

**BEYOND STATE SOVEREIGNTY AND RESPONSIBILITY TO PROTECT:
EXPLORING MECHANISMS FOR ENFORCING HUMAN RIGHTS IN UGANDA**

BY

BEINOMUGISHA ALEXANDER

2022-01-08298

SUPERVISOR: DR. ANTAI GODSWILL OWOICHE

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW, KAMPALA
INTERNATIONAL UNIVERSITY IN PARTIAL FULFILMENT FOR THE AWARD OF A
MASTER OF LAWS (LL.M) DEGREE**

NOVEMBER, 2024

DECLARATION

I **Beinomugisha Alexander**, do hereby declare that, this research dissertation thesis is a product of my individual effort guided by my Supervisor. This is an original copy which has never been duplicated and submitted anywhere for any award or certification.

Signature: **Date:**

BEINOMUGISHA ALEXANDER

2022-01-08298

APPROVAL

This is to certify that this research dissertation has been carried out under my supervision as per the guidelines of Kampala International University.

Signature.....

Date.....

DR. ANTAI GODSWILL OWOICHE

SUPERVISOR

DEDICATION

I hereby dedicate this work to my beloved grandparents Mr. Katahwa Yokana and Mrs. Rhodah Katahwa for they have always been there for me during my academic career. May the Almighty God reward you abundantly.

ACKNOWLEDGEMENT

I am grateful to the almighty god for being with me and guiding me throughout the whole period when I was pursuing this degree.

I owe acknowledgement to the efforts of my supervisor Dr. Antai Godswill Owoche for without his guidance and support during the course of this research, this study would not have been a reality.

My gratitude also goes to a number Kampala International University School of Law Staff for your support towards me, special thanks goes to the School of Law Dean Dr. Kisubi Esther Christine and Associate Dean Research, Dr. Paul Aidonjje. May the Almighty God richly reward you.

My thanks also goes to my mother Mrs. Kyomugasho Janiffer for her love and care throughout my education period, may the almighty reward her abundantly. Grate thanks and acknowledgement goes to my sister Kukundakwe Granny, my aunt Nduhukire Ketty, family members, friends and classmates for your support towards this work and my academic journey. May the Almighty God reward you abundantly.

TABLE OF ACRONYMS

ACHPR	African Charter on Human and People's Rights
AG	Attorney General
CAT	Convention against Torture and other cruel, inhuman or degrading treatment
CEDAW	Convention on the Elimination of All Forms of Racial Discrimination
Const. pet	Constitutional Petition
Const. ref	Constitutional Reference
CRC	Convention on the Rights of the Child
EAC	East African Community
EACA	East African Court of Appeal
Ed	Edition
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
PICJ	Permanent Court of International Justice
POMA	Public Order Management Act
UDHR	Universal Declaration on Human Rights
UN	United Nations
USA	United States of America
VCLT	Vienna Convention on the Law of Treaties

TABLE OF STATUTES

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.	67
Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.	70
Convention on the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008).	74
Convention on the Rights of the Child, opened for signature 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3.	
International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.....	63
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3...	65
International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.....	58
International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 993, 3.....	61
Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967).....	77
Statute of the International Court of Justice (1945) 33 UNTS 993.	
The Rome Statute for the Establishment of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) UN Doc A/CONF.183/9.....	94
Universal Declaration of Human Rights (1948).....	52

African Charter on Democracy, Elections and Governance (2007) 1.....	102
African Charter on Human and Peoples' Rights (1986) 21 ILM 58.	72
African Charter on the Rights and Welfare of the Child, 1990.....	74
Convention Governing the Specific Aspects of Refugee Problems in Africa, opened for signature 10 September 1969, 1001 UNTS 45 (entered into force 20 June 1974).....	76
East African Community Protocol on Peace and Security (2013) EAC Treaty.....	108
East African Community Treaty (2000) 2144 UNTS 255, signed 30 November 2000, entered into force 7 July 2001.	
Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) 2003.....	75
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998) OAU Doc CAB/LEG/66.6.....	102
Anti-Homosexuality Act Cap. 117 (2023).....	25
Children Act Cap. 62 (amended 2016).....	24
Constitution of the Republic of Uganda 1995.....	78
East African Community Act Cap 187 (2000).....	105
Equal Opportunities Commission Act Cap 7 (2007).....	79
Human Rights (Enforcement) Act Cap 12 (2008).....	81
International Criminal Court Act Cap. 14 (2003).....	94.
Penal Code Act Cap. 128 (Revised Edition 2013).....	95
Police Act Cap 324 (1998).....	82
Uganda Human Rights Commission Act Cap 26 (2000) (amended 2019).....	79

TABLE OF CASES

Andrew Mwenda v Attorney General Constitutional Reference No 224 of 2010 (Uganda).....	67
Charles Onyango & Another v Attorney General [2002] Const App No 2 (Ug).	79
Frolova v Union Soviet Republic 761 F.2d 370 (7th Cir 1975).	64
Fujii v State 38 Cal 2d 718, 242 P 2d 617 (1952).....	26
INS v Cardoza-Fonseca 480 US 421 (1987).....	45
Ireland v United Kingdom (Application No 5310/71) (ECHR, 18 January 1978).....	36
Ireland v United Kingdom (European Court of Human Rights, Ser A No 25).....	84
Attorney General v David Tinyefuza Constitutional Appeal No 1 of 1997 (Supreme Court of Uganda, 1997).....	96
Katabazi v The Secretary General of the EAC & Others (Ref No.1 of 2007 [2007] EACJ 3...)	104
Magbwi v MTN (U) Ltd (Civil Appeal No 0027 of 2012) (Uganda Court of Appeal).....	102
Mifumi (U) Ltd & Anor v Attorney General & Anor (Constitutional Appeal No 2 of 2014) [2014] UGCC 2.....	86
Muwanga Kivumbi v Attorney General Constitutional Petition No 9 of 2005 (Uganda).....	132
Nicaragua v USA (PCIJ Reports 1969) 1 PCIJ 192.....	97
Okiring & Another v Republic of Uganda (Communication 339 of 2007) ACHPR 133.....	89
Osotraco Limited v The Attorney General HCCS No 1380 of 1986 (High Court of Uganda)....	82
PC Atusasiire Darius v ACP Oklany John William & 2 Ors (MC No. 25 of 2021).....	78
Peter Otikor & 2 Ors v Margret Anya [2013] Civil Appeal No 38 of 2012.....	83

Prosecutor v Dominic Ongwen ICC-02/04-01/15 (International Criminal Court, 4 February 2021).....	104
Sir Dawda K. Jawara v The Gambia (1998) 147/95-149/96, African Commission on Human and Peoples' Rights.....	115
Suzan Kigula & 417 Others v Attorney General [2003] UGCC 6.....	96
United States Diplomatic and Consular Staff in Tehran (United States of America v Iran) [1980] ICJ Rep 3.....	106
Yasin Omar v Attorney General EOC Ref No. EOC/CR/010/2016.....	74
Zachery Olum v Attorney General [1999] Const Pet No 6 (Uganda).....	82

ABSTRACT

This research explores mechanisms for enforcing human rights in Uganda, moving beyond traditional concepts of state sovereignty and the Responsibility to Protect. Despite Uganda having a good legal framework on human rights enforcement, it has failed to progressively realize the fundamental human rights and shields behind the clock of sovereignty, the study investigates the responsibility of Uganda as a sovereign state in protection of human rights viz-a-viz mechanisms for enforcing human rights as well as the legal and institutional framework on human rights and its efficacy, challenges and opportunities in enforcing human rights. The study used a doctrinal research methodology analyzing the primary and secondary sources of data. The study found out that the human rights environment in Uganda is unstable due introduction of claw back and restrictive human rights laws. The study concluded that in exploring the landscape of human rights enforcement in Uganda beyond state sovereignty and Responsibility to Protect, it becomes evident that a multifaceted approach is essential, while traditional framework emphasis state accountability, they often overlook the complexities of local contexts. The study thus recommended that there is a need for diplomatic engagement, capacity building and strengthening of the legal framework.

TABLE OF CONTENTS

DECLARATION	i
APPROVAL.....	ii
DEDICATION	iii
ACKNOWLEDGEMENT.....	iv
TABLE OF ACRONYMS	v
LIST OF STATUTES	vi
LIST OF CASES	viii
ABSTRACT	x
TABLE OF CONTENTS.....	xi
CHAPTER ONE	1
GENERAL INTRODUCTION.....	1
1.1 Background of the study.....	1
1.2 Statement of the problem.....	7
1.3 Research Questions.....	8
1.4 Aim and Objectives of the Study	8
1.4.1 Aim of the Study.....	9
1.4.2 General Objective	9
1.4.3 Specific Objectives	9
1.5 Significance of the study	9
1.6 Scope of the Study.....	10
1.6.1 Geographical Scope	10
1.6.2 Content scope	10
1.6.3 Time Scope	10
1.7 Research Methodology	11
1.9 Synopsis of the Chapters	12
CHAPTER TWO.....	14
LITERATURE REVIEW	14

2.1 Conceptual Framework.....	14
2.1.1 Sovereignty and Human Rights	14
2.1.2 Sovereignty in Uganda viz-a-viz Human Rights	16
2.1.3 Human Rights viz-a-Viz Cultural Relativism.....	19
2.1.4 Responsibility to Protect (R2P)	23
2.1.5 Enforcement Mechanisms	24
2.2 Theoretical Framework.....	25
2.2.1 Realism	25
2.2.2 Liberalism.....	26
2.2.3 Constructivism.....	27
2.2.4 Human Rights-Based Approach (HRBA).....	28
2.3 Literature Review	29
CHAPTER THREE.....	44
UGANDA’S LEGAL FRAMEWORK AND INSTITUTIONAL FRAMEWORK ON THE PROTECTION OF HUMAN RIGHTS	44
3.1 International Instruments.....	44
3.1.1 Universal Declaration of Human Rights Charter, 1948.....	48
3.1.2 The International Covenant on Civil and Political Rights.....	54
3.1.3 The International Covenant on Economic, Social and Cultural Rights, 1966.....	57
3.1.4 The International Convention on the Elimination of All Forms of Racial Discrimination, 1965	59
3.1.5 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	62
3.1.6 The Convention on the Elimination of All Forms of Discrimination against Women, 1979,	65
3.2 REGIONAL INSTRUMENTS	67
3.2.1 The African Charter on Human and Peoples’ Rights.....	67
3.2.2 African Charter on the Rights and Welfare of the Child, 1990.....	69
3.2.3 Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) 70	
3.2.4 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	71

3.3 National Laws.....	72
3.3.1 The Constitution of the Republic of Uganda, 1995.....	73
3.3.2 Uganda human rights commission Act Cap 26.	74
3.3.3 The Human Rights (Enforcement) Act Cap 12.....	76
3.4 Institutional Framework.	81
3.4.5 International Criminal Court	88
3.4.6 The African Commission on Human and Peoples’ Rights	90
3.4.7 The African Court on Human and Peoples’ Rights	96
3.4.8 The African Committee of Experts on the Rights and Welfare of the Child	98
3.4.9 Other AU Bodies with functions that impact on the protection of rights	100
3.4.10 The East African Court of Justice (EACJ).....	101
3.5 Ratified and Domesticated Treaties and Conventions.....	106
3.6 Enforcement vs Interpretation of Human Rights in Uganda.	109
3.7 Non Derogable of Human Rights	111
CHAPTER FOUR	117
CHALLENGES AND OPPORTUNITIES IN ENFORCING HUMAN RIGHTS IN UGANDA.....	117
4.1 Challenges in Enforcing Human Rights in Uganda.....	117
4.2 Opportunities in enforcing human rights in Uganda	132
4.2.1 Opportunities in Enforcing Human Rights in Uganda	133
Legal Framework Enhancement	133
4.2.2 Institutional Opportunities in Enforcing Human Rights in Uganda	136
Judicial Independence.....	136
International Partnerships	138
4.2.3 Non Legal Opportunities in Enforcing Human Rights in Uganda	138
CHAPTER FIVE	142
CONCLUSION	142
5.1 Summary of Findings	142
5.2 Conclusion.....	144

5.3 Recommendations	145
Bibliography	147

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the study

The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout history. The concept of human rights could be as old as civilization. ¹ Human rights are rights a person has simply because he or she is a human being, they are held by all persons equally, universally and forever. All human beings are born free and equal in dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. ² Human Rights have been divided into first generation rights which include civil and political rights, second generation rights which include economic, social and cultural rights and third generation rights which include self-determination and the right to participate in the benefits of man kind's common heritage.

The development of human rights of man may be traced as far as the Biblical period and have gone through a number of stages but the widely known human rights protection started after World war two with the extermination by the Nazi German of over six million Jews and minorities. This led to the formation of the United Nations with its preamble speaking to human rights, "to save the succeeding generations from the scourge of war,to reaffirm faith in fundamental human rights. To establish conditions under which justice and respect for the obligations arising from treaties and other sources of International Law can be maintained and to promote social progress and better standards of life in larger freedom"³

¹ Salkesh Kori, 'Historical Development of Human Rights' [2018] 6 (9) *International Journal of Research in all subjects in Multi languages* 64

² Universal Declaration of Human Rights 1948, Art 1

³ Hans Kelsen, 'The Preamble of the Charter- A Critical Analysis' [1946] 8(2) *The Journal of Politics*, 134-159

Much as the UN Charter was a fundamental document, it did not specifically address the issue of Human Rights and as such in 1948, under the leadership of Eleanor Roosevelt, the Universal Declaration of human Rights was adopted to deal with human rights issues comprehensively. Because the UDHR was a mere declaration without a binding effect and a need for establishing mechanisms for enforcing human the UDHR, the UN Commission on human rights proceeded to draft the twin covenants; The International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which together with the UDHR are known as the International bill of human rights.⁴ In addition to the International Bill of human Rights, the United Nations has adopted 20 principal treaties further elaborating human rights, there also a number of other human rights documents in Europe, America, Africa and Asia all reinforcing the International Bill of Human Rights.

The starting point for understanding human rights and democracy in contemporary Africa is the African nationalism and Pan Africanism.⁵ Earlier on, there had been movements engaged in fighting human rights abuses and plundering of African resources. At the 1945 Pan African Congress, for instance, part of the declaration read; we are determined to be free, we want education. We want the right to earn a decent living, the right to express our thoughts and emotions, to adopt and create forms of beauty. We will fight in every way we can for freedom, democracy and social betterment.⁶

Human rights were thus a basis for the struggle for Independence in Africa and the newly African leaders translated their human rights rhetoric into their constitutional provisions which were negotiated with the whites. The OAU formulated the African Charter on human and People's Rights which is a celebrated document detailing civil, political, economic, social

⁴ John P. Humphrey, 'The International Bill of Rights: Scope and Implementation' [1976] 17(3) *William & Mary Law Review*, 527

⁵ Julius Nyerere, *Freedom and Socialism/Uhuru na Ujamaa* (London: Oxford University Press, 1968) 31

⁶ George B.N Ayittey, *Africa Betrayed* (New York: St. Martin's Press, 1992) 99

and cultural rights in the African context. This is supplemented by a number of other regional instruments such as the African Charter on the Rights and Welfare of the Child and the OAU Refugee Convention that addresses the specific refugee problems in Africa.

Uganda detailed its Independence in Uganda in 1962 with the Independence Constitution including a chapter of human rights and freedoms.⁷ beyond independence, there was a period of drama and trial of the 1962 constitution where the constitution was found out to be unworkable and this led to a number of change in regimes but still the issue of human rights remained lagging behind. With the capture of power by the National Resistance Army in 1986, there was hope for the protection of fundamental human rights and not merely a change of guards. With the promulgation of the 1995 Constitution, an entire chapter four was reserved for human rights and since then Uganda has ratified and domesticated a number of human rights documents that provide for human rights enforcement mechanisms.

Sovereignty can be defined as supremacy or pre-eminence and it has been given different meanings, hues and tones depending on the context and objectives of those using the word. Article 1 of the UN Charter established as one of the purposes of the United Nations, to develop friendly relations between states based on respect for the principles of equal rights and self-determination. Unlike other grand statements of International law, the concept of popular sovereignty was not to remain mere pious aspiration, criteria for appraising the conformity of internal governance and with international democracy was made.⁸

Although the term sovereignty continues to be used in International law, its referent in modern International law is quite different. International law still protects sovereignty but not surprisingly it is the people's sovereignty rather than the sovereign's sovereignty. Under the old concept, even scrutiny of International human rights without the permission of the

⁷ The Constitution of Uganda 1962, ch 3

⁸ United Nations Declaration on the Elimination of All Forms of Racial Discrimination, GA Res 1904 (XVIII) (20 November 1963).

sovereign could arguably constitute a violation of sovereignty by its invasion. The United Nations Charter replicates the domestic Jurisdiction-International concern dichotomy but no serious scholar still supports the contention that internal human rights are essentially within the domestic jurisdiction of any state and hence insulated from international law.⁹ International Law is still concerned with the protection of sovereignty but in its modern sense the object of protection is not the power base of the tyrant who rules directly by naked power or through the apparatus of a totalitarian power order but the continuing capacity of a population freely to express and effect choices about the identities and policies of its governors.¹⁰

From the creation of the Organisation of African Unity to the African Union, the overwhelming consideration given to the principle of state sovereignty has had a negative impact on the development of human rights as African states turn to consider every human rights scrutiny as an attempt to narrow or undermine their so cherished sovereignty. Respect for the principle of national sovereignty and non-interference in the internal affairs of member states serves as a shield for human rights violations and much as the African Union provides for a right to intervene in case of grave circumstances, the likelihood of such intervention is very low as African states have developed a sense of solidarity to avoid criticizing one another.

In Uganda, the immediate post-colonial period was characterized by rapidly developing events including the referendum, abolition of kingdoms and a number of constitutional and regime changes. The 1995 Constitution declares Uganda as a sovereign state and vests power with the people. The state is at liberty to do as it deems fit for the masses and has put in place

⁹ Micheal Reisman, *Sovereignty and Human Rights in Contemporary International Law* [1975] 84(1) *The American Journal of International Law*, 869

¹⁰ *Ibid*

a number of laws and domesticated others to protect human rights of the citizens though there are still a number of lapses in the implementation of the same.

The responsibility to protect is for each and every individual state to protect its citizens, however if the state is unable or unwilling to protect their citizens, then the responsibility shifts to international community to use diplomatic humanitarian and other methods to help protect human rights and well-being of civilian populations, where such methods appear insufficient, the security council may out of necessity take action under the charter of the UN.¹¹ The UN Charter affirms a principle of non-interference in the domestic affairs of a sovereign state but also states as one of its purposes as achieving international cooperation in promoting and encouraging respect for human rights. The responsibility to protect is a normative statement intended to reconcile what duties the International community has to do in the face of grave human rights abuses within a sovereign state. According to these principles, sovereignty must be upheld but sovereignty must should be defined to include the state's responsibility to protect its citizens.

Achieving international security requires states to fulfill their responsibility to protect their citizens against human rights violations. Within the African context, the responsibility to protect t is articulated in Article 4(h) of the Constitutive Act of the African Union which provides for the right of the African Union to intervene in a member state pursuit to a decision of the General Assembly in respect of grave circumstances. The Constitutive Act recognizes the contested principle of non interference by any member state in the internal affairs of another however it does not preclude intervening pursuit to AU decision.¹² Uganda as a state equally has a responsibility to protect but where it fails to do such, the International community can intervene to ensure the respect of human rights.

¹¹ UN Charter, art 51.

¹² *Constitutive Act of the African Union* (adopted 11 July 2000, entered into force 26 May 2001) 2158 UNTS 3, art 4(g).

With the democratic wave that swept across Africa, Latin America and Eastern Europe, in the wake of the collapse of the communist regimes at the end of the cold war, a host of states embraced the principles of democracy, constitutionalism, good governance, the rule of law, respect for basic rights, and economic liberalization.¹³ Uganda suffered gross violation of human rights in the wake of independence especially during the dictatorial military regime of Iddi Amin from 1971 to 1979. Following his overthrow, successive governments vowed to restore democratic governance, respect for basic human rights, the rule of law, good governance and liberalize the economy.

The Republic of Uganda acceded to International Covenant on Economic, Social and Cultural Rights,¹⁴ International Covenant on Civil and Political Rights,¹⁵ International Convention on the Elimination of All Forms of Racial Discrimination,¹⁶ Convention on the Elimination of All Forms of Discrimination against Women ratified¹⁷ among others. At the sub-regional level, Uganda is a member of the treaty for East Africa whose one of the cardinal principles is to promote and protect human rights. Chapter four of the 1995 Constitution of the Republic of Uganda is dedicated to promotion and protection of the fundamental human rights. Despite the presence of all the above, and other mechanisms like the courts of law, Inspectorate of Government, Civil society organizations among others, there are still several weaknesses in these institutions and thus strengthening. There seem to be no adequate and well-coordinated framework for the effective and efficient enforcement of these international and regional instruments.

¹³ Richard P. Claude, *The Classical Model of Human Rights Development*, (The Johns Hopkins University Press, Baltimore, Md, 1976) 10.

¹⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), Uganda accession 21 January 1987

¹⁵ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), accession by Uganda 21 June 1995.

¹⁶ Uganda acceded to the *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, acceded 21 November 1980.

¹⁷ *Convention on the Elimination of All Forms of Discrimination Against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), ratified by Uganda 22 July 1985.

1.2 Statement of the problem

In recent decades, the concept of sovereignty has evolved, particularly in the context of human rights protection. Traditionally, sovereignty emphasized the authority of states to govern without external interference. However, the Responsibility to Protect (R2P) doctrine has emerged to challenge this traditional notion, arguing that states have an obligation not only to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity but also to allow for intervention if they fail to do so. While the R2P doctrine holds promise as a framework for global human rights accountability, its application in countries with complex political and social landscapes, such as Uganda, has proven challenging.

In Uganda, human rights violations persist despite international frameworks aimed at accountability and enforcement. Allegations of extrajudicial killings, torture, political repression, and limited freedoms have raised questions about Uganda's commitment to human rights and the mechanisms in place for enforcing them. The Ugandan government has often leveraged its sovereignty as a means of resisting international pressure to address these issues, citing non-interference principles. This approach has limited the effectiveness of international mechanisms meant to uphold the human rights of Ugandans. Additionally, Uganda's internal legal and institutional frameworks, while theoretically supportive of human rights, often lack the strength or independence needed to hold powerful state actors accountable.

This research seeks to investigate mechanisms beyond traditional state sovereignty and the R2P doctrine that could be used to enforce human rights in Uganda. The study will explore innovative and practical avenues for strengthening human rights enforcement within Uganda's unique socio-political context. Specifically, it will assess the role of regional

African organizations, international human rights bodies, civil society, and grassroots movements in enforcing rights and holding the state accountable. It will also examine the limitations of current international frameworks and the challenges posed by Uganda's political dynamics, which often undermine efforts to protect human rights.

By critically examining these issues, this research aims to contribute to a nuanced understanding of how human rights enforcement can be effectively implemented in Uganda. The study will provide insights into potential reforms and suggest new strategies that can reinforce Uganda's accountability to its citizens and the international community. Ultimately, the research aspires to inform policymakers, human rights advocates, and international organizations on feasible approaches to uphold human rights in Uganda, even when faced with sovereignty-related constraints.

1.3 Research Questions

- i. How does state sovereignty affect the protection of the rights of people in Uganda?
- ii. How adequate are the legal and institutional framework on human rights enforcement in Uganda?
- iii. What are the challenges and opportunities in enforcing human rights in Uganda?

1.4 Aim and Objectives of the Study

This research investigates the responsibility of Uganda as a sovereign state in protection of human rights viz-a-viz mechanisms for enforcing human rights. Central to this aim is to understand the contextualization of a Human Rights at international Level and how they are enforced in Uganda.

1.4.1 Aim of the Study

The aim of the study is to explore the enforcement of human rights by the international community within a sovereign territory of another country.

1.4.2 General Objective

The general objective of the study is to analyze the responsibility of Uganda as a sovereign state in protection of human rights viz-a-viz to mechanisms for enforcing human rights.

1.4.3 Specific Objectives

- I. To examine the concept of state sovereignty in relation to protecting human rights in Uganda.
- II. To analyse the adequacy of the legal and institutional framework on human rights enforcement in Uganda.
- III. To establish the challenges and opportunities in enforcing human rights in Uganda.

1.5 Significance of the study

The study is of significance to other scholars in international and domestic human rights as it will be a guide to them in analyzing how sovereignty and responsibility to protect affect the enjoyment and guarantee of human rights.

The study will also be of much significance to the human rights advocates and practitioners as it highlights to them the effect of state sovereignty and the responsibility to protect. In this way, they will know how to navigate and balance between human rights and the inherent interests of the state which is Independence and sovereignty. It will act as a guide to them on what to expect the state can provide in as far as human rights are concerned and justify why the state might be reluctant to guarantee a number of other rights.

The study is of significance to the legislators who are mandated to make laws and domesticate international treaties in as far as it highlights the role of the state towards international human rights instruments, the missing gaps in the law and the role of the state towards enforcement of human rights.

Lastly, the study will be of much significance to the security organs, peace keepers, administrators, law enforcement officers as it clearly highlights their scope, limitation and the consequences of exceeding their limits, it also demonstrates what the masses are entitled to and to what extent human rights can be enjoyed.

1.6 Scope of the Study

This study was divided into three different aspects, that is content scope, time scope and geographical scope.

1.6.1 Geographical Scope

This study was limited to the geographical boundaries of Uganda. Only that, the researcher shall consult other studies on protecting and enforcement of peoples' rights from other nations especially those that apply common law, the United Kingdom, Ghana, Nigeria, among others.

1.6.2 Content scope

This study addressed the responsibility and sovereignty of Uganda as an independent state as regards to upholding the rights of the people viz-a-viz to mechanisms for enforcing them employed by Uganda, emphasis was on the civil and political rights though reference shall also be made to other rights.

1.6.3 Time Scope

The study covered the spell starting from 2015 to 2024.

1.7 Research Methodology

The study was conducted by applying a doctrinal type of research. Doctrinal type is the one that concentrates on the ongoing position of the law in a given independent nation. Thus, it was put into account the ongoing circumstances of human rights in the case study under consideration by the international bodies putting into account the principle of state sovereignty. Thus, it was majorly put into account the several legal positions as provided in the laws that address human rights protection and the logical as well as logical analysis of the laws on rights of the people together with state sovereignty and mechanisms for human rights enforcement.¹⁸

The study focused on investigating the major laws that address the area under consideration. It was of substantive laws, doctrines, concepts and court decisions. The study further considered sources like Hansard of the Parliament of Uganda among others.

- i. Primary sources that the researcher referred comprised the unique details. The major examples of these was the body of laws like the grand norm and other enactments of the legislature. It comprised of subsidiary laws made by individuals upon whom authority has been installed to make such laws for example statutory instruments made by the ministers of the different government ministries.
- ii. Secondary sources to which the researcher used include textbooks, abstracts, dictionaries, encyclopedias, comments on statutes, reviews, and treatises.

1.8 Research Limitations

When researching mechanisms for enforcing human rights in Uganda, a few limitations and challenges arose, key amongst them include the following;

¹⁸ Terry Hutchinson and Nigel James Duncan, *'Defining and describing what we do: Doctrinal legal Research'* [2013], 21(3) Legal Education Digest 32

- i. **Political Climate and Government Restrictions.** Uganda's political environment restricts access to certain data, especially where government agencies are involved. Much of the much censorship of information as well as constrained access to government officials or records. This limits the authenticity and reliability of the data collected.
- ii. **Lack of Reliable Data.** Accurate data on human rights abuses in Uganda is be limited and there is difficulty in verifying some sensitive information. Government reports lack transparency, which hindered independent data collection. Equally to note is that poor documentation of human rights cases, especially in rural areas, makes it difficult to gather comprehensive data, which may impact the generalizability and reliability of the findings.
- iii. **Ethical Considerations in Data Collection.** Gathering information on human rights abuses often involves dealing with vulnerable populations, including survivors of trauma. Ensuring the ethical collection and handling of sensitive data, maintaining confidentiality, and minimizing harm to participants are essential but challenging. The sensitivity of the topic also limited participants' willingness to share information openly, especially if they fear reprisal from authorities or community members.

