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Table of Contents

RECONSTRUCTING ENGAGEMENT BETWEEN CSOs AND NATIONAL HUMAN RIGHTS INSTITUTIONS Josephine Ndagire.	1
A COMPARATIVE ANALYSIS OF LEGAL PROTECTION FOR FEMALES AGAINST SEXUAL ASSAULT IN NIGERIA AND UGANDA Ifeolu John Koni.	18
CHILDREN AS RIGHTS-HOLDERS IN UGANDA: THEIR KNOWLEDGE AND PERCEPTION OF RIGHTS PROTECTION STRUCTURES Nicholas Mugabi & Innocent R. Kamyia.	38
BEYOND ETHNIC PATRIOTISM: PAULO NGOLOGOZA, POLITICS OF GEOGRAPHY AND THE MAKING OF RESIDENCE-BASED <i>BANYAKIGEZI</i> IDENTITY IN UGANDA Evarist Ngabirano.	59
THE ROLE OF ISLAM IN DIVERSITY MANAGEMENT OF MULTI-RELIGIOUS COMMUNITIES: THE CASE OF THE INTER-RELIGIOUS COUNCIL OF UGANDA Huthaifah Busuulwa.	85

RECONSTRUCTING ENGAGEMENT BETWEEN CSOs AND NATIONAL HUMAN RIGHTS INSTITUTIONS

Josephine Ndagire*

ABSTRACT

The relationship between National Human Rights Institutions (NHRIs) and civil society organizations (CSOs) is rather complex. As independent government entities, NHRIs are oftentimes constitutional bodies with a clear mandate. CSOs, on the other hand, are non-profit associations working across a range of human rights themes. Inevitably, duplicity in regard to focus areas, programming and actual activities is commonplace both amongst CSOs, as well as CSOs and NHRIs. In some instances, the programmatic overlap between CSOs and NHRIs may lead to alliances and strategic partnerships, while in others it may cause a toxic form of competition and unfounded suspicions. The latter happens more often than not. While at first glance, this might appear as the only source of acrimony, other players – including donors and government actors – contribute largely to this dysfunction. This article argues that a reconstruction in the way both players engage would not only improve their efficiency, but would more importantly, strengthen the domestic rights protection regime. This conclusion is premised on the promise of a symbiotic form of engagement. From this perspective, it is important to underline the peculiar character of each entity and how that could be utilized in a complementary manner. As such, this article examines the character of both NHRIs and CSOs – in terms of their respective mandates to lay ground for a detailed discussion on the causes of minimal or a total lack of engagement/cooperation in some cases. This discussion is followed by an analysis of what engagement – where it exists, looks like. Finally, the article proposes formal, constructive and long-term forms of engagement based on the unique strengths of each entity.

I. INTRODUCTION

There is little literature – much less academic, on engagement between CSOs and NHRIs.¹ Much of what has been written largely highlights specific incidents of collaboration and reiterates calls to engage further around human rights monitoring,

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1. E. Palmer, *The Effectiveness of National Human Rights Institutions' Relationships with Civil Society: The Commission on Human Rights in the Philippines*, 25 AUSTRALIAN JOURNAL OF HUMAN RIGHTS (2019).

documentation of rights violations and education, among others. While this is instructive in terms of highlighting best practice, these arrangements tend to be ad hoc and specific to the activities in question. This article argues for institutionalized and longer-term forms of engagement, built on capabilities and designed to optimize the use of resources.

Part II of this article examines the nature and roles of NHRIs. In doing so, it distinguishes NHRIs and contextualizes their establishment through a brief historical account that acknowledges the critical role played by CSOs. The character of NHRIs is discussed in general terms although specific NHRIs are mentioned for illustrative purposes. Using a similar framework, Part III examines the diverse nature of CSOs and offers insight on how this could be a strength in engagement with NHRIs. Part IV discusses the international and domestic frameworks for engagement while Part V takes a peek into the current forms of engagement. This discussion highlights drawbacks and ‘missed’ opportunities and forms the basis for proposals in Part VI. Part VI reimagines engagement between both entities based on the unique features outlined in Part II and III. It is argued that leveraging the respective strengths of both entities would strengthen the domestic rights protection regime.

II. UNDERSTANDING NATIONAL HUMAN RIGHTS INSTITUTIONS

States have a responsibility to protect the rights of persons within their borders and jurisdiction. This duty is executed through laws, sanctions and a range of institutions at the local and national levels including courts, human rights committees in legislative assemblies, special rights units or desks in the military, police and prisons, among others. NHRIs are primarily set up to promote and protect human rights. In that regard, they are a specialized mechanism that facilitates the enforcement of international obligations. They are typically independent government agencies that hold a broad mandate to promote and protect human rights at the domestic level. As governmental, yet independent entities, NHRIs occupy an undefined and ambiguous space.²

NHRI are disparate and thus, there is no agreed definition. These variances largely depend on the background to their establishment, as well as the context in which they operate.³ While some NHRIs are judicial or quasi-judicial mechanisms with

2. COMMONWEALTH HUMAN RIGHTS INITIATIVE (CHRI), CIVIL SOCIETY AND NATIONAL HUMAN RIGHTS INSTITUTIONS (2011),¹⁴ available at: http://www.icnl.org/research/journal/vol13iss4/special_1.htm, last accessed May 5, 2019.

3. C. Renshaw, *National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels*, 18(3) GLOBAL GOVERNANCE (2012) 299–316.

powers to hear complaints of human rights violations, compel witness and enter binding and enforceable decisions in courts of law,⁴ others are purely administrative bodies devoid of any judicial powers. This category of NHRIs exercise their protective mandate through investigations, recommendations and referral of cases to judicial mechanisms.⁵ In some countries, the ombudsman undertakes the functions of a NHRI.⁶ Still, some carry a broad mandate while others are thematic or issue-based.⁷ These differences warrant a brief discussion of the history of NHRIs.

The idea of establishing authoritative human rights institutions at the domestic level was first tabled by the Economic and Social Council (ECOSOC) in 1946 – in the immediate aftermath of the Second World War.⁸ ECOSOC urged states to consider “establishing information groups or local human rights committees within their respective countries” to further the work of the Commission.⁹ So quite clearly, the concept of sovereignty had lost appeal and the international community was devising ways of holding states accountable for rights violations at home.

In 1960, the United Nations encouraged states to form national human rights institutions, and to report information pertaining thereto to the Secretary General.¹⁰ Tellingly, it took over 30 years to draft the guidelines for their establishment and another 13 years to adopt the Paris Principles.¹¹ States were not enthusiastic about accountability for the treatment of subjects and in some cases, outrightly resisted these efforts. Consensus was eventually obtained in 1993, when the Principles relating to the Status of National Institutions (Paris Principles) were eventually adopted.¹² While a few NHRIs existed prior to this development, the 1990s saw an influx in the number of new NHRIs. Some argue that states are partly motivated by the need for validation

4. *See*, for example, Art. 53 Constitution of the Republic of Uganda, 1995 and secs. 17-22 Uganda Human Rights Commission Act, Chapter 24 of the Laws of Uganda.

5. The Equality and Human Rights Commission of the United Kingdom falls under this category. It derives its mandate from the Equality Act, 2010.

6. Examples include Colombia, Croatia and Jamaica.

7. *See*, for example, the Commission for Protection against Discrimination, Bulgaria; the Equality and Human Rights Commission, United Kingdom; and the Canadian Human Rights Commission, among others.

8. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), NATIONAL HUMAN RIGHTS INSTITUTIONS: HISTORY, PRINCIPLES, ROLES AND RESPONSIBILITIES (2010) at 7, available at: http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

9. *Id.* *See also*, Economic and Social Council Res. 1946/9 (June 21, 1946).

10. *Supra* note 8, at 7.

11. *Id.*

12. The Principles relating to the Status of National Institutions (Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

from the international community when setting up a NHRI.¹³

The Paris Principles lay out an operational framework for NHRIs and outline minimum standards. They underscore the importance of independence and a mandate broad enough to allow for a diverse set of preventive and protective functions. As a non-binding instrument, the Paris Principles are only guidelines and project the features of an efficient and effective domestic mechanism. The actual mandate of NHRIs derives from local constitutions and/or subsidiary legislation.

NHRIs are therefore established against the backdrop of a responsibility to uphold human rights domestically. However, states determine the character, form and functions of the mechanisms they establish. Broadly speaking, NHRIs investigate and adjudicate human rights violations, monitor state compliance with international human rights obligations, undertake sensitization and education programs, review new legislation, advise governments on human rights issues, conduct research and document violations, improvements and challenges. In light of these functions and the fact that their existence is sanctioned by law, NHRIs enjoy legitimacy at the national and international levels.

The actual functionality and efficacy of NHRIs is determined by the level of independence and powers accorded by states, funding and the relationship between the NHRI and stakeholders such as CSOs, development agencies, judicial and legislative bodies. The UN elaborates the principles that would ensure effectiveness of NHRIs. These include: independence through legal, financial and operational autonomy, appointment, composition and dismissal procedure; defined jurisdiction and adequate powers; accessibility; cooperation; operational efficiency and accountability.¹⁴

III. INTERROGATING THE NATURE OF CSOs

CSOs, also known as the ‘Third Sector’, is a combination of distinct and diverse civil associations. A lot of discussion on CSOs tends to focus exclusively on NGOs, which form a part of CSOs. For purposes of this article, the term CSOs is used to refer to a broad section of actors, including professional associations, community-based organisations, loose networks of associations, pressure groups and of course, NGOs.

13. Renshaw, *supra* note 3.

14. OHCHR, National Human Rights Institutions: A Handbook for the Establishment and Strengthening of National Institutions for the Promotion & Protection of Human Rights (UN Handbook) (1995) at 10-15. Available at: <<https://www.un.org/ruleoflaw/blog/document/national-human-rights-institutions-a-handbook-for-the-establishment-and-strengthening-of-national-institutions-for-the-promotion-protection-of-human-rights/>>, (last accessed May 10, 2019).

The ‘associational revolution’ in the 1990s witnessed a surge in CSOs.¹⁵ This proliferation was not without context.

In Africa, the economic crises of post-independence regimes inadvertently forced political liberalization, which opened up previously closed spaces and eventually an “explosion of associational life.”¹⁶ Although operating in authoritarian environments, citizens in the former Zaire, Nigeria and Uganda organized into associations in the 1980s to demand for good governance.¹⁷ In parts of West Africa, national chapters of Amnesty International were opened in the 1990s, while a network of churches in East Africa monitored government performance and elections.¹⁸ This revolution altered state-citizen relations¹⁹ in several ways. To begin with, citizens were no longer passive subjects but rather active and critical players who would hold states to account through these associations. This shift in the socio-political landscape is best explained by Morten Kjaerum.

Referring specifically to NGOs, Kjaerum explains that NGOs awaken the social conscience, promote diverse opinions, encourage civic participation, and mitigate the excesses of the state and the market.²⁰ These functions are undertaken in a wide array of areas ranging from humanitarian relief and service delivery to development, governance and democracy. In a sense, CSOs carry a broader mandate than NHRIs whose mandate is limited to human rights protection. This versatility, flexibility and independence of CSOs positions them as crucial actors across sectors. CSOs organize around specific sectors, issues and themes. In each of these components, CSOs either reinforce the state, provide oversight or perform state functions. By way of example, in Uganda, CSOs operate majority of the available shelters for victims of gender-based violence, and has solely provided that service for years. Similarly, for decades, ‘The Aids Support Organisation (TASO)’ — founded in 1987, provided the only support available to persons living with HIV/AIDS in Uganda.

