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**ENFORCING CIVIL AND POLITICAL  
RIGHTS IN A DECENTRALIZED  
SYSTEM OF GOVERNANCE**

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## ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
BBC	British Broadcasting Corporation
CAO	Chief Administrative Officer
CBO	Community Based Organisation
CBS	Central Broadcasting Service
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
DISO	District Internal Security Officer
DP	Democratic Party
DPP	Director(ate) of Public Prosecutions
EC	Executive Committee
FDC	Forum for Democratic Change
GPT	Graduated Personal Tax
HURIFOR	Human Rights focus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced Persons
JATT	Joint Anti-Terrorism Taskforce
KCC	Kampala City Council
LABF	Legal Aid Basket Fund
LC	Local Council
LDU	Local Defence Unit
LGA	Local Governments Act.
LRA	Lord's Resistance Army
NGO	Non Governmental Organisation
NLE	National Leadership Institute
NRM/A	National Resistance Movement/Army
NSPE	National School of Political Education
PRA	Popular Resistance Army
RC	Resistance Council/Committee
RDC	Resident District Commissioner
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UN	United Nations
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme
UPDF	Uganda Peoples Defence Forces
UPE	Universal Primary Education
VCCU	Violent Crime Crack Unit

## SUMMARY OF THE WORKING PAPER

There is no scarcity of international instruments laying down the full range of the civil and political rights to which human beings are entitled. In addition the letter and spirit of these conventions to which Uganda is a party, have been reduced to an unusually elaborate Bill of Rights and set out in Chapter 4 of the Constitution of the Republic of Uganda, 1995. The Constitution emphasises participatory democracy and provides for a decentralised local government system as an instrument for delivering this democracy at the grassroots level. Some aspects of decentralisation had actually been introduced as early as 1986/87, when the National Resistance Movement introduced Resistance Councils, later renamed Local Councils (LCs) and later still, Executive Councils (ECs). Full scale decentralisation was formally launched in 1992, and has now been given full expression in the Local Governments Act (LGA). As it is, the decentralised system provided for under the LGA and implemented since 1997 emphasises service delivery and only marginally takes into account questions of civil and political rights. The LGA could have expressly provided for a rights based approach to governance and development at local government level. It does not. However, the Act puts in place a legal and institutional framework which could have been used as an instrument for the protection and promotion of human rights.

This study involved observing and analysing the state of civil and political rights in the districts of Gulu, Kayunga and Kampala, with a view to assessing the extent to which the local governments under the decentralised system have complied with international and national standards relating to civil and political rights, what factors have impinged on the full incorporation of human rights concerns into the processes of local government, and how these can be overcome to enable the full realisation of civil and political rights. It was found that certain civil and political rights have reasonably flourished, largely thanks to decentralisation. The framework provided for under the Act, for example, provides reasonable opportunities for popular participation, but these are not always taken full advantage of. The EC Courts supplement the traditional judiciary to provide access to justice, but with certain limitations. However, when it comes to basic rights and civil liberties, including the right to life and liberty and to the freedoms of movement, expression, association and assembly, it was found that these are constantly violated. This is despite rather than because of decentralisation. In other words decentralisation has not availed itself as an arena for the promotion and protection of these rights.

The conclusion arrived at, therefore, was that decentralisation is generally a good policy, but that for it to be an effective instrument for the meaningful realisation of human rights in general and civil and political rights in particular, a number of reforms have to be effected. These include:

## **Streamlining and extending the jurisdiction of EC Courts;**

- Addressing the cultural and political factors that engender apathy and prevent sections of the population from participation in their governance;**
- Decentralizing institutions such as the Police, government service ministries and the Uganda Human Rights Commission;**
- Putting in place a simple, meaningful and effective remedies regime for human rights abuses at the district and,**
- Introducing massive focused civic and human rights education at all levels and for all stakeholders.**

## I. INTRODUCTION

### 1.1 *Taking Rights Seriously*

The promulgation of the 1995 Constitution marked a major turning point in Uganda's human rights legal regime. Not only did the new constitution stipulate the "fundamental and other human rights and freedoms" in a far more elaborate way than any of its much-maligned predecessors, but it also put in place a reasonable mechanism for the enforcement of the rights. Article 50(1) of the Constitution stipulates that any person who claims that a fundamental right or freedom guaranteed under the Constitution has been infringed or threatened is entitled to apply to a competent court for redress, including the payment of compensation.<sup>1</sup> The article goes so far as to allow any person or organisation to bring an action against the violation of another person's or group's human rights. Unfortunately, the Constitutional Court was later to pour cold water on and delimit the full reach of that provision, when it held that the clause was not to be construed to mean that that any "public spirited busy-body" could bring an action complaining against violations that did not directly affect him or her, in utter disregard of the principles of *locus standi*.<sup>2</sup>

Secondly, the Constitution proclaimed and gave legal recognition to the well-established principle that fundamental rights and freedoms are inherent and not granted by the state. It also enjoined "all organs and agencies of Government and all persons" to respect, uphold and promote the rights and freedoms set out in the Constitution.<sup>3</sup> Thirdly, one of the innovations introduced by the 1995 Constitution was the inclusion of National Objectives and Directives Principles of State Policy, a set of guidelines to be followed in taking and implementing policy decisions. Among the many principles laid down were "democratic principles," which include the principal of decentralisation and the devolution of governmental functions, as well as principles relating to the protection and promotion of fundamental and other human rights and freedoms.<sup>4</sup> Finally, it is to be noted that almost every provision of the Constitution has implications for the promotion and protection of human rights. In other words, human rights are built into the Constitution. It therefore followed that in applying the letter and spirit of the constitution, human rights questions would have to be addressed at all times.

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<sup>1</sup> Article 137 (3) and (4) of the 1995 Constitution also empowers the Constitutional Court to order or otherwise provide for redress where, in the course of the determination of a petition seeking interpretation of the Constitution, the court determines that redress is appropriate. The scope and reach of the two sets of provisions has been the subject of a number of judicial decisions including *Dr. James Rwanyarare & Afunadula -v- Attorney General*, Const. Petition. No. 11 of 1997, *UJSC -v- Attorney General*, Const. Petition. No. 6 of 1997 and No. 7 of 1997, *Ismail Serugo -v- KCC and Attorney General*, Const. Petition No. 2 of 1998 and *Charles Onyango Obbo & Anor -v- Attorney General*, Const. Petition No. 15 of 1997.

<sup>2</sup> See the case of *Dr. James Rwanyarare & Another -vs- Attorney General*, Const. Petition No. 13 of 1997.

<sup>3</sup> Article 20.

<sup>4</sup> National Objectives V through XII.

The constitution emphasizes participatory democracy, including decentralisation and the devolution of governmental powers and functions.<sup>5</sup> The Article stipulates that decentralisation is to apply to all levels of local government. The rest of Chapter 11 of the Constitution gives effect to this principle. In 1997, the Local Government Act<sup>6</sup> was passed, to operationalise the broad provisions of Chapter 11 of the Constitution.

It should be noted, however, that the policy of decentralisation had been initiated and partially implemented earlier.<sup>7</sup> The Resistance Council (RC) system had itself been developed by the NRA/M in the course of a guerrilla war against the Obote II government<sup>8</sup> and, following the recommendations contained in the Report of the Prof. Mahmood Mamdani Commission of Inquiry,<sup>9</sup> had been extended all over the country. Indeed it has been suggested that decentralisation was not a novel phenomenon. The federal and semi-federal arrangements put in place by the 1962 Constitution and, to some extent, even the framework designed under the 1967 Constitution and the Local Administration Act of 1967 recognised and attempted to address the need for the devolution of powers.<sup>10</sup> What cannot be disputed is that the post 1995 regime goes further than any previous arrangement in entrenching decentralised government. The policy and practice of decentralised local administration is now an established reality and has generally been accepted as a good thing. The plaudits heaped on decentralization, however, have mainly been based on the somewhat generalized assumption not only that devolution brings services closer to the people and that it is inherently democratic,<sup>11</sup> but also that it is a more efficient form of government in that it is founded on the participation of the local people who are most familiar with and, therefore, best placed to manage their own affairs.<sup>12</sup>

This view of decentralisation has its origins in the liberal democratic conception of local government which takes the view that the greater devolution of governmental powers and functions to lower levels provides opportunities for political education and training in leadership through the ordinary people participating in politics. It is also claimed that this promotes political harmony and stability by inculcating a community spirit, facilitates accountability and is generally more efficient.<sup>13</sup> While these sentiments may not necessarily be untrue, they tend to emphasise what, for lack of a better word, can be called a functional view of decentralized local government, in the sense that they concern themselves with the managerial and

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<sup>5</sup> Article 176, particularly clause (2).

<sup>6</sup> Act 1/1997, now Cap. 243, Laws of Uganda, 2000.

<sup>7</sup> Under the Local Governments (Resistance Councils) Statute, 1993.

<sup>8</sup> See Kisakye, 2000, at 36-46.

<sup>9</sup> GoU, 1987.

<sup>10</sup> Okumu Wengi, 1998, at 266-7.

<sup>11</sup> See, for example Kabwegyere, 2000, and Villadsen, 1997.

<sup>12</sup> National Objective No. II and Kabwegyere, 2000, Sewakiryanga, 2004, at 3.

<sup>13</sup> Olum, 2006.

technocratic aspects of local government. Consequently, the bulk of the studies and policy papers hitherto generated on decentralization in Uganda have tended to offer the view that decentralisation creates a more efficient administrative structure that has improved service delivery, resulting into faster economic growth and development.<sup>14</sup> Much less interest is paid to questions of human rights.

This tendency is to be noted not only among academics, policy-makers and local administrators but also among the ordinary people themselves—the supposed beneficiaries of the decentralization policy—and the civil society actors involved at local levels. Over the years, this approach has led to a situation where no stakeholder seems to bother about whether decentralisation has left the human rights situation on the ground better or worse. More importantly, because of this functional approach, virtually all proposals for reform tend to be geared towards creating a more efficient machinery of local government rather than one which brings about greater respect for and the enhanced promotion and protection of the rights of the effected populations.

A situation has resulted where there is remarkable focus on the human rights situation at the national level but very little at local levels. Given that with decentralisation more and more governmental activity is not at the centre, it is possible and, indeed likely that a good number of human rights questions remain unaddressed. True, there is some generalised talk about transparency and accountability, good governance, empowerment and popular participation, all of which involve human rights considerations.<sup>15</sup> But until all the stakeholders consciously adopt a human rights based approach to governance, these nice-sounding phrases will remain little more than rhetoric. Indeed it is obvious that no meaningful strides can be made in confronting the abuse of power, corruption and mal-administration at local levels so long as the leaders and the governed continue to regard human rights questions as abstract matters which are not the immediate concern of the administrator and the policy maker. Organisations and individual activists interested in human rights have tended to address issues that are of a national character. While it is true that the so-called civil and political rights have tended to be more vigilantly enforced than economic and social rights, even these have only been taken seriously only at the national level. Consequently, abuses by the armed forces, police and the top executive do get attention and exposure, but when it comes to infringement of rights by chiefs, LDUs, LC/EC Courts, and local administrators down at the neighbourhood level, there is scant attention. Now that these low-level actors have been given more powers under decentralisation, the impact of their abuses would certainly be worse than before.

