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**EVALUATION OF HUMAN RIGHTS INDEXES
IN THE EASTERN AFRICA REGION:**

Ethiopia, Burundi, Kenya and Uganda

July 2022

Dr. Elias Opongo, SJ (Editor)

with **Peter Abala Ouma, Movine Omondi and Josephine Katuu Muthama.**



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EXECUTIVE SUMMARY

Informed by the feedback received from the 2020 projects under the Conflict Monitoring Tool (CMT) and the Mapping of Faith and Civil Society Organizations (CSOs) peace structures in the region, conversations from the Focus Group Discussions (FGDs) conducted, brought out the aspect of human rights violation and thus the area of focus for 2021 Centre for Research Training and Publications (CRTP) research. A study on evaluating and measuring human rights situation in the Eastern Africa within the Regional Peace Partners region with a focus on Kenya, Uganda, Burundi and Ethiopia was therefore conducted based on the happenings in these four countries.

Purposive sampling method was employed to identify respondents who have the knowledge and good grasp of the dynamics of human rights on the ground. The data collection was mainly in three methods: individual key informant interviews; focus group discussions and questionnaire distribution. Survey Monkey was used to collect data online from different respondents across the four countries. A total of 648 questionnaires were filled by different respondents with 198 respondents being from Kenya, 156 from Uganda, 144 from Ethiopia and lastly 150 responses from Burundi. Eight Key Informant Interviews (KIIs) and two Focused Group Discussions (FGDs) were conducted in Kenya (Nairobi and Mombasa) with 2 follow up data validation exercises to affirm the validity of the study.

INTRODUCTION

The idea of human rights emerged stronger after World War II following the Germany genocide carried out on the Jews, Sinti and Romani (gypsies), homosexuals and persons with disabilities which horrified the world.¹ In 2021, the escalation of the worldwide siege on human rights included clampdowns on civil society organizations, attacks on minorities, the undermining of democratic institutions and violence against journalists.²

Human Rights, as defined by the Office of the High Commissioner for Human Rights (OHCHR), are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.³ They have been enshrined in the Universal Declaration of Human Rights and codified in a series of international human rights treaties ratified by states and other instruments adopted after the Second World War.⁴ Human rights are therefore universal, inalienable, interrelated, interdependent and indivisible.⁵ Taken together, these characteristics ensure that all human rights are to be realized whether they are civil and political rights (e.g. the right to participate in public affairs, freedom from torture and arbitrary detention), economic, social and cultural rights (e.g. the right to food, social security and education) or collective rights (e.g. the right to development, the right to indigenous peoples), for all people and at all times except in specific situations of derogation and according to due process.⁶

Africa as the world's second largest and second most populous continent has been a region with wide – spread human rights violations manifested in several forms including slavery, neo – colonialism, apartheid and multi – dimensional poverty.⁷ Thus the notion of drafting a document that would help in establishing a human rights protection mechanism in Africa was conceived in the early 1960s.⁸ However, the 1963 Charter establishing the Organization of African Unity (OAU) imposed no explicit obligation on member states to adopt the charter and the protection of human rights.⁹ The OAU ignored the massive human rights abuses perpetuated by some authoritarian governments and African leaders against their own citizens, under the pretext of state sovereignty and its preference for socio – economic development, and territorial integrity. This happened against human rights protection, the OAU had its hands tied basing its argument on the principle of non – interference in the internal affairs of member states.¹⁰ It was only later in 1981 that the African Charter also referred to as the Banjul Charter was finally adopted by the African Union (AU) in Nairobi, Kenya.¹¹ This marked a turnaround for human rights and saw an increase in the adoption of additional human rights treaties to strengthen the protection of the rights of vulnerable persons, groups and communities including refugees, children, women, youth, internally displaced persons and older persons.¹²

Concerning the adoption and domestication of human rights treaties within the African continent, the Eastern Africa region stands out as having taken significant steps.

1 <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm>

2 See B. Phillips: The Global Assault on Human Rights. Available at: <http://www.ipsnews.net/2021/12/global/-assault-human-rights/>

3 Human Rights Indicators – A guide to measurement and implementation. Available at https://www.ohchr.org/documents/issues/HRIndicators/AGuideMeasurementImplementationCompleteGuide_en.pdf

4 Ibid

5 Ibid

6 Ibid

7 Responding to Human rights violations in Africa: Assessing the Role of the African Commission and Court on Human and people's rights (1987 - 2018). Available at International human rights law review 7(2018) 1 -42

8 Responding to Human Rights violations in Africa – Assessing the role of the African Commission & Court on Human and Peoples' Rights (1981 – 2018). https://brill.com/view/journals/hrlr/7/1/article-p1_1.xml

9 Ibid

10 Ibid

11 Ibid

12 Ibid

Nevertheless, the region continues to face real challenges pertaining to the implementation of certain categories of rights and freedoms of all persons. Some of the challenges that have provided obstacles in the realization of human rights based on the societies in the region include though not limited to persistent political instability, armed conflicts, leadership deficiency, poor economic planning and fiscal ineptitudes, as well as a rapidly deteriorating physical environment that may just end up as a bigger catastrophe in these times of negative impact from climate change.

❖ **Freedom of assembly and association**

The principal source of legal standards relating to freedom of assembly and association are human right instruments and consist of a general and specialized nature, as well as instruments of regional - source scope.¹³ Among the former are the Universal Declaration of Human Rights, 1948 (UDHR) and the International Covenant on Civil and Political Rights, 1966 (ICCPR). Then there are the regional adoptions from the UDHR instruments on human rights such as the European Convention of 1950, the American Convention on Human Rights, of 1969 and the African Charter on Human and Peoples' Rights, 1981¹⁴.

❖ **Freedom of religion**

Africa's great ethnic and cultural diversity is matched by an equally complex religious scene.¹⁵ One of the most interesting features of this religious landscape is not just the many Islam, Christianity (s) and numerous other movements that have been brought to the continent and have taken root there, amidst the great variety of local forms of indigenous practice, but also the creative and innovative responses of the African themselves in forming their own religious movements.

❖ **Doctrine of separation of powers**

One reason why dictatorships flourished in Africa until the 1990s was that constitutions conferred excessive powers on presidents and stressed strongly on the respect for state sovereignty.¹⁶ Unfortunately though, even after its adoption in the 1990s, the effectiveness of the doctrine of separation of powers in state governance as a means of reducing power abuse by the governments in power, majority of governments on the continent Africa wielded so much power, that bred impunity so strong that human rights abuses continued unabated.¹⁷ The introduction and entrenchment of hybrid institutions was to allow for the accountability of these governments. It was also hoped that this would have potential not only to complement the checks and balances provided by the traditional triad but also fill in the gap wherever there would be need.¹⁸ Therefore the advent of those institutions gave the doctrine of the separation of powers renewed potency and relevance in advancing Africa's faltering constitutionalism project.

❖ **State's accountability against economic crimes**

Economic crimes refers to illegal acts committed by an individual or a group of individuals in obtaining financial or professional advantage using property that does not belong to them. It's these economic crime acts that have contributed to the endemic corruption that is prevalent, witnessed on the African continent and that has undermined the rule

13 <https://www.article19.org/data/files/pdfs/publications/sub-saharan-africa-freedom-of-association-and-assembly.pdf> (accessed on 15th October, 2021)

14 Ibid

15 Hackett, R. I. J. (2001). Prophets, "False Prophets," and the African State: Emergent Issues of Religious Freedom and Conflict. *Nova Religion: The Journal of Alternative and Emergent Religions*, 4(2), 187–212. Available at: <https://doi.org/10.1525/nr.2001.4.2.187>

16 Charles Manga Fombad, *The separation of powers in African Constitutionalism* (2019) Available at <https://oxfordre.com/politics/politics/view/10.1093/acrefore/9780190228631>

17 Ibid

18 Ibid

of the law. Most economic crimes are committed by those in power with their cronies who end up distorting the market, competition, and discouraging investments with the result being public loss of trust.¹⁹ Under such circumstances, states fail to bring persons accused of committing economic crimes to any form of accountability. The most recent and detrimental effect of corruption was seen in the failure of government through its' hindrance of the global response to the COVID – 19 Pandemic, where instances of corruption in health care systems and economic relief, in rescue and stimulus packages, have deterred reception of relief where it is needed the most.²⁰

❖ **Respect for human dignity**

The concept of human dignity is rooted in religious traditions, the ideas of the 18th century European enlightenment and contemporary secular theories of autonomy and self – determination.²¹ It is particularly associated with the Judeo – Christian doctrine that humans are created in God's image and moral philosopher Immanuel Kant's view that the human person has intrinsic worth by virtue of his or her rational faculty.²² Although the concept of dignity has a long history, it did not find its' way into any legal framework prior to the 20th century.²³

❖ **Recognition of special category rights**

In human rights law, the concept of vulnerability is often used to pinpoint that some people are more prone to harm than others and therefore measures of special protection are necessary to ensure the realization of their human rights.²⁴ For example, in the African Commission Principles and Guidelines, the concept of vulnerable and disadvantaged groups is used to refer to groups 'who have faced and/or continue to face significant impediments to their enjoyment of...rights', such as women and children.²⁵

19 G20 Anti – corruption working group: 2020 Accountability report. Available at: unodc.org/documents/corruption/G20-Anti-corruption-Resources/Accountability-and-Monitoring-Reports/2020

20 Ibid

21 The concept of human dignity in German and in Kenyan constitutional law. Available at: <http://ajol.info/index.php/tp/index>

22 Ibid

23 Ibid

24 M. Heikkilä & Mustaniemi Leakso 'Vulnerability as a human rights variable: African and European development' (2020) 20 African Human Rights Law journal 777 – 798. Available at: <http://dx.doi.org/10.17159/1996-2096/2020/v20n2a19>

25 Ibid

BACKGROUND

Kenya, Uganda, Ethiopia and Burundi are located in the Eastern Africa Region. All are serving members of the African Union and the United Nations and apart from Ethiopia, the remaining three are also partner states at the East African Community (EAC).²⁶ Ethiopia, Kenya and Uganda are also members of the Intergovernmental Authority on Development (IGAD).²⁷ Three of the countries, with the exception of Ethiopia also belong to the International Conference on Great Lakes Region (IGLR).²⁸ Kenya and Uganda attained their independence from British rule in the early 1960s while Burundi was also liberated together with its sister nation, the Republic of Rwanda from Belgian occupation in 1962. Ethiopia was able to resist attempts of colonization by British and particularly by the Italians.²⁹

Ethiopia has mostly existed under a statist regime with the space for political action and socio-economic participation of citizens largely suppressed or controlled by the government. A weak Federal system on governance based on a constitution that among other things allows the states to exit the federation, in addition to keeping state militia, has been at the centre of the country's security and socio-economic upheavals. Successive Ethiopian governments have a long history of using vague and overbroad legislation to clamp down on basic rights.³⁰ They include problematic nationwide state of emergency declarations in 2016, 2018 and its 2020 law in the context of the COVID-19 Pandemic and the now amended counterterrorism, mass media, charities and societies laws.³¹ The ongoing civil war pitting the Federal Army against Tigray Regional Government Forces (TPLF)³² culminated in the approval by Parliament of the declaration of a state of emergency for 6 months on 4th November, 2021.³³ This thus granted authorities unchecked power as fighting in northern Ethiopia spreads amid rising political and ethnic tensions.³⁴ The reported capture of key towns on the route towards Addis Ababa by Tigrayan forces affiliated with the country's former ruling party, the Tigray People's Liberation Front (TPLF) and armed forces known as the Oromo Liberation Army (OLA), have led to the to the Ethiopian federal and regional authorities together with public figures responding with public statements that risk inciting violence and discrimination against Tigrayans and others deemed to support the "invading forces".³⁵

Uganda is a constitutional Republic that has been led by President Yoweri Museveni of the National Resistance Movement (NRM) since 1986 having been re – elected in 2016 and 2021 for his fifth and sixth terms in office respectively with an NRM majority in the unicameral parliament.³⁶ While there was a marked improvement in political stability, democratization, and economic development in the country during the earlier years of NRM's leadership, recent political upheavals, including electoral malpractices, harassment of opposition presidential candidates, and gross infringement on the freedoms of the press, association and expression have markedly reversed Uganda's

26 East African Community (EAC) is a regional economic bloc that covers Kenya, Tanzania, Uganda, Rwanda, Burundi, and South Sudan. It is a common market area with open borders for trade, migration and cooperation on various common issues.

27 Intergovernmental Authority on Development is a regional body based in Eastern and Horn of Africa with key focus on conflict alleviation, stability, peace, and prosperity among the member states.

28 International Conference on the Great Lakes Region is an inter-governmental organization with an aim to foster common solutions for the common challenges, including conflicts that affect countries in the Great Lakes Region of Africa.

29 <http://exploringafrica.matrix.su.edu/battle-of-adowa-ethiopia/>

30 Human Rights Watch Report (8th November, 2021) "Ethiopia: International Action needed to prevent Atrocities"

31 Ibid

32 Human Rights Watch Report (May, 2021) "Ethiopia-Tigray Region Humanitarian Update Situation Report.

33 Ibid

34 Ibid

35 Ibid

36 <https://www.justice.gov/reports/2020-country-reports-on-human-rights-practices/uganda/>

journey of democratization.³⁷ Both elections fell short of international standards and were marred by allegations of disenfranchisement and voter intimidation, harassment of the opposition, closure of social media websites and independence in the Electoral Commission.³⁸ In the five weeks since electoral campaigns began on 9th November, 2020, dozens of people were killed in election – related violence, most of them shot dead by police and dozens more injured with the president publicly stating that 54 people were killed on 18 & 19 November in the protests and unrest that followed the arrest of the leading opposition presidential candidate and musician, Robert Kyagulanyi popularly known as Bobi Wine.³⁹

Burundi has often lingered dangerously near state collapse. The country has experienced countless civil insurrections, rebel driven armed conflicts and strongman rulerships by a majority of its former presidents. The country was a victim to the lengthy autocratic and militarized rule of President Pierre Nkurunziza from 2005 to 2020 during which the country elected Evariste Ndayishimiye as the new president. Nkurunziza's rule, including a season of brief coup attempt on his government in 2011, was characterized by flagrant human rights abuses and deep rooted suppression of political activity in the country through the security forces. The country has often been manned by weak governments that barely exerted political authority in the whole territory. Thus, human rights observance in the nation has been of grave concern as the central government is rarely in full control of the land thus its incapacity to protect majority of its citizens. Government forces have also been accused by human rights advocates and international media of perpetuating violence against sections of the civilian population during operations to counter regional militias.

Whereas Kenya is considered a more stable and open country compared to its three counterparts, as affirmed by the Freedom House Report 2021, it nevertheless, continues to experience monumental challenges ranging from socio-economic inequality, low-scale domestic violations of the dignity of the person especially police brutality including extrajudicial killings and enforced disappearances of individuals by rogue officers among others. However, the promulgation of the constitution in 2010 seemed to have changed the fortunes of the country's political, economic and socio-cultural configuration. A key example is the land reforms which have recorded some gains through the creation of a national body to deal with this. Unfortunately, infighting between the National Land Commission and the Ministry of Lands has been troublesome, resulting in failure of the reform agenda moving forward. Further, transitional justice has been far from reality since after conclusion of a protected truth commission, implementation of the report has stalled.

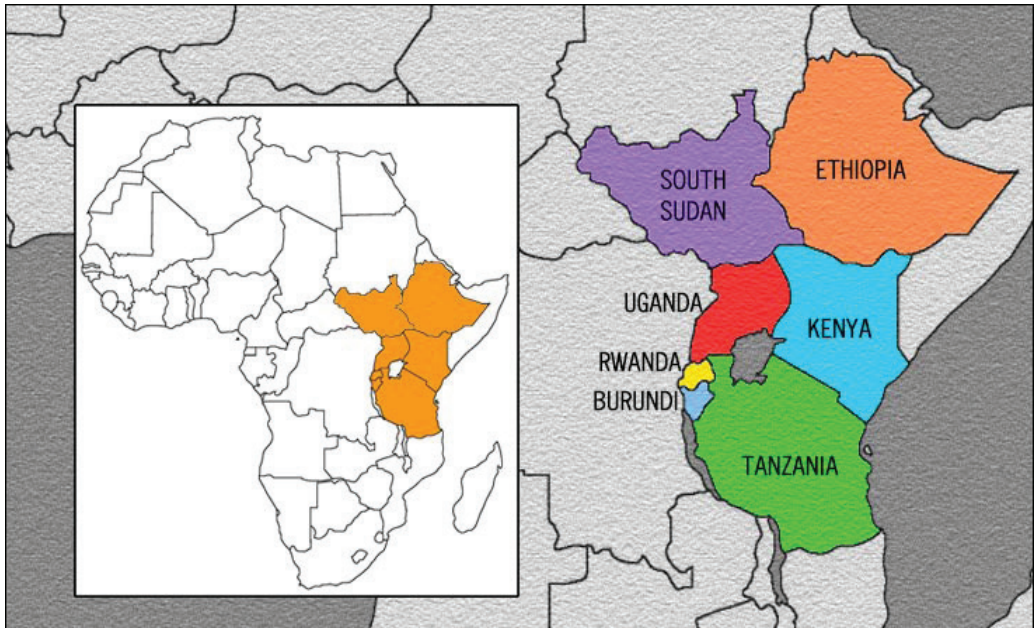
In spite of the above challenges, the constitutionally-based exercise of independence by the Judiciary has restored the citizens' confidence in the institution as it has been able to deliver landmark rulings and judgments such as the 2017 presidential election nullification which safeguards the rights and freedoms enshrined in the constitution.

37 Ibid

38 Ibid

39 <https://www.amnesty.org/en/location/africa/east-africa-the-hon-and-great-lakes/uganda/report-uganda/>

Fig 1. A Political Map showing the locations of Ethiopia, Burundi, Kenya and Uganda in different shades



Source: *East Africa Chamber of Commerce*

ETHIOPIA

I. CONTEXTUAL ANALYSIS

Ethiopia - a country with an unimpressive history of human rights abuses - is currently undergoing political transition since the announcement in January 2018 of comprehensive reform measures by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), and particularly following the appointment of Abiy Ahmed Ali as Prime Minister in April 2018, the country has experienced seismic changes.⁴⁰ The reform was a result of a nearly three-year-long protest movement that had originated in the Oromia Regional State against the EPRDF government, whose major demand was a call to improve the human rights conditions in the country, access to fundamental freedoms and entitlements, for human dignity to be respected, and an inclusive economic and political system.⁴¹

According to the Human Rights Watch (HRW) report, the declining security situation in Tigray was sparked by the outbreak of armed conflict between Ethiopian National Defence Force (ENDF) and the Tigray People's Liberation Front (TPLF) in November 2020.⁴² Thousands of people are now internally displaced, with over 63,000 more Ethiopians fleeing to Eastern Sudan adding a significant humanitarian pressure on the already strained situation in the region. Reports from the country in November 2021 suggested a rapidly worsening security situation: open confrontations between the

40 Andinet Adinew Tesfaye and Endalkachew Abera Mekuriya, Conditions of Human Rights in Ethiopia in the Aftermath of Political Reform, 19 NW. J. HUM. RTS. 23 (2021). <https://scholarlycommons.law.northwestern.edu/njhr/vol19/iss1/3>

41 Ibid

42 See Human Rights Watch Report (May, 2021) "Ethiopia-Tigray Region Humanitarian Update Situation Report."

ENDF on one side and the TPLF and Oromia Liberation Army (OLA) on the other. In her briefings to the UN Security Council concerning the security situation in Ethiopia, the UN Under-Secretary General for Political Affairs Rosemary Dicarolo remarked, “In recent days, Tigrayan forces have advanced southwards towards Addis Ababa, acting in coordination with the Oromo Liberation Army. The Government of Ethiopia has declared a nationwide state of emergency and has stated it is fighting “an existential war”. Elsewhere, insecurity in the Oromia region continues to worsen, while the situation in parts of the Benishangul-Gumuz region remains tense.”⁴³ The Under-Secretary General also went ahead to note the situation as regards to human rights violations in the country. “The report concludes that there are reasonable grounds to believe that all parties to the conflict – including the Ethiopian National Defence Force, Eritrean Defence Force, Amhara Special Forces and allied militia on one side and Tigrayan forces on the other – committed violations of international human rights, humanitarian and refugee law, to include attacks on civilians and civilian infrastructure, indiscriminate attacks resulting in civilian casualties and extrajudicial killings, torture, arbitrary detentions, sexual and gender-based violence plus forced displacement. The report states that war crimes and crimes against humanity may have been committed. It outlines steps that should be taken to ensure accountability for these acts. The undersecretary quoting the High Commissioner Bachelet observed that incidents of serious human rights violations have continued,” thus calling upon the government to look into the situation.

The conflict in the Tigray region has escalated and looks like it is spiralling out of control, and even though multi-causal in nature, its continuity can be explained as stemming from ingrained structural violence.⁴⁴ The ruling Ethiopian People’s Revolutionary Democratic Front (EPRDF) controls almost 100% of seats in the nation’s parliament, creating institutional and legal impediment to alternative political agenda.⁴⁵ Accountability for years of human rights abuses, including torture and extrajudicial killings, makes competitive multiparty democracy and civil society engagement an ongoing challenge for the Ethiopian government, and continues to curtail the freedom of expression and association.⁴⁶

II. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS RATIFIED OR ACCEDED TO BY ETHIOPIA

Like many other African states, Ethiopia has signed and ratified a number of international human rights conventions and protocols but has also declined assenting to others⁴⁷ Ethiopia’s human rights record remains a shared concern at the UN Human Rights Council, African Human Rights Commission, as well as human rights bodies such as Human Rights Watch, Amnesty International, and Transparency International. Put in context, Ethiopia has the duty to comply with its international obligations to respect, protect and fulfil human rights, within and beyond its territorial borders. For proper analysis of human rights situation in Ethiopia, it is imperative to investigate the status of its ratification and implementation of conventions and protocols of human rights observance.

Ethiopia’s ratification status of international human rights instruments indicates that out of seven core international human rights treaties, it has ratified six.⁴⁸ For instance,

43 United Nations. DiCarlo: Risk of Ethiopia descending into a widening civil war is only too real. 8th November, 2021. <https://dppa.un.org/en/dicarolo-risk-of-ethiopia-descending-widening-civil-war-is-only-too-real>

44 See World Report 2019-Ethiopia by Human Rights Watch

45 Ibid

46 Ibid

47 See United Nations, International Human Rights Instruments, 2009.Report

48 Ibid

Ethiopia is not a party to the International Convention on the Protection of All Migrant Workers and Members of their Families (ICPMWF).⁴⁹ Other instruments that the country is not party to include: the two Optional Protocols to the International Covenant on Civil and Political Rights relating to the individual complaints mechanism and the abolition of the death penalty.⁵⁰ The Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflicts, and on the sale of children, child prostitution and child pornography, have all not been accepted.⁵¹ Furthermore, Ethiopia is not signatory to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture, and the competence of their respective treaty bodies to receive and consider petitions from individuals have also not been accepted.⁵² As such the state of acceptance of some critical international treaties and conventions on Human Rights by the country remains a concern.

The main International human rights conventions to which Ethiopia is a party are presented in **tables 1, 2 and 3** below

Table 1. The main International human rights conventions to which Ethiopia is a party⁵³

No.	Name of the instrument	Party since
1.	International Covenant on Economic, Social and Cultural Rights(ICESCR),1966	11 June 1993
2.	International Covenant on Civil and Political Rights(ICCPR),1966	11 June 1993
3.	International Convention on the Elimination of All Forms of Racial Discrimination(ICERD),1965	23 June 1976
4.	Convention on the Elimination of All Forms of Discrimination against Women(CEDAW),1979	8 July 1980
5.	Convention against Torture and Other Cruel, inhuman or Degrading Treatment of Punishment(CAT),1984	14 March 1994
6.	Convention on the Rights of the Child(CRC),1989	14 May 1991

The country has also endeavoured to ratify other International human rights conventions as shown in table 2 below:

Table 2. Other United Nations human rights and related conventions ratified⁵⁴

No.	Name of the Instrument	Party since
1.	Convention on the Prevention and Punishment of the Crimes of Genocide,1948	1 July 1949
2.	Slavery Convention,1926 as amended 1955	21 Jan 1969
3.	Convention for the Suppression of the Traffic in Persons of the Exploitation of the Prostitution of Others,1949	10 Sept 1981
4.	Convention relating to the Status of Refugees,1951, and its 1967 Protocol	10 Nov 1969

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

5.	United Nations Convention against Transnational Organized Crime, 2000, and its Protocols against the smuggling of migrants by land, sea and air, and to prevent, suppress and punish trafficking in persons, especially women and children	23 July 2007
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Additionally, Ethiopia as the seat of the African Union is party to regional human rights treaties as indicated in the **table 3**

Table 3. Regional human rights conventions⁵⁵

No.	Name of the Instrument	Party since
1.	The African Charter on Human and Peoples Rights, June 1981	15 June 1998
2.	African Charter on the Rights and Welfare of the Child, 11 July 1990	2 Oct 2002
3.	OAU Convention Governing the Specific Aspects of Refugee Problem in Africa, 10 September 1969	15 Oct 1973

The 2019 Human Rights Watch Report on “Why Ethiopia cannot honour its international obligations,” revealed the blatant violation of fundamental human rights by Ethiopia.⁵⁶ According to the report, Ethiopia faces challenges of compliance with governing states’ obligations to abide by international treaty laws.⁵⁷ Amnesty International accuses the central government of using state security apparatus to conduct gross and systemic violation of human rights, in contravention of the Constitution of the Federal Democratic Republic of Ethiopia.⁵⁸ The constitution provides frameworks within which enforcement mechanisms can be utilized in defence of human rights.

III. Domestic Legal Framework for analysing Human Rights situation in Ethiopia

Freedoms are guaranteed under the Federal Constitution, State Constitutions and other domestic legislation of the country.⁵⁹ There are constitutional provisions on human rights that show how the Federal Democratic Republic of Ethiopia recognizes human rights as one of the fundamental principles of the Supreme law of the land.⁶⁰ The Constitution includes a chapter on human rights and fundamental freedoms.⁶¹ The Constitutional Bill of Rights is divided into two parts: Part one guarantees fundamental human rights that are applicable to all individuals within the territorial jurisdiction of the country,⁶² while part two focuses on democratic rights providing political rights that can be enjoyed by all citizens.⁶³ This chapter guarantees a broad range of rights and comprises thirty-one articles 14 - 44.⁶⁴ The nation’s constitution is quite elaborate on both individual and

⁵⁵ Ibid

⁵⁶ See the 2019 Human Rights Watch Report “Why Ethiopia cannot honor its international obligations,”

⁵⁷ Ibid

⁵⁸ See Amnesty International Report, 2020

⁵⁹ Art.10, Proclamation No.1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Art.10 (1) Human rights and freedoms emanating from the nature of mankind, are inviolable and inalienable; (2) Human and democratic rights of citizens and peoples shall be respected.

⁶⁰ Ibid

⁶¹ See United Nations International Human Rights Instruments (12 September, 2008), HRI “Core Document forming the initial part of the Reports of State Parties.”

⁶² Part one, Art. 14-28 Human Rights

⁶³ Part two, Art 29-44 Democratic Rights

⁶⁴ See UN HRI, 2008. Almost all the rights provided in the core human rights instruments are guaranteed under the Constitution. Articles 14 to 17 guarantee the right to life, liberty and security of the person including freedom from arbitrary arrest, detention and conviction. Article 18 prohibits cruel, inhuman and degrading treatment and punishment, acts of slavery, servitude and human trafficking of any form. Articles 19 to 23 deal with the criminal justice system and provide due process guarantees and the fundamental human rights protections for persons arrested, deprived of liberty and convicted prisoners. This includes the right to be promptly informed of reason for arrest, the right to be brought before a court of law within 48 hours, habeas corpus, freedom from self-incrimination, right to speedy trial, presumption of innocence, right to legal counsel and right to appeal to a competent court. Humane treatment of persons deprived of their liberty and basic principles such as non-retroactivity of criminal law and prohibition of double jeopardy have also been constitutionally protected. The right to privacy, freedom from unlawful search and seizure and inviolability of correspondence have been provided under article 26. Article 27 ensures freedom of religion, belief and opinion. Article 28 prohibits statute of limitation and amnesty or pardon for criminal liability of persons accused of crimes against humanity as defined by international agreements ratified by Ethiopia, such as genocide, summary executions, forcible disappearances and torture. Part two on democratic rights guarantees freedom of expression, thought and opinion recognizing freedom of the press, prohibition of censorship and right of access to information under article 29.

groups rights, such that denial of any constitutes unprecedented violation that goes against international law. Human Rights Watch stresses the fact that continued conflict in the Tigray region is in violation of a range of rights provided for in both parts one and two of the constitution, , on individual and democratic rights.⁶⁵ Excesses, fraud and corruption within the government have been termed by Transparency International as gross violation of article 41, 42, 43 and 44 of the constitution.⁶⁶ Since the government started cracking down on those viewed as a threat to the political survival of the government of Abiy Ahmed, many Ethiopians have gone into exile to protect their lives and those of their loved ones. Continued harassment, arrests and torture against opposition leaders, media and civil society organizations as well as human rights defenders, are indications of poor human rights record the country has earned over the years.⁶⁷ Despite signing and ratifying a number of international instruments on human rights such as the ICCPR, Ethiopia passed into law the controversial and oppressive Charities and Societies Proclamation Act (No.621/2009), that prohibits organizations that receive more than ten per cent of their funding from foreign sources from working on a number of human rights issues. Additionally, the Law established the Charities and Societies Agency with broad discretionary powers over Non – Governmental Organizations and in particular, Article 85 demands for the disclosure at any time of any information or documents in a charity or society’s possession. This article violates right to privacy, as enshrined in the ICCPR.⁶⁸ It further, contravenes the principle of confidentiality essential to the conduct of most human rights work, and could seriously jeopardize the security of victims and witnesses of human rights violations.⁶⁹The following indices show how much is needed, in terms of compliance, for the Ethiopian government to respect, protect and fulfil basic human rights of its citizens.

Freedom of Assembly and Association

In its’ World Report 2019 on Ethiopia, Human Rights Watch raised serious concerns about continued and widespread violation of freedom of expression.⁷⁰ Similarly, Article 19 expressed its’ concerns about the text and misuse of the Ethiopia Hate Speech and Disinformation law against those who are critical of Government policies.⁷¹ The organisation further argued that, the Proclamation to Prevent the Spread of Hate Speech and False Information that took effect on 23 March 2020 was extremely problematic from a human rights and freedom of speech perspective and should be immediately revised.⁷² The disinformation law is among many of Ethiopia’s repressive laws used to silence dissident voices and restrict citizens’ meaningful engagement in public

Citizens right to assembly, peaceful demonstration and petition and freedom of association, movement and right to nationality are provided in article 30 to 32. Right of everyone to marry and establish a family is protected under article 34 which makes the society and state custodian of family as the natural and basic unit of society. Rights for specific categories such as women and children are also allotted a separate article under 35 and 36 of the bill of rights. In particular, article 35 on the rights of women recognizes affirmative measures to remedy the historical legacy of inequality and discrimination. To ensure that all rights guaranteed under the Constitution and other legislations are enforced, the Constitution further guarantees under article 37 the right of access to justice and to get remedies from judicial bodies. The right to participate in the conduct of public affairs directly and through representative elected through genuine, periodic, free and fair elections has been provided for in article 38. Nations, nationalities, and people were accorded group protection under article 39 particularly of the right to self-determination, including the rights to use their languages, to develop and promote their culture and to full measure of self-government. The right to property including ownership and use of land is regulated under article 40. Economic, social and cultural rights are also equally guaranteed under article 41 of the bill of rights. Particularly obligation of the state to allocate increasing measures to public health, education and other services, and to allocate resources for vulnerable sections of the society such as physically and mentally disabled, the elderly and children without guardian, is expressly prescribed in the condition. Employment rights such as formation of trade unions, right to strike, to limited working hours, to rest and leisure, to healthy and safe working environment, rights of women to equal pay for equal work have been provided under article 42. Article 43 recognizes the right to development, including right to participation and consultation in national development and policies and projects affecting their communities. The right of everyone to a clean healthy environment has also been explicitly protected under article 44 of the constitution.

65 See Human Rights Watch, 2020.
66 See Transparency International Report,2019
67 See Human Rights Watch, 2019 Report on Ethiopia.
68 See Article 17 of the International Covenant on Civil and Political Rights.
69 Ibid
70 See World Report, 2019 on Ethiopia, Human Rights Watch.
71 Ibid
72 Ibid

discourse on issues of concern to them.⁷³ Media law has been used to crack down on media organizations viewed as supporters and sympathizers of the opposition parties.⁷⁴ In its' 2019 Report titled, "Ethiopia, Events of 2019," Human Rights Watch outlined that human rights reforms implemented by Prime Minister Abiy Ahmed during his first year in office were threatened in 2019 by communal, including ethnic, conflicts and breakdown in law and order.⁷⁵ There has been systematic harassment and detention without trial of journalists carrying out their duty of dissemination of information to the public. For example, on February 23, 2020 Oromia regional police temporarily detained two journalists working for the private *Mereja TV* while they were reporting on government demolition of homes and alleged forced displacement.⁷⁶ Such actions stand as a major hindrance to freedom of the media by journalists.

In its 2019 Report, Universal Periodic Review (UPR) indicated that there was initial government resistance to share information on key human rights areas of interest with the UN Human Rights Council.⁷⁷ However, the Ethiopian government later authorized requests from the UN Human Rights Council for a visit from the UN Special Rapporteur on freedom of expression.⁷⁸ Another incidence of government media crackdown occurred on July 18 2021; when security forces arrested employees and board members of the Sidama Media Network (SMN) and shut down the station based in Awassa following protests over the government's failure to organize a referendum.⁷⁹ By so doing, the government failed in its' duty to comply with the international obligation to respect, protect and fulfil fundamental human rights provided for in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The government continues to undermine the freedom of expression, media, and association on a massive scale. For instance on 3rd January, 2021 the state shut down internet and phone connections in the western region of Oromia, thus significantly restricting freedom of expression and hampering delivery of essential services amid the COVID-19⁸⁰. And even though connectivity was finally restored three months later, the government had violated fundamental civil and political rights of Ethiopians. It contradicted national and international human rights norms that guarantee freedom of expression and the right to access information.

Increased violation of the freedom of expression and association in Ethiopia seem to persist across all the regions. The 2020 Human Rights Watch Report titled, "Events in Ethiopia 2020," noted that little progress had been made into ensuring justice for past and recent abuses, including investigations into the deadly October 2019 violence.⁸¹ The Report presents indicators showing how the security and human rights situation in Ethiopia has deteriorated even as the Prime Minister Abiy Ahmed struggles to bring order amid growing unrest and political tension.⁸² As the government embarked on security reforms, armed groups continued their atrocities against civilians and security forces. In a bid to control the situation, government security forces, including Ethiopian National Defence and Oromia Regional police forces, carried out abusive counterinsurgency operations in western and Southern Oromia Region.⁸³ Reports of extrajudicial killings, mass arrests and detentions, and violence against ethnic Oromo civilians, including

73 Ibid n51

74 Ibid

75 See Human Rights Watch Report Ethiopia Events of 2019"

76 Ibid

77 See Universal Periodic Review (UPR) Report,2019 on Ethiopia

78 Ibid

79 Ibid

80 Ibid

81 See Human Rights Watch,2020 Report "Ethiopia Events of 2020,"

82 Ibid

83 ibid

medical professionals, accused of supporting or being sympathetic to the armed rebel group the Oromo Liberation Army (OLA), were widespread.⁸⁴ The political uncertainty in the country witnessed by the Ethiopians has seen them engage in ethnic as well as religious competitions, with each religious system putting a claim for dominance. Religious freedom therefore has become a recipe for inter-communal tensions.

Freedom of Religion

Cressida Marcus argues that, religious freedom in Ethiopia is circumscribed by state intervention and the constitutionality of the division between religion and state. Accordingly, this was ratified in the constitution simultaneously, with the much vaunted system of ethnic federalism.⁸⁵ This theatre of heated religious competition, characterized by increased sectarianism, now threatens the historic religious pluralism of Ethiopia.⁸⁶ This was evidenced when physical riots and clashes between believers after alleged “insults” in Kemise town in 2001, Harar in the same year and in Jimma and Gore in 2006 where people were killed and property looted/destroyed.⁸⁷ More of the physical violence was witnessed in the destruction of churches in the Jimma area and the arson attacks by Muslim militants on dozens of Sufi mosques.⁸⁸

The Ethiopian Orthodox Tewahedo Church (EOTC) remains the major Christian denomination practiced in the country, though it is no longer regarded as a state religion. The oldest Muslim settlement in Africa is located in Negash in the Tigray region. Until the 1980s a significant number of Ethiopian Jews (Beta Israel) lived in the country. The 2007 census report indicates that the religious composition of Ethiopia is as follows: Ethiopian Orthodox (43.5%), Islam (33.9%), P’ent’ay/Protestantism (18.6%), traditional faiths (2.6%), Catholicism (0.7%) and Judaism (0.7%).⁸⁹ Although Ethiopia has hosted the three mainstream Abrahamic faith traditions (Judaism, Islam and Christianity), the country is generally perceived as predominantly Christian. Nonetheless, the national census of 1994 and 2007 indicates that Muslim numbers have been quite stable over time at about a third of the population.⁹⁰

Human Rights Watch 2020 report described the civil conflict in the country as ethno-cultural with religious overtones.⁹¹ Prime Minister Abiy Ahmed noted in October 2019 that, “what began as protests against his government had quickly morphed into clashes that took on an ethnic and religious dimension.”⁹² The constitution enshrines the separation of state and religion, the establishment of freedom of religious choice and practice, prohibition of religious discrimination, while stipulating that the government shall not interfere in the practice of any religion, nor shall religion interfere in state affairs.⁹³ It however permits limitations on religious freedom as prescribed by law in order to protect public safety, education, and morals, as well as to guarantee the independence of government from religion. The law criminalizes religious defamation and incitement of one religious group against another.⁹⁴

84 Ibid

85 Cressida Marcus. (2008). Sacred Time, Civic Calendar: Religious Plurality and the Centrality of Religion in Ethiopian Society. *International Journal of Ethiopian Studies*. Tsehai Publishers. Winter/ Spring 2008, Vol. 3, No. 2, pp.143-175

86 Ibid

87 Jon Abbink – Religion in public spaces: Emerging muslim – Christian polemics in Ethiopia, *African Affairs* Vol.110, No.439 (April,2011), pp.253 – 274

88 Ibid

89 See CRTP report on Ethiopia FORB(2020), Federal Democratic Republic of Ethiopia Population Census Commission, Summary and Statistical Report of the 2007 Population and Housing Census: Population Size by Age and Sex, December 2008

90 Ibid.

91 Human Rights Watch 2020 Report “Ethiopia, Events of 2020.”

92 See CRTP, report on Ethiopia-FORB(2020), “PM Abiy Ahmed warns Ethiopia ethnic violence could worsen,” *Al Jazeera*, posted October 26, 2019, <https://www.aljazeera.com/news/2019/10/pm-abiy-ahmed-warns-ethiopia-ethnic-violence-worsen-191026193213861.html>.

93 Ibid

94 Ibid, government policy prohibits the holding of religious services inside public institutions, as required by the constitution stipulates separation of religion and state. The constitution prohibits religious instruction in public and private schools, although both public and private schools may organize clubs based religious values. The law permits the establishment of a separate category of religious schools under the auspices of churches and mosques. The Charities and Societies Agency, a government agency accountable to the federal attorney general, and the Ministry of Education regulate religious schools, which provide both secular and religious instruction. The Ministry of Education oversees the secular component of education provided by religious schools.

The 2019 Report on International Religious Freedom: Ethiopia, states that despite freedom of religion provided for in the constitution, religious groups have faced harassment by security forces that has seen followers detained for various ‘religious crimes’. According to the report, religious groups undertaking development activities are required to register their initiatives as charities with the Charities and Societies Agency and follow legal provisions originating from the Charities and Societies Proclamation.⁹⁵ The conflict in Tigray region has seen various religious groups attacked and members belonging to the faiths arrested on suspicion of fuelling sectarian differences. Those who had been arrested/ detained and later released always allege poor conditions in the cells, and denial of basic human rights as they experienced inhumane treatment including torture. Human Rights Watch 2020 Report says Ethiopia’s security forces have always carried out operations in contravention of the Convention against Torture (CAT) and other related instruments that protect and promote human rights.

Doctrine of separation of powers.

Ethiopia, one of the oldest countries in Africa, without a colonial past, has had four written constitutions in its history, adopted in 1931, 1955, 1987, and 1995.⁹⁶ A proposed revision of the 1955 constitution was issued in 1974 but was suspended by the Dergue without any legal effect because of the 1974 revolution.⁹⁷ The 1931 Constitution did not have clear delineation of rights and responsibilities of each branch of government in its seven chapters.⁹⁸ The 1955 Constitution, besides strengthening the Emperor’s position, expanded the purview of the bicameral Ethiopian parliament over the 1931 Constitution. Although the Senate remained appointive, the Chamber of Deputies was created through an election.⁹⁹ In contrast to the legislature under the 1931 Constitution, that only allowed the discussion of matters referred to it, it now had the authority to propose laws, and veto laws proposed by the executive.¹⁰⁰ It could summon ministers for questioning, and, in extraordinary circumstances, initiate impeachment proceedings against them.¹⁰¹

According to Getachev Begashaw, the third Ethiopian constitution of 1987 was drafted under the one-party dictatorship of Mengistu Haile Mariam’s Workers Party of Ethiopia (WPE), which was an abridged version of the 1977 Russian Constitution with sweeping powers vested in the presidency.¹⁰² There was no room for checks and balances of powers in a government established by the will and whims of the party strongman, Mengistu Haile Mariam, whose rule was characterized by denial of freedom of expression and association. As described by Fisseha Assefa, the fourth Constitution of 1995 has the implicit notion of the separation of powers, to the effect that the judiciary has a crucial role in resolving disputes impartially, ensuring the rule of law, and in setting limits to the power enjoyed by the executive and the legislature. Fisseha describes the act of the legislature taking over powers of the judiciary, as interfering with the independence of the courts.¹⁰³ This position was echoed by the African Peer Review Mechanism, in its fault-finding 2016 Country Report, that condemned Ethiopian parliamentary behaviour, describing it as a dysfunctional institution that sought to interfere with judicial

95 Ibid

96 See Getachev Begashaw. (2019). Good Governance with Checks and Balances in Ethiopia. International Centre, Michigan State University.