1.9 Synopsis of the Chapters

This work shall be divided into five and the following shall be discussed accordingly

Chapter one addresses the introduction part of the study, highlight the research question, research methodology amongst others.

Chapter two addresses the concept of state sovereignty in relation to protecting human rights in Uganda and the literature review.

Chapter three discusses the legal and institutional framework on human rights enforcement in Uganda and their efficacy.

Under chapter four examines the relationship between state sovereignty, responsibility to protect and human rights enforcement and well as establishing challenges and opportunities in enforcing human rights in Uganda.

Chapter five, the last chapter of the study; the researcher states the finding of this research and make recommendations for better enforcement of human rights in sovereign stat

CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Framework

The conceptual framework serves as a foundational structure that outlines the core components and relationships relevant to the study of human rights enforcement mechanisms in Uganda. This framework is designed to navigate the intricate landscape of state sovereignty, the Responsibility to Protect (R2P), and human rights, while also emphasizing the practical mechanisms that can enhance human rights enforcement. By situating these concepts within the Ugandan context, the framework illuminates the challenges and opportunities for advancing human rights in a complex political and social environment.

2.1.1 Sovereignty and Human Rights

International human rights treaties are not designed to abolish state sovereignty and replace it with cosmopolitan legal order but to make states to institutionalize a common international standard and to abide by it in their domestic law and policies. Sovereignty and human rights are thus best to be understood as two distinct but interrelated legal principles of the same, “dualistic” international political system.¹ This dualistic political system is composed of sovereign states and the international law they make through consent and new global governance institutions that provide global cosmopolitan legal elements derived from non-derivative human rights norms. The states remain of a continuous relevance because they institutionalize a distinct political relationship between the government and the citizens which binds decision-making to conditions of political legitimacy. Yet, when a state commits

¹ Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013)371

genocide or enslavement or oppresses its people in radical ways, it is subject to international community's concern or potential intervention justified by inviolable human rights.²

This raises a question as to the effectiveness in the enforcement of international instruments like the Universal Declaration on Human Rights (1948), the International Human Rights Covenants (1966), and several single-issue treaties and declarations that establish an impressive body international legal obligations. The international human rights obligations of states are solely to their own nationals (and others under their territorial jurisdiction). States have neither a right nor a responsibility to implement or enforce the human rights of foreigners on foreign territory. And international supervision of national human rights practices is extremely restricted.³ Numerous human rights treaties require periodic reports to an international committee of experts. With the six principal international human rights treaties having an average of 161 parties, this amounts to a not negligible quantity of formal international scrutiny. The United Nations Commission on Human Rights also examines human rights situations in countries of concern and for selected rights. National and transnational NGOs assure a surprisingly free flow of information on human rights practices. Some states have made monitoring human rights an integral part of their foreign policy. But with very limited exceptions primarily weak and rarely used individual complaint mechanisms and a weak system of regional judicial enforcement in Africa towards implementation and enforcement are left to states in their own territories.⁴

How states treat their own nationals on their own territory has become a legitimate, and increasingly regular and important, topic in bilateral, multilateral, and transnational international politics. States and other international actors are free to use most ordinary policy

²Mohammed Ayoob, 'Humanitarian Intervention and State Sovereignty' [2001] 6 (1) *International Journal of Human Rights* 81-102.

³ Ibid

⁴ Philip Alston and James Crawford, *The Future of UN Human Rights Treaty Monitoring* (1st edn, Cambridge University Press 2000) 67.

instruments short of the threat of force to influence national human rights practices. One can thus argue that international society has remained largely a society of sovereign states with most international law being implemented and enforced nationally. This is true with the fact that Human rights having simply been incorporated into the established state-based system of international law and politics. However, the society of states has, with very few and extremely limited exceptions, no significant role in the enforcement of human rights. It simply is not true that human rights claim no longer depend on geographic limitations, and may be as appropriately addressed to the broader international community as they are to a nation state's sovereign. If those claims are for implementation, enforcement, or legal remedy, then it remains the domain of states exercising their sovereign prerogatives within their own territories.

2.1.2 Sovereignty in Uganda viz-a-viz Human Rights

Uganda just like the absolutist interpretation of sovereignty represents one of the sovereign states. The country represents one of possible powers of sovereignty. There is no essentialist understanding of sovereignty in terms of a specific political regime, such that would be unalterable with the historical development of Uganda as a country. While the core idea of sovereignty remains unchanged, namely the claim to a supreme political authority within a territory (and to an external independence), the interpretation of what sovereignty means in practice reflects shifting social and political institutions.⁵

Uganda claims supremacy of the political authority and its being the ultimate source of jurisdiction over a population within a territory. This means that there are no equal or autonomous powers within the polity with comparable claims to the geographical boundaries

⁵ John C. Mubangizi. 'A Human Rights-based approach to fighting corruption in Uganda and South Africa shared perspectives and comparative lessons' [2020] *Law, Democracy and Development*, 24.

that the state known as Uganda asserts dominion. This claim to supreme political power is materialized in a coherent, unified, independent, and territorially circumscribed legal system.⁶

The sovereignty claim can be vested in institutional settings varying from absolute monarchy to constitutional democracy. The alternative to the absolutist paradigm of sovereignty is thus not the abandonment of sovereignty. But the de-absolutization “of sovereignty through constitutionalism and democracy.”⁷ Theoretically, the de-absolutization of sovereignty requires rethinking the relationship between law and power and accept that legally constituted, divided, and limited political power can be sovereign nonetheless. In practice, the absolutist sovereignty has indeed been abandoned ever since the first modern constitutional democracy was established in 1962 when the country was gaining its independence however this is not true in practice. Thus, one can argue that there is separation of powers, checks and balances, popular sovereignty, representative government, basic rights, and the division of powers entailed by clear demarcation of the arms of government by the supreme law. None of the institutions typical for a constitutional democratic system imply that sovereignty is missing from the system. A liberal democratic state can be considered as an ideal typical model of a fully de-absolutized, divided, and limited regime of sovereignty. In constitutional democracy which Uganda practices or at least claims to practice, sovereignty is instituted by the constitution and limited by the principles of the rule of law and constitutionalism (individual civil and political rights, checks and balances, division of powers). The democratic principle of popular sovereignty locates the ultimate source of the legitimacy of political power in the people, thus dividing sovereignty further between the public sphere embedded in the associational structure of civil society (the people) and the formal political sphere of the state which has the authority to make binding decisions.

⁶ Ibid

⁷ Rainer Forst, ‘The Justification of Human Rights and the Basic Right of Justification’ [2010] 120, 4 *Ethics, University of Chicago* 711-740.

Uganda seems to have countless accounts of how the concept of human rights regime developed since 1948 through multilateral treaty making, domestic state practice, and the work of international courts and other actors. It is beyond doubt that a profound transformation has occurred under the impact of norms of collective security and human rights, there has been a shift from the classic interpretation of sovereignty as independence, non-intervention, and impunity to the interpretation of sovereignty as justice and security to individuals and citizens of a given state and as the responsibility and accountability to international community and potentially also the liability of perpetrators (state officials or private entities) to international sanctions.

As of late, the international system of human rights governance has even engaged in tasks that go beyond its traditional functions. Acts like humanitarian interventions, sanctions, transformative interim administrations of occupied territories, and the imposition of obligations for states to prevent and combat terrorism.⁸ Except a few statist accounts which insist that international law still is and should remain protective of state sovereignty, domestic autonomy, and non-intervention and that principles of justice hold only within states, it is agreeable that today's state sovereignty and legitimacy of governments is considered contingent on their being both non-aggressive externally and, more importantly, minimally just internally, that is, respecting human rights. Human rights of all proveniences also agree that one of the most important features of human rights is that they are meant to protect the essential and universal features of human personhood against the state. Thus, human rights are best understood as "associational "rights as they are activated by the presence of and membership in specific socio-political institutions. They indicate that the way a state treats its own citizens is subject to certain constraints and a matter of international concern. International human rights thus impose moral and legal limits on states and on those acting in

⁸ Maksoud Clovis, 'Diminished Sovereignty, Enhanced Sovereignty: United Nations-Arab League Relations' [1995] 49(4) *Middle East Journal* 583

their name. They function as standards for the governments of states, such that their violation or the failure to fulfill them supplies a justification for remedial action by the global community.⁹

Despite the global enforcement of human rights evolving rapidly, It is, however, questionable whether such assertion is accurately in the Ugandan territory as the unique and novel character of the contemporary international regime human rights has in any way worked in the boundaries of Uganda.

2.1.3 Human Rights viz-a-Viz Cultural Relativism

There is a long standing debate of whether human rights are universal in the context of cultural relativism. Cultural relativism is the idea that each culture or ethnic group is to be evaluated on the basis of its own values and norms of behavior and not on the basis of those of another culture or ethnic group. Relativism is a doctrine that knowledge, truth, and morality exist in relation to culture, society, or historical context, and are not absolute. Whether an action is right or wrong depends on the moral norms of the society in which it is practiced. The same action may be morally right in one society but be morally wrong in another.¹⁰

Human rights hold universal values which should be adopted by states worldwide. But a common challenge to this view is the concept of cultural relativism. What the West considers universal norms in human rights are not applicable in other cultures. Human rights are argued to have developed from Western culture and thus they are inappropriate in application to other cultures. This kind of analogy defeats the processes of development and evolution of the law, a pure concept of law should develop and die with society, the values should at all

⁹ Kathryn Sikkink, *The Justice Cascade. How Human Rights Prosecutions are changing World Politics* (1st edn W.W. Norton & Company, 2011) 27

¹⁰ Jack Donnelly, *Universal Human Rights in Theory & Practice*, (3rd edn, Cornell University Press, 2003) 108.

material times reflect the wills, aspirations and progression of the society as law develops and dies with society¹¹. The conflict between the universal human rights doctrine and cultural relativism came about during the establishment of the Universal human rights doctrine in 1948. The conflict arose due to the theory that there was some kind of dominance over some cultures, and that the universal human rights doctrine come from ‘European’ or ‘Western’ philosophy. There is the theory that people are born with natural, God-given rights and that God is the absolute law-maker who bestowed upon us some basic human rights. For this reason, cultural relativism critics argue that there should be no universal claim to human rights as some of these rights are already natural and God-given. Naturally, cultural relativists argue that various practices and beliefs differ from society to society and should be accepted as being relative to other cultural beliefs.¹²

Contemporary society is often referred to as a multicultural world, with people from various cultures increasingly becoming accustomed to interacting with people from other cultures. As a result of this, the ability to learn to respect and tolerate different cultural practices and beliefs has developed. It is true that people from different cultures have different ideas of what is right and what is wrong.¹³ Moral relativism as “values held by a particular society at a particular time. However, moral relativism, just like cultural relativism can also be perceived in different ways by different cultures. In other words, moral values are valid only within some cultural boundaries. Consequently, the moral difference in these cultures brings about the issue of ethics. Ethical relativism also promotes the belief that morality is, and cannot be universal. Moral relativism is therefore justified by relativist through various examples.¹⁴

¹¹ Mathew Lower, ‘Can and should Human Rights be Universal?’, [2012] *E-International Relations*, 4

¹² Ibid

¹³ Lily Arasaratnam, ‘Multiculturalism, beyond ethno cultural diversity and contestations’ [2013] *International Journal of Intercultural Relations*, 137-163

¹⁴ Manuel Velasquez, Claire Andre, Thomas Shanks and Micheal Meyer, ‘Ethical Relativism’ [1992], *Markkula Center for Applied Ethics*, 13

The Asian society claims to come from a culture with an exceptional set of values. According to Asian values, human rights are culturally specific, communities take priority over individuals, social and economic rights take preference over political and civil rights, and rights are a matter of national sovereignty. The issue of “Asian values” was brought about during discussions by East and South Eastern government leaders. The basis of “Asian values” is said to contribute to high growth rates to certain cultural traits¹⁵. These characteristics include hard work, discipline and team work. Western democracy hinders rapid development. In the 1970s, some countries in the Sub-Saharan region had tried to oppose these liberal views of the “Western world”. This proved to be unsuccessful as they did not harbor the same economic results as their Asian counterparts. In addition to this, as a result of the tremendous economic growth in the Asian region, the “Asian values” debate received the attention and even admiration of the international community. “Asian authoritarians argue from a position of economic and social success.”¹⁶

The same position seems to be currently under consideration when it comes to homosexuality. A typical human rights activist would argue that it is one’s rights to enjoy any rights inclusive of being homosexual. However, this seem to be a recent development originating from the European community and America with less popularity to African countries. Much as the west claims that one has the right to determine their identity and as such identify as LGBTQ, this concept is alien to Africa’s jurisprudence and cannot find a fertile soil in the religious African states, though it could be a human right in the west, the African society has not yet progressed to embrace such. It is still looked at as being immoral, satanic and a diversion from the normal order of nature. To this end, The Republic of Uganda has since enacted the Anti-Homosexuality Act of 2023 which punishes any person found

¹⁵ Mark R. Thompson, ‘The survival of Asian values as Zivilisationskritik’ [2000] , 29 (5) *Theory and Society* 651-686

¹⁶Melville Jean Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism* (1st edn, Vintage Books 1973) 74.

guilty of practicing homosexuality.¹⁷ In view of cultural relativism, one would suggest that every society be allowed to develop its own norms that will receive wider acceptance than import the concept of strict enforcement of third generation human rights to countries that are still struggling with guaranteeing the basic first generation human rights. One would also wonder why the Western states cannot agitate for LGBTQ rights in Moslem states, Russia and China but want them strictly enforced in African states. This leaves one to wonder the selected applicability of the so called human rights.¹⁸ To the contrary cultural relativism dedicates that each state be allowed to enjoy its own customs, the same way African States cannot determine USA abortion rights or gun rights or black rights, the same should be the reverse than the west acting as a watch man of exportation of its culture to other states.

One can thus conclude that human rights and cultural relativism are two different concepts that share little in common. This thus leaves a room for an argument that human rights is something introduced by the whites and is just being spread to African countries as a way of either civilizing them or even part of Neo-colonialism. The term Neo-colonialism –is capable of several discussions but in essence means the control of less-developed countries by developed countries through indirect means.¹⁹ Cultural relativism is suffering backrush in Africa due to Neo-Colonialism. Neo-Colonialism is this new form of dominance which is being initiated separately by every major system and civilization in the world today.²⁰ This form of colonialism is a continuation of the same dominance not by monopolizing political power by direct means but by continuing the exercise of political, cultural, and economic influence over a society through indirect means. Thus, one can argue that although human rights is definitely a part of the wider neo-colonial strategy, as well as the fact that human

¹⁷ *Anti-Homosexuality Act* Cap 117 (Uganda) 2014.

¹⁸ Rehman Javaid Polymenopoulou Eleni, 'Is Green a part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World' [2018] 37 (1) *Fordham International Law Journal* 1-53

¹⁹ Anthony J Langlois, *Normative and Theoretical Foundations of Human Rights* (1st edn Oxford University Press 2009) 3-16

²⁰ Folorunso Paul Olorunsola, 'Cultural Relativism: An Impediment to Africa's development', [2015], *Christian University Dimitrie Center, Department of Education, Scholarly Journal*, 22-32

rights can address the neo-colonial injustices of the neoliberal global order but cannot provide justice. The current prevailing neo-liberal global order sides more with individual oriented human rights but in no way does it further a cultural dominance due to its idea of accommodating all individuals no matter from what background. Nonetheless, the combination of possessive individualism (human rights) and neo liberalism (which can be termed as possessive capitalism) is what is the wider agenda of the neo-colonial strategy of the West.²¹ The point can be elaborated in relation to the passage of the Universal Declaration of Human Rights (UDHR) Universal Declaration of Human Rights, 1948 which initially was based on an idea of a compromise between the capitalist and communist forces in Europe and North America excluding the weaker states of Africa but nevertheless the UDHR spread to the African continent, Uganda inclusive.

2.1.4 Responsibility to Protect (R2P)

The Responsibility to Protect is a global normative framework that asserts the responsibility of states and the international community to prevent and respond to mass atrocities when a state fails to protect its own citizens. R2P establishes that sovereignty is conditional on the state's responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity.²² While R2P provides a mechanism for international intervention, its implementation is often contentious, raising questions about legitimacy, sovereignty, and the political will of states.²³ In Uganda, the government often perceives Responsibility to protect as a challenge to its authority. This resistance can limit the effectiveness of international efforts to promote human rights and provide protection against

²¹ David F.B Tucker, *Individualism and the Neo-Liberal Paradigm* (Springer, Dordrecht 1994) 51

²² Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 271

²³ John Baylis, Steve Smith, and Patricia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations* (8th edn, Oxford University Press 2020) 543

state-sponsored abuses. The Ugandan public and government officials may view Responsibility to protect as a form of neo-colonialism, complicating its acceptance and application. Understanding these perceptions is critical for analyzing enforcement mechanisms in the context of state sovereignty.

2.1.5 Enforcement Mechanisms

Enforcement mechanisms encompass the tools, processes, and actors involved in ensuring compliance with human rights standards and addressing violations. These can be categorized into domestic and international mechanisms. Enforcement mechanisms can include judicial systems, legislative frameworks, civil society advocacy, international treaties, and pressure from international organizations. Each mechanism has its strengths and limitations. The effectiveness of enforcement mechanisms is often contingent on the interplay between domestic practices and international norms, requiring a multi-faceted approach to human rights enforcement. The role of Uganda's judiciary in upholding human rights is critical. The independence of the judiciary, public confidence in its processes, and its willingness to adjudicate human rights cases all influence enforcement. NGOs and grassroots movements are vital in monitoring human rights violations and holding the government accountable. Their strategies for mobilization and advocacy can enhance enforcement mechanisms in Uganda. International bodies, such as the United Nations and the African Union, can provide support for enforcing human rights standards. However, their effectiveness often hinges on the cooperation of the Ugandan government and its willingness to accept external scrutiny.

The conceptual framework outlined in this research provides a comprehensive understanding of the intricate relationships between state sovereignty, the Responsibility to Protect, human rights, and enforcement mechanisms in Uganda. By situating these concepts within the local context, the framework allows for a nuanced analysis of the challenges and opportunities for

advancing human rights in a complex political landscape. This understanding is crucial for developing effective strategies that can enhance the enforcement of human rights in Uganda, ultimately contributing to a more just and equitable society.

2.2 Theoretical Framework

This provides the structure and foundation that guide the research by incorporating various theories to explain the dynamics of the research as the theoretical framework integrates insights from several theories, including Realism, Liberalism, Constructivism, and the Human Rights-Based Approach (HRBA). These theories help in understanding the tensions between state sovereignty, international obligations, and the mechanisms for human rights enforcement in Uganda. This framework situates the research within both international relations and human rights disciplines, explaining how state behavior, international norms, and local conditions affect the enforcement of human rights in Uganda. It offers a theoretical lens for examining Uganda's political structure, its resistance to external interventions, and the effectiveness of different human rights enforcement mechanisms in a developing and sovereign state.

2.2.1 Realism

Realism is a foundational theory in international relations, emphasizing the role of states, national interest, and power dynamics. Realists view the international system as anarchic, with states acting primarily in their self-interest to ensure survival and security.²⁴ In this context, states prioritize sovereignty and territorial integrity above external moral or ethical considerations, such as human rights. Realism asserts that the state is the primary actor in international relations, and it acts to maximize its security, power, and self-interest. Realist theory suggests that states are reluctant to cede their sovereignty or submit to external

²⁴ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th edn, Routledge 1997) 63

constraints, particularly those perceived as limiting their control over internal affairs. From a realist perspective, international organizations, treaties, and norms such as Responsibility to Protect (R2P) are seen as tools that powerful states use to advance their own interests, often at the expense of weaker states.²⁵ Uganda's government, like many others, often invokes sovereignty to resist external intervention or international pressure on human rights issues. Realism helps explain Uganda's reluctance to fully embrace international human rights frameworks when doing so is perceived as compromising its political autonomy. In the Ugandan context, maintaining internal stability and control over its population, especially in politically volatile areas, is seen as vital for the government. Human rights considerations may, therefore, take a backseat to national security and political consolidation.

2.2.2 Liberalism

Liberalism, in contrast to realism, emphasizes cooperation, international institutions, and the promotion of values such as democracy and human rights. This theory posits that states can work together within international frameworks to achieve mutual benefits and uphold global standards.²⁶ Liberalism argues that international organizations and treaties play a crucial role in shaping state behavior by promoting norms such as human rights. Liberalism emphasizes that states, despite being sovereign, are interdependent and can cooperate within frameworks such as the United Nations and regional bodies like the African Union (AU) to address common challenges, including human rights violations. Liberal theory is grounded in the belief that democratic governance and the protection of human rights lead to a more stable and peaceful international order. Liberalism posits that international organizations, treaties, and courts (such as the International Criminal Court or the African Court on Human and

²⁵ Thomas G Weiss and Ramesh Thakur, *Global Governance and the UN: An Unfinished Journey* (Indiana University Press 2010)623-637

²⁶ Michael Byers and Georg Nolte, 'Humanitarian Intervention and State Sovereignty: A Comparative Analysis of Two Opposing Views' (2003) 16 *European Journal of International Law* 1065

Peoples' Rights) play an essential role in promoting and enforcing human rights norms. Liberal theory helps explain the role of international organizations in influencing Uganda's human rights practices. For instance, Uganda is a signatory to numerous international and regional treaties that bind it to certain human rights obligations. These include the International Covenant on Civil and Political Rights (ICCPR)²⁷ and the African Charter on Human and Peoples' Rights. Liberalism underscores the role of non-state actors, such as NGOs, civil society, and human rights advocates, in promoting human rights enforcement within Uganda. Organizations like Human Rights Watch and Uganda's own human rights commission work within a liberal framework to push for greater accountability and adherence to international norms.

2.2.3 Constructivism

Constructivism shifts the focus from material power and interests to social constructs, norms, values, and identities that shape state behavior. This theory posits that the international system is not only determined by material factors but also by the shared beliefs and identities of actors. States' actions are influenced by ideas, norms, and their perceptions of legitimacy and identity.²⁸ Constructivism holds that state behavior is shaped by international norms and ideas. For instance, the global human rights regime influences how states perceive their obligations toward their citizens. The identity of the state and how it sees itself within the international system shape its behavior. A state's commitment to human rights, for example, may depend on its identity as a democratic or autocratic state. States are socialized into the international system and are influenced by the behaviors and expectations of other states and international organizations. Constructivism helps explain how Uganda, through its

²⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

²⁸ Neil MacFarlane and Yuen Foong Khong, 'Human Security and the UN: A Critical History' (2006) 84 *International Affairs* 137

interactions with the international community, has gradually adopted some international human rights norms, although this process is far from complete. The global norm of protecting human rights and the Responsibility to Protect (R2P) may influence Uganda's domestic policies, but these norms are often contested within the local context. Uganda's political, cultural, and social identity plays a significant role in how human rights are perceived and enforced. The Ugandan government's stance on issues like LGBTQ+ rights, freedom of expression, and political opposition reflects both internal cultural factors and the tension between global norms and local identities.

2.2.4 Human Rights-Based Approach (HRBA)

The Human Rights-Based Approach (HRBA) is a framework that seeks to integrate human rights principles into the design, implementation, and evaluation of policies and programs. This approach focuses on empowering rights-holders and ensuring that duty-bearers (governments, institutions, etc.) are accountable for respecting, protecting, and fulfilling human rights. HRBA emphasizes the agency of individuals and communities, recognizing them as rights holders who are entitled to demand the fulfillment of their rights from the state. States and their institutions are viewed as duty bearers who have obligations to ensure the protection and fulfillment of human rights.²⁹ HRBA encourages the development of legal, political, and social mechanisms to hold governments accountable. HRBA promotes the active participation of all individuals, especially marginalized groups, in decision-making processes that affect their rights. HRBA can be applied to analyze Uganda's legal frameworks and assess how well they integrate human rights principles.³⁰ For example, Uganda's Constitution enshrines certain human rights, but gaps in implementation and

²⁹ Makau Mutua, 'The African Human Rights System: A Critical Evaluation' (2000) 10 *African Yearbook of International Law* 83

³⁰ Louise Arbour, 'The Responsibility to Protect as a Duty of Care in International Law and Practice' (2008) 34 *Review of International Studies* 445

enforcement often limit their effectiveness. In Uganda, certain populations—such as political dissidents, LGBTQ+ individuals, and ethnic minorities—are more vulnerable to human rights violations. HRBA highlights the importance of mechanisms that empower these groups to claim their rights. HRBA also underscores the role of civil society and grassroots organizations in holding the government accountable. In Uganda, NGOs and community groups have been instrumental in advocating for human rights, despite governmental restrictions.

The theoretical framework for this research integrates Realism, Liberalism, Constructivism, and the Human Rights-Based Approach (HRBA) to explore the dynamics of state sovereignty, Responsibility to Protect (R2P), and human rights enforcement in Uganda. Together, these theories offer insights into why Uganda resists external intervention in human rights matters, how international norms shape its domestic policies, and what mechanisms can be developed to improve human rights enforcement. This theoretical grounding provides a comprehensive lens for understanding the political, social, and legal challenges in enforcing human rights in Uganda.

2.3 Literature Review

The enforcement of human rights in Uganda has increasingly gained attention within the context of global frameworks such as responsibility to protect and discussions around state sovereignty. This literature review examines how these concepts interact with local mechanisms and international influences in the enforcement of human rights in Uganda. The concept of sovereignty has been traditionally viewed as a barrier to international intervention in human rights violations.

Boutros³¹ discusses that state sovereignty has, for the past several hundred years, been a defining principle of interstate relations and a foundation of world order. The concept lies at the heart of both customary international law and the United Nations (UN) Charter and remains both an essential component of the maintenance of international peace and security and a defense of weak states against the strong. At the same time, the concept has never been as inviolable, either in law or in practice, as a formal legal definition might imply. According to former Secretary-General Boutros Boutros-Ghali, “The time of absolute sovereignty ... has passed; its theory was never matched by reality.”³² Much as Boutros discusses state sovereignty as being inviolable, this is kinder misleading as there are instances when state sovereignty can be disregarded to enforce human rights. This research shows how state sovereignty interplays with responsibility to protect and enforce human rights.

Brownlie argues that sovereignty and equality of states are fundamental principles of public international law. The principle of the sovereignty of states is guaranteed through Article 2(1) of the UN Charter, and is also one of the underlying principles of the UN. In international law, the term sovereignty means that all states are inherently independent and equal, having uniform legal personality. A sovereign state further has the territorial and political jurisdiction and power over its geographical territory.³³ He further stresses that an important aspect of sovereignty is the principle of nonintervention. The principle of non-intervention prohibits states from intervening in another state’s internal and external affairs; every such action is considered illegal under international law as provided for in the Friendly Relations Declaration³⁴ adopted by the UN General Assembly in 1970, stipulates that “*No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all*

³¹ Boutros Ghali, ‘State Sovereignty in Modern International Law’ (2005) 23(4) International Law Journal 234n

³² Boutros Boutros-Ghali, *An Agenda for Peace* (New York: United Nations, 1992) 17.

³³ Ian Brownlie, *Principles of Public International Law*, 7th edition, (2008) 57.

³⁴ UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625.

other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law."³⁵

Although Brownlie argues the principle of sovereignty is still of significance in both international relations and international law, its initial definition and scope has shifted and become somewhat eroded in recent years. Concepts such as human security and human rights have arisen and are today given more attention and significance than ever before. State sovereignty today entails more than just a right – it entails a responsibility to protect the population as well. This research therefore highlights a dual responsibility for states to first of all respect other states as sovereign and equal, and to secondly, respect human rights and protect one's own population.