In the rule of law, human rights and democracy spaces, several CSOs predate NHRIs and performed or continue to perform the functions of NHRIs to date. Such is

15. Lester M. Salmon, *The Rise of the Non-profit Sector*, FOREIGN AFFAIRS, Vol. 73, No. 4 (1994), at 109-122.

16. MICHAEL BRATTON, CIVIL SOCIETY AND POLITICAL TRANSITION IN AFRICA (1994), INSTITUTE FOR DEVELOPMENT RESEARCH (IDR) REPORTS, Vol. 11, No. 6 (1994), at 6 available at: <<http://www.issuelab.org/resources/19673/19673.pdf>>, (last accessed June 4, 2019).

17. *Id.*

18. *Id.*

19. Lester, *supra* note 15, at 109.

20. Morten Kjaerum, *The Contributions of Voluntary Organizations to the Development of Democratic Governance*, in THE ROLE OF VOLUNTARY ORGANIZATIONS IN EMERGING DEMOCRACIES: EXPERIENCES AND STRATEGIES IN EASTERN AND CENTRAL EUROPE AND IN SOUTH AFRICA (Ann McKinstry and Birgit Lindsnaes (eds., 1993), at 15-16.

the vitality of CSOs that they have been accorded ‘Observer Status’ by several regional and international mechanisms.

Therefore, the important contributions of CSOs in the protection and promotion of human rights cannot be overstated. But for CSOs, NHRIs might not exist. Further, any discussion relating to CSOs and rights protection mechanisms should be grounded in a historical context.

IV. FRAMEWORK FOR NHRI-CSO ENGAGEMENT

A. International Framework

There is no shortage of guidelines, principles or declarations calling for cooperation or engagement between CSOs and NHRIs. The Paris Principles are the most authoritative on this subject. These principles urge NHRIs to cooperate with a wide range of civil society actors, including human rights and community-based organizations, persons with disabilities, coalitions and networks, unions, faith-based groups, social movements and victims’ relatives, among others.

The Paris Principles acknowledge the importance of NGOs and enjoin NHRIs to “develop relations with the non- governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.”²¹ The term ‘relations’ includes consultation with other bodies responsible for the promotion and protection of human rights — specifically, mediators and ombudsmen. The Paris Principles seem lean and offer little in terms of the nature of engagement expected. This possibly explains why current forms of engagement largely lack in depth.

Shortly after the adoption of the Paris Principles in 1993, an international conference was held in Tunis in the same year. The conference established the International Coordinating Committee of NHRIs (ICC) which is mandated to coordinate the activities of NHRIs. In 2016, the name of this mechanism was changed to the ‘Global Alliance of National Human Rights Institutions (GANHRI). This body is subdivided into four regions – Africa, Europe, Asia Pacific and the Americas. The main function of this body is to promote the “establishment and strengthening of NHRIs in conformity with the Paris Principles” and to use “the Principles as criteria to determine

21. Paris Principles, Methods of Operation, para. (g).

GANHRI membership.”²² Other functions include facilitating and supporting engagement with the UN Human Rights Council and treaty bodies, encouraging cooperation amongst CSOs, accreditation of CSOs through the Sub-Committee on Accreditation (SCA), among others. Accreditation of NHRIs depends on a number of factors, including engagement with CSOs.

The General Observations of the SCA explain what it regards as engagement with other human rights institutions, and what it looks out for in the accreditation process. In its view, NHRIs “should develop, formalize and maintain regular, constructive and systematic working relationships with other domestic institutions and actors established for the promotion and protection of human rights.”²³ This statement is very instructive and looks beyond activity-based forms of engagement by referencing formal, constructive and systematic working relations. However, in subsequent paragraphs, the SCA outlines the benefits NHRIs might reap from engaging with CSOs. These range from obtaining expert knowledge to gaining access to vulnerable groups. In that regard, while the SCA calls for formalized relationships it does not offer much more than a statement.²⁴

In contrast, the Asia Pacific Forum of National Human Rights Institutions (APF) — the regional chapter of GANHRI — developed the 1999 Kandy Program of Action which outlines practical forms of engagement.²⁵ The Kandy Program of Action is the most progressive and instructive document to-date on this issue of NHRI-CSO engagement. It construes engagement through a mutually beneficial lens. For instance, while calling for better, regular, transparent and substantive forms of consultations, it underlines the importance of allowing NGOs to “decide on what processes and mechanisms best suit their circumstances and relations with the national human rights institution in their country.”²⁶

In 2018, the Asia Forum for Human Rights and Development (AFHRD) published best practice for NHRI-CSO engagement.²⁷ It calls for inclusivity in the

22. Global Alliance of National Human Rights Institutions (GANHRI), General Observations of the Sub-Committee on Accreditation [Adopted by the GANHRI Bureau at its Meeting held in Geneva on 21 February 2018], G.O 1.5.

23. *Id.*

24. *Id.*

25. The Kandy Program of Action: Cooperation between National Institutions and Non-Governmental Organizations, Asia Pacific Forum of National Human Rights Institutions, Workshop on National Institutions and Non-Governmental Organizations: Working in Partnership (1999), available at: <https://nhri.ohchr.org/EN/Regional/AsiaPacific/Workshops/Kandy%20Program.pdf>.

26. *Id.*

27. Asia Forum for Human Rights and Development (AFHRD), Cooperation and Engagement between National Human Rights Institutions (NHRIs) and Civil Society, (2018), available at: <https://www.forum-asia.org/?p=26954>

engagement process and underscores the importance of working with all manner of CSOs – not just NGOs.²⁸ According to AFHRD, the Human Rights Commission of Sri Lanka (HRCSL) institutionalized engagement with CSOs by putting into place nine thematic sub-committees to allow for engagement with the public and CSO networks across an array of thematic issues. The Sri Lanka Government Coordination Committee coordinates monthly meetings between the sub-committees and CSO networks. This model of engagement is substantive, formal, inclusive and long-term.

Several other UN pronouncements on NHRI-CSO relations also fail to outline a practical framework of engagement between CSOs and NHRIs. The 1995 UN Handbook on National Human Rights Institutions goes further than the Paris Principles by elucidating the benefits of cooperation with CSOs. Among them, is the ability of NGOs to raise awareness about NHRIs, thus generating visibility for the latter.²⁹ More importantly, the handbook acknowledges that victims of rights violations are unlikely to approach a government entity to lodge a complaint – in this regard, NGOs could be intermediaries between the NHRI and the citizens.³⁰ Therein lies a great opportunity that will be explored later in this article. The handbook further explains that NGOs possess characteristics that allows them access to information which NHRIs might use to develop programs.³¹ And finally, the handbook anticipates that NHRIs could recruit or co-opt NGOs in the implementation of selected programs or projects.³² From this perspective, it appears that only NHRIs stand to benefit in all the proposed ways of engagement. Put differently, CSOs would furnish information, bring victims closer to NHRIs and support the implementation their programs. This arrangement is not mutually beneficial.

The UNDP- OHCHR Toolkit for collaboration with NHRIs (Toolkit), 2012 builds upon the handbook but largely focuses on strengthening CSOs as well as cooperation between NHRIs and UN mechanisms or country teams.³³ The Toolkit references cooperation with CSOs and other institutions broadly and in passing.³⁴

28. *Id.*

29. UN Handbook, *supra* note 14, at 14.

30. *Id.*

31. *Id.*

32. *Id.*

33. UNDP-OHCHR TOOLKIT FOR COLLABORATION WITH NATIONAL HUMAN RIGHTS INSTITUTIONS (UNDP-OHCHR TOOLKIT), 2012.

34. *Id.*

B. Domestic Framework

To reiterate, NHRIs derive their mandates from municipal law – usually the constitution and/or a statute. Few of the domestic legislations relating to NHRIs mention or mandate engagement with CSOs. Where it is expressly mentioned, the nature of engagement anticipated is generally ‘soft’ and ranges from encouraging CSOs to consulting with them. Only a few legislations speak of engagement with CSOs in strong and certain terms. For instance, the Human Rights Commission Act of Sierra Leone mandates the NHRI to have “effective cooperation” with NGOs and “other public interest bodies engaged in the field of human rights”.³⁵ The phrase ‘effective cooperation’ suggests engagement that is more than joint activity.

Similarly, the Human Rights Commission Act of Malawi references engagement in detail. It requires the Malawi Human Rights Commission to “develop work relationships with non-governmental organizations devoted to protecting and promoting human rights”. It further specifies the areas where engagement is critical and these include programs relating to economic and social development and vulnerable groups such as persons with disabilities, the elderly, children and illiterate persons.³⁶

Elsewhere, while domestic legislation calls for engagement with CSOs, little guidance is offered on the nature of engagement or areas of engagement. For instance, the National Human Rights Commission (Amendment) Act of Nigeria states that the Commission should “liaise and cooperate in such manner as it considers appropriate with local and international organizations on human rights ...”³⁷ It should be noted that this provision is an amendment to the principal legislation – which then warrants the following questions: what factors led to the inclusion of this provision?; and why is it

35. The relevant legislation in Sierra Leone – the Human Rights Commission Act, 2004 – provides that:

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission to —
(iv) effective co-operation with non-governmental organizations and other public - interest bodies engaged in the field of human rights.

36. *See*, Human Rights Commission Act, 1998.

37. Sections 6 -15 of the National Human Rights (Amendment) Act, 2010. The amendments include the following provisions:

7. Section 6 of the Principal Act is substituted for a new section 6:

(f) cooperate with and consult with other agencies and organizations, governmental and non-governmental as it may deem appropriate.

12. Insert immediately after section 14 of the Principal Act a new section 15

(1) There is established the Human Rights Fund in this Act (in this Act referred to as ‘the Fund’) which shall be applied by the Commission towards

(b) the facilitation of human rights activities of the Commission in collaboration with other human rights non-governmental organizations, civil society organizations and other stakeholders.

crafted in broad terms – leaving the NHRI with wide discretion on how to engage with CSOs? It should however be noted that Section 12 of the Nigeria Human Rights Commission (Amendment) Act establishes a ‘Human Rights Fund’ to facilitate collaborative activities between the Nigeria Human Rights Commission and CSOs including NGOs and other stakeholders. While seemingly a positive step, engagement with CSOs should not be an activity in and of itself. On the contrary, collaborations with CSOs should be embedded within mainstream programs. The domestic legislations of Kenya, India, New Zealand, Cameroon and Bangladesh, either encourage cooperation, liaison or consultation with CSOs.³⁸ Several other legislations are silent on the issue of NHRI-CSO engagement.