97 Ibid

98 Ibid, the seven chapters were:(1) The Ethiopian Empire and the Succession to the Throne;(2) The Power and Prerogative of the Emperor;(3) The Rights Recognized by the Emperor as belonging to the Nation, and the Duties Incumbent on the Nation;(4) The Deliberate Chambers of the Empire;(5) The Ministers of the empire;(6) Jurisdiction; and (7) The Budget of the Imperial Government.

99 Ibid

100 See Keller, Edmond J. (1991). Revolutionary Ethiopia: From Empire to People’s Republic. Bloomington: Indiana University Press.

101 Ibid

102 Marcus, Harold G. (1996). Haile Sellassie I: The Formative Years. Lawrenceville: Red Sea Press.

103 Fisseha, Assefa. (2011). Separation of powers and its implications for the judiciary in Ethiopia. Journal of Eastern African Studies, Volume 5, (4) in the analysis of the power relations between the three branches of government in Ethiopia, Fisseha concluded, “... in Ethiopia the legislature has sought to take away power from the courts, placing them in quasi-judicial bodies within the executive. The judiciary has also failed to check that the executive is acting within the framework of the law. The overall assessment is that the judiciary has not yet defined its role; has not properly interpreted the concept of separation of powers; and has not yet become a key organ for enforcing human rights. The judiciary has abdicated its core function of reviewing acts and decisions of the executive and administrative agencies and is in danger of paving the way for arbitrary and unchecked government”.

independence.¹⁰⁴

Kohli and Nordholt have stated that institutionalization of democracy and consolidation of the central state power for the government of Abiy Ahmed might have been difficult.¹⁰⁵ When new democratic ideas are introduced in a society that has suffered under different dictatorships with distinct socio-political structures, it becomes difficult to challenge newly emerging political norms and interests.¹⁰⁶ This often results in decentralized corruption and political violence, offering regional and ethnic elites access to strategic political positions to expand and maintain exclusivist and divisive political networks, as witnessed in many parts of Ethiopia today.¹⁰⁷ Fundamentally, the PM came to power promising to allow reforms in the three arms of government take place. Human Rights Watch says that the war between the institutions has included blatant violation of fundamental rights, with Ethiopians feeling that their government has failed them as arbitrary arrests, disappearances, torture and killings had increased, with little effort to investigate and prosecute those responsible.¹⁰⁸ When the independence of the judiciary is subverted, rule of law and justice becomes relatively insignificant as law enforcers become the “law and violate everyone else’s rights. Ethiopia is known for derogation of rights across its regions.¹⁰⁹ The Tigray operation has been described by Human Rights Watch (2021)¹¹⁰, Amnesty International (2020),¹¹¹ and Transparency International (2021)¹¹² as worrying. In addition it was reported, economic related crimes were on the increase, with law enforcers and judicial officers accused of creating a conducive environment for corruption, generally agreed as antithetic to development.

Accountability for economic crimes

Ethiopia’s struggle towards economic development has been described by Berihun Adugna Gebeye as unnecessarily slower due to economic crimes such as corruption.¹¹³ These crimes deny every member of society basic rights to education, health care, food and shelter, which are fundamental to a dignified living in any society.¹¹⁴ Transparency International report 2019, states that, despite prevention efforts at the national, regional and international levels, corruption, money laundering and irresponsible debt accumulation are on the increase in Ethiopia.¹¹⁵ According to the report, indicators of corruption include denial of access to public services without inducement of public officers, and accessing justice in courts unless judicial officers are bribed.¹¹⁶

104 See African Peer Review Mechanism 2016 Country Report on Ethiopia. The reports states that, the separation of powers is formally enshrined in the 1995 constitution, but is weak in practice. One branch, the executive, has largely undermined any opportunity for effective exercise of checks and balances. The national parliament (in which the opposition parties held just a single seat during the period under review) is regarded as a rubberstamp institution, without any influence on decision-making processes within the EPRDP, the sole ruling party for 24 years.....It is therefore unrealistic to expect that elected parliamentarians can freely and fairly participate in lawmaking. No development toward a more democratic system or a strengthened democratic public debate, inside or outside parliament, could be discerned. State and party remain closely intertwined. Ethiopia does not have an independent judiciary with the ability and autonomy to interpret, monitor and review existing laws, legislation and policies. Access to fair and timely justice for citizens, at least as conventionally defined by legal experts, cannot be said to exist. The independence of the judiciary, formally guaranteed by the constitution, is significantly impaired by political authorities and the high levels of corruption. High-level judges are usually appointed or approved by the government. This process is to some extent institutionally differentiated, but is also severely restricted by functional deficits, insufficient territorial capacities and scarce resources. The judiciary functions in ways that usually support the political stances and policies of the government. Pro-government bias is evident in political and media freedom cases, as well as in business disputes.

105 See Kohli, Atui. (1997). Can Democracies Accommodate Ethnic Nationalism? Rise and Decline of Self-Determination Movements in India. The Journal of Asian Studies: 56(2): 325-344.

106 Ibid

107 Ibid

108 See Human Rights Watch 2020 Report, “Ethiopia, Events of 2020.”

109 See UN 2021 <https://dppa.un.org/en/dicarlo-risk-of-ethiopia-descending-widening-civil-war-is-only-too-real>

110 Human Rights Watch,2021

111 Amnesty International,2020

112 Transparency International,2021

113 Gebeye, B.A. (2018). The Legal Regime of Corruption in Ethiopia: An Assessment from International law perspective. Oromia Law Journal, Vol. 4, No.1

114 Ibid

115 See Transparency International 2019 Report on global corruption indices. According to the report, corruption is not a unique problem to a specific society or country. It is a universal problem which demands universal action. However, for the meaningful international intervention against corruption, the contribution and commitment of individual states to a campaign against corruption is of paramount importance. In this regard, the role of states in ensuring international cooperation for the fight against corruption and in bringing accountability, transparency, integrity and rule of law to the governance practice is crucial.

116 Ibid

Ethiopia had been under imperial and military rules for a long time. Under these regimes the search for democracy, human rights and good governance had been compromised. Gebeye argues that, these regimes brought mal-administration, corruption, poverty and socio-economic and political crisis to the people at large.¹¹⁷ Revolutions ended both the imperial and military regimes. With the emergence of the Federal Democratic Republic, Ethiopia's new (FDRE) Constitution, the ideas of democracy, human rights, good governance and development became both a legal and public discourse.¹¹⁸ But economic crime, sustained corruption and human rights violations have caused widespread dissatisfaction among citizens with government officials in the country going back to 2015.¹¹⁹ Corruption occurs in various forms, including but not limited to clientelism, kleptocracy, rent seeking and state capture despite the existence of strong anti-corruption laws, which unfortunately have never been implemented adequately.¹²⁰

Ethiopia officially embraced such instruments as the Criminal Law and Civil Law Conventions on corruption, United Nations Convention against Transnational Organized Crime¹²¹, United Nations Convention against corruption (UNCAC) (2003);¹²² UNCAC is the first global, legally binding instrument on corruption and related matters and developed with an extensive international participation,¹²³ and the African Union Convention on Preventing and Combating Corruption (2003).¹²⁴ Such conventions call on states to implement policies and legislation that can effectively combat graft domestically and globally.

Thus, regarding the public sector, the UNCAC Convention provides that state parties have discretion implementing effective anti-corruption policies,¹²⁵ and in creating organizations specifically meant to fight corruption.¹²⁶ The convention states state parties must endeavour to ensure that public services are subject to safeguards that promote integrity, transparency and accountability among civil servants and that hiring is based on efficiency and merit.¹²⁷ States must also promote transparency and accountability in public procurement and management of public finances,¹²⁸ and must take measures to preserve integrity in especially critical areas such as the judiciary and prosecution services, and to prevent money laundering.¹²⁹ The convention hopes to achieve a corruption-free civil service that can ensure realisation of all public goods and create a conducive environment for business.

One of the challenges facing the FDRE Constitution was civil service reform, centred on tackling corruption and improved service delivery.¹³⁰ To strengthen the anti-corruption struggle, the government established the Federal Ethics and Anti-Corruption Commission

117 Gebeye, B.A (2018). The Legal Regime of Corruption in Ethiopia: An Assessment from International law perspective. *Oromia Law Journal*, Vol. 4, No.1

118 Ibid

119 Kanaan Rahman (2018), Overview of corruption and anti-corruption in Ethiopia

120 Ibid

121 Criminal Law and Civil Law Conventions on Corruption were adopted under the inter-governmental framework of the Council of Europe to deal with the problems of corruption by proposing criminal sanctions and civil remedies a solutions.

122 UNCAC was adopted by the General Assembly in its resolution 58/4 of 31 October 2003 at the United Nations Headquarters in New York. See also The Global Compact. (2003). 'background information on the Fight against Corruption', available at: http://www.transparency.org/global_compact_2003_background_information_on_the_fight_against_corruption_pdf

123 See A. Argandona. (2006). 'The United Nations Convention Against Corruption and its Impact on international Companies, Working Paper WP No.656, IESE Business School, University of Navarra. Available at<<http://iesse.edu/research/pdfs/DI-056-E.pdf> (last accessed February 2013).

124 See Berihun Adugna Gebeye, (2021). The African Union (AU) sought a continental approach to the problem of corruption which is similar to human rights issues in the 1980s. See also Transparency International, Global Corruption Report 2004-political Corruption, 62, p. 117 It is due to the regional peculiarities that the AU adopted a regional sensitive anti-corruption convention. The African Union Convention on Preventing and Combating Corruption (AU anti-corruption convention) is the most recent regional anti-corruption convention. The AU anti-corruption convention was adopted on 11 July 2003 at the AU Summit in Maputo, Mozambique and entered into force on 5 August 2005. The AU anti-corruption convention, available at: <http://www.africa.union.org/root/au/Documents/Treaties/Treaties.htm>(last accessed on 4 January 2013).

125 UNCAC, Art.5

126 UNCAC, Art.6

127 UNCAC, Art.7

128 UNCAC, Art. 9

129 UNCAC, Art. 14

130 T. Shambo, Anti-corruption efforts in Ethiopia, conference paper presented on the theme Fighting corruption and safeguarding integrity, Global Forum V, Sandton, South Africa, 2-7 April 2007; see also Institute of Educational Research, corruption in Ethiopia – submitted to the Ethics Sub-Programme of the Civil Service reform Programme, 2001 Addis Ababa.

(FEACC) in May 2001.¹³¹ Despite federal government efforts to ensure law was followed in the anti-corruption enforcement process, the 2004 Transparency International Report on global corruption¹³², suggested that the approach needed to take seriously, human rights issues associated with it. This underlines the fact that issues of corruption are always complex and state parties must therefore adopt a mechanism that ensures the rule of law is followed, and basic human rights are respected, protected and fulfilled.

The Human Rights Watch Report (2016) *Fighting Corruption with Impunity* showed that the Ethiopian government and security forces used unethical measures to pursue people perceived as corrupt.¹³³ Arbitrary arrests, forms of abuse and torture were some of the methods employed to extract information in corruption cases, violating basic rights of suspects.¹³⁴ Corruption is easily externalized through indicators: poverty, debased human rights, environmental degradation, derailed development, intra and interstate conflicts are often its consequences. Corruption destroys confidence in democracy and de-legitimises governments, especially where electoral processes are marred by bribery to subvert free and fair election. Corruption debases human dignity.¹³⁵ A method such as torture, even in service of fighting corruption, debases it further. One of the major effects of corruption in Ethiopia has been growing external debt.

Teklu Kassu et.al, have identified the existence, cause and effect of the relationship between external public debt, capital formation and economic growth.¹³⁶ Ethiopia has been suffering serious external debt problems from the early 1990s. As a result, access to the external concessional borrowing window was denied.¹³⁷ There was debt overhang, crowding out and liquidity problems caused by the Dergue's policies which included large borrowing from multilateral, bilateral and commercial creditors to finance war.¹³⁸ Inappropriate macroeconomic policy and channelling of resources to unproductive undertakings were also noted in the findings as a major concern.¹³⁹ The present government inherited mounting debt, a fragile macro economy and a very unstable country, highly vulnerable to distress and conflict. With the help of the International Development Association (IDA) and International Monetary Fund (IMF), they established a stable macroeconomic environment, adopted comprehensive debt management strategy, utilized available debt relief optimally, and improved debt indicator ratios and brought the country's external debt from unsustainability to sustainability.¹⁴⁰ However, fundamental economic and social rights were and are often compromised by PM Abiy Ahmed's efforts to ensure Ethiopians got basic services, rightly and effectively. For instance discontent with government economic policies are normally met with state violence.

Protection of the common

Desalegn Amsalu emphasizes the need for the African countries in the south of the Sahara to redouble efforts towards sustainable environmental protection.¹⁴¹ Influenced by international environmental rights law, most African countries now incorporate in their Constitutions or other legal frameworks environmental rights for their citizens.

131 Federal Ethics and Anti-corruption Commission establishment proclamation, Proclamation No. 235/2001, Federal Negarit gazzeta.

132 Transparency International, Global Corruption Report 2004-Political Corruption,

133 Human Rights Watch Report, 2016, "Fighting Corruption with impunity"

134 Ibid

135 Ibid

136 Teklu Kassu, Mishra, D.K., & Melesse Asfaw. (2014). "Public External Debt, Capital formation and Economic growth in Ethiopia". Journal of Economic and Sustainable Development, Vo. 5, No. 15.

137 Ibid

138 Ibid

139 Ibid

140 Ibid

141 Desalegn Amsalu. (2018). Environmental rights in Ethiopia: Shifting from theory to practical realization. Journal of Sustainable Development Law and Policy.

The 1995 federal Constitution of Ethiopia has an environmental policy,¹⁴² and all subsequent legislation also incorporate environmental rights contained in major international environmental law conventions.¹⁴³ Such rights include a clean and healthy environment, the right to access environmental justice, as well as the right to information and public participation on matters involving one's environment. Human Rights Watch and Transparency International have raised concerns about PM Abiy's commitment to environmental rights law.¹⁴⁴ According to them, the country's capital, Addis Ababa, has become an epicentre of air pollution.

Children and adults are at risk of contracting various illnesses, key among them being respiratory and skin infections. Some residents have even abandoned their homes, unable to cope with the effects of pollution. The government's lack of human resource capabilities or appropriate technology to promote a healthy and safe environment; its preference for economic growth over environmental protection; environmental corruption; and poor responsiveness of the public, policy makers, the political class, as well as law enforcement organs such as the police and the courts to environmental rights, are among the major causes of poor implementation. International environmental law¹⁴⁵ demands that states commit adequate resources towards the protection of environment.

A critical look at Ethiopia's track record in complying with international obligations to ensure economic, social and cultural rights are respected, protected and fulfilled indicates that PM Abiy Ahmed's government faces numerous challenges with its reform agenda. Ethiopia has consistently faced harsh environmental conditions that could not allow the country fulfil its obligations to meet basic needs rights of its people. Complex and politically charged issues surrounding the management of the on-going expansion of Addis Ababa, and clarification of constitutional provisions around Oromia's special interest remain unanswered and a growing source of tension. These tensions increased when the Oromia regional government announced its plans to demolish 12,000 homes alleging illegal settlements on the outskirts of Addis Ababa.

Respect for human dignity (Against torture)

Ethiopia ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) on 14 March 1994, but since then violation of the rights contained in the instrument continues. While the constitution and law prohibits arbitrary arrest and detention of persons and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court, the practice is that state agencies disregard those rights. Authorities detain persons arbitrarily, including activists, journalists, and members of opposition parties.¹⁴⁶ The 2019 Human Rights Report on Ethiopia revealed that law enforcement officers reportedly arrested and detained hundreds of suspects on 22 June 2019 following the killings in Bashir Dar and Addis Ababa and the July violence in Sidama Zone.¹⁴⁷ On July 18 2021, the independent rights group, the Human Rights Council (HRCO) expressed concerns over arrests of opposition groups, but there was no response from the security agencies.¹⁴⁸ As such actions continue to occur unabated since there is no one to be held accountable.

Shulztriner and Guy have argued that human dignity included in the preamble of the United Nations Charter (1945) and the Universal Declaration of Human rights (1948),

142 Ibid

143 Ibid

144 Ibid

145 Ibid

146 See Ethiopia 2019 Human Rights Report

147 Ibid

148 Ibid

has become a central concept in contemporary constitutionalism following World War II.¹⁴⁹ Many national constitutions recognize the need to uphold human dignity as criteria for human rights. This concept is not new to Ethiopia. The Ethiopian constitution protects the rights of all detained persons,¹⁵⁰ prohibits any cruel, inhumane or degrading treatment,¹⁵¹ and protects and respects human dignity of all prisoners.¹⁵² All these are based on the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).¹⁵³ The obligation to treat detainees with dignity does not depend on the availability of resources, and class, it should be guaranteed without discrimination.¹⁵⁴ While Ethiopia remains a signatory to CAT and appears to conform to the international standards, the de-facto practice is that detainees and prisoners are inhumanely treated.

Cases of use of force with discretionary restraint, disappearances and torture are common in Ethiopia. Media reports in July 2019 revealed how police detained a group of suspects and kept them in cold, dark cells with limited access to toilets, subjecting them to inhumane treatment, thereby violating their fundamental freedoms. The detainees began a hunger strike, which lasted for a few days, and on July 8, police brought the suspects to court on allegations of committing terrorism. The Human Rights Watch 2019 Report¹⁵⁵ notes that this trend continued unabated despite an outcry from different groups involved in human rights defence.

Provision of basic needs rights (rights to employment, health care, food)

Ethiopia is a poor agricultural country with a per capita income of USD 350.¹⁵⁶ The general unemployment rate was 20.5% in 2009.¹⁵⁷ It was higher for females at 29% compared to males which stood at 12.1%.¹⁵⁸ A high level of unemployment indicates the failure of a country's economy to utilise its national resources effectively. Factors explaining unemployment, such as a low level of general economic activity, recession, and discrimination have been identified.¹⁵⁹ The report by Mihret on women unemployment in Ethiopia reveals that among married women, the percentage currently employed was only 32% in 2005 according to the Ethiopia Demographic Health Survey (EDHS), and then improved slightly to 48% in the 2016 (EDHS).¹⁶⁰ The percentage of married women who receive cash earnings increased from 27% in 2005 to 36% in 2011, and then remained essentially stable at 35% in 2016. The percentage of married women not paid for their work declined from 60% to 30% between 2005 and 2011 and then increased to 49% in 2016.¹⁶¹ Ethiopia ratified the Convention on the Elimination of all forms of Discrimination against women (CEDAW) on 8 July 1980, but enforcement mechanisms limit its effectiveness in application. Women's rights are human rights provided for in international human rights instruments. With regard to statistical data on women employees in Ethiopia, the 2018 Ethiopia Gender Statistics Report estimates the rate of informal employment amongst women having dropped from 58% in 2000 to 36% in 2016, compared to 38% and 20% respectively amongst men.¹⁶² This leaves many women

149 Shultziner & Guy E. Carmi. (2014). Human Dignity in National Constitutions: Functions, Promises and Dangers. *The American Journal of Comparative Law*, SPRING 2014, Vol. 62, No. 2, pp.461-490
150 Federal Negarit Gazeta, Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995, Article 21.
151 Ibid, Article 18
152 Ibid, Article 24
153 See Samrawit Getaneh. (2015). Ethiopia: Prisons and No Human Dignity, Untold Stories
154 Ibid
155 Ibid
156 Ibid
157 Ibid
158 Ibid
159 Ibid
160 Ibid
161 Ibid
162 Yewen Alemu Mihret. (2019). Factors Associated with Women Unemployment in Ethiopia. *International Journal of Theoretical and Applied Mathematics*, 5(5),pp.68-73

without social protection, health benefits and legal status.¹⁶³ The average unemployment rate for women from 15-49 was 48%. Thus unemployment rate is still significantly higher among females. Heavy domestic duties, pregnancy and discrimination are some of the reasons for female unemployment. Ethiopian women also earn less than men. Unemployment is more of a problem among women than men due to the socio-political and economic system that has entrenched gender inequality perpetuated by patriarchal society. This imbalance has worked against women despite elaborate provisions in the constitution that had outlawed discrimination against women based on regional and international human rights instruments such as ICESCR.

Another area of concern is healthcare for women and children. A 2020 survey by Koku Sisay Tamirat et.al¹⁶⁴ indicates that in the past two decades, maternal health status showed a noteworthy improvement and achievements of Millennium Development Goals (MDGs), which was reflected by a reduction in maternal and child mortality.¹⁶⁵ Quality health care is broadly defined by availability, affordability, accessibility, and acceptability of services for best health outcomes.¹⁶⁶ Ethiopia is a highly affected country with one of the highest rates of maternal and child mortality among sub-Saharan countries, with an estimated 353 deaths per 100,000 births, according to the 2015 Central Statistical Agency Report¹⁶⁷. Similarly, according to the Ethiopia 2016 national survey, institutional delivery was 66%, and 22% of women had an unmet need for family planning services, which was linked to various barriers of accessibility and utilization.¹⁶⁸ The constitution of Ethiopia stipulates clearly that every citizen has the right to access healthcare without discrimination based on gender, sex, religion etc. However, Human Rights Watch 2020 Report “Ethiopia: Events 2020” paints a disturbing picture of the atrocities people living in Tigray region have undergone during the recent civil war. Denial of basic services, including women’s healthcare, to the region was widespread, which constituted systematic violation of fundamental human rights provided for in national, regional and international human rights norms and practices.

Recognition of special category rights

Human Rights Watch, 2019 reported over 2 million internally displaced people, including almost 1 million displaced in April and June 2019 due to an inter-communal conflict between Guji and Gedio communities in Oromia and Southern Nations, Nationalities and People’s Region (SNNPR).¹⁶⁹ At least 145,000 people had been displaced in Somali and Oromia regional states by August 2019 due to renewed fighting.¹⁷⁰ In September, ethnic violence displaced an estimated 15,000 people from the outskirts of Addis Ababa.¹⁷¹ Despite signs of rising tension among ethnic groups, the government failed to prevent attacks, resulting in further displacement.¹⁷² Human Rights Watch reports that longstanding grievances over access to land and complex questions of identity and demarcation of internal borders occasionally lead to abuses, including open conflict between ethnic groups, killings, and large-scale internal displacement.¹⁷³ Children

163 Ibid

164 See Tamirat, K.S, Tesseræ, Z.T & Kerbed, B.F. (2020). Factors associated with the perceived barriers of health care access among reproductive-age women in Ethiopia: a secondary data analysis of 2016 Ethiopian demographic and health survey. BMC Health Services Research

165 See Way C. The Millennium development goals report 2015,UN,2015

166 Gulliford M, et.al. (2002). What does' access to health care mean? J Health Sev Res policy,7(3): 186-8

167 See Central Statistical Agency, Ethiopia demographic and health survey 2016, in ORC Macro, Calverton, Maryland,USA,2016

168 Ibid

169 See Human Rights Watch Report,2019

170 Ibid

171 Ibid

172 Ibid

173 Ibid.,2019, the number of people internally displaced by conflict remained high; according to the international Organization for Migration, 1.6 million people were internally displaced as of July,66.4 percent due to conflict. The Internal Displacement Monitoring Centre reported that ethnic clashes in Oromia, Amhara, Somali, and SNNPR regions led to 522,000 new displacements in the first half of 2019. Between March and May, the government returned approximately 1.5 million internally displaced people to their home areas, many still unsafe, including by restricting delivery of humanitarian assistance and demolishing camps in areas of displacement. Those that returned often faced secondary displacement due to ongoing security and a lack of humanitarian assistance in areas of return.

caught up in the conflict in Tigray region suffered disproportionately, with a number of them forced to flee to Sudan.

The 2021 Human Rights Watch Report¹⁷⁴ described the situation as bad with concerns raised over the lack of healthcare services, which resulted in a high number of deaths among women during childbirth and increased cases of acute watery diarrhoea among children¹⁷⁵. There were also issues of food insecurity, with 4.5 million people in need of food assistance in Tigray.¹⁷⁶ PM Abiy's government failed to protect its own people and instead denied them basic human rights in pursuit of its strategic military interest in the region, causing massive displacement, and committing serious crimes in international humanitarian law.

BURUNDI

CONTEXTUAL ANALYSIS

In recognition of the need to have a broad-based view of Burundi's human rights situation today, CRTP set out benchmarks for establishing how Burundi's failure to comply with its international and regional human rights obligations has resulted in the continued violation of those rights, and the indices available that could help researchers have a wider view of the real human rights situation in Burundi. In view of the above and for purposes and scope of this review, the following fundamental rights and freedoms and related areas are covered: freedom of assembly and association, freedom of religion, doctrine of separation of powers, accountability for economic crimes (money laundering, irresponsible debt accumulation), protection of the common good (accountable economic policies on natural resources, environmental pollution, displacement), respect for human dignity (the question of torture, inter alia), provision of basic needs (rights to employment, healthcare, food), recognition of special category rights (children, youth, women, PWDs, refugees and IDPs). Burundi has been transitioning from years of failed political, socio-economic and cultural policies, entrenched structural violence and intractable cycles of conflicts. To understand the position of the country today, this review evaluates its human rights situation based on the above-mentioned indices.

State fragility in Burundi has been a cause and consequence of the country's political instability.¹⁷⁷ Since independence, Burundi underwent six episodes of civil war, two major foiled and five successful coup d'états that brought about regime change.¹⁷⁸ This political volatility generated persistent cycles of violence resulting in the collapse of the country's institutions and economy¹⁷⁹ even after the negotiation of the Arusha Agreement.¹⁸⁰ Human rights advocates have raised major concerns as the incumbent administration systematically perpetuates the situation in total defiance to its international obligations to respect, protect and fulfil those rights.

Burundi uses multiple security agencies such as the police, security forces, and intelligence services to intimidate and stem political dissent. The agencies work with the ruling

¹⁷⁴ Human Rights Watch 2021 Report: Ethiopia-Tigray Region Humanitarian Update Situation Report # 10 M 13, 2021

¹⁷⁵ Ibid

¹⁷⁶ Ibid

¹⁷⁷ Javier D. Nkurunziza (2018). The origin and persistence of state fragility in Burundi. Available at: <https://www.theigc.org/publication/origin-persistence-state-fragility-burundi/>

¹⁷⁸ Ibid

¹⁷⁹ Ibid

¹⁸⁰ <https://peacemaker.un.org/node/1207>

party's radicalized youth wing- the *Imbonerakure*,¹⁸¹ to violate human rights through repression. Indicators such as extrajudicial executions, disappearances, abductions, kidnapping, arbitrary arrests and detention without trial, torture and sexual violence, are common. The Amnesty International Report of 2016 raised concern over mass graves found in the outskirts of Bujumbura on 28 January 2016 and 2 March 2016.¹⁸² According to it, Burundi had abdicated its international obligations to investigate and prosecute those responsible for the killings and therefore proved complicit in systemic violation of human rights. Adoption of legislation has restricted and limited Civil Society's ability to operate and challenge the excesses of government in socio-economic and political systems, structures and policies in addition to the already worsened human rights situation in the Great Lakes country, whose years of violent conflict have left many homeless, poor and refugees.

BACKGROUND AND FRAMEWORK

During the 46th Human Rights Council's interactive dialogue session on Burundi, it was reported that serious human rights violations had been documented in the country since President Ndayishimiye was sworn into office. Even in recent months, human rights violations continue to be committed, especially as a result of the numerous security incidents that have been witnessed since the summer of 2020.

It was on such basis that, this review identified critical areas of human rights violations specific to Burundi, and could easily have happened in the other countries as well.

II. The status, ratification and implementation of International conventions and protocols on Human Rights in Burundi

Burundi has ratified a number of regional and international human rights conventions and treaties as part of its international obligation, and as a way of being compliant, some of the instruments form an integral part of the 2005 Constitution that provide the basis for article 19, which states, in accordance with the ICCPR that, "[t]he rights and duties proclaimed and guaranteed by, *inter alia*, the Universal Declaration of Human Rights,¹⁸³ International Covenant on Civil and Political Rights (ICCPR)¹⁸⁴, the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁸⁵ are fundamental for the dignity of every human being. It does not stop at that for there are others such as, the Convention against Torture (CAT)¹⁸⁶, and the African Charter on Human and Peoples Rights (ACHPR)¹⁸⁷ that deals with the same matter of the protection of human rights to enhance human dignity. It was expected at the international level, that Burundi would have ratified the additional international treaties and protocols that include International Convention for the Protection of All Persons from Enforced Disappearances (CPED) and the Optional Protocols to the ICCPR and CAT.¹⁸⁸ To date, Burundi has ratified,

181 The group unleashes violence on the public, especially on the opposition members critical of the excesses in the ruling party CNDD-FDD run government. Imbonerakure group grew metamorphosed out CNDD-FDD sponsored militia groups which had been characterized by war-like culture. See also Emma Graham-Harrison. (2016). The World Looks Away as Blood Flows in Burundi. Available online at: <https://www.theguardian.com/world/2016/apr/10/burundi-ethnic-violence-refugees>.

182 "Burundi: Satellite Evidence Support Witness Accounts of Mass Grave", Amnesty International, 28 January, 2016; Available at: <https://www.amnesty.org/en/latest/news/2016/01/Burundi-satellite-evidence-support-witness-account-of-mass-graves>.

183 Economic and Social Council. Committee on Economic, Social and Cultural Rights: Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural rights, 2013.

184 In a report, Ratification Status for Burundi, the UN Office of the High Commissioner for Human Rights, confirms that Burundi ratified the International Covenant on Civil and Political Rights (ICCPR) on May, 1990. This is Available online at: http://tbinternet.ohchr.org/_layout/TreatBodyExternal.aspx?CountryID=28&Lang=EN.

185 The International Covenant on Economic, social and cultural rights (ICESCR) was ratified by Burundi also on May, 1990. Available at: http://tbinternet.ohchr.org/_layout/TreatBodyExternal.aspx?CountryID=28&Lang=EN

186 Convention Against Torture (CAT) was ratified together with other instruments such as Cruel, Inhuman or Degrading Treatment or Punishment on February, 18th 1993 as recorded by UN Office of the High Commissioner for Human Rights in a study Ratification Status for Burundi. Available at: http://tbinternet.ohchr.org/_layout/TreatBodyExternal.aspx?CountryID=28&Lang=EN

187 For regional instruments, Burundi ratified the African Charter on Human and Peoples' Rights on July 28th, 1989 as indicated by the African Commission on Human and Peoples' Rights (ACHPR) study Ratification Table: African Charter on Human and Peoples' Rights. Available online at: <http://www.achpr.org/instruments/achpr/ratification/>.

188 Report of the Working Group on the Universal Periodic Review: Burundi, (March 25th, 2013) indicates that Burundi ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP2) and acceded to it with a view to abolishing the death penalty.

among others, the Optional Protocol to the CAT,¹⁸⁹ but has adamantly failed to ratify the CPED or the Optional Protocol to the ICCPR,¹⁹⁰ raising critical questions about its' commitment towards its' international obligation to comply with international human rights law and norms. CAT also requires that the country operationalizes a National Preventive Mechanism (NPM),¹⁹¹ which has not been implemented to date. According to the 2018 *Universal Periodic Review* (UPR), Burundi should have by now ratified the Convention on the Rights of Persons with Disabilities (CRPD),¹⁹² and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW).¹⁹³ Additional instruments fundamental to human rights, include the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).¹⁹⁴ All these form an integral part of the Constitution of the Republic of Burundi. These fundamental rights may not be subject to any restriction or derogation, except in certain circumstances which are justified in the general interest and their protection,¹⁹⁵ for the common good.

Dutton argues that states continual abuse and violation of human rights and mass atrocities for decades has led to the ratification of a number of international human rights treaties.¹⁹⁶ In this regard, where treaty enforcement mechanisms are weak, the state perceives the enforcement mechanisms as a threat to its' sovereignty, and as such, even those states with a history of malpractices will regularly and readily commit to treaties designed to promote better human rights practices.¹⁹⁷ An examination of treaty commitment by states shows the relationship between treaty enforcement mechanisms and likelihood of ratification across a broad range of treaties. Even though states commit to human rights treaties, studies show that states only do so as window dressing.¹⁹⁸ The fact that a state has in the past committed to treaties may also not necessarily relate to the present situation. For example, indicators of the state's commitment to, and ability to comply with, the general norms of treaties promoting normative human rights practices are not necessary indicators that a state would join another international treaty protecting human rights. Rather, studies show that many states with poor human rights records are often just as likely to commit as are states with good records.¹⁹⁹ Burton and Tsutsui further note that, many states continue their poor practices despite the fact that they have ratified a treaty condemning such practices.²⁰⁰ Taking Burundi as a practical example in this analysis, it appears that the country has committed itself to a number of treaties and ratified almost all. However its' weak enforcement mechanisms have seen an increase in institutionalized human rights abuses, such as torture, arbitrary detentions and enforced disappearance of persons, especially those critical of government.

189 See UN Treaty Collection: International Convention for the Protection of All Persons from Enforced Disappearance. Available at: http://treaties.un.org/pages/ViewDetail.aspx?src=IND&msgid_no=IV-16&chapter=4&lang=en

190 Ratification Status of Burundi: Available at: http://tbinetnet.ohchr.org/_layout/TreatBodyExternal.aspx?CountryID=28&Lang=EN.

191 See Report of United Nations Independent Investigation on Burundi (UNIIB) Established Pursuant to Human Rights Council Resolution S-24/1 (Sept. 20th, 2016). Available at: <http://www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx>.

192 The Advocates for Human Right Rights, Stakeholder Report for the United Nations Universal Periodic Review, January-February, 2018.

193 2008 Universal Periodic Review(UPR)

194 Ibid

195 Committee on Economic, Social and Cultural Rights,2013

196 Dutton, Yvonne. (2012). Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms. University of Pennsylvania Journal of International Law, Vol. 34: 1. Available at SSRN: <https://ssrn.com/abstract=2187400>

197 Dutton,2012

198 Dutton, 2012 citing e.g. Emilie M. Hafner-Burton & Kiyoteru Tsutsui. (2005). Human Rights in a Globalizing World: The Paradox of Empty Promises. In this case, it is suggested that states may ratify human rights treaties only for window dressing purposes, that the average state has ratified a steadily increasing number of human rights treaties but the percentage of states reportedly repressing human rights grown over time. This is because many international human rights treaties have non-existent or weak enforcement mechanisms-often only requiring that states self-report compliance-states may view commitment as essentially costless from a sovereignty standpoint.

199 For example, states with the worst torture rating are just about as likely as those with the best to have ratified the Convention Against Torture(CAT)

200 See Hafner-Burton & Tsutsui, as cited by Dutton, Yvonne,2012

Domestic Legal Framework analysis.

Burundi's 2005 Constitution provides a broad-based framework within which the understanding of the scope, limits and the arithmetic of political power-sharing among majority Hutus and minority Tutsi in recognition of fundamental human rights for all Burundians²⁰¹ should be carried out. Elazar argues that the relevance of power sharing is that it guarantees coexistence among ethnic groups and hence legitimizes the constitution.²⁰² Among legal provisions available to upholding fundamental human rights include the principle of equality before the law (Art.22), the right to life (Art.24), the right to be free from torture or cruel, inhuman or degrading treatment or punishment (Art.25), the freedom of expression (Art.31), the freedom of assembly and association (Art.32), and the right to due process (Art.38-40), among others. Most critical of all is that the constitution guarantees in clear terms, the independence of the courts (Art.209)²⁰³, seen within a wider framework of the doctrine of separation of power, i.e. independence of the three arms of government which must function interdependently.

III. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND HUMAN RIGHTS INDICES ON BURUNDI

Situational analysis of human rights development in Burundi

Continued violation of human rights in Burundi can better be understood within the context of the changes in political power dynamics of April 2014, following the late President Pierre Nkurunziza seeking a controversial third term.²⁰⁴ Protests and demonstrations against Nkurunziza's government were met with brutality from the police and security forces, which descended on the opposition actors and their supporters in a bid to contain the situation. Human rights advocates reported increased number of people shot dead as others were arrested, tortured and detained, or disappeared without a trace. The failed *coup d'état* by the military forces in May 2015 witnessed State security agencies use repressive means to stifle political dissent by cracking and closing down independent radio stations.²⁰⁵ A number of opposition leaders, journalists as well as civil society activists fled the country for fear of harassment, imminent arrest and torture, yet Burundi has ratified key human rights Conventions which outlaws gross violation of fundamental human rights of all regardless of political persuasion, gender, ethnicity, sex or religion.

Freedom of Assembly and Association

The 2021 Human Rights Watch Report (HRW) surfaced serious concerns about civil and political rights in Burundi. The report highlights a wide range of indexes related to democratic process. The report cites skewed electoral process, by stating how, presidential, legislative, senate and local communal elections were marred by irregularities that saw the ruling National Council for the Defence of Democracy (CNDD-FDD) Party take power once again. Indicators such as incessant harassment of civil society, extra-judicial killings and arbitrary arrests after elections were recorded and reported by UN Human

201 *Burundi's Constitution of 2005*, (2012). Available at: https://www.constituteproject.org/constitution/Burundi_2005.pdf in *The Advocates for Human Rights*, 2018

202 Elazar, J.D. (2005). Constitutional design and power-sharing in the Post-Modern Epoch. Available at, <http://www.jcpa.org/dje/articles3/constdesign.htm> in Nsabimana, G.C. (2005). *The Concept of Power Sharing in the Constitutions of Burundi and Rwanda*. L.L.M Dissertation. Centre for Human Rights, Faculty of Law, University of Pretoria.

203 *The Constitution of Burundi*, 2015. Available online at: www.hrw.org/sites/default/files/supporting_resources/burundi_compendium_2016_web_version_4.pdf.

204 Human Rights Watch, *Burundi's Human Rights Crisis*, (April, 2015-July 2016). Available online at: www.hrw.org/sites/default/files/supporting_resources/burundi_compendium_2016_web_version_4.pdf

205 Human Rights Watch, *Burundi's Human Rights Crisis*, (April, 2015-2016). Available at: www.hrw.org/site/default/files/supporting_resources/burundi_compendium_2016_web_version_4.pdf

Rights Council through a mandated Commission of Inquiry (COI).²⁰⁶ Reported violation of human rights in 2020 escalated this coming on the backdrop of Burundi's President Pierre Nkurunziza's death and current President Evariste Ndayishimiye assuming leadership of the country.

HRW Report 2021 also indicates how the absence of any international observation mission in May 2020 may have been due to lack of political good will to admit observers three months before elections, as best practices of elections demand.²⁰⁷ Restrictions on the freedom of movement, association and assembly were coordinated by those aligned to the ruling party, so that the opposition parties were curtailed from campaigning as required in pre-elections, election and post-election periods.²⁰⁸ Human Rights Watch indicated that security related abuses were widespread, with arbitrary arrests of opposition party members and youth witnessed across the country, especially after the 2020 elections.²⁰⁹ Human Rights Watch decried denial of access by opposition polling agents to polling stations, arbitrary arrests of voters, journalists and human rights advocates who sought to monitor the elections, especially in rural areas, where the ruling party still enjoyed colossal youth support.

Burundi embraced multiparty politics in 1992 after the signing of the Charter of National Unity, which called for political balancing on both sides of ethnic and gender basis. The country had faced a series of challenges such as the assassination of the president (a Hutu) just three months after his election in 1993.²¹⁰ The Arusha Agreement and the 2005 Constitution recognized the importance of the right to form political parties without interference. Nonetheless the government has often interfered in the internal management of political parties, particularly since the boycott of the 2010 elections by opposition parties. The ruling party- National Council for the Defense of Democracy (CNDD-FDD), worked on a strategy that weakened opposition parties to stem their competitiveness including National Forces of Liberation (FNL), the Front for Democracy in Burundi (FRODEBU), the Union for Peace and Democracy (UPD) and The Union for National Progress (UPRONA), The Front for Democracy in Burundi (FRODEBU) in an effort to sustain its hold on political power.²¹¹ The 2005 constitution stipulates the importance of power-sharing between Hutus and Tutsis in the National Assembly and Senate, and that women and members of the two minority groups be created for special seats in both houses²¹².

Political party formations' freedom to assemble and associate include inclusive participation in terms of membership, gatherings and rallies, all provided for by Burundi's constitution with an elaborate composition of rights and freedoms under the Bill of Rights. Civil and political rights have a provision that calls for the full participation of the citizens in the political affairs of their country and includes registering as voters and voting, being ready and willing to accept or contest election results through the judicial processes established in the law. Women's political rights also include a number of internationally recognized rights such as, the right to vote, to run for political office, to hold elected and appointed government positions to join political parties, and the right to petition government officials.²¹³ On the question of the extent to which foreign powers wield influence on Burundi's political landscape, whereas governance and leadership means commitment to respect, protect and fulfil its civil and political rights obligations,

206 Human Rights Watch, World Report 2021 Available at: [hrw.org/world-report/2021/country-chapter/burundi](https://www.hrw.org/world-report/2021/country-chapter/burundi)

207 Ibid

208 Ibid

209 Human Rights Watch, News Release (June, 2020)

210 <https://www.eisa.org/pdf/burcasestudy.pdf>

211 Ibid

212 Freedom House: freedomhouse.org/country/Burundi/freedom-world/2019

213 CIRI: Women's Rights-Political, [ChartsBin.com, April, 2021, <http://chartsbin.com/view/40069>](https://chartsbin.com/view/40069)

views and positions of researchers and human rights experts, remain divergent, but fundamental to the understanding of Burundi's recent human rights behaviour.

