays an important role in the protection of human rights.

The other relevant institution as mentioned earlier, is the Inspectorate of Government. This constitutional functionary has its genesis in the Inspector-General of Government Statute which was enacted in 1987 – long before the 1995 Constitution came into being.<sup>54</sup> Section Seven of that statute, dealing with the function of the Inspectorate, provided that the Inspector-General was “charged with the duty of protecting and promoting the protection of human rights and the rule of law in Uganda.”<sup>55</sup> In that regard, one of the functions of the Inspector-General was “to inquire into allegations of violations of human rights committed against any person in Uganda by any person in a public office....”<sup>56</sup>

Most of the provisions of the Inspector-General of Government Statute have now been overtaken by Chapter Thirteen of the 1995 Constitution, through which the Inspectorate of Government has now been constitutionalized. Article 223 establishes the Inspectorate and Article 225 spells out its functions which include, *inter alia*, the promotion and fostering of strict adherence to the rule of law, the elimination of corruption and abuse of authority, the promotion of good governance and the stimulation of public awareness about the values of constitutionalism.<sup>57</sup> It has been opined that these areas “involve human rights issues and therefore the Inspectorate has the potential of complementing the work of the [Human Rights] Commission.”<sup>58</sup> It is debatable whether the Inspectorate of Government has been successful in executing its mandate. It is well known, however, that the Inspectorate is significantly under-funded and understaffed and that its efforts are often frustrated by high-ranking government officials who are potential targets of the Inspectorate’s investigations.<sup>59</sup> Be that as it may, to the extent that the Inspectorate has the potential for building good governance through improving administration, it does play, and will continue to play, an important role in the protection of human rights. There is no doubt that good governance is essential for effective promotion of human rights.<sup>60</sup>

As mentioned earlier, the institutional protection and promotion of human rights in Uganda is not confined to the courts, the Human Rights Commission and the Inspectorate of Government. There are a few other institutions that play indirect but important roles. It was also mentioned earlier that the effective enjoyment or enforcement of human rights largely depends on the level of public awareness of and perceptions towards such rights and the mechanisms and institutions through which to enforce them. It is to that end and against that background that I conducted a

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<sup>53</sup> *Economic and Social Human Rights in the Aftermath of Uganda’s Fourth Constitution* (n 52) 41.

<sup>54</sup> See ‘Inspector-General of Government’ <<http://www.igg.go.ug/functions.htm>> accessed 13 April 2005. The Statute is known as the Inspector-General Act of 1978.

<sup>55</sup> Section 7(1).

<sup>56</sup> Section 7(1)(a).

<sup>57</sup> Article 225(1).

<sup>58</sup> *The domestic protection and promotion of human rights* (n 1) 479.

<sup>59</sup> See ‘Inspector-General of Government’ <[http://www.igg.go.ug/press\\_details.php?id=62](http://www.igg.go.ug/press_details.php?id=62)> accessed 14 April 2005.

<sup>60</sup> *The domestic protection and promotion of human rights* (n 1) 480.

survey aimed at seeking information on public knowledge or awareness of the rights in the constitution, violations or protection of such rights, and awareness and perceptions regarding human rights institutions. What follows is an analysis of the results of that survey.

#### **IV. The Survey**

The research investigation was conducted during the period of July-September 2004. The methodology adopted involved administering questionnaires. There are several advantages of using questionnaires in a study of this nature. Firstly, with questionnaires, the researcher is able to reach respondents in distant places, and more importantly, questionnaires are an excellent way of dispassionately tackling questions dealing with perceptions, attitudes and representativeness.<sup>61</sup> Moreover, questionnaires “are the only realistic way of taking the pulses of hundreds or thousands of people.”<sup>62</sup> The obvious disadvantages associated with the use of questionnaires include misrepresentations and misinterpretations. Some respondents may not take the questionnaires seriously, answering as they think they should in order to portray or conform to a particular image.<sup>63</sup> The researcher usually has no control over such responses other than to take cognizance of such shortcomings in interpreting the data.