Interestingly, the Human Rights Act of New Zealand instructs the Human Rights Commission to inquire into matters that may infringe human rights, including procedures, practices and laws – regardless of the perpetrator – governmental or non-governmental. In this regard, it appears that the Human Rights Commission of New Zealand has a specific mandate to monitor activities, policies and practices of NGOs, and to institute inquiries where a rights violation may occur. In practical terms, this provision alters the relationship between the New Zealand Human Rights Commission and CSOs. Rather than regarding both as equal partners working toward the same goal, the law regards CSOs as potential perpetrators of rights violations.³⁹

38. Kenya National Commission on Human Rights Act, 2002 states as follows:

16. (1) The functions of the Commission shall be —

(g) to encourage the efforts of other institutions working in the field of human rights and cooperate with such other institutions for the purpose of promoting and protecting human rights in Kenya.

The Protection of Human Rights Act, 1993 of India states:

12. Functions of the Commission

(i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights.

The Human Rights Commission Law, 2004 of Cameroon:

2: The Commission shall be responsible for the promotion and protection of human rights and freedoms. To that end, it shall:

Liaise, where necessary, with non-governmental organizations working for the promotion and protection of human rights and freedoms.

The Human Rights Commission Act, 2009, Bangladesh states:

12. Function of the Commission:

(1) The Commission shall perform all or any of the following functions, namely:—

(k) to encourage and coordinate the efforts of Non- Governmental Organizations and institutions working in the field of human rights;

39. The New Zealand Human Rights Act, 1993 reads:

Functions of Commission

(g) to consult and co-operate with other persons and bodies concerned with the protection of human rights:

V. BARRIERS TO NHRI-CSO ENGAGEMENT

The NHRI-CSO alliance largely depends on the character of both entities in any given setting. For the most, NHRIs largely determine whether to engage or not; how to engage; and the level or nature of engagement. It is without a doubt, an unequal yoke. As statutory bodies with huge budgets, guaranteed funding and access to state institutions, NHRIs seemingly need little from CSOs, whose existence and sustainability is often threatened by lack of funding and questions about their legitimacy and credibility. This might explain what might be termed as a ‘superficial’, ‘token’ or ‘activity based’ form of engagement that is prevalent in CSO-NHRI engagements today.

Where there is no engagement, NHRIs tend to perceive themselves as mandate holders and may resist attempts or efforts by CSOs to partner or undertake similar work. In such instances, NHRIs prioritize engagement with similar organizations or organizations that carry a legal mandate such as other NHRIs, government agencies or international organizations. This cluster of NHRIs tends to perceive CSOs as competitors for funding and relevance in terms of programming. The situation is not helped by the huge numbers of CSOs which arguably overwhelm NHRIs – especially where there is duplicity of work, little expertise and apparent donor agendas.⁴⁰

It must be acknowledged that in some instances, the factors that determine the level of engagement may be well beyond the control of the NHRI in question. It might be argued that as state agencies, NHRIs are caught up in the narratives and dictates of the governments of the day. When governments discredit CSOs by labelling them as partisan, corrupt, agents or conduits of hostile powers and pass laws aimed at decapitating them, NHRIs may feel the need to engage cautiously or distance themselves from CSOs completely, so as to appease the government. It would therefore appear that the attitude of a state towards CSOs informs relations between CSOs and NHRIs, to some extent.

Finally, NHRIs may wish to be seen as independent—not just from the government, but CSOs too. In some instances such as where states are openly hostile to CSOs or where state institutions are not receptive and cooperative with NHRIs, the latter may alienate CSOs—especially those that are confrontational or critical of the state.

(h) to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights.

(o) to assist and advice the organizations, institutions and generally the civil society for effective application of human rights.

40. CHRI, *supra* note 1, at 40.

CSOs, on the other hand, have largely lost optimism about the ability of NHRIs to promote and protect human rights.⁴¹ While they campaigned heavily for the establishment of NHRIs, increasingly, some NHRIs are perceived as apologetics for rights violations, hesitant promoters of rights whose independence is compromised.⁴² Therefore, in a few instances, CSOs too, have shunned engagement with NHRIs they perceive as illegitimate.⁴³ The Commonwealth Institute for Human Rights reports that after the appointment of commissioners for the Human Rights Commission in Sri Lanka contravened national laws and the Paris Principles, several CSOs viewed it as illegitimate and consequently disengaged.⁴⁴

VI. NHRI-CSO ENGAGEMENT PRACTICES

Behind every CSO-NHRI engagement, however abysmal or the total lack thereof, is a historical, political and social context. The benefits of NHRI-CSO engagement are enormous and littered in literature. This explains why in some cases, NHRIs and CSOs engage frequently while in others, engagement is totally absent or far in between. It should also be noted that because engagement in most cases is not intentional, it is undocumented or unreported. Practice shows that NHRIs do support the work of CSOs, consult regularly and hold joint activities with them.

NHRIs have generally been and continue to be critical of legislative and executive measures restricting the activities of CSOs. Recommendations to state authorities are preceded by extensive consultations with CSOs. Examples of specific cases abound. In 2016, the government in Croatia reduced funds allocated to CSOs through a decree. The Ombudswoman—who carries out functions of a NHRI, held consultations and recommended more funding in her 2016 report. The recommendation was adopted by the government in 2017.⁴⁵ Following proposals for tougher laws and harassment of some NGOs by government in 2014, the Uganda Human Rights Commission (UHRC) urged the Ministry of Internal Affairs to ensure that laws are “conducive and facilitative of the work of Human Rights Defenders registering as Non-

41. *Id.*, at 12.

42. *Id.*

43. *Id.*, at 40.

44. *Id.*

45. EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS, NATIONAL HUMAN RIGHTS INSTITUTIONS AND HUMAN RIGHTS DEFENDERS: ENABLING HUMAN RIGHTS AND DEMOCRATIC SPACE IN EUROPE, 11, available at: http://ennhri.org/IMG/pdf/ennhri_18_006-publication-04a-bat.pdf, last accessed June 10, 2019.

Governmental Organizations.”⁴⁶ This recommendation followed consultations with NGOs that culminated into an action plan and a desk for human rights defenders at the Commission.

NHRIs and CSOs hold joint events to commemorate special days or to implement specific projects. The Ghanaian Human Rights Commission and the South Africa Human Rights Commission (SAHRC) regularly co-opt CSOs in their activities.⁴⁷ In 2018, SAHRC and the African Policing Civilian Oversight Forum (APCOF) hosted a joint dialogue that brought together CSOs and government institutions. The dialogue partly aimed to “... offer a space for CSOs to engage on human rights-related policing issues.”⁴⁸ NHRIs and CSOs tend to engage in preparation for the Universal Periodic Review.⁴⁹ The Kenya and Australian NHRIs both partnered with CSOs for the countries’ international review processes. In Kenya, CSOs eventually followed up on the recommendations made to the government in the country’s first UPR process.⁵⁰ The National Human Rights Commission of Mongolia holds biannual partnership meetings with CSOs.⁵¹ In 2017, the meeting developed an action plan for 2018.⁵² At the event, CSOs identified potential areas for collaboration, which included conducting joint studies and events to commemorate the 70th anniversary of the Universal Declaration of Human Rights (UDHR) and the 25th anniversary of the Paris Principles, among others.⁵³

In some instances, NHRIs and CSO work collectively to advocate for new laws or legislative reform. In Uganda, between 2009 and 2012, CSOs and the UHRC jointly advocated for a substantive law on torture, cruel, inhuman and degrading treatment or punishment. In a similar fashion, the Human Rights Commission of Malaysia works with CSOs to campaign for the country’s accession to the United Nations Convention against Torture, Degrading or inhuman Treatment (UNCAT).⁵⁴ Also in 2013, the UHRC applauded efforts to form the “National Coalition on Human Rights Defenders”

46. Uganda Human Rights Commission (UHRC), *The 17th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda* (2015), at 128.

47. CHRI, *supra* note 2, at 35.

48. South Africa Human Rights Commission, Media Invite: SAHRC and APCOF hosts Dialogue on Human Rights and Policing, available at: <<https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1282-media-invite-sahrc-and-apcof-hosts-dialogue-on-human-rights-and-policing>>, (last accessed June 10, 2019)

49. CHRI, *supra* note 2 at 60.

50. *Id.*

51. AFHRD, *supra* note 27.

52. *Id.*

53. *Id.*

54. *Id.*

that would bring together HRDs.⁵⁵

At the regional level, CSOs in the Asia Pacific region founded the Asia NGO Network on National Human Rights Institutions (ANNI). This network functions the same way as the Asia Pacific Forum (the regional chapter of GANHRI). The major role of ANNI is to promote the effectiveness and independence of NHRIs in the region. As such, ANNI attends the annual fora of APF and makes submissions on behalf of its members. This engagement is formal and feeds into the activities of member CSOs at the domestic level.⁵⁶

VII. RETHINKING NHRI-CSO ENGAGEMENT

This section proposes formal, constructive and long-term forms of engagement between NHRIs and CSOs. The discussion is structured around the individual functions of NHRIs. The proposals are premised on a belief that constructive engagement will significantly reduce duplicity, improve relations and ensure optimal use of resources. From this perspective, constructive engagement means undertaking unilateral actions where engagement would add limited or no benefit. As such, it is argued that some functions are better performed by NHRIs and others by CSOs. Where engagement is undertaken, it must be executed in a manner that optimizes finances, expertise, human resource and feasibility.

A. Complaints, Investigations and Adjudication

NHRIs are typically mandated to receive complaints, investigate human rights violations and in some cases, receive evidence and adjudicate complaints. Several CSOs, on the other hand, offer legal aid services which include receiving complaints, undertaking investigations, legal aid camps, holding mediations and legal representation. These processes are parallel to each other, and quite often, victims or complainants will report the same matter to the NHRI and several other CSOs. It is therefore important to synchronize these processes. One way of doing so, would be to create a database of all legal aid service providers and a case referral and management system. This system could be centrally managed by the NHRI but accessible to *vett*ed legal aid service providers. In this way, complaints or cases would be better managed.

55. UHRC, *supra* note 46, at 123.

56. ASIA NGO NETWORK ON NATIONAL HUMAN RIGHTS INSTITUTIONS, REPORT ON THE PERFORMANCE AND ESTABLISHMENT OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ASIA (2018) available at: <https://www.humanrightsinasean.info/system/files/documents/2018_ANNI-Report_FINAL.pdf?download=1>, (accessed 3 June 2019).

Secondly, CSOs could refer complaints against security forces such as the army, police and intelligence personnel to NHRIs because of their easy access to state institutions. In a similar fashion, NHRIs should seek the expertise of specialized CSOs in matters such as domestic violence, land, child neglect and labor related violations during adjudication.

B. Research and Documentation

Both NHRIs and CSOs undertake research on varied themes and issues. NHRIs typically carry a mandate to protect and promote all human rights. Only a few NHRIs have a thematic focus. To fulfill this mandate, NHRIs generally research and document rights violations across several themes and publish reports with recommendations. Needless to say, no one institution may reasonably be expected to undertake this role. This presents an opportunity for long-term engagement with CSOs. CSOs tend to have a thematic focus and as such, possess deep knowledge and expertise in their areas of focus. NHRIs and (specialized) CSOs could enter agreements whereby the latter feed into the NHRI report. This is not to suggest that NHRIs should relegate some areas to CSOs. On the contrary, NHRI could have internal focal points on particular areas that work alongside CSOs. This would require working very closely with a number of CSOs by having joint planning meetings, mapping specific geographic areas, pooling resources and undertaking joint field visits.