Two levels of analysis can help us understand how foreign powers have been influencing the government of Burundi on a range of human rights related questions: First, at East Africa regional level a Working Paper with the title, "Regional Sanctions against Burundi: A Powerful Campaign and its Unintended Consequences"²¹⁴ broadly discusses the impact of regionally imposed sanctions on the Burundian regime and its' involvement in the peace process as a result of the 1996 coup that raised major human rights concerns among EAC Member States. In this case, the writer argues that while previous literature had attributed the sanctions' success in pressuring the government of Burundi into negotiating a peace deal, the government actually responded to the sanctions senders' key demand to engage in unconditional, inclusive peace talks under the auspices of the regional mediator once the economy had already started to recover.²¹⁵ However, the regime anti-sanction campaign didn't yield the desired results for the Buyoya government, and was instead forced to negotiate a conclusive peace deal to escape further sanctions. Sanctions always bring about untold suffering to the citizens, whose basic rights to healthcare, food, and trade are jeopardised by the failure of the state to respect, protect and fulfil those rights that are fundamental to human beings.

Second, we turn to the international level. In the Legislative Observatory: European Parliament (2020), the European Union adopted Resolution 2502 in 2020 on Burundi focusing on fundamental freedoms, human rights and democracy in general. On freedom of expression, considered a key component of democratization process, the resolution statement recalled that the situation in Burundi, with several reports of violation of fundamental civil rights and political freedoms, was worrying. This, the resolution stated, was seen through a stalemate which made reaching a political solution through the Inter-Burundi Dialogue threaten the May 2020 elections. Consequently, the Europe Union (EU) threatened further sanctions on Burundi, if the Nkurunziza regime did not hold elections reflective of democratic standards. The 2019 UN Human Rights Council-mandated Commission of Inquiry on Burundi (COIB), expressed similar views, expressing concerns about civil and political rights violation ahead of the May 2020 presidential and parliamentary polls, whereby fear and intimidation had been widespread against those opposed to CNDD-FDD party.

In its' 2019 World Press Freedom Index, Reporters Without Borders ranked Burundi 159th out of 180 countries on the fundamental freedom of expression. They reported how four journalists from the Iwacu press group were arrested while covering violent conflict between the rebels and the army in North-Western Burundi and were sentenced to 15 year prison terms.²¹⁶ The Burundian National Communication Council also banned all Burundian journalists from divulging any information to international broadcasters such as the BBC and the Voice of America (VOA). Bound by the human rights clause of the Cotonou Agreement, Burundi's restriction of the freedom of expression was condemned on the basis that Bujumbura was a signatory to a number of international human rights instruments. According to the 2020 World Press Report, Burundi was ranked at 160, down from 159 in 2019, with a global score of +2.44 (53%),²¹⁷ the main indicator being freedom of expression, especially free speech, access to information, and press freedom.²¹⁸

214 Grauvogel, Julia. (2014). Regional Sanctions against Burundi: A Powerful Campaign and Its Unintended Consequences, *GIGA Working Papers, No.255*, German Institute of Global and Area Studies (GIGA), Hamburg.

215 Ibid

216 World Press Freedom Index, 2019; Reporters Without Borders (RSF). rsf.org/en/burundi

217 Ibid

218 CIRI: ER Index- Freedom of Movement, [ChartsBin.com, viewed 12th April, 2021, <http://chartsbin.com/view/40062>](https://chartsbin.com/view/40062)

The state of observance of freedom of the person to assemble and associate continues to face real challenges despite the country being a state party to numerous international treaties and conventions. Burundi is party to the international Covenant on Civil and Political Rights, and has therefore, the duty to comply with its' international obligation to respect, protect and fulfil fundamental human rights law.

Freedom of Religion

Freedom of religion as guaranteed in the 2005 constitution outlaws any restrictions on individual rights to worship.²¹⁹ The constitution describes the status of religious freedom, and provides mechanisms that allow successive governments to have policies that promote without violating religious beliefs and practices of groups, religious denominations and individuals right.²²⁰ The freedom of citizens to exercise and practice their religious beliefs is sacrosanct. Even though subject to actual government restrictions, these freedoms constitute fundamental human rights, contained in the law of the land adopted from international human rights instruments. The CIRI: ER Index-Freedom of Religion shows, how and why citizens should be allowed to freely practice their religions in a non-coercive, peaceful manner, while respecting the freedoms of others who may not be leaning towards any religious belief at all.²²¹ In other words, the idea of freedom of religion, touches directly on religion as a human right, which can be defined as freedom to practice one's faith without interference and the right to equal treatment of one's religion by the government and society and also on the influence of religion on human rights in general.²²²

The Burundian Constitution established a secular state; prohibiting religious discrimination; recognizes the freedom of thought, conscience, and religion; and provides for equal protection under the law irrespective of one's religion. Further, these rights may be limited by law in the general interest or to protect the rights of others, and may not be abused to compromise national unity, independence, peace, democracy, or the secular nature of the state, or to violate the constitution.²²³ In addition the constitution prohibits political parties from preaching religious violence, exclusion, or hate,²²⁴ as a way to promote national cohesion. Reports on religious demographic data based on the 2008 national census, showed 62% of the population in Burundi is Roman Catholic, 21.6% Protestant, , and 2.3% Seventh-day Adventist. Another 6.1% have no religious affiliation, while 3.7% belong to indigenous religious groups. The Muslim population lives mainly in urban areas, and is estimated at 10-12%, mainly the Sunni sect.²²⁵ The Shia Muslims are few and there is a small Ismail community as well. Religious groups that constitute less than 5% of the population include Jehovah's Witnesses, Orthodox Christians, and The Church of Jesus Christ of the Latter-day Saints, Hindus, and Jains. A 2013 national survey found 557 religious groups in Burundi, registered and recognized by a 2014 law framework of religious confessions, that demand that such organizations register with the Ministry of the Interior, and if they meet all criteria set for recognition of such institutions then they have a right to religious freedom.²²⁶ Pluri-religious societies often face identity crises, as certain religious groupings sometimes resort to compete for recognition by governments, at the expense of others. Although Burundi has not witnessed widespread religious-related human rights violations, restrictions by government to limit

219 International Religious Freedom Report at: <https://www.state.gov/religiousfreedomreport/>

220 CIRI: ER Index-Freedom of Religion, ChartsBin.com, April, 2021, <<http://chartsbin.com/view/40066>

221 Ibid

222 Jonathan, Fox. (2008). State Religious Exclusivity and Human Rights. In *Political Studies*, Vol. 56, 928-948

223 Burundi- 2019-International Religious Freedom Report- International Religious Freedom Report for 2019, United States Department of State. Office of International Religious Freedom

224 Ibid

225 Ibid

226 Ibid.

the scope of activities, remain a major concern to human rights advocates who question the objectivity of the criteria used in registering religious institutions in the country.

Religious leaders have also not been spared continued harassment by State agencies. According to reports, the president of the country's chapter of the Seventh-day Adventist Church was arrested on 24 October 2019 and detained without charges.²²⁷ He was later released without any explanation by the state regarding the incident. This was viewed by human rights advocates as a violation of the Convention against Torture (CAT) and other related conventions that protect citizens from inhumane treatment.

Doctrine of separation of powers

Charles-Louis de Secondat, baron de La Brede et de Montesquieu, an 18th century French social and political philosopher is credited with the crafting of one of the foundations upon which modern democratic governance rests.²²⁸ The practice of separation of powers demands that there be a clear functional distinction between the three arms of government (Executive, Legislature, and Judiciary). The intent is to prevent the concentration of power and provide for checks and balances.²²⁹ The checks and balances are quite fundamental to the democratization process, which must be observed.²³⁰ The traditional philosophical and legal characterization of the powers of the branches of government are: First, the legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government. Second, the executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch. Third, the judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.²³¹ When the checks and balances among the three arms function properly, it contributes to an effective and responsive government.

Like any other African country, Burundi's constitution recognizes the doctrine of independence and separation of power distributed among the three arms of government, namely the executive, the legislature and the judiciary²³². The Constitution states that, the judiciary is independent from the executive and the legislature, and that when exercising their functions, judges are bound by the law.²³³ Burundi's constitution recognizes the checks and balances between the executive, legislature and judiciary, such that the legislature has power to question the executive on fundamental constitutional issues of the common good²³⁴. The institutional relationship between the arms of government is based on the assumption that though each arm would function independently, there is still interdependence between them that is predicated on the principle of complementarity. The relationship between the branches of government has been theoretically upheld, but in practice, inevitably conflict between them remains real as their interdependence seems to generate tension as far as power limitations are concerned. Nsabimana emphasizes, that the supremacy of the Constitution is guaranteed under the Constitution of Burundi.²³⁵ It prohibits any violations of the rights protected under international law and the constitution itself by whatever means, hence the three arms are all subject

227 International Religious Freedom Report for 2019.

228 Rebecca Kadaga, MP. (2016). Separation of Powers and the Relationship between Parliament and the Judiciary: views from the Commonwealth Women Parliamentarians (CWP) Chairperson. In The Parliamentarian, 2016, Issue Two

229 Kadaga, *ibid*

230 *Ibid.*

231 *Ibid*

232 See Article 18 of the Constitution of Burundi. Sub-section of this article stipulates that, the Government respects the separation of powers, and that the supremacy of law, good governance and transparency in the management of public activities, will be upheld all the time. Constitutionally, respecting the rule of law could be interpreted as the rule of law as far as the law is binding to the Government in a broader sense, that three independent institutions are bound by the law (Executive, Legislature and Judiciary).

233 See Article 209 of the Constitution of Burundi

234 See Article 202 of the Constitution of Burundi

235 Nsabimana, G.C. (2005). The Concept of Power Sharing in the Constitutions of Burundi and Rwanda. L.L.M Dissertation. Centre for Human Rights, Faculty of Law, University of Pretoria.

to it. In addition, prior to the promulgation, all bills must be in conformity with the Constitution,²³⁶ as the supreme law of the land.

Continued gross violation of human rights in Burundi demonstrates how theoretically constitutional supremacy and enforcement of law by the three arms of government is possible, but practically very problematic. These institutions are obligated by law, to respect, protect and fulfil human rights as dictated by the International Bill of Rights, i.e. Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic and Cultural Rights and the African Charter on Human and Peoples' Rights (ACHPR), and especially Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).²³⁷ Burundi's supreme law is quite clear on the representation question. Nzoyisenga emphasizes this issue by stating how the 2005 Constitution of Burundi contains elaborate frameworks on women representation in all sectors.²³⁸ According to the writer, gender quotas are spelt out in various articles of the constitution, with emphasis that women hold a minimum of 30% of seats in Parliament - both in the National Assembly and in the Senate, as well as the Executive.²³⁹ In other words, Burundi's electoral law as defined by the constitution, which was largely inspired by the Arusha Agreement, established a quota of 30% female representation in elected positions.²⁴⁰ Whether or not these measures have had any impact on women's political influence and respect of human rights in Burundi, remains a heated debate, although it is not clear how the new administration would set a gender agenda within Burundi's constitutional dispensation. Nzoyisenga argues that the 2005 general election was a litmus test for the gender quota process resulting in historic gains for women, with their representation noting record growth from 12% to 36% in executive, national assembly and senate.²⁴¹ Women are also represented in other institutions such as public administration, diplomatic posts, the judiciary, and security forces.²⁴² The discourse on women's representation continues and even though captured in Burundi's supreme law, the implementation of women's rights remain a critical obligation for each of the three arms of government.

However, questions regarding representation in the Constitution of Burundi are broad in scope to include other groups such as the youth, people living with disabilities (PWDs) and all minority groups. Discussions on representation therefore must take into consideration all the groups that require mainstreaming in leadership and governance which include respect and protection of minority rights by law. But even though gender analysts see record improvement in Burundi's fulfilment of international human rights obligation on women representation, observation of the criteria used in ensuring that the youths are represented across the three institutions, such as in cabinet, parliament, senate and judiciary, continue to raise pertinent human rights questions.

Accountability for economic crimes

236 See article 228 and 231 of the Constitution of Burundi.

237 Nsabimana, G.C. (2005).

238 Nzoyisenga, F. (2020). 15 Years of Gender Quotas in Burundi: What's the Impact? Available at: giwps.georgetown.edu/15-years-of-gender-quotas-in-burundi-whats-the-impact/

239 Articles 129,164, & 182(2) of the Constitution of Burundi, introduced a requirement that women hold a minimum of 30% of seats in Parliament - both in the National Assembly and in the Senate- as well as the Executive. The measure aimed at addressing Burundian women's historical underrepresentation in public life since the country's independence in 1962.

240 Nanourou, S., & Abigail, W. (2014). Analysis of the Status of Women in Burundi's Political and Electoral Processes. In International Foundation for Electoral Systems, Washington D.C.

241 Nzoyisenga, F. (2020). 15 Years of Gender Quotas in Burundi: What's the Impact? Available at: giwps.georgetown.edu/15-years-of-gender-quotas-in-burundi-whats-the-impact/. This report notes that the 2005 general elections, the first test of the gender quota, resulted in historic gains for women. Women's representation jumped from 12% to 36.8%, from 19% to 31%, and from 18.8% to 34.6% in the executive, the national assembly (upper chamber), and the senate, respectively. Women inherited the positions of speaker of the national assembly and 2nd vice-president of the republic. The trend continued steadily until today. During the 2015-2020 period (the legislature governed by the 2005 constitution) women represented 36.36% of members in parliament and 31.8% of the officials in the executive.

242 The Constitution mandates "gender equilibriums" in articles 135, 208, & 255. Today, women make up at least 30% of members at important national institutions, including the Truth and Reconciliation Commission (CVR Burundi), the National Independent Commission on Human Rights (CNIDH), and the National Independent Electoral Commission (CENI Burundi). In 2011, the Burundian legislature even went as far as to require a minimum of 30% women in the compositions of national and provincial executive committees of political parties (art.33 of the law of political parties).

Economic crimes are broader in scope and entail various levels of analysis beyond the limits of positive law, as they persistently cut across many and diverse disciplines. This includes international human rights law, international relations, diplomacy, economics, and trade, gender, peace and security studies. In other words, economic crimes are multi-causal, multidimensional, and therefore analysis requires a multidisciplinary approach. These types of crimes touch on the fundamentals of financial systems whose operations are realized through banking institutions, bureau de change, organizations run by both local and foreign people, involved in transnational transactions. Burundi's constitution is clear on how financial engagements should be carried out in an accountable and transparent manner, with penalties spelt out for defaulters of law. The situation has been exacerbated by the, foreign and domestic debt. Burundians fear that with the increasing debt burden even as it becomes more real, and therefore narrowing down the possibility of citizens' access to the common good is narrowed down further, (i.e. good roads, railways, ports, clean environment, healthcare, education etc.).

One of the most persistent crimes that deny a nation the opportunity to transform the lives of its citizens is corruption. Corruption assumes new meanings every single day and despite efforts to combat it at both global and national levels, it keeps on fighting back. The United Nations Convention against Corruption (UNCAC), was adopted in 2003 and represents one of the most recent and extensive conventions which specifically recognise and tackle corruption.²⁴³ The convention set out to define and criminalise the actions of corruption and hence requires state parties to put in place anti-corruption policies.²⁴⁴ The aim of the convention was to provide a comprehensive legal framework to serve as a universally acceptable instrument that would be used in efforts to prevent and combat corruption.²⁴⁵ As complex as it may appear, corruption denies people the opportunity to enjoy fundamental human rights through access to basic services such as education, health care, food, etc. It is on the basis of carrying out comprehensive data collection on perceptions of corruption and its' relation to human rights, that Transparency International developed a tool called Corruption Perception Index (CPI)²⁴⁶ that has been used to collect data on corruption cases across the world. This tool was used by Transparency International on Burundi and the rating has not been positive. According to CPI, the rating of Burundi remained unchanged at 19 Points in 2020 from 19 Points in 2019 and 17 Points in 2018.²⁴⁷ In 2016, Human Rights Watch categorized Burundi as the most corrupt country in the East African region by identifying the police and judiciary as having the highest rates of bribery. It was revealed that many innocent people would be detained and even jailed if they failed to pay a bribe to either the police or judicial officers. From a human rights perspective therefore, the principle of equality for all was completely undermined, because only those who were well off would be able to guarantee their own freedom when confronted with corruption.²⁴⁸ This discussion points to other practical indicators of debt accumulation.

Like any majority of African countries, Burundi's debt growth has been assuming a worrying trend, with debt sustainability analysts indicating that Burundi faced a high risk of debt distress. Based on debt sustainability analysis (DSA), Nord and Ghura, **noted that despite notable reviews of a better coverage of exports of services, Burundi**

243 See Tools and Methods Series, Concept Paper 2: Supporting Anti-Corruption Reform in Partner Countries: Concepts, Tools and Areas for Action, October, 2011.

244 Ibid

245 See Tools and Methods, Concept Paper Series 2, 2011. A number of regional anti-corruption conventions have also been adopted. This includes the Inter-American Convention against Corruption of the Organization of American States (OAS), the Council of Europe Criminal Law Convention on Corruption, and the African Union Convention on Preventing and Combating Corruption.

246 See Andvig, Jane et.al. (200). 'Research on corruption: A policy orientated survey.' Available at: http://www.icgg.org/downloads/contribution07_andvig.pdf. The CPI ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean).

247 Transparency International, 2020.

248 See Contra Nocendi, Available at: contranocendi.org/index.php/en/newa/154-corruption-in-burundi

remained assessed as being at high risk of debt distress.²⁴⁹ The scope of the debt scenario is not only limited to what IMF has been raising since 2015 regarding Burundi's capacity to manage its' debts, but extends to include fundamental human rights undermined by debt accumulation. Access to basic needs such as education, health care and food may be limited since accumulated debt needs to be serviced. When financial mismanagement and funds meant for socio-economic well-being of the citizens are misdirected to serve political survival, questions about socio-economic justice arise and must be analysed within a broader context of human rights and the common good.

Protection of the common good

A review of the initial report²⁵⁰ on Burundi's international obligations on economic related rights, indicate milestones made, but also gaps to be filled as outlined by the Committee on Economic, Social and Cultural Rights (CESCR).²⁵¹ The CESCR's review concerning Burundi's obligations presents a list of fundamental issues of human rights nature that require serious attention. The Committee on Economic, Social and Cultural Rights had asked Burundi to provide statistical information on several indicators such as poverty levels,²⁵² levels of unemployment,²⁵³ access to health care,²⁵⁴ and other issues, in relation to specific demographic groups. Also requested was information on measures taken to adopt a general anti-discrimination act,²⁵⁵ incorporating all groups protected under ICESCR and other measures the government had taken to combat discrimination, particularly the minority groups such as the Batwa indigenous community and albinos.²⁵⁶ The State has the duty to respect, protect and fulfil cultural rights of minority groups without any form of discrimination.²⁵⁷

As part of its' human rights measurement initiative, CESCR directed that Burundi produce impact reports on a number of policy initiatives, that included the 2014 National Employment Policy,²⁵⁸ as well as the 2010-2015 National Action Plan to Eliminate the Worst Forms of Child Labour,²⁵⁹ the 2008-2015 National Agricultural Strategy,²⁶⁰ and the 2012-2017 National Agricultural Investment Plan and their impact on malnutrition and food insecurity,²⁶¹ and the 2011-2015 Health Care Development Plan and how it addressed access to adequate health care.²⁶² These are critical issues fundamental to basic

- 249 Roger Nord, Dhaneshwar Ghura (IMF) & John Panzar (IDA). (2015). "Six Review Under the extended credit facility arrangement, and request for extension and augmentation of access-debt sustainability analysis update. Burundi: Debt Sustainability Analysis; IMF Country Report No. 15/85
- 250 See Economic and Social Council, 31 March, 2015. Available at: imf.org/external/pubs/ft/dsacr/pdf/2015/dsacr1588.pdf
- 251 The list of issues presented by the initial report, related to the CESCR and required Burundi to demonstrate by clarifying whether or not the Covenant was directly applicable to the State party. The issues ranged from the general provisions of the Covenant (art. 1-5), to issues relating to the specific provisions of the Covenant (art.6-15).
- 252 See article.11 of the Covenant on the right to an adequate standard of living. Burundi was asked to provide updated information on poverty levels in the State party, disaggregated by year and region, ethnic group, age group and sex. The government was required to provide information on the outcome of the implementation of the 2007-2010 poverty reduction strategy paper and developments in the second phase of the strategy. Other areas that required the government to provide updated information on, included the scale of the prevalence of malnutrition among children under 5 years of age, particularly among disadvantaged and marginalized groups, notably the Batwa.
- 253 See article 6 (Right to work) of the Covenant.
- 254 See article 12 (Right to health) of the Covenant
- 255 See article 2,par.2 (Non-discrimination) of the Covenant
- 256 Burundi was asked to indicate measures taken by the State party to adopt a general anti-discrimination act which outlined all prohibited grounds for discrimination, in accordance with article 2, paragraph 2, of the Covenant. Information on measures taken to combat discrimination in all areas relating to the rights enshrined in the Covenant, particularly against the various ethnic groups including the indigenous Batwa people, was also required. But also steps taken to increase public awareness of the situation of the Batwa and to combat the stigmatization they face.
- 257 Article 15 of the Covenant outlines what constitutes cultural rights. The Committee on Economic, Social and Cultural Rights asked Burundi to provide information on measures taken to allow the most disadvantaged and marginalized groups in both rural and urban areas, as well as the Batwa, to have access to and enjoy the right to take part in cultural life, but also the impact of those measures. The impact of the measures adopted to protect the cultural diversity and cultural heritage of the Batwa with respect to their ancestral lands, favourable environment for them to preserve, develop, express and share their identity, history, culture, language, traditions and customs, were issues taken as fundamental to cultural rights, which Burundi was supposed to indicate how it had practically respected, protected and promoted them.
- 258 Article 6-Right to work. Burundi was required to provide information on the impact of measures adopted by the State party in the area of employment, particularly the National Employment Policy of November 2014. The government needed to indicate how it was reducing unemployment, particularly among young people and women.
- 259 Burundi was to provide detailed information on the results of measures taken for the effective implementation of legal provisions to prohibit forced labour, particularly for Batwa and children.
- 260 Under Article 11- Right to an adequate standard of living, Burundi needed to indicate the impact of measures taken to combat malnutrition and food insecurity.
- 261 Article 11 also puts obligations on Burundi to indicate how its human rights record applies to disadvantaged and marginalized persons and groups, particularly women, the Batwa and internally displaced persons, stating whether or not they have equal access to land and food.
- 262 Article 12(Right to health) was supposed to capture how measures taken to improve access to health care indicated in the 2011-2015 Health care Development Plan, especially among rural areas focusing on disadvantaged and marginalized groups such as the Batwa. The availability of medical staff and medical equipment in all regions was to be shown clearly by the government. Also to be indicated was whether or not Burundi had adopted a specific policy to promote and protect the health of persons affected by albinism.

human rights. The Committee also asked whether or not Burundi had taken measures to establish a national minimum wage to regulate working conditions,²⁶³ particularly child labour within the Batwa community. Information on natural resources and national policy for development, especially the entry-point of foreign investors, and how communities in mining areas stand to benefit from investment in terms of compensation for land as they are displaced and resettled need to be availed to the affected communities.²⁶⁴ The findings on violation of fundamental rights of children revealed that in 2017, Burundi made a minimal advancement in efforts to eliminate the worst forms of child labour.

The report on the 2010-2015 National Action Plan indicated that children in Burundi engage in the worst forms of child labour, including commercial sexual exploitation.²⁶⁵ Children also performed dangerous tasks in agriculture. It was also revealed that Burundian children were trafficked within the country, often from rural areas for domestic work and commercial sexual exploitation.²⁶⁶ As such protection of the child from forced labour is a major concern in the country.

Respect of human dignity(Against torture)

Burundi ratified the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) on February 18th 1993, and the Optional Protocol of the Convention against Torture on 18 October 2013.²⁶⁷ In 2012, Human Rights Watch released a report indicating a number of killings by state agencies and rebel groups, which followed from the 2010 election of Pierre Nkurunziza as President on a CNDD-FDD ticket²⁶⁸. It should be recalled that since 2015, security forces and members of the ruling party's CNDD-FDD youth league, known as the *Imbonerakure*, have been carrying out extrajudicial killings, arresting people arbitrarily, and raping, threatening, and harassing those whom they perceived as political opponents, with impunity.²⁶⁹ The report is corroborated with the Advocates for Human Rights Report of 2018, which discusses how enforced disappearances and extrajudicial killings were carried out by state actors. These included arbitrary executions, targeted assassinations, random detentions, torture, and sexual violence.²⁷⁰

Despite having ratified several treaties, violation of basic human rights has been on the increase, as the Commission of Inquiry of 2017, indicated in its report, with a list of some of the violations.²⁷¹ Such observations underpin the fact that the violation of human rights in any form contradicts human dignity which is the criterion for measuring a country's adherence to human rights and their fundamental freedoms. This has been well captured and defined by the international bill of rights; Universal Declaration of Human Rights (UDHR).

263 Under Article 7-(Right to just and favourable working conditions), Burundi was asked by the Committee to provide updated information on the progress made in establishing a national minimum wage based on an indexing system in order to guarantee workers and their families a decent standard of living. Also asked was information on the measures the State party had taken to improve working conditions in the informal sector.

264 The African Commission has made a pioneering decision against a violation of peoples' environmental rights and rights to natural resources (Social and Economic Rights Action Centre-SERAC and the Center for Economic and Social Rights (CESR) v Nigeria, Comm 155/96. Oil contaminating water, soil and air or Ogoni people. Nigeria was ordered to make amends. Shell also involved, but private actor.

265 See Burundi, Minimum Advancement in 2017 Findings on the Worst forms of Child Labour, Bureau of International Labour Affairs. Available at: refworld.org/pdf/5bd05aaf16.pdf

266 Ibid.

267 See United Nations Human Rights Treaty Bodies, Database, OHCHR.org, Available at: tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=BDI&Lang=EN

268 See Roopa, Gogineni. (2012). Report: In Burundi, Scores of Extrajudicial killings. Available at: voanews.com/archive/report-burundi-scores-extrajudicial-killings

269 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26086&LangID=E> (accessed 24th September,2021)

270 The Advocates for Human Rights, 2018; Stakeholder Report for the United Nations Universal Periodic Review. Available at: theadvocatesforhumanrights.org/uploads/burundi_human_rights_council_civil_and_political_rights_june_2017.pdf

271 The Commission of Inquiry identifies indicators of those violations as extrajudicial executions, acts of torture and other inhuman and cruel treatment, sexual and gender-based violence, arbitrary arrests and detention and enforced disappearances, which demand for large ransoms from families of the victims. The violations have always been committed by members of the National Intelligence Service and the police or the youth wing of the ruling party CNDD-FDD, Imbonerakure. Available at: ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2175&LangID=E. Visit also the Commission's web page: <http://www.ohchr.org/EN/HRBodies/HRC/ColBurundi/Pages/ColBurundi.aspx>

Some of the articles spelt out in the declaration state that “one of the most appalling violations of the human rights is the act of torture, which is the resultant outcome that destroys the dignity and impairs the capability of victims to continue their lives as close to normal as possible.”²⁷²

Provision of basic needs rights

The 2014 National Employment Policy offers suggestions on possible mechanisms for addressing unemployment in Burundi, especially among the youth and women. On this question, the Burundi government had been tasked by the Committee on Economic, Social and Cultural rights (CESCR) to provide information on: (1) the measures taken to eliminate stereotypes and practices that perpetuate discrimination against women, and measures taken to ensure equality between men and women in the context of the Covenant, especially with regard to inheritance and accessibility to land,²⁷³ (2) the outcomes on the action taken to combat discrimination against women in light of 2012-2025 National Gender Policy. This had been done through the institutionalized framework for operationalization, and consisted of the National Gender Council, the Steering Committee, the Technical Action Committee as well as the provincial and municipal committees.²⁷⁴ The Burundian government responded to some of the issues raised by the Committee in regard to compliance with international obligations, for the respect, protection and fulfilment of human rights law indiscriminately through policy reforms. This was to help ensure that measures to promote employment for all as stated clearly in the Constitution, and the broadly articulated legislation on the right to work would be realized.²⁷⁵ The conduct of the government in the enforcement of these laws remains poor, which may explain the reasons behind the continued violation of human rights, especially those pertaining to women and children.

Burundi ratified all key international conventions regarding child labour to help combat violations of basic rights for the protection of children,²⁷⁶ by establishing laws and regulations related to child labour. These efforts, unfortunately have been hampered by existing gaps in the legal framework and that makes enforcement mechanisms weak. For instance, in 2017, Burundi’s labour law enforcement agencies took actions to combat child labour, but the existing legal and policy gaps in the enforcement mechanism at the Ministry of Public Service, Labour, and Social Security, has contributed to the escalation of human rights abuses against children in places where they have been illegally employed. Burundi maintains the position that the respect and protection of human rights within its’ borders are top priority for the government, and is therefore committed to fulfilling its international human rights obligations. The scope of the commitment remains in question given the widespread atrocities that continue to ravage the country without regard to national and international law. The global view on Burundi in the post-ratification of human rights instruments paints a negative image of a country that is in transition from decades of cyclical violent conflicts, and whose commitment to the enforcement of those instruments remains weak and ineffective. Hafner-Burton and

272 See Vienna Declaration, article 55.

273 See Articles 3 on Equal rights of men and women, Article 6-Right to work and Article 7-Right to just and favourable working conditions, Article 8-Trade union rights, Article 9-Right to social security

274 See article 3 of the Covenant.

275 See CESCR Initial report of State parties, 2013. Article 52 recognizes the right of everyone to the “enjoyment of the economic, social and cultural rights indispensable to their dignity and freedom of personal development, as a result of the national effort in this regard[and] bearing in mind the country’s resources”. Articles 51 adds that “[a]ll Burundians shall also have the right to have access to public services in their country.” But read alongside these articles, are Decree-law No. 1/037 of 7 July 1993 amending the Labour Code of Burundi in regard to weekly working time and rest days, the employment of women and child labour. Decree-law No. 1/009 of 6 June 1998 establishing the civil service regulations which gives every civil servant equality of opportunity without any discrimination(arts.6(1) and 6(8) in relation to professional development. All this information is contained in Economic and Social Council, 2014.

276 See 2017 Findings on the Worst forms of Child labour: Burundi, Minimum Advancement in the Bureau of International labour Affairs. Ratified Conventions on Child Labour include: ILO C.138, Minimum Age, ILO C. 182, Worst Forms of Child Labour, UN CRC, and UN CRC Optional Protocol on Armed Conflict, UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

Tsutsui emphasize the fact that “the human rights regime is not designed to supply its members with strong institutional tools to enforce compliance,” and unfortunately, a “... gap (exists) between ratification and behaviour because governments have incentives given to ratify human rights agreements, they have neither the intention nor the capacity to implement.”²⁷⁷ This is the conundrum within which Burundi finds itself enmeshed.

Recognition of special category rights

Burundi has had a myriad of human rights related abuses of minority groups over the years. Successive post-independence regimes have been characterized by non-compliance of international obligations to respect, protect and fulfil those rights elaborately captured in the international bill of rights that forms the corpus of international human rights law. The 2005 Constitution provides for the protection of special category groups in Burundi. Under this review the groups include: children, youth, women, and people with disabilities (PWDs), refugees, as well as internally displaced persons (IDPs). This however, is only theoretically observed in the law as practice has shown that implementation and enforcement remain problematic, for they rely on the political good will of the incumbents. The outcome of non-commitment is that minority rights are grossly violated. And as Aftab Alam points out, the protection and promotion of minority rights has been a traditional concern for modern jurisprudence of human rights law, whose problem areas lie in discrimination, oppression and exclusion and denied identity.²⁷⁸ Under international human rights law, states have the obligation to not only address minority rights-related issues individually, not only through the application of domestic law and regional instruments, but also collectively, by use of international human rights law instruments.

Nation states are often composed of different ethnic, religious or linguistic identities. United Nations (UN) suggests that 10 to 20% of the world’s population belong to minority groups in their countries of nationality. These constitute disadvantaged groups in society and more often than not, they are subjected to injustice and socio-economic discrimination. Aftab argues that the exclusion of these groups from power is often characterized by denial of dignity, identities and cultures.²⁷⁹ Furthermore, they are excluded from meaningful participation in public and political life.²⁸⁰ The discourse on minority groups in Burundi cannot adequately address fundamental issues of human rights nature outside the 2005 constitution, but also from an international perspective. As earlier pointed out, Burundi is a signatory to a number of human rights instruments, both regional and international.²⁸¹ Enforcement mechanisms remain weak because they are determined by the political power relations of incumbent regimes.

277 Hafner-Burton & Kiyoteru Tsutsui. (2005). “Human Rights in a Globalizing World. The Paradox of Empty Promises,” *American Journal of Sociology* 110, no.5: 1373-411.

278 Aftab Alam. (2015). *Minority Rights Under International Law. Journal of the Indian Law Institute*. July-September, pp.376-400

279 *Ibid*

280 Li-an Thio. (2002). “Battling Balkanization: Regional Approaches towards Minority Protection beyond Europe,” in *43 Harvard International Law Journal* 410.

281 Ratified treaties include: UDHR, ICCPR, ICESCR, CAT, CEDAW, CRC, ACHPR and Optional Protocols to these treaties and conventions.

KENYA

I. Historical Background

Soon after Kenya attained its independence in 1963, it moved into varying degrees of autocratic rule and by 1966 it was effectively under a single party state system at least by practice.²⁸² However, by the early 1980s, President Daniel Arap Moi had established an increasingly repressive regime which in 1982 instituted a one – party state; by law, with a powerful executive that used harsh, autocratic tactics including torture and murder to silence the opposition and hold on to power.²⁸³

Kenya's transition from pre-colonial and colonial eras to a post-independence *de facto* one-party state to one-party state system by *de jure* and back to multi-partyism in 1992, and finally into a new constitutional dispensation in 2010, has had a great impact on the extent to which the rights and freedoms enjoyed by citizens across the country are protected.

The government that succeeded the Kenyatta regime was similarly unimpressive in its human rights observance. While the initial period from 1978 to 1982 as the Moi Administration asserted its foot in power was relatively calm,²⁸⁴ the period following the abolition of multi-party politics in Kenya was tumultuous.²⁸⁵ Whether the failed coup attempt rattled the new president the wrong way or the regime just conformed to the prevailing wave of African politics is uncertain. Rushed parliamentary constitutional amendments were often employed to contain the full enjoyment of fundamental freedoms by the citizens. For instance, single-party politics under the constitutional amendment that inserted section 2A hindered key fundamental rights such as the freedom of choice, thought, association, expression, and political participation. Fundamental rights such as the right to life and protection from harmful punishment and torture, economic freedom and freedom of identity were also largely placed at risk by these retrogressive laws. This was especially true for the state's perceived opponents like human rights activists, opposition politicians, student union leaders, and environmental activists. The largely politically motivated assassinations of influential figures also persisted. Foreign Minister Robert Ouko, Bishop Alexander Muge, Father John Kaiser, University of Nairobi student leader Titus Adungosi-Tito perished under strange sinister circumstances.²⁸⁶ Therefore, the right to life and other fundamental freedoms were violated with impunity and contempt under the entire Kenya African National Union (KANU) rule.

The repeal of section 2A of the 1963 Constitution removed the ban on registration of alternative political parties hence precipitated a boom in the number of parties registered.²⁸⁷ Some of the major parties registered for the 1992 elections, alongside KANU, included Forum for Reforms and Democracy (Ford) -Kenya and Forum for Reforms and Democracy (Ford)-Asili. Despite the opening up of space for multiparty politics, politically motivated intimidations of opposition politicians still persisted during this period. Instrumentalisation of the country's diverse ethnic groups by the political elite also emerged as a new form of political organization in Kenya during

282 Pagnucco, Ron, Chris, Hausman et al "An overview of the Human Rights Movement in Kenya." Presentation at the Annual meeting of the American Sociological Association Las Vegas, NV, August 20, 2011.

283 Ibid

284 Widener, J. (1992). The Rise of a Party-State in Kenya: From "Harambee" to "Nyayo!" Pp. 130-161 Berkley: University of California

285 Korwa, A. and Munyae, I. (2001). Human Rights Abuses in Kenya under Daniel Arap Moi (1978-2001). African Studies Quarterly, Vol.5, Issue.1 pp.1-17 <https://sites.clas.ufl.edu/africanquarterly/files/Volume-5-Issue-1.pdf>

286 Mathenge, O. (2020). Unresolved Moi-era murders that officials called suicide. The Star Newspaper, 4th February 2020 <https://www.the-star.co.ke/news/2020-02-04-unresolved-moi-era-murders-that-officials-called-suicide/>

287 Throup, Multiparty politics in Kenya, 86-88.

this period.^{288 289} Ethnic mobilization was majorly orchestrated by the incumbent regime and involved acts such as incitement of indigenous communities to displace perceived ‘outsiders’ from their ancestral or home lands.^{290 291 292} This new wave of negative ethnicity subjected many Kenyans to immense suffering, especially those living in the Rift Valley Region. Thousands of innocent lives were lost, and property and land of unknown value were wrongfully confiscated from rightful owners.²⁹³ Rowdy gangs of violent youths and tribal militia often wielding machetes and arrows ransacked villages in parts of Njoro, Kiambaa and Uashin Gishu localities, among other places, killing, maiming and flushing out the ‘outsiders.’²⁹⁴ Militias were often used for political revenge on real and perceived KANU rebels. Homesteads of politicians challenging KANU candidates for parliamentary and local seats were often set on fire or their property seized by the state on baseless allegations.²⁹⁵ It is worth noting that while the first decade of multiparty politics in Kenya allowed contest for political offices and multiparty political organization in the country, it did little to reverse state suppression of citizens’ fundamental rights and freedoms.²⁹⁶ It was not until the ascension to power of the National Alliance of Rainbow Coalition (NARC) government under President Mwai Kibaki, that the human rights scenario in the country largely improved.

Marked improvement in observance of basic tenets of freedoms of speech, expression, economic freedoms, and even the freedom of the media were recorded. For the first time, Kenyans were able to express themselves freely, participate in the economy and even gain meaningful access to government data and information from private media without considerable inhibitions.²⁹⁷ The outcome of the 2005 Referendum, where the incumbent government graciously accepted defeat on a raft of constitutional changes it had proposed without resorting to underhand tactics to secure victory or intimidation of its opponents, was a clear sign of the shift in Kenya’s human rights practice.²⁹⁸ The 2007/2008 post-election (PEV) inter - ethnic skirmishes went into history as the worst form of open political violence recorded in the country. This therefore eroded the gains made during the period of the NARC government. Modest reports place the number of lives lost at about 1500 and of internally displaced persons (IDPs) at about 500000.^{299 300}

The promulgation of the country’s 2010 Constitution sought to address these past injustices whereby, through the bill of rights as enshrined in Chapter 4, it guarantees all citizens the enjoyment of all rights and fundamental freedoms as contained therein and in the Universal Declaration of Human Rights and other international and regional human rights instruments. The Chapter is thus viewed as the basis for political, socio-economic and cultural policies in the country.³⁰¹ While the state is recognized as the guardian of human rights, its’ role does not entail granting of the fundamental freedoms and rights, which are meant to be enjoyed by all by virtue of being human.

288 See National Council of Churches of Kenya. (1992).” CPK/ARCH: Synod committee report.”
 289 Abuom, A. (1993). The role of Kenyan churches in democratization. (Paper presented at a conference on the Christian Churches and Africa’s democratization), Leeds
 290 *ibid.*, 189-202; see Republic of Kenya (2004)”Report of the Commission of Inquiry to the illegal and irregular allocation of public land” (Ndung’u Report); Njuguna, G. (2008)” The Lie of Land Evictions and Kenya’s Crisis.” African Policy Brief, Brief No. 2, African Policy Institute.
 291
 292
 293 *ibid.*
 294 *ibid.*
 295 *ibid.*, 378-379
 296 *ibid.*, 539-540
 297 See African Peer Review Mechanism. (2006). Country Review Report of the Republic of Kenya. https://www.eisa.org/aprm/pdf/Countries_Kenya_APRM_Report.pdf
 298 Daniel Branch, Nic Cheeseman, Democratization, sequencing, and state failure in Africa: Lessons from Kenya, African Affairs, Volume 108, Issue 430, January 2009, Pages 1–26, <https://doi.org/10.1093/afraf/adn065>
 299 Human Rights Watch. Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance. <https://www.hrw.org/report/2008/03/16/ballots-bullets/organized-political-violence-and-kenyas-crisis-governance>; Truth, Justice, and Reconciliation Commission. ”Final Report - TJRC Report Volume 1” (2013). I. Core TJRC Related Documents. 7. Available at: <https://digitalcommons.law.seattleu.edu/tjrc-core/7>
 300
 301 Constitution of Kenya 2010, Chapter Four-Bill of Rights

The Supreme Law envisions full recognition and protection of human rights and freedoms as being necessary for the realization of dignified living for all individuals and communities. Adherence to and respect for human rights by the state is expected to guarantee all citizens socio-economic justice and enable them attain their highest individual potentials.³⁰² A regime of mixed practice has characterized Kenya's human rights observance by both state and private actors. While the third cycle of human rights report submitted to the Office of High Commissioner for Human Rights (OHCHR) in fulfillment for the country's obligation under the Human Rights Council Resolution 16/21* indicated good progress of the state of human rights in Kenya,³⁰³ much more needs to be done.