In this particular research study, questionnaires were distributed in two rural areas and one urban area. The two rural areas chosen were the village of Mutolere in Kisoro district and the village of Kabuyanda in Mbarara district. In these areas, questionnaires were distributed randomly among respondents from several households. The urban areas chosen included several residential and industrial parts of Kampala, the capital city of Uganda. The urban respondents included factory workers, students, government employees and ordinary people chosen randomly from various households. The choice of research areas was mainly based on the need to highlight the rural/urban contrast.

In all, 2000 questionnaires were distributed and administered by the researcher with the help of a few trained assistants. Half of the questionnaires (1000) were distributed in Kampala and the other half in Mutolere (500) and Kabuyanda (500). The questions were generally based on three aspects:

- i) awareness and perceptions regarding the Bill of Rights in the Constitution;
- ii) awareness and perceptions regarding human rights violations on the one hand and protection on the other; and
- iii) knowledge and perceptions regarding certain human rights institutions and how to access them.

For purposes of simplicity, most of the questions required a “yes” or “no” answer, while others were based on a multiple choice format.

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<sup>61</sup> See JC Mubangizi, ‘Protection of human rights in South Africa: Public awareness and perceptions’, (2004) 29(1) *Journal for Juridical Science* 62, 66. See also JC Mubangizi, *The Protection of Human Rights in South Africa: A Legal and Practical Guide* (Juta & Co, Cape Town 2004) 148.

<sup>62</sup> See L Brickman and DJ Rog (eds), *Handbook of Applied Social Research Methods* (SAGE, California 1998) 485.

<sup>63</sup> *Protection of human rights in South Africa* (n 61) 67.

A total of 1487 respondents (a response rate of almost 75%) from all the research areas (both urban and rural) answered the questionnaire properly. Of these, 739 (49.7%) were from the urban areas while 748 (50.3%) were from the rural areas. With regard to the age of the respondents, 893 (60.1%) were under 30 years old and 536 (36%) were over 30 (58 respondents (3.9%) did not indicate their age). As far as gender balance is concerned, 798 respondents (53.7%) were male while 565 (38%) were female (124 respondents (8.3%) did not indicate their sex).

#### *Awareness and perceptions regarding the Constitution and the Bill of Rights*

As mentioned earlier, the idea behind the maxim *ignorantia iuris neminem excusat* (ignorance of the law is no excuse) is that all people are expected to have knowledge of the law so as to safeguard themselves and to protect and enforce their rights. Accordingly, the first question of the survey asked whether the respondents had heard of the 1995 Ugandan Constitution. 89.2% answered in the positive while only 10.8% answered in the negative. The respondents were then asked whether they were aware that the Constitution contains a chapter on the protection and promotion of fundamental and other human rights and freedoms. 78.6% said they were aware while 21.4% said they were not.

There are a number of observations to be made regarding the responses to the two questions. First, public awareness of the existence of the Constitution and the human rights therein is quite high. Secondly, there was not much difference in the level of awareness between the urban respondents and their rural counterparts (90.1% and 87% respectively regarding awareness of the Constitution, and 76.5% and 79.4% respectively regarding awareness of the Bill of Rights in the Constitution). Thirdly, in terms of gender, males seem to have a slightly higher level of awareness than females. 92.4% of the male respondents said they were aware of the existence of the Constitution compared to 83.7% of the female respondents. As for the level of awareness of the Bill of Rights, the figures were 81.5% for males and 72.5% for females.

It is important to note that although the level of public awareness of the Constitution and the Bill of Rights is quite high, many Ugandans think that the Government has not done enough to make the whole population aware of the rights in the Constitution. Only 30% of the respondents thought the Government had done enough in this regard, while 54.8% thought otherwise and 15.1% said they did not know. The main disparity here was between the age groups. Of the 30% who thought the Government had done enough, only 9% were above 30 years of age. The responses from males and females were fairly balanced (17.4% and 12.6% respectively). So were the urban and rural responses (11.8% and 18.2% respectively).