C. Monitoring and Inspections

NHRIs monitor compliance with international obligations within a state. This function entails monitoring obligations under specific treaties such as the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), among others. NHRIs periodically report to various treaty bodies on a state's levels of compliance. This function requires regular engagement with state authorities at the policy level to ascertain progress and barriers to implementation. It also entails visiting places of detention such as prisons, police cells, children's rehabilitation centers, women shelters, among others.

CSOs also engage with treaty bodies and conduct their own inspections in a manner parallel to NHRIs. NHRIs are better placed to engage state officials and monitor detention centers while CSOs might have relatively easy access to health

facilities, factories, schools, among others. As such, NHRIs are able to not only state their findings but also to provide insight into measures or plans to address any challenges. It would therefore be constructive for NHRIs and CSOs to form thematic working groups that work together to monitor the state's compliance with international obligations. Membership to the working group could depend on the expertise of the CSO, capacity and credibility. This approach would minimize duplicity but would more importantly, build consensus at the domestic level. The working groups could also be responsible for monitoring the implementation of recommendations in various thematic areas.

D. Education

Promotion of human rights requires civic education, trainings, capacity building and sensitization. Several domestic legislations list education as a core function of the NHRI. A number of CSOs also carry out capacity building programs. Oftentimes, the target groups or audiences are the same. These are typically judicial officers, members of the legislative assembly, local council leaders, prisons authorities, police, the army, local grassroots communities and vulnerable groups, among others. Inevitably, the lack of coordination — both amongst CSOs, as well as between CSOs and NHRI, leads to wastage of resources, duplicity and fatigue of the intended beneficiaries.

CSOs have networks at the grassroots and access to some of the most reclusive populations. NHRIs should therefore map capacity-building activities to determine the most effective way of undertaking their own education/capacity building programs in a manner that is complementary. The mapping would inform the appropriate form of engagement. It is envisaged that NHRIs and various CSOs could agree to for instance, develop joint education programs, publish information books or undertake sensitization campaigns.

The Commission for Human Rights and Good Governance in Tanzania serves as best practice. The Commission entered a formal arrangement with ten NGOs in 2007 to enable joint implementation of monitoring and education programs.⁵⁷ The Memorandum of Understanding between the Commission and the NGOs delineates roles.⁵⁸

57. CHRI, *supra* note 2, at 50.

58. *Id.*

E. Legislative Review

A large percentage of NHRIs and CSOs review existing, new and proposed legislation to assess compliance with international norms. In some instances, both entities propose amendments or new laws. In Uganda, the UHRC acknowledged the contribution of CSOs in that respect in its 17th annual report. It observed:

... the undisputed growth of [Human Rights Defenders] HRDs that have through various campaigns brought about significant and commendable change in the arena of human rights. It was through the efforts of HRDs' campaigns, that laws prohibiting torture, domestic violence, trafficking in persons and female genital mutilation were enacted.⁵⁹

Law reform is brought about by extensive advocacy and intensive lobbying of individual representatives, specific committees in legislative bodies, or public interest litigation. CSOs are advantaged by their flexibility, broad networks at the grassroots and among elected representatives. This notwithstanding, the stated position of a NHRI on a matter carries a lot more weight than that of CSOs. As such, NHRIs should partner with CSOs that work around legal reform in order to support those efforts.

VIII. CONCLUSION

Effective engagement between NHRIs and CSOs is achievable. This however requires an honest reflection on the limitations of current forms of engagement. Questions that may be asked include: what opportunities are missed through unilateral actions or activity/project based forms of engagement? What more could be achieved and what steps should be taken to ensure constructive and long-term forms of engagement. The barriers to engagement outlined in this article are not insurmountable – even where the state is hostile to CSOs. It is the duty of NHRIs to promote associational freedoms and sensitize the state about the work of CSOs. Put differently, NHRIs should bridge the gap between CSOs and state organs even in the most challenging situations. This article discusses several possibilities and thus offers insight on how NHRIs and CSOs could redefine and reconstruct how they engage.

59. UHRC, *supra* note 46.

A COMPARATIVE ANALYSIS OF LEGAL PROTECTION FOR FEMALES AGAINST SEXUAL ASSAULT IN NIGERIA AND UGANDA

Ifeolu John Koni*

ABSTRACT

Women and girls constitute a large segment of human beings often referred to as more vulnerable members of the society who deserve special protection of the law, especially against all form of sexual abuse or assault. This article undertakes a comparative analysis of the legal frameworks of Uganda and Nigeria on sexual crimes with a view to determining the measure of protection their females enjoy under the relevant laws. The goal of this comparison is to bring out the lessons that the two countries, the latter representing West Africa and the former representing East Africa, can learn from each other in the attempt to develop the jurisprudence on rape and other variants of sexual assault in Africa. The article adopts the doctrinal research model and relies on both primary and secondary sources of information like the Constitutions of the two countries, the main statutes embodying their criminal law, judicial decisions (primary sources), books, journal articles, periodicals and the internet (secondary sources). The article observes that neither of the two countries has a composite law on sexual offences as a result of which the rules under which women and girls can seek protection are scattered in different statutes. However, Uganda has taken a remarkable step towards developing its jurisprudence in this area through the Sexual Offences Bill currently before the Parliament. As the Bill contains innovative provisions capable of granting the females better protection against sexual offences, this article recommends a speedy passage of the document and advises Nigeria to follow suit by initiating a separate law under which all females can obtain adequate safeguards against sexual violence and exploitation.

I. INTRODUCTION

One of the primary purposes of law, more specifically, of criminal law, is the protection or preservation of public order and safety. Other objects, as enumerated by the

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Wolfenden Committee on Homosexual Offences and Protection in England,² are: to protect the citizens from what is offensive and injurious; to preserve public decency; and to provide sufficient safeguards against the exploitation and corruption of the more vulnerable members of the society. The term “more vulnerable members of the society” can rightly be interpreted to be referring to women, children, the physically challenged and the aged.³ Accordingly, while it is assumed that every law abiding citizen of the society is entitled to legal protection against criminality, there is no doubt that some class of citizens, by reason of age, gender or other circumstances of birth, ought to be given a special consideration by lawmakers and law enforcement personnel. This is the jurisprudential basis for the making of special provisions for women (and girls), children, the physically challenged, the aged, among others, in the legislative instruments of most modern States.⁴

As a matter of fact, protection of life and property, coupled with the provision of a secure environment for people to pursue their legitimate businesses and careers, is seen worldwide as an embodiment of the social contract between the government and the governed. It is for this reason that the constitutional instruments of these States embody provisions stipulating that the security and welfare of the citizens shall be the primary purpose and responsibility of government.⁵

Women and girls, no doubt, constitute a significant part of the class of the “more vulnerable members of the society” by virtue of their unique nature as the fairer gender and as mothers (and potential mothers) in their nations. It is intended in this article to examine the extent to which they are protected by law, using Nigeria and Uganda as case studies. The primary objective of the article is to determine whether this class of people enjoy sufficient protection under the relevant laws of their countries, to enable them play their roles effectively as wives, mothers and career women. The article also seeks to identify the major lessons that these two great African States can learn from each other in terms of providing adequate safeguards against the abuse and exploitation of women and girls.

2. For a more elaborate discussion of the report of the Wolfenden Committee, *see*, IFEOLU J. KONI, APPRECIATING CRIMINAL LAW IN NIGERIA, DECISION MANAGEMENT CONSULT LIMITED, ILORIN (2016) 3-4.

3. *Id.*

4. See, for instance, the Constitution of the Republic of Uganda, 1995 (as amended), article 33(3), granting special protection to women on the basis of their unique status, and the Child Rights Act, 2003 of Nigeria, guaranteeing the provision of protective measures or special needs of disabled children to enhance their enjoyment of rights contained in the Act.

5. See the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 14 (2) (b). For a similar provision in the Constitution of the Republic of Uganda, 1995 (as amended), see article III (v).

II. THE CONCEPT OF SEXUAL ASSAULT

Before defining what sexual assault means, it is important to first consider the meaning of the term “assault”. Assault is both a crime and a tort. It is the threat or use of force on another that causes that person to have a reasonable apprehension of imminent harm or offensive contact or the act of putting another person in reasonable fear or apprehension of an immediate battery by means of an act amounting to an attempt or threat to commit a battery.⁶

In a strict sense, particularly, under the law of torts, assault is distinguishable from the offence of battery, although ordinary usage now creates a certain difficulty in differentiating between the two.⁷ The word “assault”, in general usage, connotes a physical attack. However, in the middle ages, the terms “assault” and “battery” were given their technical meanings which they seem to have retained till date. The distinction between the two lies in the fact that assault, strictly speaking, does not involve the application of actual force. It is sufficient that the force is threatened whereas battery does not.⁸ By this technical meaning, assault is the preparatory stage to the commission of the crime of battery.

In Nigeria and Uganda, it seems that the main enactments embodying criminal law in these two countries use the term “assault” in a general sense, i.e., to cover the meanings of both assault and battery.⁹ It is equally in this sense that the term will be used in this article. It is important to state that assault may be lawful or unlawful. Any assault that is authorized or sanctioned by law will not create liability. For example, under sections 253-256 of the Nigerian Criminal Code, an assault committed in the following circumstances will be lawful —

- i) When a person is charged by law with the duty of executing or giving effect to a lawful sentence of court;
- ii) when a person is executing the lawful process of a court and he is required to arrest or detain another person under such process; and
- iii) when a person is executing a lawful warrant issued by any court and he is required to arrest or detain another person under such warrant.¹⁰

6. B. GARNER, BLACK'S LAW DICTIONARY, 9TH EDN (2009), at 130.

7. See, KONI, *supra* note 1, at 275.

8. *Id.*

9. See the Penal Code Act, Cap 120, Laws of Uganda, 2009, sections 235 and 236; and the Criminal Code Act, Cap C38, Laws of the Federation of Nigeria (LFN), 2004, section 252. See further Penal Code Act, Cap P3, LFN 2004, section 264.

10. Although there are no similar provisions in the Ugandan Penal Code Act, it is clear from the wordings of section 238 that assault committed in similar circumstances are legally excusable.

Having considered the general meaning of assault, we can now proceed to examine what will amount to sexual assault in law. The *Black's Law Dictionary* defines sexual assault as “sexual intercourse with another person who does not consent.”¹¹ The term has also been defined as “an offensive sexual contact with another person, exclusive of rape.”¹² The *Black's Law Dictionary*, citing the Model Penal Code of the United States of America, lists a number of circumstances under which sexual contact can result in an assault. These include cases —

- (i) where the actor compels the victim to submit by force or by certain specified threats;
- (ii) where the actor has impaired the victim's capacity to control or appraise her conduct by administering drugs or other intoxicants;
- (iii) where the victim is unconscious or is less than 10 years old;
- (iv) where the actor inflicts serious bodily injury upon the victim or another;
- (v) where the victim is suffering from a mental disease or defect that the actor knows to render her incapable of appraising the nature of her conduct;
- (vi) where the victim is under a known misapprehension as to the nature of the act or the existence of a marital relationship between the parties;
- (vii) consensual intercourse, other than between husband and wife, where the victim is less than 16 years old and the actor is at least four years older than the victim;
- (viii) consensual intercourse where the victim is under 21 and the actor is a guardian or other person responsible for the victim's welfare;
- (ix) where the victim is in a custodial institution and the actor has supervisory or disciplinary authority over her;
- (x) where the victim is a female who is induced to participate in the sexual act by a promise of marriage that the actor does not intend to perform; and
- (xi) where there is any touching of the sexual or intimate parts of another person for the purpose of arousing or gratifying the sexual desire of either party.¹³

We shall be adopting this broad definition in our analysis of sexual assaults against the females in this paper. It is, indeed, implicit in this definition that sexual assaults or, for that matter, cases of sexual abuse or exploitation, are not restricted to females – women and girls. There have also been reported (and of course unreported) cases of men and

11. GARNER, *supra* note 9, at 123.

12. *Id.*

13. See generally the Model Penal Code, sections 213.1 - 213.4.

boys being sexually abused mostly by their male counterparts.¹⁴ These latter cases are, however, outside the scope of this article, although references may intermittently be made to them. The truth of the matter is that cases of sexual assaults against men and boys are mere exceptions to the general occurrences.