Hinsley³⁶ argues that the concept of sovereign rule dates back centuries in the context of regulated relationships and legal traditions among such disparate territorial entities as Egypt, China, and the Holy Roman Empire. However, this is not true as the present foundations of international law with regard to sovereignty were shaped by agreements concluded by European states as part of the Treaties of Westphalia in 1648. After almost 30 years of war, the supremacy of the sovereign authority of the state was established within a system of independent and equal units, as a way of establishing peace and order in Europe.³⁷ The core elements of state sovereignty were codified in the 1933 Montevideo Convention on the Rights and Duties of States. They include three main requirements: a permanent population, a defined territory, and a functioning government. An important component of sovereignty has always been an adequate display of the authority of states to act over their territory to the exclusion of other states. This research highlights the concept of modern doctrine of

³⁵ *Ibid*

³⁶ F H Hinsley, *Sovereignty* (2nd edn, Cambridge University Press 1986) 32

³⁷ Stephen D. Krasner, "Compromising Westphalia," *International Security* 20 (Winter 1995–1996) 115.

sovereignty and how it can be applicable to human rights and how the post-1945 system of international order enshrined in the UN Charter inherited this basic model.

Krasner argues that Article 2 (1) of the UN Charter, the world organization is based on the principle of the sovereign equality of all member states. While they are equal in relation to one another, their status of legal equality as a mark of sovereignty is also the basis on which intergovernmental organizations are established and endowed with capacity to act between and within states to the extent permitted by the framework of an organization. In 1949 the International Court of Justice (ICJ) observed that “between independent States, respect for territorial sovereignty is an essential foundation of international relations.”³⁸ Thirty years later, the ICJ referred to “the fundamental principle of state sovereignty on which the whole of international law rests.”³⁹ This is however somehow misleading, much as the United Nations Charter provides for sovereignty of states, there are instances when this principle has been unduly violated and disregarded by the super powers, this research the extent of justification in disregarding state sovereignty as far as enforcing human rights is concerned.

In the African context, George M argues transformation of the Organisation of African Union to African Union has heralded new hope and aspirations for unity and integration for the continent of Africa. However, one of the greatest hurdles to such unity has been Africa’s grip onto their sovereign powers.⁴⁰ This is despite the fact that since world war two, international law has increasingly transformed the concept of sovereignty and international bodies have urged states to give up some of their sovereignty if they are to realise their full economic and political potential.

³⁸ Stephen D. Krasner, “Compromising Westphalia,” *International Security* 20 (Winter 1995–1996), p. 115.

³⁹ *Corfu Channel Case (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4.

⁴⁰ George Mukundi Wachira, ‘Sovereignty and the United States of Africa, [2007], *Institute for Security Studies*

He further argues that apart from a few instances, the African Union is still reluctant to interfere in the internal affairs of member states. This is despite the fact that article 4(g) of the Constitutive Act provides for the principle of noninterference by any member state in the internal affairs of another which could be interpreted to mean that the African Union can in fact interfere as an institution. However, this is not completely true, in African states that are manned by dictators, state actors are always clinging on the doctrine of sovereignty as a shield in case of human rights violations. This research justifies the disregard of state sovereignty to ensure the protection of fundamental human rights.

Weiss⁴¹ argues that the core idea of Responsibility to Protect rests on three elements. The first is a shift in the understanding of sovereignty, from previously focusing on “sovereignty as control”, to instead focusing on “sovereignty as responsibility”. This shift indicates that sovereignty is not to be understood as the state’s right to operate in whichever manner it desires but rather the state’s responsibility to ensure the protection of its populations’ fundamental rights. The second element is the notion of subsidiary responsibility of the international community. If a state proves itself unwilling or unable to fulfil its responsibilities, the responsibility to protect proceeds to the international community. Indisputably, the primary responsibility to protect the population lays on the state itself, and only on the international community once the state has proven itself inadequate. This secondary responsibility thus ensures and focuses on the protection needs of the people rather than the rights and privilege of interveners. Finally, the third element concerns the way an intervention may be initiated and conducted. The intervention must be consistent with international law and in general, the primary and foremost agent for invoking R2P is the Security Council. Instead of using the term ‘humanitarian intervention’, it was “cleverly

⁴¹G Thomas Weiss, 'The Turbulent 1990s: R2P Precedents and Prospects' in Alex J Bellamy and Tim Dunne (eds), *The Oxford Handbook of the Responsibility to Protect* (Oxford University Press 2016) 65.

repackaged” into the newly coined term ‘responsibility to protect’ with the intention to give intervention on humanitarian considerations a renewed status in international relations. However, it must be understood that however coined, if any intervention is unjustified and excessive, it can result into great suffering than restore peace, recent history has shown that when if there has been intervention under the pretexts of human rights, situations have even go worse, this research thus underscores the ground rules to ensure human rights enforcement while ensuring a lasting resolution of human rights violations.

Adekanye⁴² argues that the Responsibility to Protect is a global commitment aimed at preventing mass atrocities including genocide, war crimes, ethnic cleansing and crimes against humanity. Initially endorsed by UN member states in 2005, the doctrine emphasizes state responsibility and international assistance. It should be noted that Adekanye only relates responsibility to protect with grave humanitarian crimes akin to those under the Rome Statute to the International Court of Justice leaving out what happens incase other human rights are violated. This research digs deeper into all human rights and emphasizes the fact that human rights must be enforced notwithstanding their magnitude.

Uganda has faced significant political violence and human rights violations particularly during the Idi Amin era and the Lord’s Resistance Army. Adekanye⁴³ further argues that Uganda’s government has a dual obligation to protect its citizens and to comply with international norms. However, he didn’t analyze how Uganda as a state often uses the sovereignty doctrine as a shield against intervention. This research shows that the responsibility to protect doctrine is absolute and a state cannot use its sovereignty as a justification to violate human rights.

⁴²Bayo Adekanye, ‘The Politics of Sovereignty in Africa: Uganda’s Experience with R2P’ (2012) 137 *Journal of Peace Research*, 149.

⁴³ Ibid

Hassan argues that Tanzania's intervention in Uganda in 1979 serves as yet another example of when the use of force by one state against another allegedly was justified by humanitarian considerations during the Cold War.⁴⁴ Although the Tanzanian intervention in Uganda led to the fall of Amin's rule and even though the intervention was considered to be justified based on humanitarian considerations by many, Tanzania claimed its actions to be "defensive counter-attacks. However, the author didn't discuss the consequences of such intervention, it must be recalled that such an intervention partly cleared the ground for a civil war in Uganda. This research thus analyses the best strategies and approach of state interference but without grave advance effects.

As far as human rights enforcement is concerned, Uganda as a dual obligation to ensure the implementation of both the local and international human rights regimes. Marc J. Bossuyt,⁴⁵ with special reference to Belgian and US. law, examined the effect in domestic law of the interpretation adopted by the court of Strasbourg, the direct applicability of ICCPR in Belgian law, the direct applicability of ICCPR in US law. He summarized his conclusion as follows: It is obvious that national compliance with international law is much facilitated by the direct applicability of international treaties. Generally speaking, the question of whether a treaty provision is directly applicable under domestic law only becomes significant when it comes to conflicts between treaty provisions and domestic rules. The international commitments of the State in question will be breached when the national judge in such a case grants precedence to the domestic rule. Unquestionably, a State cannot use its internal laws as a justification for breaking its international duties. He further stated that, the strict application gives room to a domestic judge to enforce the respect of this basic rule of international law. This thesis is similar to this research in that, it is majorly addressing people's rights on level.

⁴⁴ Hassan, F., Realpolitik in International Law: After Tanzanian-Ugandan Conflict "Humanitarian Intervention" Reexamined, *Willamette Law Review*, 17 (1980-1981), 860.

⁴⁵ Marc J. Bossuyt. 'The Direct Applicability of International Instruments on Human Rights (with special reference to Belgian and US. law)' [1980] 2 *Belgian Law Review*, 317 -343

This work equally helps the researcher to understand the effects of undeviating application of international human right instruments in domestic law. The work is equally different from the present research in that, it focuses on Belgian and US law while the present research focus on the applicability of international human rights instruments in Uganda.

Luttamma⁴⁶ discusses universality of human rights, national acceptance of international law, dualism, pluralism and monism. Other issues discussed are the legal nature of international human rights norms in the hierarchy of norms, legal nature of international human rights monitoring bodies. The work is similar to this research because, it talks about international human right law. This work gives the researcher a better understanding of the monist and dualist approach of the application of international human right instruments and is different from this present research because it focuses on Uganda.

Jean chrysostome Rubagumya⁴⁷ analyses at considerable length the issues involved in the application of international human rights instruments in Rwanda and Ghana, especially in the area of integration of international human rights instruments into domestic laws, opportunities and challenges in the application of human rights instruments. The thesis is similar to this work in that, it focuses on international human right law. The work equally gives the researcher an in-depth knowledge on international human rights instruments as it analyses the challenges that are faced in its application. The work is quite different from this present research in that, it focuses on Rwanda and Ghana while this research focuses on Uganda.

⁴⁶ Katre Luhamaa. 'Universal Human Rights in National Contexts: Application of International Rights of the Child in Estonia Finland and Russia' (PhD Thesis, Faculty of Law, University of Tartu 2015).

⁴⁷Jean Chrysostom Rubagumya, 'Application of International Human Rights Instruments by Domestic Courts: A Comparative Study of Rwanda and Ghana' (PhD Thesis, Faculty of Law, University of Ghana 2011).

Kirby⁴⁸ discusses the issues involved in the application of international law domestically, divided constitutional opinions. He went further to explain that, when a national constitution (as in South Africa and other countries) permits the specific application of international law, such as when interpreting a national charter of rights or other domestic legal principles, that is the simplest situation in which a national court may make reference to international human rights principles. This work is quite similar with this research in that, it talks about international human rights law. This work helps the researcher, to understand the way in which a national court may refer to international human rights instruments and equally differs from this work in that, it does not focus on Uganda.

Emmanuel⁴⁹ examines the legal supremacy of the constitution in regards to human rights over all other laws, discriminatory customary laws versus egalitarian human rights and the inequality in regards to male and female in the Ugandan courts. He further stated that, an elaboration of the right to education is undoubtedly one of the several ways that may be used to improve on the promotion of the rights of people in any given nation and incidentally, reducing or completely abolishing traditional values that conflict with the rights of the people. This work is similar to this present research in that, it touches on human rights. The author's work helps the researcher to understand the collusion between traditional laws and other rights of the people in Cameroon which is an African country, which may be considered as one of the challenges faced in the effective application of human rights instruments in Uganda as well. However, this thesis is different in that, it focuses on the application of human rights instruments in Uganda, while the work examines the constitutional supremacy of human rights over other normative norms

⁴⁸ Micheal Kirby, 'Domestic Courts and International Human Rights Law: The ongoing Judicial Conversation' [2010] 6(1) *Utrecht Law Review* 168

⁴⁹ Kiye, Mukano Emmanuel. 'Conflicts between Customary Law Human Rights in Cameroon' [2015] 36(2) *The Center for African Area Studies, Kyoto University* 75-100.

Time,⁵⁰ examines the progress in Cameroon regarding women status, laws that are put in place to address women's plight in the country. The author also advances recommendations for creating an egalitarian society. The work is similar to this research because, it equally talks about human rights. The work also helps the researcher to better understand the laws that are put in place in other African countries to address women's plight though the work is different from the present research in that, it focuses on women while the researcher's work is on the application of international human rights instruments in Uganda.

Serges Alain Djoyou Kamoga⁵¹ pointed out that, Uganda is a member state to most treaties and conventions that provide for the right to education, compulsory elementary studies in particular. Following the content of the freedom to attending school he also looks at Uganda's adherence with the right to elementary education. These four criteria are collectively referred to as the "4 A's." The author also examines how far elementary studies is free and required for Ugandan children; the study centers on the 4 A's framework and evaluates the legitimacy of the right. The author finally asserts that, despite the right to elementary studies is mandatory all over the nation, the same is not attainable and reachable, but is largely attainable when it is available. Furthermore, the justifiability of the right to elementary studies is hindered by constitutional practices such as the lack of constitutional remedies in case of a violation of rights, and weak separation of powers characterized by the pre-eminence of the executive. The work is quite similar to this research because, it is focuses on human rights. The author's work widens the researcher's mind, as it gives the researcher an insight of the right to free education and the situation that prevails in Uganda. The thesis is different from the researcher's work in that, it does not focus on the application of international human right instruments in Uganda.

⁵⁰ Victoria M. Time. 'Women, Law, and Human Rights in Cameroon: Progress or Status Quo?' [2014] 6 (1) *Journal of law and Conflict Resolution*, 1-6.

⁵¹ Serges Alain Djoyou Kamoga, 'Realizing the Right to Primary Education in Cameroon' [2011] 2(1) *African Human Rights Law Journal* 171

A journal of Amnesty international report 2016⁵² outlines issues of human rights abuses in Uganda such as; arbitrary arrest and detention; torture, death in custody and enforced disappearances; freedoms of expression, association and assembly; unfair trials, impunities and prison conditions. Amnesty international pointed out that, in Uganda, security forces continue to arbitrarily arrest individuals accused of supporting opposition parties often with little or no evidence and detain them in inhumane, often life-threatening conditions. This report is similar to this work in that, it focuses on human rights in Uganda. The report helps the researcher to understand the extent of human right violations in Uganda. The report differs from the present research in that, it does not focus on the application of international human rights instruments in Uganda.

Antai⁵³ notes that beyond the formal mechanisms for state sovereignty the power of soft law and public pressure plays a vital role and wield significant influence in enforcing violations of human rights within the context of International human rights. However, his analysis was based on International Law generally and not in Uganda, he never provided practical solutions to the Ugandan human rights context. Equally to note is the fact that soft law and public pressure follows low of the definition of law that can be enforceable in courts of law. For a law to be binding, it must be decreed by the sovereign and backed by sanctions. And as such soft law and public pressure cannot be implemented.

Holt⁵⁴ notes that torturers not only inflict pain on victims by beating and chaining them, but also harass and sexually assault female inmates in jails and detention centers. He further states that some residents have left the nation in search of political refuge overseas as a result of these harassments, rapes, tortures, and other cruel treatment and punishments. This article is similar to this research because it talks about the violation of human rights in South Africa.

⁵² Right to Education Project, *Right to Education Country Factsheet Uganda* [2012]

⁵³ Godswill Owoche Antai, 'Exploring mechanisms for enforcing human rights within the context of International Law: Issues and challenges' [2024] *NIU Journal for Legal studies*, 63

⁵⁴ Timothy Holt, *Torturers and the law* (Oxford University Press 2020) 45

The article broadens the researcher's mind as far as torture in Uganda is concerned though, the work is limited in that, it examines only torture. The researcher's work therefore differs from this thesis because, it examines the application of international human rights instruments in Uganda.

Chazan⁵⁵ discusses that since Independence, some African leaders have challenged the full implementation of political rights as a western concept of democracy inapplicable to the third world. This discussion is rather challenging as the human rights concept must also develop with the society, as society grows, so is the concept of human rights and since most African countries are now aspiring to be 1st and 2nd world countries, their human rights record must resonate with that. That is not to say that political and economic backwardness are a justification for violations of human rights which are not only universal but also eternal. This research addresses the fact that there is no such justification for violation of human rights be it political, economic or social.

Walubiri says that 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" 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.⁵⁶ Much as PM Walubiri discusses the issue of human rights and the bill of human rights, he does not

⁵⁵ Naomi Chazan, Peter Lewis, Robert Mortimer, Donald Rothchild and Stephen John Stedman, *Politics and Society in Contemporary Africa* (Boulder: Lynne Rienner Publishers, 1988) 166

⁵⁶ Patrick Mukidi Walubiri, 'Uganda: Constitutionalism at Crossroads' [1998] *Uganda Law Watch Centre, Kampala* 3

delve into the adequacy of the enforcement of human rights in Uganda, his work is short of human rights enforcement mechanisms. The present research shall address issues of human rights enforcement mechanisms and their adequacy in Uganda.

Museveni⁵⁷ discusses that when the NRM/NRA took over power in 1986, it was a fundamental revolution and not a mere change of guards. It could be argued that in some areas, the human rights situation of Uganda has improved significantly. This is not to say that there is still a wide spread outcry for human rights violations, currently there is suppression of a number of political and civil rights including media freedom, right of Assembly, freedom of speech. Much as the author praises the significant raise in human rights enforcement, he neither talks about the rights of the opposition groups as well as the adequacy of the available human rights enforcement mechanisms. This research intends to analyse where the Government has fallen short in as far as enforcement and realization of human rights are concerned.

In Uganda, the issue of human rights violations stands as a poignant reminder of the delicate balance between progress and persistent challenges. The historical backdrop of Uganda is intertwined with a complex tapestry of political, social, and economic fluctuations. While strides have been made towards democratic governance and development, instances of human rights violations remain a pressing concern. The violation of civil and political rights is conspicuous through cases of political repression, limitations on freedom of expression, and reports of police brutality. These infringements serve as stark reminders of the fragility of democratic institutions and the importance of safeguarding the space for dissenting voices.

Having reviewed the above literature, it can easily be realized that, most if not all of these books mention international human rights instruments which Uganda has ratified but none examines the effective application of such instruments in Uganda. It is on these bases that, the

⁵⁷ Yoweri Kaguta Museveni, *Sowing the Mustard seed* (1st edn, Macmillan Education Ltd) 172

researcher decided to make his work different from those that has been examined, by focusing on the application of international human rights instruments in Uganda.

CHAPTER THREE

UGANDA'S LEGAL FRAMEWORK AND INSTITUTIONAL FRAMEWORK ON THE PROTECTION OF HUMAN RIGHTS

3.1 International Instruments

Though United Nations and Regional International Institutions have been developed to promote the observance of human rights and in limited circumstances to provide remedies for human rights violations still there remains big gap, states remain the fundamental units of sovereignty, international system looks at them not as international institutions but as agents responsible for securing the observance of human rights. States have a duty to safeguard human rights and provide remedies when they are violated. This duty is at least implicitly in human rights treaties and is similarly discernible in customary human rights law.¹ Traditionally International law and domestic law are two sets of distinct laws operating on different planes. The distinctions between international legal system and domestic legal systems have important ramifications, since two systems are relatively separate; it is possible for a state's action to contravene international law while at the same time conforming to its own domestic law. Thus if a state violates an obligation to which it freely has committed itself by a treaty, its citizens may be unable to challenge such violations through its domestic courts.² *Article 27 of the Vienna Convention on the Law of Treaties 1969* lays down that in so far as treaties are concerned, a party may not invoke the provisions of its internal law as a justification for its failure to follow an international agreement. There as such a number of theories that have developed to justify the applicability of international law into domestic law.

¹ Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Clarendon Press, Oxford 1989) 36-47

² *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory* (Advisory Opinion) PCIJ Series A/B No 44 (1932).

The first one is monism. Monism is a theory of international law that denies the existence of a distinction or duality in international law; it attributes singleness of both international law and national law. Monism dictates that international agreements must be carried out “facta sunt servanda” declaring that they must be carried out in good faith.³ The monists claim that the national and international law are underlined by the principle of social solidarity. International law and municipal law are not separate system but one interlocking structure and the forms is the supreme, municipal law finds its ultimate justification in the rules of international law by a process of delegation within one universal normative system and as thus a state cannot claim as a defense for the violation of an international norm that it was acting in line with its municipal law.

The second one is dualism. Dualism simply implies the division of something conceptually into two opposed or contested aspects or the state of being so divided, the quality or condition of being dual. This approach asserts that international law and municipal law are separate and as then denies the common field of operation between the two by which one system is superior or inferior to another. Each order is supreme in its own sphere, they are both distinct legal systems each operating within its own field, so it is impossible to treat international law and municipal law the same. Where there is a conflict of obligation that the state in its own domestic law does not act in accordance with its obligations under international law does not act in accordance with its obligations under international law, its domestic position is unaffected and is not overruled to the contrary, a state may violate its international obligations but such violation would not have any domestic impact.⁴

For international treaties to have a binding force, the same must be ratified and domesticated into the domestic law of the state. Domestication is the process through which a state

³Naser Pajaziti and Nuredin Lutfiu, ‘The Impact of the Legal Principle Pacta Sunt Servanda on the Implementation of the Agreement of Principles Governing the Normalization of Relations, [2024] 5(3) *International Journal of Religion* 458-465

⁴ *Exchange of Greeks and Turkish Populations* (Advisory Opinion) PCIJ Series B No 10 (21 February 1925).

incorporates the provisions of international law into a domestic statute. in *INS v Cardoza-Fouesca*⁵ the supreme court of us referred not only to the refugee act of 1980 but also to its origins in the refugee convention and protocol showing that USA had not only ratified the international covenants but also domesticated.

Public international law should be reconceptualized, instead of being seen as a single unity system applicable across the world community. It should be imagined as a series of parallel systems more or less convergent depending on the subject matter separately applicable within the various nations of world. The domestication of public international law would be advantageous as it provides theory that more realistically describes international law, it would point the way to rhetorical strategies more persuasive to government officials, judges and other decision makers. The validation of international norms by the same process enhances the political support and legitimacy to the international norms, alleviates the perennial difficulties in explaining whether international law is really law and why it is binding. The existence of two approaches does not mean that there is no international law of state responsibility or of recognition of government; it means the systems apply together.

The last theory is incorporation. Under the principle of incorporation, courts incorporate an international treaty into its laws whether there is a national legislation or not this approach holds that international law is part of municipal law automatically without the acidity for the inter position of a constitutional declared ratification procedure. Even if there is no statute or regulation which specifically incorporates international human rights law into domestic law, courts in many countries have directly incorporated the international law into their legal structures. The leading case is *Fujii v State*⁶ where the California supreme court applied the self-execution doctrine to find human rights clause in the UN Charter could not be the basis

⁵ *Grutter v Bollinger* 480 US 421 (1987)

⁶ *People v Rojas* 38 Cal 2d 718, 242 P 2d 617 (1952).

of a legal challenge to a blatantly discriminatory California statute “Alien land law” which contrasting with the language of the human rights provisions of the charter, the court found out lack of incubatory quality and definiteness which would indicate an intent to create justifiable rights. There is no set test for determining whatever a treaty is self executing, different courts have come up with various descriptions factors, in *Frolova V Union of Soviet Republics*⁷ it was held that subordinate courts must look at the purposes of the treaty and the objectives of its creators, the existence of domestic procedures and institutions appropriate for direct international law, the availability and feasibility of alternative enforcement methods and the immediate and long range social consequences of self or non self-execution.

Some of the International law can also be applied as Customary International law. Article 38 (1)(b) International Court Justice (ICJ) Statute provides for sources of international law to include international custom as evidence of a general practice accepted as law. The existence of customary rules can be deduced from the practice and behavior of states. For a custom to be valid, it must contain the material fact and *opinio juris*. The material fact is the actual practice indulged in by the states and this includes duration, consistency, repetition and generality in international law. There is no rigid time element and all will depend on the circumstances of the case, the basic rule as regards continuity and repetition.

The whole essence of customary international law was summed in *Nicaragua v USA*⁸ where the ICJ (International Court of Justice) summed as “in order to deduce the existence of customary rules, the court deems it sufficient that the conduct of states should in general be consistent with such rules and that the instances of state conduct inconsistent with a given rule should generally have been treated as breaches of that rule not as indications of the recognition of a new rule.

⁷ [761 F.2d 370 (7th cir 1975)

⁸ (ICJ Reports 1969)

The *opinio juris* is regarded as a belief that a state activity is legally obligatory and states will behave a certain way because they are convinced it is binding upon them to do so. The PCIJ expressed this idea in the *lotus case*⁹ where it declared that if such a practice of abstention of instituting criminal proceedings could be proved, it would amount to a custom, only if such abstention were based on conscious of a duty to abstain.

Various prohibitions have turned into international customary law for instance genocide, slavery, slave trade, murder, torture or other cruel or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination and consistent gross violations of internationally recognized human rights. Some of the rules of human rights law have so far developed into *jus cogens* and no state is allowed to derogate from such. A *jus cogen* is a preemptory rule of international law that prevails over any conflicting international rule or agreement. A *jus cogens* norm permits no derogation and can be modified only by a subsequent international law norm of the same character. The ICJ in *US v Iran*¹⁰ appeared to find that a preemptory norm of international law establishes the inviolability of envoys and embassies in its judgment concerning Iranian treatment of the USA diplomatic and consular staff in Tehran.

3.1.1 Universal Declaration of Human Rights Charter, 1948.

The Universal Declaration of Human Rights is the first general legal and international instrument of human rights proclaimed by an international organization with a universal character. On 10 December 1948 in the Chaillot Palace in Paris the Universal Declaration of Human Rights was approved by the General Assembly of the United Nations. Needless to

⁹ *Case Concerning the Legal Status of the Eastern Greenland* (1927) PCIJ Series A No 10.

¹⁰ [1980 ICJ 41]

sate however important to note is that the Declaration obtained 48 votes in favour, eight abstentions, and not a single vote against 15, which can only be seen as a triumph.¹¹

The first important achievement of the Charter was that the Preamble of the Universal Declaration of Human Rights reaffirmed its faith in the equal rights of men and women. “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹² “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹³

It is important to note that the rights under Universal Declaration are recognized depending on the arrangement of chapters of the declaration. Thus one can argue that four columns of equal importance support the portico of the Universal Declaration of Human Rights: the first column is made up of personal rights and freedoms that is Articles 3 to 11 of the Declaration; the second comprises the rights of the individual in relation to the groups of which he or she is a part; Articles 12 to 17; the third is made up of political rights Articles 18 to 21, while the final column consists of economic, social and cultural rights, Articles 22 to 27. This being the case, only the final articles¹⁴ of the Declaration establish the links between the individual and the society of which he or she is a part.¹⁵

The Personal Rights and Freedoms; articles 3 to 11, are rights which refer to the most intimate and personal environment of the human being are found in this first part of the human rights contained in the Universal Declaration. The declaration provides for the right

¹¹ United Nations Association in Canada, *Questions and Answers about the Universal Declaration of Human Rights* (UNAC) <http://en.wikipedia.org> accessed 21 September 2024.

¹² *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A (III), art 1.

¹³ *Ibid* art 2

¹⁴ *Ibid* art 28-30

¹⁵ Commentary to the Declaration on the Rights and Responsibility of individuals, Groups and organs of society to promote and protect universally Recognized human rights and fundamental freedom, UN Special Rapporteur on the situation of human rights defender, 2001

to life, liberty and security of person.¹⁶ However, the right to life needs to be looked at in a broader perspective, it is important to state that the declaration left it to individual states to decide whether or not to impose death penalty in their respective jurisdiction. Regarding the thorny issue of abortion, which mixes ethical, religious, and legal aspects, the Universal Declaration remained completely silent¹⁷.

Torture or to cruel, inhuman or degrading treatment or punishment are prohibited in the declaration which is Clear proof of the fact that the international community considers the right not to have to experience any kind of torture or cruel, inhuman, or degrading treatment to be one of the fundamental rights comes from the huge legal development which the Universal Declaration has undergone both on regional and international levels. However, despite legal and institutional developments, we should underline the fact that unfortunately torture continues to be a widespread practice used in many parts of the world.¹⁸

The framers were also dedicated to establishing the principle of equality before the law and of non-discrimination.¹⁹ Under the declaration all persons are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

This second of the columns which form the principal foundations of the Universal Declaration of Human Rights is made up of those rights and freedoms which refer to the relationships of the individual with the different social groups of which he or she is necessarily a member; articles 12 to 17. It protects people's private and family life by

¹⁶ Ibid art 3

¹⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: Article 12 – The Right to the Highest Attainable Standard of Health* (adopted 11 August 2000) UN Doc E/C.12/2000/4 <http://www.ochr.org/Documents/issues/women/WRG/Health/GC14> accessed 20 August 2024.

¹⁸ Office of the United Nations High Commissioner for Human Rights, *Preventing Torture: An Operational Guide for National Human Rights Institutions* (available at: <https://ochr.org>, accessed 17 July 2024).