#### *Human rights violations/protection – general*

The first question in this general category sought to establish public perceptions regarding the places where human rights are violated most. Many respondents thought that most human rights violations took place in rural areas (30%) rather than in urban areas (11.8%). Similarly, many respondents thought there were more human rights violations in the work place (28.8%) rather than at home (11.7%). A few respondents thought most human rights violations occurred in schools (8.7%) while 9.1% of the respondents said they did not know. Predictably, more youths

thought that most human rights violations took place in schools, as 6.7% of the 8.7% who made that choice, were below 30 years of age. There was no significant disparity in terms of the male/female contrast. Variations in terms of area (urban/rural) are depicted in the following graph.

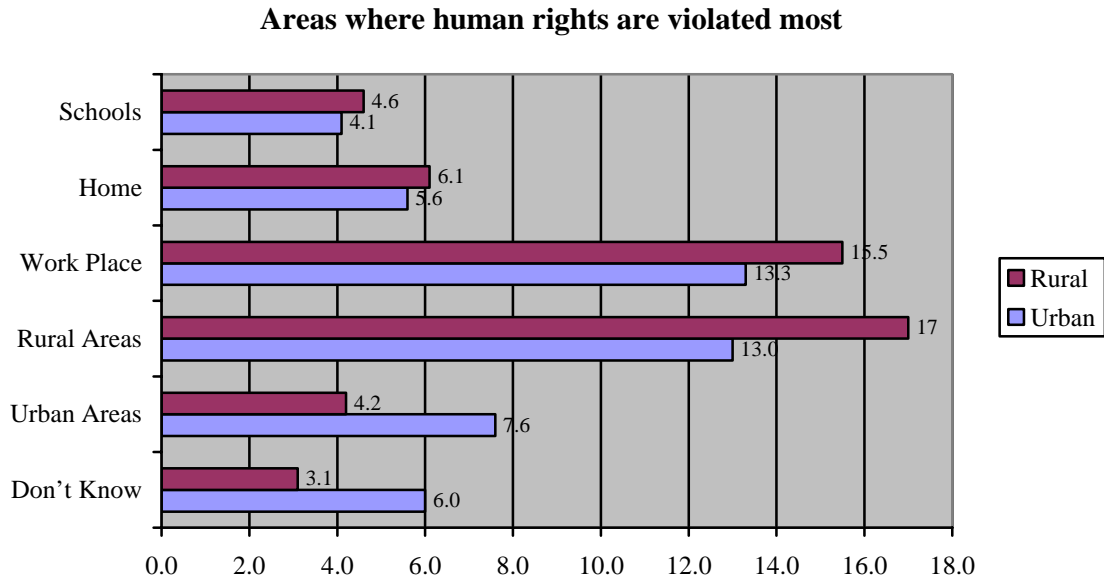


Figure 1: Percentage distribution of perceptions regarding where human rights are violated most.

The second question in this category related to the culprits or perpetrators of human rights violations. In that regard it should be remembered that section 20(2) of the Constitution provides for both the vertical and horizontal application of the Bill of Rights by stating that the rights and freedoms in Chapter 4 “shall be respected, upheld and promoted by all organs and agencies of Government and by all persons”. In that context, respondents were asked who they thought violated human rights most. Of the respondents, 30.8% thought the main culprit was the government against the citizens, 32.7% thought it was the rich against the poor and 19.8% thought it was the police and the military against civilians. Very few respondents (4.5%) thought it was foreigners against Ugandans and even fewer (0.6%) thought it was vice versa. The remaining 9.1% of respondents did not know.

It is clear from the above data that the main culprits of human rights violations, according to those surveyed, are the government and the rich. The urban/rural contrast is quite interesting as 17.1% of the 30.8% who thought it was the government against the citizens, were from rural areas compared to 13.6% who thought likewise. Similarly, 20% of rural respondents thought the main culprits were the rich against the poor. These responses are likely informed by the rampant abuse of government power and the conditions of abject poverty that prevail in rural Uganda. Indeed this is consistent with, and is emphasized by, the responses to the question relating to the main cause of human rights violations. When asked what they thought was the main cause of human rights violations in Uganda, one third of

the respondents (33.8%) said it was social and economic inequalities, 14.6% thought it was lack of access to basic social services, 24.9% thought it was lack of democracy and 23.2% said it was tribalism. Only 3.5% said it was none of the four.