III. LEGAL FRAMEWORK FOR THE PROHIBITION OF SEXUAL ASSAULTS IN UGANDA

The relevant laws to be considered under this subheading are: Constitution of the Republic of Uganda, 1995 (as amended), the Penal Code Act,¹⁵ and the Sexual Offences Bill of 2015. They will now be considered in the outline.

A. *The Constitution of Uganda, 1995*

The provisions of the Ugandan Constitution relevant to the subject of this article are articles 24, 27, 31 and 33. Article 24 provides that “No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.” Even though this right is enjoyable by all people domiciled in Uganda, it seems that the right was created more particularly to protect the interest of more vulnerable members of the society like women and girls. Accordingly, in the case of *Victor Juliet Mukasa and another v. Attorney General*,¹⁶ the court, in interpreting this provision, held that the fondling of the breasts of the 2nd applicant coupled with her public humiliation amounted to a violation of her right to dignity.

Article 27 embodies the right to privacy of person, home and other property. It states as follows:

No person shall be subjected to —

(a) unlawful search of the person, home or other property of that person; or

(b) unlawful entry by others of the premises of that person.

(2) No person shall be subjected to interference with the privacy of that

14. For example, it has been reported that population-based studies conducted among adolescents in developing countries indicate that 3.4% of males in Namibia and 13.4% in Tanzania have experienced a sexual assault while 11% of male adolescents in South Africa and 29.9% in Cameroon have been victims of sexual initiation. See, Z. Namaganda, Examination of the legal framework for protection of females against sexual violence in Uganda (LLM Dissertation, School of Law, Kampala International University, Kampala, Uganda, May 2019), at 12. Unpublished.

15. Cap 120, Laws of the Republic of Uganda, 2009.

16. (2008) AHRLR 248 (UgHC 2008).

person's home, correspondence, communication or other property.

The foregoing provision appears to be a double-edged sword. On the one hand, it can serve as a bulwark against sexual assaults since some cases of abuse take place in the homes of the victims. For example, in the *Victor Mukasa case*,¹⁷ the assault started from the home of the 2nd applicant and continued in the office of the law enforcement agents who arrested her. It is also a fact that some cases of rape and attempted rape, the most serious form of assault on females, have been reported in the homes of the victims. In the Nigerian case of *R v. Effiong*,¹⁸ a man entered the bedroom of a woman (the complainant) uninvited and requested to have sexual intercourse with her. He actually caught hold of her and attempted to force himself on her.

On the other hand, the provision can be used as a shield to protect the perpetrators of the crime. This is because most of the cases of sexual assaults take place in the homes of the suspects. The matter is made worse when minors are the victims and they have been intimidated to an extent that they cannot speak up against their attackers.

The provisions germane to this subject under article 31 of the Ugandan Constitution can be found in subsections (1), (2a) & (3) which read thus:

- (1) A man and a woman are entitled to marry only if they are each of the age of eighteen years and above....
- (2a) Marriage between persons of the same sex is prohibited
- (3) Marriage shall be entered into with the free consent of the man and woman intending to marry.

Earlier in this article, we have adopted a broad definition of sexual assault incorporating a number of circumstances that can ground an allegation of the commission of the crime. One of them is the defilement of a girl under 16 years which is captured under article 31 (1) above. Another one is the rule against coercion or any form of force or threat which can also be situated within article 31 (3). Although same sex marriage is not specifically mentioned among the circumstances, the conditions listed under sections 213.1 – 213.4 of the Model Penal Code, which the *Black's Law Dictionary* refers to, shows that it is only a consensual sexual intercourse between a man and a woman, each of whom is an adult, and neither of whom is suffering from any mental or social incapacity, that will be protected by law.

One provision that underscores the gender sensitivity of the Ugandan Constitution, and which is also relevant to this discourse, is article 33(3), which states

17. *Id.*

18. (1936) 3 WACA 83.

that “the State shall protect women and their rights, taking into account their unique status and natural material functions in society.” If, indeed, there is any legal basis for advocating for special protection for the females in Uganda, it is this clause. There is no doubt that it is “the unique status and natural material functions of women”, including, of course, girls, that make them ordinarily susceptible or vulnerable to sexual harassment, violence and exploitation. The framers of the Ugandan Constitution must be commended for inserting this provision in the organic law of the country.

B. The Penal Code Act¹⁹

Prior to the advent of colonialism, the Republic of Uganda, like other African countries, was not a lawless society. The country had its own system of criminal justice, though customary in nature. That the white men (British) who colonized the country between 1894 and 9 October 1962 attempted to whittle down and even abrogate customary criminal law is a known historical fact. But, due to the tenacity of the diehard traditionalists of the time, the attempt to completely throw away the rules of customary criminal law did not succeed initially. Accordingly, by the time the colonial masters were departing and the Penal Code was being drafted, some rules of customary criminal law that had been abrogated by the Independence Constitution of 1962²⁰ were codified as part of the criminal law of Uganda.²¹ It has been suggested that the Code reflected natural law theory of modality. The idea that law and morality are not unconnected and that it is apparently for this reason that some acts which under the English law would not constitute crimes have been criminalized by the Penal Code Act (PCA).²² The acts are contained basically under Chapter XIV of the Code and are labeled as “offences against morality.” This is the Chapter of the PCA that embodies the statutory framework for the protection of women and girls against sexual assaults in Uganda.

We shall now proceed to consider these provisions. The relevant ones are sections 123, 124, 125, 126, 128, 129, 129B, 130, 131, 132, 133, 140 and 144.

1. Offence of rape—As stated earlier, rape is the worst form of sexual assault that can be committed against a female. The offence is criminalized under section 123 of the PCA while the punishment for it is stated in section 124. According to section 123,

19. Cap 120, Laws of the Republic of Uganda, 2009.

20. See Independence Constitution of 1962, article 28 (12).

21. See I.J. Koni, INTRODUCTION TO CRIMINAL LAW IN UGANDA, Panamaline Books Distributors Limited, 2019) at 19-20.

22. *Id.*

any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threat or intimidation of any kind or by fear of bodily harm, or by means of false representation as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape.

The ingredients of this crime are embedded in this definition. The most significant of these elements is the lack of consent. Even where the consent is present, the rule is that it must have been freely or voluntarily obtained by the actor. There must also be no misrepresentation as to the nature of the act and the parties involved therein.

The most striking thing about the crime of rape is the idea of making it a capital offence under the Act. To this end, section 124 categorically states that a person convicted of rape is liable to suffer death. Furthermore, an attempt to commit the crime of rape renders the actor liable to imprisonment for life.²³ This underscores the seriousness with which this offence is treated in Uganda.

2. *Abduction*—The provision relating to abduction applies to both male and female but from the wording of section 126 which contains this crime, there is no doubt that the intention of the legislature is to protect the latter. It states that ‘any person, whether male or female, who, with intent to marry or be married to, or to have sexual intercourse with another person or to cause that person to marry, be married or have sexual intercourse, takes that other person away or detains him or her against his or her will, or unlawfully takes another person under the age of 18 years out of the custody of any of the parents or of any other person having lawful care or charge over that person commits an offence and is liable to imprisonment for seven years.’

What has now become a regular practice by the dreaded *Boko Haram* insurgents in Nigeria to forcefully take school girls away and marry them out to their commanders and fighters is surely within the contemplation of this provision. There is no doubt that the intention of this rule is to preserve the right of girls and young ladies to marry suitors of their own choice.

3. *Indecent Assaults*—It is an offence under the Act for any person to unlawfully and indecently assault any woman or girl and whoever is found guilty of the charge is liable to imprisonment for 14 years.²⁴ Where the girl assaulted is under 18 years, it shall be no defence that she consented to the act of assault. It is further

23. Penal Code Act, section 125.

24. *Id.*, section 128.

provided that any person who, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or girl, or intrudes upon the privacy of such woman or girl, commits a misdemeanor and is liable to imprisonment for one year.²⁵

What will amount to indecent or unlawful assault is not defined in the Act. This is a serious lacuna for two main reasons. First, this is a serious offence that attracts 14 years imprisonment. It is important therefore that a prospective actor knows the implication of what he or she intends to do. The second, and perhaps, more important, reason is the difficulty in determining the ingredients of this offence since the definition from which they would have been extracted is lacking. Any attempt to amend the provisions of the Penal Code Act must address this lacuna as a matter of urgency.

4. *Defilement of persons under 18 years*—The definition of this offence is apparent from the wording of section 129 (1). It states that “any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement....” The punishment for the offence is life imprisonment.²⁶ An attempt to commit the offence renders the actor liable to imprisonment for 18 years.²⁷

What will amount to a “sexual act” is notably defined in the Act as “(a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ; (b) the unlawful use of any object or organ by a person on another person’s sexual organ.”²⁸ The Act goes further to define a “sexual organ” to mean “a vagina or penis.”²⁹ It needs to be pointed out that although this provision applies generally to both male and female, its main intention, as can be inferred in particular from the definition of the term “sexual act”, is to grant special protection to the latter.

The crime of defilement is treated as a more serious offence when it is committed against a person who is below the age of 14 years, or where the actor is infected with the Human Immunodeficiency Virus (HIV), or where he/she is a parent or guardian or a person in authority over the victim, or where the victim is a person with a disability, or where the actor is a serial offender. In any of the foregoing circumstances, the actor is liable to suffer death.³⁰

25. *Id.*, section 128(3).

26. *Id.*, section 129 (1).

27. *Id.*, section 129 (2).

28. *Id.*, section 129 (7).

29. *Id.*

30. *Id.*, section 129 (3) & (4). Any person who attempts to commit this offence is liable on conviction to imprisonment for life. *See*, section 129 (5) of the Act.

5. *Payment of compensation*—The victim of the offence of defilement or aggravated defilement as defined under section 129 of the Act is entitled to be paid compensation by the offender, in addition to any sentence that the court may impose on the latter. The compensation is for any physical, sexual or psychological harm caused to the victim by the offence.³¹ This is a commendable provision as it has addressed the age long complaint about the neglect that victims of crimes have been suffering under our criminal justice system.

6. *Defilement of idiots or imbeciles*—One of the circumstances under which sexual contact can amount to an assault, as stated earlier in this article, is where the victim is suffering from mental disease or defect that the actor knows to render her incapable of appraising the nature of her conduct.³² Under this circumstance, the victim is deemed incapable of giving a valid consent to the sexual act in law. To this end, section 130 of the PCA states as follows:

Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, commits a felony and is liable to imprisonment for fourteen years.