The human rights scenario in Kenya during the grand coalition government was relatively calm, since various drawbacks of the turbulent period were rectified. The government prioritized the resettlement of the IDPs and other post conflict peace building mechanisms including the realization of human rights and fundamental freedoms such as the freedom of the press, right to legal redress, freedom of expression, picketing, association, and thought were significantly enhanced.

II. Kenya's Track record on Implementation of Conventions

Kenya's ratification, accession, and operationalization of international treaties and conventions on human rights has not been particularly impressive. The Government of Kenya has often relied on domestic constitutional frameworks to operationalize key demands on human rights observance by international treaties. For instance, in its' third cycle report to the Human Rights Council in line with the Universal Periodic Review Process (UPRP), the Government of Kenya (GoK) acknowledged this position by, among other explanations flaunting the efficacy of its' domestic legal frameworks on such matters. The report stated that there existed no implementation gap for the issues that the Optional Protocol to the Convention on the Rights of the Child (OPCRC) seeks to resolve at that time. The government asserted that the Child Act 2001 was being reviewed to enhance and strengthen its capacity regarding the protection of the child's rights. Other key frameworks that the GoK relied on to implement the demands of the Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC) include; the Counter trafficking in Persons Act of 2010 that illegitimized all forms of human trafficking, including those in the child, the Victims Protection Act of 2014 also offers protection for the victims of crimes and abuse of power, and special protection for vulnerable persons like children. The Employment Act of 2007 guaranteed full payment for women during their three months maternity leave.³⁰⁴ The Act also provides for equality of work for migrant workers hence fulfilling the gap foreseen by the International Convention on the Rights of Migrant Workers and Members of their Families (CMW).³⁰⁵ Thus, while the assertions by the GoK may indeed be reflective of the country's legal framework on human rights, it is still prudent for any responsible state to ratify international agreements, especially those that seek to protect the sanctity of human dignity.

Regardless, there has been a slight change of attitude by the GoK as far as ratification of international treaties and conventions on human rights is concerned. As of the date of the UPRP report the government was already considering its' reservation on chapter 10(2)

³⁰² *ibid*

³⁰³ United Nations General Assembly, Human Rights Commission. (2020). National Report Submitted per paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Kenya, Working Group on the Universal Periodic Review, 21st –30th January 2020 <https://undocs.org/A/HRC/WG.6/35/KEN/1>

³⁰⁴ Human Rights Council, 2019.

³⁰⁵ *ibid*.

of the International Covenant on Economic, Social and Cultural Rights. The government was in the process of presenting for ratification by parliament several regional treaties that included the Protocol to the African Charter on Human and People’s Rights on the Rights of Older Persons in Africa and People’s Rights on the Rights of Persons with Disability.³⁰⁶ Still other important human rights conventions not ratified yet by Kenya include the Optional Protocol of the Convention against Torture (CAT-OP), the Second Optional Protocol to the International Covenant on Civil and Political Rights which aims to abolish the death penalty (CCPR-OP2-DP), the Interstate communication procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art.32).³⁰⁷ Conversely, the government has also ratified various international and regional treaties.

Key Regional treaties acceded to include the African Continental Free Trade Area Agreement and the Tripartite Free Trade Agreement. These two treaties opened African borders for free trade and enhance the realization of socioeconomic rights and freedoms by the people of Africa through poverty alleviation, promotion of equality, and job creation. Kenya also ratified the Marrakesh treaty to facilitate access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled on 2nd June 2017.³⁰⁸ The country has also ratified a number of international treaties on human rights, including; International Covenant on Civil and Political Rights (CCPR) ratified on 1st May 1972, International Covenant on Economic, Social and Cultural (CESCR) also ratified on the same day. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was acceded to on 9th March 1984. Following this was the 30th July 1990 ratification of the Convention on the Rights of the Child (CRC). Other treaties ratified include the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)-21st February 1997, International Convention on the Elimination of All Forms of Racial Discrimination (CERD)-13th September 2001, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict (CRC-OP-AC), and the Convention on the Rights of Persons with Disabilities (CRPD).³⁰⁹ As discussed earlier, Kenya’s actions as far as submitting to the international regime on human rights is thus of a mixed practice.

Table 4. Table Showing List of Kenya’s Ratification of Human Rights Treaties

Treaty Action	Year
Admission to UN	16.12.1963
United Nations Charter	
Universal Declaration of Human Rights (UDHR)	Ratification 31.07.1990
International Covenant on Civil and Political Rights (ICCPR)	Accession 23.03.1976
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Accession 01.05.1972
Convention on Discrimination Against Women (CEDAW)	Accession 09.03.1984
African Charter on Peoples and Human Rights (APCHR)	Ratification 23.01.1992
International Conventions on Elimination of All Forms of Racial Discrimination	Ratification 13.09.2001
Convention on the Rights of the Child (CRC)	Ratification 30.07.1990

306 ibid

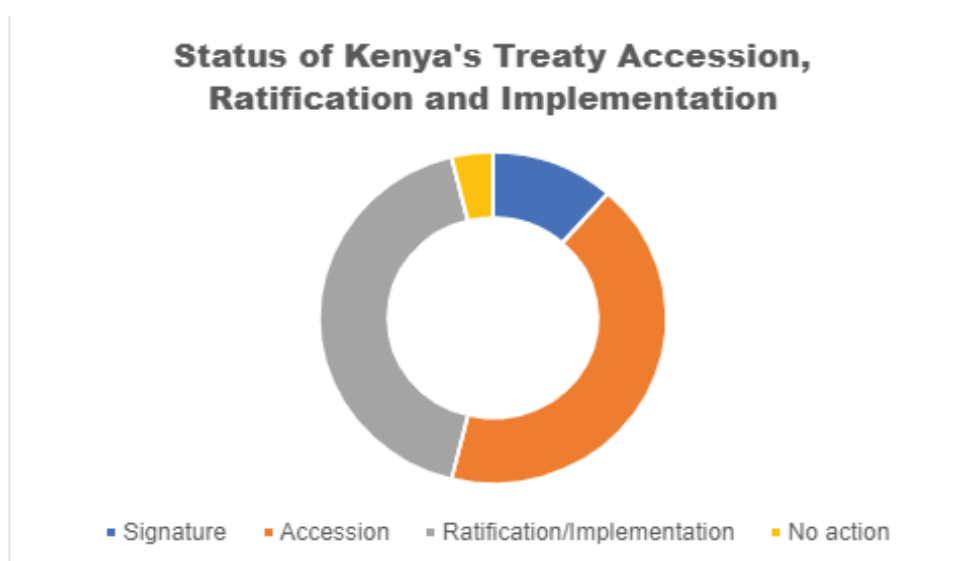
307 See United Nations Human Rights Treaty Bodies Website, Ratification Status for Kenya. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN

308 Ibid.

309 see United Nations Human Rights Treaty Bodies Website on Ratification Status for Kenya https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN

Optional Protocol on the Involvement of Children in Armed Conflict	Ratification 28.01.2002
Optional Protocol to CRC on Prostitution and Pornography	Signature 08.09.2000
African Charter on Rights and Welfare of the Child	Ratification 25.07.2000
African Charter	Accession 25.07.2000
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	Accession 04.02.2004
International Labour Organization(ILO) Convention No.138 on Employment Age	Ratification 09.04.1979
ILO Convention No.182 Concerning the prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	Ratification 07.05.2001
Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the United Nations Convention against Transnational Organized Crime) Palermo Protocol	Accession 05.01.2005
Convention on the Status of Refugees	Accession 16.05.1966
Optional Protocol to CSR on the Status of Refugees	Accession 13.11.1981
Convention on the Rights of Persons with Disability, 2006	Ratification 18.05.2008
Optional Protocol to CEDAW	No action
Convention on the Elimination of Racial Discrimination	Accession 21.02.1997
Convention against Torture (CAT)	Accession 21.02.1997
Covenant on Economic, Social and Cultural Rights	Accession 01.05.1972
Covenant on Civil and Political Rights	Accession 01.05.1972
Rome Statute of the International Criminal Court	Ratification 05.03.2005
The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Signature July 2003
African Charter on Human and Peoples' Rights on the Rights of Women in Africa 11 th July 2003	Signature 12.12.2003

Fig 2. Pie chart showing Kenya's Status on Human Rights Treaties accession, ratification and signature



Pie chart showing Kenya's Status on Human Rights Treaties accession³¹⁰, ratification³¹¹, and Signature³¹²

III. Constitution of Kenya 2010 and the search for a new Human Rights Regime

The Bill of Rights as enshrined in chapter 4 of the Constitution of Kenya 2010 (CoK) contains a comprehensive list of rights and freedoms that the state has a mandate under the law to guard, protect, and guarantee for the enjoyment by the citizens. Kenya's Constitution declares that all rights and fundamental freedoms inherently belong to all citizens by virtue of being human, should not be tampered with so as to allow the state to deny citizens the freedoms enshrined in the Constitution unless there is a legitimate cause for such actions, and even under those circumstances, all other basic rights shall be sustained for continued enjoyment by such persons. However, certain rights cannot be limited under any circumstance³¹³ such as the freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from slavery or servitude, the right to a fair trial, and the right to an *order of habeas corpus* that is, a right requiring a person under arrest to be brought before a judge or into court, especially to secure the person's release unless lawful grounds are shown for their detention.

It is necessary to understand the historical and cultural contexts that have informed and that continue to determine the path of human rights observance in Kenya. While not entirely a bumpy road, respect for human rights and fundamental freedoms has faced tremendous challenges that can only be addressed adequately through an in-depth analysis of the specific clusters of rights as outlined in the Constitution.

Civil Rights

The Bill of Rights lists the following rights and freedoms to be enjoyed freely by all within the boundaries of Kenya, whether one is a local or foreigner. These rights are claimed by one's being and are meant to promote proper civil interactions among the citizens and between the citizens and their government. Such rights include but are not limited to; the right to life, equality and freedom from discrimination, human dignity, freedom and security of the person, freedom from slavery, servitude and forced labour, right to privacy, freedom of conscience, religion, belief and opinion, freedom of expression, freedom of the media, right of access to information, freedom of association, and freedom of assembly; demonstration, picketing and petition.³¹⁴ In regard to the observance in Kenya, it is well understood and agreed by all parties, both state and non-state, that the enjoyment of civil rights indeed makes up the free and civil society that Kenya aspires to be. However, certain actors, whether state or private, have constantly contravened the demands of the law concerning the enjoyment of these rights. State actors have often used significant limitations on freedom of the media and the freedom of demonstration and picketing.³¹⁵ Anti-riot police are occasionally used to cause harm and injury on government critics. For instance, targeted attacks on National Super Alliance (NASA) supporters during the 2018 repeat presidential elections culminated in the unfortunate loss of hundreds of lives, including those of children. Excesses committed by police

310 'Accession' refers to the act by a state party to accept obligations for a treaty or Convention that is already in force

311 Ratification involves state parties accepting to implement treaty agreement by formally assenting to the treaty's requirements, generally by embedding the treaty to their national laws through legislative processes or actions by authorized bodies of the state.

312 The signing of treaties refers to the act by states to show a willingness to either formally commit to ratification of a treaty or an interest in safeguarding the critical demands of a convention without legally committing to the framework of accountability within the treaty.

313 *ibid.*

314 *ibid.*

315 Amnesty International 2021 Report. <https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>

officers deployed to quell riots by university students persists despite public outcry.³¹⁶ Cases of suspected extrajudicial killings by security agents have also been on the rise. Lifeless and mutilated bodies of terror suspects, suspected criminals and gang members, and government critics have occasionally been discovered lying in thickets hundreds of miles from their localities. The recent disappearance and eventual discovery of the butchered body of the Somali businessman Bashir adds to the soaring numbers.³¹⁷ Barely a month before Bashir's murder, locals in Murang'a found the bodies of gang members who had been under police surveillance for a protracted period. They had been murdered and their bodies mutilated and abandoned in various locations across the country.³¹⁸ Cases of extrajudicial killings keep dragging in the Kenyan judicial system; hence, the victims never really get justice for their loved ones. The case involving police accused of murder of lawyer Willie Kimani and his compatriots remains unresolved despite having caused a big uproar in the country.³¹⁹ Such precedence tend to bolster the stance of the killer cops involved in such heinous acts.

While the freedom of the media has recorded marked improvement, at least from the days of KANU, there still exist certain loopholes within the law that the executive has often taken advantage of to suppress media freedom. The historic 2018 media blackout saw a majority of the major TV and Radio stations locked out of coverage on claims that they had disobeyed an executive order banning all mainstream media from airing the mock presidential swearing-in ceremony of opposition leader Raila Odinga, an act which was termed high treason by the government.³²⁰ Arbitrary arrests and detention of bloggers and journalists by the state also amount to harassment hence a significant infringement on the freedom of the press. However, the growing popularity of social media platforms such as Twitter and Facebook has effectively challenged the glass ceiling placed on traditional media. Kenyans can now express themselves freely, criticize the government, and picket with minimal consequences. Recent campaigns on Twitter and other social media platforms demanding reversal of a loan issued by the International Monetary Fund shows the extent of freedoms enjoyed by Kenyans online.³²¹ Caution must be taken that these new frontiers of engagement are not used to trample on the rights of others by the supposed enjoyers. After all, the Constitution stipulates that one's right should not hinder the enjoyment of another right(s).

Political Rights

The 2010 Kenya Constitution defines political rights as those rights that enable an individual to freely make political choices. Such rights may include one's rights "to form or participate in forming, a political party, the right to take part in the activities of or recruit members for, a political party; or to campaign for a political party or cause. Citizens have the right to free, fair and regular elections based on universal suffrage and free expression of the will of electors for public office or body under the Constitution. Every adult citizen has the right, without unreasonable restriction, to register as a voter and to vote by secret ballot in any election or referendum. The law guarantees any one the right to vie as a candidate for public office or office within a political party of which the citizen is a member and to be elected to hold office." Denial of these rights by the

316 Amnesty International <https://www.amnesty.org/en/latest/campaigns/2019/02/the-brave-kenyan-sisters-seeking-justice-for-their-brother-shot-by-police/>

317 Osen, G. and Ombati, C. Somali trader Bashir's family denies terror, fake currency link. 23rd May 2021. *THE STAR* <https://www.the-star.co.ke/news/2021-05-23-somali-trader-bashirs-family-denies-terror-fake-currency-link/>

318 Ombati, C. Two Bodies of Kitegela missing men found in Murang'a, Thika. 29th April 2021 <https://www.the-star.co.ke/news/2021-04-29-two-bodies-of-kitengela-missing-men-found-in-muranga-thika/>

319 Human Rights Watch. Kenya: Investigate Killings of Lawyer, Two Men. 3rd July 2016 <https://www.hrw.org/news/2016/07/03/kenya-investigate-killings-lawyer-two-men>

320 Nyabola, N. Putting Kenya's media shutdown in context. 2nd February ALJAZEERA 2018 <https://www.aljazeera.com/opinions/2018/2/2/putting-kenyas-media-shutdown-in-context>

321 BBC. Letter from Africa: Kenyans protest over growing debt. 8th April 2021 <https://www.bbc.com/news/world-africa-56651735>

state or any other party can and must be challenged in a court of law or before any other competent authority established under the law. Political rights have largely taken root in Kenya, and seem to be growing.

There is increasing participation in the nation's political life; which has encouraged registration of numerous political parties. Space to contest for political seats has been expanded, and individuals can now vie for positions both within the party and within the national and county structures. Devolution has also created more spaces for potential leaders to participate in governance. However, the downside of this free-for-all system has been its propensity to attract many candidates, even those with questionable ethical inclinations. The failure of relevant institutions to implement ethical requirements for officeholders, as espoused in Chapter Six of the Constitution on, Leadership and Integrity, has significantly impaired the conduct of free, fair and open electoral processes. In the 2013 and 2017 elections, unnecessary stiff political competitions resulted in costly elections with candidates spending vast sums of money during election campaigns for mobilization of political support. Over-monetization of elections can lock out potential candidates who are denied party and popular support as a result of their inability to meet a certain financial threshold.

Allegations of electoral fraud and theft of votes have also characterized some electoral outcomes. The Supreme Court of Kenya declared the first round of the 2017 Presidential Election null and void when the opposition presidential candidate and other disgruntled parties petitioned the presidential electoral outcome. The court quashed attempts to overturn the second round of elections on technical grounds. Even the previous Presidential election of 2013 had also met a legal challenge and only held after a controversial ruling by the Supreme Court that approved its legitimacy. Therefore, while the courts have played a critical role in arbitrating cases of electoral disputes, the persistence of electoral malpractices is a clear sign that perhaps the will of the people to vote for candidates of their choice continue to face hurdles both at the national and at the county levels.

Socioeconomic and Cultural Rights

Socioeconomic and cultural rights are those guarantees that enable one's life to be meaningful, both in pursuit of happiness, income, community and personal fulfillment. Rights of this nature are guaranteed by the Constitution and include; freedom of movement, protection of the property right, rights on labour relations, right to a clean and healthy environment, economic and social rights, freedom of language and culture, and right to family among others.

Rights of Persons under Special Categories

Rights of persons under special category refer to those rights and freedoms that individuals enjoy because of exceptional circumstances of their being. The law mandates the state to make available protection for persons with disabilities, youths, minorities and marginalized groups, and the older members of the society. The rights of the citizens while under a state of emergency and the circumstances under which the state may declare such a state of emergency is also highlighted.

The level of commitment of the state to fulfill these rights differs from one set of rights to another. Some key categorization of these rights and their fulfillment or lack of it is helpful for the analysis of the human rights index in Kenya.

Freedom of Religion

Kenya's Constitution established a secular state,³²² where every person in the republic has the right to freedom of conscience, religion, thought, belief, and opinion. The law upholds every individual's right to manifest freedom of religion, both individually and in community, in private and in public through worship, practice, teaching, and observance, including observance of a day.³²³ No prevailing condition may deny any one access to an institution, employment or facility, or the enjoyment of any right because of their belief or religion. It is also illegal to compel or force individuals to act or engage in any activity contrary to their belief or religion. The country is thus home to a multiplicity of religious groups.

According to International Religious Freedom 2018, religious groups officially registered in Kenya are Christians at 83% of the population, Muslims-11%, Hindus, Sikhs, and Baha'is about 2%, while the remaining comprised individuals practicing various traditional beliefs and adherences.³²⁴ There is also a sizeable number of atheists, agnostics, and other irreligious persons in the country. While the practice of and expression of one's religious freedoms has remained relatively attainable in the country, with a majority of Kenyans free to worship and express their faiths, there is still a significant perceived affront to human security as a result of an individual's religious identity as Muslim Leaders/Organizations continue to blame security agencies for extrajudicial killings, enforced disappearances, and abductions of a section of their members accused of having links with the Al Shabab.³²⁵ There have also been allegations of assassination or assassination attempts on Muslim clerics accused of teaching radical doctrines to the youths, mainly in the country's Coastal and North-Eastern Regions.³²⁶ Assassinations and extrajudicial killings, even of persons accused of heinous acts such as terrorism, are prohibited in the Constitution since it denies one the right to a fair hearing before a court of law. Such assassinations have occurred with an obvious target of Muslims, especially those of Somali descent. Such occurrences entail discrimination on religious and ethnic grounds.

The actions of the Al Shabab and their sympathizers in the Northern and Coastal counties have also been increasingly intolerant towards non-Muslim populations residing in the localities. Killings of non-Muslim civil servants, teachers and health workers have been witnessed.³²⁷ Teachers' Unions had, in their presentation to the Senate, sought the withdrawal of all non-Muslim teachers from Northern Kenya on the grounds of insecurity.³²⁸ It has also been reported that elements of Muslim fundamentalists coerced non-Muslim female teachers to dress in long dresses (*deeras*) and veils (*hijab*). Such actions amount to religious discrimination and gender based violence. There have also been attempts by the executive to unjustly root out certain minority belief systems like atheism, Rastafarian, agnosticism etc. from the public sphere. For instance, the Attorney General's office unsuccessfully attempted to suspend the registration of the Atheists Society of Kenya (ASK), an action which was overturned through a successful appeal by the society.³²⁹ There have also been wrangles between learning institutions and the Ministry of Education over students dressing in hijabs and other headgear by

322 Constitution of Kenya, Article 8

323 Constitution of Kenya, Article 32

324 United States Embassy in Kenya, Kenya 2018 International Religious Freedom Report <https://www.state.gov/wp-content/uploads/2019/05/KENYA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

325 Kamude, J. (2014). Gunned down in Mombasa-the clerics that have died. *The New Humanitarian* <https://www.thenewhumanitarian.org/analysis/2014/07/28/gunned-down-mombasa-clerics-have-died>

326 Ibid

327 See Yusuf, M. (2019). Suspected Al-Shabab Militants Kill 3 Kenya Teachers. *VoA News* <https://www.voanews.com/africa/suspected-al-shabab-militants-kill-3-kenyan-teachers>

328 See Nzwilli, F. (2020). Mass Exodus of teachers triggers education crisis in northeast Kenya. *World Watch Monitor* <https://www.worldwatchmonitor.org/2020/03/mass-exodus-of-teachers-triggers-education-crisis-in-north-east-kenya/>

329 see *Atheists In Kenya & another v Registrar of Societies & 2 others* [2018] eKLR <http://kenyalaw.org/caselaw/cases/view/147307>

students while in school. While the Teachers Service Commission has insisted that schools should admit students without regard to the headgear, some private and church-sponsored schools still deny entry to schools of students dressed in such religious attire, in contravention to Kenya's supreme law. While the Supreme Court ruling in 2019 gave learning institutions the leeway to set their dress code, the fairness and constitutional conformity of such a ruling still hangs in doubt³³⁰.

Therefore, there is need to foster interreligious and intra-religious dialogue to safeguard peace and harmony among religious group in the country. The government must refrain from all forms of discrimination in its fight against terrorism. Investigative bodies should investigate all forms of religious motivated assassinations, extrajudicial killings, and all abuses of individual freedoms on religious basis. In its 2021 report, Amnesty International posits that there have been about 144 extrajudicial killings in the year ending 2020, targeting perceived religious extremists.³³¹ All these show a state of increasingly threatened space for freedom of religion.

Freedom of Assembly and Association

Regarding freedom of association, the constitution states that, "every person has the right to freedom of association, which constitutes the right to form, join or participate in the activities of an association of any kind."³³² The law does not allow any form of compulsion of an individual to join an association of any kind. Regarding the registration of an association, the law states that registration of an association may not be withheld or withdrawn unreasonably. There must also be a fair hearing before registration is withdrawn.³³³ The law recognizes the right of every person, peacefully and unarmed, to assemble, demonstrate, picket, and present petitions to any public authority³³⁴. While this is a constitutional requirement, conditions on the ground have been majorly harsh. Restrictive state practices have severally often contravened the freedoms of the citizens to hold their government accountable. The state normally use police officers and other security agencies to suppress peaceful demonstrations organized by the *wananchi*³³⁵ to express disapproval for certain government policies. For instance, Amnesty International reported the police used excessive force to enforce the Covid-19 curfew put in place in March 2020 by the President.³³⁶ Police officers beat, shot at, molested and extorted innocent civilians to impose a curfew.³³⁷ A 2020 report by Human Rights Watch stated that at least six people had been killed just in ten days of the dusk to dawn curfew. By July 2020, about fifteen cases of police killings related to covid-19 had been recorded.³³⁸ A seventeen-year-old boy was killed in Kasarani after police opened fire on a peaceful demonstration against poor state of roads.³³⁹ In its 2021 Report, Missing Voices revealed that 105 people were killed by police. Such deaths included the murder of the *Kianjokoma brothers*. Disappearances of persons was also witnessed including that of Mwendwa Mbinjiwe; a security expert.³⁴⁰ Such actions by the government amounted to abuse of the right to lawful suspension or deregistration of associations. Government should desist from such overreach; the use of state machinery to silence dissent, civil society and public outcry. The Independent Police Oversight Authority should also investigate

330 See Kenya Court overturns the ruling on wearing hijab in school. ALJAZEERA News 24th Jan 2019 <https://www.aljazeera.com/news/2019/1/24/kenya-court-overturns-ruling-on-wearing-hijab-in-schools>

331 See Amnesty International Report 2020/2021, The State of the World's Human Rights. p. 215 <https://www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF>

332 Constitution of Kenya 4(36)

333 Ibid.

334 ibid. Chapter 4(37)

335 Wananchi is a Swahili word for the public

336 Ibid.

337 Amnesty International, 2021 p.215

338 see Human Rights Watch, Kenya-Events of 2020 <https://www.hrw.org/world-report/2021/country-chapters/kenya>

339 ibid.

340 Missing Voices Report, 2021

police killings and hold rogue officers found culpable accountable; which is part of its constitutionally established roles.

Doctrine of Separation of Powers

The constitution establishes three arms of government; the Executive, the Legislature and the Judiciary. Theoretically, all arms of government are equal in status but are differentiated in roles. Regarding human rights, the supreme law clarifies the role of each branch of government in the realization of equal enjoyment of rights by all. Article 165 provides that, “The High Court has jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of rights.³⁴¹ The function of the Legislature in upholding human rights is outlined in the constitution. Parliament should enact legislations to give original jurisdiction in cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of rights.³⁴² While the executive branch which acts as the custodian of the instruments of state power is obligated by law to allocate resources in a way that ensures complete enjoyment of the right or fundamental freedom regardless of the prevailing circumstances, including the vulnerability of particular groups or individuals this has not been the case. The law also states that human rights are inherent to all human beings and are not granted by the State.³⁴³ The state and its agencies’ sole responsibility is to protect and guard the fulfillment of human rights by all.

The three branches of the Kenyan government have often collaborated on a need basis. However, relations between the three arms of government are defined mainly by rivalry. The apex of this incongruence was in 2017 when the Supreme Court nullified the outcome of the Presidential elections, which had granted the incumbent an overwhelming victory. The response by the Executive was a declaration of a senseless war on the judiciary which included unprecedented budget cuts, refusal by the president to appoint forty judges proposed to him by the Judicial Service Commission (JSC), and politicization and public ridicule of judicial decisions and officers.³⁴⁴ A High Court’s unanimous judgment that declared the Building Bridges Initiative unconstitutional elicited a storm of negative reactions from key members of the executive and parliament. Some politicians allied to the president even classified this ruling as an attempt by the judiciary to orchestrate a coup against the presidency.³⁴⁵ Therefore, the courts’ attempt to institute a human rights compliant political environment has been inhibited by budgetary restrictions and disobedience of court rulings or orders by members of the executive.³⁴⁶ Parliament has also portrayed a lack of political goodwill to keep the executive in check on its hostile relations with the judiciary.

Accountability Against Economic Crimes

Transparency international’s Corruption Perception Index 2020 report ranked Kenya with a score of 31 points out of 100. A score below 50 in the index typically shows severe levels of public sector corruption.³⁴⁷ The report focus was mainly on corruption in the management of the Covid-19 pandemic funds and resources. Government agencies were

341 Constitution of Kenya Chapter 4(23)

342 *ibid.*

343 *ibid.* Chapter 4(3a) and (21)

344 Waitara, C. Manufacturing a Crisis: How the Executive Is Failing the Judiciary. Elephant 29th August 2020. <https://www.theelephant.info/features/2020/08/29/manufacturing-a-crisis-how-the-executive-is-failing-the-judiciary/>

345 See Odhiambo, M. BBI ruling was an attempted coup on President Kenyatta-MP Pkosing. THE STAR 16th May 2021 <https://www.the-star.co.ke/news/2021-05-16-bbi-ruling-an-attempted-coup-on-president-kenyatta-mp-pkosing/>

346 Kenya Law. Civil Application 1 of 2017(Ur 1/2018) <http://kenyalaw.org/caselaw/cases/view/148784/>

347 Amnesty International 2020/2021 Report on Kenya <https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/kenya/report-kenya/>

faulted by a journalistic report in the manner in which covid-19 funds extended to Kenya by external financiers including the World Bank had been managed.³⁴⁸ Overpricing and theft involving Covid-19 Personal Protective Equipment (PPEs) by officers at the Kenya Medical Supplies Agency (KEMSA).³⁴⁹ This trend of brazen pilferage of Covid-19 funds put millions of lives in danger as the pandemic continue to spread rapidly. Medical protective gears meant for health workers could not get to the intended persons as some elements within KEMSA working in cahoots with unscrupulous politicians and business persons ravaged the national stocks.

Investigations carried out by the Office of the Auditor-General confirmed these reports. Unfortunately, no conviction has been made concerning the scandal. The Office of the Director of Public Prosecutions has forwarded files for criminal charges but this has borne no fruits in terms of actual convictions. Parliamentary inquiry into this theft, including one at the Senate, have not produced any tangible results. It therefore, remains a great challenge for the high prevalence of economic crimes in the country persist despite the adoption of a progressive constitution with specialized bodies mandated to tackle the vice. In one of his addresses, the president admitted that his government loses about Ksh. 2 billion per day through corruption.³⁵⁰ Loss of such colossal amounts of money to corruption has affected drastically service delivery to the public. Basic amenities such as public healthcare, education, markets, roads, and other vital services are in a state of disrepair and want partly due to the entrenched uncontrollable mismanagement and pilferage of public resources by government officers in collusion with private business people. *Tenderpreneurs* operating as cartels in cahoots with corrupt civil servants continue to loot dry revenues collected by the state. Kenya's debt burden has also continued to worsen.

Recently a section of Kenyans angered by uncontrollable debt accumulation by the state signed an online petition to the International Monetary Fund (IMF), asking the global lender to reverse the award of a loan granted to Kenya to help in post-pandemic economic recovery³⁵¹. A worsening rate of inflation coupled with a rapidly increasing cost of living has meant that many Kenyans can barely meet their basic needs, especially during the pandemic. Long term servicing of the accrued debts by the government will mean tighter taxation caps going into the future. Overindulgence in major infrastructural projects such as the Standard Gauge Railway (SGR), Nairobi Express Way, Lamu Port, among others has also precipitated rapid and unsustainable loan uptake by the state. Parliament revised Kenya's loan ceiling to Ksh. 9 trillion to allow the government to borrow more for its Big 4 Agenda (Universal Health Care, Food Security, Affordable Housing and Manufacturing). Kenya's debt to Gross Domestic Product (GDP) ratio currently stand at 71.47%.³⁵² The challenge with debt accumulation in Kenya is not accrument but rather the runaway theft by public officials responsible for the dispensation of funds obtained from the loan facilities.

Protection of the Common Good

The Constitution of Kenya envisions that “every person shall have a right to enjoy a clean and healthy environment.”³⁵³ Thus, the environment needs to be protected for

- 348 BBC. Coronavirus corruption in Kenya: Officials and businesspeople targeted. <https://www.bbc.com/news/world-africa-54278417>
- 349 Human Rights Watch. Kenya: Pandemic Health Workers Lack Protection. <https://www.hrw.org/news/2021/10/21/kenya-pandemic-health-workers-lack-protection> 21st October 2021
- 350 Muriuki Benjamin. (2021). President Kenyatta Says over Ksh. 2Billion is stolen From Gov't Daily. Citizen Digital <https://citizen.digital/news/president-kenyatta-says-over-ksh-2-billion-is-stolen-from-govt-daily-4563455/>
- 351 Changole Adelaide. (2021). Don't Lend Our Government, Debt-Weary Kenyans Demand of IMF. Bloomberg. <https://www.bloomberg.com/news/articles/2021-04-09/don-t-lend-to-our-government-debt-weary-kenyans-demand-of-imf>
- 352 O'Neil Aaron. (2021). National debt of Kenya in relation to gross domestic product (GDP). Statista. <https://www.statista.com/statistics/451122/national-debt-of-kenya-in-relation-to-gross-domestic-product-gdp/>
- 353 Constitution of Kenya, Article 42

the benefit of the present and future generations through legislative interventions by parliament regarding environmental law and other emerging threats on the environment; as well as other measures. The state must ensure sustainable exploitation, utilization, and management of natural resources as well as conservation of the environment is actualized. The state must also guarantee and ensure a fair sharing of the accruing benefits from mining, excavation and extraction of resources from land and Kenya's maritime borders.³⁵⁴ The law also stipulates that enforcement of environmental rights in the event of a violation, either by state parties or private entities. Constitutional order sets the courts as the legal path for seeking redress in disputes regarding cases of environmental rights infringement.³⁵⁵ United Nations Sustainable Development Goals, which Kenya is a party to set goals on achieving sustainable utilization of natural resources.³⁵⁶ Recently the nation experienced a tale of legal feuds and public outcry over an attempt by government to penetrate one of the largest public spaces in Nairobi County; *Uhuru Park* and other protected zones, including *the Nairobi National Park* and *the Papal Dias* and the historic *St. Paul's University Chapel*, both located at the University of Nairobi grounds. The government had planned to utilize land shelved from these demolitions to further the construction of the Nairobi Express Way.³⁵⁷ While the plan to have the new road pass through the park was eventually abandoned and a new plan that circumvented the road around the park developed, government's all but clear readiness to hive off what it perceives as idle land only shows a rare glimpse into its lack of prioritization to abide by internally sanctioned SDGs and other conventions including national policy on environmental protection and sustainable development. Similarly the idea of having a tolled road system is in the first place a major disregard for public good; especially bearing the fact that part of the financing for the road emerged from the public coffers.³⁵⁸ ³⁵⁹ While Kenya imposed a total ban on plastic bags, other protected areas still remain threatened. For instance, most parts of the nation's capital and other major towns are in deplorable conditions; litter everywhere, leaking sewerage pipes that often mix with water for domestic consumption, and uncontrolled and irregular erection of buildings across these cities are just but a few of the cases. Plant owners often direct industrial and domestic waste into water bodies causing a scourge of unparalleled proportions to downstream users of rivers.³⁶⁰ Cholera outbreaks have often been as a result of the consumption of such waters, sometimes claiming multitudes of lives. Government's withdrawal prematurely from imposing regulations on the protection of river beds from developers under unclear circumstances has left the citizens afraid of its' hidden motives.

Displacement of people in the wake of rapid mega-infrastructure development and reclamation of public land by the government has also been on the rise. Recently the state forcefully evicted scores of inhabitants in Ruai, Nairobi without offering the evictees sufficient notice or alternative places for relocation or resettlement.³⁶¹ Forceful evictions also occurred in Kisumu's Kibos area, where a section of the minority Nubian community were forcefully evicted from land belonging to the Kenya Railways, thus exposing them to adverse weather conditions with limited alternatives for resettlement.³⁶²

354 Ibid.

355 Ibid.

356 Bucza, C. and Hinterberger, F. (2015). Towards sustainable development: Global targets for sustainable use of natural resources. <https://sustainabledevelopment.un.org/content/documents/6609130-Buczko-Towards%20diverse%20and%20sustainable%20governance.pdf>

357 Citizen Digital. (2019) Government Revises Nairobi Expressway Design to Avoid Taking up Uhuru Park Land. <https://citizen.digital/news/govt-revises-nairobi-expressway-design-to-avoid-taking-up-uhuru-park-land-291789/> 31st October 2019.

358 BBC. Letter from Africa: How the Nairobi Expressway is changing Kenya's capital. 23rd February 2021. <https://www.the-star.co.ke/news/2019-10-31-state-revises-design-for-nairobi-expressway-to-leave-out-uhuru-park/>; 367 Gathara, P. (2019). Nairobi Should Rethink its Colonialist Approach to Urban Design. Bloomberg CityLab. <https://www.bloomberg.com/news/articles/2019-11-11/why-a-new-expressway-in-nairobi-is-a-bad-idea>

359

360 Akumu, C. (2021). Circular Economy Best Bet to Tackle Solid Waste Menace in Kenya. InfoNile. <https://www.infonile.org/en/2021/03/circular-economy-best-bet-to-tackle-solid-waste-menace-in-kenya/>

361 Nnoko-Mewanu, J and Abdi, N. (2020). Nairobi Evicts 8,000 People Amidst a Pandemic and Curfew. Human Rights Watch. <https://www.hrw.org/news/2020/06/10/nairobi-evicts-8000-people-amidst-pandemic-and-curfew>

362 Amnesty International. Kibos Land and Demolition Case: High Court Finds Kenya Railways Corporation and the Ministry of Interior and Coordination of National Government guilty of gross human rights violations. <https://www.amnestykenya.org/wp-content/uploads/2021/09/2021-Sep->

Such forceful demolitions pose a threat to human life and usually lead to the loss of properties of immense value by the evictees. Displaced persons stay in the cold for an endless number of days and are forced to rely on aid agencies for survival while the government rarely extend much-needed compensation to the families. In the wake of these disregard of protecting environmental rights, there has been a positive remedy by the courts, through pronouncements of land mark judgments in the Owino Uhuru case³⁶³ and the Dandora Dumpsite case.

Respect of Human Dignity (Against Torture)

The Constitution sets out human dignity as the core of human rights observance and promotion.³⁶⁴ In Article 25, the law lists freedom from torture and cruel, inhuman or degrading treatment or punishment as one of the fundamental rights that may not be limited under any circumstances whatsoever.³⁶⁵ The law goes ahead in article 28 to clarify that “every person has a right to inherent dignity and a right to have that dignity respected and protected.”³⁶⁶ Article 29(d) outlaws all forms of torture, both physical and psychological.³⁶⁷ Kenya also acceded to the Convention against Torture (CAT) in 1997 thus has an international obligation to take “effective legislative, administrative, judicial or other measures to prevent any acts of torture within its territorial jurisdiction.”³⁶⁸ While the government’s official position has been that of zero tolerance on torture, there are still concerns over the conduct of security forces regarding how they get intelligence, information, and admission of crimes from accused persons under their custody. The legacy of the KANU regime, especially under Moi presidency, is still vivid in the memories of its victims.³⁶⁹ *Nyayo Torture Chambers* bears an indelible mark of human rights abuses by the government. The victims of such tortures did not receive any form of compensation, neither did the state acknowledged the abuses.³⁷⁰ Police operations in much of the suburbs of Nairobi, especially in the informal settlements, have often left an outcry for justice.

Police patrols unfairly target young men, with many ending up in the police cells where they face torture and other forms of cruelty. Such exercises sometimes turn fatal with many deaths associated with suspected torture in police cells already in public records.³⁷¹ On 28th April 2021, “police in Nairobi illegally arrested, detained, and killed Collins Ochieng’ from Mathare,”³⁷² The government ignored a detailed narration of events as they unfolded from a Community Based Organization, Mathare Social Justice Centre. Annual Report by the Missing Voices revealed police officers killed 157 Kenyans in 2020 with forceful disappearance of 10 others while in custody.³⁷³ Of all these cases, only 28 have been held liable for criminal charges. This shows the very minimal action by Independent Police Oversight Authority (IPOA) and other government departments responsible for reigning on rogue officers. The state must endeavour to uphold and

1-Kibos-Ruling-Judgement-Statement-for-release.-21.pdf

363 Kenya Law. <http://kenyalaw.org/caselaw/cases/view/198619/>

364 Constitution of Kenya. Article 19, sub-Article 2

365 Ibid. Article 25

366 Ibid. Article 28

367 Ibid. Article 29(b)

368 United Nations Human Rights Council. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

369 McCann, S. (2017). “You don’t forget your Torturers”: Wachira Waheira’s 30 Year Quest for Justice in Kenya. International Centre for Transitional Justice. <https://www.ictj.org/news/wachira-waheire-torture-justice-kenya>

370 Kenya National Commission on Human Rights. Foot Prints of Impunity: Counting the Cost of Human Rights Violations. Nyayo House Torture Chambers. <https://www.knchr.org/Portals/0/CivilAndPoliticalReports/FOOTPRINTS%20OF%20IMPUNITY-B5-F-T-24-7-2017.pdf?ver=2017-07-27-105838-067>

371 World Organization Against Torture (WOCT) (2008). Addressing the economic, social and cultural root causes of Torture in Kenya. https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/KEN/INT_CAT_NGO_KEN_41_9385_E.pdf

372 Mathare Social Justice Centre (MSJC). Who Is Next? A Participatory Action Research Report Against the Normalization of Extrajudicial Executions in Mathare. <https://s3-eu-west-1.amazonaws.com/s3.amazonaws.com/s3.amazonaws.com/sourceafrica.net/documents/118493/Mathare-Social-Justice-Centre-Who-Is-Next.txt>

373 Missing Voices Kenya. (2020). The Brutal Pandemic: Missing Voices 2020 Annual Report. <https://ke.boell.org/sites/default/files/2021-04/Missing%20Voices%20Annual%20Report%20.pdf>

incorporate transparency on all anti-crime and anti-terror operations conducted by the security agencies to hold officers accountable.