### *Civil and political rights*

As mentioned earlier, the bulk of the rights contained in the Ugandan Constitution are civil and political rights. It was obviously not possible to obtain information regarding the public awareness and perceptions towards all these rights. What was attempted was an investigation of such awareness and perceptions in respect of specific rights to which we now turn our attention.

Although all rights are important, there is no doubt that the right to equality lies at the heart of all other human rights and freedoms. For that reason, most international human rights instruments and national constitutions with bills of rights ordinarily include this right. Accordingly, Article 21 of the Ugandan Constitution provides for the right to equality and freedom from discrimination. In an attempt to determine the perceptions towards this important constitutional right, respondents were asked whether they thought that all people in Uganda were treated equally. An overwhelming 86.2% answered in the negative. Only 10.5% thought all Ugandans were treated equally, with 3.3% saying they didn't know. The almost unanimous view that Ugandans are not treated equally was shared rather consistently between the urban and rural respondents (83.7% and 88.7% respectively). The same applies to males (86.7%) and females (85.5%). The youth (under 30) on the other hand, were more assertive in their negative responses (89.5%) compared to their older counterparts (79.9%).

Article 22 of the Ugandan Constitution provides for the protection of the right to life, however, the provision is phrased in such a way that it does not abolish the death penalty.<sup>64</sup> The death penalty is one of several contentious issues that fall under the right to life and as such it is a subject of furious and emotive debate worldwide. In that context, the respondents were asked whether they thought the death penalty should be abolished. Surprisingly the respondents were equally divided in their views. Of those who answered, 50.4% thought the death penalty should be abolished whereas 49.6% voted to uphold it. Interestingly, there was also no significant disparity in terms of area (rural/urban), gender or age group.

It was mentioned earlier that over the years, the main political characteristic of the present Ugandan government has been the prohibition of political activity other than under the ruling National Resistance Movement itself. There is no doubt that the right to participate in the political activities of one's country lies at the heart of every democratic society. The Ugandan Constitution recognizes this right by providing under Article 38(1) that: "Every Ugandan citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law." Quite apart from the claw-back clause (limitation) within the right, it would be safe to assume that this political right should be interpreted to include the right of all citizens to vote and elect their leaders in free and fair elections. It is, therefore, surprising that when asked whether the

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<sup>64</sup> Section 22(1) provides: 'No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court'.

leaders in the respondents' various areas were properly elected through the will of the people, there was little to choose between the positive and negative responses (45.7% and 45.3% respectively). A further nine per cent of the respondents said they did not know. Interestingly, there was also little difference between the urban/rural respondents as well as between gender and age.

It is usually said that the level of a nation's civilization can be seen most clearly in the way it treats its prisoners. Accordingly, many constitutions that contain bills of rights attempt to provide for some level of protection for those suspected as well as convicted of criminal acts. In this regard, Article 23 of the Ugandan Constitution deals with the protection of personal liberty, which includes rights for arrested, detained or restricted persons. Furthermore, Article 28 deals with the right to a fair hearing and spells out the rights of a person charged with a criminal offence. In that context, respondents were asked if they thought the Constitution provided enough protection for suspects and prisoners. More than half of the respondents (52.2%) replied in the negative, slightly over a quarter (27.1%) replied in the affirmative and 20.7% said they did not know. It is therefore clear that the majority of Ugandans think that the rights of suspects and prisoners are not sufficiently protected. This is not surprising, considering that Uganda has frequently been criticized for its poor prison conditions which pose severe health risks leading to a number of deaths from malnutrition, dehydration, dysentery and pneumonia.<sup>65</sup>

The next two questions dealt with freedom of expression and freedom of religion. Freedom of expression is one of the most fundamental rights that individuals can enjoy, and in Uganda, it is guaranteed under Article 29(1)(a) of the Constitution. Accordingly, the respondents were asked whether they thought that all people in Uganda could speak and express themselves freely. About two thirds (65.7%) said this was not so. Of these, 35.8% were rural respondents while 29.9% were from urban areas. A large number of youths (44.3%) thought likewise. So too did males (38.5%). It is important to note that the very negative responses to this question were in stark contrast to the responses regarding the issue of freedom of religion.<sup>66</sup> Asked whether people in Uganda were allowed to practice the religion of their choice, an overwhelming 89% of the respondents answered in the affirmative. Only 9.8% said this was not so, while a negligible 1.2% said they did not know. There were no significant variations based on area, gender or age group. It is obvious, however, that the majority of Ugandans enjoy the right to religious freedom although the same cannot be said about freedom of expression.