One interesting aspect of this provision is that both the substantive offence and an attempt to commit it attract the same penalty. This is a bit strange as generally the crime of attempt, one of the inchoate offences, usually attracts lesser punishment than the commission of the substantive offence. This is probably a slip that ought to be corrected during any future attempt to amend the Act.

The penalty attached to the commission of the substantive offence of defilement of an idiot or imbecile (14 years imprisonment) is too mild, given the gravity of the offence. As indicated in the wording of this provision, the victim of the crime is deemed incapable of giving consent. The act should therefore be elevated to the status of an “aggravated defilement” that should render the actor liable to, at least, imprisonment for life.

31. *Id.*, section 129B.

32. *See*, GARNER, *supra* note 9.

7. *Procuration*—Section 131 of the PCA provides as follows:

Any person who—

- (i) procures or attempts to procure any girl or woman under the age of 21 years to have unlawful carnal connection, either in Uganda or elsewhere, with any other person or persons;
- (ii) procures or attempts to procure any woman or girl to become, either in Uganda or elsewhere, a common prostitute;
- (iii) procures or attempts to procure any woman or girl to leave Uganda, with intent that she may become an inmate of or frequent a brothel elsewhere; or
- (iv) procures or attempts to procure any woman or girl to leave her usual place of abode in Uganda, such place not being a brothel, with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Uganda or elsewhere, commits an offence and is liable to imprisonment for seven years.

The rule embodied in this section is intended, apparently, to curb the increasing wave of trafficking in girls under the pretext of assisting them to get jobs in Dubai, United Arab Emirate (UAE), and other countries like Italy and Saudi Arabia.

The provision of section 132 of the Act deals with a similar problem the only difference being that here the use of threat or intimidation is involved. The section also introduces the elements of false representations and the use of drug or any substance designed to overpower or stupefy the victim. Surprisingly, however, a lesser punishment is prescribed here (two years imprisonment, being a misdemeanor),³³ despite the fact that it is obviously a more serious offence than the one created under section 131 (*procuration simpliciter*).

8. *Householder permitting defilement*—It is an offence under the PCA for any person, being the owner or occupier of a premise or having or acting or assisting in the management or control of the premises, to induce or knowingly suffer any girl under the age of 18 years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally. Anyone found guilty of this offence is liable to imprisonment for five years.³⁴ This is clearly a rule against sex slavery and its inclusion in the Act is commendable.

33. According to section 22 of the PCA, the general punishment for any misdemeanor is imprisonment for a period not exceeding two years.

34. PCA, section 133.

9. Conspiracy to defile—Under section 140 of the PCA, any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means to permit any man to have unlawful carnal knowledge of her commits a felony and is liable to imprisonment for three years. This provision applies to females of different ages and is apparently intended to grant them protection against sexual exploitation or abuse.

10. *Knowledge of age of female*—As an additional protection for the females, and to minimize the effect of technicality in the proof of cases of sexual assaults, the Act provides that save as otherwise expressly stated, it is immaterial with reference to offences committed against a woman or girl under a specified age that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.³⁵

C. Sexual offences Act 2021

In what probably marked a watershed in the fulfillment of the long awaited dream of having a separate, composite and comprehensive enactment on sexual offences, Monica Amoding, then National Female Youth Member of Parliament, on 14 April 2016, tabled before the Parliament of Uganda the Sexual Offences Bill. It was brought as a private member's Bill under the aegis of the Uganda Women's Parliamentary Association (UWOPA). The objects of the Bill, according to the long title thereto, include—

to enact a specific law on sexual offences for effectual prevention of sexual violence, enhance punishment of sexual offender; provide for the protection of victims during sexual offences trial; provide for extraterritorial application of the law; repeal some provisions of the Penal Code Act, Cap 120; and for other matters connected therewith.

On 4th May 2021, the Parliament of Uganda passed the Sexual Offences Bill. However, at the time of writing this article, the Bill was yet to be assented to by the President into law. We shall now proceed to highlight some of the major provisions of the Bill, particularly those that have direct bearing on the subject of this article.

1. *Marital rape*—Clause 2(3) of the Bill provides for marital rape, thus addressing the nagging question as to whether a man can rape his own wife. According

35. *Id.*, section 144.

to this clause, the offender upon conviction is liable to imprisonment to not less than one year imprisonment or a fine of not less than 24 currency points (Ugandan Shillings Four Hundred and Eighty Thousand only). The significance of this provision can be situated in a 2007 Ugandan Bureau of Statistics Report to the effect that 68% of ever-married women aged between 15 and 49 years had experienced some form of violence inflicted by their spouses or intimate partners.³⁶

2. *Expanded definition of rape*—Clause 2 of the Bill has expanded the definition of rape beyond the provision of section 123 of the PCA. By the additional elements, where the spouses are living together, a spouse may refuse consent to a sexual act on any ground which may include—

- i) poor health or medical condition of the spouse refusing to perform a sexual act;
- ii) evidence of reasonable fear that engaging in a sexual act is likely to cause injury or harm to the spouse refusing to perform a sexual act; or
- iii) any other ground deemed to be reasonable by the court.

3. *Offence of aggravated rape*—The Bill attempts to distinguish between ‘rape’ and “aggravated rape.” The main difference lies in the penalty. Whereas the punishment for rape is life imprisonment that of aggravated rape is death. The circumstances that can lead to aggravated rape are listed under clause 3 (2) and they include—

- (i) whether or not the offender is infected with HIV or suffering from AIDS;
- (ii) whether or not the offender is infected with a sexually transmitted disease;
- (iii) whether or not the offender is a serial offender;
- (iv) whether or not the act constituted a gang rape;
- (v) whether or not the victim suffers disability;
- (vi) whether or not the offence was committed in the presence of a child;
- (vii) the age of the person against whom the offence was committed; and
- (viii) the extent of the harm caused to the person against whom the offence was committed.

4. *Sexual assault*—Clause 6 of the Bill defines sexual assaults to mean engaging another person in a sexual manner against her will forcefully or otherwise by direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of that

36. SEXUAL OFFENCES BILL 2015 PETITION: AN ANALYSIS OF ITS EFFECT ON FEMALE SEX WORKERS, LESBIANS, BISEXUAL AND TRANSGENEER WOMEN AND OTHER MARGINALISED GROUPS OF PEOPLE IN UGANDA, available at <https://www.kuchutime.com> (accessed 14 February 2020).

person; or exposing or displaying his or her genital organs to another person, or with the intention to insult the modesty of that other person uttering any word, making any sound or gesture or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by that person or intruding upon the privacy of such person. The recommended penalty for this offence is one year imprisonment or a fine of twenty four currency points.

5. *Sexual harassment*—This is contained under clause 7 and it states that a person who makes unwelcome sexual advances or requests for sexual favours or engages in verbal or physical conduct of a sexual nature where submission to such conduct is made a condition of an individual's employment, or submission to or rejection of such conduct is used as the basis for employment decisions, or where the conduct has the purpose of unreasonably interfering with an individual's work performance, commits an offence known as sexual harassment.

6. *Offences relating to position of trust*—Clause 8 of the Bill forbids a person in a position of trust from taking advantage of his or her influence over another person to have sexual intercourse or commit any other sexual act with that person. The recommended penalty for this offence is ten years imprisonment.

7. *Improper sexual activity with persons in custody*—The Bill, under clause 11, forbids an official of a correctional facility from engaging in sexual contact or intercourse, harassment or assault with a person in custody. The recommended punishment is seven years imprisonment.

8. *Sexual act with a person incapable of giving consent*—Under clause 8 of the Bill, any person who performs a sexual act with a person incapable of giving consent commits an offence and is liable to imprisonment for life.

i) *Proceedings in camera*—Under clause 32 of the Bill, the court before which criminal proceedings relating to sexual offences are held, shall direct any person whose presence is not necessary not to be present, unless the complainant and the accused otherwise request. And according to clause 33, where a court directs a proceeding to be conducted in camera, no person shall publish any information that may reveal the identity of a complainant or accused in the proceeding.

ii) *Corroboration of Evidence*—By clause 35 of the Bill, the evidence of a child of tender years shall be admissible in court where the judge or magistrate

determines that the child is of sufficient mind to testify, where the child has been able to identify the actor, and where there is sufficient evidence to corroborate the child's testimony.

iii) Sexual offences databank—Clause 36 states that the court shall, where the accused person is convicted, order that the DNA sample be stored in a databank for sexual offenders. The databank is to be kept for such purpose and at such place and shall contain such particulars as may be determined by the Minister.

IV. LEGAL FRAMEWORK FOR THE PROHIBITION OF SEXUAL ASSAULTS IN NIGERIA

Unlike the Constitution of Uganda, the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) is by no means gender sensitive. Accordingly, there is really no constitutional basis for seeking or pursuing any agenda, legally speaking, for special protection for women and girls against sexual abuse and assaults. The provision embodying the right to dignity of human person³⁷ from which the females can seek protection against sex related violence or assault applies to all persons.

The truth of the matter is that the legal framework for the protection of females against sexual assaults in Nigeria is scattered in different enactments. Currently, there is no composite instrument dealing exclusively with sexual crimes. The Sexual Harassment Bill that is currently before the Senate, which would have filled this gap, is lopsided, as will be expatiated later. The relevant laws to be considered under this subheading are the Criminal Code Act,³⁸ the Penal Code Act,³⁹ and the Sexual Harassment Bill currently before the National Assembly.

Nigeria operates a dual system of criminal law, with the Criminal Code and the Penal Code applying in the southern and northern Nigeria respectively. In most cases, the principles contained in the two codes with reference to the relevant subjects are basically the same. It is therefore in those few cases where the provisions are different that references shall be made to the two codes in this discourse.

A. Sexual offences under the Criminal and Penal Codes

It is important to state, first and foremost, that Nigeria, unlike Uganda, is a Federation of 36 States and the Federal Capital Territory (FCT), Abuja. There are therefore

37. See, the Constitution of the Federal of Republic of Nigeria, 1999 (as amended), section 34.

38. Cap C38, Laws of the Federation of Nigeria (LFN) 2004.

39. Cap P3, LFN 2004.

Federal, State and FCT laws. In the context of criminal law, the two main federal enactments are the Criminal Code and the Penal Code. They apply respectively in the southern and northern parts of Nigeria. Each of the 36 States of the Federation has also enacted its own criminal or penal code. The States in the North, plus the FCT, enact their own penal code laws, which are basically a duplication of the Penal Code Act, while in the South, the States have re-enacted the Criminal Code Act as criminal code laws of their respective jurisdictions.

Our main focus in this article is on some sexual offences contained in the two main enactments — the Criminal Code and the Penal Code — that are intended to protect the females.

1. *Rape*—The provisions of section 357 of the Criminal Code and 282 of the Penal Code (both of Nigeria) are *in pari material* with that of section 123 of the Penal Code Act of Uganda, cited earlier. The ingredients of the offence are also basically the same. The two jurisdictions differ only in terms of the penalty for rape. According to section 358 of the Criminal Code, any person who commits the offence of rape is liable to imprisonment for life.⁴⁰ But under section 124 of the Ugandan PCA, a person convicted of rape is liable to suffer death.