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<sup>14</sup> See generally Nsibambi, 2000, Villadsen, 2000, and Lubanga, 2000.

<sup>15</sup> See, for example Nsibambi, 1997.



The world has made great strides in the recognition, protection and enforcement of rights generally and of civil and political rights in particular. At the national level, Uganda has also made remarkable strides in putting in place the legal and institutional framework needed to highlight and protect these rights, especially civil and political rights (much less so economic, social and cultural rights) but only so at the broad national level. Thus, the Uganda Human Rights Commission (UHRC) has largely remained a Kampala affair, with only a limited presence beyond the capital. The civil society actors who advocate for respect for human rights also tend to focus on the goings-on at national level. There is no deliberate focus on the lower levels. This partly explains why the unacceptable human rights situation in Northern Uganda over the last twenty years, which have been wrongly treated as a local “Acholi affair,” has not attracted the attention one would expect. Following the 2005 constitutional amendments and the national and local government elections of early 2006, a multi-party system has now replaced the so-called no-party or movement system, at least in law. For now, this shift is more apparent than real. With time, however, the practice of multi-party politics is bound to result in increasing bi-partisan local government structures. Unless human rights questions are addressed, such structures are bound to result in practices that are indifferent to if not outrightly hostile towards the legitimate concerns of sections of the population that may not be influential enough to be politically significant.

### ***1.2 Scope and Objectives of the present Study***

The overall objective of this study is to assess, through study and research, the extent to which local governments under the decentralised system are compliant with the international, regional and national human rights standards in their day-to-day operations. This, in specific terms, required the researcher:

1. To analyse the extent to which local governments in Kampala, Kayunga and Gulu have complied with international, regional and national human rights standards relating to civil and political rights;
2. To examine the factors that tend to constrain or facilitate the full incorporation of human rights concerns in the processes or governance in the targeted districts;
3. To suggest ways and means through which human rights considerations can be better incorporated into the policies and conduct of local government in the targeted districts.

Against the above background, this study seeks to make the case for taking seriously civil and political rights within the framework of the decentralized structure. We take the view that it is not enough to go on and on about the right to life, liberty, freedom of expression, association, assembly and movement, and all the other rights and freedoms that have been lumped together as civil and political rights, without looking at what these rights mean for the ordinary person and how these

can be protected and enforced in a manner that is meaningful to the supposed beneficiary.

The study begins with a general examination of the legal framework for the protection and promotion of civil and political rights. We then analyse the policy and practice of decentralisation, with a particular emphasis on the selected districts of Gulu, Kayunga and Kampala,<sup>16</sup> with a view to determining whether the institutional and legal structures put in place in pursuit of the decentralisation policy facilitate or hinder the enjoyment of civil and political rights. We analyse to what extent civil and political rights are being enjoyed on the ground in the selected districts. We attempt to identify what factors facilitate or hinder the enjoyment of these rights. Considering space and time constraints, the study was not intended to and could not deal with the full range of civil and political rights. Thus, it specifically focuses on the right to life, liberty and security of the person, access to justice as a central element of the right to a fair hearing, the right to participation in the political and social life of the community and “the freedoms,” namely, freedom of expression, association and assembly. Finally, some suggestions are made for concrete action in respect of the rights and freedoms reviewed.

At the end of the day, the point is hopefully made that civil and political rights are too important to be allowed to remain a matter of abstract rhetoric. That they must not remain the exclusive domain of the elite. Human rights education must not remain a preserve of the few and, finally, a radical departure to the approach to the observance and enforcement of human rights has got to evolve, which can only begin with a critical study of the situation on the ground.

### **1.3 *Research Questions and Methodology***

The above study objectives in turn could be concretely addressed by posing the following questions:

- ◆ What laws and institutional structures are in place to ensure that local governments under the decentralised system promote, protect and preserve civil and political rights?
- ◆ What has been the effect of decentralisation and devolution of governmental powers on the observance of and respect for civil and political human rights?

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<sup>16</sup> The assumption is that the realities in the three districts, taken together, generally mirror the rest of the country. It must also be pointed out that at around the time the field study was being conducted, the process of creating new districts was unfolding. Gulu was one of those affected, when Amur District was created. In this study, we dealt with the districts as they existed in early 2006.

- ◆ What is the role of the various stakeholders in the protection and promotion of civil and political rights within the decentralized system?
- ◆ What are the implications of the transition to multi-party politics on the human rights situation at local government level?
- ◆ What monitoring mechanisms are in place to ensure that local government actors observe and protect human rights?
- ◆ What are the crucial capacity needs for local governments to enable them promote and protect civil and political rights and, in particular access to justice?

The study involved both field and library research entailing a systematic review of existing primary and secondary sources, in depth interviews with selected stakeholders and focus-group discussions. A qualitative approach was adopted. The study was conducted in the three purposively selected districts of Gulu, Kayunga and Kampala. Gulu was chosen because it was expected that the twenty or so years of political unrest in the district has resulted in certain tendencies that may not necessarily be evident in the relatively more peaceful south. Consequently, the human rights situation in Gulu is a microcosm of the situation in the rest of northern and eastern Uganda, where similar but, in some situations, less debilitating conditions exist. In other words, Gulu provides the worst case scenario. By comparing Gulu with the rest of the country, one is able to visualise what the effect of the unrest has been on the enjoyment of civil and political rights. Kayunga, on the other hand was selected as a typical peaceful rural area. Other factors holding constant, the human rights situation in Kayunga ought to closely mirror the rest of southern, lower eastern and western Uganda.

Kampala was purposely selected for its centrality, relative political stability and urban character. Here, local government closely relates with the top echelons of central government and, therefore Kampala proved to be an interesting case of “decentralization of the centre.” It was also expected to have the better educated, enlightened and politically conscious portion of the national population. Thirdly, the full glare of the media and human rights watchdogs is focused on Kampala. It was therefore possible to examine what impact these factors have had on the human rights situation.

Interviews were conducted with key informants to complement information and data obtained from observation of the unfolding processes in the sample areas. The key informants were councilors and chairpersons at the various levels of local government and other local government officials, including chiefs, CAOs, LDUs, and other civil servants and political actors. Representatives of the UHRC and non-governmental and other community based organizations interested in human rights issues were also interviewed. Focus group discussions were held with

human rights activists and influential political players particularly in Gulu and Kayunga.

## **II. OF RIGHTS IN GENERAL AND CIVIL AND POLITICAL RIGHTS IN PARTICULAR**

Louis Henkin and John Lawrence Hargrove have defined human rights as claims which every individual has or should have upon the society in which he or she lives.<sup>17</sup> To call them “Human” suggests they are universal and inherent and available irrespective of geography, race, gender, class or status. Calling them “rights” means they do not have to be earned. They are entitlements, not favours, gifts or privileges and are not a result of appeals to grace, charity, pity, mercy, brotherhood or love.

### **2.1 *Civil and Political Rights under Conventional International Law***

While the idea that human beings as such have certain inherent rights is as old as human society, the stipulation of these rights in specific terms in instruments capable of being enforced with consistency and certainty is traceable to the development of European nation-states. The oldest known bills of rights are the Magna Carta of 1215, the Bill of Rights of 1688 (UK), the French Universal Declaration of the Rights Man and Citizen of 1789 and the American Bill of Rights of 1791.

For centuries, however, human rights issues continued to be regarded as being exclusively within the domestic jurisdiction of sovereign states. This gave rise to serious difficulties of enforcement because while by definition rights are entitlements against and expectations from one’s society and, therefore are primarily meant to offer the individual protection against abuses by the state and its agents, the state would be able to abuse individuals’ rights with impunity because human rights were “internal matters” in which other states could not interfere.<sup>18</sup> The genocide and other abuses unleashed by Hitler in occupied Europe, the extremely brutal policies pursued by Japan in Asia in the 1930s and early 1940s, and the horrors the world went through in World War II finally focused attention upon the need for an international legal regime for the protection of human rights. Consequently, when the UN charter was enacted, for the first time, an obligation was specifically imposed on states to observe, respect and protect human rights. Hence the Charter provides:

With a view to the creation of conditions of stability ..... the United Nations shall promote:

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<sup>17</sup> Henkin, and Hargrove, 1994. See also Cassese (1989).

<sup>18</sup> Harris, 1998, at 624.

- (a) Higher standards of living, full employment, and conditions of economic and social progress and development.
- (b) ... ..
- (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.<sup>19</sup>

Under the Charter, all the member states pledged to take joint and separate action, in co-operation with the UN, for the achievement of the purposes set out in the above article.<sup>20</sup>

In the wake of the UN Charter followed a number of instruments enshrining the international and regional framework for human rights. For our purposes, the major ones which deal with civil and political rights include the Universal Declaration of Human Rights, (UDHR), 1948, the International Covenant and Civil and Political Rights (ICCPR) 1966, the African Charter on Human and Peoples' Rights (ACHPR), also known as the Banjul Charter of 1981, the 1<sup>st</sup> and 2<sup>nd</sup> Optional to the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979, the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984, the Convention on the Rights of the Child, 1989 and, more recently, the Convention on the Rights of Persons with Disabilities (CRPD), of December 2006.

The Universal Declaration of Human Rights (UDHR) clearly showed that it was not a directly justiciable instrument. The Declaration was proclaimed 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, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance ...*<sup>21</sup>

The limitations of the Declaration are obvious. It was not to be enforced as law, but was to be spread, *a la* the Holy Gospel, “by teaching and education.” The parties to it were not bound to immediately implement its prescriptions but were to take “progressive measures” to realise them at their own pace as it were. It assumed that the community of nations would, in good faith, work towards the

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<sup>19</sup> United Nations Charter, Article 55.

<sup>20</sup> Id. Article 56.

<sup>21</sup> UNGA Resolution 217A (iii), Constituting the preamble to the UDHR. (emphasis added).

realization of the rights therein enshrined.

Be that as it may, the Declaration has been generally accepted as laying down the ideals or standards to which every progressive society is supposed to aspire and is a vital guide in the interpretation of the provisions of treaties, constitutions and national legislation relating to human rights. More importantly, it has been a critical guide in crafting bills of rights for national constitutions and treaties dealing with human rights.

The UDHR deals with among others, the full range of civil and political rights including, for our purposes, the right to life, liberty and security of person,<sup>22</sup> protection from torture or cruel, inhuman and degrading treatment or punishment,<sup>23</sup> equality before the law and freedom from discrimination,<sup>24</sup> the right of access to justice and the right to a fair hearing,<sup>25</sup> the right to privacy,<sup>26</sup> freedom of movement,<sup>27</sup> the right to the freedom of thought, conscience and religion,<sup>28</sup> freedom of opinion and expression,<sup>29</sup> freedom of peaceful assembly and association,<sup>30</sup> and the right to participate in the government of one's country.<sup>31</sup>

Partly in consideration of the limitations above mentioned, the UN enacted the International Covenant on Civil and Political Rights (ICCPR) and, its twin sister, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966, the former coming into force in 1976. The covenant was well received, with 136 state parties acceding thereto.<sup>32</sup>

It imposed on States Parties, specific obligations, and provided:

*Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.<sup>33</sup>*

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<sup>22</sup> Universal Declaration of Human Rights (UDHR), Article 3.

<sup>23</sup> Id. Article 5.

<sup>24</sup> Id. Article 7.

<sup>25</sup> Id. Article 8, 9 and 10.