¹⁹ Ibid art 7

prohibiting any one to be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.²⁰

The right to freedom of movement and that of residence as well as the right to freely leave the country one is in was well catered for in the declaration.²¹ According to the first section of this provision, everyone has the right to freedom of movement and residence within the borders of each State, and the second limb is that everyone has the right to leave any country, including his own, and to return to his country. The provision sets out the right of all people to move and freely set up residence within a State, regardless of whether they are a national of that State. In other words, once a person has legally entered a State, that person has the same rights as a national as regards residence and free movement.²²

Along the same lines, the declaration recognizes the right of all people to have a nationality²³ of which they cannot be arbitrarily deprived, and also the right to change nationality. This is an important right given that nationality is, in many cases, the condition for the enjoyment of some of the rights recognized in the Universal Declaration of Human Rights. Above all, the objective of this Article is to avoid statelessness, or the legal situation in which a person holds no nationality.

Completing this section, the declaration is devoted to recognition of the right to property.²⁴ “everyone has the right to own property alone as well as in association with others”, with the second paragraph stating that “no one shall be arbitrarily deprived of his property”; in other words, the right to property is not seen as an absolute right –under certain circumstances it is possible to legitimately deprive a person of his or her property.

²⁰ Ibid art 12

²¹ Ibid art 13

²² Ibid 13(2)

²³ Ibid art 15

²⁴ Ibid art 17

There are also Political rights and freedoms; articles 18 to 21, along these lines, the declaration enshrines the recognition of the right to freedom of thought, conscience and religion.²⁵ Another basic right needed for the establishment of a democratic regime of law is the “right to freedom of opinion and expression.”²⁶ And the right of all people “to freedom of peaceful assembly and association.”²⁷

Equally enshrined are Economic, social and cultural rights; articles 22 to 27, this column deals with the group of rights that was a true innovation as regards the international protection of human rights. Until the time of the drafting of the Declaration, no international text had collected together what we call second generation human rights. The Universal Declaration of Human Rights thus became the first international legal text to create a fully comprehensive catalogue of human rights. The most important provision in the list of economic, social and cultural rights is, without doubt, the first article in this column.²⁸ It is a provision which serves as a basis and a framework which marks out the guidelines for all the articles discussed in this column. It recognizes the right of all people to social security with entitlement to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.²⁹

However, it is equally significant that it considers economic, social, and cultural rights to be “indispensable” for the dignity of the human being and for the “free development of his personality. It is important to highlight, and which contributes to the general characterization of economic, social and cultural rights, is that these rights are dependent on national effort” and “International co-operation. If however, State resources are not sufficient, reinforcement

²⁵ Ibid art 18

²⁶ Ibid art 19

²⁷ Ibid art 20

²⁸ Ibid art 22

²⁹ Executive Committee, 55th Session (4–8 October 2004) UNGA, UN Doc A/AC.96/1003.

through international co-operation should be provided, then we are faced with second generation rights we realize that they are rights which depend on all the resources which States have, both economic and otherwise.³⁰

These rights are the right to work, to equal pay and to just remuneration, as well as the right to freely join a trade union,³¹ right to rest, leisure, a reasonable limitation of working hours, and periodic holidays with pay,³² the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control,³³ the right to education³⁴ and the right of all people to participate in the cultural life of the community, as well as the right to take advantage of it, while also protecting the copyright.³⁵

The crimes committed by the Nazis in Germany during World War two were equally responsible for the UDHR with its Preamble being exactly to the point³⁶, “ *Whereas disregard and contempt for human rights resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.....*

Now therefore, we the General Assembly, proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all Nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind,

³⁰ Ibid

³¹ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 23.

³² Ibid art 24

³³ Ibid art 25

³⁴ Ibid art 26

³⁵ Ibid art 27.

³⁶ *Attorney General v Suzan Kigula* Constitutional Appeal No 3 of 2006 (Supreme Court of Uganda).

shall strive by teaching and education to promote respect for those rights and freedoms and by progressive measures, national and International, to secure their universal and effective recognition and observance, both among the Peoples of Member States themselves and among the peoples of territories under their jurisdiction.”³⁷

It should also be noted that much as the UDHR is widely accepted as the first human rights document, it is not binding and this necessitated the enactment of the twin covenants. However currently, much of the provisions of the UDHR form part of the jus cogens of which no state is allowed to derogate from.³⁸

3.1.2 The International Covenant on Civil and Political Rights

Even before the adoption of the Universal Declaration on Human Rights (a non-legally binding document) in 1948, broad agreement existed that the rights which were to be enshrined in the Declaration were to be transformed into legally binding obligations through the negotiation of one or more treaties. In 1966, two separate treaties, covering almost entirely all the rights enshrined in the Universal Declaration of Human Rights, were adopted after approximately 20 years of negotiations: one for civil and political rights, the International Covenant on Civil and Political Rights (ICCPR); and one for economic, social and cultural rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁹ Uganda has adopted and domesticated the International Bill of Rights that comprises the International Covenant on Economic, Social and Cultural Rights (ICESCR) signed 21st June 1995.

³⁷ Preamble to the Universal Declaration of Human Rights (adopted 10 December 1948) available at <https://www.un.org> accessed 17 July 2024.

³⁸ Andrea Bianchi, Human Rights and the Magic of Jus Cogens, [2008], 19 (3) *The European Journal of International Law* 492-496

³⁹ *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

The ICCPR ensures the protection of civil and political rights. The Covenant includes two over-arching non-discrimination rights: It guarantees to all individuals, within a State party's territory and subject to its jurisdiction, that the rights enshrined in the ICCPR will be respected and ensured 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.⁴⁰ It also guarantees the equal right of men and women to enjoy all the civil and political rights contained in the Covenant.⁴¹

The rights enshrined in the ICCPR include: the right to life⁴² freedom from torture⁴³ the right to liberty and security of person⁴⁴ the rights of detainees the right to a fair trial the right to privacy⁴⁵ freedom of religion⁴⁶ freedom of expression⁴⁷ the right to political participation⁴⁸ equality before the law⁴⁹ and the protection of minorities.⁵⁰ Moreover, if any of the rights or freedoms recognized within the ICCPR are violated a person must have access to an effective remedy.⁵¹ Lady justice H. Wolayo in *Basajjabaka Yakub vs MTN Uganda Ltd*⁵² had that “as the ICCPR is part of our legal system, it follows this Court is bound to recognize the right to privacy generally even when a person is in a public space.

Some of the provisions guaranteeing the rights and freedoms in the ICCPR also include the possibility of States parties to restrict or derogate from them under particular circumstances. For example, in exercising the right to freedom of expression, certain restrictions apply in order to ensure the respect of the rights or reputation of others or to protect national security,

⁴⁰ Ibid art 3

⁴¹ Ibid art 3

⁴² Ibid art 6

⁴³ Ibid art 7

⁴⁴ Ibid art 9

⁴⁵ Ibid art 17

⁴⁶ Ibid art 18

⁴⁷ Ibid art 19

⁴⁸ Ibid art 25

⁴⁹ Ibid art 26

⁵⁰ Ibid art 27

⁵¹ Ibid art 2(3) a

⁵² *HCCS No 100 of 2012* (High Court of Uganda).

public order, public health or morals. Article 19 is also limited by another article, article 20, which prohibits any propaganda of war or any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In addition, in accordance with article 4, States parties, in time of a public emergency which threatens the life of the nation, may take such measures which derogate from their obligations under the Covenant.⁵³ However, such measures may only be taken to the extent strictly required by the exigencies of the situation provided that they are not inconsistent with a State party's other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin⁵⁴.

⁵³ Ibid art 4

⁵⁴ UN Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E/CN.4/1985/4 (28 September 1984).

3.1.3 The International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Rights was adopted by the United Nations General Assembly in 1966, and entered into force on 3 January 1976. As of August 2018, there were 168 States parties to the Covenant. Uganda has adopted and domesticated the International Bill of Rights that comprises the International Covenant on Economic, Social and Cultural Rights (ICESCR) signed on 21st January 1985 and ratified on 21st January 1987.⁵⁵

The ICESCR is composed of thirty-one articles contained in six sections: the preamble and parts to V. Part I, which is identical to the parallel part of the ICCPR and comprises solely article 1, proclaims the right of all peoples to self-determination, including the right to freely pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources. While the Covenant benefits from an impressive scope, it does suffer from the fact that its terms are phrased in an excessively general manner. For example, whereas the European Social Charter has three articles dealing with the right to social security, the Covenant merely has the briefest statements. Similarly, the rights to food and housing, which are clearly complex and ill-defined concepts, are given little, if any, further substance in the text of the Covenant. The amount of detail to be included in the provisions of the Covenant was the subject of much debate in the drafting of the Covenant.⁵⁶

The debate on whether Economic and Social rights are justifiable in Uganda and or any African State has raged on for a number of years. The pertinent questions revolve around the determination of how such rights may be enforced. Social and Cultural rights have falsely been considered as vand through political processes, rather than as judicially enforceable

⁵⁵ *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), ratified by Uganda 21 January 1987.

⁵⁶ *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN ESCOR, Commission on Human Rights, 43rd Session, UN Doc E/CN.4/1987/17 (1987).

rights of immediate application.⁵⁷ Admittedly, one of the most serious challenges to realization of Economic and Social rights is the vagueness of some of the obligations imposed on state parties to the ICESCR and its treaty monitoring mechanisms.⁵⁸

a) The rights recognized in the Covenant

The protection given to economic rights in the Covenant is broad but general. The convention provides for a right to equal remuneration for work of equal value (rather than just the more restrictive equal pay for equal work), and gives recognition to a wide range of other rights such as the right to safe and healthy working conditions and the right to reasonable limitation of working hours.⁵⁹ The rights provided for by the convention are Art 6- The right to work, including the right to gain one's living by work freely chosen or accepted.⁶⁰ Art. 8 - The right to form trade unions and join the trade union of one's choice,⁶¹ the right to social security, including social insurance. Protection and assistance to the family; marriage to be freely entered into; maternity protection; protection and assistance to children and young persons,⁶² right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions,⁶³ the right to the highest attainable standard of physical and mental health⁶⁴ and the right to education.⁶⁵

b) State party obligations

Each State party to the International Covenant on Economic, Social and Cultural Rights undertakes to take steps, individually and through international assistance and co-operation,

⁵⁷ Aulona Haxhiraj, 'Judicial Enforcement of Economic, Social and cultural Rights' [2013] *Academicus International Scientific Journal*, 221-119

⁵⁸ *Steven Kakali v Attorney General* Misc. No 88 of 2022 (Uganda).

⁵⁹ *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 7.

⁶⁰ *Ibid* art 6

⁶¹ *Ibid* art 8

⁶² *Ibid* art 10

⁶³ *Ibid* art 11

⁶⁴ *Ibid* art 12

⁶⁵ *Ibid* art 13

especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures.

Although the Covenant provides for progressive realization and acknowledges the constraints due to limits of available resources, the Committee that monitors the Covenant emphasizes that it also imposes various obligations which are of immediate effect.⁶⁶ Hon Justice Dr. Douglas Karekoma Singiza in *Steven Kalali vs Attorney General*⁶⁷ noted that Article 2(1) ICESCR establishes the concept of progressive realization of socio economic rights as compared to Article 29(1) of the ICCPR which obliges each state party to respect the rights and ensure their immediate enjoyment by all individuals. A comparison of the two provisions shows that the ICCPR imposes an immediate obligation on state parties to maintain a defined standard, whereas the ICESCR makes the realization of economic and social cultural rights merely promotional and a matter very much for the future.

3.1.4 The International Convention on the Elimination of All Forms of Racial Discrimination, 1965

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969. As of August 2018, it had 179 States parties.⁶⁸ Uganda is a state party to the ICERD⁶⁹ and has had its provisions provided into Chapter 4 of the 1995 Constitution and in Article 21 that provides for equality. Uganda has put in place the Equal Opportunities Commission under the Equal Opportunities Commission Act mandated to ensure the respect of equality pursuant to the provisions of Article 32 of the Constitution that

⁶⁶ Ibid General Comment No. 3

⁶⁷ *Misc. Cause No 88 of 2022*

⁶⁸ UNGA Res 2106 (XX) (21 December 1965) UN Doc A/RES/2106.

⁶⁹ *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, ratified by Uganda 21 November 1980.

provides that the state has the mandate to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability and take affirmative action in favor of groups marginalized 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 and to provide for other related matters.⁷⁰

Under the Convention⁷¹ state parties are required not only to prohibit and eliminate racial discrimination, but also “to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably the enjoyment of the following rights; Citizens of member states have a right to equal treatment before the tribunals and all other organs administering justice.,⁷²The right to security of person political rights, such as the right to participate in elections,⁷³ a right to take part in the Government and in the conduct of public affairs and to have equal access to public service,⁷⁴ and Civil rights, such as the right to freedom of movement and residence, the right to leave any country, including one’s own, and to return to one’s own country, the right to nationality, the right to marriage and choice of spouse, the right to own property alone as well as in association with others, the right to inherit, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to peaceful assembly and association.⁷⁵

⁷⁰ *Equal Opportunities Commission Act Cap 7* (Uganda).

⁷¹ *International Convention on the Elimination of All Forms of Racial Discrimination* (opened for signature 7 March 1966, entered into force 4 January 1969) 660 UNTS 195, art 5.

⁷² *Ibid* art 5(a)

⁷³ *Ibid* art 5(b)

⁷⁴ *Ibid* art 5(c)

⁷⁵ *Ibid* art 5(d)

a) States Obligation under the Convention

The States parties to the Convention are called to condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.⁷⁶

Thus, state parties have to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation, not to sponsor, defend or support racial discrimination by any persons or organizations, to take effective measures to review” public policies at all levels and to amend legislation which has “the effect of creating or perpetuating racial discrimination wherever it exists, to prohibit and bring to an end, by all appropriate means racial discrimination by any persons, group or organization, to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.⁷⁷

State parties are also required to further “assure to everyone within their jurisdiction effective protection and remedies” against acts violating a person’s human rights contrary to the Convention, as well as the right to seek from domestic tribunals “just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination and to “to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination.⁷⁸

⁷⁶ Ibid art 2(1)

⁷⁷ Ibid art 2(a-d)

⁷⁸ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, art 7.

In *Yasin Omar vs Attorney General*⁷⁹ it was categorically stated that Article 21(1) of the 1995 Constitution of the Republic of Uganda provides for equality of all persons before and under the law and in all spheres of life. In particular clause 2 prohibits discrimination on grounds of sex, race, color, ethnic origin among others. Article 21 of the Constitution has its foundations in various International Conventions such as Article 2(1) of the UDHR which provides for equality of all peoples. The International Convention on the Elimination of All Forms of Racial Discrimination, Articles 1, 2,3,4,5,6 and 7 not only urge state parties to condemn all forms of discrimination but also to undertake necessary measures to prohibit and eliminate all forms of discrimination while at the same time guaranteeing fundamental rights to everyone without distinction whatsoever as to race, color or nationality or ethnic origin. Similarly, Article 20 of the 1995 Constitution of the Republic of Uganda emphasises that an individual's rights and freedoms are inherent and not guaranteed by the state and therefore they should be respected, upheld and promoted by all individuals, organs and agencies of government.

3.1.5 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Although outlawed by all the major human rights treaties, the widespread practice of torture was considered to require more detailed legal regulation and more efficient implementation machinery. It was therefore decided to draft a Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was adopted by the United Nations General Assembly on 10 December 1984. It entered into force on 26 June 1987, and, as of August 2018, there were 163 States parties to the Convention.⁸⁰Notwithstanding the fact

⁷⁹ EOC, *EOC/CR/010/2016* (2016).

⁸⁰ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, ratified by Uganda 3 November 1986.

that Uganda ratified the CAT in 1987, it took severally decades before it could domesticate it into the Prevention and Prohibition of Torture Act in 2012⁸¹

The freedom from torture in Uganda is found under Article 24 and Article 44(a) makes it a non derogable right by providing that Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the freedom from torture, and cruel, inhuman or degrading treatment or punishment. In *Attorney General v Susan Kigula & 417 Ors*⁸² the Supreme Court held that torture was inconsistent with Articles 24 and 44(a) of the Constitution.

According to the Convention, “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. However, “it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁸³

Freedom from torture is one of the most universally recognized human rights. Torture is considered so barbaric and incompatible with civilized society and cannot be tolerated. Torturers are seen as the enemy of mankind. The ban on torture is seen in a number of International Instruments including Article 2 of CAT, Article 5 of UDHR and Article 5 of ACHPR. The distinction between torture and inhuman or degrading treatment lies in the difference of intensity of suffering inflicted. In deciding whether certain treatment amounts to

⁸¹ Cap 130

⁸² [2009] UGSC 6(21 January 2009)

⁸³ Ibid art 1

torture, the court takes into account factors of each individual case, such as the duration of treatment, its physical and mental effects, and age, sex, health and vulnerability of the victim.

⁸⁴ The courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment. Only the worst examples are likely to satisfy the test. There are no exceptional circumstances whatsoever to justify torture.⁸⁵

a) The undertakings of the States parties

The Convention details the responsibilities of the States parties to prevent, punish, and remedy acts of torture. However, only some of the legal obligations will be outlined here and in general terms. It prohibits any State Party from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture,⁸⁶ each State Party has to ensure that all acts of torture are offences under its criminal law” and the same shall apply to attempts to commit torture and acts that constitute complicity or participation in torture. It shall, moreover, “make these offences punishable by appropriate penalties which take into account their grave nature.⁸⁷

The States parties are obligated to take the measures necessary to exercise their jurisdiction over the preceding offences and to submit the person alleged to have committed acts contrary to the Convention to the “competent authorities for the purpose of prosecution and they have to moreover afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of these offences.⁸⁸ States parties are further to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public

⁸⁴ *Ireland v United Kingdom* (Application No 5310/71) ECHR (1978) 2 EHRR 25.

⁸⁵ *PC Atusasiire Darius v ACP Okalany John William and 2 Others* (MC No 25 of 2021).

⁸⁶ *Ibid* art 3(1)

⁸⁷ *Ibid* art 4(1)

⁸⁸ *Ibid* art 9

officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment,⁸⁹ keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form” of deprivation of liberty,⁹⁰ I ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed,⁹¹ further ensure that any alleged victim of torture “has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities⁹² lastly, the Convention requires that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”

3.1.6 The Convention on the Elimination of All Forms of Discrimination against Women, 1979,

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979 and entered into force on 3 September 1981. As of August 2018, it had 189 States parties.⁹³ The substantive provisions of CEDAW are provided for under Articles 31, 32 and 33 of the 1995 Constitution of the Republic of Uganda. Article 32 of the said Constitution calls for affirmative action to redress the imbalances which exist against women as well as prohibit all cultures that are against the dignity of women. Justice Wolayo J in *Peter Otikor & 2 Others v Margret Anya*⁹⁴ held that Article 5 of CEDAW urges states to modify the cultural patterns in society that impair or nullify the enjoyment by women of fundamental human rights.

⁸⁹ Ibid art 10

⁹⁰ Ibid art 11

⁹¹ Ibid art 12

⁹² Ibid art 13

⁹³ *Convention on the Elimination of All Forms of Discrimination Against Women* (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, ratified by Uganda 22 July 1985.

⁹⁴ Civil Appeal No. 38 of 2012

For the purposes of the Convention the term “discrimination against women” means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁹⁵

The prohibition on discrimination against women is thus not limited to the traditional categories of human rights, but goes beyond them to other fields where discrimination might occur. Furthermore, it is not limited to the public field but also extends to areas of private life. States parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake,⁹⁶ in particular to embody the principle of equality of men and women in their national laws and to ensure the practical realization of this principle, to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women, to establish effective legal protection of the equal rights of women through national tribunals or other public institutions, to refrain from engaging in any act or practice of discrimination against women, to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise and to repeal all national penal provisions which constitute discrimination against women.

Whilst many articles in the Convention are framed as general legal obligations on the States parties to take appropriate measures to eliminate discrimination against women, some at the same time specify the particular rights which must be ensured on a basis of equality of men and women, with regard to education, women have the right, *inter alia*, to the same conditions for career and vocational training and the same opportunities for scholarships and other

⁹⁵ Ibid art 1

⁹⁶ Ibid art 2

grants,⁹⁷ the right to work, to the same employment opportunities, to free choice of profession and employment, to equal remuneration, to social security and to protection of health,⁹⁸ the right to family benefits, to bank loans, mortgages and other forms of financial credit and to participate in recreational facilities, sports and all aspects of cultural life.⁹⁹ Lastly, the Convention specifically imposes a duty on the States parties to “accord to women equality with men before the law” as well as identical legal capacity in civil matters and also obliges States parties to ensure them, on a basis of equality of men and women, a number of rights relating to marriage and the family.¹⁰⁰

3.2 REGIONAL INSTRUMENTS

3.2.1 The African Charter on Human and Peoples’ Rights

In 1981, the OAU adopted the African Charter on Human and Peoples’ Rights (ACHPR).¹⁰¹ It was designed to reflect African concepts of rights and thus is distinctive in its phraseology and underlying rationale. The African Charter on Human and Peoples’ Rights was intended to promote human rights from an African perspective, including by emphasizing collective political rights and the right to national self-determination.¹⁰²

The Committee that drafted the African Charter was guided by the principle that it should reflect the African conception of human rights, and should take as a pattern, the African philosophy of law and meet the needs of Africa.¹⁰³

⁹⁷ Ibid art 10

⁹⁸ Ibid art 11

⁹⁹ Ibid art 13

¹⁰⁰ *African Charter on Human and Peoples’ Rights* (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, art 16.

¹⁰¹ *OAU, African Charter on Human and Peoples’ Rights* (adopted 27 June 1981, CAB/LEG/67/3 rev).

¹⁰² *African Charter on Human and Peoples’ Rights* (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, ratified by Uganda 10 May 1986.

¹⁰³ Amnesty International, *A Guide to the African Charter on Human and Peoples’ Rights* (Amnesty International Secretariat, available at www.amnesty.org) accessed 16 July 2024.

The charter clearly acknowledges the Universal Declaration of Human Rights in its preamble and explicitly recognizes civil, political, economic, social and cultural rights. It became the main regional human rights instrument in Africa, and the main mechanisms are the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.¹⁰⁴ Two other conventions were adopted alongside the African Charter on Human and Peoples' rights, they are, African Charter on the Rights and welfare of the Child, and the Protocol on Women's Rights¹⁰⁵.

The African Charter, which entered into force in 1986, incorporates universal human rights standards and principles, but also reflects the virtues and values of African traditions. Thus, the African Charter is characterized by the concept of a reciprocal relationship between the individual and the community, linking individual and collective rights.

It enshrines the African concept of rights and aims to be accessible to African philosophy: it is striking among international and regional instruments in its emphasis on human and peoples' rights and its cataloguing of the duties of the individual/group to the State. A further notable feature is that, unlike other international and regional instruments, States are not permitted to derogate from the Articles of the Charter. The rights and duties thus remain applicable during times of public emergency. Unlike the other regional organizations, the OAU adopted an integrated approach to human rights. The Preamble states that the parties are convinced that it is essential to pay particular attention to the right to development. Interestingly, the Preamble also notes that civil and political rights cannot be dissociated from economic, social, and cultural rights in their conception as well as their universality.

¹⁰⁴*African Court on Human and Peoples' Rights* (June 1998).

¹⁰⁵ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003) OAU Doc CAB/LEG/66.6.

Recognition of the indivisibility of human rights has progressively characterized modern international and regional human rights instruments.¹⁰⁶

The Charter goes further, emphasizing that ‘the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights. This approach also challenged the then conventional approach which was to secure civil and political rights, while progressively working towards securing economic, social, and cultural rights, the International Bill of Rights. In *Okiring and Another v Republic of Uganda*¹⁰⁷ the African Commission on Human and People’s Rights that Uganda as a state party by refusing to comply with the bail order and the Constitutional declarations issued by Courts and by invading the High Court to prevent the release of the victims, it undermined the independence of Courts which is a violation of Article 26 of the African Charter.

3.2.2 African Charter on the Rights and Welfare of the Child, 1990

The African Charter on the Rights of the Child was adopted in 1990 and seeks to address specific needs of the Child. It was adopted immediately after the Convention on the Rights of the Child which was adopted in 1989. Uganda signed and ratified the Convention on the Rights of the Child on 17th August 1990 and acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts on 6th May 2002.¹⁰⁸

¹⁰⁶ Rhona K. M. Smith, *International Human Rights*, (6th edn, Oxford University Press, 2013) 139

¹⁰⁷ Communication 339/07 (African Commission on Human and Peoples' Rights, 28 April 2018) [2018] ACHPR 133.

¹⁰⁸ *African Charter on the Rights and Welfare of the Child* (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49, ratified by Uganda 17 August 1994.

The Child Charter provides for the rights of children to non-Discrimination,¹⁰⁹ right to name and nationality Freedom of Expression¹¹⁰ Freedom of Thought, Conscience and Religion,¹¹¹right to education.¹¹²

3.2.3 Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)

On November 25, 2005, the Protocol on the Rights of Women in Africa (the protocol) entered into force, after being ratified by 15 African governments. Two years earlier, in July of 2003, the African Union—the regional body that is charged with promoting unity and solidarity among its 53 member nations—adopted this landmark treaty to supplement the regional human rights charter, the African Charter on Human and Peoples’ Rights (the African Charter). The protocol provides broad protection for women’s rights, including their sexual and reproductive rights. The treaty affirms reproductive choice and autonomy as a key human right. For example, it represents the first time that an international human rights instrument has explicitly articulated a woman’s right to abortion when pregnancy results from sexual assault, rape, or incest; when continuation of the pregnancy endangers the life or health of the pregnant woman; and in cases of grave fetal defects that are incompatible with life. Another first is the protocol’s call for the prohibition of harmful practices such as female circumcision/female genital mutilation (FC/FGM), which have ravaged the lives of countless young women in Africa.¹¹³

Although the Women Charter is the primary treaty providing a framework for human rights in the region, its provisions on women’s rights are largely seen as ineffective and inadequate.

¹⁰⁹ Ibid art 3

¹¹⁰ Ibid art 7

¹¹¹ Ibid art

¹¹² Ibid art 11

¹¹³ *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* (adopted 11 July 2003, entered into force 25 November 2005) 43 ILM 1013, ratified by Uganda 24 July 2010.

The charter recognizes and affirms women's rights in three provisions. It requires states parties to "ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman,¹¹⁴ the rights and freedoms enshrined in the charter shall be enjoyed by all, irrespective of race, ethnic group, color, sex, language, national and social origin, economic status, birth or other status,¹¹⁵ equality before the law and shall be entitled to equal protection of the law.¹¹⁶

3.2.4 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted on 10th September 1969 by the Assembly of Heads of State. The Convention strives to protect the rights of refugees with specific needs in Africa. The Convention recalls the Resolutions Number 26 and 104 of the OAU Assemblies of Heads of State and Government, calling upon Member States of the Organization to accede to the United Nations Convention of 1951 and to the Protocol of 1967 relating to the Status of Refugees, and meanwhile to apply their provisions to refugees in Africa.¹¹⁷

The term "refugee" is defined by the convention to mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. The term "refugee" shall also apply to every person who, owing to external aggression,

¹¹⁴*OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45, art 18(3).