The offence of attempted rape under the Nigerian Criminal Code attracts 14 years imprisonment⁴¹ whereas under section 125 of the Ugandan Penal Code the penalty is life imprisonment.

2. *Defilement of girls and idiots*—The Criminal Code provides that any person who has unlawful carnal knowledge of a girl under 13 years is liable to imprisonment for life and an attempt to commit this crime renders the actor liable to imprisonment for 14 years.⁴²

The approach here is slightly different from that of Uganda where the law talks about defilement of persons under 18 years and the offence is labeled “a sexual act”. The penalty for the commission of the substantive offence (life imprisonment) is the same in both jurisdictions but an attempt to commit the offence renders the actor liable to 14 and 18 years imprisonment in Nigeria and Uganda respectively.

The Ugandan Code makes a distinction between defilement simpliciter and aggravated defilement while in Nigeria there is no such clear distinction. The latter attracts a death penalty in Uganda.⁴³

40. See, Penal Code Act of Northern Nigeria, section 281, for a similar provision.

41. Criminal Code Act, section 359.

42. *Id.*, section 218.

43. See, Penal Code Act (Uganda), section 129 (3)8 (4).

The Criminal Code further provides under section 221 that any person who has or attempts to have unlawful carnal knowledge of a girl being of or above 13 years and under 16 years of age, or knowing a woman or girl to be an idiot or imbecile, has or attempts to have carnal knowledge of her, is guilty of a misdemeanour and is liable to imprisonment for two years, with or without caning.

It is clear from the foregoing that defilement of girls under 18 years, idiots and imbeciles attracts stiffer penalties in Uganda than in Nigeria. It should also be noted that corporal punishment, such as caning or whipping, has been abolished in Uganda, pursuant to the Penal Code (Amendment) Act No 8 of 2007 which repeals all references to it in section 129 and other sections of the Penal Code Act, Cap 120 of Uganda. It is further noted that whereas section 129B of the PCA of Uganda makes provision for payment of compensation to victims of defilement, there are no such provisions in both the Criminal Code and the Penal Code of Nigeria.

3. *Corroboration in sexual offences in Nigeria*—One of the most controversial issues regarding sexual offences in Nigeria, particularly those involving teenage girls, is the requirement of corroboration. These offences are listed under sections 218, 221, 223 and 224 of the Criminal Code. In respect of all of the above, it is provided that a person cannot be convicted upon the uncorroborated testimony of one witness. Even in other cases, the courts in Nigeria have always regarded it as unsafe to convict on the uncorroborated evidence of the complainant only.⁴⁴ It has been argued⁴⁵ that if the requirement of corroboration were to be applied loosely, then it would be difficult for a young girl of about 12 years raped and dumped in a deserted location by an evil man to establish a case of defilement against the actor even where she is able to identify him and remember all the details of the act. The truth of the matter is that most cases of defilement are committed under the cover of darkness and in circumstances where there may be no other eyewitness apart from the victim.

B. Sexual Harassment Bill

The attempt by Nigeria to enact a Sexual Harassment Bill was apparently prompted by a “BBC #SexForGrades film” which went viral on the social media platform in October 2019. Following the report, the Nigerian Senate introduced a Bill that aims at preventing the sexual harassment of university students. The proposed legislation,

44. See, *Sambo v. State* (1993) 6 NWLR (pt. 300) 399; *Oladokun Ogunbanjo v. State* (2007) 8 NWLR (pt 1035) 157, and *Sunmonu v. IGP* (1957) WRNLR 23.

45. See, KONI, *supra* note 1, at 289.

according to a BBC report on Africa,⁴⁶ followed a BBC investigation that uncovered alleged sexual misconduct by lecturers in Nigeria and Ghana.

The Bill titled: “A Bill for an Act to Prevent, Prohibit and Redress Sexual Harassment of Students in Tertiary Educational Institutions and for matters concerned therewith, 2019”, was sponsored by the Deputy Senate President, Ovie Omo-Agege, and 106 other Senators. The Bill, according to a report by the *Premium Times*,⁴⁷ seeks to promote and protect ethical standards in tertiary institutions and to protect students against sexual harassment as well as prevent sexual harassment of students by educators in tertiary institutions.

1. *Contents of the Sexual Harassment Bill*—Clause 1 is on the objective of the Bill while clauses 2 and 3 are on the relationship of authority, dependency and trust between an educator and a student. Offences constituting sexual harassment are captured under clause 4. In clause 5, marriage is a defence to a charge of harassment under the Bill, but under clause 6 it is not a defence that the student consented to the offence.

Clauses 8 to 10, 11/12 and 13/14 are respectively on commencement of criminal proceedings, penalty, and civil action for an educator’s breach of fiduciary duty.⁴⁸ Institutional disciplinary measures, independent sexual harassment prohibition committee and disciplinary procedure are respectively dealt with under clauses 15, 16 and 17. Under clause 18, there could be a judicial review of decisions taken by the institutions while criminal liabilities of administrative heads are spelt out in clauses 19 and 20. A student can be held liable for a false complaint under clauses 18, 21 and 22 but there are provisions for the protection of students from victimization under any guise, pursuant to clauses 23 to 25.

The lopsided nature of the Bill has attracted criticisms from some commentators who argue that the scope should have been widened to cover similar relationships especially priest congregant, employer- employee, father-daughter, warder- prisoner, etc.⁴⁹ Another concern raised on the Bill is the suggestion that it is gender biased by not taking into consideration the allegation that some female students do harass male educators by their mode of dressing.

46. Nigeria seeks anti-sexual harassment law after BBC #SexForGradesfilm><https://www.bbc.com><accessed, dated 10 October 2019 (accessed 15 February 2020).

47. *Queenesther Iroanusi, Nigeria: Anti-Sexual Harassment Bill scales second Reading at Senate, available at <https://allafrica.com> (accessed 15 February 2020).*

48. *Id.*

49. *Id.*

V. LESSONS FROM UGANDA TO NIGERIA

This analysis has shown clearly that Uganda has a more robust and comprehensive legal framework for the protection of females against sexual abuse and exploitation than Nigeria. In this connection, attention cannot but be drawn to some specific areas. The first is the penalty for committing the offence of rape. In Uganda, it is treated as a capital offence under the Penal Code Act.⁵⁰

In Nigeria, the offender is liable on conviction to life imprisonment.⁵¹ The Penal Code Act, which is applicable in northern Nigeria, even adopts a rather liberal approach to the punishment by stipulating in section 283 that “whoever commits rape shall be punished with imprisonment for life or for any less term and shall also be liable to fine.” The implication of this provision is that the court is at liberty to even as low as two years imprisonment for rape, thereby making a charade of the life jail prescription.

It has to be acknowledged that the world is moving away from death penalty. Nevertheless, the penalty for a heinous offence like rape should not be trivialized as the Penal Code Act of Nigeria seems to have done under the provision aforementioned. It is submitted that the approach adopted by Uganda, under the proposed Sexual Offences Bill, in distinguishing between rape *simpliciter* and aggravated rape, for the purpose of imposing a stiffer punishment for the commission of the latter, is much better. There is no doubt that when rape is committed under any of the circumstances mentioned in clause 3(2) of the proposed Bill, the life of the victim is gravely endangered so much so that rape (aggravated rape) at that point may be elevated to the status of murder or culpable homicide punishable with death.

Another area where Uganda seems to have taken a commendable step is the payment of compensation to victims of defilement as stipulated under section 129B of the PCA. This is in addition to any sentence that the court may impose on the offender. This provision is not replicated in either the Criminal Code or the Penal Code of Nigeria.

Furthermore and as earlier stated, the requirement for corroboration in respect of some offences dealing with defilement of young girls has created a lot of avoidable evidential burden on the prosecution and the complainant. While this clog is present in the extant laws of the two countries, Uganda has taken a step towards lifting it by introducing clause 35 into the proposed Bill. If this clause is approved, the court can safely act on the evidence of the victim alone where same is credible, cogent and reliable. This is a move worthy of emulation.

50. See, Penal Code Act (Uganda), section 124.

51. Criminal Code Act, section 358.

Perhaps, the most radical step that Uganda has taken towards developing its jurisprudence with respect to sexual crime is the Sexual Offences Bill,, which is now before the President for assent. Some landmark provisions of this Bill have earlier been highlighted in this article. We may again single out clause 2(3) which creates circumstances under which a man can be held liable for raping his wife. Sex is supposed to be enjoyed in marriage and not a weapon of punishment that it has turned out to be in some homes. The law is obviously intended to recognize the right of a married woman to politely say no when a sexual intercourse can endanger her life, as in when she is seriously sick. This contrasts sharply with the rather conservative position of the Penal Code Act of Nigeria which states clearly in section 282 (2) that “sexual intercourse by a man with his own wife is not rape if she has attained to puberty”. Is the law saying here that even if the woman is gravely indisposed and the sexual intercourse can endanger her life she cannot refuse?

This is not to say, however, that Uganda’s legal framework is perfect. For example, in an attempt to be gender neutral, the Act contains provisions that can even defeat the objective for which the law was initiated. There is no doubt that women and girls are largely at the receiving end of sexual offences. Any law that is intended to protect them, in keeping with the obligation created under section 33(3) of the Ugandan Constitution, should make no pretense as to its purpose, both in terms of the object clause and the wordings of the relevant sections.

VI. CONCLUSION

From the totality of our analysis in this article, it is obvious that each of the two countries needs a composite law on sexual offences that can adequately protect the legal rights and interests of females against all form of sexual abuse, assaults and exploitation. While the Ugandan Parliament has taken a bold step in this direction by passing the Sexual Offences Bill, Nigeria missed a golden opportunity to do the same through the Sexual Harassment Bill, also currently before the Senate (Red Chamber) of the National Assembly. The reason is that the scope of the Bill, as noted by some of the critics, is too narrow. The impression should not be created that sexual harassment, or, for that matter, any other form of sexual offence, is restricted to the campuses of tertiary institutions. It is proposed that the Bill be withdrawn, re-titled and redrafted in such a way that it can deal exhaustively and holistically with all form of sexual assaults, including rape, in Nigeria. In this connection, Nigeria can adopt, with necessary modifications, some of the radical and laudable clauses in the proposed Ugandan Bill, as already highlighted this article.

CHILDREN AS RIGHTS-HOLDERS IN UGANDA: THEIR KNOWLEDGE AND PERCEPTION OF RIGHTS PROTECTION STRUCTURES

Nicholas Mugabi* & Innocent R. Kamy**

ABSTRACT

In this article, we examine children as rights-holders and their perception of child protection structures based on evidence from selected districts in Uganda. Using a cross-sectional research design, survey data was collected from 520 children. Based on the Bronfenbrenner's ecological model, results show that within the microenvironment, majority of the children were aware of survival, development and participation rights. The micro and meso systems of local councils and extended family as protection structures were most trusted by children. The perceived trust of protection structures was based on the quality of services accessible, children's knowledge and awareness, perceived capacity and the legal mandate. We recommend that effective child protection should be cognizant of the interwoven micro, meso, exo and macro systems which affect child development. The government should ensure that human rights laws are strictly enforced and child-friendliness of the protection structures.