Provision of Basic Needs (Food, Health, Education, Employment)

Regarding economic and social rights of persons, the Constitution of Kenya in Article 43 states the following;

That every person has the right to the highest attainable standard of health, adequate housing, and freedom from hunger, clean and safe waters.³⁷⁴

Kenya is a state party to the International Covenant on Economic, Social and Cultural Rights. The covenant in its' entirety envisions a significant role for state parties to participate in the provision of economic and social needs of individuals and the society at large. Article 6 of the covenant obligates state parties to recognize and protect the right of all persons to work, including the right of everyone to an opportunity to gain a living through work which they choose or accept. The state must thus put in place viable policies to achieve the full realization of the covenant. Such policies may include; investment in vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and productive employment under conditions safeguarding fundamental political and economic freedoms of individuals.³⁷⁵ The 11th Article of the covenant urges state parties to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and continuously improve living conditions. The covenant also requires the enjoyment of the highest attainable standard of physical and mental health. The state must thus take steps, including; provision for the reduction of stillbirth-rate and of infant mortality and for the healthy development of the child (reproductive health), improvement of all aspects of environmental and industrial hygiene, prevention, treatment and control of epidemic, endemic, occupational and other diseases, and the creation of conditions which would assure to all medical service and medical attention in the event of sickness³⁷⁶. Therefore, the imperative placed on Kenya by both international and domestic legal frameworks in regard to the fulfillment of its' obligation that guarantee provision of the basic needs to its' population is inescapable. Thus, the state has no choice but to comply. However, it is extremely disheartening to learn that equitable access to basic needs in Kenya may indeed be a pipe dream if conditions essential for equitable development of all persons are not put in place. Kenya is one of the most unequal societies in Africa. Research by Oxfam found that a mere 8300 super-rich in Kenya own more wealth than the bottom 99.9% of the population. The report also showed that about 2.9 million more people would live in extreme poverty if this same trend of inequality is sustained for the next five years.³⁷⁷ In addition another 2.6 million Kenyans are also likely to fall into poverty or remain poor because of ill health. The findings by Oxfam revealed more than a million school-aged children are out of school in Kenya as a result of a decline in the government's spending on education³⁷⁸. While attempts by the government to bring forth reforms in the economy, through the Big Four Agenda, have brought some sense of revival to some sectors in the economy, key targets remain unmet. The Universal Health Coverage launched in four pilot counties, Kisumu, Nyeri, Machakos, and Isiolo, has been largely unsuccessful, mainly due to lack of adequately equipped medical facilities as well as a human resource that continue to

374 Article 43, 2010 Kenya Constitution.

375 OHRHC, International Covenant on Economic, Social and Cultural Rights(ICESR) Part III, Article 6

376 *ibid.* Articles 11 and 12

377 Oxfam International. Kenya: extreme inequality <https://www.oxfam.org/en/kenya-extreme-inequality-numbers>

378 *ibid.*

bedevil the country's health sector; always showing in incessant strikes and other forms of labour actions. Immense pressure put on the country's healthcare during the Covid-19 pandemic has undoubtedly shown the extent of lack in Kenya's healthcare system. For instance, only 22 out of the 47 counties had functional ICUs by the time of the Covid-19 outbreak. About 42% of Kenya's hospital beds are located in hospitals with no oxygen supply. In total Kenya had only 537 ICU beds and 256 ventilators.³⁷⁹ The inadequacy of crucial medical facilities in the hospitals paints the sorry state in which Kenya's critical medical care is in, and of course, it is a crisis in the face of a ravaging pandemic.

The country's infant mortality rate has also flattened and is a cause for alarm.³⁸⁰ Squabbles between government and the United States Agency for International Aid (USAID) over tax payment for the much-needed HIV/AIDS antiretroviral drugs caused an unnecessary and dangerous delay in the supply of the life sustaining medicine for the patients. This crisis was a black spot that revealed the level of carelessness and lack of concern by government for its population.³⁸¹ The delay threatened the lives of millions of people who depend on ARVs for survival and amounted to gross violations of human rights. The level of unemployment in the country, which is at its' highest in the last four years, has strained access to quality food, education, healthcare, and other amenities for majority of Kenyans.³⁸² Incessant drought and famine also continue to ravage the North Eastern and South Rift Valley Regions of the country.³⁸³ Limited access to basic services such as clean water, sewerage services, and decent housing is also prevalent in the slums and informal settlements in key urban areas. And is a major contributor to life threatening illness and epidemics e.g. cholera outbreaks etc.³⁸⁴ Therefore, it is unlikely that the government can fulfill even the bare minimum of what the constitution and other international regimes on access to basic needs demand of it. Therefore, civil society must keep the state in check to ensure the policy makers stay on track with the fulfillment of SDGs and the Kenya Vision 2030, which expressly calls for sustainable development and guarantees human dignity, equality, and access to all basic amenities

Recognition of Special Category

Part three of Chapter 4 of the Kenyan Constitution is written with specific application of rights of people under special category. These categories of persons include; women, children, persons with disability, youth, minorities, marginalized groups, and older persons. In general, the law upholds the unrestricted rights of these persons to attain the highest form of support, care, facilitation by the state, family and society in achieving personal, economic, social and political fulfillment. The state is required by law to institute affirmative action to ensure representation of women, youth, persons with disability and minorities in all key appointive and elective positions in public offices.³⁸⁵ Kenya has acceded or ratified several treaties regarding protecting special category rights, including; Convention on the Rights of the Child, Optional Convention on Involvement of Children in Armed Conflicts, African Charter on Rights and Welfare of the Child, Convention on Status of Refugees, and Convention on the Rights of Persons with Disability, Convention Against Discrimination of Women (CEDAW), and the African

379 Barasa, E. W., Ouma, P. O., & Okiro, E. A. (2020). Assessing the hospital surge capacity of the Kenyan health system in the face of the COVID-19 pandemic. *PLoS one*, 15(7), e0236308. <https://doi.org/10.1371/journal.pone.0236308>

380 Kimani-Murage, E. W., Fotsio, J. C., Egondi, T., Abuya, B., Elungata, P., Ziraba, A. K., Kabiru, C. W., & Madise, N. (2014). Trends in childhood mortality in Kenya: the urban advantage has seemingly been wiped out. *Health & place*, 29, 95–103. <https://doi.org/10.1016/j.healthplace.2014.06.003>

381 Jerving, S. Exclusive: USAID says no Kenya HIV medication deal. 22nd April 2021. Devex <https://www.devex.com/news/exclusive-usaid-says-no-kenya-hiv-medication-deal-99731>

382 O'Neil, A. Unemployment rate in Kenya. <https://www.statista.com/statistics/808608/unemployment-rate-in-kenya/>

383 Global Hunger Index. (2019). A Mixed Picture: Poverty Reduction, Rapid Population Growth and Extreme Weather. <https://www.globalhungerindex.org/case-studies/2018-kenya.html>

384 Kenya - Inside informality: poverty, jobs, housing and services in Nairobi's slums (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/450081468047364801/Kenya-Inside-informality-poverty-jobs-housing-and-services-in-Nairobis-slums>

385 Constitution of Kenya, Chapter 4 Articles 52-57

Charter on Human and Peoples' Rights on the Rights of the Women in Africa. Such commitments have highlighted the country's resolve to protect the rights of persons falling under special categories. However, Kenya has failed to ratify and operationalize some key conventions that could go a long way in improving the situation of all persons belonging to either of the special categories. For instance, the government is yet to accede to the International Convention on protecting the Right of all Migrant Workers and members of their families, Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, Optional Protocol to CEDAW, and the Optional Protocol to the Convention on the Rights of the Child on Prostitution and Pornography.

Women's rights and gender equality in Kenya remain a sensitive topic. While the Constitution proposes a two-thirds gender rule on all public appointments, Kenya's parliament has failed to institute any meaningful legislation on this constitutional requirement. As a result, the country's Chief Justice, in September 2020, advised the President to dissolve the legislative body as it was constituted in contravention to the demands of the law as far as gender parity was concerned.³⁸⁶ Women also continue to face many challenges, including wide spread cases of Sexual and Gender-Based Violence (SGBV). Many cases of male-partner killings and abuse have recently emerged and have been sustained across the country despite the efforts of state officers and civil society movements to build healthy relations. In March 2021, the governor of Kisumu County suspended a number of Kisumu County officers pending further investigation on the assault of a businesswoman by dragging her on the streets in Kisumu Central Business District (CBD)³⁸⁷. A popular radio breakfast show was caught up in controversy after the hosts were allegedly recorded promoting SGBV on air. The hosts had made comments suggesting their support for reasons behind a heinous assault of a lady by her lover in Nairobi after they differed over sexual consent. This event led to a social media storm by Kenyans who demanded action from the owners of the radio station, resulting in the dismissal of the three hosts.³⁸⁸ While their sacking cleared the air, their misogynic sentiments had escaped and will shape debates on gender relations in the country for years. The rise in the number of teen pregnancies during school closures due to government lockdown also negatively affected the education of the girl child.³⁸⁹ Media sources reported that thousands of teenage pregnancies, mostly from sexual assault during the lockdown, will affect the education of many girls who are likely to drop out of school because of the stigma related to teenage pregnancy.

Refugee rights have also remained a thorny issue. While the country accommodates roughly over 500000 refugees in the two refugee camps; Kakuma and Dadaab, under a United Nations Framework and in collaboration with the United Nations High Commissioner for Refugees (UNHCR) and other national and international agencies, its' commitment towards full implementation of the rights of the refugees under international law have been irregular. For instance, Kenya has customarily used the refugee population as pawns in its geopolitical and economic interests. A recent spat with the Government of Somalia has been suspected as a cause for an attempt by the government to close the two camps and send hundreds of thousands of vulnerable refugees back home.³⁹⁰ The conditions in the refugee camps are also de - humanizing, as thousands of people are concentrated in small spaces with limited opportunities for personal growth. The

386 Amnesty International 2021 Report on Kenya

387 Matete, F. Anger as Kisumu askaris drag woman on tarmac. 25th March 2021 The Star <https://www.the-star.co.ke/news/2021-03-25-anger-as-kisumu-askaris-drag-woman-on-tarmac/>

388 BBC NEWS, Kenyan DJs, sacked after blaming the woman for being pushed off a building. 28th March 2021 <https://www.bbc.com/news/world-africa-5655495>

389 Human Rights Watch Kenya: Events of 2021 <https://www.hrw.org/world-report/2021/country-chapters/kenya>

390 Frelick, B. Closing Camps Will not Solve Kenya's Refugee Problem. Human Rights Watch 13th April 2021 <https://www.hrw.org/news/2021/04/13/closing-camps-wont-solve-kenyas-refugee-problem>

Covid-19 pandemic also hurt the uptake of refugees by the country due to fears related to the spread of the virus. Amnesty International 2021 Report on Kenya shows that over 13000 new arrivals to refugee camps in 2020 were not registered. Reception and registration centres for asylum seekers in urban areas remained partially closed, thus affecting asylum issuance.³⁹¹ Kenya has also struggled with making conclusive reparations for the victims of the 2007/2008 PEV. While most IDPs were compensated, some either received insufficient compensation or were excluded from the process.³⁹² There is a need to revisit and address any outstanding complaints. The Rights of Persons with disabilities (PWD) in Kenya is also enshrined under Article 54 Constitution of Kenya (CoK) as follows,

All persons with disability shall be treated with dignity and respect and be addressed and referred to in a manner that is not demeaning. Persons with disabilities must also be enabled access to educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the person's interests. All institutions must also make facilitation to allow PWDs access to all places, public transport and information, sign language, braille or other appropriate means of communication and access to materials and devices to overcome constraints arising from their disability. The state is also obligated to ensure a progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

While the clarity of the law on the rights of PWDs is unmistakable, its implementation has been hasty. There has, indeed been a marked improvement in the general observance of PWDs rights by the state, private organizations and the public. However, this positive trend has been dogged by the widespread instances of abuse meted out persons with disabilities. For instance, a cartel has emerged in most urban centres that plant PWDs, especially from neighbouring countries in various spots across the country, to beg for money and other goods from members of the public.³⁹³ Kenya's constitutional framework also guarantees the rights of the child and youth.

Critical sections of the articles on the child's rights, among other things, establish a child's right to identity, free and compulsory primary education; to be protected from all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour. It also provides for the right of parental care and protection for the child and a right not to be detained unless it is the measure of last resort. By and large, the law envisions that the child's best interest should always be of paramount importance in all matters concerning the child.³⁹⁴ Regarding the affairs of the youth; the state has a primary obligation to take all measures necessary, including affirmative action programmes, to ensure that the youth access relevant education and training, have opportunities to associate, be represented and take part in political, social, economic and other spheres of life. The law also grants the youth the right to access employment and be protected from harmful cultural practices and exploitation.³⁹⁵ African Charter on the Rights of and Welfare of the Child adopted in July 1990 and enforced 29th November 1999 in its' opening clauses it obligates all state parties to recognize the rights, freedoms and duties enshrined. The Charter also expected state parties to undertake necessary steps, under their constitutional processes and with the present Charter, to adopt legislative or other measures as may be necessary to affect the Charter. The Charter outlines that any

391 see Human Rights Watch 2021 Report for Kenya

392 Kenya Law. (2017). Internally Displaced Persons Initiative v Permanent Secretary Ministry of Devolution & Planning

393 Wanjala, W. Trafficking of persons with Special Needs for Begging in Kenya. The Pontifical Academy of Sciences <http://www.xn--ppstlicheakademied-erwissensschaften-b4c.va/content/accademia/en/publications/scriptavaria/africanwomenjudges2019/wanjala.html>

394 Constitution of Kenya, Chapter 4(53)

395 . Article 55

custom, tradition, cultural or religious practice inconsistent with the rights, duties and obligations in the Charter shall to the extent of such inconsistency be discouraged. Non-discrimination, the best interest of the child, right to survival and development, right to name and family, freedom of expression, association, thought, conscience, and religion, protection of privacy, education, and right to leisure, recreation and cultural activities.³⁹⁶They are recorded as obligatory and fundamental for state protection.

Despite the weight of obligation held by the state and society concerning the observance of youth and child rights, situations that prove otherwise still persist in the country. In the aftermath of the 2017/2018 presidential election(s), it was reported that security officers, conducting operations to disperse NASA supporters rioting in rejection of the electoral results, shot and killed many children in Nairobi and Kisumu. The Police Service has reacted to such reports by blaming rogue officers whom the service said shot live bullets indiscriminately at rioters. Whether it was wrongful shooting by stray bullets, this caliber of assault on the child's rights was unimaginably gruesome and gross.³⁹⁷ ³⁹⁸ The state of youth unemployment in the country is inconceivable. About 40% of Kenyan youth remain either unemployed or underemployed despite being willing and able to work.³⁹⁹ Some youths also remain unemployed despite having the right education qualifications, skill set, as well as the right experience and aptitude for work. Youth form the largest bulk of persons under extreme poverty in Kenya. Young women are as a matter of fact facing double tragedy; as they are affected by virtue of being women as well as being young. The covid-19 pandemic worsened the condition of the youth, as a majority of them have been driven out of jobs and business due to the cutting effects of government lockdown. While the dusk to dawn curfew is no longer applicable its' impact on youth will require joint efforts by all to unroll. Negative fiscal planning and mismanagement of public resources has meant that the youth, who form majority of the population, bear the biggest brunt of harsh economic times. High cost of living, inflation and worsening political temperatures are also a threat to fulfillment and enjoyment of critical rights and fundamental freedoms by youth. Incessant closures of education institutions, places of worship, entertainment joints and other avenues of interactions have also negatively impacted the socio-cultural progress of youth. The government must devise policies to reverse these trends to salvage the worsening mental illness situation amongst youth. The government needs to ensure solid fiscal policies that target microfinance for small and medium businesses dominated by youth. Authorities may also need to implement targeted financing of key sectors such as hospitality and tourism, entertainment industry, and sporting industry which offers the immense opportunity for business and employment for youth.

Conclusion

The status of human rights observance in Kenya is mixed. On the one hand, the country has ratified and acceded many international and regional conventions that protect fundamental freedoms and rights of persons; conversely, the operationalization of such treaties has been marked with state inaction due to the lack of political good will. The nation's constitution is rich in its' desire for fulfillment of human rights in its entirety. However, lack of political goodwill, citizens' apathy, and socio-cultural dynamics have

396 See African Union, African Charter on the Rights and Welfare of the Child. https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf

397 Odhiambo, R. Children among victims of post-election violence in Kenya. 15th August 2017 DW <https://www.dw.com/en/children-among-victims-of-post-election-violence-in-kenya/a-40095962>

398 Human Rights Watch. Kenya: Police Killed, Beat Post-Election Protesters. 15th October 2017 <https://www.hrw.org/news/2017/10/16/kenya-police-killed-beat-post-election-protesters>

399 Alushula, P. Census: 39% of Kenya youth are unemployed. 24th February 2020 Business Daily <https://www.businessdailyafrica.com/bd/economy/census-39pc-of-kenya-youth-are-unemployed-2281430>

dealt a colossal blow to the realization of the dreams of the supreme law. The fabric of the democratic order created by Kenya's Constitution 2010 is still solid. It will require an independent judiciary, functioning legislature, and a proactive but restrained executive to make wholesome enjoyment of human rights and fundamental freedoms in Kenya a reality. Civil society and religious organizations must play their role in keeping the government accountable to its citizens as envisioned in the Constitution.

UGANDA

In order to understand the human rights status of Uganda, one needs to situate contextual analysis within the changing political dynamics of the country and the region. Uganda has had decades of theoretical multiparty democracy. Like many other African countries, Uganda has ratified a number of international human rights treaties accepting the obligation to not only comply with them, but also create effective enforcement mechanisms to ensure those rights are respected, protected and fulfilled. The scope of the above commitment remains limited by a systemic dictatorial and autocratic rule under President Yoweri Museveni, which has stifled dissent from those who openly challenge excesses within the socio-political and economic system, structures and policies. Since the National Resistance Movement (NRM) assumed power in 1986, Uganda has undergone several transitional phases characterized by cycles of violent conflicts which have exacerbated gross violation of fundamental human rights. The escalation of human rights abuse in Uganda has been instrumentalized through multiple security agencies (police, army, intelligence) used by the NRM government to make sure voices from non-state actors such as civil society organizations, human rights activists, journalists, lawyers, political activists, are silenced.

Uganda's transitioning from political instability to a relatively peaceful country has not been without its fair share of pain and joy. The transition has been commendable with notable improvement in human rights guarantees since the promulgation of the 1995 Constitution⁴⁰⁰. However, Uganda remains one of the countries in Sub-Saharan Africa witnessing systemic violations of fundamental human rights through laws enacted to inform selective justice aimed at stifling and stemming dissent from voices such as human rights defenders⁴⁰¹ and political opponents. Ntabadde observes that, atrocities against these actors had been carried out through arbitrary arrests, detention without trial, torture and brutal repression with impunity on the part of security organs during the pre and post-independence era.⁴⁰² Uganda remains host to many refugees from DRC and South Sudan, but has often been accused of violating international refugee law, embodied by the 1951 Convention that clearly spells out the framework for protection and promotion of the rights of refugees wherever they may be.

I. The Status of ratification, domestication and implementation of Human Rights Law Conventions

Uganda has ratified and domesticated several human rights treaties and conventions on a wide range of human rights related issues. However, like many African countries, Uganda was quick to sign and ratify those instruments, but reluctant to implement a

400 See The 1995 Constitution of the Republic of Uganda. But also a report by Universal Periodic Review Stakeholders Engagement Joint Submission by the Human Rights Network-Uganda(HURINET-U)

401 See Human Rights Watch, 2019 Report

402 Ntabadde, C. (2018). "UHRC assesses Uganda's legislation against the UN Convention on the Rights of the Child commitments, to make Uganda a better place for children." Available at: <http://www.uhrc.ug>

number of them for two major reasons: (i) that under international human rights law, Uganda has the duty to ratify and domesticate treaties and conventions, speedily and timely, and guarantee their enjoyment in full; but (ii) that if enforcement mechanisms were to be strengthened, compliance by State parties to investigate and prosecute human rights related cases would be founded on an objective criteria, a situation the incumbent government has serious problems with given that state machinery stand accused of continued violation of human rights within and outside Ugandan borders.

II. Ratified and Domesticated Treaties and Conventions.

Uganda has adopted and domesticated the International Bill of Rights that comprises the International Covenant on Economic, Social and Cultural Rights (ICESCR) signed on 21st January 1985 and ratified on 21st January 1987 and the International Covenant on Civil and Political Rights (ICCPR) 21st June 1995.⁴⁰³ It also acceded to the Optional Protocol to the ICCPR on 14th November 1995, but has neither signed, ratified nor acceded to the Second Optional Protocol to the ICCPR, which aims at abolishing the death penalty, raising persistent questions. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was signed and ratified on 22nd July 1980, Convention on the Elimination of All Forms of Discrimination against Women was signed on 30th July 1980 and ratified on 22nd July 1985, but the Optional Protocol of the convention has not been signed, ratified or acceded to by Uganda. Other instruments signed and ratified include United Nations Convention against Transnational Organized Crime signed on 12th December 2000 and ratified on 9th March 2005. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was acceded to on 3rd November 1986, while International Convention for the Protection of All Persons from Enforced Disappearance was signed on 6th February 2007.

With regard to specific rights of children, Uganda signed and ratified the Convention on the Rights of the Child on 17th August 1990 and acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts on 6th May 2002, having ratified the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 21 June 2001. Uganda ratified Abolition of Forced Labour Convention on 4th June 1963, and Employment Policy Convention on 23rd June 1967. On education, Convention against discrimination was ratified on 9th September 1968. Special group rights for persons with disabilities, refugees and IDPs, Convention on the Rights of Persons with Disabilities and its' Optional Protocol were signed on 30th May 2007, Convention and Protocol relating to the Status of Refugees were acceded to on 27th September 1976, as well as the Convention relating to the Status of Stateless Persons acceded to on 15th April 1965, as the International Convention on the Prevention and Punishment of Crimes Against International Protected Persons was acceded to on 5th November 2003. Following the apocalyptic genocide in Rwanda of 1994 that claimed close to a million lives leaving the entire world in utter shock, Uganda acceded to the Convention on the Prevention and Punishment of the Crime of Genocide on 14th November 1995, but also signed the Rome Statute of the International Criminal Court (ICC) on 17th March 1999 and ratified it on 14th June 2002.

Uganda is a signatory to a number of African Regional treaties, conventions and protocols. These include: African [Banjul] Charter on Human and Peoples' Rights (signed on 18th August 1986 and ratified on 10th May 1987) and the Convention Governing the

403 See University of Minnesota, Human Rights Library: Ratification of International Human Rights Treaties-Uganda. Available at: hrlibrary.umn.edu/research/ratification-uganda.html

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

III. The 1995 Constitution and fundamental Human Rights in Uganda

The 1995 Constitution of Uganda provides frameworks for analysis of human rights in the Bill of rights under chapter 4. To operationalize enforcement mechanisms, the constitution provides for the existence of the Uganda Human Rights Commission (UHRC) established under Article 51(1), to achieve three basic objectives: (1) to ensure human rights are respected, protected, promoted and fulfilled under international human rights law by all State agencies,⁴⁰⁴(2) as a permanent body to monitor the human rights situation in recognition of Uganda's violent and turbulent history that had been characterized by arbitrary arrests, detention without trial, torture and brutal repression with impunity on the part of security organs during the pre and post-independence era;⁴⁰⁵(3) to ensure all human rights violations are thoroughly investigated and prosecuted in accordance with both domestic and international laws. To find out how, if and when these objectives are achieved or otherwise, the following areas are contextually examined to determine whether or not Uganda is compliant to its' international human rights obligations as required.

404 See Article 51-58 of the Constitution of Uganda

405 See Ntabadde, Catherine, 2018, stating how the Constitution of Uganda and the Uganda Human Rights Act of 1997 provide the legal mandate, functions and the powers of the Commission.

ENFORCEMENT OF HUMAN RIGHTS LAW.

Uganda has national institutional mechanisms in place and functioning to increase engagement with international human rights mechanisms, namely, the National Human Rights Action (NHRA) and the National Human Rights Education Plan (NHEP).⁴⁰⁶ The National Human Rights Action Plan of Uganda validated by the Committee of the Human Rights Action Plan in 2014 aimed at setting up a permanent, functioning structure to address reporting obligations and follow up on the implementation of recommendations. On the one hand, OHCHR has continuously supported the Government, the Uganda Human Rights Commission and civil society organizations to develop the Action Plan⁴⁰⁷ The Office also helped the government to develop an online database to follow up on the status of implementation of the recommendations issued by the international, regional and national human rights mechanisms. Launched in 2016, the tool was updated to incorporate a monitoring and evaluation framework.⁴⁰⁸

An Inter-ministerial Committee on Human Rights was established in fulfilment of a Universal Periodic Review (UPR) voluntary pledge made by the Government. The Committee is a standing body that is composed of focal points from key ministries and departments as well as civil society representatives.⁴⁰⁹ The Committee is responsible for Uganda's human rights reporting obligations and tracks and coordinates the implementation of the recommendations of human rights mechanisms. The Committee submits state reports, in compliance with guidelines, to the UPR, the Committee on the Rights of Persons with Disabilities (CRPD), the Committee on Migrant Workers (CMW), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW). OHCHR's technical support developed an online tool to follow up on the implementation of recommendations.⁴¹⁰ It also contributed to reinforcing Uganda's national capacity on reporting the violations and abuses of human rights and its' sustained engagement with international, regional and national human rights mechanisms such as UN Commission on Human Rights (UNCHR), African Commission on Human Rights (ACHR), and Uganda Human Rights Commission (UHRC). OHCHR supports state institutions, the national human rights institution such as UHRC and civil society organizations in their engagement with these mechanisms, as well as offering training, and also funding and facilitating their engagement with Universal Periodic Review (UPR)⁴¹¹. These efforts by various human rights bodies have been supported also by among others, Human Rights Watch, Amnesty International, and Transparency International, which have consistently documented and reported human rights violation based on the international human rights law. For purposes of this review the following human rights indices are covered.

Freedom of Expression and Association

Freedom of expression and association are key to the democratization process, provided for in the International Covenant on Civil and Political Rights (ICCPR) as well as the Constitution of Uganda under chapter 4. As fundamental as it is, freedom of expression

406 UN Human Rights in the field: Africa, 2017

407 Ibid. OHCHR supports State institutions, the

408 Ibid. The Inter-ministerial Committee and Ministerial Human Rights desk submit timely State reports in compliance with reporting guideline and effectively participate in the review process.

409 UN Human Rights in the field: Africa, 2017

410 ibid

411 ibid

is manifested through free speech that is not curtailed by oppressive laws and restrictions by State parties. The Freedom in the World 2021 Report ranked Uganda as ‘chained and not free’, similar to Burundi and Ethiopia while Kenya is ranked as ‘partly free’⁴¹² According to the report, from 2003 to 2014, Uganda’s overall freedom ranking in the Survey of Freedom in the World was between 4.5 and 5 in Freedom House’s scale (with 1 being most free and 7 being least free). In the noted period, Uganda was rated as a “partly free” country on the assumption that freedom of expression was guaranteed in law and practice.⁴¹³ However, this status was short-lived, as the country’s score dropped to 5.5 and its status downgraded to “not free” in the 2015 Freedom in the World Report, due to deterioration in civil and political rights as well as personal liberties,⁴¹⁴ with indicators such as arbitrary arrest, detention without trial, and torture⁴¹⁵ hitting record highs. Nevertheless, Freedom House ranks Uganda as “not free” in its’ Freedom of the Media Report for 2021 due to the existence of insignificant independent media.⁴¹⁶ However, with the introduction of repressive laws in the country, the little gains recorded in recent years have been lost as Uganda has degenerated into dictatorial- autocratic regime rule that has seen Reporters without Borders rank it 97th out of 180 countries in the 2015 Index.⁴¹⁷ Uganda’s free speech can be traced back to the 1990s when the media was then seen as vibrant long before constitutional reforms that saw new laws introduced to regulate the industry.

Such developments changed the entire media landscape in a very fundamental way by expanding it in terms of diversity and ownership which had been restricted in the past, but now proliferated with independent media outlets (both electronic and print). Freedom in the World 2016 presented demographic data on media ownership indices in Uganda using practical indicators showing how although state owned media were among the largest outlets, there were more than 200 independent radio stations, 50 independent television stations, and 50 independent print media outlets owned by either foreign investors or Ugandans operating in the country. These gains were quickly reversed upon reintroduction of retrogressive media laws. Restrictions in the new laws under the Press and Journalist Act (PJA) (2014) required not only all registered journalists to be holders of university degrees, but also adhere to strict media law and ethics. Professional code of conduct became a tool for intimidation and control, that would even be used by the Minister for Information to deny investors the legal rights to start and freely operate media establishments in the country. However, the new law faced hurdles as human rights defenders, media practitioners and owners jointly challenged it in the Supreme Court following the closure of a number of radio stations. The Supreme Court ruled in favour of the human rights defenders on the grounds of unconstitutionality of the new Law on Sedition.⁴¹⁸ However, this had minimal implications for the freedom of

412 See Ranking in Freedom in the World 2021: Uganda’s Status: Not free. Freedom Ranking: 32; Political Rights: 11; civil Liberties: 23. Freedom House ranks Uganda “not free” in its Freedom of the Media Report for 2021. Reporters Without Borders ranks Uganda 97th out of 180 countries in its 2015 index.

413 See Human Rights Watch, 2016 and World Press Report, 2017 which recorded Uganda’s free speech trajectory. Under Uganda’s dictatorial regimes following independence, and particularly during melancholic rule of Idi Amin, there had been little respect for human rights or freedom of expression, either in law or practice. After Yoweri Museveni seized power in 1986, his government reduced repression, adopted a new constitution protecting some fundamental human rights, and allowed independent media to develop to record degree. But it was a matter of time before Museveni’s rule degenerated into authoritarianism that introduced restrictions and constant pressure on the media, as well as opposition political groups and alternative social movements.

414 See Article 23 of the Constitution of the Republic of Uganda. Universal Periodic Review (UPR) together with Human Rights Network-Uganda (HURINET), indicated in a Survey conducted in 2009 that up to 36 of community respondents had ever been arrested on false accusations, mistaken identity, malice and no reason by security forces other than the police, the only organ mandated to conduct arrests and kept in ungazetted places separating them from their families and lawyers.

415 African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV) (2008) Baseline survey on the trends and nature of torture in Uganda, Kenya and Ethiopia.

416 Freedom in the World 2021

417 See Reporters Without Borders 2016 Report.

418 See Human Right Watch, 2010 Report on Media Freedom in Uganda. It was clear in the report that the Ugandan government uses its national laws to bring charges against journalists, restrict the number of people who can lawfully be journalists, revoke broadcasting licenses without due process of law, and practice other forms of repression. Similar laws and procedures exist in other countries, but in Uganda, the government uses the laws in partisan ways to create a minefield for media owners and reporters who speak or write about issues that the government deems politically sensitive or controversial. Several government-controlled bodies, including the Broadcasting Council, the Media Council, and the Uganda Communications Commission (UCC) wield broad, ill-defined, and unchecked powers to regulate the media. Many of the sanctions they levied have been in violation of freedom of expression

expression, particularly freedom of the media⁴¹⁹ that has been eroded continuously and threatens to drive out investors from the media industry.

The conditions for an independent media have deteriorated quickly in Uganda.⁴²⁰ It is reported that from 2002 - 2020, Uganda fell from a previous global ranking of 52 to 125 out of 180 countries in the World Press Freedom Index.⁴²¹ Cohen and McIntyre (2020)⁴²² suggest that the paradoxical situation with a liberalized media system with many different media houses and at the same time governmental crackdowns on media freedom blurs the line between a free press and a restricted press, and that the resulting self-censorship and lack of critical reporting may strengthen existing power structures.

Such arrests are not limited to political agitations, but extend to journalists and human rights defenders summoned on charges of sedition, incitement to violence, or promoting sectarianism against the government.⁴²³ In response to these violations, Uganda Human Rights Commission (UHRC)'s attempts to increase efforts to champion respect, protection and promotion of human rights ended up curtailed every time the government was portrayed as being in violations of those rights on record scale. On many occasions the commission has been threatened with disbandment if it continues challenging NRM's human rights record. This has made the commission susceptible to complicity on the excesses within government. As a statutory body created by an Act of parliament, UHRC has the duty and mandate of defending human rights across board in Uganda, regardless of ethnic, gender, religious, political, sex, and nationality status. The scope of this mandate has been limited by inadequate funding, which depends entirely on state budgetary allocations. Hence the commission's independence has been compromised as a result of overreliance on government funding to carry out its' mandate as stated in the 1995 constitution of Uganda. Although, UHRC collaborates with other partners in running its' programs, reliability on sources of funds remains a major obstacle to carrying out its' watchdog monitoring mandate of promoting and protecting human rights in Uganda. Chapter 24 of the Constitution of Uganda provides for the functions of the commission outlining in vivid terms its' mandate.⁴²⁴ Despite clear mandates that were outlined in the constitution, UHRC continues to meet obstructions in the dispensation of its obligations that include investigating and recommending action against any human rights violation.

Freedom of Religion

Uganda is signatory to the International Bill of Rights, of which freedom of religion is covered under the International Covenant on Civil and Political Rights (ICCPR) ratified on June 21st 1995. The constitution outlaws state religion, by categorically prohibiting religious discrimination and accords each faith tradition equal status by law. Freedom of religion is clearly stated in the constitution of Uganda in Article 29, which provides for the "protection of freedom of conscience, expression, movement, religion, assembly and association."⁴²⁵ According to Uganda 2017/2018 International

by best international practices.

419 See Human Rights Watch, 2010 Report. A Media Minefield: Increased Threats to Freedom of Expression in Uganda

420 Defending Journalism Against State Repression: Legal Mobilization for Media Freedom in Uganda. Available at <https://www.tandfonline.com/doi/full/10.1080/1461670X.2021.1882879> (accessed on 27th September, 2021)

421 Reporters Without Borders 2020 "2020 World Press Freedom Index." <https://rsf.org/en/ranking>. [Google Scholar]

422 Cohen, Meghan Sobel, and Karen McIntyre. 2020. "The State of Press Freedom in Uganda." *International Journal of Communication* 14 (0): 20.

423 Human Rights Watch, 2010.

424 See Chapter 24 of the 1995 Constitution of the Republic of Uganda. The Uganda Human Rights Commission Act states, that the commission shall perform the following functions but not limited to: 1)-(a) to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human rights; (b) to visit jails, prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations; (c) to visit any place or building where a person is suspected to be illegally detained; (d) to establish a continuing programme of research, education and information to enhance respect of human rights. 2) Decisions of the commission under article 53(2) of the constitution shall have effect as those of a court and shall be enforced in the same manner.

425 Parliament of the Republic of Uganda (2006). Chapter Four, article 29: The Constitution of the Republic of Uganda. Available at: <https://www.parliament.go.ug/documents/1240/constitution> (accessed on 18-07-2020)

Religious Freedom Report, the constitution provides *inter alia* for freedom of belief, the right to practice and promote any religion, to belong and participate in the practice of any religious organization consistent with the law.⁴²⁶ But there would be a limit to the scope of those freedoms, especially where conscientious objection of certain religious beliefs contradicted government programs such as immunization drives,⁴²⁷ suspected to compromise bioethics and serious security threat to family continuity in Uganda. The government cracked down on Muslim clerics who opposed such programs on the basis of violating other peoples' rights to healthcare considered fundamental to international human rights treaty law.

According to the 2020 Report on International Religious Freedom: The U.S. government estimates the total population of Uganda at 42.3 million (midyear 2020 estimate). As per the most recent census conducted in 2014, 82 percent of the population is Christian. The largest Christian group is Roman Catholic with 39% percent; 32% being Anglican, and 11% Pentecostal Christian. Further, official government estimates Muslims constitute 14% of the population. Other groups that collectively represented less than 5 percent of the population include Seventh-day Adventists, cultural indigenous beliefs, Baptists, Orthodox Christians, Hindus, Jews, and those with no religious affiliation.⁴²⁸ The UMSC estimates Muslims (Sunni) to be closer to 25 percent of the population, while the Hindu Association in Uganda classifies the largest non-African ethnic population of Indian decent as being Hindu.⁴²⁹ These are those officially registered and recognized having met registration criteria that require such bodies to register with the Uganda Registration Service Bureau (URSB) and obtain an operating license.⁴³⁰ The license then serves as a copy of proof of title of ownership of premise, a copy of resolution to start a religious organization, and still need to sign the memorandum of understanding between the government and religious institution or church requesting for a license.⁴³¹ But as Ugandan law seems progressive on religious freedoms expressed through this diversity, state agencies continue to act in a manner inconsistent with the same law that protects and promotes those freedoms.

Doctrine of separation of powers

Tasneem Sultana conceptualizes separation of power as a model of democracy that involves the separation of political power among government's three branches the Executive, the Legislature and the Judiciary. In a system where separation of powers is clear, each branch is constrained from intervening in the area of responsibility of another branch.⁴³² The doctrine emphasizes the checks and balances between independent and co-equal branches of government as understood by the French political and social philosopher Baron de Montesquieu.⁴³³ It is these checks and balances that protect the people from authoritarian or arbitrary rule.⁴³⁴ The doctrine holds that, in order to avoid

426 See US State Department (2018). Uganda 2017/2018 International Religious Freedom Report. Available at: <https://www.state.gov/wp-content/uploads/2019/05/UGANDA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf> (accessed on 17-07-2020) in CRTP's FORB (2020) Report.

427 See Uganda 2017/2018 International Religious Freedom Report. The government of requires religious groups to register. The government restricted activities of religious groups it defined as "cults" and arrested some members who refused to participate, due to religious reasons, in government immunization drives. Local media reported that the Ministry of Internal Affairs (MOIA) Executive Office's Religious Affairs Department Director, Reverend Aaron Mwesigye, said the government intended to increase regulation of the activities of faith-based organizations to make them more accountable and transparent. The Uganda Muslim Supreme Council (UMSC) said the government continued to discriminate against Muslims when hiring senior and lower-level officials.

428 Ibid.

429 Ibid

430 URSB (2019). Compliance notice for faith-based organizations. Available at: <https://ursb.go.ug/2019/1203/compliance-notice-for-faith-based-organizations/> (accessed on 18-07-2020)

431 See CRTP's FREEDOM OF RELIGION OR BELIEF (FORB) IN UGANDA (2020) Report.

432 See Tasneem Sultana. (2012). Montesquieu's Doctrine of Separation of Powers: A Case Study of Pakistan. Journal of European Studies. University of Karachi. Montesquieu defined the doctrine of separation of powers in his Spirit of Law (1734) based on the system of checks and balances in government. Checks and balances implies that there are competing sovereigns. Checks refers to the ability, right and responsibility of each power to monitor the activities of the other(s), while balance refers to the ability of each entity to use its authority to limit the power of others. Available at: <http://www.experiencefestival.com/separation-of-powers-checks-and-balances>.

433 Ibid

434 See <http://www.indianofficer.com/forums/2062-separation-powrs-vs-fusion-powers.html>.

concentration of power in the hands of a minority group in the political system, the three principal constituents of government- the executive, the legislature and the judiciary should be separate and enjoy equal and well-defined powers and independence.⁴³⁵ But this is the ideal, the practice however is that, sustained interference by one arm (mostly the executive arm) of government into the activities and operations of the other two remains an instrumental threat to the protection and promotion of human rights in many polities across the world and particularly in Uganda.

Chapters 6, 7 and 8 of the 1995 Constitution amended in 2006, elaborate the constitutional framework, mandate and functions of each branch of government, spelling out areas of convergence and divergence as far as the responsibility to protect and promote human rights is concerned. The current Ugandan context is characterized by systemic political interference in the independence of courts and the Judiciary in general, to the effect that, the institution has been rendered almost dysfunctional. This has had implications for human rights of those pursuing justice in the courts. The majority end up disappointed due to the pervasive interference in legal processes by the other arms of government. Isanga argues that courts in Uganda have at times taken recourse to law selectively and decided cases in strong consideration of the will of the executive. According to this view, Ugandan courts of justice review have not been strong enough to listen to public views on certain respects of human rights.⁴³⁶ For example, in regard to the death penalty, the Constitutional Court states that public participation is relevant because the Constitution of Uganda provides that “judicial power is derived from the people and shall be expected by the Courts...in conformity... with the values, norms and aspirations of the people”.⁴³⁷ Isanga’s perspective is that, fundamental human rights and freedoms are beyond the dictates of mere public views, since at times such views could be shaped by judicial decisions. However, the interpretation of judicial decisions must be informed on the basis that Uganda’s Constitution acknowledges and places human rights beyond the whims of the state, which represents the people,⁴³⁸ by providing that “fundamental rights and freedoms of the individual are inherent and not granted by the State”.⁴³⁹ Despite the above provisions and interpretation of the supreme law of Uganda, arbitrary killings, torture and detention without trial remain common place, and are carried out by state actors or security agencies in total disregard of human rights protected under the law.

As a signatory to a number of international human rights instruments, Uganda’s obligation to create an environment for the enjoyment of those rights is irreplaceable. However, like the majority of African countries, Uganda’s law clearly states that equality before the law is not optional, and that every gender shall be represented at all levels of government; in the executive, women’s representation shall be on the basis of 2/3 to uphold women specific rights as upheld by CEDAW. Other instruments that protect the rights of women include ICCPR, ICESCR as well as ACHPR. The same reasoning applies to other arms of government, which according to Amnesty International Report, have maintained skewed women representation, with judicial appointments to the bench mostly favor men despite equivalent competitiveness, competence and commitment of women across the country.

The 1995 Constitution provides among its’ social and economic objectives that the State shall ensure that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, dignified work, decent shelter, adequate clothing,

435 See Tasneem Sultana. (2012).

436 See Isanga, M. Joseph. (2009). African Courts and Separation of Powers: A Comparative Study of Judicial Review in Uganda & South. *Interdisciplinary Law Review*, 69,102. Concordia University School of Law.

437 Constitution of the Republic of Uganda(1995) article 126(1)

438 Article 1(2) of Uganda’s Constitution provides that “all authority in the State emanates from the people of Uganda.”

439 Constitution of the Republic of Uganda(1995) article 20(1)

food, security, pension and retirement benefits etc. The Law also includes provisions against discrimination and provisions relating to specific groups such as the rights of women, children, persons with disabilities and minorities⁴⁴⁰. All arms of government have legal obligation to respect, protect and fulfill all these rights.