<sup>26</sup> Id. Article 12.

<sup>27</sup> Id. Article 13.

<sup>28</sup> Id. Article 18.

<sup>29</sup> Id. Article 19.

<sup>30</sup> Id. Article 20.

<sup>31</sup> Id. Article 21(1).

<sup>32</sup> Harris, 1998, at 636.

<sup>33</sup> ICCPR, Article 2 (1).

It obligated the states parties thereto to put in place legislation operationalising it.<sup>34</sup> More importantly, each party to the Covenant was bound to put in place a remedies regime for the benefit of persons under its jurisdiction whose rights were violated or threatened.<sup>35</sup> Besides, the covenant elaborated on the basic civil and political rights enumerated in the UDHR. The optional protocols to the ICCPR and the later specific instruments were made to take into account new developments in the international arena and to address peculiar human rights concerns of specific sections of society.<sup>36</sup>

## **2.2 The 1995 Constitution and National Legislation**

The above international instruments have been adopted by most African countries which have not only accepted to be bound by them but, have incorporated their provisions in their constitutions and legislations, to varying degrees. As a party to the said international instruments, Uganda is bound to observe and work towards realization of the principles set out therein. But even if Uganda was not a signatory, it would still be bound by the bulk of the principles contained in these instruments, given that they are really codifications of already existing international and human rights law. As it is, Uganda adopted most of the principles enshrined in the conventions and made them part of the Constitution and other legislation. These are to be found in chapter 4 of the 1995 Constitution, a bill of rights that is not only more elaborate in its provisions relating to basic rights than any of its predecessors, but which also covers rights not expressly dealt with by the earlier constitutions. The Uganda Constitutional Commission ('the Odoki Commission'), which gathered people's views for the new constitution and prepared the draft that formed the basis for the 1995 Constitution was of the expressed view that human rights were not only the basic building block for human dignity, but were central to the attainment of peace, security, stability, constitutionalism and the rule of law.<sup>37</sup>

The 1995 Constitution was enacted against the background of a history of horrendous human rights abuses within a centralized system. The 1902 and 1920 Orders in Council, which laid the constitutional foundation for colonial rule, did not even contain bills of rights. Colonial policy and practice did not pretend to respect human rights. The post independence period was supposed to be different, but the abuses unleashed on the population were even worse than those of the colonial period. Both the 1962 and 1967 Constitutions had bills of rights, albeit with far-reaching claw-back clauses, that removed the rights which had ostensibly been given. Even when these constitutions were amended/modified through legal notices

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<sup>34</sup> Id. Article 2(2).

<sup>35</sup> Id. Article 2 (3).

<sup>36</sup> The African Charter on Human and Peoples' Rights which was enacted in 1981, was intended not only to introduce African values into human rights jurisprudence, but also to put in place a regional (African) mechanism for the protection and enforcement of Human Rights. It has largely, remained a dead letter. See Abdullahi, 1997.

<sup>37</sup> GOU, 1993, Paras. 7.11 – 7.15.

in the wake of the various unconstitutional transitions, the bill of rights would always remain intact, at least on paper. This, however, did not prevent the governments of the day from committing atrocities. Indeed Amin, Obote and Museveni (up to 1995) all governed under the 1967 constitution, but with differing consequences. This then demonstrated, that in matters of constitutionalism, democracy, human rights and the rule of law, legal provisions only tell half the story.<sup>38</sup>

The broad principles set out in the 1995 Constitution have in turn been given effect through legislation and the creation of a number of institutions. Through the Judicature Act,<sup>39</sup> the Magistrate Courts Act,<sup>40</sup> The Local Council Courts Act, 2006 and, before that, the Executive Committees (Judicial Powers) Act,<sup>41</sup> a hierarchy of courts have been put in place all over the country, through which redress can be sought for human rights abuses. More to the point, the Uganda Human Rights Commission (UHRC), a constitutional body established under Articles 51 and 52 of the Constitution and the Uganda Human Rights Commission Act,<sup>42</sup> has now been in existence since 1997 and has done a lot of work in the field of receiving and entertaining complaints of human rights abuse, awarding damages and other forms of relief on a regular basis. In addition, the Commission has been quite active in a wide range of other areas ranging from human rights education and advocacy to visiting prisons and investigating and reporting on the human rights situation in the country.<sup>43</sup>

Apart from the judicial institutions, there are a wide range of organs and public institutions with responsibility for the protection and promotion of human rights. These include the armed forces, police, the prisons service, local governments, Local Defence Units (LDUs), intelligence agencies and professional bodies like the Uganda Law Society. Thus if the human rights situation in Uganda has not been rosy, it cannot be for a lack of laws and institutions. The question is whether the laws have been applied and whether the institutions are effective on the ground, or whether the organs and institutions supposed to look out for the rights of the people have in fact joined in the game of violating them. In this study, we sought to examine whether these institutions are present at the local level and, if so, what role they play in the area of human rights within the framework of the decentralised system.

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<sup>38</sup> See Tusasirwe, 2005, at 4, and Kanyeihamba 2006, at 198.

<sup>39</sup> Cap. 13.

<sup>40</sup> Cap. 16.

<sup>41</sup> Cap. 8.

<sup>42</sup> Cap. 24.

<sup>43</sup> The UHRC publishes annual reports, in addition to pronouncing itself in public fora and the media from time to time. For more detailed studies of the Commission and its activities, see Onoria, 2003.



### III. DECENTRALISATION AND HUMAN RIGHTS

#### 3.1 *The concept and the practice*

As already pointed out, decentralisation pre-dated the 1995 Constitution. The system of local government which the NRM found in place when it captured power in 1986 was a highly centralised one. It had been established under the Local Administration Act of 1967 and had changed very little since. Under this system, the various levels of local administration had little power. It has, for example, been pointed out that under the 1967 arrangement the Ministry of Local Government was empowered to: approve district budgets; approve bye-laws made by local governments; revoke such bye-laws; receive accountability for transferred resources, and dissolve local councils.<sup>44</sup> The lowliest of employees of a local government was centrally appointed.<sup>45</sup> The introduction of Resistance Councils (RCs) started the process of changing this. Then on 2<sup>nd</sup> October 1992, President Museveni launched the policy of decentralisation. The 1995 Constitution and the Local Government Act of 1997 merely consummated this process.

Decentralisation has been defined as “the transfer of legal, administrative and political authority to make decisions and manage public functions from the central government to local councils.”<sup>46</sup> The espoused aim of decentralisation was to:

- ◆ Transfer real power to the local governments and thus reduce the work load of the remote and under resourced central government officials.
- ◆ Give local communities political and administrative control over services and promote people’s feelings of ownership of programmes and projects in the local area.
- ◆ Free local managers from central constraints and in the long run allow development of structures tailored to local circumstances.
- ◆ Improve financial accountability and responsibility. Boost the capacity of local councils to plan, finance and manage delivery of services to their constituencies.<sup>47</sup>

It is clear that the main thrust of these policy aims is supposed to be “effective service delivery.” The proponents of decentralisation argued that it was the surest way of delivering “good governance,” the catch-word of the World Bank led socio-economic formulations of the 1990s.

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<sup>44</sup> Nsibambi, 2000a, at 1.

<sup>45</sup> Id.

<sup>46</sup> Nsibambi, 1997 at 333 and Kabwegyere, 2000 at 141.

<sup>47</sup> Kabwegyere, Id., and, Nsibambi, 2000 at 2.

It has to be conceded that at least in theory, the good governance agenda did recognise the place of human rights. The World Bank, for example, maintained that good governance must guarantee human rights, check corruption and promote democratisation and accountability.<sup>48</sup> In practice, however, decentralisation tended to be concerned more with effective administration than with the promotion of popular participation and human rights. Whether the type of decentralisation that was implemented in Uganda amounted to democratic decentralisation and can deliver good governance, therefore, remains debatable. An examination of the operation of the decentralisation system in Gulu, Kayunga and Kampala clearly revealed that the long arm of central authority still pervades political and administrative life at the lower levels, albeit to a lesser extent than under the 1967 to 1986 arrangement.

### **3.2 The Local Governments Act**

The Local Governments Act is largely silent on the question of human rights. However, in its long title—which is indeed unusually long—the Act is described as:

*An act to amend, consolidate and streamline the existing law on local governments in line with the Constitution to give effect to the decentralisation and devolution of functions, powers and services; to provide for decentralisation at all levels of local governments to ensure good governance and democratic participation in, and control of, decision making by the people; to provide for revenue and the political and administrative set up of local governments; and to provide for election of local councils and for any other matters connected to the above.*

One of the objectives of the Act is stated to be “to ensure democratic participation in, and control of decision making by the people concerned.” The other is “to establish a democratic, political and gender-sensitive administrative set up in local governments.”<sup>49</sup> Syntactical redundancy aside, one can say that although the LGA does not specifically proclaim human rights, its framers at least had in mind democracy, popular participation and good governance, all of which are important bedrocks for the promotion and protection of human rights.

In judging the LGA, therefore, it is not fair to merely look at the absence of provisions expressly dealing with human rights. The proper question to ask is whether the institutional structure it puts in place promotes democracy, popular participation and, indeed, human rights.

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<sup>48</sup> See World Bank, 1989. Indeed decentralisation, liberalisation of the economy, privatisation of public enterprises and civil service reform made up the 1990s package of World Bank driven reforms that were supposed to deliver good governance. Hence, the decentralisation policy in Uganda had both home grown and exogenous components.

<sup>49</sup> LGA, Section 2 (b) and (c).

The Act prescribes a two-tier system of local government. The district/city / municipal council as the apex local government and the sub-county/division council as the lower local government.<sup>50</sup> The council is “the highest political authority within the area of its jurisdiction.”<sup>51</sup> The council chairperson and councillors are elected by universal adult suffrage.<sup>52</sup> The composition of the councils is adequately representative. The councils are given wide powers and functions, including the power to monitor employees’ performance of their functions,<sup>53</sup> the power to make bye-laws,<sup>54</sup> and planning powers.<sup>55</sup> The Act also prescribes administrative units for lower levels down to the village, with a representative council at each level.<sup>56</sup> While under the Act these units have executive authority, they also exercise judicial power under the Local Council Courts Act<sup>57</sup>

It can therefore be said that at least on paper, the Act provides a framework for the involvement of the people in choosing their own leaders. Ideally, this structure could then be used by the people to enforce accountability and also to safeguard their rights and interests. At the same time, however, the Act confers on local governments wide-ranging authority which is capable of being abused, and it is doubtful whether the structure it sets out has an inbuilt mechanism for checking abuses by the local government officials. We now proceed to examine how this framework actually operates on the ground in the sample districts.

#### **IV. THE STATE OF CIVIL AND POLITICAL RIGHTS**

The civil and political rights recognised under Chapter 4 of the 1995 Constitution, and under the UDHR and the ICCPR include the right to life, the right to personal liberty, the right to dignity and physical integrity (prohibition of slavery, torture and related ills), the right to a fair hearing, the right to freedoms of expression, association and assembly, freedom of movement, freedom of conscience, thought and opinion and, the right to participate in the governance and politics of one’s country and, equality before the law and protection from discrimination. In the following pages, we consider some of those civil and political rights that have particular resonance within a decentralized system.

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<sup>50</sup> LGA, Section 3.