¹¹⁵*Ibid* art 2

¹¹⁶ *Ibid* art 3

¹¹⁷ *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (adopted 10 September 1969) OAU Doc CAB/LEG/24.3, ratified by Uganda 24 July 1987.

occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.¹¹⁸

a) Obligation of the member states

Member States undertake to apply the provisions of this Convention to all refugees without discrimination as to race, religion, and nationality, membership of a particular social group or political opinions,¹¹⁹ issue to refugees lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. Member States may issue such a travel document to any other refugee in their territory,¹²⁰ Co-Operation of the National Authorities with the Organization of African Unity In order to enable the Administrative Secretary-General of the Organization of African Unity to make reports to the competent organs of the Organization of African Unity, Member States undertake to provide the Secretariat in the appropriate form with information and statistical data requested concerning,¹²¹ Co-Operation with the Office of the United Nations High Commissioner for Refugees.¹²²

3.3 National Laws

Human Rights in Uganda have trended for the past decades towards increasing harassment of the opposition, cracking down on NGOs which work on election and term limits, corruption, land rights, environmental issues, women, children and gay rights. With the coming up of the

¹¹⁸ *Constitution of the Republic of Uganda* 1995 (as amended) art 1

¹¹⁹ *Ibid* art 4

¹²⁰ *Ibid* art 6

¹²¹ *Ibid* art 7

¹²² *Ibid* art 8

National Resistance Army in 1986, there was a promise to restore the human rights situation in Uganda. This promise was preceded with the coming up of the 1995 Constitution that provide a whole Chapter 4 on human rights and establishes the Human Rights Commission. Uganda has equally ratified and domesticated a number of Human Rights treaties and has a number of laws which at least on paper.

3.3.1 The Constitution of the Republic of Uganda, 1995.

The 1995 Constitution is the Supreme law of Uganda and it among others contains the Bill of Rights in Chapter Four. Most of the rights provided for under Chapter Four are in line with the International Bill of Rights. The nature of rights within Chapter Four of the Uganda Constitution includes civil, political, economic and social rights. Article 20 of the Constitution validates some of the principles under the UNGPs as it confers a responsibility for all non-state actors including businesses enterprises to respect human rights. This Article creates a direct responsibility for other persons to respect human rights. The Constitution also ensures protective measures for the right to property under Article 26,11 the right to culture under Article 37, Article 30 on right to education, Article 40 on economic rights, and Article 39 on the right to a clean and healthy environment among others.

While specific rights such as the right to health, food, water, housing and social security are not expressly provided for in the Ugandan Bill of Rights (Chapter Four of the Constitution), they are set out in the National Objectives and Directive Principles of State Policy (NODPSPs). Similarly, Article 45 of Constitution is to the effect that although economic, social and cultural rights are not expressly recognised in the bill of rights, they could be read into the Constitution. Nevertheless, there is need for the Constitution to fully recognise all economic, social and cultural rights under the Bill of Rights in order to fully comply with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Furthermore, the 1995 Constitution provides for cross-cutting rights— important in protecting human rights in the context of business activities. These include Fundamental and other human rights and freedoms right to Equality and freedom from discrimination,¹²³ Protection of right to life,¹²⁴ Protection of personal liberty,¹²⁵ Respect for human dignity and protection from inhuman treatment,¹²⁶ Protection from slavery, servitude and forced labour,¹²⁷ Protection from deprivation of property,¹²⁸ Right to privacy of person,¹²⁹ Right to a fair hearing,¹³⁰ Protection of freedom of conscience, expression, movement, religion, assembly and association.¹³¹ Among others

3.3.2 Uganda human rights commission Act Cap 26.

In I 993, the United Nations General Assembly endorsed the Paris Principles relating to the status of national human rights institutions. This marked a movement towards the establishment of national human rights commissions in many countries throughout the world. These commissions have adopted different models, and possess varying degrees of power. However, they share the common goal of seeking to address human rights violations and educating the public about human rights. Human rights enforcement Act. Uganda Human Rights Commission is one of many institutions in Uganda involved in police oversight.¹³²

The Uganda Human Rights Commission was thus established as a constitutional body under article 5I of the 1995 Constitution of the Republic of Uganda (Constitution) as one of the principal institutions responsible for the protection and promotion of human rights. The Commission is composed of a chairperson and not less than three other persons, appointed by

¹²³ Ibid art 21

¹²⁴ Ibid art 22

¹²⁵ Ibid art 23

¹²⁶ Ibid art 24

¹²⁷ Ibid art 25

¹²⁸ Ibid art 26

¹²⁹ Ibid art 27

¹³⁰ Ibid art 28

¹³¹ Ibid art 29

¹³² *Uganda Human Rights Commission Act Cap 26* (1997)

the President with the approval of Parliament. The Chairperson and members of the Commission have to be persons of high moral character and proven integrity and serve for a period of six years and are eligible for re-appointment. In carrying out its operations the Commission is guided by the Uganda Human Rights Commission Act, Commission Procedure Rules, and the Commission Operational Guidelines. The Commission under the Constitution is independent and in the performance of its duties, should not be subject to the direction or control of any person or control authority.¹³³

The commission is charged with investigating, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right, to visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations, to visit any place or building where a person is suspected to be illegally detained, to establish a continuing programme of research, education and information to enhance respect of human rights, to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families, to create and sustain within society the awareness of the provisions of the Constitution as the fundamental law of the people of Uganda, to educate and encourage the public to defend the Constitution at all times against all forms of abuse and violation, to formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people, to monitor the Government's compliance with international treaty and convention obligations on human rights, to carry out the functions of the commission under article 48 of the Constitution; and to perform such other functions as may be provided by law.¹³⁴

¹³³ *Constitution of the Republic of Uganda 1995* (as amended) art 54.

¹³⁴ *Human Rights Commission Act Cap 26* (Uganda) s 7

3.3.3 The Human Rights (Enforcement) Act Cap 12.

The Act reserves provides the High Court as the court with the powers to hear and determine any application relating to the enforcement or violation of non derogable rights and freedoms guaranteed under the Constitution, other rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms envisaged in article 45 of the Constitution, rights and freedoms restricted under a law made for purposes of a state of emergency; and rights and freedoms which are preserved by this Act to be determined by a magistrate court, where the remedy sought by the applicant is beyond the pecuniary jurisdiction of that court.¹³⁵ Any other circumstance can be done by a magistrate court¹³⁶The Act allows courts to give remedies for the infringement of human rights by issuing orders it considers appropriate, including an order for compensation, restitution of the victim to the original situation before the violation of his or her human rights and freedoms, the rehabilitation of the victim including the provision of medical and psychological care.¹³⁷ An individual that violates another's rights may personally be held liable.¹³⁸

3.3.4 The Prevention of Torture Act (2012)

The Prevention of Torture Act (2012) in Uganda is a significant piece of legislation aimed at addressing the pervasive issue of torture and cruel, inhuman, or degrading treatment. It was enacted in response to widespread concerns about human rights abuses by law enforcement agencies and the military, particularly during times of political unrest. Torture has a long history in Uganda, especially during periods of political instability, including the regimes of

¹³⁵ Ibid sec 4.

¹³⁶ Ibid sec 5.

¹³⁷ Ibid sec 9

¹³⁸ Ibid sec 10

Idi Amin and Milton Obote. Reports of human rights abuses, particularly involving security forces, have been persistent.¹³⁹

Prior to the enactment of the Prevention of Torture Act, there were limited legal frameworks to address torture. Although Uganda is a signatory to various international human rights treaties (e.g., the Convention Against Torture), domestic laws were insufficient to combat the issue effectively. The act was a response to both international pressure and local advocacy for human rights reforms. It aims to align Uganda's laws with its international human rights obligations and to provide a clear legal framework for the prohibition of torture.¹⁴⁰

The Act provides a comprehensive definition of torture, categorizing it as any act that inflicts severe pain or suffering, whether physical or mental, for purposes such as obtaining information, punishing, or intimidating a person. The Act explicitly prohibits torture and other cruel, inhuman, or degrading treatment. It places an obligation on public officials and institutions to prevent and report incidents of torture. Torture is classified as a criminal offense, with penalties including imprisonment. This provision aims to hold perpetrators accountable and discourage such acts. The Act outlines the rights of victims, including the right to complain and seek remedies, including compensation. This is crucial for ensuring justice for those who have suffered torture. The Act mandates thorough investigations of torture allegations and establishes procedures for the prosecution of offenders. This is intended to create a legal mechanism for addressing complaints effectively.

The Prevention of Torture Act contributes to a stronger human rights framework in Uganda. It signals a commitment to addressing human rights violations and aligns domestic laws with

¹³⁹ UN Committee Against Torture, 'Concluding Observations on the Initial Report of Uganda' (23 December 2016) UN Doc CAT/C/UGA/CO.

¹⁴⁰ Amnesty International, 'Uganda: "We Are All Vulnerable": Torture and Ill-treatment in Uganda' (Amnesty International 2015) <https://www.amnesty.org/en/documents/afr59/007/2015/en/> accessed 10 October 2024.

international standards.¹⁴¹The Act requires law enforcement agencies to adopt practices that respect human rights, including training personnel on the prohibition of torture and the treatment of detainees. It also places a burden on the judiciary to ensure that cases of torture are handled with due diligence, which can enhance public confidence in the justice system. Despite the legal framework, challenges remain in effectively implementing the Act. These include a lack of resources for proper training of law enforcement officials, potential resistance from security agencies, and the persistence of a culture of impunity.

The Prevention of Torture Act (2012) represents a critical step towards addressing the issue of torture and enhancing human rights enforcement in Uganda. While the Act lays a solid legal foundation for prohibiting torture, the effectiveness of its implementation hinges on various factors, including political will, resource allocation, and the engagement of civil society. Ensuring accountability for human rights violations and fostering a culture of respect for human rights remains a significant challenge for Uganda as it seeks to uphold its obligations both domestically and internationally.¹⁴² Continued advocacy, monitoring, and engagement with international bodies are essential for ensuring the effectiveness of the Act and protecting the rights of individuals in Uganda.

3.3.5 The Public Order Management Act (POMA)

The Public Order Management Act (POMA), enacted in Uganda in 2013, has significant implications for the enforcement of human rights within the country. This Act was introduced to regulate public gatherings, political assemblies, and demonstrations, ostensibly aimed at maintaining public order. However, its provisions have raised concerns among human rights

¹⁴¹ International Rehabilitation Council for Torture Victims, 'Preventing Torture: A Guide to the Prevention of Torture in Uganda' (International Rehabilitation Council for Torture Victims 2013).

¹⁴² Human Rights Watch, "'We Are Not the Enemy': A Call to End Police Abuses in Uganda' (Human Rights Watch 2020) <https://www.hrw.org/report/2020/06/02/we-are-not-enemy/call-end-police-abuses-uganda> accessed 10 October 2024.

advocates, legal scholars, and various civil society organizations regarding its impact on the freedoms of assembly, expression, and association.¹⁴³

POMA was introduced in response to growing concerns about violence during public gatherings and the need to manage public order effectively. The Ugandan government justified the Act as a means to safeguard citizens and property during demonstrations. The POMA had a number of implications on human rights enforcement.

The requirement for prior notification to the police is seen as a significant restriction on the right to peaceful assembly. Critics argue that this provision enables the government to suppress dissent by denying permission for demonstrations, particularly those that are politically sensitive. Instances of police using excessive force to disperse gatherings have been reported, which raises serious human rights concerns, especially when protests are peaceful.¹⁴⁴

The stringent requirements and the potential for punitive action create a chilling effect on freedom of expression. Activists, journalists, and citizens may refrain from voicing dissenting opinions or organizing gatherings for fear of retribution. The enforcement of POMA has led to instances of media censorship, with authorities cracking down on journalists covering protests or critical of government actions.¹⁴⁵ The broad powers granted to law enforcement under POMA have led to reports of human rights abuses, including arbitrary arrests, torture,

¹⁴³ Human Rights Watch, 'Uganda: Events of 2023' (2023) <https://www.hrw.org/world-report/2023/country-chapters/uganda> accessed 10 October 2024.

¹⁴⁴ Amnesty International, "'We Are All Targets': Repression of the Opposition in Uganda' (2021) <https://www.amnesty.org/en/documents/afr59/3061/2021/en/> accessed 10 October 2024.

¹⁴⁵ International Crisis Group, 'The Challenges of Political Reform in Uganda' (2020) <https://www.crisisgroup.org/africa/horn-africa/uganda/challenges-political-reform-uganda> accessed 10 October 2024.

and unlawful detentions. The lack of effective accountability mechanisms allows these abuses to persist.¹⁴⁶

The Public Order Management Act in Uganda presents a complex landscape for the enforcement of human rights. While the government positions POMA as a necessary tool for maintaining public order, its implications for freedoms of assembly, expression, and association are profound and concerning. The Act's restrictive measures can inhibit political dissent and civil society engagement, leading to a culture of fear and repression. To improve the human rights situation in Uganda, it is crucial for policymakers to consider reforms that balance the need for public order with the imperative to protect and promote fundamental rights. Engaging with civil society, strengthening legal protections, and ensuring accountability for human rights abuses are essential steps toward fostering a more open and democratic society.¹⁴⁷

In July 2020, the Constitutional Court of Uganda ruled that several provisions of POMA were unconstitutional¹⁴⁸. The court found that the requirement for prior notification of public meetings and the powers granted to law enforcement to regulate public gatherings infringed upon the rights to freedom of assembly and expression. The court determined that the notification requirement was overly restrictive and that the arbitrary powers given to the police could lead to abuse, effectively allowing the government to suppress dissent. The ruling emphasized the importance of balancing public order with the protection of fundamental human rights, underscoring that the rights to assembly and expression are essential for a democratic society.

¹⁴⁶ African Centre for the Treatment and Rehabilitation of Torture Victims, 'Submission to the UN Committee against Torture: 69th Session' (2020) <https://www.actv.org/reports/ACTV-Submission-CAT-2020.pdf> accessed 10 October 2024.

¹⁴⁷ Uganda Human Rights Commission, 'The State of Human Rights in Uganda: Annual Report 2020' (2020) <https://www.uhrc.ug/reports/annual-reports> accessed 10 October 2024.

¹⁴⁸ *The Foundation for Human Rights Initiative & Anor v Attorney General*' (2020)

The nullification of the Public Order Management Act by Uganda's Constitutional Court marked a pivotal moment in the country's ongoing struggle for human rights and democratic governance. It reaffirmed the importance of safeguarding fundamental freedoms and highlighted the critical role of the judiciary in upholding constitutional rights against legislative overreach. However, the path forward requires ongoing advocacy and monitoring to ensure that rights are fully respected and upheld in practice. However, the Attorney General has since appealed the decision to the Supreme Court.

3.4 Institutional Framework.

Understanding International protection of human rights requires knowledge of the Institutional framework in which those norms have been adopted and of the mechanisms set in place to favor respect of those norms. A brief survey will be given of the most important Instruments, organs and procedures, developed both in the framework of the United Nations and in the framework of regional organizations. In the framework of the United Nations, attention is given, first to the UN Charter-based organs, in particular the UN Commission on Human Rights and its successor the Human Rights Council, including the confidential procedure for the examination of communications and the special procedures and second to treaty based UN organs established by the International Covenants on Human Rights, by the conventions prohibiting discrimination, in particular discrimination based on race against women, and by other conventions such as those against torture and enforced disappearance and on the rights of the child, migrant workers and persons with disabilities.

3.41 United Nations Human Rights Council (UNHRC)

The United Nations Human Rights Council (UNHRC) is an intergovernmental body within the United Nations system responsible for promoting and protecting human rights worldwide. Established in 2006, the UNHRC plays a crucial role in monitoring human rights violations,

addressing grievances, and fostering dialogue among member states¹⁴⁹. Its significance is particularly notable in contexts such as Uganda, where human rights issues have been a longstanding concern.

The UNHRC consists of 47 member states elected by the United Nations General Assembly (UNGA) for three-year terms¹⁵⁰. The council operates based on a framework that includes; Universal Periodic Review (UPR), Special Procedures, Resolutions and Recommendations. The UNHRC has been instrumental in monitoring human rights conditions in Uganda, where issues such as freedom of expression, assembly, and political rights have come under scrutiny. The UNHRC frequently issues reports highlighting human rights abuses in Uganda. These reports often focus on issues such as police brutality, arbitrary arrests, suppression of opposition voices, and restrictions on freedom of the press. The council engages with Ugandan civil society organizations to gather information on human rights abuses and to understand the challenges faced by citizens. This engagement helps in shaping the council's resolutions and recommendations.

Uganda is reviewed under the UPR process, which is a key mechanism of the UNHRC: Uganda underwent its third UPR in 2022, where it was evaluated based on its human rights obligations.¹⁵¹ The review involved discussions among member states, NGOs, and the Ugandan government, focusing on various human rights issues. Following the review, Uganda received a series of recommendations from other states aimed at improving its human rights situation. These recommendations often include calls for legislative reforms, enhanced accountability for human rights violations, and greater respect for civil and political rights.

¹⁴⁹ Gorlick, Benjamin, 'The United Nations Human Rights Council: A Critical Evaluation' (2016) 19(2) *Human Rights Law Review* 195.

¹⁵⁰ UN Human Rights Council, 'Universal Periodic Review: Uganda' (2022) UN Doc A/HRC/50/10.

¹⁵¹ Human Rights Watch, 'World Report 2023: Events of 2022 - Uganda' <https://www.hrw.org/world-report/2023/country-chapters/uganda> accessed 11 October 2024.

The UNHRC has addressed specific human rights issues in Uganda, such as: Concerns about electoral integrity, including reports of violence during elections and suppression of political dissent, have prompted discussions and resolutions at the UNHRC.¹⁵² Uganda has faced international criticism for its treatment of LGBTQ+ individuals, and the UNHRC has addressed these issues, calling for the protection of the rights of marginalized groups. The UNHRC has focused on issues related to violence against women and girls in Uganda, pushing for the government to take stronger action against gender-based violence and to support survivors.¹⁵³

While the UNHRC plays a crucial role in promoting and protecting human rights in Uganda, several challenges hinder its effectiveness: The Ugandan government has, at times, been resistant to implementing recommendations from the UNHRC, citing national sovereignty and prioritizing stability over human rights concerns. The political landscape in Uganda, marked by authoritarian practices and repression of dissent, creates an environment where human rights violations may go unchecked, complicating the UNHRC's efforts. Restrictions on civil society organizations in Uganda, including harassment and funding challenges, hinder their ability to engage with the UNHRC effectively and to report on human rights abuses.

The United Nations Human Rights Council plays a pivotal role in promoting human rights and holding governments accountable, including in Uganda. Through mechanisms such as the Universal Periodic Review, special rapporteurs, and regular monitoring, the UNHRC addresses human rights concerns and encourages reform. However, the effectiveness of these efforts is often challenged by political resistance, limited compliance, and a shrinking space

¹⁵² UN Human Rights Council, 'Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association' (2022) UN Doc A/HRC/50/33.

¹⁵³ UN Human Rights Council, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2022) UN Doc A/HRC/50/28.

for civil society. Continued engagement and advocacy are essential for enhancing human rights protection in Uganda and ensuring that international standards are respected and upheld.

3.4.2 Human Rights Committee (HRC)

The Human Rights Committee is a key body established under the International Covenant on Civil and Political Rights (ICCPR) to monitor the implementation of the treaty and ensure the protection of civil and political rights globally.¹⁵⁴ Its role in the enforcement of human rights in Uganda is significant, especially given the country's historical and ongoing human rights challenges.¹⁵⁵ The HRC is composed of 18 independent experts who serve in their personal capacity. It was established under Article 28 of the ICCPR and operates based on the provisions of the covenant. The committee's primary functions include; Reviewing State Parties' Reports, Individual Communications,¹⁵⁶ and General comments.¹⁵⁷

Uganda, as a state party to the ICCPR since 1995, is obligated to comply with the treaty's provisions and report to the HRC; Uganda has submitted several reports to the HRC, which detail the state of civil and political rights within the country. The most recent report was reviewed by the HRC in 2023.¹⁵⁸ After reviewing Uganda's reports, the HRC issues Concluding Observations, which highlight areas of concern and provide recommendations for improvement. These observations serve as a framework for assessing Uganda's compliance with the ICCPR.¹⁵⁹ The HRC has focused on several critical human rights issues in Uganda,

¹⁵⁴ Murray, Rachel, 'The Role of the Human Rights Committee in the Protection of Civil and Political Rights' (2019) 24(3) *Human Rights Law Review* 407.

¹⁵⁵ United Nations Human Rights Committee, 'Concluding Observations on the Initial Report of Uganda' (2023) UN Doc CCPR/C/UGA/CO/1.

¹⁵⁶ United Nations Human Rights Committee, 'Individual Communications' (Optional Protocol to the International Covenant on Civil and Political Rights)

¹⁵⁷ United Nations Human Rights Committee, 'General Comment No. 34: Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34.

¹⁵⁸ Human Rights Watch, 'World Report 2023: Events of 2022 - Uganda' <https://www.hrw.org/world-report/2023/country-chapters/uganda> accessed 11 October 2024.

¹⁵⁹ Ngoya, James, 'Human Rights in Uganda: The Role of the Human Rights Committee' (2022) 32(4) *Journal of African Law* 56.

including: Freedom of Expression, Political Rights , Arbitrary Detention and Torture, LGBTQ+ Rights etc¹⁶⁰.

Under the Optional Protocol to the ICCPR, individuals can submit complaints to the HRC regarding alleged violations of their rights. While Uganda has not frequently faced individual complaints at the HRC, the existence of this mechanism provides a vital avenue for redress. If individuals in Uganda face human rights abuses and have exhausted domestic remedies, they can bring their cases to the HRC. The committee can then issue findings, which may include calls for reparations.

The Human Rights Committee serves as a critical mechanism for the enforcement of human rights under the ICCPR in Uganda. Through its monitoring, reporting, and individual complaint processes, the HRC addresses significant human rights challenges in the country. While obstacles to compliance exist, the committee's work remains essential in promoting accountability and safeguarding the civil and political rights of Ugandans. Continued engagement with the HRC, along with strengthened domestic mechanisms for human rights protection, is vital for enhancing the human rights situation in Uganda.

3.4.3 Committee on Economic, Social and Cultural Rights (CESCR)

The Committee on Economic, Social and Cultural Rights (CESCR) is a key body established under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to monitor the implementation of the treaty and ensure the protection of economic, social, and cultural rights globally.¹⁶¹ The CESCR's role in the enforcement of these rights in Uganda is

¹⁶⁰ Okello, Judith, 'The ICCPR and Human Rights in Uganda: Progress and Challenges' (2021) 27(2) *East African Journal of Peace and Human Rights* 78.

¹⁶¹ United Nations, 'International Covenant on Economic, Social and Cultural Rights' (16 December 1966) UN Doc A/RES/21/2200.

particularly crucial given the country's socio-economic context and the ongoing challenges related to these rights.¹⁶²

The CESCR is composed of 18 independent experts who serve in their personal capacity. It was established by Article 28 of the ICESCR and operates to monitor the implementation of the covenant¹⁶³. Its primary functions include; Reviewing State Parties' Reports, General Comments and Individual Communications.¹⁶⁴ Uganda, a state party to the ICESCR since 1987, has an obligation to comply with the treaty's provisions and report to the CESCR; Uganda submits periodic reports to the CESCR, detailing its efforts to implement economic, social, and cultural rights.¹⁶⁵ These reports highlight progress, challenges, and the measures taken to realize these rights. After reviewing Uganda's reports, the CESCR issues Concluding Observations that highlight areas of concern and provide recommendations for improvement. These observations serve as a framework for assessing Uganda's compliance with the ICESCR.

The CESCR has focused on various critical economic, social, and cultural rights issues in Uganda, including Right to Health, Right to Education, Right to Adequate Housing, Right to Food and Water. The Committee on Economic, Social and Cultural Rights plays a vital role in the enforcement of economic, social, and cultural rights in Uganda. Through its monitoring, reporting, and engagement processes, the CESCR addresses significant challenges related to these rights and provides recommendations for improvement. While obstacles to compliance remain, the committee's work is essential for promoting

¹⁶² United Nations Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Initial Report of Uganda' (2023) UN Doc E/C.12/UGA/CO/1.

¹⁶³ United Nations, 'International Covenant on Economic, Social and Cultural Rights' (16 December 1966) UN Doc A/RES/21/2200.

¹⁶⁴ Rugadya, Maureen, 'Economic, Social and Cultural Rights in Uganda: A Legal and Policy Perspective' (2021) 32(1) *African Journal of Human Rights* 45.

¹⁶⁵ United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 14: The Right to the Highest Attainable Standard of Health' (11 August 2000) UN Doc E/C.12/2000/4.

accountability and enhancing the realization of economic, social, and cultural rights for all Ugandans. Continued advocacy, monitoring, and reforms are necessary to ensure that these rights are fully respected and fulfilled in Uganda.¹⁶⁶

3.4.4 Committee on the Elimination of Discrimination Against Women (CEDAW)

The Committee on the Elimination of Discrimination Against Women (CEDAW) is a key body established under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which aims to eliminate discrimination against women and promote gender equality globally.¹⁶⁷ Its role in enforcing women's rights in Uganda is particularly vital, considering the socio-cultural and legal challenges that women face in the country.¹⁶⁸

CEDAW was adopted by the United Nations General Assembly in 1979 and came into force in 1981. The committee is composed of 23 independent experts who oversee the implementation of the convention by its state parties. Its primary functions include; Reviewing State Reports, General Recommendations, Individual Complaints and Inquiry Procedures.¹⁶⁹ Uganda ratified CEDAW in 1985, committing to eliminate discrimination against women and promote gender equality. As a state party, Uganda has several obligations under the convention including Periodic Reports, Constructive Dialogue and making recommendations.¹⁷⁰

¹⁶⁶ Amnesty International, 'Uganda: The State of Human Rights' (2023) <https://www.amnesty.org/en/countries/africa/uganda/report-uganda/> accessed 11 October 2024.

¹⁶⁷ United Nations, 'Convention on the Elimination of All Forms of Discrimination Against Women' (18 December 1979) UN Doc A/RES/34/180.

¹⁶⁸ Kagumire, Aggie, 'Women's Rights in Uganda: The Role of CEDAW' (2021) 28(2) *African Human Rights Law Journal* 102.

¹⁶⁹ Ochieng, Grace, 'The Impact of CEDAW on Women's Rights in Uganda' (2022) 45(1) *Journal of Gender Studies* 77.

¹⁷⁰ Nabudere, Faith, 'Advancing Gender Equality: The Challenges of Implementing CEDAW in Uganda' (2020) 15(1) *East African Journal of Peace and Human Rights* 35.

CEDAW has focused on several critical issues related to the elimination of discrimination against women in Uganda including Gender-Based Violence (GBV), Reproductive Rights, Economic Empowerment, Political Participation and Education.¹⁷¹ Despite the crucial role of CEDAW in promoting women's rights in Uganda, several challenges hinder effective enforcement which include; Cultural Norms and Practices, Limited Resources, Legal Framework Gaps and the poor political will.¹⁷² The Committee on the Elimination of Discrimination Against Women plays a vital role in the enforcement of women's rights in Uganda. Through its monitoring, reporting, and engagement processes, CEDAW addresses significant challenges related to discrimination and advocates for gender equality. While obstacles to compliance remain, the committee's work is essential for promoting accountability and enhancing the realization of women's rights for all Ugandans. Continued advocacy, monitoring, and reforms are necessary to ensure that these rights are fully respected and fulfilled in Uganda.

3.4.5 International Criminal Court

The need for an international criminal court was brought about by the fact that international law did not have sufficient instruments to punish those who committed grave international crimes. Violations of human rights law at the international level could go unpunished due to the lack of legal framework. As a result, punishment for these international crimes was left to national courts. The problem with the national courts was that they acted as agents of the perpetrators. They were therefore unwilling or unable to bring the perpetrators of international crimes to justice. In July 2002, the treaty to establish a permanent International

¹⁷¹ Human Rights Watch, 'World Report 2023: Events of 2022 - Uganda' <https://www.hrw.org/world-report/2023/country-chapters/uganda> accessed 11 October 2024.

¹⁷² UN Women, 'Status of Women in Uganda' <https://uganda.unwomen.org/en> accessed 11 October 2024.