Accountability for economic crimes

Uganda is signatory to a number of anti-economic crime conventions, which deal with economic related crimes that are transnational in nature. The anti-graft law provides a framework for detection, identification, and categorization of those crimes, procedures of investigations and prosecution of those implicated. The Constitution of Uganda protects everyone's right to fair trial and those found culpable of such crimes have the right to be present and heard before a court of law. There have been blatant violations of rights particularly of persons suspected of money laundering. A number of them have, without any incriminating evidence against them, ended up arrested, tortured and detained. Practical cases have been reported by Human Rights Watch showing how the anti-graft law has been used to silence and stem dissent, especially those viewed by NRM government as critics to its' excesses.

In the 2018 Global Economic Crime and Fraud Survey report⁴⁴¹ on Uganda, significant socio-economic and geopolitical development on both the global and the local scenes were considered. The report highlights the forms of economic crime most prevalent in Uganda, comparing them with the global survey results and the results for Africa; the East and Central African Region that includes Uganda, Kenya, Tanzania, Rwanda and Zambia. Among the forms of economic crimes the report found to have a high prevalence rate within Ugandan organizations were fraud committed by the consumer, business misconduct, and asset misappropriation, cybercrime, bribery and corruption.⁴⁴² While the mechanisms to fight these crimes have been lauded as robust, the methods used to enforce them against crimes identified and categorized as economic related have grossly violated fundamental human rights at two levels: first, those accused of the crimes have ended up being mistreated despite protection by the constitution and human rights law entitling them to fair trial, the anti-fraud and anti-corruption state agencies such as the Uganda Anti-Corruption Agency have wrongfully enforced the law on many occasions. Second, citizens who are the subject of law and human rights cannot access basic healthcare, education and food due to inefficient and selective application of anti-fraud and anti-corruption laws and enforcement methods. Corruption is rampant in Uganda and remains the most heinous economic crime.

Mubangizi argues that, corruption has serious policy implications for development and the common good. As such, it has a devastating impact on the rights of the majority that consists of mostly poor people.⁴⁴³ Uganda's Constitution, particularly the Bill of Rights, provides for a wide range of human rights, including socio-economic rights. By their nature socio-economic rights have important social and economic dimensions as most of them reflect specific areas of basic needs. However, provision for goods and services to meet such basic needs can only be guaranteed by substantial budget that are often allocated by government.⁴⁴⁴ Corruption has the effect of putting pressure on such

440 See Health and Human Rights: WHO: <http://www.who.int/hhr> . Also Human rights in Uganda: UHRC: <http://uhrc.ug> ; OHCHR: <http://ohchr.org> <http://www.ohchr.org/EN/Countries/>

441 See Fraud: The overlooked Competitor; The Global Economic Crime and Fraud Survey ("GECS"), Uganda Report. GECS is a biennial Pricewaterhouse Coopers survey that receives and analyse feedback from stakeholders in various economic sectors of focus in relation to the nature, prevalence and effects of economic crimes experienced over the preceding 24 months of operations.

442 *ibid*

443 See John C. Mubangizi. (2020). "A Human rights based approach to fighting corruption in Uganda and South Africa: shared perspectives and comparative lessons" in Law, Democracy and Development, Vol.24, Cape Town. Available at: <https://orcid.org/0000-0002-1408-268X>

444 *ibid*

budgets, thereby undermining the quality of much needed services, hence violating the socio-economic rights of people.⁴⁴⁵ The scope of the negative effects of corruption is not just limited to socio-economic rights, but also civil and political rights.

Corruption has been identified by Transparency International⁴⁴⁶ and Human Rights Watch as one of the greatest threats to democracy in Uganda. Corruption Perception Index (CPI)⁴⁴⁷ shows that, the crime has undermined the fundamental growth of multiparty democracy by denying the Ugandan people civil and political rights, for example to register to vote and choose leaders through a transparent, fair and free electoral process, or that in case of contested election results, access of electoral justice in court. Notable institutional corruption indicators in Uganda included public procurement, the police and judiciary. CPI indicates that, the upper levels of the judiciary often demonstrates higher standards of professionalism and independence, than the lower levels that are more susceptible to corrupt deals including falsification of case evidences for a bribe. This has significant implications for human rights as one of the functions of the judiciary is the protection of human rights. Corruption in the judiciary compromises this role.⁴⁴⁸ As a transnational crime, corruption has been dealt with within the international legal framework⁴⁴⁹, from which anti-corruption laws in Uganda are drawn ranging from the UNCAC, ACPCC, but has failed to ratify OCED Convention on combating bribery of Foreign Officials in International Business Transactions. Uganda invokes these instruments only to stem and stifle political opponents, and therefore selective application of the instruments has had a massive bearing on human rights practices in the country.

Closely related to corruption, is debt accumulation. Due to the indivisibility, interdependence and interrelatedness of all human rights,⁴⁵⁰ there is an inevitable correlation between corruption and debt accumulation. Tanzi and Davoodi argue that corruption leads to an increase in public expenditure as taxes collected by individual governments tend to secure corruption activities rather than finance development projects within a specific country hence result to financing of projects through borrowed loans. Borrowed money for targeted projects have ended-up in the pockets of a few corrupt public officers to the detriment of servicing basic needs of the ordinary people. The Declaration on the Right to Development underscores in its' preamble that, in order to promote development, "equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for, and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms".⁴⁵¹ Cephaz Lumina posits that excessive external debt burden becomes not only a human rights problem, but has an adverse impact on the realization of human rights and development of debtor countries in two main interrelated ways: (a) through diversion of resources from basic social services, such as education, health and infrastructure to debt servicing, significantly reducing the capacity to create conditions for the realization of human rights and undermines development;⁴⁵²

445 ibid

446 See the Transparency International Corruption Perceptions Index 2020 report on the status of corruption in Uganda

447 See Corruption Perception Index(CPI) report,2019

448 Mubangizi, (2020).

449 The main international anti-corruption legal instrument is the UN Convention against Corruption (UNCAC). It deals with prevention, criminalization, international cooperation, asset recovery and implementation mechanisms. Uganda ratified the Convention on 9th September 2004. Uganda also ratified the United Nations Convention against Transnational Organized Crime (TOC) on 9th March 2005. The Convention focuses on mainly the fight against organized crime and includes all provisions relating to corruption. For African specific context, the African Union Convention on Preventing and Combating Corruption (ACPCC) is the most relevant legal instrument. Its main emphasis is on the need for Member States to develop mechanisms of preventing, eradicating, and punishing acts of corruption. Article 7 of the Convention is dedicated to the fight against corruption and related offences in the public service, and Article 8(1) obliges State Parties to create, within domestic legal systems, an offence of illicit enrichment. Uganda ratified the Convention on 30 August, 2004. The main purpose of OCED Convention on combating Bribery of Foreign Officials in International Business Transaction, is to provide a framework for criminalizing corruption in international business transactions.

450 See Cephaz Lumina. Sovereign Debt and Human Rights

451 ibid

452 See "Report of the highest task force on the implementation of the right to development on its fifth session" (A/HRC/12/WG.2/TF/2), para.87 in Cephaz

(b) through policy conditions attached to international debt relief mechanisms which undermine country ownership of national development strategies.

Uganda's debt burden exceeds 50% of GDP, its ceiling having reached UGX 6.8 trillion⁴⁵³ as domestic debt. According to World Bank's External Debt Stock and International Debt Statistics report, 2019 Uganda's external debt stands at USD 13.971 Billion.⁴⁵⁴ Uganda Human Rights Commission (UHRC) has raised concerns questioning national policy direction on external debt, especially the debt repayment model, which has been faulted as ineffective, and in violation of basic rights. Like any other developing country, Uganda's human rights obligations are quite relevant in the context of its' external debt arrangements.⁴⁵⁵ Thus, for example, the Committee on Economic, Social and Cultural Rights has often urged borrower states like Uganda, to take into account their obligations under the covenant in all aspects of their negotiation with international financial institutions in order to ensure that economic, social and cultural rights, particularly of the most vulnerable sections of society, are not undermined. It has encouraged creditor countries to do all they can to ensure that the policies and decisions of the international financial institutions of which they are members, in particular the International Monetary Fund (IMF) and the World Bank, are in conformity with the obligations contained in articles 2(1), 11, 15, 22 and 23 concerning international assistance and cooperation.⁴⁵⁶

Despite the adverse human rights effects of high external debt burdens, creditor-driven policy responses to the sovereign debt crisis have hitherto ignored consideration of human rights.⁴⁵⁷ This raises concerns since human rights regimes offer a transparent, coherent and universally recognized framework that can inform the design and implementation of a debt restructuring mechanism that can provide a just, equitable and durable solution to the debt crisis.⁴⁵⁸ The NRM government has not been transparent and accountable in handling external debts. President Museveni's administration has ignored core principles of equality, non-discrimination, and participation by other actors like civil society and religious institutions on debt crisis management issue. These groups deal with ordinary citizens on daily basis and are therefore well placed to recommend policies and strategies to address debt crisis in a more transparent manner.⁴⁵⁹ In other words, a human rights-based approach to external debt means that debt sustainability analyses should take into account the socio-economic, cultural, civil and political human rights implications of debt service.⁴⁶⁰ Debt crisis is multi-dimensional and always has implications for the common good and human rights guarantees.

Protection of the common good.

The relationship between human rights and the common good cannot be conceived as mutually exclusive. On the contrary, there exists an individual right to the common good, e.g. the right to benefit from health-related common goods such as programmes for securing herd immunity against COVID-19 and the global health policy by World

Lumina, 2020. Also see Isabella Bunn, "The right to development: Implications for International economic law" in American University International Law Review, Vol. 15, No. 6 (October 2000), pp. 1452-1467 (Lumina, pp. 293)

453 See Rebecca Nabejja, (2021) Uganda's Debt Burden Exceeds 50% of GDP Ceiling. Kampala International University

454 Cephas Lumina, (2020). Sovereign Debt and Human Rights

455 ibid

456 ibid

457 ibid

458 See "Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights"(A/64/289 and Carr.1), para.74

459 See Transparency of Loans to Uganda, 14 May 2019. Historically, Uganda has had a poor record regarding public debt management, which in the 1990s resulted in Uganda qualifying for debt relief worth USD 2 billion through Highly Indebted Poor Countries initiative. Uganda's public debt has gradually increased in recent times. At the end of 2017, total public debt was estimated at USD 10.3 billion, equivalent to 40 percent of GDP. This compares to 17 percent of GDP in 2006 (MEFMI, 2018). Out of this aggregate debt, external debt accounts for just over 60 percent and domestic debt just under 40 percent. Interest payments on this debt accounted for the largest share of the domestically funded budget in 2017/18.

460 The IMF, for example insists that in order "[t]o reduce debt vulnerabilities decisively, countries need to pursue cautious borrowing policies and strengthen their public debt management."

Health Organization (WHO) that targets all human beings wherever they are.⁴⁶¹ Economic development policies such as urban planning and implementation of common good projects such as public roads, government posts, hospitals, schools and markets should take into consideration economic and cultural rights of ethnic communities occupying land on which such development plans are implemented. This can only be achieved by multi-sectoral planning and collaborative strategies conceptualized through human rights based approach. Uganda has had a refugee crisis for decades. When refugee camps are established on land occupied by local communities, the tendency has always been to relocate occupant communities, and this has had implications for human rights of those communities. Northern Uganda for example has been the epicenter of intractable conflicts with local communities fleeing their ancestral land due to insecurity from the rebels from South Sudan and Democratic Republic of Congo. The central issue here is that exclusivist and discriminative economic policies continue to isolate and marginalize some regions of the country, especially those considered as bastions of oppositions or resistant to forced resettlement.

Uganda continues to enforce this strategy in gross violation of economic, social and cultural rights, but also minority or indigenous rights and women's rights.⁴⁶² Convention 169 on Indigenous and Tribal Peoples, which was adopted by the International Labour Organization in 1989,⁴⁶³ is legally binding on States Parties and the only binding international instrument related to the rights of indigenous peoples. The Convention establishes the right of indigenous persons in independent countries to "exercise control, to the extent possible, over their own economic, social and cultural development," in a number of areas.⁴⁶⁴ The Convention includes a section on land, and requires States Parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights.⁴⁶⁵ In essence, the "measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities".⁴⁶⁶ The Convention also requires the provision of legal procedures to resolve land claims,⁴⁶⁷ establishes rights over natural resources,⁴⁶⁸ protects against removal,⁴⁶⁹ and establishes a right of return and compensation for lost land through either land (of at least equal quality and quantity) or money.⁴⁷⁰ The onus to respect, protect and fulfill these rights lies squarely with the state, which is signatory to a number of convention and treaties that bind all countries that have signed and ratified the instruments. Uganda falls within this category, and therefore every time people are displaced from their land it reflects as a failure by the government to comply with international human rights treaty law.

Respect of human dignity (against torture)

Uganda acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 3rd November 1986,⁴⁷¹ while International Convention for the Protection of All Persons from Enforced Disappearance was signed on 6th February 2007. However, enforcement of these instruments remains theoretical,

461 See John Tasioulas & Effy Vayena. (2016). The place of human rights and the common good in global health policy. In *Theor Med Bioeth*(2016), 37:365-382

462 See Elizabeth Wickeri & Anil Kalhan. (2019). "Land Rights Issues in International Human Rights Law." Institute for Human Rights and Business

463 ILO Convention 169

464 Ibid, Article 1

465 Ibid, Article 14

466 Ibid, Article 14

467 ILO Convention, Article 14

468 Ibid, Article 15

469 Ibid, Article 16

470 Ibid, Article 16

471 CAT- though abbreviated as CAT, the convention incorporates both inhumane/ degrading treatment or punishment as the definition of Torture provided for under Article 1 was deemed not to be precise enough

but practically problematic as the NRM government has perfected the art of torture and forced disappearance for those viewed as a threat to security and the survival of the regime. Human Right Watch reports of 2020/2021 demonstrated how security agencies have continued to abuse essential elements of human dignity and fundamental in gross violation of international human rights law. For instance, the report revealed that on 4th March 2021 the Internal Affairs Minister had presented a list of 177 people in military detention arrested in November, 2020 and February 2021 allegedly for participating in riots, possession of military stores and meetings of post-election violence.⁴⁷² At the same time President Museveni told reporters how 50 people – members of the opposition – were being held by the Special Forces Command, a unit of the Ugandan army.⁴⁷³ Human Rights Defenders have constantly accused the National Resistance Movement regime for attempted systematic cleansing of those viewed as their potential challengers in the elections. The regime carries out these atrocities in total defiance of the international, regional, and national human rights instruments to which Uganda is signatory.

Human Rights Watch Report of 2011 shows how violations of human rights have been carried out by security agencies including Uganda police Rapid Response Unit, which frequently operates outside the law carrying out torture, extortion, and in some cases, extrajudicial killings.⁴⁷⁴ It uses illegal methods of investigation and grossly violates the rights of the people it arrests and detains.⁴⁷⁵ The unit has been accused of blatant violation of the rights of terrorist suspects and used the anti-terrorism law to crack down, stifle and stem dissents posing political threat to the NRM regime. According to Human Rights Watch, the unit has had a high profile since the Kampala bombings in July 2010 in which 79 people were killed.⁴⁷⁶ The report says, several suspects were brought to the unit, interrogated, held incommunicado and beyond the statutory time limits.⁴⁷⁷ Central to all these operations, the scope and limits of human rights enforcement mechanisms which are supposed to be transparent and whose quasi-oversight body is Uganda Human Rights Commission (UHRC). UHRC has continued to observe and insist that Uganda has a responsibility under international law to investigate allegations of abuses by its police and security forces and hold those responsible to account.⁴⁷⁸ Human dignity therefore demands total respect, protection and fulfilment of basic human rights by the state. This not an option, but obligation in law.

Provision of basic needs rights (right to employment, healthcare, food etc.)

The right to employment, healthcare, food and other basic needs rights are provided for under international, regional and national laws. Uganda has ratified a wide range of international and regional human rights treaties related to the enjoyment of the highest attainable standard of physical and mental health.⁴⁷⁹ These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the African Charter on Human and Peoples' Rights (ACHPR).⁴⁸⁰ The 1995 Constitution of Uganda provides among its' social and economic objectives that the State shall ensure that all Ugandans enjoy rights and opportunities

⁴⁷² See Human Rights Watch, (2021). Uganda: End Enforced Disappearances of Opponents: Investigate Abuses; Release Those in Arbitrary Detention

⁴⁷³ *ibid*

⁴⁷⁴ See Human Rights Watch, (2011) Report: "Violence Instead of Vigilance: Torture and Illegal Detention by Uganda's Rapid Response Unit."

⁴⁷⁵ *ibid*

⁴⁷⁶ See Human Rights Watch, (2011). Uganda: Torture, Extortion, Killings by Police Unit: Investigate Rapid Responses Unit and Prosecute Officers Responsible for Abuses. Available at: hrw.org/news/2011/03/23/Uganda-torture-extortion-killings-police-unit

⁴⁷⁷ *ibid*

⁴⁷⁸ *Ibid.*

⁴⁷⁹ See Fact Sheet. Health and Human Rights in Uganda. WHO: <http://www.who.int/hhr> Also UHRC: <http://uhrc.ug> and OHCHR: <http://ohchr.org> , <http://www.ohchr.org/EN/Countries>

⁴⁸⁰ *ibid*

and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, and food, security, pension and retirement benefits.⁴⁸¹ However, for unclear reasons, the right to health is not incorporated among the operational articles. The constitution includes provisions against discrimination and provisions relating to specific groups, such as the rights of women, children, persons with disabilities and minorities.

Human Rights Watch conducted a study on Uganda's prisoners in 2011 to determine the actual health conditions in prisons and unearthed massive scale human rights violations. The indicators included conditions such as overcrowding, food and nutrition, water, sanitation, and hygiene. Other indicators included physical abuse, hard labor, punishment, beatings. On health rights, Human Rights Watch remains concerned with how prevention and treatment of disease affecting prisoners are carried out.⁴⁸² Under Ugandan law, prisoners are also entitled to "have access to the health services available in the country without discrimination."⁴⁸³ The government acknowledges its' legal obligation to ensuring that healthcare services provided are equivalent to those available in the general population and can be availed to those serving time in state penitentiaries across the country.⁴⁸⁴ However, the situation in the prisons is deplorable, with high rates of Human Immune – deficiency Virus (HIV) and Tuberculosis (TB) contractions; COVID-19 infections have also been reported in prison facilities. Uganda has not come up with a decongestion strategy to respond to the health challenges facing most of its' correctional facilities. Persons serving in correctional facilities are denied majority of basic rights and are often subjected to inhumane treatment inconsistent with human dignity. Inadequate healthcare services in prisons continue to pose a serious health threat to the entire correctional institutions meant for rehabilitating delinquent individuals.

Recognition of special category rights.

Under international human rights treaty law, Uganda has the responsibility to respect, protect and fulfill special category rights pertaining to children, youth, women, PWDs, refugees and IDPs. The 2014 Human Rights Watch Study shows that Uganda has one of the youngest populations in the world with over 56 percent of its 37 million people under the age of 18, and more than 52 percent under age 15.⁴⁸⁵ Children are the single largest group of Uganda's poor, constituting 59 percent of those living under the poverty level.⁴⁸⁶ Street children are some of the most visible of the country's poor, living, sleeping, and working in public, and as such they are exposed to extreme risk of violence and abuse.⁴⁸⁷ The 2019 child abuse and neglect situation analysis report by African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) shows child neglect was ranked the highest violation of children's rights, while sexual violence or defilement emerged the second.

481 Ibid

482 Human Rights Watch (2011). "Even Dead Bodies Must Work": health, Hard Labour, and Abuse in Ugandan Prisons. Uganda has 223 prisons countrywide. Designed to house 13,670, in March 2010 Ugandan prisons were at 224 percent of capacity, with 29,136 and 1,278 female prisoners in custody. The Uganda Prisons Service employs 6,700 staff, including 6 physicians.

483 See Prisons Act, 2006, Sec. 57(f). All people have a right to the highest attainable standard of health, and under international law, states have an obligation to ensure medical care for prisoners at least equivalent to that available to the general population. States also have an obligation to meet a certain minimum adequate standard of prison health conditions and care to individuals in detention, regardless of a state's level of development. The Human Rights Committee, the monitoring body of the International Covenant on Civil and Political Rights, has determined that danger to a detainee's health and life as a result of the spread of contagious disease and inadequate care constitutes a violation of that treaty. See also Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), Specific articles include: ICESCR, arts. 12(1) and 2.2; ICCPR, arts. 6.7 and 10(1); Convention against Torture, art. 16.

484 Human Rights Watch interview with prison medical authority, UPS, November 18, 2010

485 The Government of Uganda, "The State of Uganda Population Report 2012: Uganda at 50 years: Population and Service Delivery; Challenges, Opportunities and Prospects," 2012, http://mail2.unfpa.orug/pub/2012/2012_SUPRE.pdf (accessed April 29, 2014).

486 Ibid, p. 57. According to a June 2014, 3.7 million children under the age of five live in poverty and extreme deprivation, with limited access to health care, nutrition, education, sanitation, and shelter. See also Didas Kiseembo, "3.5 m children living in abject poverty-report," Daily Monitor, June 11, 2014, <http://mobile.monitor.co.ug/New?Number-of-children-on-streets-rises-to-10-000/-/691252/1748668/-/format/xhtml/-/os8ivs/-/index.html> (accessed June 16, 2014)

487 Human Rights Watch, 2014

Physical violence, property rights and children in conflict with law followed in that order. By gender, the female victims dominated with 53.9% against 46.1% males.⁴⁸⁸ Ugandan children are forced into child labour in total violation of their rights. The International Covenant on economic, Social and Cultural Rights (ICESCR), which Uganda ratified in 1987, safeguards children from work that is harmful, dangerous, or likely to hamper their normal development, and requires signatories to prohibit and punish all forms of child labour.⁴⁸⁹ Another special category of people is people with disabilities (PWDs). The Convention on the Rights of Persons with Disabilities (CRPD) does not define disability, but instead describes persons with disabilities to include those who have long term physical, mental, intellectual or sensory impairments, which interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The CRPD recognizes and seeks to eliminate discrimination experienced by all persons with disabilities, including and particularly women with disabilities. As a state party to the CRPD and the Convention on the Elimination of Discrimination Against Women (CEDAW), Uganda has an obligation to ensure that women with disabilities enjoy protection afforded by international human rights law. Human Rights Watch has documented the experiences of a section of women with disabilities in the country before the war in Northern Uganda as well as women who acquired their disabilities as a result of the armed conflict, from landmines, gunshot wounds, mutilation, and fire.⁴⁹⁰ While the law protects every Ugandan, women with disabilities experience stigma and isolation, sexual and gender-based violence, and obstacles to accessing justice. Reports show that PWDs especially women often lack access to care in rehabilitation, maternal health, physical therapy, family planning, and reproductive healthcare, including HIV testing, treatment and prevention.⁴⁹¹ Their prevailing condition affects them in many ways including denial of employment by both public and private sectors in violation of CEDAW.

Also affected are young persons with disabilities. There are high levels of unemployment for both young persons with disabilities and young people without disabilities.⁴⁹² But while more than half of young men (53%) and two-fifths of young women (40%) without disabilities are currently employed, only a third of young men and women (34% and 30%) with disabilities are currently employed. This is in contravention of the CRPD to which Uganda is signatory. Therefore, the state of observance of special category rights especially that of the PDWs, youth, women and refugees is a concerning thus concerted efforts by the state, civil society and religious groups is urgently required to improve the plights of these special groups of the country's populace.

488 Uganda: Child abuse and neglect situation report. Available at: <http://www.anppcan.org/uganda-child-abuse-and-neglect-situation-report-2019/> (accessed on 27th September, 2021)

489 International Covenant on Economic, Social and cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res.2200A (XXI).

490 See Human Rights Watch (2010). "As if We Aren't Human"

491 Ibid.

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

1. METHOD OF STUDY

The evaluation and measuring of human rights indexes in the region will involve research and development of a simple tool to be disseminated to the various actors in the region. The research will involve questionnaires, focus group discussions with human rights actors, Key Informant Interviews and validation workshops.

❖ Study Methodology

The study applied case study approach with an in depth analysis of the current human rights situation in the identified countries. Purposive sampling method was employed to identify respondents who had the knowledge and good grasp of the dynamics of human rights on the ground. Data collection was mainly by three methods: individual key informant interviews; focus group discussions; and questionnaire distribution. Survey Monkey was used to collect data online from different respondents across the four countries. Survey Monkey is an internet based software that is usable for creation of survey tools, generation and dissemination of respondent links, and receipt and analysis of feedback from respective respondents. A total of 648 responses were filled by respondents across the four countries, with 198 respondents from Kenya filling the questionnaire completely online. Eight Key Informant Interviews (KIIs) and two Focused Group Discussions (FGDs) were also conducted in; Nairobi and Mombasa. Two follow up data validation exercises to seek expert and stakeholder opinions on the validity and efficacy of the study outcome were also held in the respective locations.

A mixed method approach comprising both qualitative and quantitative techniques of research was used. Qualitative approach was applied in the collection and collation of opinions, views and considerations of survey respondents, focus group discussants and key informants. Similarly additional qualitative feedback was also drawn from the input gathered from validation meetings conducted in Kenya and Uganda. Data obtained was then subjected to context analysis, whereby the textual data obtained were coded and interpreted to form valid information. Meanwhile, quantitative analysis of the survey outcome was deemed essential to ranking of the opinions of the respondents on various study questions. Quantitative approach was also critical in highlighting the general trends and preferences of the respondents. Collection of qualitative data was conducted between the months of June and August.

Similarly, data collection in the remaining countries also employed the use of Survey Monkey platform. Uganda recorded 140 responses filled online while 16 responses were gathered through administration of physical questionnaire forms. Four KIIs were also conducted in Uganda. A data validation exercise was also conducted with the participation of 20 validators. Survey data from Ethiopia was obtained majorly through administration of physical survey forms. Despite the challenging security situation in the country as a result of a brewing civil war in the Tigray Region and an impending national election, our Human Rights Monitor was able to administer a total of 120 questionnaires physically while a further 24 respondents took the survey online. An additional 5 KIIs were also conducted to enrich the outcome of the survey. In the case of Burundi, a majority of the responses were still drawn from the physically administered questionnaires. A total of 140 forms were filled while only 10 responses were recorded online. Unfortunately, the Research Assistant who travelled to Burundi and held Key Informants Interviews and a Focus Group Discussion with Human Rights stakeholders in the country passed away in

the midst of compiling his analyses and reports. As result data gathered especially in the KIIs could not be retrieved. Nevertheless, a version of the FGD report was recovered; previously written in Kirundi, from our Human Rights Monitor from Burundi who had acted as an aid to our Research Assistant during the field study. The translation of the document was consequently commissioned and data obtained from it has been critical in understanding the human rights situation in Burundi.

1. STUDY RESULTS

DATA ANALYSIS

I. KENYA

Since its' creation by the British in 1895, the Kenyan state has undergone two significant transformations (pre and post 2010 Constitution promulgation), both marked by illiberalism and massive human rights violations.⁴⁹³ The data collection exercise in Kenya affirmed this position with some of the fundamental freedoms and rights under threat ranging from the lack of access to basic provisions including food, clean water, quality health and affordable education to the undermining of the right to human dignity.

Data collection

A total of 198 respondents took part in the survey with a majority of them filling/ completing over 90% of the questions. Out of this 101 (52.06%) filled as male, and 93 (47.94%) as female, 4 respondents did not indicate their gender. On age distribution, of the total respondents, those falling between 18 and 35 comprised 108 (55.10%), 36 to 45; 57 (29.08%), 46 to 55; 24 (12.24%), 56-60; 5 (2.55%) and 61 and above comprised 2 responses translating to 1.02%. Two respondents did not fill for age. Regarding country of origin; where one worked or resided, the majority (196) of the respondents identified as Kenyans thus translating to 98.99% with the remaining two coming from Burundi and Uganda respectively. About half of the respondents accounting for 90 (45.64%) indicated being residents in urban centres (that is cities and big towns including Nairobi, Mombasa, Kisumu, Nakuru and Eldoret). Semi-urban dwellers; those living in small towns or on the outskirts of urban areas were 42 (21.22%) while the remaining 50 reside in the rural areas. A total of 17 respondents did not indicate their locality. Data was also collected from seven key informant interviews and a Focused Group Discussion held in Mombasa and attended by fifteen participants.

Responses gathered thus provided the actual state of enjoyment and fulfillment of these rights and freedoms by individuals across the country.

a) Freedom of Assembly and Association

In addition to the international and regional instruments that entrench the freedom of assembly and association, the Kenya constitution enshrines both freedoms under Article 36 & 37 respectively.

When asked to rate the enjoyment of civil and political rights in the country, the respondents indicated a relatively free space for political organization. This is a reflection of the finding in the Freedom in the World 2021 Report by Freedom House

⁴⁹³ Makau Mutua, Justice under Siege: The Rule of Law and Judicial Subservience in Kenya, 23 Hum. Rts. Q. 96 (2001). Available at: https://digitalcommons.law.buffalo.edu/journal_articles/569

which ranks Kenya as partly free in both the civil and political space. It was the respondents' observation that the freedom by citizens to form and operate political parties in the country was considered to be moderately guaranteed with 45 (24.59%) of the 198 respondents suggesting that observance is at 51-75%. However it is critical to note that 33 of respondents representing 18% ranked observance at only 0-25%. There is therefore evident sharp division in opinion as far as observance of political freedom for all is concerned. This could be as a result of the variance in political culture, regional political dynamics and access to political information across the different parts of the country. During a Focused Group Discussion in Nairobi, the participants stated that they believe majority of Kenyans enjoy some of the civil and political rights adequately. This was highlighted by a community leader from Mathare who stated thus, "...we have made some stride out of blood and sweat for freedom of association. No arrests for speaking your mind. We are enjoying political rights. We can post these things online (sic)." In agreeing with the community leader, another participant at the FGD – a representative of the Kenya National Commission on Human Rights (KNCHR) asserted that presently there is more space for media freedom in the country e.g. free radio talks. He also commented that the recent rulings of the high court on the suitability of the president in his private capacity is another sign of change in Kenya. Additionally, it was his observation that, "More Kenyans can now confidently approach the courts for their rights." There is therefore a general agreement that progress has been made in most aspects of observance of civil-political rights albeit, there is need for continued work by human rights defenders for even more space to be realized.

b) Freedom of Religion

Secularization of the state⁴⁹⁴ did not marginalize religion to the extent that it ceases to have an impact on the country's politics.⁴⁹⁵ References to God are embedded in the national fabric even if some deist concepts have been woven into the mix.⁴⁹⁶ Religion in Kenya therefore plays a significant role in the country's politics and one would not fail to notice the presence of religion in its political life.⁴⁹⁷

The above assertion translates to the enjoyment of the freedom of religion in the country as was observed by over 90% of respondents who opined that individuals have the liberty to belong to religious orientation and engage in religious activities of their choice. With 103 (52.28%) stating that religious freedom is highly guaranteed while 81 (41.12%) agreeing that it was generally guaranteed. Interestingly, of the 197 responses received none suggested that religious freedom was not guaranteed. Only one respondent failed to fill this question. Organization of faith-based activities and operations is also widely supported and barely hindered. For instance only an average of 1(0.51%) individuals thought that activities such as registration of religious groups and ownership of property, including land, by religious/faith-based or institutions affiliated to such societies was not guaranteed. Despite this positive feedback, it is still critical to note that 11 (5.58%) respondents were uncertain whether freedom of religion and belief (FoRB) was indeed guaranteed. Freedom of Religion and Belief also featured as one of the most observed cultural right observed in the country with a total of 95.34% respondents agreeing it is observed and only 0.52% saying it is not observed. Even related issues like right to communal heritage and cultural attire also seem to be well guaranteed each garnering over 90% rate of observance approval from respondents. While this figure is not massive, it still suggests that a constituency in the country is unsure about its FoRB.

⁴⁹⁴ Article 8 Constitution of Kenya 2010

⁴⁹⁵ Ndozvu, H.J. (2014). Muslims in Kenyan Politics.

⁴⁹⁶ Ibid

⁴⁹⁷ Ibid

Kenya's major religious groups are Christians, Muslims and Hindus. Christians have an 80% population share. Islam is practiced by about 15% percent of the population while the remaining 5% subscribe to other minority beliefs including Hinduism, African Traditional Beliefs and others. Recent crackdown on a section of Mosques and Muslim leaders by state security agencies in counterterrorism operations may have given an impression of profiling of terrorists on religious grounds. This idea is widely accepted in the parts of the country where such operations may have been carried out and as Ndozvu observed, there are local variations in emphasis on perceived marginalization of the Muslim community, with the most cited grievances being poor education facilities, difficulties in acquiring national documents, exclusion from government employment, and the human rights abuses associated with the "war on terror." Key locations with this feeling include: Coast Region; in Mombasa, Lamu, Kwale counties; North Eastern Region; Garissa, Mandera, Wajir, and Isiolo counties; and Eastleigh in Nairobi. Sheikh Hussein disagrees with religious extremists who have constantly harassed non-Muslim residents of the North Eastern region, thus causing them fear. He says that this is not the position acceptable to the Muslim clerics and calls upon the locals to cooperate with the security agencies in dealing with the extremists.

c) Doctrine of Separation of Powers

An independent judiciary, the essential guardian of the rule of law, is the linchpin in the scheme of checks and balances through which the separation of powers is assured.⁴⁹⁸ In its simplicity, separation of powers denotes that power should not be vested in the hands of few, but clearly donated to three arms of government so that none should have excessive powers.⁴⁹⁹

With the promulgation of the Constitution of Kenya in 2010 there came clearer separation of powers from the previous more powerful constitutional dispensation that had a President with unfettered powers to influence the Legislature and Judiciary.⁵⁰⁰ In regard formal distinction and precision of functions, the constitution is clear in Article 1(3) that the sovereign power of the people is delegated to the Legislature, Executive and Judiciary and goes on further to assign their functions in chapter 8, 9 and 10 respectively.⁵⁰¹ From the data gathered, the levels of commitment towards protection and provision of key rights and fundamental freedoms e.g. right to life, freedom of expression, and right to education and health, seem to vary.

The Judiciary was ranked as the most committed thus attaining the highest for both 'very committed' and 'committed' categories at 43 (21.83%) and 87 (44.16%) respectively. Parliament had the lowest approval as far as human rights protection is concerned with only 14 (7.11%) of the responses ascribing it as very committed in human rights. Inversely the Legislature also has the highest disapproval numbers with 8 respondents saying that it is not committed at all compared to 4 respondents for the Executive and only 2 for the Judiciary. Regarding separation of power, the majority of the respondents suggested that the Executive still exercises arbitrary authority and uncontrolled power. For instance 132 (68.75% of respondents) expressed a certain level of agreement that arbitrary arrests and unlawful detention of citizens without due process was common across the country. When it comes to the authority of judges in determining critical cases and dispensing justice in cases involving senior political figure including in presidential

498 Makau Mutua, Justice under Siege: The Rule of Law and Judicial Subservience in Kenya, 23 Hum. Rts. Q. 96 (2001). Available at: https://digitalcommons.law.buffalo.edu/journal_articles/569

499 Kibet, E; Wangechi, K: A Perspective on the Doctrine of Separation of Powers Based on the Response to court orders in Kenya. Available at <https://press.strathmore.edu/uploads/journals/strathmore-law-review>

500 Ojwang JB, The Constitutional development in Kenya: Institutional adaptation and social change (1990), 41.

501 Ibid note 10

election petitions; 128 (65.98%) out the 198 respondents agreed that the judiciary lacked the freedom to make independent rulings. A paltry 14 (7.29%) and 17 (8.76%) responses respectively disagreed with these assertions. Parliament continued to record disapproval in its human rights protection track record with a total of 149 (77.61%) of the 198 responses agreeing, with varying degrees of intensity, that the House should do more to show its human rights commitment particularly as far as the achievement of the two-thirds gender rule is concerned.

d) Accountability against Economic Crimes.

When measuring the effects of irresponsible debt accumulation on the level of access to basic needs including public goods such as quality and affordable healthcare, education and other social services, majority of respondents agreed that accumulation of public debt negatively impacts the freedom and liberty of human rights. Of these respondents 111 (56.63%) strongly agree that debt accumulation is a hindrance to achievement of human rights. A further 63 (32.14%) respondents agree with this assertion while 7(3.57%) disagrees and only 1 respondent (0.51%) strongly disagrees. Out of 196 responses, 14 (7.14%) were neutral. Therefore 88.77% of the respondents generally agree to a certain degree that debt accumulation is harmful to public wellbeing.

Table 5. Respondents’ views on how debt accumulation limits access to basic Human Rights.

Answer Choices	Responses
Strongly Agree	56.63%
Agree	32.14%
Neutral	7.14%
Disagree	3.57%
Strongly Disagree	0.51%

A community leader during the Focused Group Discussion in Mombasa agreed that while government borrowing has led to infrastructural development, there is need for the public to be involved in budget making as well as the planning process. Regarding other economic crimes, including mismanagement of public funds and money laundering, a religious leader says that integrity is an individual decision hence perpetrators must be held individually accountable. He called upon religious organizations to speak truth to the country, including not allowing politicians and other individuals to launder money through the church. A Director at the Kenya National Commission on Human Rights speaking during the Focused Group Discussion in Nairobi urged both elected and appointed leaders at both levels of government to be accountable to the citizens. It was his plea that: “Leaders should be accountable and transparent in what they do. If there is no information given to the public, then there is no transparency. To achieve equitable resource distribution, we have to consider involving ourselves in matters of public participation. The state exists for the welfare of all its citizens and if it does not help, citizens have the right to question this.” Another participant at the Nairobi FGD wondered why governors have become extremely rich since the onset of devolution. It was her observation that, “...since the issue of devolved government came about,

you find that governors have become rich since they use money and do not develop the counties they represent.” A community leader from Mathare on the other hand, opined that the best step to confront economic challenges facing the country, including run away graft in public offices is to embrace sound financial management practices and holding office bearers accountable. To put this into context it was his contestation that, “we should apply what we collect to our needs. Let’s have an enabling environment for our businesses. We have to revise our tax regime (we don’t see impact of taxes). Let’s target *mwananchi*. They should be vigilant about the political leaders. Let’s be stern on the leaders.”

e) Protection of Common Good

In terms of this thematic area, the research aimed to ascertain the extent to which the government has put in place relevant policies, decisions and actions pertaining to the protection of the public from adverse effects of environmental pollution, compensation of displaced communities and protection of minority rights of indigenous communities. Regarding protection of common good including sustainable management of the environment and natural resources there is surprisingly divided opinion on the level of state protection for the same. For instance, of the 196 conveyed, 17(8.72%) think that the public is highly protected from adverse effects of environmental pollution while 20 (10.26%) believe that the public is under extreme threat from environmental pollution. Another 63 (32%) think that generally the public is protected while 52 (26.67%) think that the country is under extreme threat of environmental pollution. Even on the sensitive issue of mass displacements there was still a bit of relatively mixed feedback with 45 (23.94%) agreeing that compensation for displaced persons is protected while 54 (28.79%) saying it is under threat. The lack of a conclusive position on these issues may be as a result of the variance in approaches taken by national and county government (s) in different parts of the country to resolve environmental challenges or land disputes involving displacement of masses. A youth participant at the Mombasa FGD contends that sometimes Kenyans also live in denial when it is apparent they face displacement. He says that while the police are often seen as perpetrating inhumanity, they are always only following court orders. He however acknowledges that sometimes forced displacements are inhumane especially if they do not give the victims an alternative place to move to as they await resettlement. Another participant also points out that Kenyans often forget the plight of those who are displaced quickly. He stated that: “People only make noise during the night of eviction then forget about it.” He thinks that this culture of silence on evictions encourages private actors and the state to continue with forced evictions.

f) Respect for Human Dignity

The statistics from the research revealed a grim picture on the outlook on respect for human dignity in the country. This position is a reflection that came from the analysis of the data gathered in the research where over 60% of the respondents believe that major abuses of human dignity such as detention without trial, torture, forced disappearance, kidnappings and extrajudicial killings often occur in the country to a certain degree. Extrajudicial killings rank highest as the most frequently occurring abuse with a total of 141 (76.1%) of the 196 respondents saying it is often (both more often and ‘just’ often). Extrajudicial killings are common in informal settlements in urban areas and in localities predominantly inhabited by a Muslim majority. One of the Human Rights’ advocate working with the Mathare Social Justice Centre opines that police violence including killings is worrying. In his own words he stated that, “Police officers attached

to Pangani Police Station have been mentioned adversely in these violations. Police give the excuse of crime even as they end lives of young men. Justice for the victims of police violence has also been very slow.” A Sheikh participating in the discussion lamented that recently some elements in the police force responsible for the disappearance of members of the Muslim Community accused of being involved in terrorism added to the violation of the right to freedom of movement. His comment was further reinforced by another of the Council of Imams of Kenya who described the pain that families of Muslim clerics accused by government of teaching extremist ideologies at the Coast Region are undergoing. To lay basis to his assertion he stated that, “Sheikhs Abboud Rogo and Abubakar were allegedly gunned down by police even as Al Shabaab militants also commit extrajudicial killings of those who criticize or oppose their ideologies. Sheikh Mohammed Idris was killed by Al Shabab. Such acts bring pain and bitterness to the children of slain actors as the means being employed by government do not reduce but rather increases terrorism. This is a country with a constitution where everyone has rights.” Another participant at the Mombasa FGD, who is familiar with police operations, while agreeing that some elements of officers are out of order, observed that sometimes police have a dilemma. He says that while the Constitution provides for all offences to be bailable, the public often take offence when known suspects are released on bail. Similarly human rights activists also pressure police to release suspects and accuse them of violations if they delay. A political aspirant and community leader from Mathare believes that while the country has made strides in upholding political and civil rights including freedom of association and expression, social rights were still under threat. His views were as follows, “on the social rights, they do not exist in Mathare since arbitrary arrest is on the rise, and Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) people cannot come out openly because they can be arrested or get malicious charges.” A human rights defender from Mathare Social Justice Centre agreed with his colleague’s observation where he stated that, “we lack a government that is law abiding. There is massive violation of court orders coupled up with police brutality and extrajudicial killings.” It is therefore clear that respect of human life and dignity is wanting especially in the informal settlements across the country. Police officers and other state security agencies seem to target citizens in security operations that often end up with arbitrary arrests and extra judicial killings. One of the Human Rights Defender advised his colleagues in the FGD to prioritize documentation of all abuses taking place in their localities as they champion for redress of such violations.