<sup>51</sup> *Id.*, Section 9.

<sup>52</sup> *Id.*, Section 111.

<sup>53</sup> *Id.*, Section 30 (6).

<sup>54</sup> *Id.*, Sections 38 and 39.

<sup>55</sup> *Id.*, Sections 35 – 37.

<sup>56</sup> *Id.*, Part v.

<sup>57</sup> Act 13 of 2006, which came into force on 8<sup>th</sup> June 2006, repealed the Executive Committees (Judicial Powers) Act, Cap. 8 and re-named the courts Local Council (LC) Courts. Under Cap.8 the courts were known as Executive Committee (EC) Courts. For detailed examination of the operation and challenges of the erstwhile RC Courts, now LC Courts, see Barya & Oloka-Onyango, 1994, Barya 1993 and Tusasirwe 2003.

#### **4.1 The Right to Participation**

Article 38(1) of the 1995 Constitution provides that every Ugandan citizen has a right to participate in the affairs of government, either individually or through his or her representative in accordance with the law.<sup>58</sup> In terms of legislation, this provision has been given meaning not only through the various electoral laws, which enable all adult citizens to participate in choosing their representatives but also through the LGA and the framework it creates. Supporters of the LC system point out that its biggest contribution was in delivering participatory democracy. They point out that the LC system is “a system of governance in which the people are continuously involved in governing their own communities and making decisions that affect their daily lives.”<sup>59</sup>

Other scholars have been less enthusiastic. Ingrid Burkey, for example, while dealing with the pre-1997 structure (when members of the lower councils elected representatives to upper councils from their own number), pointed out that because the representatives on the upper councils were not directly elected by universal adult suffrage, they could ignore the inputs from below.<sup>60</sup> On the right of recall as a means of the voters controlling the elected leaders, Burkey points out the obvious, that recall is a theoretical possibility which is extremely difficult to exercise in practice, and that in fact she had found no record of it having been successfully attempted.

In relation to the cardinal expression of the right to participate, namely, the right to vote, it is important to point out that whereas elections were held for District and sub-county councils in 2006, the elections for the lower councils have not yet been carried out countrywide. The mandate of the existing councils expired nearly two years ago but, in the absence of local council elections, the existing members have happily carried on without renewing their mandate. In the circumstances it cannot be said that when such councillors make decisions or take certain actions, the ordinary people have thereby “participated” in those decisions and actions through “their chosen representatives.” Besides, as Hajji Nasser Takuba, the Kawempe Division Chairman pointed out, these Lower local council officials no longer consider themselves beholden to the electorate and do not seem to expect to answer to the higher administrative units either, but seem to derive their authority from an external source.<sup>61</sup>

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<sup>58</sup> This provision echoes Article 21 of UDHR and Article 25 (a) of the ICCPR.

<sup>59</sup> Kabwegyere, 2000, at 71.

<sup>60</sup> Burkey, 1991. It should be noted that sub-county and district councillors are now elected by universal adult suffrage, those as the parish are chosen by the village councillors from among their number.

<sup>61</sup> Interview on 2<sup>nd</sup> March 2007.

In both Gulu and Kayunga, the leaders readily admit that mainly because of the cultural mindset, women do not actively participate in political and administrative discussions and decision-making even when the laws and structures allow them to. Thus men tend to dominate, whether the councils are sitting as administrative units or as judicial organs. This is in spite of the provisions of Sections 10, 16 (3) and 47 (3) of the LGA, which specifically require at least one-third of the posts at these levels to be occupied by women.

They pointed out, however, that the situation of women's participation has generally improved in the urban centres, as opposed to the rural countryside. Yet even in Kampala, an urban area, interviewers were unanimous in the observation that women's participation, especially in entertaining complaints and resolving disputes was minimal. The youth used to participate through the youth councils, which have lately been scrapped. In the absence of youth councils, the youth are required to participate through the general structures where they are disadvantaged by lack of experience, exposure, financial resources and confidence.

On the other hand, it was found that in all three districts, local people enthusiastically participated in judicial proceedings before EC/LC courts, but not in meetings called to address development and political/administrative issues. Indeed, it emerged that in all the districts, locals attend and even actively participate in putting questions to parties to disputes in their capacity as *bataka* or citizens. In the case of Kampala, this is more so in the slums and city outskirts, while residents of the "up-town" sections tend to have little to do with EC/LC's, even as courts.

On participation in electoral processes, it emerged that there was a more enthusiastic turn out by the population in Gulu than in Kayunga and Kampala. The interviewees in Gulu explained that the massive turn out was because the people—most of whom have been in IDP camps for over ten years—were eager to change the current political leadership which they blame for their woes, in the hope that their lot would then improve. Overall, the local residents in all the districts tend to be very active during electoral periods but return to their daily lives and leave the elected leaders to do pretty much as they please thereafter.

One councillor in Kayunga admitted that there is a problem of members of minority nationalities being marginalized in terms of political participation. Thus the Basoga, Bagisu, Banyala and Acholi tend to keep out of the area politics, for fear of provoking conflict with the majority Baganda. In Gulu, the interviewees insisted that there were no such minorities, although official records show the contrary. In the case of Kampala, the mix of nationalities seems to be such that apart from isolated cases, it is generally possible for a member of any nationality to participate in the political and civic life of the community without being overtly isolated. From this, one can conclude that increased exposure tends to undermine gender and ethnic differences as barriers to civic and political participation.

## **4.2 Access to Justice**

Article 28 of the constitution deals with the right to a fair hearing which is the right to have civil or criminal matters heard and determined through a fair, speedy and public hearing before an impartial and independent court or tribunal established by law. The Article makes far-reaching prescriptions intended to ensure the enjoyment of that right. Article 126 also lays down principles that are to govern the administration of justice, to ensure that it is fair, effective and meaningful. It is the implementation of these broad principles that would ensure access to justice. The present study considered the question of access to justice as its central component. Access to justice, in its broad sense is not just limited to availability of dispute resolution institutions, but also covers their accessibility as well as the quality of the services they deliver, which includes the fairness of the processes, their speed and efficiency in disposing of disputes, and the practicalities of enforcing the decisions of the dispute resolution fora.<sup>62</sup>

The communities under study have various options in their search for justice. These include the formal courts, specialised tribunals like the Uganda Human Rights Commission, and the EC/LC Courts. Sometimes, however, they seek justice from non-judicial institutions, including the police, the armed forces and administrators.

### **4.2.1 The Formal Courts**

Although the courts of judicature are established and operate under Chapter 8 of the 1995 Constitution, the nitty-gritty of their operations are governed by the Judicature Act in the case of the superior courts and the Magistrates Courts Act, in the case of the subordinate courts. The Supreme Court and the Court of Appeal sit in Kampala. The High Court, on the other hand, is mandated to hold sessions in various areas of Uganda designated as circuits.<sup>63</sup> These circuits handle both civil and criminal matters and are meant to render justice more accessible. Under this arrangement, there is supposed to be resident judge in Gulu handling matters for the entire Acholi-Lango sub-region. For criminal matters the Mukono circuit takes care of Kayunga.

Gulu has a Chief Magistrate, a Magistrate Grade 1 and a number of Grade II Magistrates who are supposed to be spread all over the district.<sup>64</sup> Kayunga has a Grade 1 Magistrate. Kampala, apart from the High Court, has Chief Magistrates at Mengo (civil), Nakawa (both civil and criminal) and Buganda Road (criminal). There are also lower magistrates at the said courts and also at City Hall, Makindye, Luzira, Mwanga II Road, Kiira Road, Kireka, Kasangati and Nabweru.<sup>65</sup>

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<sup>62</sup> See LABF, UNDP/UNCDF, at 1.

<sup>63</sup> Judicature Act, Section 19.

<sup>64</sup> See the Magistrates Courts (Magisterial Areas) Instrument, S.I. 23 of 1997.

<sup>65</sup> The latter two fall under Nakawa Court, but are actually outside Kampala District.

The courts at Kampala handle a huge load of cases both civil and criminal. The table below shows the performance of the DPP stations at the various courts under review during the year 2005.

**TABLE 1**

**CRIMINAL PROSECUTIONS AT VARIOUS MAGISTRATES' COURTS**

<b>STATION</b>	<b>MAKINDYE</b>	<b>CITY HALL</b>	<b>NAKAWA</b>	<b>BUGANDA ROAD</b>	<b>BUGANDA ROAD</b>	<b>GULU</b>	<b>KAYUNGA</b>
Total Registered	5,766	1,170	1,591	5,141	12,710	1,085	543
Convicted	190	0	65	662	128	65	29
Dismissed	247	27	13	148	335	14	14
Acquitted	16	0	1	56	23	4	2
Withdrawn	11	0	7	16	28	1	0
Sanctioned	1,825	802	836	2,086	1,147	746	62
Under hearing	824	0	232	687	4,232	12	381
Committed	24	0	0	34	21	45	0
Appealed	3	0	0	10	0	0	0
Revised	1,525	13	-	50	0	0	-
Closed, no evidence	499	219	117	488	241	-	-
Further inquiry	605	114	244	24	24	143	33

**Source:** *Directorate of Public Prosecutions, 2005*

The above statistics paint an interesting picture. In the first place, while the total “catchment” population served by the respective DPP stations is more or less the same, the number of cases reported for all the stations in Kampala is many times higher than that for both Gulu and Kayunga. This means either that the crime rate in Kampala is high, possibly a result of the urban setting, or that a high percentage of the crimes committed get reported, followed up and the culprits are held and prosecuted. Alternatively, it could mean that Gulu and Kayunga use alternative

methods of tackling criminal matters or, that the victims of crime in those districts do not consider reporting to government law-enforcement agencies as a viable source of relief. Interviews with stake-holders revealed that all four factors play a role.

The second significant factor is that there is an extremely low level of convictions all through, compared to the dismissals, acquittals, closures for lack of evidence and those sent for further inquiry. This could be due to at least three factors, namely, poor handling by prosecutors, (which in turn could be due to under-facilitation, poor training, corruption and excessive work-load), false arrests (meaning that the culprits should not have been booked in the first place, a common occurrence where police simply rounds up crowds of suspects during swoops) or faulty jurisprudence (a high burden and standard of proof, presumption of innocence, the accused person's right to remain silent, or the need for corroborative evidence). Again studies conducted by other researchers show that all these factors play a role.<sup>66</sup>

The same picture—of a bigger percentage of the population resorting to courts in Kampala than in Gulu and Kayunga, and of more cases being either withdrawn or lost than those won—is replicated in the civil courts. The perceptions of the people towards formal courts of law were very revealing. Civil society actors, including leaders of CBOs in Gulu especially revealed that there is a lot of intimidation of ordinary people by civilian leaders and military/security persons, calculated to discourage the reporting of human rights violations. Pressure is thus mounted on the people to either drop their complaints or have them solved locally by way of mediation, adjudication or by LCs, camp leaders or commanders of military units. Residents pointed fingers of accusation at a notorious army unit, the 11<sup>th</sup> Battalion of the UPDF, which routinely committed atrocities until there was a public uproar. The army leadership decided to constantly rotate the unit across Gulu and Kitgum, rather than keeping them stationed at one point.