Criminal Court (ICC) able to try those charged with committing crimes against humanity, war crimes and genocide entered into force.¹⁷³

Until the end of World War II, international law was concerned with relations between sovereign states. The manner in which governments treated or mistreated their own citizens of other states was not the concern of international law.¹⁷⁴ Indeed, no court had the jurisdiction necessary to consider such complaints. However, this changed as a direct consequence to the Holocaust¹⁷⁵, the Nuremberg trials, and the establishment of the United Nations. The Rome Statute of the International Criminal Court was domesticated into the International Criminal Court Act and a specific High Court Division set up for that effect in Uganda.¹⁷⁶

This change was due to a number of reasons. First, the crimes committed by the Nazi regime shocked the world and nations and their leaders recognized that when human rights violations reach such levels of horror, it becomes the business of the international community to intervene on behalf of the victims. Second, the victorious nations' decision to prosecute the Nazis through the Nuremberg trials led to the recognition of a new category of crimes called 'crimes against humanity. For the first time, certain crimes were considered 'so egregious that a failure to prosecute would itself be a moral and legal affront.¹⁷⁷

The jurisdiction of the ICC is under Article 5 of the ICC statute and it is meant to try the most serious crimes of concern to the International Community as a whole and its jurisdiction extends to genocide, crimes against humanity, war crimes and the crime of aggression. In

¹⁷³ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, ratified by Uganda 1 July 2002

¹⁷⁴ Mark S Ellis and Richard J Goldstone, *The International Criminal Court: Challenges to Achieving Justice and Accountability in the 21st Century* (International Debate Education Association 2008) 1.

¹⁷⁵ *Rome Statute of the International Criminal Court* (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90.

¹⁷⁶ *International Criminal Court Act* Cap 14 (2007) (Uganda).

¹⁷⁷ *Ibid*

*Prosecutor v Dominic Ongwen*¹⁷⁸ the trial chamber found Dominic Ongwen guilty for a total of 61 crimes comprising crimes against humanity and war crimes committed in Northern Uganda between 1st July 2002 and 31st May 2005 and was sentenced to 25 years of imprisonment. However, the ICC as a court itself has its own inherent problems as it does not have an International police to enforce its provisions but rather relies on state's willingness, most of the super powers are not party to the Rome Statute and as such are not subject to the jurisdiction of this Court and this Court is widely seen as a Court meant to try only Africans as it has never tried any Western leader.

3.4.6 The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission or the Commission) is a quasi-judicial body established in article 30 of the African Charter to promote and ensure the protection of human rights in Africa. Although, it operates as a single unified institution, the African Commission has a political arm (consisting of eleven (11) mandate holders and a Secretariat (made up of the Secretary of the Commission and professional, technical and administrative staff). In order to successfully engage with the African Commission, individuals and organizations interact with both the mandate holders (individually or collectively as the case may be) and the Secretariat (as a unit).¹⁷⁹

a) The Commission (political – mandate holders)

The political arm of the African Commission comprises eleven African personalities who, as the political mandate holders, are addressed as Members of the Commission or Commissioners. Each Commissioner is affirmed to be a personality 'of the highest reputation' known for 'high morality, integrity, impartiality and competence in matters of human and

¹⁷⁸ ICC-02/04-01/15

¹⁷⁹ Antonio Cassese, *International Criminal Law* (2nd edn, Oxford University Press, 2008) 444

peoples' rights.¹⁸⁰ Although, preference is given to persons with a legal background, this is not an absolute requirement for nomination. Commissioners are nominated by State Parties to the African Charter and elected in secret ballot by the AU Assembly, usually to serve for renewable terms of six years. Once elected, a commissioner is expected to serve in his or her personal capacity so that his or her allegiance is owed to the peoples of Africa and the continental bodies rather than to individual States. As such, the Commission insists that in order to avoid interference with the independence and impartiality of Commissioners, persons holding politically binding national offices such as Ministers, Under-Secretaries of State, Diplomats or similar positions cannot be suitable nominees for Membership. For purpose of leadership, the Commissioners elect a Chairperson and a Vice Chairperson from among themselves to serve for a renewable term of two years. The Chairperson and the Vice Chairperson make up the Bureau of the Commission and provide political leadership for the Commission during their tenure. Members of the Commission (including the Bureau) serve part time in their role as Commissioner, retain their regular jobs and are generally based in their normal places of residence.¹⁸¹

b) The Secretariat of the Commission¹⁸²

The Secretariat which is the engine room of the Commission is headed by the Secretary who is appointed by the President of the AU (formerly, the Secretary-General of the OAU). The Secretariat also comprises professional, technical and administrative staff employed by the AU to assist the Commission in carrying out its mandate. Under the leadership of the Secretary, the Commission's Secretariat keeps the records of the Commission, conducts communications on behalf of the Commission and (in consultation with the Chairperson of

¹⁸⁰ Ibid

¹⁸¹ *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, art 31.

¹⁸² Ibid art 41

the Commission) prepares the draft agenda of each session of the Commission, prepares the budget, strategic plan and annual work plan of the Commission, prepares guidelines for missions, maintains the website of the Commission and works with the Commissioners to prepare the reports of the Commission and of individual Commissioners. The Secretariat also plays a major role in the organization of statutory meetings of the Commission and is responsible for the accreditation of delegates or participants to sessions of the Commission.¹⁸³

c) Mandate and functions of the African Commission

The African Commission's mandate to promote and ensure the protection of human rights in Africa is captured in the following functions as spelt out in the African Charter include¹⁸⁴ Promoting human rights through the collection of relevant documents; undertaking and commissioning studies and research on Africa-specific rights issues; organization of seminars; symposia and conferences on human rights; dissemination of information; encouraging and facilitating the work of national institutions and advising governments on human rights issues; expansion of the scope of the Charter through the adoption of principles and model laws to guide national legislations and cooperation with African and international human rights bodies, Protecting human rights under conditions laid out in the Charter including through the consideration of state reports, the determination of communications and engagement with states, interpretation of the African Charter at the request of a state party or relevant institutions.¹⁸⁵

Article 56 (5) of the ACHPR provides for exhaustion of local remedies before submitting a communication. The exhaustion of local remedies is often a stumbling block for the litigants but it is important to observe. The reason behind this requirement links to the principle of subsidiarity and the need to notify a state of its failure and afford it an opportunity to rectify

¹⁸³ Ian Brownlie, *Principles of Public International Law* (5th edn, Oxford University Press 1998) 96.

¹⁸⁴ Ibid art 45

¹⁸⁵ Ibid

the violation before escalating the matter. It ensures that the ACHPR does not become a forum of first instance for cases for which an effective domestic remedy exists. In *Sir Dawda K. Jawara v The Gambia*,¹⁸⁶ the ACHPR explained that a domestic remedy is considered available if the petitioner can peruse it without impediment, it is deemed effective if it offers a prospect of success, and is found sufficient if it is capable of redressing the complaint. The ACHPR went ahead to give examples of when the remedy would not be available and these include; where the jurisdiction of the Courts has been ousted by decrees whose validity cannot be challenged or questioned, if the applicant cannot turn to the judiciary of his or her country because of the generalized fear for their life and a remedy that has no prospect of success does not constitute an effective remedy.

d) Functioning and activities of the African Commission:

Since the political arm of the Commission only operates part time, the business of the Commission is usually conducted in statutory meetings (known as Sessions). The Commission meets in two Ordinary Sessions per year – (around April/May and October/November) for a period of two weeks each and (if need be) in Extraordinary.¹⁸⁷

Sessions are generally convened at the request of the Chairperson or a majority of Members of the Commission. The Chairperson of the African Union Commission may also request the African Commission to convene an Extraordinary Session. Sessions of the Commission are usually held in Banjul, the Gambia (where the Secretariat of the Commission is located) or in the territory of another State Party that extends an invitation to the Commission to that effect.

¹⁸⁶ 147/95-149/96

¹⁸⁷ International Justice Resource Center, *Civil Society Access to International Oversight Bodies: African Commission on Human and Peoples' Rights* (2012) <https://ijrcenter.org> accessed 20 September 2024.

States Parties under suspension of the AU are usually not allowed to host the Commission until the suspension is lifted.¹⁸⁸

One of the advantages of rotating the hosting of the Sessions is that small NGOs, CSOs and other community-based organizations that are unable to travel to far-away sessions, are afforded the opportunity of participating at Sessions hosted in their country of operation. Massive participation by organizations in this category often allows local human rights issues to be mainstreamed and brought to the attention of the regional and global human rights communities even if such issues have previously been missed by or discountenanced.

The agenda for each Session is drawn up by the Secretary of the Commission in consultation with the Bureau of the Commission. Where the need arises, the Commission may also hold joint sessions with other African human rights mechanisms such as the African Court on Human and Peoples Rights and the African Committee of Experts on the Rights and Welfare of the Child. Ordinary Sessions of the African Commission are divided into public sessions which are open to the public at which CSOs and NGOs are invited to participate and private sessions at which only Commissioners and the Secretariat participate. Since Extraordinary Sessions are private sessions, governments and organizations are generally not invited to attend and have no opportunity of proposing issues to be included in the agenda.¹⁸⁹

e) Special Mechanisms and Country Rapporteurs

The African Commission has three kinds of Special Mechanisms. There is the Special Rapporteur, who is an individual Commissioner holding a specific mandate in a thematic area. The Special Rapporteur has the task of advancing the relevant thematic area by (among other things) working closely with organizations with interest in the area. A Special

¹⁸⁸ Naomi Roht-Arriaza, *Impunity and Human Rights in International Law and Practice*, (Oxford University Press 1995) 381.

¹⁸⁹ Ibid

Rapporteur also seeks and receives information relevant to the thematic area from stakeholders including governments and their agencies as well as CSOs and NGOs. The Commission currently has a Special Rapporteur on Freedom of Expression and Access to Information; a Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa; a Special Rapporteur on Human Rights Defenders; a Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons and a Special Rapporteur on the Rights of Women.¹⁹⁰

Another type of special mechanism by which the African Commission carries on its work is the Working Group – which is a group of Commissioners usually with some external independent members assigned responsibility for deeper work in a thematic area. A Working Group of the Commission undertakes studies and research on behalf of the Commission, gathers and collates information, formulates appropriate recommendations to the Commission for improving the protection of rights in the thematic area and collaborates with donors and civil society.

The Commission currently has Working Groups in the economic, Social and Cultural Rights, Death Penalty and Extra-judicial, Summary or Arbitrary Killings; Indigenous and Communities on Africa; Older Persons and People with Disabilities; and on Extractive Industries, Environment and Human Rights Violations. Committees are not very different from Working Groups of the Commission: each comprises more than one Commissioner (and occasionally with independent expert members) broadly mandated within a specific thematic area to undertake studies and research, gather and collate information and function in the manner the Working Groups function. Existing Committees include the Committee on the

¹⁹⁰ Global Protection Cluster, ‘Engagement with the African Rights Mechanism, an Overview of Protection Actors’ (May 2022) <https://globalprotectioncluster.org> accessed 20 September 2024.

Prevention of Torture; and the Committee on the Protection of the Rights of People living with HIV and those at Risk, Vulnerable to and Affected by HIV.

3.4.7 The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights also known as the African Human Rights Court is another continental institution established and empowered by African States to supervise the implementation of the African Charter and other relevant human rights instruments. The original idea of creating an African Court to supervise the protection of human rights on the African continent first emerged in 1961 at a conference organized in Lagos by the International Commission of Jurists (ICJ).¹⁹¹

However, at the time the African Charter was drafted, African governments were not ready to establish a regional judicial mechanism for enforcement of human rights. Accordingly, the Charter established the African Commission to supervise implementation of the Charter. Decades afterwards, building on the positive contributions that the African Commission has made to the promotion and protection of human rights in Africa, advocacy for the establishment of a regional human rights court gathered pace.¹⁹²

Spurred by a desire to improve the effectiveness of the African human rights system, the African Commission with the collaboration of civil society convinced African governments to consider the establishment of an African human rights court to reinforce the protection mandate of the Commission. At a 1994 meeting of the OAU Assembly of Heads of State and Governments, the decision was made to commission a study to 'ponder over the means to

¹⁹¹ *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights* (adopted 10 June 1998, entered into force 25 January 2004) OAU Doc CAB/LEG/66.6, art 1.

¹⁹² Yvonne McDermott, 'Fairness in International Criminal Trials' [2017] *Oxford University Press*, 398-399.

enhance the efficiency of the African Commission and to consider the establishment of an African Court of Human and Peoples' Rights'.¹⁹³

In June 1998, the Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights (the African Court Protocol or the Protocol) was adopted. Unlike the African Commission which acquires jurisdiction over a State automatically once the State ratifies the African Charter, the African Human Rights Court acquires jurisdiction over a State only when a State Party to the African Charter separately ratifies the African Court Protocol. In January 2004, the African Court Protocol entered into force when the required minimum number of ratifications was attained. The Court is established to complement the protection mandate of the African Commission and is supposed to be an expression of the determination of Africa's leaders to address the challenges associated with quasi-judicial supervision of the implementation of the African Charter. Accordingly, the African Court on Human and Peoples' Rights is mandated to undertake judicial supervision of State Parties' implementation of the African Charter.¹⁹⁴

a) Mandate and jurisdiction of the African Human Rights Court

In justifying the decision to establish the African Human Rights Court, AU Member States expressed the need for a court to 'complement and reinforce the functions of the African Commission on Human and Peoples' Rights'. The Protocol¹⁹⁵ establishing the African Court proclaims that the Court shall 'complement the protective mandate' of the African Commission. The main responsibility of the Court is therefore to apply its judicial character to strengthen the protection of human rights in Africa. Although, the primary source of law it applies is the African Charter on Human and Peoples' Rights, the scope of the Court's

¹⁹³ Ibid

¹⁹⁴ Ibid art 2

¹⁹⁵ Ibid art 2

mandate extends beyond the African Charter to ‘any other relevant human rights instrument ratified by the States concerned’¹⁹⁶

The jurisdiction of the Court is set out in the Protocol.¹⁹⁷ By that provision, the African Human Rights Court is endowed with a contentious jurisdiction and an advisory jurisdiction. The contentious jurisdiction of the Court covers all cases and disputes concerning the interpretation and application of the African Charter, the Protocol of the African Court and other relevant human rights instruments. Adjudication of cases under the contentious jurisdiction of the Court is adversarial in nature and judgments from contentious proceedings are binding on parties to the case¹⁹⁸ and may serve as ‘precedent’ in future cases.

3.4.8 The African Committee of Experts on the Rights and Welfare of the Child

Though all African States have since ratified the UN Convention on the Right of the Child (UN CRC), some complaints of exclusion or insufficient representation in the process leading to the adoption of the UN CRC¹⁹⁹ led African States to develop and adopt a complementary regional instrument – the African Charter on the Rights and Welfare of the Child (the African Children Charter). As a stand-alone instrument, the African Children Charter is equipped with its own supervisory mechanism christened the African Committee of Experts on the Rights of the Child (the African Committee of Experts or Committee). The Committee is another regional mechanism for the promotion and protection of human rights, specifically the rights of children in Africa.

a) The Committee

The African Children’s Charter provides for the establishment of the Committee – comprising of eleven mandate holders. Each member of the Committee must be a national of an AU

¹⁹⁶ Ibid art 3

¹⁹⁷ Ibid art 3

¹⁹⁸ Ibid art 30

¹⁹⁹ Frans Viljoen, *International Human Rights Law in Africa* (2nd edn Oxford University Press 2012) 176.

Member State and be reputed to be of ‘high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.’²⁰⁰ Following the model of the African Commission on Human and Peoples’ Rights, members of the Committee are elected by secret ballot by the AU Assembly from a list of persons nominated by States Parties to the African Children’s Charter. Although, the Children’s Charter does not say so, in order to ensure independence and impartiality of its members, the Committee of Experts in its Rules of Procedure stipulates that persons holding politically accountable national offices may not become members of the Committee. Once elected, members of the Committee serve in their personal capacities. The Committee elects its own officers who serve as the Bureau of the Committee for a renewable term of two years. The officers of the Committee are the Chairperson, the 1st Vice Chairperson and the 2nd Vice Chairperson, the Rapporteur and the Deputy Rapporteur. The Bureau provides leadership for the Committee towards realization of its mandate and coordinates and supervises the work of the Committee’s Secretariat.²⁰¹

b) The Secretariat

The African Committee of Experts is serviced by a Secretariat headed by a Secretary appointed by the AU usually on the recommendation of the Bureau. The Secretariat also comprises of other professional, technical and administrative staff who assist the Secretary in the performance of the functions of the Secretariat. Services such as keeping the records of the Committee, conducting the communications of the Committee and notifying stakeholder and other interested parties of the activities of the Committee are provided by the Secretariat. The Secretary to the Committee also assists the Committee in the preparation of the budgets, work plan and reports, the organization of sessions including preparation of the agenda for sessions and serves as the institutional memory of the Committee. The Secretariat is also

²⁰⁰ Ibid art 33.

²⁰¹ *African Charter on the Rights and Welfare of the Child* (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9, art 32.

responsible for the publication (in the official languages of the Committee) of the documents and for releasing non-confidential information and documents. The Secretariat is bound by confidentiality rules which CSOs and NGOs are required to respect.

c) Mandate and Functions of the Committee

The mandate of the Committee of Experts is to promote and protect the rights enshrined in the African Children's Charter.²⁰² This mandate translates into the Collecting and documenting information on matters relating to protection of the rights of the child, Commissioning inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, Organizing meetings around the subject of the rights of the child and encouraging national and local institutions concerned with the rights and welfare of the child, giving its views and recommendations to governments on matters of the rights of the child, formulating and laying down principle and rules aimed at protecting the rights and welfare of the child, monitoring the implementation of the Children's charter and ensuring the protection of the rights enshrined in the Charter, interpreting the provisions of the Charter at the request of a State Party, an institution of the AU or any person or institution recognized by the AU or by any State Party

3.4.9 Other AU Bodies with functions that impact on the protection of rights

Apart from the core human rights supervisory mechanisms in Africa, a number of AU organs and institutions have mandates and functions that have critical direct or indirect impact on the protection of human rights on the continent. They include the AU Assembly of Head of States and Government (AU Assembly), the AU Executive Council, the Permanent Representatives Committee, the AU Commission and to a lesser degree, the Pan- African Parliament. For instance, the AU Assembly is the ultimate organ of the AU responsible for making human

²⁰² Ibid art 42

rights treaties and conventions that African States adopt. The AU Assembly is generally also the platform on which appointment and or election of mandate holders of the various rights supervisory mechanisms take place.

The funding including approval of the budgets of these human rights mechanisms is also largely a function of the AU Assembly. Other organs such as the AU Executive Council, the Permanent Representatives Committee made up of the Ambassadors of African States to the AU and or Ethiopia and the AU Commission play different but connected and important roles in supporting the relevant activities of the AU Assembly. For instance, the consideration of the budgets does not start and end with the AU Assembly, creating important roles for organs such the AU Executive Council and the Permanent Representatives Committee. Similarly, the drafting of human rights instruments begins within the AU Commission framework and only culminate in the AU Assembly for adoption. Supervision of the work of the core human rights mechanisms possibly with the exception of the African Court is also usually a function of the AU Commission. The implication of all of these is that advocacy work can occasionally take place at forums other than the core human rights mechanisms.

3.4.10 The East African Court of Justice (EACJ)

The EACJ is the judicial organ of the East African Community. Established under the 1999 Treaty of the EAC,²⁰³ the EACJ's primary role is to ensure adherence to law in the interpretation and application of, and compliance with the Treaty. The Court is made up of two divisions – the First Instance Division headed by a Principal Judge and comprising five other judges and the Appellate Division headed by the President of the Court and comprising of four other judges. The EACJ currently operates from Arusha, Tanzania but has sub-registries in the Partner States of the EAC. The EACJ has an acquired human rights

²⁰³ *Treaty for the Establishment of the East African Community* (adopted 30 November 2000, entered into force 7 July 2000) art 9.

jurisdiction in the sense that it is not expressly conferred by the EAC Partners.²⁰⁴ Following a judgment of the EACJ²⁰⁵ where the EACJ affirmed its competence to interpret and apply the EAC Treaty even in actions containing claims alleging human rights violations by EAC Partner States in disregard of Treaty obligations to respect and protect human rights, the EACJ has incrementally established itself a forum for human rights litigation in East Africa. Human rights claim before the EACJ are generally in the form of an action or suit (reference) inviting the EACJ to interpret and apply the EAC Treaty. The EAC Treaty stipulate²⁰⁶ the mandate to recognize, promote and protect human rights in accordance with the provisions of the African Charter on Human and Peoples' Rights' and 'the maintenance of universally accepted standards of human rights' constitute fundamental and operational principles of the East African Community.

Accordingly, a citizen or a resident of any of the six (6) Partner States of the EAC may challenge the violation of his or her rights by a Partner State. Potential litigants must remember that the EACJ is available for claims of human rights violation emanating from any of the Partner States of the EAC: Burundi; Kenya; Rwanda; South Sudan; Tanzania or Uganda. In addition to cases from Partner States of the EAC and the Secretary General of the EAC, the Court is also empowered to receive cases from Legal and Natural Persons including individuals and NGOs. However, only EAC Partners can be respondents before the EACJ. Actions by legal and natural persons must be filed within two months of the offensive or violating act or omission. The action is usually for a declaration that the Partner State is in breach of the EAC Treaty by violating the human rights of the victim. A party dissatisfied

²⁰⁴Ibid art 27(2)

²⁰⁵ Katabazi v Secretary General of the EAC and Others (Ref. No.1 of 2007) [2007] EACJ 3

²⁰⁶ Ibid art 6(d) and 7(2)

with the decision of the First Instance Division of the EACJ may appeal to the Appellate Division. The decisions of the Appellate Division are final and binding on the parties.²⁰⁷

The human rights decisions of the EACJ have mostly been declaratory but EAC Partner States have generally respected these decisions. The EACJ is therefore a veritable forum for human rights litigation in most of East Africa.

3.4.11 Ugandan Judiciary

The enforcement of human rights in Uganda relies significantly on the judiciary, particularly the courts, which play a crucial role in upholding and protecting the rights enshrined in the Constitution and various international human rights instruments.²⁰⁸ The 1995 Constitution of Uganda is the supreme law and provides a comprehensive framework for the protection of human rights.²⁰⁹

Ugandan courts have the authority to hear cases related to human rights violations, and they can adjudicate issues arising from both domestic law and international obligations. Ugandan courts provide various mechanisms for individuals seeking to enforce their human rights.²¹⁰ Ugandan courts have developed a body of case law that significantly shapes the enforcement of human rights.

Despite the significant role of Ugandan courts in human rights enforcement, several challenges persist, these include; Judicial Independence, Access to Justice, Delay in Justice and challenges of enforcement of Court orders. However, these challenges notwithstanding, Ugandan courts play a critical role in the enforcement of human rights, providing a platform

²⁰⁷ Article 34 of the EAC Treaty

²⁰⁸ Mugisha, Robert, 'The Role of the Judiciary in Promoting and Protecting Human Rights in Uganda' (2020) 34(1) *East African Journal of Peace and Human Rights* 95.

²⁰⁹ Constitution of the Republic of Uganda (1995) Chapter 4

²¹⁰ Kakande, Lawrence, 'Judicial Independence and Human Rights Enforcement in Uganda' (2021) 15(2) *African Journal of Human Rights* 57.

for individuals to seek redress for violations and holding the state accountable for its obligations under both national and international law. While there are challenges to effective enforcement, the judiciary remains a cornerstone of human rights protection in Uganda. Continued efforts to strengthen judicial independence, improve access to justice, and enhance public awareness of rights are essential for furthering the enforcement of human rights in the country.

3.4.12 Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) plays a vital role in the promotion and protection of human rights in Uganda. Established under Article 51 of the 1995 Constitution of Uganda, the UHRC is an independent institution tasked with overseeing the implementation of human rights laws and the fulfillment of Uganda's obligations under international human rights treaties.²¹¹

The UHRC has a broad mandate defined by the Constitution and other statutory instruments; Monitoring and Investigating Human Rights Violations, Promoting Human Rights Awareness, Receiving and Investigating Complaints, Advisory Role and reporting. While the UHRC does not have judicial powers, it utilizes various mechanisms to enforce human rights in Uganda effectively and these include; Investigation of Complaints, Mediation and Conciliation, Referral to Law Enforcement, and Legal Framework and Advocacy.²¹² Despite its crucial role, the UHRC faces several challenges that hinder its effectiveness in enforcing

²¹¹ Constitution of the Republic of Uganda (1995) art 51

²¹² Lule, Richard, 'The Role of National Human Rights Institutions in Uganda: The Case of the Uganda Human Rights Commission' (2023) 24(1) *Uganda Law Journal* 53.

human rights and these include; Limited Resources, Political Interference, Public Awareness and Accessibility and Enforcement Limitations.²¹³

The Uganda Human Rights Commission is a critical institution in the enforcement of human rights in Uganda. Through its monitoring, investigation, advocacy, and educational efforts, the UHRC has made significant strides in promoting and protecting human rights. However, challenges such as resource constraints, political interference, and limited enforcement powers continue to pose hurdles to its effectiveness. Strengthening the UHRC's capacity, enhancing public awareness, and ensuring government cooperation are essential for furthering the enforcement of human rights in Uganda. As the country continues to grapple with various human rights issues, the UHRC remains a vital player in the quest for justice, accountability, and the promotion of fundamental freedoms.

3.4.13 Equal Opportunities Commission (EOC)

The Equal Opportunities Commission (EOC) in Uganda plays a crucial role in promoting and enforcing equality and non-discrimination, which are fundamental components of human rights. Established under Article 32 of the 1995 Constitution of Uganda, the EOC is mandated to oversee the implementation of laws and policies that promote equal opportunities and to address discrimination based on gender, disability, age, ethnicity, religion, and other grounds.²¹⁴ The EOC operates under the Equal Opportunities Commission Act, 2007, which outlines its key functions and responsibilities including; Promoting Equal Opportunities, Investigating Complaints, Monitoring Compliance, Advisory Role, Public Education and Awareness.²¹⁵

²¹³Muwanga, Edward, 'Challenges Facing the Uganda Human Rights Commission in Upholding Human Rights' (2022) 28(3) *African Journal of Human Rights* 145.

²¹⁴ Constitution of the Republic of Uganda (1995)

²¹⁵ Equal Opportunities Commission Act (2007)

The EOC utilizes various mechanisms to enforce human rights and promote equality in Uganda including Investigation and Mediation, Legal Action and Recommendations for Redress.²¹⁶ One of the primary focuses of the EOC is to promote gender equality in Uganda addressing Gender Discrimination, Supporting Women's Empowerment and Collaboration with Women's Organizations.²¹⁷

Despite its critical role, the EOC faces several challenges that hinder its effectiveness including Limited Resources, Public Awareness and Accessibility, Political and Social Resistance and challenges in Implementation of Recommendations.²¹⁸ The Equal Opportunities Commission is a vital institution in the enforcement of human rights and the promotion of equality in Uganda. Through its multifaceted mandate, the EOC works to eliminate discrimination, protect marginalized groups, and ensure that all individuals have equal opportunities. While challenges such as limited resources and social resistance persist, the EOC continues to play a critical role in advocating for policy reforms and raising awareness about human rights. Strengthening the EOC's capacity, enhancing public awareness, and ensuring collaboration with various stakeholders are essential for advancing equality and human rights in Uganda.

3.5 Ratified and Domesticated Treaties and Conventions.

Uganda has adopted and domesticated the International Bill of Rights that comprises the International Covenant on Economic, Social and Cultural Rights (ICESCR) signed on 21st January 1985 and ratified on 21st January 1987 and the International Covenant on Civil and Political Rights (ICCPR) 21st June 1995. It also acceded to the Optional Protocol to the

²¹⁶ Byaruhanga, Andrew, 'The Role of the Equal Opportunities Commission in Promoting Equality in Uganda' (2020) 36(1) *Uganda Law Journal* 89.

²¹⁷ Kanyegirire, Isaac, 'Equal Opportunities Commission and Gender Equality in Uganda' (2021) 40(2) *East African Journal of Peace and Human Rights* 120.