### *Socio-economic rights*

As mentioned earlier, Chapter 4 of the Ugandan Constitution pays minimal attention to the protection of socio-economic rights. Only a few of these are protected, the bulk of the rest being laid down in a part of the Constitution entitled "National Objectives and Directive Principles of State Policy". Accordingly, the questions aimed at determining people's perceptions regarding the protection of socio-economic rights were confined to the right to education, workers' rights and the right to a clean and healthy environment.

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<sup>65</sup> See A Dissel, 'Prison conditions in Africa', <<http://www.csvr.org.za/paper/papdis10.htm>> accessed 27 April 2005.

<sup>66</sup> Provided for under article 29(1)(c).

First, respondents were asked whether they thought that all people in Uganda had access to education. A significant majority (61.5%) answered in the negative. Only 36.4% of the respondents answered in the affirmative, while 2.1% said they did not know. Secondly, respondents were asked about their perceptions regarding labour relations. A large majority (78.5%) thought that workers were not treated fairly by the government and other employers. Of the remaining respondents, 12.8% thought workers were treated fairly and 8.7% said they did not know. It is interesting to note that urban and male respondents were more emphatic than their rural and female counterparts in indicating that the above socio-economic rights are not sufficiently protected. No significant disparity was found in the responses between age groups (under 30 and above 30).

The final question in this category was in relation to the right to a clean and healthy environment. Of all the respondents, 56.1% said they did not live in a clean and healthy environment, 41.4% said they did, and 2.5% did not know. What is interesting is that a higher percentage of the rural respondents (62.7%) thought their environment was not clean and healthy compared to their urban counterparts (49.5%). There was no significant variation between the responses in terms of gender and age group.

It is clear from the above analysis that the few socio-economic rights provided for in the Ugandan Constitution are not sufficiently protected or implemented. The majority of the respondents thought that many Ugandans do not have access to education and that workers are not treated fairly by the government and other employers. They also thought that many people live in an environment that is not clean and healthy.

The following table illustrates the responses regarding specific human rights (civil, political and socio-economic) discussed above. Only variations according to area type (urban and rural) are shown and all figures are rounded to the nearest percentage point.

Perceptions regarding specific human rights (civil, political and socio-economic)

Fundamental human rights	Perceptions regarding specific human rights (%)		
	Urban	Rural	Total percentage for each category
Death Penalty			
• In favour of	30	20	50
• Not in favour of	20	30	50
Election of leaders			
• Fairly elected	22	24	46
• Not fairly elected	20	25	45
• Do not know	8	1	9
Protection of Prisoners			
• Enough protection	11	16	27
• Not enough protection	25	27	52
• Do not know	14	7	21
Equality for all Ugandans			
• Equality	6	5	11
• No equality	42	44	86
• Do not know	2	1	3
Freedom of Expression			

<ul style="list-style-type: none"> <li>• Freedom</li> <li>• No freedom</li> <li>• Do not know</li> </ul>	18 30 2	14 36 0	32 66 2
Freedom of religion <ul style="list-style-type: none"> <li>• Freedom</li> <li>• No freedom</li> <li>• Do not know</li> </ul>	44 5 1	45 5 0	89 10 1
Access to education <ul style="list-style-type: none"> <li>• All have access</li> <li>• Not all have access</li> <li>• Do not know</li> </ul>	16 33 1	20 29 1	36 62 2
Workers treated fairly at work <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Do not know</li> </ul>	5 40 5	8 39 3	13 79 8
Live in a healthy environment <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Do not know</li> </ul>	23 25 2	18 31 1	41 56 3
TOTAL	50	50	100

Figure 2: Percentage distribution of perceptions regarding specific human rights in Uganda

#### *Awareness and perceptions regarding human rights institutions*

As mentioned earlier, the most relevant institutions in so far as human rights protection in Uganda is concerned are the Human Rights Commission and the Inspectorate of Government. It was also mentioned that the Ugandan courts of judicature play an important role, particularly the Court of Appeal which doubles up as a Constitutional Court for purposes of interpreting the Constitution. Accordingly, questions in this part of the survey were aimed at determining the level of public awareness regarding these institutions and knowledge about the mechanisms for initiating a complaint should one's rights be violated.