Information available suggests that in settled rural populations, as in Kayunga, crime rates are low and crimes are of a petty nature (interfering with land boundaries, criminal trespass, affrays, threatening violence, assaults). On the other hand, in heavily settled areas such as towns (especially the slums of Kampala) and IDP camps, crime rates are high and increasing, and the crimes tend to be more serious. In Gulu, for example, high rates of homicide, causing grievous bodily harm, defilement and rape were reported. On the other hand these, apart from defilement, are extremely rare in rural areas. The leaders attribute this to poverty, the collapse of social structures and the atmosphere of lawlessness and impunity that prevails in the slums and IDP camps. Addressing the problem of rape, the sub-county chief of Paicho complained that “LCs send letters of complaint to higher officials

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<sup>66</sup> See, for example, the findings of Barya and Rutabajuuka, 2002.



for action but in most cases, the victims are discharged within four or five days. These are common cases in IDP camps but the culprits come back to us immediately.”<sup>67</sup>

The Chief Magistrate of Gulu agreed that indeed the IDP lifestyle lent itself to a high incidence of crime, but maintained that the courts would have coped, had it not been that for several years, there had been no High Court criminal session to handle capital offences.<sup>68</sup> He lamented the “dismal failure” in delivering juvenile justice, blaming the local governments which have the responsibility for running the juvenile justice system.<sup>69</sup>

Kayunga is a relative new district, created about only four years ago. It was declared a district as a result of the agitation by local politicians, claiming that a district would bring services closer to the people. Yet it is now faced with an acute shortage of personnel making it difficult to deliver the promised services. As of November 2006, the prosecutor’s office was less than a year old. Previously, prosecutors came from Mukono District and operated on a part-time basis. The interviewees in Kayunga complained of delays in the criminal justice system, especially in the prosecution of capital offences. They identified the causes as a lack of personnel, especially police, to carry out investigations, and inadequate facilitation of police, the prosecutor’s office and the court. They were unanimous in the view that whereas the introduction of a Grade 1 Magistrate and resident prosecutors were certainly tangible benefits arising from decentralisation, the formal judiciary remains highly centralised and generally detached from the people. They pointed out that there is minimum participation in the work of the judiciary by ordinary people. Another reality which emerged was that most people are scared stiff of courts, magistrates, prosecutors and police. They almost never take any complaints to them. Instead, they go to the local councils which then forward the matters which are beyond their jurisdiction to police or the formal courts.

It is not only the courts and prosecution department that have remained highly centralised. Police and prisons, too, are controlled from the centre. Indeed, the leaders pointed out that police only has a presence in the urban areas. In the rural areas, Local Defence Units and, until recently, local administration police are responsible for most policing functions. Their efficiency, not to mention respect for the human rights of the suspects they deal with, leaves a lot to be desired. Moreover, they have now been subsumed and are controlled by the mainstream police,<sup>70</sup> meaning that the local governments have little to do with them. When they mishandle law and order matters, the local government cannot decisively

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<sup>67</sup> Interview with the sub-county chief, Paicho sub-county, 7<sup>th</sup> August, 2006.

<sup>68</sup> Interview with Mr. Tom Chemtai, Chief Magistrate, Gulu, on 8<sup>th</sup> August, 2006.

<sup>69</sup> Id.

<sup>70</sup> Interview with Mr. Moses Mayego, District Police Commander, Kayunga and also with Mr. Yasin Ndimwibo, the District Police Commander, Gulu.intervene, yet the police, which is supposed to supervise them, is thin on the ground.

#### **4.2.2 Local Council (LC) / Executive Committee (EC) Courts**

Local Council Courts are central to the efforts to enable ordinary Ugandans access justice. The thinking that informed the establishment of LC courts, and the philosophy underpinning them rhyme with the letter and spirit of Article 126 of the 1995 Constitution. This partly explains their success, and the fact that they are the most widely used dispute resolution fora, given that over 80% of the population of Uganda use them to settle disputes.<sup>71</sup>

One would have thought that Kampala people are more receptive of the formal courts and have little to do with LC Courts. This is in fact not the case. Most people interviewed, especially from the less affluent sections of the city, such as the slums and poorer outskirts tended to have more faith in LC courts. They feel that because of their technicalities and bureaucracy, the formal courts should only get involved when the LC Courts have failed to resolve the disputes. They commended LC Courts for simplifying the justice systems. In particular, ordinary people have found relief in having proceedings conducted in vernacular languages. They point out that the bulk of land disputes are settled locally without resort to the formal courts. Indeed, most interviewees in Kampala did not even think it was necessary to extend the jurisdiction of LC courts, they felt that the courts already cover a lot of ground, the legal limitations to their jurisdiction notwithstanding..

In all three districts the public perception of the formal courts vis-a vis LC Courts is not rosy. In the case of Gulu, there was consensus that at least before people were herded into IDP camps, LCs were doing a good job in administering justice at the lower levels. The ordinary people find them accessible and even effective in handling minor claims. Indeed, even in the IDP camps, these courts still have a role albeit a severely reduced one.

*LC Courts are important and have really helped the community. They are near, convenient and accessible. People just walk to the chairman's place. They are willing to talk and they don't hide information. You get many witnesses. People are more free and open.*<sup>72</sup>

Likewise in Kayunga, the general feeling is that whatever their faults, at least LC courts are accessible and they conduct business in a manner the people can understand. Overall, there is no doubt that the ordinary people appreciate LC courts as an important institution in their lives expect them to continue to have a role in the administration of justice, especially where minor cases are concerned, their faults and limitations notwithstanding.

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<sup>71</sup> This was found out in a baseline survey on the operations of LC Courts conducted in 1998 and confirmed a criminal justice baseline survey conducted in 2001/2002. See LABF, UNDP/UNCDF, 2006, at 2.

<sup>72</sup> Interview with Oketa Santa, Councillor, Gulu.

The reasons given for preferring LC Courts to the formal ones include the fact that LCs live and operate within the community and so have a clear understanding of the disputes brought before them, use of simple procedure and local languages, the fact that they usually have and use background information and the perception that they are cheaper and faster.<sup>73</sup>

#### 4.2.3 The Limitations of LC/EC Courts.

The rosy views of LC Courts, however, were interspersed with cautious criticisms. Earlier studies have identified corruption and bribery, lack of training, cultural biases against sections of the population such as women, nepotism and cronyism, inadequate facilitation (including lack of remuneration), poor working relations with other stake-holders such as police, the existence of an ambiguous remedies regime or enforcement mechanism and the fear of backlash from the persons against whom LC officials make decisions as some of the problems which confront the LC Court system.<sup>74</sup> The present study confirmed that these limitations are still very evident.

To begin with, people in all three districts agree that the advent of multi-party politics means the LCs are no longer free of bias:

*Under the multi-party system, the people of one party will not support the work done by the other. Things will not work properly. Ugandans were not sensitised through seminars so that people understand what multiparty is about.*<sup>75</sup>

Other respondents explained that most officials at lower levels find it difficult to decide against people of their own party and that consequently, it is increasingly hard to reconcile parties to disputes. EC/LC Courts also became victims of their own success. Their popularity has resulted in people requiring them to handle matters which are way beyond their jurisdiction and which they apparently regularly do. Respondents in Gulu and Kayunga said sometimes the courts even try cases of defilement. Thirdly, the exercise of judicial as well as administrative power has made chairmen really powerful and abusive of their offices. Interviews disclosed that in some cases, chairpersons not only dominate proceedings but they actually sit alone to hear cases and pass verdicts, exactly like magistrates.<sup>76</sup>

At the same time, EC/LC Courts do not take appeals kindly. In both Kayunga and Gulu, the feeling was widespread that when one appeals the verdict of an LC Court, one is viewed as a “big-head”, as having challenged the authority of the

<sup>73</sup> LABF, UNDP/UNCDF, 2006 at 11.

<sup>74</sup> id. at 22-26.

<sup>75</sup> Interview with Agnes Odong, Councillor, on 8<sup>th</sup> August, 2006.

<sup>76</sup> According to Councillors interviewed in Gulu and Kayunga, such as Martin Ojara, Councillor for Berdege, Gulu, this is quite common, especially the further one goes outside town, into the countryside.

council.<sup>77</sup> In such a case, the slighted chairperson will not rest until s/he has taught the culprit a lesson in respect. There is also ample evidence not only that EC/LC courts, like formal courts, are much more favourable to the rich, but that the “court fees” they charge depends on one’s station in life. They then make every effort to accommodate those who pay more substantial fees. This is exacerbated by the fact that LCs are not paid for handling judicial work.

An earlier study conducted by LABF and UNDP/UNCDF found that this is a nationwide problem. That not only do the fees charged vary from one LC to another, but that in all cases, they exceed the 500/= prescribed by the RC Courts (Fees) Regulations of 1990.<sup>78</sup> Unless this trend is checked it will be a matter of time before LC Courts cease to be the cheap dispute resolution forum they were meant to be.

In addition, the jurisdiction of the courts is severally limited by statute. In fact they have virtually no criminal jurisdiction to write home about. Yet many petty crimes could easily be disposed of at that level without risking a crisis, instead of waiting for the formal courts to get rid of the decades-old backlog of cases. The Local Council Courts Act, 2006 has now substantially increased the pecuniary jurisdiction of the courts as shown below, but their subject-matter jurisdiction remains severely restricted.

A number of interviewees, including the Kawempe Division Mayor, complained that often when LC/EC courts make their decisions, their implementation is tampered with by other centres of power, including RDCs, police and other central government representatives and agents of the ruling party. Finally, it has already been pointed out that in fact the mandate of lower local councils expired more than a year ago, yet many LCs continue to hear cases. At the end of the day, the lack of knowledge about the law and of rights in general continues to be the greatest hinderance in accessing justice.

#### **4.2.4 The Local Council Courts Act, 2006**

The Act came into force on 8<sup>th</sup> June 2006. It repealed the Executive Committees (Judicial Powers) Act, Cap.8, which was a rendition of the Resistance Committees (Judicial Powers) Statute, 1988. Apart from restoring to the courts their more familiar title (as LC Courts), the Act took in stride the changes that had occurred over the years. It took into account the differences between rural LCs and their urban counterparts, giving a different composition for each.<sup>79</sup> It took cognisance of the provisions of the Land Act, which conferred jurisdiction on LC Courts matters relating to land, specified under those Acts. It amended the Children Act to streamline the matters relating to children which the LC courts may handle.

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<sup>77</sup> Interview with Nyeko Kenneth, Opinion Leader, Gulu, with who other interviewees concurred.

<sup>78</sup> LABF, UNDP/UNCDF, 2006 16.

<sup>79</sup> Section 4.

More importantly, the Local Council Courts Act increased the civil pecuniary jurisdiction of the LC courts from five thousand shillings to one hundred currency points (2,000,000/=),<sup>80</sup> in effect putting them at par with Magistrates Grade I, though of course the range of civil matters in respect of which this jurisdiction may be exercised is limited, compared to that of the magistrates' courts.<sup>81</sup> Under section 24, the courts are enjoined to adhere to the rules of natural justice in the conduct of cases. The Executive Committees (Judicial Powers) Act had vested supervisory powers over the EC courts in the High Court, although the marginal note to the relevant section referred to "Chief Magistrate's supervisory powers."<sup>82</sup> This anomaly has now been rectified. Under the new law, supervision is exercised by the Chief Magistrate.<sup>83</sup>

Apart from the foregoing, the Act retained the provisions of its predecessor relating to the remedies regime, the appeals system and rules of conduct of the court. Whereas the Local Council Courts Act has catered for some of the changes that have taken place in relation to the judicial role of Local Councils, the framers of the Act missed an opportunity to address some of the limitations listed above, for example the challenge posed by the transition to a multi-party system, the intrusion into the LCs judicial function by central government executives, and the restricted scope of the remedies regime of the jurisdiction of the courts. The fact remains, however, that of the benefits of devolution of power since 1986, LC/EC Courts are and have been the most visible, the limitations notwithstanding. Given that the law has not yet been put into practice, and also in light of the fact that the lower level councils are yet to be elected, there is still a need to evaluate the extent to which the new legislation will effectively address the problems alluded to.