Table 6. Tabulation of responses on Violations against Human Dignity in Kenya

Violation	More Often	Often	Uncertain	Less Often	Not at all
Detention without trial	23.81%	33.33%	17.46%	16.93%	8.47%
Torture	22.87%	39.89%	18.09%	16.49%	2.66%
Forced disappearances	33.33%	38.17%	12.37%	12.37%	3.76%
Extrajudicial killings	34.22%	41.18%	10.70%	10.70%	3.21%
Kidnappings	29.26%	40.96%	11.17%	16.49%	2.13%

Source: CRTP Research

g) Provision of Basic Needs

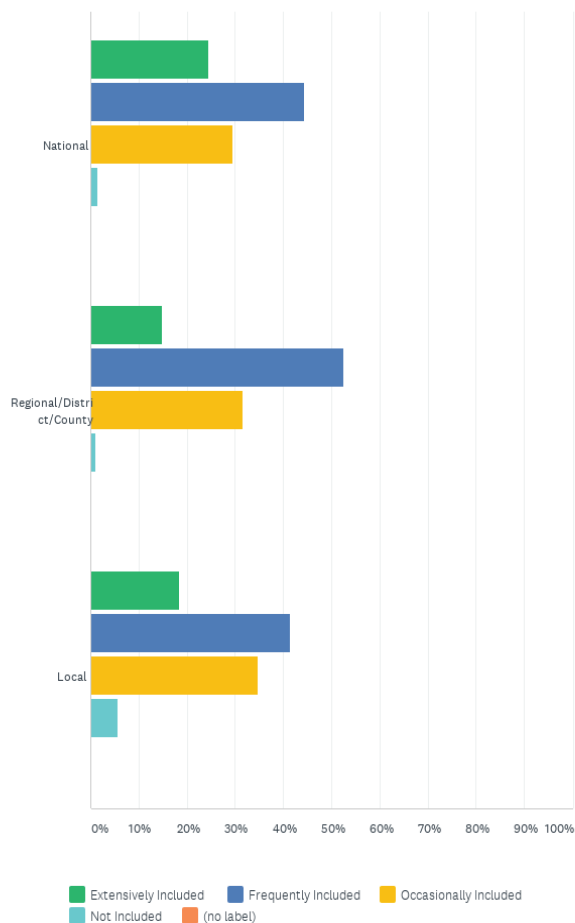
From the outcome the respondents' views on the effect of debt accumulation by the government on provision of basic services to the public was more or less clear that public goods such as health, education, food etc. were in real jeopardy. Over 88% of the respondents agreed that debt accumulation by government limits their access to basic needs. When asked to rank the arms of government in terms of their commitment to fulfilling basic human rights, the Legislature trailed both the Judiciary and the Executive, with the Executive as mandated to drive government policy receiving a nod of 83.24% translating to 164 respondents out of 196 who agreed. However this number also includes 58 respondents who thought that the Executive is 'somehow committed', and 33 (16.75%) who felt that the Executive is either less committed or not committed at all, with the numbers adding to about 91(46.19%) out of 197 responses. The findings translate to almost half of the entire population with almost no confidence in government policies to alleviate poverty, spur regional balance and equity and create employment especially for the youth. Participants at a Focused Group Discussion in Mombasa agreed that while government infrastructural projects are a positive, loss of money through such projects is hindering the provision of other critical services. A Sheikh in the discussion indicated that sometimes classes are built but no teaching materials or teachers inside these classes. A member of the Mathare Social Justice Centre narrated the level of poverty experienced in Mathare slums. In her words she explained that, "some people here live in cardboard houses. Water is a problem as a 20-litre jerrican of water goes for Ksh 20. Few people can afford this...girls sometimes run into early marriages to escape poverty from home." Participants at the FGD in Mombasa also linked Al Shabab recruitment in the country to the high rate of poverty levels among the youth. Often the young people are lured with promises of jobs or education and end up falling in the hands of terrorists. Thus, despite infrastructural developments across the country, the levels of poverty is still intolerable. Access to food, water, education and healthcare is largely compromised in most households in the country. The political aspirant participant wondered about the slow pace of government action on the inadequacy of basic utilities in Mathare. It was his views that, "the economic rights, water and housing in Mathare are bad and the government does not help by saying it is work in progress therefore derailing the process to help people." A middle-aged human right defender also narrated the state of hardship in most Kenyan households by observing that, "Instead of taking care of its citizens, the government is busy "curtailing the wheelbarrow movement." In relation to the Sustainable Development Goals of 2030, currently in the year 2021 people are still going hungry, there is gender inequality, poor education and yet we are heavily taxed as citizens."

h) Recognition of Special Category Rights

Special category rights that pertain to specific groups of persons that are in need of state protection have come to be observed more recently in Kenya. The 2010 Constitution takes cognizance of this aspect in Articles 53 – 57, which outline the type of protection these persons are entitled while ensuring that they too enjoy all the other rights and fundamental freedoms enshrined in the constitution. Those in this category include women, children, youth, and persons with disability (PWDs), refugees, internally displaced persons (IDPs) and minority groups. Rights of women; including the right to education for the girl child and fair remuneration for women in formal jobs seemed to be fairly observed across the country. Our findings indicate that, on the inclusion of women in decision making, the inclusion rate was as high as 98.47% at the National

level, 98.98% at the county level and 94.39% at the grassroots/local level. While the intensity of inclusion varied across the board from extensive to occasional, the feedback paints a positive picture of women participation in decision making in the country and must thus be hailed. However when it came to responses for the non-inclusion at the national and county levels it was negligible, tallying less than 2% of responses each, though at the local levels it turned up slightly higher at 11 (5.61%) responses of the 196 responses gathered. Respondents cited patriarchal cultures at the local level, especially in rural communities, as an impediment to women's participation in every aspect of life. High levels of illiteracy also was cited and blamed as contributing to the exclusion of women. There was a silver lining too: the government insistence on the 100% transition of all students into high school education. Women's issues are increasingly being addressed by Non-Governmental Organizations (NGOs) and Community Based Organizations (CBOs) at the local, national and county levels, giving women more space for participation. As far as remuneration of women in formal employment is concerned, 39.24% believed it was either very good or generally good while 42.86% thought that women received fair share of compensation for their work. This shows high inclusivity rates for women both in business and at the work places. 17.86% of the respondents however still believe that the country's policy on women's remuneration is still wanting; with 14.80% seeing it as bad and 3.06% describing it as very bad. While a majority of respondents agree that the playing field for remuneration is generally leveled, some mentioned a few challenges that women in Kenya still face. For instance sometimes women undergo sexual exploitation and harassment to gain promotions or hiring in some institutions. Companies, especially for profit ventures sometimes have policies that are not friendly to women especially regarding maternity leave and other health benefits. One respondent stated that some institutions view women as a burden because of the mandatory maternity leave. A majority of Kenyan women also remain dis-empowered, hence work in the casual labour force where remuneration and conditions of work are skewed to favour men. Women's rights to own and inherit matrimonial property are also under threat as noted by a middle-aged woman and a women's rights defender who participated in the Nairobi FGD. They both believe that backward cultural practices have held widows at the mercy of the families of their husbands. The middle-aged woman participant (who also is a widow) stated that, "My in-laws have been selling my plots one after another without consulting me..." Responding to this complaint, a director at the Kenya National Commission on Human Rights (KNHCR) sought to clarify that the country's law on inheritance underlines the right of both men and women to inherit from their partners. He agreed to have an in-depth session with the complainant and participant to get to the bottom of her complaint. A participant who was a grassroots women's organizer also pointed out the need for stakeholders to understand that different women require different interventions as they face different and unique challenges. The sentiments by the women rights defender and middle-aged woman participant thus pinpoints to the exclusion of women in decision making at the grassroots and local level which was ranked higher at 5.6% compared to the National and County level which was at 2%.

Figure 4. Inclusion of Women in Decision Making In Kenya at different levels



Source: CRTP Research

Respondents also gave feedback on the states observance of other minority rights. Where satisfaction with the level of protection accorded each category differed, with children leading the pack with a satisfaction rate of 52.55%, followed by women at 48.98%, Persons With Disabilities (PWDs) at 44.1%, Internally Displaced Persons (IDPs) at 30.77%, with youth being the least protected among the special groups with a satisfaction rate of only 24.1%. The state of observance of the rights of youth also received the largest rate of dissatisfaction by respondents at 56.41% translating to a total of 110 out of 195 respondents who filled for the question showing their disapproval. While the rights of other groups seem to be under relative threat, there is a common agreement that the youth are under extreme pressure. A middle-aged key informant and a participant in the Mombasa FGD, working both as a member of Mombasa District Peace Committee and as a Vice Chairperson for the Kenya Red Cross Society, identified three major challenges afflicting the youth in her county. These challenges include: attraction to violent extremism and crime, drug and substance abuse. The root cause of these challenges is lack of income, thus widespread poverty. The Covid-19 pandemic worsened an already bad situation. Another member of the District Peace Committee

said that youth from coast region continue to lose jobs as night travels by buses have been taken over by Madaraka Express Train thus kicking many youths out of their jobs as conductors, drivers, and mechanics . Additionally, he said that the tourism, hospitality and entertainment sectors have suffered immensely under Covid-19 restrictions thus massive loss of jobs countrywide.

The State observance of refugee rights under the International Humanitarian Law and Refugee Convention among other international covenants is fairly impressive. Key fundamental freedoms of the refugee including the right to asylum, protection from forced repatriation, right to reintegration, right to relocation, freedom of movement and right to access basic needs were in most cases well observed with an average of 62.55% of the respondents agreeing. However freedom of movement and right to reintegrate in Kenyan society remain some of the biggest challenges for the refugees posting 11.34% and 7.73% of the total responses for being restrained. It was the views of a participating Sheikh in the Nairobi FGD that the government should consider granting refugees who wish to stay in the country citizenship just like Uganda has been doing with the Rwandese refugees. He further stated that refugees often face harassment by police officers who often go around raiding neighbourhoods dominated by refugees mostly in Nairobi's Eastleigh and Huruma areas. Refugees are in constant fear of being flushed out and taken back to the refugee camps where life is barely manageable. Kenya's policy to concentrate refugees in the camps is increasingly unpopular. However the government recently reached an agreement with the UNHCR that will it see the reintegration of refugees in the country actualized. One of the participants at the Nairobi FGD empathizes with the living conditions of refugees in the country and hopes for reintegration to be fast tracked. In his words, "Burundi and Karamojong girls are used as cheap labor. Nairobi is used to transit them to the Middle East. In an area with refugees from neighboring countries, the refugees are taken advantage of by the police, who extort refugees who do not have papers, and also because they do not know the law. As East Africans, what laws can be made to ensure that we are known as East Africans and not refugees."

RECOMMENDATIONS

In summary the country seems to be making great steps in its human rights observance. Kenya's record on political and civil rights such as freedom of association, press, assembly and expression are particularly impressive. Unfortunately the condition of living for most Kenyans continue to worsen. High cost of basic needs including food, healthcare, education and proper housing are all major challenges that the country has to struggle with and overcome. For instance, it was recently reported that at least over 2million Kenyans were at the verge of hunger.

Government must first and foremost put in measures to extinguish the run-away pilferage of public funds that is happening in government departments. It is worrying that unscrupulous officials have even resorted to stealing money meant for critical sectors like health. The Covid-19 heist that occurred in 2020 is just an illustration of the level of rot in Kenyan governance. Officers found liable for stealing public resources should face the full wrath of the law. The country's judiciary should be able to expedite decisions on all cases involving economic crimes. Parliament should legislate a reduction in the time taken to hear and judge such cases to not more than sixty days just as is done in highly politically significant cases like presidential election petition.

The Ministry of Finance and National Planning should also prioritize spending for human services such as public health, education, housing and micro finance for the vulnerable groups in the country. While mega infrastructure is critical for the country's economic growth, there is need to augment this by doubling down resources to the countries low income earners who feel left out of the country's economic development.

The outcome of this evaluation paints a grim picture of country's security agencies, especially as far as their respect for the rule of law and due process of justice is concerned. Many participants and respondents in this research expressed their concern over increased police violence especially in dealing with the residents of informal settlements and terror suspects. The courts must reign in these rogue officers. Justice for victims of extrajudicial killings, forced disappearances and other forms of police violence must never be delayed. Office of the Director of Public Prosecution must endeavour to priorities these cases and ensure they are finalized and those officers responsible served justice. There is also need for true institutional reforms in the police service including empowering the National Police Service Commission and giving the competent civilian commissioners real authority and power to lead and guide the police service.

The rate of enforced and disorderly evictions in the country is worrying. The relevant bodies and authorities such as the National Land Commission, Land Courts and the Ministry of Lands should henceforth take seriously their responsibility of regulating the proper use of land and other natural resources in the country. Parliament should also make the necessary laws guiding land ownership and lawful evictions of persons. In cases where such laws already exist the relevant enforcing bodies should follow them to the latter including submitting themselves to court orders and other judicial inhibitions in the course of executing their duties.

County governments must work out in ensuring that all by-laws and policy actions undertaken at the local levels adhere to national laws and frameworks on ownership of land and other properties. For instance, continuous harassment of traders in most counties across the country is an affront to human dignity thus must cease and any county officials involved in such practices should be held culpable.

The government should also consider strengthening its implementation of its internationally accepted mandates to protect and safeguard the rights of all persons within its borders. Constant harassment of refugees seeking asylum in the country is a gross violation of refugee rights under international law. The state must also stop playing international politics with the plight of refugees, especially those living in Daadab and Kakuma refugee camps. For instance, consistent threats of the repatriation of the Somali refugees as a way of forcing the Somali government to toe the line runs against Kenya's commitment to the protection of the refugees. In fact the country should consider integrating all refugees who qualify for asylum in the country in order to avert the humanitarian disaster observed in the derelict camps. State Security Agencies should also work hand in hand with Interpol and other foreign security services to address the excessive rate of human trafficking. Where Kenya is considered a major transit locations for trafficking of persons from the neighbouring countries especially Rwanda, Uganda, Somalia to foreign destinations especially to the Gulf and Middle East Region.

Finally, there is an urgent need to deescalate the politics of confrontation in the country and move them away from vitriolic ethnic and identity based exchanges to issue-based and agenda grounded formations. All actors including the citizenry should endeavour to hold each other accountable to the highest values. Elections should not divide the

country, but should rather serve as opportunities for national renewal and reflection, where leaders are vetted and those who do not meet the threshold of leadership are sent home, while those who show courage and the right currency for leadership are invited to serve the people. Any attempts to create discord among the citizens, be it by political leaders or other actors, must be punished severely. Kenyan Courts must on the lookout for such individuals and must serve them maximum punishment.

II. UGANDA

Human rights observance in Uganda, in the past and present, has been marked with a lot of concern over abuse. The country has known various conflicts and suppression of basic rights. According to the Human Rights Watch Report 2021, recent human rights abuses have been marked by arrest and harassment of opposition members and supporters, abuses by security officers, curtailment of the freedom of expression and assembly among other indicators. Additionally, the Freedom in the World Report 2021 ranks Uganda as '*Not Free*' with a total democracy score of 34. The ranking of Uganda as not free is similar to that of Ethiopia (democracy score 22) and Burundi (democracy score 14), while Kenya is ranked at *Partly Free* (with a total democracy score of 48). However, prior to the COVID-19 outbreak, structural transformation was driving a decline in poverty, despite a slowdown in average economic growth over the last decade.⁵⁰²

Data collection

A total of 156 respondents took part in the survey data collection. Out of this number 99 (63.46%) were male while 57 (36.54%) were female. The largest age category who participated was that between 18 to 35 years with 70 (44.87%) responses coming from this group. It was followed closely by those between 36-45 years with 68 (43.59%) respondents age group 46-55 had 10 (6.42%) respondents, and 56-60 had 5 (3.21%) while those 61 years and above only numbered 4, translating to 2.56% of the total responses. All the participants worked and lived in Uganda. Most were urban dwellers, with 99 (63.46%) coming from the big cities such as Kampala, Jinja and Entebbe. Semi-urban dwellers accounted for 38 (24.36%) responses while rural areas had 13 of the total 150 responses. Six respondents did not indicate their locality. Another 15 participants were also engaged for a focus group discussion in Kampala on 25th August 2021. In addition to the focus group discussion, a further four key informant interviews were conducted.

Respondents were engaged on their perception of the status of observance of fundamental freedoms and rights within the country. The outcome of this inquiry reflected a mixture of opinions and is discussed below.

a) Freedom of Association and Assembly

Freedom of Association refers to the ability of citizens and non-citizens within the boundary of a state to organize themselves in various forms of political, economic, socio-cultural groupings. Such groupings may include political parties, civil organizations, cultural outfits etc. Freedom of Assembly on the other hand entail the ability of individuals, acting as collective entities in most cases, to gather together in the spirit of seeking to influence government policies and the actions of other actors. Such gatherings may involve actions such as picketing, peaceful demonstrations and strikes, boycotts, go slows, sit-ins etc. The ability of individuals to form new political parties was observed to be relatively free with 39 (32.50%) of the 176 respondents rating it at 51-75% free with another 15.83% of the respondents ranking it between 76-100%. A

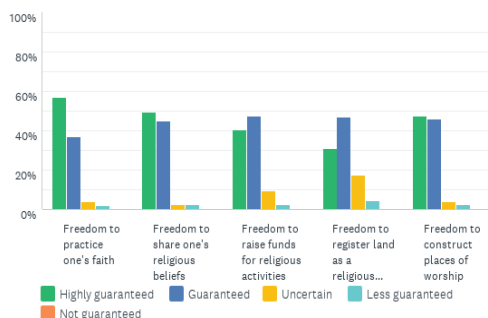
502 <https://www.worldbank.org/en/country/uganda/overview#1>

further 20.83% of the respondents observed that the rate of observance of the right falls between 40-50% with only 14(11.67%) respondents rating it at 0-25%. This response shows an enabling environment for political party politics. However, it is important to note that the right to form the party is not fully guaranteed in the country a revelation that is particularly worrying and may indicate critical institutional challenges. A comment by a journalist participating in the FGD was captured as follows, “I was a victim of demonstration and I saw how people were beaten and detained.” A women’s right activist interviewed lamented that during the last elections opposition politicians and supporters were arrested under unclear circumstances and detained without trial. In her view, such actions by the National Resistance Movement (NRM) government officials were tantamount to dictatorship. Another journalist, also a participant in the discussion, criticized the government’s decision to suspend the activities of certain NGOs and CBOs on grounds of their non-compliance to the guidelines issued by the National NGOs Forum. He believes that the suspensions, which numbered about fifty, would negatively affect human rights work that had taken shape in the country especially activism against police violence and unlawful eviction of citizens.

b) Freedom of Religion

From the responses gathered, freedom of religion seems to be protected across the country. Critical aspects of Freedom of Religion and Belief (FoRB) like the freedom to practice ones faith, share ones faith, and own property as religious organizations, are largely guaranteed. For instance 56.77% of respondents think that one’s freedom to practice faith is highly guaranteed. While 36.77% think that it is guaranteed. This is in comparison to only 0.65% and 1.94% who think it is not guaranteed or less guaranteed respectively. Religious bodies are also able to freely own property, including constructing places of worship, raising funds and acquiring land. In this regard, 47.71% believe that the right to construct places of worship is highly guaranteed while 45.75% said it is guaranteed. Only 2.61% think it less guaranteed with no respondent saying that it is not guaranteed. When asked to comment on their observation on the general observation of freedom of religion and belief as a right, 63.58% said FoRB was extensively observed, 29.80% indicated that it was somehow observed while only 3.31% of respondents were uncertain or think it is not observed respectively. Other related rights, such as the right to cultural dress and attire and the right to communal heritage, also received a positive nod from the respondent with each having over 90% of respondents saying that they are generally observed.

Figure 5. Rating on the Freedom of Religion and Belief in Uganda



Source: CRTP Research

c) Doctrine of Separation of Powers

Regarding the actions of the three arms of government when it comes to the protection of human rights against violations, respondents suggested that Uganda had challenges starting with the arbitrary use of force by security forces, even as they disregard court procedures. There was also undue control/pressure from the presidency over the Parliamentary and Judicial officers. For instance 26.19% and 36.51% of respondents strongly agree or agree that arbitrary arrests and detentions by law enforcement agencies was a common occurrence. Judicial officers were seen by the majority of respondents as working on the behest of the presidency, with 38% of the respondents stating that they strongly agreed that judges could not independently make rulings on presidential petitions while 22.67% agree and only 9.33% and 7.33% disagreed or strongly disagreed respectively, and a further 22.67% of respondents were uncertain. Indeed this outcome only confirms the bleak scenario that unveiled recently when the opposition candidate Robert Kyagulanyi Ssentamu popularly known as Bobi Wine, was forced to withdraw his petition against the incumbent president. He cited lack of trust in the nation's judiciary which he thought was working under the patronage of the President and his National Resistance Movement. Police conduct when imposing Covid-19 lockdown measures was also excessive. A representative of Persons with Disabilities (PWDs) narrated a scenario in which a female police officer was caught live assaulting a woman she accused of violating curfew rules. Cases of the police beating traders caught on the wrong side of the curfew were so rampant that the President had to intervene to ask them to stop beating members of the public. Such disregard for the rule of law, where accused persons are not subjected to legal proceedings are an affront to human rights.

d) State Accountability for Economic Crimes

Economic crimes, especially those committed by the state and state actors, were a major challenge to the enjoyment of human rights in the country. According to one of the respondents, "Debts put a big backlog of credit that the future generations will have to pay for them to be free from debts. Debts creates a dependency syndrome." Another respondent's observation was that, "Even those not yet born will bear the burden. It's extremely disturbing that we pay exorbitant taxes, service the loans by force yet we don't see the impact of the borrowed monies. The Covid-19 example is a huge shame to this rogue regime." The reflections of these responses mirror the general feeling towards irresponsible debt accumulation and other economic crimes including run away corruption and mismanagement of public funds. A human rights defender commenting on the state of corruption in the country highlighted the occurrence during the Covid-19 funds scandal. It was his view that, "We have a cancer of corruption that is eating away our nation in all sectors and the fish is rotting right from the head. If corruption can be fought and overcome, there can be fair resource distribution. It was heartbreaking to learn that even the little funds that were meant to support the vulnerable poor during the second COVID-19 lockdown just ended in the hands of the well to-do people and it has caused a scandal in the nation that calls for further investigations in which investigations more of the tax payers money shall be wasted and no solution is expected to favor the poor (sic)." The majority of the respondents believe that when debt accumulation is unregulated it denies the citizens access to basic services since the government is forced to divert the resources that would otherwise be expended to provide such services to pay debts. High taxes were also seen as a direct consequence of the debt burden. Corrupt public officials also thrive under uncontrolled debt accumulation as they dip their hands into the public coffers thus making the citizens repay stolen funds. Overall, 85.33% of

the respondents either strongly agree or agree that debt accumulation is a threat to human development. In the words of one of the respondents, “Most times government will focus on areas it has interest in, hence neglecting other sectors which lead to incurrance of debts without consideration of the tax payers, and focus on areas like health, education as well as agriculture but will borrow more funds for security.” He further highlights another area of concern for the public as being the use of debt money to fund the interests of the government which is biased towards the military and other forms of national security expenditure leaving areas of public concern such as access to food, healthcare and education in limbo. His sentiments are a reflection of the World Bank Economic Overview of Uganda 2021 which reports that only 95 out of 100 children born in Uganda survive to age 5 as under nutrition is high and stunting affects 29% of children in Uganda aged 5 years and below.

e) Protection of the Common good of the public

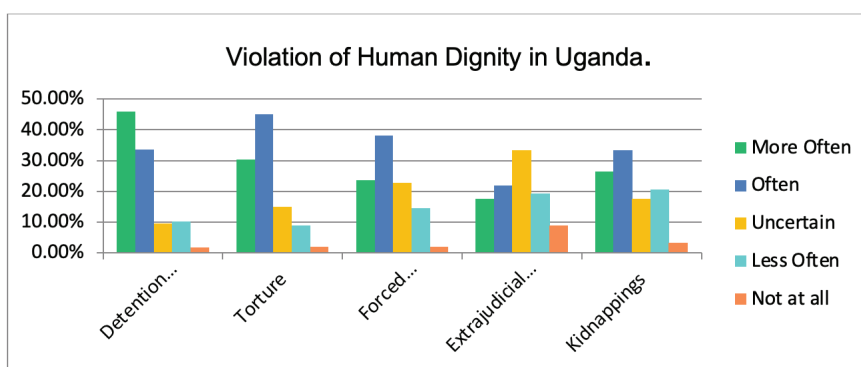
Protection of the common good of the public is also under increasing threat. For example the right of the displaced to be compensated is viewed by a total of 30.73% as being either under extreme threat or under threat. The minority rights of indigenous groups are also under stress; according to 36.72% of the respondents said it was threatened. The State also seems to have failed to protect the public from adverse effects of environmental pollution. At 46.15%, a figure just shy of half the population, disapproval for government’s efforts at mitigating environmental pollution seem perverse. As per one of the respondent, “Nearly all environmental rights are under threat in Uganda, e.g. forests are being wantonly cut everywhere, plastics of all types scattered everywhere - including deep in the rural areas and nobody including NEMA - the agency which is supposed to protect the environment is bothered.” Encroachment on the wetlands, noise and air pollution, water pollution and mismanagement of natural forest featured in most of the responses. Another respondent added that, “forests, swamps are being cleared anyhow, the minority people such as pygmies from the time (1991) when they left the forest have not been accorded compensation and resettlement, there is a lot of garbage in towns with poor garbage disposal, use of factory made herbicides/manure has become dangerous to soil and nature, this has affected bees and pollination.” Members of the public also seem to exacerbate the worsening environmental and settlement situation in the country. In his comment, one respondent observed, “It’s actually the population that has continued to degrade the environment thereby staying in wetlands, bush burning and deforestation.” Thus, the harrowing state of environmental decadence, while hugely dependent on state intervention, is evidently a consequence of a multiplicity of actors.

f) Respect for Human Dignity

Human life is increasingly under threat in the country. While human life and dignity in Uganda has always been under extreme pressure, especially during Idi Amin’s government that was a culmination of multiple coups, counter coups and coup attempts, such scenarios had largely ceased save for the Lord’s Resistance Army activities in the Northern regions. However an increasingly autocratic rule by the incumbent president and his NRM founders, together with heavy handed crack down on dissident voices and opposition figures; including opposition presidential candidates has undone the progress made in the past three decades. Foremost assault on human dignity in the country comprised: arbitrary detention (without trial) with 45.74% saying it occurred more often than normal. A further 33.33% indicated that it occurred often, thus forming a solid 85.91% of respondents who were confident that arbitrary arrests and detention

was common place in the country. In addition to detention without trial, respondents also identified the prevalence and frequency of other abuses with 85% saying torture also occurred often. Forced disappearances, extrajudicial killings and kidnappings were also frequent with 61.26%, 39.13% and 59.4% of participants agree that the above occurred generally often respectively. Other forms of gross human rights violations identified by the respondents include framing of innocent people, defilement, domestic violence, abductions and work place/office abuses. A university lecturer, commenting on the outcome of the 2021 elections decried the extreme level of violence during the polls by noting that, “The level of violence this time was high; there have been arrests, shootings and killings.” Most of the violence was perpetrated by the members of state security agencies and was usually directed at opposition actors. He additionally laments that, “Even after elections, people are being mistreated and of course there are others who have been killed. There is fear and uncertainty of whether people shall live the next day...” This damning revelation shows just how tense and unpredictable the atmosphere still is in the country several months after the elections.

Figure 6. Violation of Human Dignity in Uganda



Source: CRTP Research

One of the most prolific journalists in the country wrote us an op-ed in which he raises critical concerns concerning the murky waters in which journalists operate. He lists life threatening bodily injuries inflicted by the police and sister security agencies as some of the abuses meted on journalists doing their work. Victims of state brutality include NTV-Uganda correspondent who was covering a story on the illegal detention of a section of supporters of a former presidential candidate. Another victim of state violence was a Spark Television Reporter who was assaulted by the military police when covering demonstrations over unstable power supply in Kayunga Town. In short, a gross violation of human rights by state security agencies is prevalent in the country.

g) Provision of Basic Needs (Rights to employment, healthcare, food)

The level of access to basic necessities of life such as food, employment for the adult population, healthcare and education, all significant measures of human rights fulfillment in a society, received varied responses. As observed by one of the respondents, regarding the effect of debt accumulation on access to common goods by the public, he stated thus, “It puts a heavy cost of repayment on the government hence no funds to cater for the common man’s needs”. Indeed 85.33% of respondents agreed that debt accumulation is counterproductive when it came to the having access to human services. Other factors

cited as limiting access to public goods include corruption, bribery and mismanagement of public resources, skewed development policies and irresponsible fiscal planning. A respondent summarized the situation in these words, “Money is currently being redirected to the servicing of external debts yet ordinary citizens need social services. The sad fact is that money obtained through loans is mishandled by a few, yet government taxes all indiscriminately to generate revenue”. Even sectors in the economy that are the backbone of survival for the majority of the citizens are slowly being abandoned by the government. One FGD participant commented, “due to the high debt, the government treasury (sic) always has less capacity to fund the national programs that benefit the local population. In the same vein, Uganda being largely an agricultural country, high debts make it difficult for the government to invest in empowering the populace in agricultural production through extension services and inputs such as seeds among others.” This comment brings to the forefront the deteriorating quality of life for the majority of Ugandans. Additionally, a secondary school teacher opined that, “The poor are being stepped on, as I said earlier, the poor are being undermined and there is no fair justice to the poor.” This sums up the stark reality: the economically deprived in Uganda rarely get justice, even from the state.

The respondents also expressed concern with the level of commitment of the respective branches of government in securing access to basic needs for all. One of the respondent was quoted saying, “Because the legislature somehow passes some laws which don’t favor the ordinary people,” Indeed distrust of the arms of government is explicit. For instance only 38.82% of the respondents believe that the nation’s Parliament is fully commitment to fulfilling basic needs. The Executive and Judiciary almost tied on approval with percentages of 40.26 and 40.52 respectively. This means that at approximately 59% of the population does not have confidence in any of the branches of government as far as provision of common goods for all is concerned. In fact, 5% of the respondents believe that the government is absolutely not committed at all to providing basic needs to its people.

h) Recognition of Special Category Rights

The observance of the rights of women and the girl child seem to be adequate. Access to socio-economic and political opportunities is improving gradually. The trend with closing the gap in incomes between women and men is particularly impressive. Women working in formal industries receive equivalent remunerations with their male counterparts. At least 55.84% of the respondents believe that remuneration of women in formal employment is good; either very good or good. A further 35.71% think it is generally fair. Thus 91.55% of the total responses are positive about advancement in income equity. Emphasis of this finding was further captured by a respondent who said that, “They are paid like their male counterparts. It is about the position one holds, for example parliamentarians whether male or female aren’t discriminated in terms of pay”. Regardless of the positive outlook in earning in the formal sector, there is a convergence in thinking that women working in the informal sector still face a disparity of income when compared to their male counterparts. There are however other challenges with which women, even those working in the formal sector, continue to wrestle. Issues such as competition for job vacancies sometimes expose women to sexual and gender based abuses. One of the respondents put it this way, “It’s not always about the capability in most times which limits the chance of many women with the chance to do their professional jobs or be in good offices but rather “Physical appearance that is appealing to most””. Grant of access to spaces for lactating mothers and maternity leave is still a

challenge to women working in many organizations, especially in the private sectors. Women providing family labour in farms and households also go unrewarded.

Inclusion of women's voices at the decision making level in various issues and policies such as the girl child's right to education is also fairly advanced with 97.4% of respondents citing some level of inclusion of women; be it extensive, frequent or occasional, at the national level. Inclusion of women at the regional and local levels were also remarkably high with 95.46% and 85.52% of the respondents agreeing that the respective levels of governance included women in decision making. Areas where inclusion of women's voice include national politics, education and community. For instance at the moment key political offices, including that of the Prime Minister, one vice president and deputy speaker, are held by women. There is however disparity between representation for women and their involvement at the grassroots level as compared to the national and regional levels. As was observed by one of the respondents, "Girl child policies flow from national level, local women have done (sic) little apart from implementing what has already been generated from the national levels". Negative cultural traits and traditions have an impact on the place of women in the society. A woman council leader at the FGD narrated how her own sister was physically assaulted by her husband for refusing to have sex with him when she discovered the man was HIV-positive while she was negative. Another participant at the same meeting had highlighted a similar story, "There is a lady at Kasangye who is HIV negative and her husband is HIV positive and he had never disclosed to her. She discovered it after giving birth to 9 children. When she requested that they stop having sex, he became violent and told her he would kill her, yet continued having other women outside marriage." Such glaring cases of Sexual and Gender Based Violence is evident of how some cultural practices inhibit women's development.

A comment by one of the respondents reflect the position held by most people across the country thus, "I have realized that most people think that the girl child was not meant for this kind of education as they are mostly viewed as house wives. Where you find people make statements like a lady can't be an engineer though why no one explains. And this leaves most girls unable to have better education like a boy or man would. Also certain times like where a girl child becomes a mother while still in school, her education might stop there but the boy who made her a mother will continue to study. It looks like there is a limit to a girl child education."

Whereas the participation of women was observed to be fairly advanced at 97.4%, there are those that question whether their involvement has any significant impact. A women's rights activist while agreeing with this view stated that, "Women are not yet free to participate in politics and compete favorably with men because they are still tied to the affirmative action. A woman who tries to tussle it out with men is harassed and pulled down because she should have remained in her lane and vie for female seats. Thus women are sometimes only co-opted." In other words women's participation in decision making must not just be seen.

Observance of other special category rights by the state and other actors is fairly unsatisfactory. For example, less than half of all respondents are satisfied with the country's record on promoting the various rights such as rights of persons with disability (35.29%), resettlement and compensation of internally displaced persons (32.67%), rights of the child (31.58%) and youth welfare (19.33%). However, observance of refugee rights seem to be particularly positive. More than 60% of respondents felt that

the top most `plight of the refugees was well observed by the state apart from their right to relocate to a 3rd country that gathered a 43.7% approval as being observed. Refugees' freedom of movement was the most assured right with 82.89% of respondents agreeing it was widely observed. Access to basic needs such as health, education, food and humane shelter was a close second with 82.11%, followed by the right to asylum at 70.39%, right to integration in the host community at 61.84% and finally protection from forced repatriation at 58.67%.

Figure 7. Observance of Special Category Rights in Uganda

Rights	Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
All persons with disabilities (PWDs) can access services easily (health, education, information etc.)	5.88%	29.41%	20.92%	39.87%	3.92%
The State is committed to Indiscriminate resettlement and compensation of all of internally displaced persons (IDPs) across the Country	6.00%	26.67%	33.33%	28.67%	5.33%
The State protects Children from all forms of abuse (child labour, child trafficking, child pornography, and bodily harm etc.)	8.55%	23.03%	21.05%	34.87%	12.50%
All Women are protected from all forms of gender based violence (spousal invasion of one's privacy, sexual harassment etc.)	6.54%	22.22%	26.80%	35.95%	8.50%
Youth participation in decision making processes on matters concerning them is guaranteed (job creation, mental health, leadership etc.)	5.33%	14.00%	27.33%	40.67%	12.67%

Source: CRTP Research

Therefore, the country is generally well suited to hosting refugees. However, It is important to note that respondents mentioned prevalence of violence against refugee communities in certain specific localities. They are often targeted and chased away from the land allocated by government. Access to quality education and employment opportunities was also a challenge to most refugees. As highlighted by one participant, "Right to work is still an impediment given the origin of some of these refugees and language issues, access to formal employment is an uphill task for them. Most refugees find themselves in informal sector with very few working in formal organizations as interpreters in organizations like Refugee Law Project, Inter Aid among others". This comment summarizes the condition of the majority of refugees in Uganda. While they enjoy basic services and have even been granted parcels of land, there is still lack of integrative forces to assure them of their security.

RECOMMENDATIONS

While the outlook of human rights observance in the country is not as hopeless as it used to be during Idi Amin's regime (over 40 years ago), it is prudent to state that the key actors

need to take real action and address the concerns that have been outlined by the outcome of this research. The government is inevitably a major player and must thus take the necessary steps to guarantee its citizens an enabling physical and political environment to enjoy all rights and freedoms as outlined in the UHDR document. Significant steps required may include whole hearted observance of the rule of law and democratic procedures in resolving all conflicts involving the state and the private citizens.

Relevant government departments should also consider taking up cases involving sexual and gender based violence across the country. The perpetrators of all forms of gross human rights violations, particularly those serving in the armed forces and other government security establishments, should be held accountable for their actions without regard to their affinity to those wielding political authority. Improvement in human security regime in the country will serve the country's population a great deal and may even spur trade and commercial exchange in the country.

Government policies on management of public resources should focus on alleviating extreme poverty across the country. While access to food is relatively guaranteed across the country, access to other basic needs such as quality healthcare and education is still far from being accomplished. All efforts to ensure universal access to basic needs is thus a key factor for Uganda's growth into a middle income country.

There is an urgent need to control land use and destruction of national protected zones especially water catchment areas and wetlands. Wanton deforestation in the country's rain forests by people intending to convert such areas into arable lands must be checked. The National Environment Management Authority (NEMA) should ensure that sustainable use of natural resources is upheld across the country.

III. ETHIOPIA

Despite being the only nation in Africa never to be colonized, Ethiopia has faced a myriad of challenges for the longest time possible, with perennial famine topping the list. However, the state of human rights observance in the country has improved remarkably, especially after the transition of power that brought Abiy Ahmed to power. Notably, in its January 15th, 2019 report, HRW noted positively that "the human rights landscape transformed in 2018 after Abiy Ahmed became Prime Minister".⁵⁰³ Ahmed's government released political detainees, kick started an economic liberalization programme, and appointed a woman to serve as the country's president and currently has a female Chief Justice (as is the case with Kenya). Freedom of the press, access to information and citizen's right to criticize and question the state is largely accessible to the majority of the population. Nevertheless, it is critical to note that the ongoing civil war is a major setback to the transformation agenda that had been initiated by the new government.

Data collection

A total of 144 respondents took part in the survey for the data collection; 84 were male and 59 female. The majority of the respondents were in the age range of 36 to 45 (67 respondents), range 18 to 35 had 51 respondents, 46 to 55 had 20 respondents, 56 to 60 had 5, while above 61 had only 1. 90% of the respondents were urban dwellers with a small percentage of 1% being from rural areas only comprised 1% while 9% were semi-urban dwellers. Data collection in Ethiopia consisted of Key Informant Interviews (7), and a stakeholder's focus group discussion (FGD) held in Addis Ababa.

503 Andinet Adinew Tesfaye and Endalkachew Abera Mekuriya, Conditions of Human Rights in Ethiopia in the Aftermath of Political Reform, 19 NW. J. HUM. RTS. 23 (2021). Available at: <https://scholarlycommons.law.northwestern.edu/njhr/vol19/iss1/3>

Respondents, Informants and FGD participants were required to give feedback on the state of adherence to the human rights in Ethiopia. The outcome of these deliberations can be deduced from the following categories of rights.

a) Freedom of Association and Assembly

Asked to rate the extent of observance of key political and civil rights in the country, a good number of respondents thought that such freedoms were relatively guaranteed. 75% of the respondents thought that the freedom to form and operate political parties in the country was at 51-100%. Only 4% believe that individual's right to organize themselves into political outfits is curtailed rating it between 0-25% while the remaining 21% rating it between 26 – 50%. The freedom to exercise the right to vote was observed to be guaranteed with 81% of the respondents rating it at between 51 -100% with only 6% rating it at between 0 -30% and the remaining 13% observing it falls between 40 -50%.

b) Freedom of Religion

The area of freedom of religion was almost similar in the four countries as the respondents agreed that freedom of religion and belief was generally guaranteed. In Ethiopia an average of 85% of respondents agreed that key aspects of freedom of worship were guaranteed. Such aspects included freedom to practice one's faith, share religious beliefs, and raise funds for religious activities among others. This has further been cemented by the provision of Article 11 of the Ethiopian Constitution sub-section 3 that states thus: "The State shall not interfere in religious matters and religion shall not interfere in state affairs."

c) Doctrine of Separation of Powers

Regarding separation of powers between the various arms of government, respondents were fairly divided. However, most respondents generally agreed that independence enjoyed by the judiciary and legislature was limited. About 46% of the respondents agreed that law enforcement agencies often conduct arbitrary arrests with regard for the rule of law. Similarly, on the freedom of judges to make rulings on petitions related to the outcome of the national elections and other matters where the executive was a key player, 46% said they either strongly agreed or agreed that the judiciary did not enjoy the independence to perform its functions under law. Furthermore, 50% of the respondents either strongly agreed or agreed that Parliament need to pass the two-thirds gender rule, indication of the Legislature's reluctance and lack of independence in doing so, given that Ethiopia is not a signatory to the Optional Protocol to the Convention on Elimination of all forms of Discrimination Against Women. On the flipside, about 30% of respondents disagreed with the assertion that separation of power between the various arms of government was lacking. In fact, it is important to note that another 20% of the respondents were uncertain on whether the various branches of government enjoyed autonomy from undue influence of the Prime Minister's office.

d) Accountability for economic crimes

Irresponsible accumulation of debts by the government was seen as an impediment to sustainable human development in the country. Out of 141 responses, 105 respondents agreed, albeit to varying degree, that debt accumulation denied citizens access to basic human rights. 26 respondents said they were neutral on this matter, meaning that they either were unsure about the effects of debt accumulation on their livelihoods or they just had not given it much thought. Only 10 respondents disagreed with the notion that debt

accumulation negatively impacted citizens' livelihoods. The majority of the responses gathered in this area indicated the lack of accountability by the state in ensuring proper utilization of funds borrowed from external donors and partners as a hindrance to the advancement of human development in the country.