According to the survey, about three quarters of the respondents (75.7%) were aware of the existence of the Uganda Human Rights Commission and the work it does. Only 24.3% claimed they had never heard of the Commission. A few observations can be made here. First, the high level of public awareness of the existence of the Commission is consistent with the earlier data which showed a generally high level of awareness of the Bill of Rights and the Constitution. Secondly, a slightly higher percentage (52.4) of those who knew about the Commission were from urban areas. This could be attributed to the fact that urban dwellers are usually more enlightened than their rural counterparts. It is perhaps for the same reason that more youths were aware of the existence of the Human Rights Commission than were their elders (63.3% compared to 36.7%). There was no significant variation in terms of gender.

The trend depicted above is also reflected in the responses regarding public awareness of the existence of the office of the Inspector-General of Government

(IGG). A total of 80.8% of the respondents claimed to have heard of the office of the IGG as opposed to 19.2% who had not. Knowledge of this important government functionary was found to be fairly balanced between urban and rural respondents (52.2% and 47.8% respectively). In so far as the gender balance is concerned, however, there appears to be a higher level of awareness among males (61.6%) than females (38.4%). The same applies to the level of awareness in respect of age groups (61.7% among the under 30's as opposed to 38.3% among the over 30's).

The trend of high public awareness continued with regard to the existence of the Constitutional Court. Only one third of respondents (33.9%) claimed they had never heard of the Court while two thirds (66.1%) were aware of its existence. Interestingly, more rural respondents (55.3%) knew about the Court than did their urban counterparts (44.7%). Knowledge of the Court was also more prevalent among males (61.6%) than females (38.4%). It was also more prevalent among youths (68.5%) than among their older counterparts (31.5%).

Public awareness of the rights in the Constitution and knowledge of human rights institutions are obviously not enough to protect human rights. People also need to know how to trigger the intervention of such institutions in the event that their rights are violated. Accordingly, the respondents were asked if they, or anybody they knew, had approached any of the institutions discussed above to claim a human rights violation. Slightly over half of the respondents (51.8%) answered in the affirmative. More than half of these respondents (52.2%) were from urban areas and about 64.2% were below 30 years of age. Furthermore, more males (62.7%) than females (37.3%) had approached one or more of the institutions mentioned or knew someone who had.

Finally, the respondents were asked how they would approach the court or any other human rights institution if their rights were violated. Predictably many respondents (16.3%) did not know. Of those who claimed to know, the majority (35.4%) said they would do so through a community leader, 28.7% through a lawyer and 19.5% would do so directly. Understandably, more rural respondents (59.4%) would go through a community leader compared to their urban counterparts, the majority of whom (59.7%) would prefer to go through a lawyer. The picture that emerges here is that there are many Ugandans who do not know how to approach the various human rights institutions for assistance. Many rural dwellers would go through their community leaders while many urban dwellers would go through lawyers, and not many Ugandans would take the direct route.

## **V. Conclusions**

Several conclusions can be drawn from the results of the survey analyzed in this study. First, in Uganda there is a high level of public awareness of the Constitution and the human rights it contains. Although that awareness is generally widespread (both in urban and rural areas), it is mainly higher among males than it is among females. This is why, it has been opined, in Uganda, as in many other African countries, women constitute the majority of the victims of human rights violations.<sup>67</sup> Women are routinely subjected to violence, denied the right to own property and

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<sup>67</sup> See L Sewanyana and T Awori, 'Uganda: The Long and Uncertain Road to Democracy' in A Ahmed An Naim (ed), *Human Rights Under African Constitutions* (University of Pennsylvania Press, Philadelphia 2003) 415.

generally discriminated against. This perhaps explains why many respondents thought the Government could and should have done more to make the whole population aware of the human rights in the Constitution, despite the fact that the level of human rights public awareness is already quite high.