#### **4.2.5 UHRC Northern Region Office**

The third important player, in as far as access to justice is concerned, is the Uganda Human Rights Commission, Northern Region Office. The office was opened in 1998 to oversee the sub-regions of West Nile, Acholi and Lango. At the time of the field-visit, Mr. Francis Ogwal had been the head of the office since 2004. Under the Uganda Human Rights Commission Act, the mandate of the UHRC, and therefore of the Regional office includes but goes beyond hearing and determining cases relating to abuse of human rights.<sup>84</sup> The office receives and deals with complaints of human rights abuses in the ordinary way, by registration of the complaint and assessing the same in accordance with the provisions of the UHRC Act, and then going ahead to carry out investigations. Depending on its findings, the office either conducts mediation leading to signature of a memorandum

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<sup>80</sup> Section 10 (2) (a).

<sup>81</sup> According to the Second Schedule to the Act, this jurisdiction can only be exercised in respect of debts, contracts, assault and battery, conversion, damage to property and trespass.

<sup>82</sup> Section 32 of Cap. 8.

<sup>83</sup> Section 40 of Act 13/2006.

<sup>84</sup> See UHRC Act, Section 7.

of understanding or—if a tribunal hearing is deemed necessary—it is arranged and is presided over by a visiting Commissioner.

The awards given depend on the nature of the infringement and the surrounding circumstances. The vast majority of the reported violations involve central and local government agents (UPDF, police, chiefs, LDUs, school teachers and administrators and prisons officers). According to Ogwal, the Local Governments make serious efforts to pay awards made, while central government rarely does.<sup>85</sup> The office mainly receives complaints relating to the violation of civil and political rights, especially extra-judicial killings and torture both by rebels and errant Government soldiers; deprivation of liberty through illegal arrests and detentions as well as abductions, and interference with the freedoms of association and assembly—especially when political parties had just been formed, when some groups were allowed to hold meetings while others were not. These violations were attributed to the nature of the armed conflict taking place in the region. Other complaints involve the widespread deprivation of property by soldiers and powerful civilians. There are also cases of the refusal to pay employees' wages, and of economic exploitation, especially in the construction sector involving little or no remuneration and the use of child labour. The respondent reported the widespread sexual abuse of women, defilement and rape, predominantly by civilians in IDP camps, but also by soldiers.<sup>86</sup>

On relations with other institutions, Ogwal revealed that there is generally good rapport, except that on occasion, military commanders have refused to allow UHRC staff to visit military detention facilities. To improve relations between civilians and the military, civil/military co-operation centres have been set up in Kitgum, Gulu, Pader and Lira, with the help of donors. Their purpose is to receive complaints that are civilian and military related. For example, soldiers offended by the civilians can report to these centres and vice versa. Though not properly facilitated, the centres have played a vital role in smoothing-out relations between civilians and the military.

The major problems faced by the UHRC office include limited funding and other facilitation, understaffing, and a general lack of awareness and knowledge of human rights especially in the IDP camps. A number of violations take place yet people do not know their rights and where to report the violations. The UHRC Northern Region Office has worked hand in hand with other human rights NGOs under their umbrella organisation to retain paralegals who work with the population and assist in reporting violations and conducting human rights education programmes. In addition, decentralizing the operations of UHRC so as to make its services accessible beyond the regional officers remains a distant dream.

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<sup>85</sup> Interview with Mr. Francis Ogwal, the Head of UHRC Northern Region Office.

<sup>86</sup> Mr. Ogwal estimated that about 80% of the sexual abuses against women in IDP camps are perpetrated by civilians and only about 20% are traceable to the military.

#### **4.2.6 Other Actors**

Because of the peculiar situation in Gulu, new power centres have emerged, some of which seek to exercise judicial or quasi-judicial power. For example in the IDP camps, Camp Leaders are very powerful, sometimes usurping the authority, not just of Local Councils but also of chiefs. Likewise, soldiers often interfere in ongoing disputes and try to impose their own solutions. A tendency has reportedly emerged of people viewing the military units which protect the camps as the real centres of power, with the result that they prefer to take their complaints to the commanders of such units, who themselves do little to discourage such tendencies.<sup>87</sup> Consequently, sometimes the military hijacks the authority of the LCs, chiefs and other civic leaders.

#### **4.3 *The Right to Life, Liberty, Human Dignity and Physical Integrity***

Article 22 of the Constitution recognises the all-important right to life and prohibits the arbitrary deprivation of life. Other provisions of the Constitution recognise the right to human dignity and prohibit actions which would interfere with the physical integrity of the human person. In this regard, torture and cruel, inhuman and degrading treatment are prohibited,<sup>88</sup> so too are slavery, servitude and forced labour.<sup>89</sup> The situation in Gulu and other parts of northern Uganda has literally made a mockery of these rights. Arbitrary taking away of lives, through extra-judicial killings, has been going on routinely. As our respondents testified, state agents and LRA rebels are both to blame.<sup>90</sup> Indeed, the state takes the blame even when outlaws wreck havoc because it is the responsibility of the state to ensure that the citizenry are protected. It is no defence that the rebels are vicious criminals or that they have the sympathy of sections of the local population.

In addition to the direct killings, there has been massive suffering and preventable loss of lives, especially infant mortality, through poor or non-existent medical services, malnutrition, a lack of safe water, diseases resulting from unsanitary conditions, congestion and other hazards characteristic of camp life. Of course the very fact of keeping hundreds of thousands of people in IDP camps for years under severely restrictive conditions and virtual military custody is grossly inconsistent with the right to liberty. It is no consolation that they are kept there for their own security because, as already stated, the state ultimately has the obligation to protect its citizens in normal non-curfew conditions.

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<sup>87</sup> Interview with Mr. Opira Otto, Parish Chief.

<sup>88</sup> Article 24.

<sup>89</sup> Article 25.

<sup>90</sup> Nearly all the persons interviewed in Gulu, other than the RDC were unanimous in this respect.

Apart from the killings, there have been widespread abductions by the rebels on the one hand and prolonged detentions of captured rebel suspects and suspected rebel collaborators by the military on the other. Torture and mutilations on a horrifying scale have been documented by numerous studies. Olara Otunnu<sup>91</sup> has described what is happening in the Acholi sub-region as a genocide.<sup>92</sup> In a study of this nature, it is not possible to fully capture the scale of the violations that have taken place in Acholiland. Suffice it to say that they have been considerable.

According to the Director of Human Rights Focus (HURIFO), a Gulu based NGO, and representatives of other human rights NGOs who were interviewed during this study, they have either witnessed or receive numerous reports of extra-judicial killings including firing squads by the military while people were forced to watch, manhandling of suspected rebels and rebel collaborators by police and the military, and other related ills.<sup>93</sup> At the time of this investigation, HURIFO was conducting a total of 14 cases of torture in the courts, with four cases having been decided in favour of the victims. The regional office of the Uganda Human Rights Commission is also handling several cases of torture.<sup>94</sup>

As a result of the armed conflict, Gulu has missed out on most of the benefits of decentralisation, such as they were. As one Councillor painfully stated, “the people of Gulu have never tasted decentralisation; for them it is just a story.”<sup>95</sup> In such a situation, it is accurate to say that decentralisation has had only a minimal impact on the state of this aspect of civil and political rights. It is of course true that decentralisation involved the empowerment of local leaders. It would then have been expected that they would use their powers to prevent the abuse of the rights of their people. However, the reality is that in a situation of armed conflict, with rebels roaming the territory and the military hunting for them in the communities, it would be hard for a village councillor to interfere in military operations in order to prevent abuses. To do so would be to invite the wrath of the men in uniform. We found that only on rare occasions have the people been able to confront military commanders about abuses by their subordinates.<sup>96</sup> On a positive note, it was noted that abuses have been scaled down lately as the armed conflict entered a lull. With tensions going down, it has reportedly become increasingly possible for local leaders to expose misconduct and demand remedial action.

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<sup>91</sup> Former UN Special Representative for Children in Armed Conflict.

<sup>92</sup> *Id.*

<sup>93</sup> Disclosed during focus group discussion at Gulu on 8<sup>th</sup> August, 2006.

<sup>94</sup> Interview with Mr. Ogwal, *op.cit.*

<sup>95</sup> Kerubino Ojok, Councillor. Col. Walter Ochola, the Resident District Commissioner, Gulu, was also of the same view.

<sup>96</sup> According to Mr. Martin Ojara, the Speaker, Gulu District Council, people are increasingly assertive of their rights. He attributes this to activism on the part of human rights NGOs and UHRC.



The situation in the rest of our area of study is largely different. Torture, but on a much smaller scale was reported to occur from time to time in police facilities. In the case of Kampala, state attorneys and LCs mentioned cases of torture of suspects by the Violent Crime Crack Unit (VCCU) of the police and high-handed violent arrests effected by the Joint Anti-Terrorism Task Force (JATT).<sup>97</sup> There are also cases of mistreatment of members of the public by the Police during arrests and by law enforcement officers of KCC when dealing with unlicensed traders and street vendors.<sup>98</sup> The long drawn-out saga, of the continued incarceration of the 22 PRA suspects for more than a year after they were granted bail, is a clear case of the unlawful deprivation of liberty.

#### ***4.4 Freedom of Association, Expression and Assembly and Access to Information***

The respondents reported that the atmosphere in the 2006 elections was relatively more relaxed than in 2001. This was the case in all three districts. The introduction of multi-party politics widened the avenues for political participation and expression. In Gulu, people were initially cynical about politics as they reportedly did not see anything in it for them. Eventually, however, they sought to use the elections to bring about a change in their fortunes. Consequently, people, including women and the youth were very active during the campaigns and elections. One veteran politician captured the mood as follows:

*People in the camps (initially) did not see the need for politics. But they later actively participated in the elections in all the processes, but their main interest was somebody who can get them out of those camps. People wanted change. They also say no tampering with land.*<sup>99</sup>

Not surprisingly, the people of Gulu overwhelmingly voted against the NRM in both the presidential and parliamentary elections as well as those for the district and sub-county local governments.

Another interesting finding was that there was minimal government interference with actual opposition campaigns in Gulu, even though it was clear that that the opposition was headed for a landslide. The politicians interviewed—the majority of whom are avowed members of the opposition—confirmed that outside military units, there was minimal rigging: “Each person voted the way they wanted. The elections here were more peaceful than in southern Uganda.”<sup>100</sup>

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<sup>97</sup> Interview with the Resident State Attorney and Magistrate Grade I, Nakawa.

<sup>98</sup> Interview with vendors of shoes and other accessories at Luwum Street, 5<sup>th</sup> March 2007.