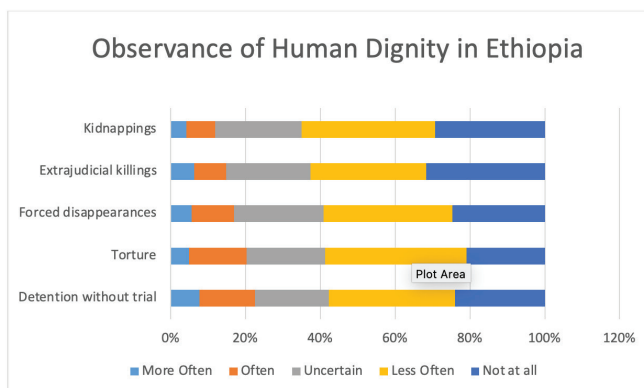
e) Protection of the Common Good

On the protection of the common good, the government of Ethiopia also seems to be doing fairly well, especially in the protection of the country's biodiversity. Key measures for promotion of sustainable development seem to be in place. For instance 68% agreed that the government has successfully protected its citizens from the adverse effects of climate change. Only 4% believe that the public is under extreme threat of environmental pollution. Compensation for displaced communities is also impressive. Only 7% believe that those displaced from their homes are under threat of not being compensated. An overwhelming 78% are satisfied with government policies on compensation of displaced persons. Similarly, protection of minority rights, including those of indigenous communities is impressive with 81% of respondents saying that such rights are either highly protected or protected by the state. It is, however, key to note that 13% of respondents still believe that minority rights of indigenous communities is under threat in the country.

f) Respect of Human Dignity

In gauging Ethiopia's frequency of adhering to the respect of human dignity in relation to detention without trial, torture, forced disappearances, extra judicial killings and kidnappings, more than 10% of respondents agreed that certain human rights abuses occur often in the country. Detention without trial was the most prevalent of the violations, with 23% of respondents agreeing that it occurred often or more often. Other major violations in the country included torture, forced disappearances, and extrajudicial killings. It is however key to note that in all cases more than 50% of responses received stated that such violations either occurred less often or did not occur at all. For instance an average of 61% of all voices captured believed that torture, forced disappearances and extrajudicial killings either occurred less often or did not occur at all in the country. This positive feedback could be an indication that the promise of Abiy Ahmed of a more open and tolerant society is slowly being realized since taking over power in 2018.

Figure 8. Observance of Human Dignity in Ethiopia



Source: CRTP Research

g) Provision of Basic Needs

Quality, affordable and humane conditions of living is enhanced when the state provides key public goods to its populace. These include though are not limited to healthcare, food, education, and security. As discussed earlier, a major setback to efficient provision of basic needs by most states in Africa is poor economic and fiscal policies. Irresponsible debt accumulation, economic crimes such as corruption and mismanagement of public funds and regional economic imbalance are among the challenges that the country has faced in its attempts to guarantee the provision of the basic needs and protection against the violation of the human rights to all its citizens. Access to food for all has particularly been a matter of grave concern, as the country struggles with famine almost every year. An ongoing civil war between the Federal Forces and the Tigrayan People's Liberation Front (TPLF) has further pushed millions of displaced persons into hunger, desperation, with an increasing percentage of the general population having to depend on aid. It is however reassuring to learn that majority of the citizens still have faith in the government's commitment to fulfill the promises that will facilitate the provisions at least of most of their basic human needs. An average of 56% of all respondents believe that all the branches of government are either very committed or committed to providing basic public goods to all its subjects.

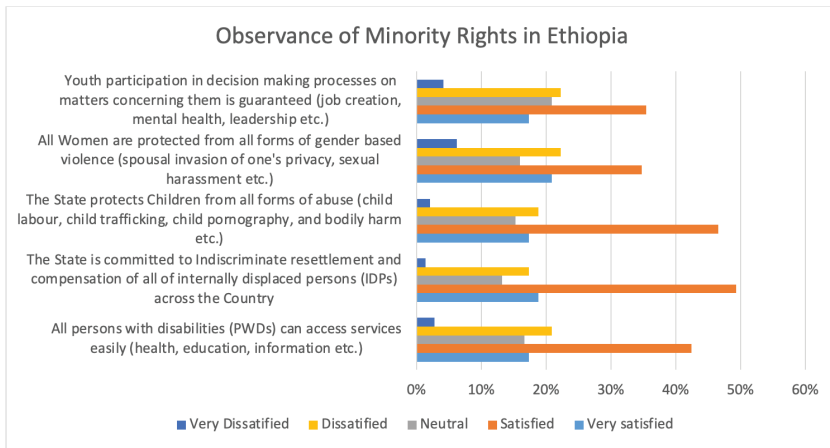
h) Recognition of Special Category Rights

The inclusion of women in decision making in the country has been largely very impressive, especially in the area of the girl child education, which is a major enabler of women's emancipation. The government has been particularly consistent in this aspect and also allowed women activities in the areas of policy-making and politics at the national level. 66% of the respondents agreed that women were either frequently or extensively included in decision making at this level. This was observed in the appointment of a female president and presently a female Chief Justice. Inclusion of women at the regional level came second at 54%. Women at the local society level were the least included. While 51% of the respondents agree that inclusion of women was still happening at the local levels, a worrying 15% of respondents observed that women were not included at all at the grassroots. The nature of patriarchal societies within African countries especially at the local levels could be a contributing factor to the low level of engagement of women in decision making spaces as was observed by the 15% of the respondents. In the socioeconomic wellbeing of women in the country, especially those in formal employment both in government and the private sector, the general agreement was that the country's policy on women's remuneration is positive. About half of the respondents (46%) believe that women's pay in formal employment is either very good or good. A further 36% think it is fair. Thus 82% of those surveyed think that there is improved equality of earning between women and men.

The country's track record in the protection for special rights category was also largely positive. At least 60% of all respondents believe that the country's promotion of the rights of key persons including women, children, youth, PWDs, IDPs and refugees was on the right track. Observance of internationally established policies for refugees was quite impressive. The right to asylum is assured, with at least 82% of respondents saying it is either extensively or somewhat observed. Other refugee rights that are largely observed in the country include protection from forced repatriation, freedom of movement, and access to basic needs. The youth too have not been left behind as was indicated by a Key Informant - a government official stated that the Government

has conducted various activities including the creation of job agencies so as to curb the problem of unemployment among the youthful population in the country.

Figure 9. Observance of Minority Rights in Ethiopia



Source: CRTP Research

RECOMMENDATIONS

As the level of involvement of women at the local level is low, both the government and non-state actors such as human rights defenders need to collaborate in advocacy campaigns to sensitize the local communities on the importance of having an all-inclusive society in the decision making arena.

Given that the separation of powers between the different arms of government is an important aspect of a democratic society, there is need for the public and political institutions to play an active role in ensuring that the adherence to the doctrine of separation of powers especially by the Executive arm is achieved and enforced.

Being part of the International Community, the Government has an obligation to ensure that it complies with the observance of human rights especially the protection of women and minority groups in the country through either acceding to various protocols on convention ratified or adhering to conventions, treaties and protocols ratified and acceded to.

Additionally, as suggested by the respondents, there is need for the Legislature to pass into law the two – thirds gender rule bill as an indication of its’ commitment towards human rights.

There is an urgent need for the Government to call for a cease fire in the Tigray region which has witnessed massive violation of human rights of the civilians.

IV. BURUNDI

Former President Pierre Nkurunziza, whose tenure was marked by widespread abuses, died in June, days after Évariste Ndayishimiye took power in Burundi following the May 2020 presidential elections. However, the serious human rights situation in the country remained largely unchanged.⁵⁰⁴ With the transition into the new government of President Evariste Ndayishimiye, observers will be keen to see whether there will be an improvement of the observance of human rights in the country.

Data collection

Data was collected from 150 respondents in an online survey that was also administered physically by the respective human rights monitor. A total of 60 respondents filled as female thus accounting for 40% of the total while the remaining 60% were male. Majority of those who took the survey were generally young. Those between ages 18-35 actually accounted for 64% of responses, followed by 19% at age range 36-45, and 15% of respondents were between 46-55 years. The remaining 2% comprised those above 55 years. Urban dwellers formed the largest bloc of respondents at 62%, followed by those from rural areas at 22%. The remaining 16% of respondents hail from localities categorized as semi-urban. Information was also drawn from focus group deliberations and plentiful key informant interviews held in the capital.

The essence of the data collection exercises was to determine the state of observance of key categories of human rights. As such analysis of data has been designed to provide a comprehensive report on the status of observance of these rights and freedoms.

a) Freedom of Association and Assembly

While a gradual and marked improvement of the political atmosphere is now a reality in Burundi, a reality check on enjoyment of freedom of association especially as far as formation and organization of alternative political organizations is still needed. An entire 57% of respondents rated the observance of the freedom to form political parties at lower than 30%. Thus multiparty politics are still far from being achieved in the country. It is, however, important to note that at least 41% of the respondents rated observance of political freedom to be above 40%. This shows a positive indication that if proper mechanisms are put in place a freer political environment may result. Additionally, the country's continuous protection of the citizens' right to their communal heritage through participation in the various initiation celebrations is commendable with 41% of the respondents agreeing that the right is extensively observed.

b) Freedom of Religion

As in the other countries involved in the research, the freedom to practice one's faith, beliefs or customs was largely guaranteed. While the level of enjoyment did not attain high percentages, it is still acceptable. Major tenets of freedom of religion and belief including the individual's freedom to share their beliefs and practice own faith, in addition to the right of religious organizations to own property is largely protected. An average of 64% of the respondents believed that such freedoms were either highly guaranteed or satisfactorily guaranteed by the state. Being a secular state as enshrined in Article 1 of the 2018 Burundi Constitution, the country has lived up to the constitution's expectation by ensuring that there is respect for religious diversity hence the preservation of the freedom of religion as concluded by majority of the respondents.

504 <https://www.hrw.org/world-report/2021/country-chapters/burundi>

Table 7. Observance of Freedom of Religion and Belief in Burundi

Rights	Highly guaranteed	Guaranteed	Uncertain	Less guaranteed	Not guaranteed
Freedom to practice one's faith	35%	37%	5%	6%	17%
Freedom to share one's religious beliefs	28%	37%	9%	11%	14%
Freedom to raise funds for religious activities	21%	44%	13%	13%	9%
Freedom to register land as a religious group/organization	16%	41%	17%	13%	13%
Freedom to construct places of worship	23%	42%	9%	10%	15%

Source: CRTP Research

c) Doctrine of Separation of Powers

Separation of powers between the branches of government in the country remains illusory. The executive arm led by the President of the country still exercises arbitrary authority over the judges and Members of Parliament. Civil and political conflicts that should normally be subjected to court proceedings barely make it to chambers. 62% of the respondents agreed that the state often use law enforcement agencies to stifle political dissent. A further 59% also believe that the nation's judiciary is often unable to freely make rulings on major cases, particularly those involving the presidency or other key figures in government. This may be as a result of the excessive and undue influence of these actors over the judiciary. As it has been noted, the independence of the judiciary is a principle strongly proclaimed in Burundi but it remains precarious in practice.⁵⁰⁵ Parliament has on major occasions also taken a back seat as far as protection of human rights is concerned. For instance, 50% of the respondents think that the Legislature has barely done enough to champion the rights of women, particularly their inclusion in decision making. The interference and lack of independence of the Judiciary has dwindled public confidence in the institution, with 33% of the respondents believing it is less committed to ensuring fulfillment of basic human rights as opposed to Executive's and Parliament's rating of 14% and 16% respectively. As the arm of government mandated with the responsibility of interpreting laws, the Judiciary has without doubt abdicated this mandate if reference is to be made to the percentage of arbitrary arrests conducted in the country, and that was expressed by 62% of respondents. Through this statistic, one must infer that the State has failed to abide by Article 23 of the Constitution that prohibits the arbitrary arrest and illegal holding of individuals by the State or any of its' organs.

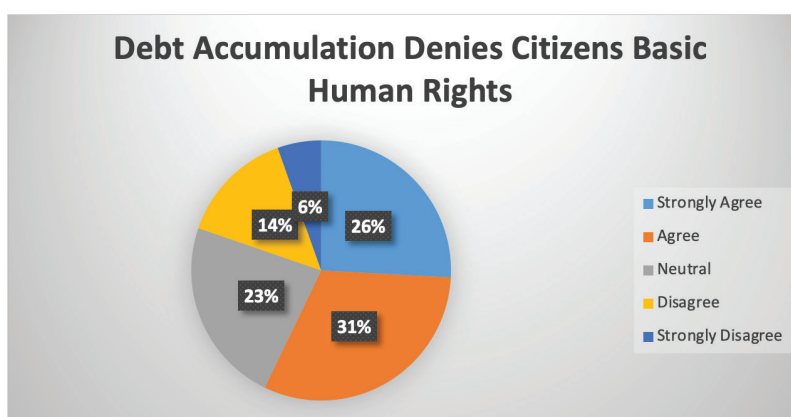
d) Accountability for Economic Crimes

The assertion by of one of the survey respondents that, "Debt accumulation brings poverty within their households" is an accurate understanding of the impact of irresponsible

505 THE INDEPENDENCE OF THE JUDICIARY VIS-À-VIS THE EXECUTIVE by Aimé-Parfait NIYONKURU. Available at <https://www.hamann-legal.de/upload/7Aime-Parfait.pdf>

accumulation of debts by the government. The majority of the country, as expressed in this poll, agree with this respondent: 57% of the respondents strongly believe that debt accumulation may eventually deny the public access to basic needs. Another respondent comments that, “Debts can bring development if the government has a clear vision. But, they deprive citizens of their primary rights when the government is corrupt”. In other words irresponsible accumulation of debts in addition to corruption among state officials may eventually make debt repayment unbearable among the ordinary citizens. He additionally adds that “Increase in prices, increase in taxes which will handicap the ordinary citizens (sic).” This observation by one of the survey respondents summarizes the impact of economic crimes on the livelihoods of the ordinary citizens in the country. High taxes are imposed by the government in a bid to repay the loans it undertook thus leading to intolerably high cost of living and which is a disadvantage for the citizens who can barely survive.

Figure 10: Impact of debt accumulation on basic needs in Burundi



Source: CRTP Research

e) Protection of the Common Good

Burundi’s track record in protecting the common good of the public is relatively commendable. Key areas of concern to the public seem to be under state protection. Environmental rights including protection of the public from adverse effects of environmental pollution, compensation of displaced communities and the plight of indigenous communities and protected areas are given considerable attention by the state. Over 50% of respondents agree that the common good of the public was either highly or considerably protected by the government. On the flipside, about 20% of respondents feel that the common good of the public is under threat. This divergence in opinion may be as a result of regional differences and the varying measures taken by the state to ensure environmental conservation and sustainable utilization of natural resources in the different parts of the country. As such this gap must be bridged in order to foster a wholesome and viable environmental conservation policy across the entire nation.

f) Respect for Human Dignity

Human dignity is indeed the foundation of all forms of human action, whether socio-economic, political or even cultural. As such evaluation of the state in respecting human dignity is the true reflection of the true picture of human rights observance. Burundi’s

respect for human dignity has been a matter of controversy especially going by its history of authoritarian governance, coups d'état and coup attempts. The resultant effects of such turbulent political environment has been a decline in respect for human life and dignity. The outcome of our survey confirms this assertion. An average of 50% of the respondents agreed that serious violations of human dignity such as detentions without trial, torture, forced disappearances, extrajudicial killings and kidnappings especially of dissenting political voices occur often across the country. The percentage affirms the Human Rights Watch 2021 Report that highlighted the receipt of credible information of real or suspected opposition members being killed, disappeared, arbitrarily arrested, threatened, and beaten, particularly in rural areas hence tainting the assurance of the country's president of ensuring the observance of human rights. This must be a worrying trend, especially for the recently inaugurated government. There is need for state actors and non-state players involved in perpetrating or abetting these violations to desist from these activities. Cases of gross violations of human rights and international law must be brought before national and international courts for justice to be served. It is encouraging to note that an increasing number of respondents also stated that such violations are occurring less often presently. Kidnappings and forced disappearances at 31% and 28% respectively were the least occurring. This variation may also account for regional differences, especially in some rural areas where such violations may be uncommon due to limited political and military activities. As observed with other International Conventions, Burundi is a party to them but adherence proves a challenge.

Table 8. Violation of Human Dignity in Burundi

Abuse	Very often	Often	Uncertain	More Often	Less Often	Not at all
Detention without trial	0%	42%	16%	21%	16%	5%
Torture	2%	30%	17%	20%	23%	9%
Forced disappearances	1%	24%	22%	15%	28%	10%
Extrajudicial killings	2%	39%	13%	12%	26%	9%
Kidnappings	3%	29%	13%	12%	31%	12%

Source: CRTP Research

g) Provision of Basic Needs

The government of Burundi is by large perceived as being relatively committed to providing its citizens with basic human rights such as healthcare and food. This is as observed by 52% of the respondents who thought that the executive had put in relevant measures to enable public access and enjoyment of various forms of public good including quality and affordable healthcare, education etc. However, it is a concern to also discover that an average of at least 27% of the respondents still feel that all the three arms of government are either less committed or not committed at all to fulfilling access to basic citizen needs. Indeed this is a worrying trend and, added to the impacts of corruption and mismanagement of public funds, even those acquired through borrowing, it may be the real cause of persisting extreme poverty among the majority.

h) Recognition of Special Category Rights

The level of women's participation in decision making in the country seems to be improving. Participation of women in national issues leads the way with 73% of the respondents agreeing that women are sufficiently included in decision making at this level, followed by a moderate participation of women at the regional and local levels. The level of earning for women in the country is also viewed by a majority of respondents as satisfactory. 79% believe that remuneration of women working in formal employment is either good or fair. The assessment therefore, is a positive reflection of Burundi's observance of international obligation on elimination of discrimination against women in all spheres of life as provided for in the Convention on the Elimination of All forms of Discrimination against Women to which it is a party. However, a lot is left to be desired in the Government's effort to ensure the protection of women from gender based violence (GBV). Respondents' satisfaction and dissatisfaction opinion were both at par at the rating of 39%. This therefore calls for an urgent need for the Government to ensure the percentage of gender based violence as per the respondents is brought down to safeguard the milestones achieved in advancing women's rights. Regarding protection of children, Burundi has really lagged behind as 42% of the respondents stated they were dissatisfied with the Country's efforts, overshadowing 39% of the respondents who were satisfied with the efforts put in place to ensure children are protected. This finding seems astonishing given that Burundi ratified and acceded to the Convention on the Rights of the Child together with its' two optional protocols. The exclusion of the youth from decision making processes as represented by 58% of the respondents, majority of who were young. These respondents were dissatisfied with the extent of youth engagement in decision making in the country, a clear demonstration that Burundi has a long way to go to bridge the gap on protection of social interest group rights. It is however impressive that in line with the obligations provided for under the 1951 Refugee Convention, Burundi has performed exceptionally well in protecting the rights of refugees in the Country.

RECOMMENDATIONS

Most respondents were of the view that children are not adequately protected, and the governments need to adhere to their international obligations and put in place relevant policies that will ensure they abide by all the treaties, conventions and protocols ratified and acceded to. In order to ensure this, non-state actors like human rights defenders, civil society representatives, among other advocates for the protection of human rights, need to hold the government accountable by calling it out whenever it fails to do so.

The Ministry of National Solidarity, Human Rights and Gender needs to undertake meaningful measures aimed at promoting the constitutional provisions on human rights as it is the other main public institution tasked with human rights protection and promotion purpose after the Constitutional Court.

From the survey carried out, the respondents' pointed out the need for the Legislature to formulate policies and laws that would address the issue of corruption to ensure those involved in the practice are dealt with promptly.

Job creation opportunities for the youth was further suggested as a means to ensure that graduates do not venture into criminal activities and become a target population of politicians who might recruit them to cause violence in the country.

Since the level of women participation in the decision making process at the local level

is low, both the government and non-state actors need to engage in advocacy campaigns to sensitize communities on the importance of modifying cultural beliefs and practices that are oppressive to women.

Lastly, there is need for leaders and aspirants to participate in lifestyle audits before and after securing the various elective positions so that they might be held by others and themselves accountable.

BIBLIOGRAPHY

A. Argandona. (2006). 'The United Nations Convention Against Corruption and its Impact on international Companies, Working Paper WP No.656, IESE Business School, University of Navarra. Available at: <http://.iese.edu/research/pdfs/DI-056-E.pdf>

Abdu Kiyaga. (2013). "Number of Children on Streets, Rise to 10,000, 000," Daily Monitor, April 15, 2013, <http://www.monitor.co.ug/News?national?number-of-children-on-streets-rises-to-10,000/--688334/1748668/-/index.html>.

Abuom, A. (1993). The role of Kenyan churches in democratization. (Paper presented at a conference on the Christian Churches and Africa's democratization).

African Union, African Charter on the Rights and Welfare of the Child. https://au.int/sites/default/files/treaties/36804-treatyafrican_charter_on_rights_welfare_of_the_child.pdf

Alushula, P. Census: 39% of Kenya youth are unemployed. 24th February 2020 Business Daily <https://www.businessdailyafrica.com/bd/economy/census-39pc-of-kenya-youth-are-unemployed-2281430>

Amnesty International <https://www.amnesty.org/en/latest/campaigns/2019/02/the-brave-kenyan-sisters-seeking-justice-for-their-brother-shot-by-police/>

Atheists in Kenya & another v Registrar of Societies & 2 others [2018] eKLR <http://kenyalaw.org/caselaw/cases/view/147307>

Available at: <http://www.ohchr.org/EN/HRBodies/HRC/UNIIB/Pages/UNIIB.aspx>

Barasa, E., Ouma, P., & Okiro, E. (2020). Assessing the hospital surge capacity of the Kenyan health system in the face of the COVID-19 pandemic. *PLoS one*, 15(7), e0236308. <https://doi.org/10.1371/journal.pone.0236308>

BBC NEWS, Kenyan DJs, sacked after blaming woman for being pushed off a building. 28th March 2021 <https://www.bbc.com/news/world-africa-56555495>

BBC. Letter from Africa: Kenyans protest over growing debt. 8th April 2021 <https://www.bbc.com/news/world-africa-56651735>

Ben Phillips, (2021). The Global Assault on Human Rights. Available at: <http://www.ipsnews.net/2021/12/global-assault-human-rights/>

Burundi's Constitution of 2005, (2012). Available at: https://www.constituteproject.org/constitution/Burundi_2005.pdf in *The Advocates for Human Rights*, 2018

Changole, A. Don't lend our Government, Debt-Weary Kenyans Demand of IMF. 9th April 2021 <https://www.bloomberg.com/news/articles/2021-04-09/don-t-lend-to-our-government-debt-weary-kenyans-demand-of-imf>

Cressida Marcus. (2008). Sacred Time, Civic Calendar: Religious Plurality and the Centrality of Religion in Ethiopian Society. *International Journal of Ethiopian Studies*. Tsehai Publishers. Winter/ spring 2008, Vol. 3,

- Desalegn Amsalu. (2018). Environmental rights in Ethiopia: Shifting from theory to practical realization. *Journal of Sustainable Development Law and Policy*.
- Doron Shulztiner & Guy E. Carmi. (2014). Human Dignity in National Constitutions: Functions, Promises and Dangers. *The American Journal of Comparative Law*, SPRING 2014, Vol. 62, No. 2, pp.461-490
- Dutton, Yvonne. (2012). Commitment to International Human Rights Treaties: The Role of Enforcement Mechanisms. *University of Pennsylvania Journal of International Law*, Vol. 34:1. Available at SSRN: <https://ssrn.com/abstract=2187400>
- Elazar, J.D. (2005). Constitutional design and power-sharing in the Post-Modern Epoch. Available at: <http://www.jcpa.org/dje/articles3/constdesign.htm> in Nsabimana, G.C. (2005). *The Concept of Power Sharing in the Constitutions of Burundi and Rwanda*. L.L.M Dissertation. Centre for Human Rights, Faculty of Law, University of Pretoria.
- Emma Graham-Harrison. (2016). *The World Looks Away as Blood Flows in Burundi*. Available online at: <https://www.theguardian.com/world/2016/apr/10/burundi-ethnic-violence-refugees>.
- Frelick, B. Closing Camps Won't Solve Kenya's Refugee Problem. Human Rights Watch 13th April 2021 <https://www.hrw.org/news/2021/04/13/closing-camps-wont-solve-kenyas-refugee-problem>
- George Kateb. (2011). *Human Dignity*. Cambridge, MA: Harvard University Press and Michael Rosen. (2012). *Dignity*. Cambridge, MA: Harvard University Press.
- Getachev Begashaw. (2019). Good Governance with Checks and Balances in Ethiopia. International Centre, Michigan State University.
- Global Hunger Index. (2019). A Mixed Picture: Poverty Reduction, Rapid Population Growth and Extreme Weather. <https://www.globalhungerindex.org/case-studies/2018-kenya.html>
- Grauvogel, Julia. (2014). Regional Sanctions against Burundi: A Powerful Campaign and Its Unintended Consequences, GIGA Working Papers, No.255, German Institute of Global and Area Studies (GIGA), Hamburg.
- Gulliford M, et.al. (2002). What does' access to health care mean? *J Health Sev Res policy*, 7, 7(3): 186-8
- <https://digitalcommons.law.seattleu.edu/tjrc-core/7>
- <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>
- <https://www.statista.com/statistics/451122/national-debt-of-kenya-in-relation-to-gross-domestic-product-gdp/>
- Human Right Watch, 2010 Report on Media Freedom in Uganda
- Human Rights Watch (2011). "Even Dead Bodies Must Work": health, Hard Labour, and Abuse in Ugandan Prisons
- Human Rights Watch 2021 Report: Ethiopia-Tigray Region Humanitarian Update

Situation Report # 10 M 13, 2021

Human Rights Watch 2021 Report: Ethiopia-Tigray Region Humanitarian Update Situation Report # 10 M

Human Rights Watch Report (April 2021) “Tigray Region on the Verge of Destruction”

Human Rights Watch Report (May, 2021) “Ethiopia-Tigray Region Humanitarian Update Situation

Human Rights Watch, (2015). Kenya: End Harassment of Rights Groups; Government Targets Organizations in Tense Coastal Region. <https://www.hrw.org/news/2015/06/10/kenya-end-harassment-rights-groups>

Human Rights Watch, 2010 Report. A Media Minefield: Increased Threats to Freedom of expression in Uganda

Human Rights Watch, Kenya-Events of 2020 <https://www.hrw.org/world-report/2021/country-chapters/kenya>

Human Rights Watch, News Release (June, 2020)

Human Rights Watch. Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance. <https://www.hrw.org/report/2008/03/16/ballots-bullets/organized-political-violence-and-kenyas-crisis-governance>

Human Rights Watch. Kenya: Investigate Killings of Lawyer, Two Men. 3rd July 2016 <https://www.hrw.org/news/2016/07/03/kenya-investigate-killings-lawyer-two-men>

Human Rights Watch. Kenya: Police Killed, Beat Post-Election Protesters. 15th October 2017 <https://www.hrw.org/news/2017/10/16/kenya-police-killed-beat-post-election-protesters>

Igunza, E. Coronavirus corruption in Kenya: Officials and businesspeople targeted. 24th September 2020 *BBC NEWS*

Isanga, M. Joseph. (2009). African Courts and Separation of Powers: A Comparative Study of Judicial Review in Uganda & South Sudan. *Interdisciplinary Law Review*, 69,102. Concordia University School of Law.

Jerving, S. Exclusive: USAID says no Kenya HIV medication deal. 22nd April 2021. *Devex* <https://www.devex.com/news/exclusive-usaid-says-no-kenya-hiv-medication-deal-99731>

John C. Mubangizi. (2020). “A Human rights based approach to fighting corruption in Uganda and South Africa: shared perspectives and comparative lessons” in *Law, Democracy and Development*, Vol.24 No.1 (2020). Available at: <https://orcid.org/0000-0002-1408-268X>

John Tasioulas & Effy Vayena. (2016). The place of human rights and the common good in global health policy. In *Theoretical Medicine and Bioethics* (2016), 37:365-382

Jonathan, Fox. (2008). State Religious Exclusivity and Human Rights. *Political Studies*, Vol. 56, 928-948

Kamude, J. (2014). Gunned down in Mombasa-the clerics that have died. *The New Humanitarian* <https://www.thenewhumanitarian.org/analysis/2014/07/28/gunned-down-mombasa-clerics-have-died>

Kenya - Inside informality: poverty, jobs, housing and services in Nairobi's slums (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/450081468047364801/Kenya-Inside-informality-poverty-jobs-housing-and-services-in-Nairobis-slums>

Kenya Court overturns ruling on wearing hijab in school. *ALJAZEERA News* 24th Jan 2019 <https://www.aljazeera.com/news/2019/1/24/kenya-court-overturns-ruling-on-wearing-hijab-in-schools>

Kenya Human Rights Commission. A Police Service Gone Rogue: Torture, Extra Judicial Killings and Enforced Disappearances.

Kenya Law, Civil Application 1 of 2017(Ur 1/2018) Available at: <http://kenyalaw.org/caselaw/cases/view/148784/>

Kenya Law. (2017). Internally Displaced Persons Initiative v Permanent Secretary Ministry of Devolution & <https://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/743-a-police-service-gone-rogue-torture-extra-judicial-killings-and-enforced-disappearances.html>Planning

Kimani-Murage, E. W., Fotso, J. C., Egondi, T., Abuya, B., Elungata, P., Ziraba, A. K., Kabiru, C. W., & Madise, N. (2014). Trends in childhood mortality in Kenya: the urban advantage has seemingly been wiped out. *Health & place*, 29, 95–103. <https://doi.org/10.1016/j.healthplace.2014.06.003>

Korwa, A. and Munyae, I. (2001). Human Rights Abuses in Kenya under Daniel Arap Moi (1978-2001). *African Studies Quarterly*, Vol.5, Issue.1 pp.1-17 <https://sites.clas.ufl.edu/africanquarterly/files/Volume-5-Issue-1.pdf>

Legislative Observatory: European Parliament. Available at: <https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&ref>

Lowman. et. al. (1998). 'The Inter-American Convention Against Corruption: A Comparison with the United States Foreign Corrupt Practices Act', 38 Va.J. Int'l, pp. 243-244

Matete, F. Anger as Kisumu askaris drag woman on tarmac. 25th march 2021 *The Star* <https://www.the-star.co.ke/news/2021-03-25-anger-as-kisumu-askaris-drag-woman-on-tarmac/>

Mathenge, O. (2020). Unresolved Moi-era murders that officials called suicide. *The Star Newspaper*, 4th February 2020 <https://www.the-star.co.ke/news/2020-02-04-unsolved-moi-era-murders-that-officials-called-suicide/>

Mbondenyi, M. (2003). The Potential of Taita Customary Law in the promotion and protection of human rights in Kenya. LLB dissertation, Moi University School of Law.

Missing Voices Statistics on 2020 <https://missingvoices.or.ke/statistics/#>

Muriuki, B. President Kenyatta says over ksh.2billion is stolen from gov't daily. 18th

January 2021 <https://citizentv.co.ke/news/president-kenyatta-says-over-ksh-2-billion-is-stolen-from-govt-daily-4563455/>

Njuguna, G. (2008) "The Lie of Land Evictions and Kenya's Crisis." *African Policy Brief*, Brief No. 2, African Policy Institute.

Nsabimana, G.C. (2005). *The Concept of Power Sharing in the Constitutions of Burundi and Rwanda*. L.L.M Dissertation. University of Pretoria.

Ntabadde, C. (2018). "UHRC assesses Uganda's legislation against the UN Convention on the Rights of the Child commitments, to make Uganda a better place for children." Available at: <http://www.uhrc.ug>

Nyabola, N. Putting Kenya's media shutdown in context. 2nd February *ALJAZEERA* 2018 <https://www.aljazeera.com/opinions/2018/2/2/putting-kenyas-media-shutdown-in-context>

Nzoyisenga, F. (2020). 15 Years of Gender Quotas in Burundi: What's the Impact? Available at: giwps.georgetown.edu/15-years-of-gender-quotas-in-burundi-whats-the-impact/

Nzwili, F. (2020). Mass Exodus of teachers triggers education crisis in northeast Kenya. *World Watch Monitor* <https://www.worldwatchmonitor.org/2020/03/mass-exodus-of-teachers-triggers-education-crisis-in-north-east-kenya/>

O'Neil, A. National debt of Kenya in relation to gross domestic product (GDP) 2026* *Statista* 11th May 2021

O'Neil, A. Unemployment rate in Kenya. <https://www.statista.com/statistics/808608/unemployment-rate-in-kenya/>

Ochieng', D. Help at last for families hit by night demolitions. *The Standard* <https://www.standardmedia.co.ke/nyanza/article/2001402671/help-at-last-for-families-hit-by-night-demolitions>

Odhiambo, M. BBI ruling was an attempted coup on President Kenyatta-MP Pkosing. *THE STAR* 16th May 2021 <https://www.the-star.co.ke/news/2021-05-16-bbi-ruling-an-attempted-coup-on-president-kenyatta-mp-pkosing/>

Odhiambo, R. Children among victims of post-election violence in Kenya. 15th August 2017 *DW* <https://www.dw.com/en/children-among-victims-of-post-election-violence-in-kenya/a-40095962>

Office of Human Rights High Commission, International Covenant on Economic, Social and Cultural Rights (ICESR) Part III, Article 6

Office of the Human Rights High Commission (OHCHR) website

Ombati, C. Two Bodies of Kitengela missing men found in Murang'a, Thika. 29th April 2021 <https://www.the-star.co.ke/news/2021-04-29-two-bodies-of-kitengela-missing-men-found-in-muranga-thika/>

Osen, G. and Ombati, C. Somali trader Bashir's family denies terror, fake currency link. 23rd May 2021. *THE STAR* <https://www.the-star.co.ke/news/2021-05-23-somali-trader->

bashirs-family-denies-terror-fake-currency-link/

Oxfam International. Kenya: extreme inequality <https://www.oxfam.org/en/kenya-extreme-inequality-numbers>

Ratification Status for Burundi. Available at: http://tbinternet.ohchr.org/_layout/TreatBodyExternal.aspx?CountryID=28&Lang=EN

Rebecca Kadaga, MP. (2016). Separation of Powers and the Relationship between Parliament and the Judiciary: views from the Commonwealth Women Parliamentarians (CWP) Chairperson. In *The Parliamentarian*, 2016, Issue Two

Report of the Working Group on the Universal Periodic Review: Burundi, (March 25th, 2013)

Report of United Nations Independent Investigation on Burundi (UNIIB) Established Pursuant to Human Rights Council Resolution S-24/1 (Sept. 20th, 2016).

Republic of Kenya (2004). “Report of the Commission of Inquiry to the illegal and irregular allocation of public land” (Ndung’u Report).

Roopa, Gogineni. (2012). Report: In Burundi, Scores of Extrajudicial killings. Available at: voanews.com/archive/report-burundi-scores-extrajudicial-killings

Samrawit Getaneh. (2015). Ethiopia: Prisons and No Human Dignity, *Untold Stories*

Sanger, C. and Nottingham, J. (1964). The Kenya General Elections of 1963. *Journal of Modern African Studies*, Vol.2, No.1 pp.1-4

Savage, D. (1970). Kenyatta and the Development of African Nationalism in Kenya. *International Journal*, 25(3), 518-537. doi: 10.2307/40200855.

T. Shambo., Anti-corruption efforts in Ethiopia, conference paper presented on the theme Fighting corruption and safeguarding integrity, Global Forum V, Sandton, South Africa, 2-7 April 2007

Tamirat, K.S, Tessema, Z.T. & Kebed, B.F. (2020). Factors associated with the perceived barriers of health care access among reproductive-age women in Ethiopia: a secondary data analysis of 2016 Ethiopian demographic and health survey. *BMC Health Services Research*

Teklu Kassu, Mishra, D.K., & Melesse Asfaw. (2014). “Public External Debt, Capital formation and Economic growth in Ethiopia”. *Journal of Economic and Sustainable Development*, Vo. 5, No. 15.

The 1995 Constitution of the Republic of Uganda

The Global Compact. (2003). ‘background Information on the Fight against Corruption’, available at: http://www.transparency.org/globl_compact_2003_background_information_on_the_fight_against_corruption_pdf (last accessed 5 February 2013)

The Government of Uganda, “The State of Uganda Population Report 2012: Uganda at 50 years: Population and Service Delivery; Challenges, Opportunities and Prospects,” 2012, http://mail2.unfpa.or.ug/pub/2012/2012_SUPRE.pdf

The Truth, Justice and Reconciliation Commission of Kenya; Public Hearing Transcripts-Thematic-Torture-RTJC07. Seattle University School of Law Digital Commons <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1131&context=tjrc-core>

Throup, D. The Construction and destruction of the Kenyatta State, in M.G. Schatzberg(Ed). *The Political Economy of Kenya*, pp.51-52

Throup, D. and Hornsby, C. (1998). *Multiparty Politics in Kenya*. Pp.19-20Pp.19-20 Ohio University Press

Transparency International Kenya, 2020 Corruption Perception Index. <https://tikenya.org/wp-content/uploads/2021/01/2020-Corruption-Perceptions-Index-Press-Release.pdf>

Transparency International Kenya, Tracking Covid-19: A Report on Transparency and Accountability in government's Response to the Covid-19 Pandemic p.19

Truth, Justice, and Reconciliation Commission, "Final Report - TJRC Report Volume 1" (2013). *I. Core TJRC Related Documents*.

UN Human Rights in the field: Africa, 2017

UN Treaty Collection: International Convention for the Protection of All Persons from Enforced Disappearance. Available at: http://treaties.un.org/pages/ViewDetail.aspx?src=IND&mtdsg_no=IV16&chapter=4&lang=en

UNCAC was adopted by the General Assembly in its resolution 58/4 of 31 October 2003 at the United Nations Headquarters in New York.

United Nations General Assembly, Human Rights Commission. (2020). National Report Submitted under paragraph 5 of the Annex to Human Rights Council Resolution 16/21* Kenya, Working Group on the Universal Periodic Review, 21st–30th January 2020 <https://undocs.org/A/HRC/WG.6/35/KEN/1>

United Nations Human Rights Treaty Bodies Website, Ratification Status for Kenya. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN

United Nations, Department of Economic and Social Affairs website for more information on SDGs <https://sdgs.un.org/goals>

United Nations, International Human Rights Instruments, 2009.Report

United Nations. *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. G.A. Res.39/46, U.N. GAOR, Dec.10, 1984, 1984

United Nations. *International Covenant on Civil and Political Rights*. G.A. Res. 2200A (XXI), UN GAOR, Dec.16, 1966

United Nations. *International Covenant on Economic, Social, and Cultural Rights*. G.A. Res. 2200A (XXI), UN GAOR, Dec.16, 1966

United Nations. *Universal Declaration of Human Rights*. G.A. Res.217 (a) (III), U.N. GAOR, Dec. 10, 1948.

United States Embassy in Kenya, Kenya 2018 International Religious Freedom Report <https://www.state.gov/wp-content/uploads/2019/05/KENYA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>

University of Minnesota, Human Rights Library: Ratification of International Human Rights Treaties-Uganda. Available at: hrlibrary.umn.edu/research/ratification-uganda.html.

US State Department (2018).Uganda 2017/2018 International Religious Freedom Report. Available at: <https://www.state.gov/wp-content/uploads/2019/05/UGANDA-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>(accessed on 17-07-2020) in CRTP's FORB (2020) Report

Waghid, Y. (2014). African Philosophy of Education as a Response to Human Rights Violations: Cultivating Ubuntu as a Virtue in Religious Education. *Journal for the Study of Religion*, 27(1), 267-282. Retrieved 26th May 2021, from <http://www.jstor.org/stable/24798879>

Wanjala, W. Trafficking of persons with Special Needs for Begging in Kenya. *The Pontifical Academy of Sciences* <http://www.xn--ppstlicheakademiederwissenschaft-en-b4c.va/content/accademia/en/publications/scriptavaria/africanwomenjudges2019/wanjala.html>

Widener, J. (1992). *The Rise of a Party-State in Kenya: From "Harambee" to "Nyayo!"* Pp. 130-161 Berkley: University of California Press.

World Report 2021, *Human Rights Watch*. Available at: hrw.org/world-report/2021/country-chapter/burundi

World Report, 2019 on Ethiopia, Human Rights Watch.

Yenew Alemu Milhret. (2019). Factors Associated with Women Unemployment in Ethiopia. *International Journal of Theoretical and Applied Mathematics*, 5(5), pp.68-73

Yolanda Bouka & Nanjala Nyabola. (2016). *The Crisis in Burundi and the Apathy of International Politics*. Heinrich-Boll-Stiftung. Publications: www.boell.de

Yusuf, M. (2019). Suspected Al-Shabab Militants Kill 3 Kenya Teachers. *VoA News* <https://www.voanews.com/africa/suspected-al-shabab-militants-kill-3-kenyan-teachers>



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