Secondly, the survey shows that human rights violations take place more in rural areas than in urban areas. This is not surprising considering that Uganda's population is largely rural, with an estimated 90 percent of the population living in rural areas and over 60 percent of these living below the poverty line.<sup>68</sup> The significance of this is that poverty is in itself not only a denial of human rights, but it also erodes or nullifies the realization of both socio-economic rights and civil and political rights.<sup>69</sup> This view is further strengthened by the results of the survey which show that although the government is the main culprit of human rights violations, the main causes of such violations are social and economic inequalities and the lack of access to basic social services.

In the specific context of civil and political rights it is clear that certain important rights, such as the right to equality and freedom of expression, are not well protected. The results of the survey, however, show divergent views on the death penalty, participation in political activity and the rights of prisoners. What is quite clear though, is that the majority of Ugandans feel that the right to freedom of religion is well protected.

There is little doubt that many Ugandans are not happy with the level of protection of their socio-economic rights. It ought to be remembered that only a few of these rights are incorporated in the Bill of Rights section of the Constitution, the rest being included in the section on National Objectives and Principles of State Policy. It has actually been suggested that the Bill of Rights section of the Constitution needs to be redrafted "in order to incorporate these rights which are fundamental to the full existence of a whole human being."<sup>70</sup> According to Oloka-Onyango:

In recognizing and incorporating these rights in an amended constitution, the South African example can serve as inspiration. This is with respect to the formulation of these rights, as well as in relation to the articulation of the nature of the state's obligation in ensuring their progressive realization.<sup>71</sup>

In so far as human rights institutions are concerned, it is clear that there is a generally high level of awareness of the existence of such institutions and the work they do. However, the same cannot be said about the knowledge of the mechanisms and channels for approaching these institutions. Moreover, although the Human Rights Commission and the Inspectorate General of Government play an important role in human rights protection, it ought to be remembered that those institutions are only quasi-judicial bodies and their ability to enforce human rights is severely limited. The courts, particularly the Constitutional Court, should be better placed to play this role. However, the reality is that "the few cases that have been brought

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<sup>68</sup> *Human Rights Under African Constitutions* (n 67) 387.

<sup>69</sup> See JC Mubangizi, 'Know Your Rights: Exploring the Connections between Human Rights and Poverty Reduction with Specific Reference to South Africa', (2005) 21 *South African Journal on Human Rights* 32, 33.

<sup>70</sup> See *Economic and Social Human Rights* (n 51) 47.

<sup>71</sup> *Ibid.*

before the Constitutional Court to date, have been brought by powerful elites, who are seeking through the courts to protect their own interests.”<sup>72</sup>

Compared to the years of Idi Amin and Milton Obote, there is no doubt that there has been some improvement in Uganda’s human rights record over the last decade or so. There is also remarkable improvement in the institutional mechanisms through which human rights violations can be redressed. These are facts of historical reality that are not necessarily borne out by the findings of this survey. Rather, what the results of the survey show is that human rights violations still abound.

There are other factors relevant to human rights protection that fall outside the parameters of this study. The continuing war in northern Uganda and the stubborn insistence of the NRM to stay in power no matter what, do not auger well for the future of human rights protection in that country. As mentioned earlier, in July 2005 Ugandans voted in a national referendum to approve a multi-party system. In August 2005, Parliament voted to change the constitution to lift presidential term limits. The elimination of term limits cleared the way for Museveni to run again in 2006 despite significant controversy and mounting allegations of human rights abuses. There are several other challenges, some of which have been highlighted in this study. Any attempts to address these challenges must take advantage of the opportunities offered by the constitutional framework. Tampering with this framework as the present government is doing only serves the selfish political interests of a few and can only be a recipe for disaster. Ugandans do not need that.

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<sup>72</sup> See *The Long and Uncertain Road to Democracy* (n 67) 417.