<sup>99</sup> Councilor Kerubino Ojok.

<sup>100</sup> Id.

On the other hand, there is a widespread view that inside the barracks,

*Some officers performed their duties impartially but you could sense that lower ranking soldiers were being required to do what they didn't like. Ballot boxes from the barracks were heavily stuffed.*<sup>101</sup>

It also emerged that the people did not seem to appreciate the transition to multi-party politics and each side seemed to view the other as enemies not merely as opponents, and would threaten each other with dire consequences. This, it goes without saying, is an endemic problem in the whole country, one of the not so rosy legacies of movement-style politics.

Outside the campaign period, there is constant suppression of opposition voices under the security pretext. Hence, when MPs Okumu Reagan and Ocula were acquitted of the charges of murder that had been slapped against them, and they returned to their district, they sought to hold open-air prayers at Kaunda Ground in Gulu Municipality, but were firmly prevented from doing so by the Police and the army.<sup>102</sup>

In Kampala, the violation of freedom of association and assembly has been widespread. Opposition rallies are routinely blocked and demonstrations dispersed. Not even university students are allowed to demonstrate at campus. The increasingly common excuse for prohibiting lawful assembly is that it disrupts business in the city centre.<sup>103</sup> This justification cannot wash, considering that pro-NRM assemblies are never dispersed. Moreover, the Police recently dispersed a DP gathering and procession in Mpigi on the 26<sup>th</sup> of January, 2007, when there was no vibrant business to disrupt, given that the day was a public holiday.<sup>104</sup> In any case, disruptions always occur as a result of the Police violently interfering in otherwise peaceful assemblies, indiscriminately using tear gas, water cannons, batons and even live bullets on unarmed civilians.

The campaign and election period also exposed interesting realities in relation to press freedom, access to the Media and access to information. The inescapable finding was that the press was not free during the period of elections and even after. There are four prominent FM radio stations in Gulu, to wit Radio Omega, Radio Choice, Radio Pacis and Radio Maria. Radio Pacis and Radio Choice are independent while Omega is Government funded. Radio Maria is owned and operated by the Catholic Church and has little to do with politics. Other stations

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<sup>101</sup> Interview with Betty Kibotha, Woman Leader.

<sup>102</sup> Interview with Mr. James Otto of HURIFO on 9<sup>th</sup> August, 2006.

<sup>103</sup> This is the justification that was given by Mr. Edward Ochom, Police Spokesman, while appearing on a KFM talk-show on the 12<sup>th</sup> of March, 2007 and reiterated by Mr. Grace Turyagumanawe, Regional Police Commander, Kampala Extra.

<sup>104</sup> See *Daily Monitor*, 27<sup>th</sup> January, 2007 at 1 and 2.

of radio stations.

The most popular in the slums are the vernacular stations, such as CBS, Radio Simba, Sanyu, Super FM and numerous others while up-town with nationwide coverage can also be received. In the case of Kayunga, the radios most listened to are CBS and Radio Uganda. As for Kampala, there is a plethora Kampala tends to listen to stations such as Capital, KFM, BBC and Radio One. While radio is widely accessible, however, the interesting finding was that the majority of the listeners tend to be the youth, and they are mostly interested in music, only turning to news and talk-shows when matters of particular interest such as elections or the arrest of prominent politicians or other similar events are unfolding.

During the campaigns and elections, radio operators in Gulu were reportedly summoned for a security meeting where they were told they were not to broadcast anything without security clearance.<sup>105</sup> Thereafter, the security people had to edit every release before it could be broadcast. Eventually, journalists had to censor themselves to avoid landing in trouble.

Opposition politicians, including Dr. Kiiza Besigye, the FDC presidential candidate, were prevented from accessing and using the government-controlled media. However, the plot backfired. When it was realised that opposition politicians paid better and more promptly for airtime than their ruling party counterparts, the radio stations ended up having to grant them access.

Interference with radio broadcasting was much more subtle in Kampala and Kayunga. But the tendency of government-controlled media to “discourage”, if not outrightly turn away opposition politicians, and the mounting of overt and covert pressure on independent media, so as to force the proprietors to censor themselves, is evident.<sup>106</sup>

The point to note about all this is that political and administrative decentralisation has, fortuitously coincided with the mushrooming of private radio stations all over the country, but the policy of decentralisation has not necessarily galvanised the people against abuse of freedom of expression generally, and press freedom in particular. It has also not created any remarkable local capacity to resist state abuse of the people’s rights in this regard. The proliferation of private media, however, has made it much harder to suppress the flow of information, as the Gulu scenario demonstrates.

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<sup>105</sup> According to Mr. Martin Ojara, the Speaker, Gulu District Council.

<sup>106</sup> The Monitor has been closed for days in the past for its perceived “anti-government” stance. See generally, Onoria (2003).

As far as the press is concerned, As a result of widespread illiteracy in Gulu and Kayunga, the overwhelming majority of the ordinary people do not read newspapers, although there are both English language and vernacular newspapers on the market.<sup>107</sup> The culture of reading and relying on the press is more evident in Kampala than in either Gulu or Kayunga, and it is in Kampala that the press more overtly shapes opinion. Indeed, it is only in Kampala that the LCs pointed to the press as their major source of information. For Gulu and Kayunga, radio, official communications and word of mouth are the main sources.

## **V. THE INTERFACE BETWEEN DECENTRALISATION AND CIVIL AND POLITICAL RIGHTS**

Despite an overall improvement in Uganda's human rights situation since the 1970s and 1980s, there is a continuing tendency of the state and its agents to blatantly disregard civil and political rights. It has been argued that unlike economic, social and cultural rights, civil and political rights are really cost-free. It does not cost the state anything in order for it to refrain from killing its subjects, or to treat them humanely, or to allow them to express themselves, enjoy their liberties or assemble and associate lawfully. On the other hand the provision of education, health-care and food security would attract a cost.<sup>108</sup>

The considerations which informed the formulation and implementation of the decentralisation policy in Uganda had little to do with civil and political rights, the rhetoric about empowering the people notwithstanding. The main interest was really to ease the workload on the central government, which had reached crisis-point. In that sense, what was sought to be implemented was actually deconcentration, not devolution. Consequently, the intrusive hand of the central government—in particular the ministry of local government—remains very much in evidence. This also explains why it has not taken long for the central government's fear of losing control over the districts to be exposed. It is now evident that a creeping process of recentralisation is unfolding.

The central government, in an attack of populism, abolished graduated personal tax. While it is readily conceded that poll-tax, being a direct personal tax is globally unpopular and the methods of its enforcement have always been oppressive, the fact is that control over the collection and use of this tax had given local governments and lower units some real power. Its replacement with central government hand outs has given back to the latter the powers decentralisation was supposed to have ended. This is more so with conditional grants in respect of which central government prescribes exactly what the funds despatched to local governments are to be used on.

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<sup>107</sup> The newspapers in the former category include the *New Vision*, *The Daily Monitor* and *The Red Pepper*, while the vernacular papers include *Rupiny* in the case of Gulu, and *Bukedde* in the case of Kampala and Kayunga. *Orumuri* is also read by the Banyakore and Bakiga resident in Kampala.

<sup>108</sup> Senyonjo, 2003, at 5.

Secondly, the central government has now taken back the power to appoint the Chief Administrative Officers (CAO), the chief executives of the local governments. Then there is the continued interference of central government organs and agents in the conduct of local government elections. Moreover, central government ministries still have a decisive hand in the way certain basic services such as education and health are delivered at local the levels. In the meantime, the Resident District Commissioner, the District Internal Security Officer (DISO), the entire security and military apparatus, the police, the prisons service, all of which are central government institutions, continue to hold sway. Uganda Police has in fact absorbed the erstwhile Local Administration Police into its structures.<sup>109</sup> In particular, with the increased militarization of all aspects of life, including basic neighbourhood security, civil and political rights increasingly take the back seat. Governments have a legitimate interest in matters of defence and security, because it is their role not only to safeguard national sovereignty and territorial integrity, and also to keep law and order. However, when a government emphasises order at the expense of law, then civil and political rights are invariably compromised.

From the foregoing, there is no doubt that in some aspects, the situation of civil and political rights is substantially better than it was before the onset of decentralisation. What is not clear is whether these gains are because of or in spite of decentralisation. In its express provisions, the Local Governments Act is not exactly a charter of civil and political rights. The Act, however, could still have been used to put in place a local government system that if properly used, would have provided a reasonable instrument for the observance, promotion and protection of civil and political rights. The local government and lower administrative structures prescribed by the Act, for example, could have been used for empowerment purposes. Over time, the occupants of offices at these levels would also gain the confidence not only to participate in the civil and political life of their communities, but also to stand up to those who seek to abuse their rights and those of other members of their communities. The reservation of special seats for women under sections 10, 16 and 47 of the LGA were clearly a good starting point for ensuring the participation of women. But how come women still marginally participate in civic matters? It is therefore clear the people still minimally participate in their own governance despite rather than because of the provisions of the Act.

As regards access to justice, again the picture which emerges is that through the Resistance Council (later the LC) system, a framework was put in place that enabled ordinary people to access justice when they could not possibly have done so, at least not as easily, under the traditional system. The weaknesses and limitations of the LC/EC courts do not necessarily take away the essential benefits of popular justice, and yet they can be addressed through reforms.

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<sup>109</sup> Interview with Mr. Kajina, Special Branch Officer, Katwe Police Station.

When it comes to other civil and political rights we have shown that these are still being abused, in some instances massively so, in spite of decentralisation. It is submitted, however, that the decentralised system could have been used to prevent some of the abuses, in the first place through enlightening the population about their rights and, in the second, by using the decentralised structures for combating and redressing abuses. This would require participants in the decentralised governance to appreciate the importance of human rights so that they can then creatively use the structures to protect and promote human rights. It also requires educating the people generally not only about their rights but also how to safeguard and protect them.

Such an education cannot be an education in the formal sense. It involves systematically building an understanding of human rights into the culture and day-to-day lives of the people, and this cannot be done overnight at rallies, workshops or even in formal institutions of learning. Decentralisation would have been ideal for this purpose, in the sense that through it, human rights issues would have been built into the day-to-day business of governance, so that through practice and exposure, the people would appreciate that human rights issues are not the preserve of academics and activists, but are basic building blocks of a happy and prosperous society.

To the usual challenges of protecting and promoting human rights has been added a new dimension since 2006, namely, the transition to multi party politics. The need to tolerate dissenting views, even if they are in the minority has never been greater. In this respect, the notion of popular participation will have to be rethought, given that the party that wins an election under the multi-party system is entitled to monopolise political power. The LC/EC court may have lost its aura of impartiality, yet in matters of justice, perception is as important as reality. The competition for power along partisan lines provides an even greater temptation to emasculate dissenting views than under the so-called individual merit system. Indeed, the very idea of introducing pluralism in a society with a low level of human rights consciousness poses enormous challenges. But it would be wrong to suppress the demand for a multi-party system on the ground that the people are too backward to participate in pluralistic politics.

## **VI. RECOMMENDATIONS AND CONCLUSION**

The foregoing discourse has demonstrated that there is no shortage of international instruments dealing with civil and political rights to which Uganda is party. Likewise, the Bill of Rights in Chapter 4 of the 1995 Constitution is perhaps the most elaborate ever, providing for rights that are rarely found in national constitutions. These provisions were not meant to be the preserve of academics and human rights activists. They were intended to have life and to be applied to better the lot of the people to whom they relate. As it is, the ordinary Ugandan has little to do with the content of these laws. This is not what the situation was meant

to be like.