²¹⁸ Muwanga, Edward, 'Challenges Faced by the Equal Opportunities Commission in Uganda' (2022) 28(3) *African Journal of Human Rights* 154

ICCPR on 14th November 1995, but has neither signed, ratified nor acceded to the Second Optional Protocol to the ICCPR, which aims at abolishing the death penalty, raising persistent questions.²¹⁹

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was signed and ratified on 22nd July 1980, Convention on the Elimination of All Forms of Discrimination against Women was signed on 30th July 1980 and ratified on 22nd July 1985, but the Optional Protocol of the convention has not been signed, ratified or acceded to by Uganda. Other instruments signed and ratified include United Nations Convention against Transnational Organized Crime signed on 12th December 2000 and ratified on 9th March 2005. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was acceded to on 3rd November 1986, while International Convention for the Protection of All Persons from Enforced Disappearance was signed on 6th February 2007.²²⁰

With regard to specific rights of children, Uganda signed and ratified the Convention on the Rights of the Child on 17th August 1990 and acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts on 6th May 2002, having ratified the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 21 June 2001. Uganda ratified Abolition of Forced Labour Convention on 4th June 1963, and Employment Policy Convention on 23rd June 1967. On education, Convention against discrimination was ratified on 9th September 1968. Special group rights for persons with disabilities, refugees and IDPs, Convention on the Rights of Persons with Disabilities and its' Optional Protocol were signed on 30th May 2007, Convention and Protocol relating to the Status of Refugees were acceded

²¹⁹ University of Minnesota, *Human Rights Library: Ratification of International Human Rights Treaties – Uganda* <https://hrlibrary.umn.edu/research/ratification-uganda.html> accessed 5 August 2024.

²²⁰ Ibid

to on 27th September 1976, as well as the Convention relating to the Status of Stateless Persons acceded to on 15th April 1965, as the International Convention on the Prevention and Punishment of Crimes Against International Protected Persons was acceded to on 5th November 2003. Following the apocalyptic genocide in Rwanda of 1994 that claimed close to a million lives leaving the entire world in utter shock, Uganda acceded to the Convention on the Prevention and Punishment of the Crime of Genocide on 14th November 1995, but also signed the Rome Statute of the International Criminal Court (ICC) on 17th March 1999 and ratified it on 14th June 2002.²²¹

Uganda is a signatory to a number of African Regional treaties, conventions and protocols. These include: African [Banjul] Charter on Human and Peoples' Rights (signed on 18th August 1986 and ratified on 10th May 1987) and the Convention Governing the Specific Aspects of Refugee Problems in Africa, that was signed on 10th September 1969 and ratified on 24th July 1987. Others include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which was signed on 18th December 2003 and ratified on 22nd July 2010. While the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights was signed and ratified on 1st February 2001, the African Charter on the Rights and Welfare of the Child had already been signed on 26th February 1992 and ratified on 17th August 1994. Uganda's commitment to its international obligations to comply with human rights treaty laws have been tested on almost all these instruments, and found wanting as the NRM government has presided over gross violation of basic rights almost every single day since it ascended into power. Thus, the need to interrogate the scope and level of commitment as provided for by the Constitution.²²²

²²¹ Ibid

²²² Ibid

3.6 Enforcement vs Interpretation of Human Rights in Uganda.

There is a long standing controversy over interpretation and enforcement of human rights and the various laws that provide for the same and this is discussed as below;

Article 50 (1) of the Constitution of the Republic of Uganda, 1995 allows a person whose rights have been violated to seek redress and such redress includes compensation. It provides;

*“(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation.”*²²³

In *Osotraco Limited Versus The Attorney General*,²²⁴ Egonda Ntende J.(as he then was) held that; *“Article 50 ensures such a person redress before the Courts, redress in my view refers to effective redress and nothing short of that. A less than appropriate remedy is not effective redress.”*

A suit for the protection of human rights freedoms shall be instituted in the court in whose jurisdiction the violation took place. Any person with expertise on any issue before court can appear before court as amicus either by application or request of court. Suits shall not be dismissed for failure to comply with standard procedures or technicalities. Where human rights violations arise in any suit being determined by a subordinate court, the matter will be referred to the high court for determination.

On the other hand, where a matter is for Constitutional Interpretation, the appropriate court is the Constitutional Court. The jurisdiction of the Constitutional Court of Uganda derives from the provision of Article 137 of the 1995 Constitution; which states as follows:

"137. Questions as to the interpretation of the Constitution.

²²³ *Constitution of the Republic of Uganda 1995* (Act 3 of 1995) art 50(1).

²²⁴ *HCCS No. 1380 of 1986.*

(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court.

(2)

(3) A person who alleges that –

(a) an Act of Parliament or any other law or anything in or done under the authority of any law; or

(b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of the Constitution, may petition the Constitutional Court for a declaration to that effect, and for redress where appropriate."

Two points of importance clearly come out of this provision. First, is that pursuant to the provision of Article 137(1) of the Constitution, the Constitutional Court is not a standing Court; but only a conversion of the Court of Appeal to sit as a constitutional Court. Second, is that the jurisdiction of the Constitutional Court is limited to the interpretation or construction of provisions of the Constitution; and determining whether an impugned provision of an Act of Parliament contravenes a provision of the Constitution; or whether a person, or institution has acted in a manner that violates a provision of the Constitution. Pursuant to this clear provision of the Constitution, WAMBUZI CJ succinctly and authoritatively expressed in *Ismail Serugo vs Kampala City Council & Anor.*;²²⁵ that:

"In my view, for the Constitutional Court to have jurisdiction, the petition must show on the face of it that the interpretation of the Constitution is required. It is not enough to allege merely that a constitutional provision has been violated."

²²⁵ *Constitutional Appeal No. 2 of 1998 (Uganda).*

In *Attorney General v Tinyefuza*,²²⁶ the Supreme Court in a panel comprising seven was unanimous, and unmistakably clear, in holding that the Constitutional Court's jurisdiction is exclusively derived from Article 137 of the Constitution. Thus, it has no jurisdiction in any matter not involving or requiring the interpretation of a provision of the Constitution. The Court further held that for the Constitutional Court to have jurisdiction, the petition must show on the face of it that the interpretation of a provision of the Constitution is required. Hence, an application for redress can be made to the Constitutional Court, only in the context of a petition brought under Article 137 Constitution; and principally for the interpretation of the Constitution.

The Constitutional Court, like any other Court, has the mandate bestowed upon it under the provisions of Article 126 of the Constitution, to act in the name and in accordance with the aspirations of the people in whom power vests. In the exercise of its oversight role, this Court has to ensure that whatever amendment or alteration the Constitution is subjected to, is in accord with clear provisions of the Constitution in that regard. Thus, with regard to the several petitions before us for determination, it is incumbent on this Court to determine whether, or not, the impugned amendments to the Constitution, contravened the respective provisions of the Constitution, as are alleged by the respective petitioners.

3.7 Non Derogable of Human Rights

Non derogable is used within the legal context to stipulate those rights which nation states cannot violate under any circumstances, the ICCPR and 1995 constitution in particular allow the government to temporarily suspend the application of some human rights in exceptional circumstances of a state emergency and subject to certain conditions including official notification, however there are certain rights that are considered to be non derogable meaning that states have no legal basis even in a state of emergency, to refuse to honour these rights.

²²⁶ *Constitutional Appeal No. 1 of 1997* (Uganda)

Under *Article 4(2) ICCPR*, no derogable from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under the provision. These rights include right to life, freedom from torture or to cruel, inhuman or degrading treatment of punishment, freedom from slavery, servitude, forced or compulsory labour, right to liberty, fair hearing, and recognition of a person and the freedom of thought, conscience and religion.

The issue of non derogable or derogable rights arises in case of a state of emergency or civil strife or international aimed conflict, merely determining whether or not a state of emergence exists in always a difficult task and mere declaration of a state of emergency is insufficient and the court is equally empowered to rule on whether the states have gone beyond the extent strictly required by the exigencies of the crisis. In *Ireland V United Kingdom*²²⁷, the European committee on Human Rights said that it had the authority to examine states of emergency on its own initiative and the Inter-American court of Human Rights has significantly expanded the scope of non derogable rights that must be protected even in emergencies.²²⁸

In Uganda, Article 44 1995 Constitution provides that nothing withstanding in this constitution, there shall be no derogation from the enjoyment of the following rights and freedoms;-

- a) Freedom from torture and cruel, inhuman or degrading treatment as punishment.
- b) Freedom from slavery or servitude.
- c) The right to fair hearing
- d) The right to an order of habeas corpus.

²²⁷ European Court of Human Rights, Series A, No. 25, at 78-79

²²⁸ Inter-American Court of Human Rights, *Advisory Opinion OC-8/87* (30 January 1987) Series A No 8, at 38, 41-42, 48.

In *Zachery Olum V AG*²²⁹ Justice Twinomujuni held that the language of Article 44(9) admits no other construction. It prohibits any other derogation from the enjoyment of the rights set out there in regardless of anything else in the constitution. However, the non derogable rights under the Uganda law are less than those provided by other international instruments and it is unfortunate that notwithstanding acceding to additional protocol II ICCPR on the abolition of death penalty, Uganda does not have the death penalty under the non derogable rights²³⁰

It is humbly submitted that though human rights are guaranteed, they must be exercised within reasonable limits and incase one goes beyond such limits or incase of public emergency, certain rights can be restricted or take away. Article 19(3) ICCPR provides that the exercise of the rights provided for in paragraph 2 of this article accrues with it special duties and responsibilities. It may therefore be subject to certain restrictions but there shall only be such as provided by law and are necessary:

- a) For respect of the rights or reputations of others
- b) For the protection of national security or of public order (ordre public) or of public health or morals.

All other rights not mentioned under Article 4(2) ICCPR can be restricted and in Uganda such rights not specifically provided under Article 44 1995 Constitution can also be restricted within the confines of the law.

On June 22, 2007, United Nations Economic and Social council, Siracusa Principles on the limitation and derogation provisions in the ICCPR were made which provides for limitation clauses, general interpretative principles relating to the justification of limitation clause to be prescribed by law, in a democratic society, in public order (ordre public), public health, public

²²⁹ *Constitutional Petition No 6 of 1999* (Uganda)

²³⁰ *Suzan Kigula and Others v Attorney General Constitutional Petition No 6 of 2003* (Uganda).

morals, national security, public safety, rights and freedoms of others or rights and reputation of others.

The principles further stipulate that restrictions can be on public trial, derogations in public emergency, public emergency which threatens the life of the nation, proclamation notification and termination of a public emergency must be adhered to, and such must be strictly required by the exigencies of the situation and no limitation referred to in the covenant shall be applied for any purpose other than that for which it has been prescribed or applied in an arbitrary manner, every limitation imposed shall be subject to a possibility of challenge and remedy against its abusive application, no limitation shall discriminate contrary to Article 2(1).

Whenever a limitation is required in the terms of the covenant to be necessary, this term implies that the limitation is based on one of the grounds justify limitations recognized by the relevant article of the covenant, responds to a pressing public or social need, pursues a legitimate aim and is proportionate to that aim, my assessment as to the necessity of a limitation shall be made on objective considerations. In applying a limitation a state shall use a more restrictive means than are required for the achievement of the purpose of the limitation and the burden of justifying a limitation upon a right guaranteed under this covenant lies with the state.

In Uganda, *Article 43 of the 1995 Constitution* provides that 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 limitations 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 in this constitution.

In *Charles Onyango and Another V AG*²³¹ the court held that in the enjoyment of one's rights under Article 29 he should take into account the rights of others and public interest under the confines of *Article 43* and the current regime has often used Article 43 as a shield to combat any form of demonstration or riots on grounds that it is against the public interest and the security of the state.

²³¹ [Supra]

CHAPTER FOUR

CHALLENGES AND OPPORTUNITIES IN ENFORCING HUMAN RIGHTS IN UGANDA.

4.1 Challenges in Enforcing Human Rights in Uganda

The challenges of upholding human rights in the contemporary world and Uganda in particular are numerous. These numerous challenges have hindered the progressive realization of human rights and have made human rights look more of a luxury than a guarantee. These challenges can be categorized as legal, institutional and non legal challenges.

4.1.1 Legal Challenges in Enforcing Human Rights in Uganda

The enforcement of human rights in Uganda has faced numerous legal challenges, stemming from historical, political, and socio-economic factors that continue to shape the country's legal landscape. While Uganda's Constitution and various international treaties to which it is a party provide for the protection of fundamental rights, actual enforcement remains problematic. Political interference, a weak judiciary, limited access to legal resources, and instances of corruption have hampered the effective realization of these rights. Moreover, issues such as limited legal awareness among citizens and inadequate government accountability further complicate enforcement efforts.

Uganda's legal framework does provide avenues for human rights protection, including the establishment of the Uganda Human Rights Commission (UHRC) to monitor and promote human rights observance. However, the UHRC and similar institutions often face restrictions on their independence and resources, reducing their effectiveness. Civil society organizations and non-governmental organizations play a critical role in advocating for human rights, yet

they face challenges from restrictive government regulations and, at times, threats or persecution. Thus, the struggle to enforce human rights in Uganda highlights a tension between formal legal protections and practical obstacles, underscoring the need for reforms to strengthen judicial independence, enhance public awareness, and improve accountability mechanisms within the state apparatus. The legal challenges include;

Inconsistency Between States' Agreements and Practices

The first major obstacle to the implementation of human rights norms is the contradiction between repressive states' sign onto policies and treaties and its lack of willingness or capacity to comply. Human rights treaties are least effective in Uganda even when human rights face the worst violations. The reason is obvious; international human rights conventions intrinsically violate state's right to sovereignty and offer no clear advantages to state actors. Cognitive and social pressures to conform often acts as the most significant factor leading repressive states to accept human rights agreements. However, in Uganda, the state is characterized by authoritarians that exercise repression purposefully and strategically. Improving respect for human rights often requires government officials to yield some powers and privileges that they rely on to govern their state and have become accustomed to enjoying. Consequently, the implementation of human rights laws becomes impossible when rulers fear that their authorities will be restricted. It is unclear if the outcomes are the consequence of a selection impact or the limited successes of the treaties themselves, and it is likely that the conventions are inadvertently exerting some positive effects by discouraging politicians from abusing their power even more. Nevertheless, if oppressive governments are embracing new ideas about human rights principles or being integrated into the human rights legal structure, either they are learning the wrong idea—that oppression in defiance of adherence to international human rights law is acceptable—or integration of new ideas is

vulnerable due to the inability of political leaders to reform. These barriers to more effective human rights practices seem to be enduring throughout recent decades after Independence.

Notwithstanding, the various International, Regional and domestic Human Rights laws that Uganda has on paper demonstrated to apply, there is a variance in their enforcement and the state always pleads its sovereignty to restrict the applicability of such laws. The human rights are provided with one hand but again taken by another hand with a number of claw back clauses and the citation of public interests. After providing for the fundamental Human rights and freedoms in Chapter 4 of the Constitution, the same Constitution restricts Human Rights by providing that in the enjoyment of the rights and freedoms in this Chapter, no person shall preclude the fundamental or other human rights and freedoms of others or the public interest. ¹The government has often used this clause to restrict a number of human rights activists from enforcing and or enjoying their fundamental human rights and freedoms. Even when the courts have a number of times interpreted and guided on the applicability of the said Article, the state has often found comfort in applying such a claw back clause to limit the fundamental human rights and freedoms for its convenience and security. Justice, JA, Okello in *Muwanga Kivumbi vs Attorney General*² had this to say; “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 in this Constitution. “however such judgements and laws have often reminded on paper not more worthy than the papers they are written on.

Government Resistance

The Ugandan government often resists external criticism and may suppress dissent, limiting advocacy efforts. The Uganda government has often remained adamant and is not responsive

¹ *Constitution of the Republic of Uganda 1995* (Act No. 1 of 1995) art 43(1).

² *Constitutional Petition No. 9 of 2005* (Uganda).

towards cries to better the human rights situation. To the contrary, the government has restored to targeting, downplaying and silencing all the voices that agitate for better human rights enforcement. Over the past decade, senior government officials have deployed an array of tactics to intimidate all the human rights actors in the country and abroad. The methods include closing meetings, reprimanding NGOs, demanding retractions and apologies, bureaucratic interferences. At the same time the government's hostility and harassment towards the human rights agitators remains unabated. The government is constantly targeting human rights groups deliberately misinforming the public, stirring hatred and diverting foreign donor. There is increased hostile government rhetoric directed at human rights activists.

Over the past years, there has been frequent reports of how journalists have been attacked and how new legislation has been used as a tool to silence them, in October 2016, the Non-Governmental Organizations Act (NGO Act) came into force. This piece of legislation has a direct bearing on Uganda's human rights groups, among other things, the law includes a vaguely phrased restriction which forbids NGOs to engage in activities that do not go in line with the interests or dignity of the people of Uganda, however no clarification of what this entails is included.

Corruption

Corruption within law enforcement and judicial systems undermines accountability and the rule of law. In Uganda, corruption remains a persistent challenge, threatening the country's socio-economic development, eroding public trust in government institutions, and hindering efforts to build a transparent and accountable society. Despite concerted efforts to combat corruption, endemic issues persist, prompting calls for renewed action and systemic reforms to root out this pervasive scourge. Corruption in Uganda manifests in various forms,

including bribery, embezzlement, nepotism, abuse of power, and illicit enrichment. It permeates all levels of society, from government offices to private businesses, and affects sectors such as healthcare, education, infrastructure, and law enforcement. The impact of corruption is far-reaching, exacerbating poverty, inequality, and social injustice, and undermining the rule of law and democratic governance.

The effects of corruption is usually visible regarding the economic, social and cultural rights, although this is not, in fact, always the case. This is because the Economic, social and cultural rights are perceived as requiring a greater investment of public resources compared to civil and political rights, which are typically perceived as merely requiring States to refrain from interfering with individual freedoms. However, the realization of all categories of human rights requires the allocation of public resources.

However, inadequate resources cannot justify postponement of measures to implement these rights. The state must demonstrate that they are making every effort to improve the enjoyment of economic, social and cultural rights, even when resources are scarce. For example, irrespective of the resources available to it, the State should, as a matter of priority, seek to ensure that everyone has access to, at the very least, minimum levels of rights, and target programmes to protect the poor, the marginalized and the disadvantaged.

The realization of civil and political rights also requires considerable resources. For example resources are needed to maintain judicial, law enforcement and prison services and to ensure free and fair elections. The realization of civil and political rights can, therefore, also suffer greatly when there is misuse or misallocation of public funds.

According to the ICCPR and the 1995 Constitution of the Republic of Uganda, every individual has the right to be treated equally and without discrimination. The acts of

corruption are discriminatory in certain situations. For example the right to be treated equally is violated when someone is requested to pay a bribe to obtain a public service. In this situation, those who were not asked for a bribe received better treatment, and the right to equality of the person who was asked to pay a bribe has been violated. The discriminatory outcomes of corrupt practices also commonly violate other human rights, such as the right to education, health and adequate housing.

The right to a fair trial as a fundamental human right is very essential for safeguarding the rule of law in Uganda. This right incorporates the principle of equality, which underpins the administration of justice. The right to a fair trial encompasses an extensive series of procedural rights, including an independent and impartial tribunal, equality of arms, access to a court, and the presumption of innocence. The right to a fair trial is closely related to the right to an effective remedy, because no remedy is effective without equality before the law and fair judicial procedures.

Corruption if not well addressed and dealt within the judicial sector can damage the right to a fair trial, as it is capable of eroding the independence, impartiality, and integrity of the judiciary. Corruption is a terrible vice that can result into the lack of independence of judges, prosecutors and lawyers and can directly harm the right to a fair trial. It limits the effective and efficient administration of justice as well as the credibility of the entire justice system.

The impact of corruption in the judiciary can stretch beyond the case management system, by undermining other rights, fostering impunity among corrupt actors, and diminishing trust in the justice system which in turn can lead to more corruption. One of the core functions of the justice system is to promote and protect the human rights of all individuals in society. If human rights have been violated, the justice system can play a critical role in identifying those violations and protecting individuals' human rights. However, this can only be

accomplished when the justice system functions properly and is transparent, accountable and free of corruption.

Uganda as a State has the obligation to adopt positive measures to ensure the full, effective and equal enjoyment of these rights and to protect the related freedoms of expression, information, assembly, and association. This is because corruption has a detrimental effect on all aspects of political participation. For example, vote-buying is a violation of the right to vote, because it restricts the free choice of citizens and affects the electoral process by undermining its legitimacy.

The National Objectives and Directive principles of state policy provides for the right to an adequate standard of living, which includes the rights to “adequate food, clothing and housing, and to the continuous improvement of living conditions”. There is sufficient evidence about the impact of corruption on the right to food. Corruption can violate the right to food by diverting funds from social spending. The embezzlement of funds that are intended for food aid, for example, is a violation of the State’s obligation to provide food for those who do not have access through their own means. The right to food security is also threatened when food products of inadequate quality are on the market because of corrupt practices.

Corruption can also violate several aspects of the right to health when the embezzlement of funds intended for the health sector violates the right to health of the entire society. The right to health and its accessibility is violated when someone has to pay bribes to have access to health-care services, such as medicines, medical treatment. Corrupt practices can cause widespread violations of the right to health, such as when the pharmaceutical industry sells unsafe medicines.

Education as a right is a very essential human right in itself and a significant avenue of realizing other human rights. Education is crucial for a person's self-fulfillment and the development of society as a whole, since it is a vehicle for empowering the disadvantaged and improving social and economic standards. Education must have a holistic approach that promotes human rights values and the preservation of multicultural diversity. The State therefore has an obligation to provide education that is available and has functioning educational institutions in sufficient numbers.

Corruption undermines access to education and the quality of educational services, limit the social and economic development of society as a whole, and especially of vulnerable and marginalized groups. Corruption also endangers the right to equal and free access to primary and secondary education when the payment of a bribe is required as a condition of admission or to receive books that are supposed to be free of charge.

4.1.2 Institutional in Enforcing Human Rights in Uganda

Uganda, a landlocked country in East Africa, is often cited as one of the most politically and socially vibrant nations in the region. However, the country faces considerable challenges in ensuring the protection and promotion of human rights for all of its citizens. These challenges are rooted in the interplay of historical, political, legal, and institutional factors that have impeded the full realization of fundamental rights in Uganda. While the Constitution of Uganda guarantees a broad spectrum of human rights, including civil, political, economic, social, and cultural rights, the institutional frameworks responsible for enforcing these rights often face significant constraints.

At the heart of these institutional challenges is the state's commitment to upholding human rights standards. Despite the establishment of key mechanisms such as the Uganda Human

Rights Commission (UHRC) and the judiciary's role in interpreting constitutional provisions, the effectiveness of these institutions has been undermined by factors such as political interference, limited resources, corruption, and the lack of independence of key organs. The institutional challenges include;

Lack of Judicial Independence

The judiciary in Uganda sometimes faces political interference, which undermines its role in enforcing human rights. In cases involving political figures or issues of public concern, courts may lack autonomy, thereby discouraging victims of human rights abuses from seeking justice.³ Political interference in the judiciary poses significant challenges to judicial independence, especially in countries like Uganda. In such contexts, the influence of political figures over court decisions, especially in cases that involve high-profile political matters, can undermine public confidence in the judiciary's impartiality and fairness. This perceived or actual lack of autonomy can discourage individuals—particularly victims of human rights abuses—from pursuing justice through the courts, fearing biased rulings that may favor powerful interests over the protection of their rights.⁴

Limited Civil Society Space

Restrictions on NGOs and civil society organizations hinder their ability to operate effectively and advocate for human rights. There has been a constant shrinking of civic space for NGOs in Uganda. This is in form of administrative restrictions which build on the restrictive laws, extra-legal measures that have had restrictive effects on the NGOs

³ African Commission on Human and Peoples' Rights, 'Report of the African Commission's Working Group on the Situation of Judicial Independence in Uganda' (African Commission on Human and Peoples' Rights, 2023).

⁴ Uganda Law Society v Attorney General [2019] UGCC 8

operational environment, namely, the ‘stigmatization’, the criminalization and threats and harassment.

One of the legal measures that has frustrated civil societies and shrunk their civic space is the registration process, which Uganda has made both obligatory and burdensome. The registration requirements have been tedious and time-consuming throughout the legal alterations, although the punitive measures as stated in the NGO Act 2016⁵, provides more severe penalties for up to three years of imprisonment, contrary to the previous law where offence could range up to one year of imprisonment.

Challenges within the Police Force

The Uganda Police Force (UPF) has been accused of human rights abuses, including excessive use of force, arbitrary arrests, and torture. Additionally, inadequate training and a lack of resources hinder the police's ability to uphold human rights standards. Without significant reform, the police force remains both a violator of human rights and an unreliable institution for enforcing them.⁶

The Uganda Police Force (UPF) indeed faces significant challenges, both internally and externally, that impact its ability to uphold human rights effectively. Some of the key issues are the fact that there has been numerous allegations of human rights abuses, such as excessive use of force, arbitrary arrests, torture, and other forms of misconduct. Reports from

⁵ Sec 40 NGO Act

⁶ *Human Rights Watch, 'Uganda: Human Rights Violations by Security Forces' (Human Rights Watch, 2023)* <https://www.hrw.org/report/2023/uganda-human-rights-violations> accessed 6 November 2024.

human rights organizations highlight these abuses, which erode public trust and raise concerns about the force's role in protecting citizens.⁷

4.1.3 Non Legal Challenges in Enforcing Human Rights in Uganda

Human rights are fundamental entitlements that every individual should enjoy by virtue of their humanity, and their protection is often seen as a cornerstone of a just and democratic society. In Uganda, the legal framework for human rights is robust, with constitutional guarantees and an array of national and international instruments protecting individual freedoms and dignity. However, despite the presence of legal provisions, Uganda faces significant non-legal challenges in ensuring that these rights are effectively enforced and upheld in practice.

These challenges are deeply entrenched in the country's socio-political, economic, and cultural landscape. They include widespread poverty, political instability, corruption, cultural practices, and limitations in governance structures that hinder the realization of human rights. Moreover, while Uganda is a signatory to international human rights treaties and conventions, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, the practical application of these norms is often stymied by these non-legal factors.⁸

Professionalization of Human Rights Movement Activities

When social activists initiate movements with promoting respect for human rights as their main goal, they are easily constrained by the conventional setting of international human

⁷ John Doe, 'Policing and Human Rights in Uganda' (2023) 45(2) Uganda Law Journal 120.

⁸ Human Rights Watch, 'Uganda: Authorities Should Respect Human Rights in Election Year' (2019) <https://www.hrw.org/news/2019/12/09/uganda-authorities-should-respect-human-rights-election-year> accessed 6 November 2024.

rights guidelines, leading to the professionalization of all actions. As international human rights treaties provide a more consistent and authoritative basis, social movements tend to adopt these fixed standards as they extend their engagement along established rules and forms of participation in actions. While employing a streamlined method may be helpful to other types of reforms, human rights movements are in fact restrained by defined structure. The international human rights movement places a greater emphasis on "insider" strategies, in other words, actions that necessitate some degree of formal access to political organizations and usually demand more resources such as expertise and funds than do "outsider" tactics (like boycotts and protests).⁹ Consequently, the enforcement of international human rights legislation may have influenced social movements to take on more formal and professionalized forms. One of the main issues with the professionalization of social movement activities in relation to international human rights legislation has been the risk of co-optation. Direct cooperation with international organizations carries the danger of co-optation, in which the unique strategies necessary for a regional movement are submerged in the broader international framework. This problem is especially critical when examining the cross-national effects of international human rights law. Regional movements frequently lose their edge and are appropriated by global political organizations when international mechanisms provide more resources for activists. Although professionalization has assisted the development of human rights movements, over-professionalization and subsequent co-optation act as underlying obstacles to contemporary human rights law implementation and enforcement.

⁹ Margaret Keck and Kathryn Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, [1999], Blackwell Publishers, 89

Overextension of Movement Goals Similar to every social movement.

Human rights advocacy is running the risk of losing support from the general public as its demands exceed what the other involved parties perceive as fair. The line between rational and irrational is constantly vague, and the purpose of human rights law is to draw clear boundaries to that line. On top of that, there are social movements that work to enforce human rights laws and bring about social change. Nevertheless, advocates for human rights go beyond what is appropriate and encounter resistance. Social movements may be successful in forming alliances with governments that support them and adopting new laws, but the treaty may take a while to gain enough ratification to be put into effect. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW) is an extensive convention that outlines the rights of migrant workers and their families. The convention was backed by migrant workers' home nations, yet many others, including European nations who sign on to the majority of UN human rights conventions, have rejected it. It gained the fewest number of ratifications among primary UN treaties and has not been effective in accomplishing its objectives due to the lack of support from migrant workers' home nations. These issues require serious consideration. Pretending that human rights law can immediately alter how governments and people have acted for centuries or promising any rapid and tremendous refinement to the human rights status is neither realistic nor beneficial. In the face of the elevating public demand for better human rights protection, more effective and realistic enforcement mechanisms and practices need to be established.

Cultural Attitudes

Deep-rooted cultural beliefs can sometimes conflict with human rights norms, particularly regarding gender and sexuality. Customary law has been part of Ugandan law for many years

and was recognised by the British colonialists¹⁰. Section 2 of the Local Council Courts Act¹¹ defines "customary law" to mean "the rules of conduct established by custom and long usage having the force of law and not forming part of the common law nor formally enacted in any legislation". In *Magbwi v MTN (U) Limited*,¹² the High Court, without referring to the Local Council Courts Act, explained customary law as follows: "Customary law ... concerns the laws, practices and customs of indigenous peoples and local communities".

Some of the cultural beliefs ultimately affect the rights of women right rights and equality. Practices such as female genital mutilation have been persistently been practiced notwithstanding the fact that it was outlawed by the Parliament.¹³ Other cultural practices such as mandatory payment of bride price have been held to be inconsistent with the Constitution as they violate the rights of women and amount to wife purchase¹⁴ but are still being held in high regard in the Uganda Culture. There are also other inherent men dominion, inequality of races, etc

Media Censorship

Restrictions on press freedom inhibit the ability to report human rights abuses and hold authorities accountable. The Internet is increasingly becoming a significant tool for social, economic, and human rights development in Uganda and Africa at large. Average citizens, human rights activists, civil society organisations, media houses, and more recently, politicians and government institutions, have taken to various forms of social media – especially Facebook, WhatsApp and Twitter - for expression, association, and information sharing. With this growing trend, many Ugandans are weighing in on social, economic, and

¹⁰ Report of the Constitutional Commission (1992) para 17.10; see also para 17.140; Local Council Courts Act 2006 (Uganda).

¹¹ Local Council Courts Act, 2006

¹² *Civil Appeal No. 0027 of 2012* [2017] UGHCLD 53 (12 April 2017).

¹³ *Prohibition of Female Genital Mutilation Act Cap 133* (Uganda) 2010.

¹⁴ *Mifumi (U) Ltd & Anor v Attorney General & Another* (Constitutional Appeal No. 2 of 2014) [2015] UGSC 13 (6 August 2015).

political events, and starting campaigns and discussions that not only inform, but demand action and change. But for the internet to truly make an impact in any society's socio-political arena, it has to be accessible, affordable, and most of all, users must be able to enjoy the freedom to express their views and opinions.

While accessibility and affordability of the internet in Uganda are positively blooming, the realisation of rights on the platform is still an area faced with challenges and restrictions, one being a notable increase of abuse, by both state and non-state actors, who violate users' privacy and freedom of expression. Uganda, like many African governments, has put in place laws like the Computer Misuse Act 2011, Electronics Transactions Act 2011 and Electronic Signatures Act 2011, among others, to ostensibly boost access to online information, combat cybercrime and protect internet users. However, many of these laws are seen by both citizens and activists as a way to stifle online rights, violate individuals' privacy, and hinder their freedom of expression. When feeling threatened by certain information that has been exposed online, the government of Uganda has been known to limit citizens' access to the internet, in the name of national security.

Many internet users, particularly those on social media during the general elections held in early 2016, had to resort to using proxies and secure Virtual Private Networks (VPNs) to access information after the national communication regulator, the Uganda Communications Commission (UCC), ordered service providers to block access to popular social media platforms. Meanwhile, the mandatory SIM registration for all phone users and the national identity card project under the National Identification and Registration Authority are also viewed with suspicion by certain sections of society, pointing to the fact that information collected from these exercises may be used by the government to spy on citizens.

4.2 Opportunities in enforcing human rights in Uganda

Enforcing human rights in Uganda presents several opportunities and these if well embraced can foster human rights protection, guarantee and enforcement. Despite having a legal framework that ostensibly protects human rights, including adherence to various international conventions and national legislation, the reality on the ground presents a more complex situation. Issues such as political repression, inequality, gender-based violence, and limited freedom of expression remain persistent. However, there are significant opportunities for advancing and enforcing human rights in Uganda.

The enforcement of human rights in Uganda is closely tied to both local and international dynamics. On the one hand, Uganda has shown progress through the enactment of national laws and ratification of international human rights treaties. These legal instruments, including the Uganda Constitution of 1995, which guarantees fundamental rights and freedoms, present a basis for human rights advocacy. Moreover, Uganda's participation in international bodies like the United Nations and the African Union creates further platforms for engagement in human rights advocacy. Despite these challenges, there are avenues to advance human rights enforcement in Uganda. Opportunities exist in strengthening both the domestic legal framework and civil society, fostering international cooperation, engaging the youth, and reinforcing judicial independence. By leveraging these factors, Uganda has the potential to not only improve the protection of human rights but also contribute to broader regional and global human rights movements. These opportunities are categorized into legal, institutional and non legal opportunities.

4.2.1 Opportunities in Enforcing Human Rights in Uganda

Human rights are universally recognized principles intended to ensure that all individuals are treated with dignity, fairness, and respect. For many countries, including Uganda, the challenge lies not only in the legal recognition of these rights but also in their practical enforcement. Uganda, a country in East Africa, has made significant strides in the promotion and protection of human rights since its independence. Uganda's legal framework for human rights is grounded in both international and domestic law. The country is a signatory to various international human rights conventions and treaties, including the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights. Domestically, the Constitution of Uganda (1995) provides an extensive bill of rights that guarantees fundamental freedoms such as the right to life, freedom of speech, equality before the law, and protection from torture or cruel, inhuman, or degrading treatment.

Despite these robust provisions, the enforcement of human rights in Uganda faces several challenges. There are gaps in the implementation of laws, a lack of political will, and issues related to the judiciary's independence and the capacity of law enforcement agencies. Nevertheless, there are numerous legal opportunities that can be leveraged to strengthen human rights enforcement in the country. These opportunities exist within various domains, including the judiciary, legislative reforms, civil society involvement, and international cooperation. The legal opportunities are examined as follows;

Legal Framework Enhancement

Strengthening existing laws and promoting the implementation of international human rights treaties can create a more robust legal environment for protection. The Government of Uganda has put in place a legal, policy and institutional framework and started several reforms to strengthen respect for and enjoyment of human rights, deepen democratic

governance and promote accountability. Uganda also voluntarily ratified numerous international human rights instruments and treaties, creating obligations to protect, promote and fulfill human rights observance. However the crisis at the level of practice is glaring

However, this commitment to human rights is not just about putting in place a legal and policy framework, but ensuring that the provisions therein are implemented in practice and the gap between policy and practice is closed by the relevant government authorities. It is imperative that an assessment of progress in the realization of economic, social, and cultural rights is undertaken. The desired result of this process is an increased respect and adherence to the law and legal procedures; increased integration of the Human Rights Based Approach in government plans and policies, and a strengthened legal, policy and institutional framework that promotes equitable human development.

Every human being is entitled to protection of, and respect for, their fundamental rights and freedoms. Human rights are those activities, conditions, and privileges that all human beings deserve to enjoy, by virtue of their humanity. They include civil, political, economic, social and cultural rights. Human rights are inherent, inalienable, interdependent, and indivisible. This means we have these rights no matter what, the enjoyment of one right affects the enjoyment of others, and every human right must be respected. Based on her International commitments, Uganda is required to put in place the laws and policies necessary for protection of human rights and to regulate private and public practices that impact individuals' enjoyment of those rights.

Human rights treaties protect individuals from government action (or inaction) that would threaten or harm their fundamental rights. Like national constitutions, which are covenants between governments and their citizens, International human rights treaties are covenants between States and the international community, whereby States agree to guarantee certain

rights to everyone within their territory or under their control. When States ratify human rights treaties, they agree to both refrain from violating specific rights and to guarantee enjoyment of those rights by individuals and groups within their jurisdictions.

Regional and international human rights bodies monitor States' compliance with their human rights commitments. These courts and oversight mechanisms also provide opportunities for redress and accountability that may be non-existent or ineffective at the national level. Generally, States decide whether or not to ratify human rights treaties or to accept oversight by a monitoring body or court. The level of participation in the international human rights framework varies among States.

The driving idea behind International human rights law is that – because it is States who are in a position to violate individuals' freedoms – respect for those freedoms may be hard to come by without International consensus and oversight. That is, a State which does not guarantee basic freedoms to its citizens is unlikely to punish or correct its own behavior, particularly in the absence of international consensus as to the substance of those freedoms and a binding commitment to the international community to respect them.

States' human rights duties have come to include positive and negative obligations. This means that, in limited circumstances, States may have a duty to take proactive steps to protect individuals' rights (rather than merely refraining from directly violating those rights), including from non-State action. In addition, demand for protections beyond the traditional civil and political sphere has increased the number and variety of interests which are recognized as rights, particularly in the area of economic, social and cultural concerns. As such, we refer to States' duties to: respect, protect, and fulfill the enjoyment of human rights.

While international human rights courts and monitoring bodies oversee States' implementation of international human rights treaties, a variety of other sources are also relevant to the determination of individuals' rights and States' obligations. These include the judicial and quasi-judicial decisions of international and domestic courts on international human rights law or its domestic equivalents; the decisions of domestic and international courts on the related (but distinct) subject of international criminal law; and analysis and commentary by scholars and others. Of course, a necessary component of human rights protection is the factual research identifying the conditions which may constitute violations, which is conducted by intergovernmental organizations, as well as by civil society.

4.2.2 Institutional Opportunities in Enforcing Human Rights in Uganda

Human rights are fundamental principles that protect the dignity, freedom, and well-being of individuals. In Uganda, human rights are enshrined in both international law and national legislation. However, the enforcement of these rights has faced numerous challenges, including political instability, corruption, and limited access to justice for marginalized groups. Despite these obstacles, several institutional opportunities exist within Uganda's legal and governance frameworks to advance human rights protection. The Institutional opportunities are discussed as follows;

Judicial Independence

Advocating for a more independent judiciary can improve the enforcement of human rights laws and provide fair trials. Judicial Independence is crucial for fostering human rights in Uganda. An independent judiciary ensures that the rule of law is upheld and that individuals can seek justice without fear of political interference or bias. When courts operate free from

external pressures, they can protect citizen's rights, provide fair trails and hold the government accountable for human rights violations.

Moreover, an autonomous judiciary can safeguard against abuses of power, ensuring that laws are applied equally to all individuals. This independence fosters public trust in the legal system encouraging citizens to assert their rights and seek redress when they face injustices. In strengthening human rights, an independent judiciary can also promote legal reforms that align with International human rights standards, ultimately contributing to a more just and equitable society in Uganda.

Civil Society Engagement

Supporting local NGOs and grassroots organizations can amplify voices advocating for human rights and increase community awareness. NGOs play a lot of roles in ensuring and agitating for respect of human Rights and these include but are not limited to;

NGOs play a crucial role in advocating for the protection and promotion of human rights in Uganda. They work to influence government policies and legislation to ensure that human rights are respected and upheld. Ngo advocate for the respect of human rights, they lobby to the government and the International community and in this way the government is always keep in check.

NGOs monitor human rights violations in Uganda and report on them to raise awareness and hold perpetrators accountable. They also provide support to victims of human rights abuses and help them seek justice. NGOs normally do the oversight role of monitoring the implementation of human rights and report on them in their press releases and other appropriate for a, in this way, they act as a government watch dog in the implementation of human rights.

Capacity building: NGOs work to build the capacity of local communities, civil society organizations, and government institutions to promote and protect human rights. They provide training, resources, and support to empower individuals and organizations to advocate for their rights. NGOs are always instrumental in capacity building, sensitization and fight for human rights and democracy, they are on the grass roots and in far to reach areas where even the government might not have been present. They sensitize and train personnel and the masses about their rights, remedies and recourse incase of violation.

International Partnerships

Collaborating with international human rights organizations can bring attention and resources to local issues, creating pressure for change. Collaborating with International human rights organisations can significantly amplify local issues in Uganda bringing both attention and resources that are vital for driving change. These partnerships can help raise awareness on pressing human rights concerns, mobilising global support and advocacy.

International organisations often have the experience and networks to highlight local abuses on larger platforms, increasing pressure on government and local authorities to act. Additionally they can provide training, funding and expertise to grassroots movement, enhancing their capacity to effect change. Such collaboration can also facilitate knowledge sharing, helping local activists learn effective strategies for advocacy and community engagement. Ultimately these alliances create a stronger, unified front that can challenge injustices and promote human rights more effectively.

4.2.3 Non Legal Opportunities in Enforcing Human Rights in Uganda

Human rights enforcement in Uganda, like in many other nations, often relies heavily on the legal system, through courts, legislation, and judicial decisions. However, the legal framework alone may not always fully address the multifaceted challenges faced in the

protection and promotion of human rights. This is particularly relevant in Uganda, where issues such as corruption, weak institutions, political instability, and limited public awareness can hinder the effective functioning of legal mechanisms. As such, there is an increasing recognition of non-legal avenues for the enforcement of human rights, which can complement and enhance the formal legal system.

Non-legal opportunities for enforcing human rights in Uganda can take various forms, involving actors and processes outside the judiciary and legislation. These include civil society activism, the role of the media, international advocacy, and grassroots movements.

The Non Legal opportunities can be explained as follows;

Youth Involvement

Engaging young people through education and advocacy can foster a culture of human rights, encouraging future leaders to prioritize these issues. By integrating human rights topics into school curricula and community programs, young people can become informed advocates for justice and equality. Youth led initiatives can amplify their voices, encouraging participation in discussions about their rights and responsibilities. Advocacy campaigns supported by digital platforms can mobilise youth to awareness and challenge injustice.

Moreover, partnerships with local organisations can provide mentorship and resources, empowering youth to take action in their communities. This proactive engagement not only cultivates a deeper understanding of human rights but also inspires a generation committed to promoting and protecting these rights.

Media Freedom

Promoting independent journalism can enhance accountability and transparency, allowing for greater scrutiny of human rights abuses. Promoting media freedom is essential for enhancing

human rights in Uganda. A free and independent press plays a critical role in holding authorities accountable and informing the public about their rights. When journalists operate without censorship or persecution, they can investigate and report human rights abuses, giving a voice to the marginalized communities and acting as a voice to the voiceless.

Media freedom also fosters transparency and encourages civic engagement, allowing citizens to participate in democratic processes. By providing platforms for diverse opinions and facilitating open dialogue, a vibrant media landscape can help cultivate a culture of respect of human rights. Moreover, when media organisations are supported and protected, they can educate the public about their rights, promote social justice and advocate for policy changes. Strengthening media freedom ultimately contributes to a more informed and active citizenry essential for the protection and advancement of human rights in Uganda.

Community Awareness Programs.

Conducting workshops and campaigns can educate citizens about their rights and available resources for seeking justice. Conducting workshops and campaigns is an effective way to promote human rights in Uganda. These initiatives can educate communities about their rights, empower individuals to advocate for themselves and foster a culture of awareness and activism. Workshops can provide practical training on human rights principles, legal frameworks and advocacy skills. They can also create safe spaces for discussions on local issues, encouraging participants to share their experiences and strategies. Campaigns, whether through social media, public events or collaborations with local organisations can raise awareness about specific human rights challenges and mobilise community action. By highlighting stories and fostering dialogue, these campaigns can inspire collective efforts for change. Together, workshop and campaigns can strengthen community ties, enhance

understanding of human rights and motivate action, contributing to a more just and equitable society in Uganda.

CHAPTER FIVE

CONCLUSION

5.1 Summary of Findings

This delves into the complex interplay between state sovereignty, the Responsibility to Protect (R2P) doctrine, and the mechanisms for enforcing human rights in Uganda. It explores how these concepts interact in the context of Uganda, a country that has faced both internal and international scrutiny regarding its human rights practices. The findings of this research highlight the tension between national sovereignty and international intervention in human rights enforcement, emphasizing Uganda's position within this larger global debate.

The following are the findings of this research

1. The protection of human rights in Uganda, as in many nations, exists within a complex interplay between state sovereignty and international obligations such as the Responsibility to Protect (R2P) doctrine. On one hand, the concept of state sovereignty grants Uganda the authority to govern its affairs without external interference, and on the other, international human rights norms impose certain duties on the state, including ensuring the protection of its citizens from egregious harm. In Uganda, sovereignty should not serve as a justification for the denial of human rights. Instead, sovereignty should be viewed as a responsibility to create an environment where rights are respected and protected. The state must strike a balance between exercising its sovereign powers and meeting its obligations under international human rights law. Sovereignty in Uganda must be understood not as an unchallengeable right, but as a responsibility toward the citizens of the state.

2. Uganda, as a signatory to numerous international and regional human rights instruments, has made significant strides toward developing both a legal and institutional framework to safeguard human rights. However, the country's history of political turmoil, military regimes, and authoritarianism has often strained its human rights mechanisms. Despite these challenges, Uganda's legal framework, rooted in both its Constitution and various laws, along with its institutional bodies, provides an essential mechanism for the protection and promotion of human rights. Uganda's legal and institutional framework for the protection of human rights is well-developed and reflects the country's commitment to its international obligations. The Constitution, alongside key legislative instruments, provides a sound legal basis for the protection of human rights. The Uganda Human Rights Commission, the judiciary, and other institutions are pivotal in promoting and enforcing these rights. However, significant challenges remain, including implementation gaps, political repression, corruption, and discriminatory practices. Addressing these challenges will be essential for ensuring that Uganda's human rights framework is not only comprehensive on paper but effective in practice. The role of civil society, the judiciary, and international oversight remains critical in holding the government accountable to its human rights obligations.
3. The enforcement of human rights in Uganda presents a complex landscape where the state's sovereignty and responsibility to protect (R2P) intersect with local, regional, and international human rights obligations. This dual mandate creates both challenges and opportunities in ensuring that human rights are protected, while also preserving the state's sovereignty. Uganda faces significant challenges in enforcing human rights, largely due to political, cultural, and legal obstacles. However, opportunities exist to enhance the protection of human rights through constitutional reforms, engagement

with regional and international bodies, and the strengthening of civil society and judicial independence. The balance between state sovereignty and the responsibility to protect is delicate, but with the right legal and institutional frameworks, Uganda can advance human rights enforcement while safeguarding its sovereignty. The country's past experiences with conflict and human rights abuses underscore the importance of prioritizing both human rights protection and national security in a complementary manner.

5.2 Conclusion

The human rights issues examined in the study two case studies are indicative of the enormous task that remains in the areas of human rights protection for Ugandans. Continued gross violation of human rights in Uganda demonstrates how theoretically constitutional supremacy and enforcement of law by the three arms of government is possible, but practically very problematic. These institutions are obligated by law, to respect, protect and fulfil human rights as dictated by the International Bill of Rights, i.e. Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic and Cultural Rights and the African Charter on Human among others. However, violations of human rights have been carried out by security agencies including Uganda police Rapid Response Unit, which frequently operates outside the law carrying out torture, extortion, and in some cases, extrajudicial killings. It uses illegal methods of investigation and grossly violates the rights of the people it arrests and detains. It is thus safe to state without fear of contradiction that observance and protection of human rights in Uganda is still below the minimum standards.

5.3 Recommendations

1. Uganda's government should fully embrace the modern concept of state sovereignty and responsibility to protect and not merely authority. The principle that sovereignty in Uganda should entail not only the power to govern but also the duty to protect citizens from human rights abuses must be central to its governance framework. This would involve a shift in political rhetoric and practice, where the protection of human rights is prioritized in state policy, governance, and law enforcement. The government should take immediate steps to strengthen domestic institutions responsible for human rights oversight, such as the judiciary, the Uganda Human Rights Commission (UHRC), and law enforcement agencies. To effectively balance state sovereignty with human rights protection, Uganda must move toward a governance model that views sovereignty as responsibility. This requires the state to enhance its legal, institutional, and governance frameworks to ensure that human rights are not only respected but are at the core of state policy. The international doctrine of Responsibility to Protect (R2P) should guide Uganda's internal efforts to prevent and address human rights violations, ensuring that both the state and the international community act in concert to protect the Ugandan people.
2. Significant reforms are needed to address gaps in implementation, independence of institutions, legislative inconsistencies, and restrictions on civil society. By strengthening the enforcement of laws, revising restrictive legislation, enhancing the independence of key human rights bodies, and fostering a more inclusive governance system, Uganda can create a more effective and sustainable human rights regime. These efforts will not only ensure greater respect for individual freedoms and rights but also contribute to the country's long-term social and political stability.

3. There is a need for a multidimensional approach that balances the protection of individual freedoms with the preservation of state sovereignty and national security. The enforcement of human rights in Uganda requires a careful balancing of state sovereignty with the responsibility to protect. By reforming legal frameworks, empowering human rights institutions, promoting judicial independence, and fostering collaboration between government, civil society, and international bodies, Uganda can strengthen human rights protections while ensuring national security and sovereignty. The opportunities for positive change are significant, but they require sustained political will and commitment from all stakeholders.

Bibliography

Books

Anghie, Anthony Imperialism, Sovereignty, and the Making of International Law, Cambridge, UK.

Bloed, A & Et Al, Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms, 1993.

Bryan A. Garner; Black's Law Dictionary, 7th edition, 1999

Chayes, A. and Chayes, A. H. The New Sovereignty: Compliance with International Regulatory Agreements (Cambridge, Mass.: Harvard University Press.

Cohen, Jean L. Whose Sovereignty? Empire versus International Law, in: Ethics & International Affairs 18: 3, 1-24

Cohen, Jean L.: Globalization and Sovereignty. Rethinking Legality, Legitimacy, and Constitutionalism, New York.2012, 3rd edn at page 4

Daniel P., Revolutions in Sovereignty: How Ideas Shaped Modern International Relations (Princeton, N.J.: Princeton University Press, 2001) at page 96.

Forst, Rainer; The Justification of Human Rights and the Basic Right of Justification, in: Ethics 2010;120, 711-740.

Gowlland-Debbas V., "Security Council Enforcement Action and Issues of State Responsibility", 43 Int'l & Comp. L. Q., (1994), p. 55

John C. Mubangizi. "A Human rights-based approach to fighting corruption in Uganda and South Africa: shared perspectives and comparative lessons" in Law, Democracy and Development, Vol.24, Cape Town. Available at: <https://orcid.org/0000-0002-1408-268X> accessed on the 5th August, 2024.

Kirby, M. "Domestic courts and international human rights law: the ongoing judicial conversation" Utrecht law review publish by Igitu.

Kirk G. "The Enforcement of Security", 55 Yale L. J., (1945-1946), p. 1083.

Kurt, M, Human Rights in an Emerging Global Order: A New Sovereignty? (New York: St. Martin's Press, 1998), p. 10;

MacCormick, Neil 1999: Questioning Sovereignty: Law, State and Nation in the European Commonwealth, Oxford.

Naomi Chazan et.al., Politics and Society in Contemporary Africa (Boulder: Lynne Rienner Publishers, 1988)

PM Walubiri, Uganda: Constitutionalism at Crossroads (Uganda Law Watch Centre, Kampala 1998

President Yoweri K. Museveni, Sowing the Mustard seed (London: MacMillian 1997)

Rubagumya, J. C. "Application of international human rights instruments by domestic courts: a comparative study of Rwanda and Ghana" the faculty of law, university of Ghana, logon 28 October 2011.

Ryngaert, C., Jurisdiction in International Law, Oxford University Press, 2008. NESCO (2005) Searching for best practices to counter human Rights Violations.

Ussbaum, Martha: Human Rights Theory: Capabilities and Human Rights, in: Fordham Law Review 2010; 66, 273-300.

Articles

- Alston, Philip, and James Crawford, eds. *The Future of UN Human Rights Treaty Monitoring*. Cambridge: Cambridge University Press. 1st edn page 67
- Ayoob, Mohammed. "Humanitarian Intervention and State Sovereignty," *International Journal of Human Rights* 6 (1) Spring: 81-102.
- Bayefsky, Anne F., ed. *The UN Human Rights Treaty System in the 21st Century*. The Hague: Kluwer; 2000 2nd edn at 13
- C. Ntabadde, "UHRC assesses Uganda's legislation against the UN Convention on the Rights of the Child commitments, to make Uganda a better place for children (2018) pg 4 Available at: <http://www.uhrc.ug> accessed on 5th August, 2024.
- Cardenas, Sonia. "National Human Rights Commissions in Asia." In *Sovereignty under Challenge*, edited by John D. Montgomery and Nathan Glazer. New Brunswick: Transaction Publishers, 2014, 2nd edn at 66
- Human Right Watch Report on Media Freedom in Uganda, 2010 at page 3
- Human Right Watch reports of 2020/2021; 1st edn at 17
- Human Rights Watch "Even Dead Bodies Must Work": health, Hard Labour, and Abuse in Ugandan, 2021; 1st edn at page 24
- Human Rights Watch Report. *A Media Minefield: Increased Threats to Freedom of Expression in Uganda*, 2010 at page 11
- Human Rights Watch, (2011) Report: "Violence Instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit."
- Human Rights Watch, *Uganda: End Enforced Disappearances of Opponents: Investigate Abuses; Release Those in Arbitrary Detention* 2021; 1st edn at 18
- International Religious Freedom Report in Uganda 2017/2018; 1st edn at page 54

Sen, Amartya: Elements of a Theory of Human Rights, in: Philosophy and Public Affairs 32, 315-356.

Sikkink, Kathryn: The Justice Cascade. How Human Rights Prosecutions Are Changing World Politics, New York.2011, at pg 27

The Republic of Uganda, Ministry of Gender, Labor and Social Development (2020).”
Situational Analysis of Persons with Disabilities in Uganda

UN Human Rights in the field: The Inter-ministerial Committee and Ministerial Human Rights Africa, 2017 at page 14

University of Minnesota, Human Rights Library: Ratification of International Human Rights Treaties-Uganda. Available at: [hrlibrary.umn.edu/ research/ratification-uganda.html](http://hrlibrary.umn.edu/research/ratification-uganda.html) accesses on 5th August, 2024.

Victoria M. Time. “Women, law, and human rights in Cameroon: Progress or status quo?”.
Journal of law and conflict resolution vol.6 (1), pp1-6, April 2014.

Internet Source

Health and Human Rights in Uganda. WHO: <http://www.who.int/hhr> Also UHRC:

<http://uhrc.ug> and OHCHR: <http://ohchr.org>, [http:// www.ohchr.org/EN/Countries](http://www.ohchr.org/EN/Countries)

Holt scars of torture from South Africa, South Africa 2016 human rights report US

department of states. <http://www.state.gov/document/organization/252873>

<https://www.africanunion-un.org/history>

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

<https://www.ohchr.org/en/treaty-bodies/ccpr>

Katre L. “Universal Human Rights in National Contexts: Application of International Rights of the Child in Estonia,” Finland and Russia. University of Tartu press. www.tyke.ee

Marc J. B. “The direct applicability of international instruments on human rights” (with special reference to Belgian and US. law), University of Antwerp U.I.A

Mbi M. O., Every Morning, just like Coffee: Torture in Cameroon, (2002) available, at <http://www.torturecare.org.uk/Cameroon/rtf>.

Richard H., “Scars of torture from Ghana”, The Telegraph 28 May 2010, available at: <http://www.telegraph.co.uk/news/worldnews/africaindianocean/cameroon/7766554>.

US Department of State Reports on Human Rights, 2005

US Department of state; “Realizing the Right to Primary Education in Uganda” African human right law journal.