When it comes to the laws governing decentralisation, again the provisions of the LGA and its schedules may be short on provisions on human rights, but it is quite elaborate on the machinery for operating the decentralised system. The omission to deliberately provide for a rights-based approach to local government was unfortunate. However, the Act could still have been used to propagate, protect and promote human rights, rather than to minimize or eliminate them. The biggest problem has been not so much in the provisions as in the process of their implementation. With necessary reform and action, there is much that could still be realised from decentralisation, in terms of human rights in general and civil and political rights in particular. In this regard, we propose the following:

### **6.1 Access to Justice**

There is no doubt that one of the most significant achievements of decentralisation has been the RC/LC/EC courts system. The traditional judicial system, with its retinue of stern-faced, largely male, English-speaking magistrates, sly lawyers, corrupt prosecutors, wigged judges, stuffy court-rooms and brutal enforcers (police, bailiff, prison warders) would overwhelm the toughest of peasants and has over the decades proved itself incapable of meeting the aspirations of the ordinary people and the ends of justice as they see it. For them, the system remained alien, if not outrightly oppressive.

Thus, when the RC system came in and was widely accepted, it was not so much because the system was intrinsically good, but because the alternative was even more unacceptable. As pointed out in the foregoing discussion, the RC/LC/EC system has its own in-built weaknesses. Its biggest advantage, however, is that it is easily accessible to the ordinary individual. It is therefore necessary to address its limitations, so as to turn it into an even better instrument of delivering affordable, understandable, friendly and effective justice.

In the first place, the pecuniary jurisdiction of the EC courts could be extended from a paltry Ushs. 5,000/= to even 500,000/=, while their criminal jurisdiction could be extended beyond dealing with breaches of bye-laws and juvenile offenders<sup>110</sup> to include minor offences. The range of remedies they may grant can also be widened. Finally, the procedures for enforcement of EC court decisions need to be developed and simplified.

However, in order to extend the jurisdiction of the LC courts, there will be a need for a co-extensive process of educating executive committee members in the relevant substantive and procedural laws and the rules governing the administration of

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<sup>110</sup>The jurisdiction to handle juveniles was conferred relatively recently by the Children Act, 1996 (now Cap. 59).

court business, so that they appreciate the importance of such basic concepts as the requirement for natural justice, fair trial, presumption of innocence in criminal cases, the rights of accused persons, and the right of appeal. Fortunately, over the last twenty years, some basic experience in conducting trials has been developed and perfected in every village in the country. Any problems that the extension of the jurisdiction of LC courts may cause would be addressed through the appeals process and the supervisory role of the Chief Magistrates, but which would necessarily have to be more robust and properly facilitated.

Of course the LC courts cannot replace the traditional judiciary, which still has a vital role to play in the protection of human rights. It is necessary to facilitate up-country courts, put in place properly trained magistrates, and address the socio-economic factors which have made ordinary people apathetic towards the judiciary. At the same time, there is a need to properly train magistrates in human rights issues, including inculcating in them the tradition of judicial activism which is one way of giving effect to the letter and spirit of human rights instruments. Furthermore, courts need to be spread out to the remotest parts of the country. But most importantly, there is a need to take serious efforts to eliminate the vice of corruption in the judiciary. Most of these measures are already under consideration by the Justice Law and Order Sector (JLOS) and other initiatives being pursued within the judiciary.<sup>111</sup> They need to be supported and encouraged.

It is also necessary to put in place a simple but effective and meaningful remedies regime for both the traditional courts, for UHRC and the EC courts, so that people whose rights are abused get proper and prompt redress, whichever forum they may choose to go to.

## **6.2 Participatory Democracy**

The recent abolition of Youth Councils has taken away the most direct channel of participation in national politics that the youth had. To date, the youth are supposed to participate along with their more experienced and financially cushioned elders. Women are still entitled to occupy at least one-third of all seats on the councils and lower administrative units. As already observed, however, women simply fill the posts and are largely passive participants in the active deliberations of the councils. The causes of their non-participation being mainly cultural, can be addressed through education; by educating the women to break the cultural barriers and men to appreciate the importance of actively involving women rather than suppressing them.

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<sup>111</sup> The judiciary has in recent years pursued a number of reforms including the creating of four specialised divisions of the High Court, increasing the number of judicial officers at all levels, establishment of an internal Judicial Integrity Committee, revision of the code of conduct for judicial officers, putting in place five-year strategic plans, the chain-linked project and other, as to which, see Tumasirwe (2003).



We also made a finding that the majority of the rural population participate in the politics of their communities only during the elections and sit back thereafter. The solution to this is to make participation worth their while. The prevailing political culture and practices have forced the people to adopt a cynical attitude towards politics and politicians. Making politics meaningful to the people is a sure way of making them participate. They also need to see that their input will be taken on board. Involving the people in actual decision making is a legal requirement under the LGA, and there should be a sanction for not doing so. Of course educating the ordinary people to appreciate their rights and entitlements, so as to hold leaders to account would help to boost their confidence and thus enable them to participate more actively.

### **6.3 *Civil Rights, Civil Remedies***

The losses of lives in Gulu and the suppression of basic civil liberties in Kampala and Kayunga have little to do with decentralisation. The solutions to these therefore largely lie elsewhere. However, the political dynamics in Gulu have demonstrated that once the people are determined, no amount of central government coercion can suppress them. Indeed, it also shows that ordinary people acting unanimously can stand up to government and that by so doing, they can force the government to address their concerns. By overwhelmingly voting for the opposition, the people of the Acholi sub-region have forced the government to address the northern conflict and seek to end it by peaceful means. That it has taken the kind of horrors witnessed in northern Uganda over the last twenty years to force a determined effort to restore normalcy is a sad commentary on the politics of this country. Civil and political rights are so basic that it should not take widespread suffering to achieve them.

The limited access to information has to be addressed by widening access to education. Decentralisation has already made its contribution in this respect, through the role it plays in facilitating universal primary education (UPE). The information departments at the districts are almost dormant. They need to be revived to play their rightful roles. The strengthening of private media will also contribute towards increasing access to information, and rendering it harder for the state to dominate the airwaves and thereby suppress alternative views.

### **6.4 *Decentralisation of the Stake-Holders***

The local governments have been decentralised. But they are not the only stakeholders in the arena of civil and political rights. The problem with decentralisation did not go far enough, in the sense that some vital sectors continue to be controlled from the centre. The ministries of education and health continue to lord it over the operations of those sectors down to the lowest levels. The Police, the military and the prisons service continue to be controlled from the centre. As a matter of fact, local administration police, which used to be controlled by the local governments has now been absorbed into and is controlled by the central government police. In most areas, even LDUs are under the Police. These

cannot be deployed by the decentralised governments to safeguard their people's interests, except at the whim and instance of the central government. Yet these institutions impact heavily on the enjoyment of human rights.

The Uganda Human Rights Commission also needs to be decentralised beyond the regions. The important role played by the Northern region office demonstrates the great need for this. UHRC needs a presence at least at every sub-county. There is need for human rights watch-dogs at the lower levels. For a start, some existing offices can take on this role. Human rights NGOs and other civil society activists also need to be on the ground, and not to confine their activities to the safety of urban areas. That way, the watch-dogs of human rights will be in a position to look out for human rights. Without decentralising the Police, UHRC, civil society organisations dealing with human rights and the courts, the decentralised local government structures could easily turn into enclaves of oppression, and abuse the rights of the people unrestrained.

### **6.5 *Halt Recentralisation***

In the meantime, there are indications that the process of decentralisation has either lost momentum, or, in some vital areas, is even being reversed. The chief technocrat, chief policy implementor, at the district is the Chief Administrative Officer (CAO). Hitherto, the power to appoint CAOs lay with the district local government, through its district service commission. That power has since been withdrawn.

The authority to levy Graduated Personal Tax (GPT) was hitherto the main source of financial autonomy enjoyed by the local government, because they could predict, plan for and spend the revenue. Then, in one frenzied attack of populism the government got up one day during the presidential campaigns, and reduced the minimum GPT payable, before scrapping it altogether. Market dues were also scrapped. The grant from the central government supposed to replace this revenue is around one-third of what was being collected in the past. The bulk of the business of local governments is now supposed to be funded using central government grants, the bulk of which are the so-called conditional grants. By their nature conditional grants are inconsistent with decentralisation because through them, the central government dictates the details of what projects are to be pursued at local levels. Starved of revenue, district councils now meet only several times a year. The sub-county councils are not any better. In that way, the avenues for participation have been curtailed, in addition to the councils and lower administrative units being denied the resources necessary for their involvement in various issues, including the area of promoting and protecting human rights.

### **6.6 *Education? What Education!***

Throughout the foregoing recommendations, we have emphasised the role of education in empowering the people to look out for their own rights and in equipping the stakeholders in the decentralised local government system to appreciate the

importance of human rights, before they can be expected to observe, promote and protect them. The need for a human rights education for all stakeholders cannot be overemphasised. It is the key to any meaningful reforms. The question is what education is appropriate? To begin with, there ought to be a minimum human rights content in the formal school curriculum at all levels. One is never too young to know about human rights. This would, of course, begin with training the very teachers who handle the various levels of formal education.

But there is need for a much broader human rights education for ordinary people and the leaders at all levels. Some of these may not be dragged to institutions of learning. Moreover, human rights education cannot be a one day thing. Rather, the instruction has to be built into their day-to-day lives. The Kyankwanzi-type of indoctrination cannot deliver much. Indeed, the lasting contribution of the National School of Political Education (NSPE), now renamed the National Leadership Institute (NLE) at Kyankwanzi has been the building of a cadre of NRM die-hards, who spent most of their energies fighting pluralism, before making an about-face and supporting the hurried transition to the multi-party system as a side dish for the so-called third term project. That kind of education is actually anti-human rights.

What is needed is a human rights based civic education on the part of the entire population and specific training on how to handle human rights issues for leaders. Unfortunately, like political education, civic education in this country has been vulgarised. It has been reduced to teaching illiterate peasants how to thumb-mark ballot papers, on the eve of national elections. Civic education should be broad. It should involve educating the people on what their rights and entitlements are, who has the responsibility for what, and how to safeguard and defend their own rights and interests. It should have the effect of mobilising the people not just for development, but to resist oppression, exploitation and misrule. Such an exercise would have to be conducted by a wide range of stakeholders, including civil society organisations, institutions of learning and, above all, the people's own leaders who themselves have to acquire human rights education in the first place.

There is evidence that human rights education, even by way of short seminars/workshops does work. For some years Police and prisons staff have been attending such courses and already, it is obvious that there is an overall improvement in their handling of suspect and prisoners respectively. Likewise, the practice by UHRC Northern Region Office and its partner human rights NGOs in Gulu, of sending paralegals into the IDP camps to receive complaints about human rights abuses and to explain to people their rights has borne visible fruits and the people are reported to be increasingly vigilant about their rights. Synergies could be derived from spreading such programmes to all stakeholders. Thus whereas there are a number of reforms that need to be initiated in order to bring about a more meaningful realisation of civil and political rights, three basic requirements stand out: education, education and education.

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