I. INTRODUCTION

Uganda has the second youngest population in the world, with 50.3% of the 40 million people below 15 years.¹ The 1995 Constitution of the Republic of Uganda and the Children (Amendment) Act, 2016 categorize persons below the age of 18 years as children, and it guarantees them survival, development and participation rights. Child rights abuses occur when there are violations of the guaranteed human rights. This means that rights-holders are claimants who should demand for their rights, and the protection of such rights is a responsibility of the duty bearers. In essence, lives of children are a public concern. As rights-holders, they depend on adults like parents, guardians, community members and state actors to protect their rights. A child's

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1. NATIONAL PLANNING AUTHORITY, THIRD NATIONAL DEVELOPMENT PLAN (NDP III) 2020/21-2024/25 (2020).

physical, emotional and psychological vulnerability may result from the failure of adult members and the State to provide protection. In addition, their vulnerability may be a reflection of social relations of generation and gender, exposure to risk, inadequate capacity and potential.² This makes it imperative to recognize the rights of children, develop age appropriate structures and processes for observing the rights, and facilitate children's legal and political socialization.³

Child protection can be a function of an individual caregiver, as well as the social ecology.⁴ In Bronfenbrenner's ecological model, child development is viewed as a product of the interaction between the individual's perceptions of the immediate environment and the environment itself.⁵ Child development constitutes a set of enduring changes in the individual's perceptions, feelings, and behaviors.⁶ Thus, as rights-holders, children also play a role in the observance of their rights. However, this can only be possible when children have the capacity to demand for their rights. O'Neill has however questioned the appeals to children's fundamental rights, whether this can empower children or their advocates to get the recognition and fulfillment of obligations.⁷

In 1924, the League of Nations endorsed the first Declaration of the Rights of the Child, which was a set of series of normative claims to save and protect the 'delinquent' and the 'waif'.⁸ Uganda ratified the United Nations (UN) Convention on the Rights of Children in 1990, thereby committing to a set of child rights standards. Uganda's 1995 Constitution and the attendant legal instruments must comply with the Universal Declaration of Human Rights (UDHR), the United Nations Convention on the Rights of a Child, the Organization of African Charter on the Rights and Welfare of the Child, and the covenant on Economic, Social and Cultural Rights. Specifically, the provisions of these legal instruments have been domesticated in the country's statutes to protect the rights of children. Uganda's 1995 Constitution also obliges all

2. Watts J. Michael & Hans G. Bohle, *The Space of Vulnerability: The Causal Structure of Hunger and Famine*, 17(1) PROGRESS IN HUMAN GEOGRAPHY 43-67 (1993).

3. P. Badali, M. Ruck & J. Bone, *Rights Conceptions of Maltreated Children Living in State Care*, 16(1) THE INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS 99-119 (2008).

4. Maguire J. Kathryn & K. Showalter, *The Protective Effect of Neighborhood Social Cohesion in Child Abuse and Neglect*, 52 CHILD ABUSE & NEGLECT 29-37 (2016).

5. U. Bronfenbrenner, *Ecological Models of Human Development*, 3(2) INTERNATIONAL ENCYCLOPEDIA OF EDUCATION 37-43 (1994).

6. R. TURNER, *TEENAGE KICKS—THE DIFFERENTIAL DEVELOPMENT OF DRUG USE, DRUNKENNESS, AND CRIMINAL BEHAVIOUR IN EARLY TO MID-ADOLESCENCE*. GOTHERNBURG, SWEDEN: BRANDFACTORY AB (2020).

7. O. O'Neill, *Children's Rights and Children's Lives*, 98(3) ETHICS 445-63 (1988).

8. G.A. Jones, *Children and Development: Rights, Globalization and Poverty*, 5(4) PROGRESS IN DEVELOPMENT STUDIES 336-42 (2005).

citizens to protect children against any form of abuse, harassment or ill treatment. Recognizing children's rights means committing to safeguarding the well-being of children as well.⁹ Thus, children as minors are vulnerable members of society in need of special protections and considerations, and are entitled to the same rights as adults.¹⁰

As a State party to the UN Convention of the Rights of the Child (UN CRC), Uganda is required to respect and enforce children's rights, including freedom of expression, the right to education, social rights, freedom from exploitation, child labor, harmful treatment and hazardous work.¹¹ The country has developed the Orphans and Other Vulnerable Children (OVC) Policy, 2004 and other comprehensive national strategies and plans of action to enforce the rights of children. The National Strategic Program Plan of Interventions (NSPP1 11) for example, describes the roles and responsibilities of different government actors and non-governmental organisations (NGOs) to ensure harmonization, coordination of quality and comprehensive service delivery and response for OVCs.

In addition, the National Child Labour Policy, 2006 protects against child labor, sexual abuse and exploitation. In this case, child protection entails preventing and responding to violence, exploitation and abuse, including trafficking, child labor and harmful traditional practices.¹² The Children (Amendment) Act, 2016 consolidates most of the rights and wellbeing of children and the subsequent child protection structures. For instance, the Act underscores the observance of children welfare and guiding principles for any actions taken relating to children. The other laws concerning child protection include but are not limited to; The Employment Act, 2006 (which protects the children from hazardous and exploitative work), the Anti-Trafficking in Person's Act, 2009 (which protects children from trafficking, and the Penal Code Act (amended in 2000) (which prohibits sexual abuse of children). Others include the Occupational Safety and Health Act, 2006; the Domestic Violence Act, 2010; the Female Genital Mutilation Act (FGM), 2009; and the Education Act, 2008.

9. L. Saguisag & Matthew B. Prickett, *Introduction: Children's Rights and Children's Literature*, 40(2) THE LION AND THE UNICORN v-xii (2016).

10. MINISTRY OF GENDER, LABOUR AND SOCIAL DEVELOPMENT (MGLSD), VIOLENCE AGAINST CHILDREN IN UGANDA: FINDINGS FROM A NATIONAL SURVEY (2015).

11. The relationship between children and development is built upon the 1959 Declaration of Rights: 'to a standard of living adequate for the child's physical, mental, spiritual, moral and social development', to 'rest and leisure, to engage in play and recreational activities appropriate to the age of the child' (Articles 27 and 31), as well as to compulsory education, health care, legal representation and freedom of speech regardless of ability, ethnicity, religion or gender, were henceforth legal obligations. See, Jones A. Gareth, *Children and Development: Rights, Globalization and Poverty*, 5(4) PROGRESS IN DEVELOPMENT STUDIES (2005).

12. UNICEF, Child Protection Information Sheet: What Is Child Protection? (2006).

In theory, legal frameworks provide clear rights of children and the obligations of duty bearers, but this does not translate into real meaningful improvements in childrens' wellbeing and status.¹³ State parties are expected to take on care-giving and standard setting roles, implementing reforms to guarantee children's minimum levels of shelter, food, school, health, respect, protection of the cultural environment and protection from violence. Duty bearers at all levels must create systems of effective protection for children; well designed and carefully implemented. Community-based child protection groups are effective means of improving children's protection and wellbeing in different contexts.¹⁴ Community-based child protection groups may include volunteers that help in strengthening linkages between the formal and non-formal structures.¹⁵ Child protection systems include comprehensive approaches to protect children from abuse, neglect, exploitation and violence and that ensure fulfilment of children's rights to protection.

However, there is persistence of child abuses in form of physical, emotional, sexual and other violations. Our study reveals that while the legal framework is strong, child protection is embedded within the capacity of the agency of rights-holders to know their rights, demand for them and to seek for redress in case of violation. The agency of rights-holders however operates within unfair ecological conditions of micro, meso, exo and macro-environments. For example, social and cultural macro systems are skewed towards child abuse with limited recognition of the agency of children as right-holders. The cultural context blur rights violations, as the other social structural actors do not give children's rights the requisite attention.

In principal, Uganda has several formal child protection structures and legal instruments whose mandate is to protect child rights and wellbeing. However, in reality, formal structures give limited audience to children as rights-holders, which creates a gap in the efforts of children to demand and enjoy their inherent rights. The formal structures include the Uganda Police Force, Local Governments, Labor Courts, and child protection committees. Formal child protection structures are meant to create awareness on child rights, monitor child rights violations, receive reports of cases of violation, handle some of the cases or give referrals where the cases are beyond their mandate. The agency of children as right bearers is also essential in creating a violence free environment. Accordingly, the International NGO Council on Violence Against

13. J. Grugel, *Children's Rights and Children's Welfare after the Convention on the Rights of the Child*, 13(1) PROGRESS IN DEVELOPMENT STUDIES 19-30 (2013).

14. M. Wessels, *What Are We Learning About Protecting Children in the Community? An Inter-Agency Review on Community-Based Child Protection Mechanisms* (2009).

15. War Child UK, *Final Report Study of Community Based Child Protection Mechanisms in Uganda and the Democratic Republic of Congo* (2010).

Children (INCVAC) observes that children should be able to report violence in ways that are adapted to their rights, needs and level of understanding.

Despite Uganda's ratification of several international instruments that guarantee child protection, children in the country continue to be subjected to gross abuse, exploitation, neglect, kidnap, child sacrifice, and sexual abuse even by the mandated protectors. For example, in a national survey, one in three girls (35%) and one in six boys (17%) reported experiencing sexual violence during their childhoods, 11% of the girls experience pressured or forced sex. For ages 13-17 years, one in four girls (25%) and one in ten boys (11%) reported sexual violence in the past year.¹⁶

Thus, in this article, we examine children as rights-holders and their perception of child protection structures based on evidence from selected districts in Uganda. The research study was guided by two research questions: 1) What is the children's level of knowledge and awareness of their rights? 2) What is perception of children towards formal and informal child protection structures? In terms of structure, the article is organized into seven parts. Part one is the introduction. Part two covers the theoretical framework. Parts three and four provides the study methodology and study results respectively. Part five covers the discussion of the study results, while the conclusion and policy recommendations are covered in parts six and seven respectively.

II. THEORETICAL STANCE

A. *The Ecological System Model of Human Development*

Children's conception of their rights reflects the knowledge about and sense of parameters for these rights. Children's rights, like other human rights, are interdependent and require broad, comprehensive support. This is even more critical when it comes to children that are in conflict with the law; they must have recourse when violence is perpetrated against them.¹⁷ Building a protective environment for children calls for strengthening government commitment and capacity to guarantee children's rights, establishment and enforcement of adequate legislation to address harmful attitudes, customs and practices, open discussion of child protection issues,

16. MGLSD, *supra* note 10.

17. International NGO Council on Violence Against Children (INCVAC), *Creating A Nonviolent Juvenile Justice System (2013)*, http://resourcecentre.savethechildren.se/sites/default/files/documents/inco_report_2013.pdf. See also, Kanya R. Innocent & E. Walakira, *Perpetrators of or Protectors against Violence? Police Officers in Uganda and Their Encounters with Children in Street Situations*, In *CHILD ABUSE AND NEGLECT IN UGANDA* (D. Kaawa-Mafigiri & E.J. Walakira eds., 2017) vol. 6, at 179–197. https://doi.org/10.1007/978-3-319-48535-5_10.

developing children's life skills, knowledge and participation and building the capacities of family and communities.¹⁸ It should be noted that observance of rights results in improved outcomes for children. It is evidence that that an individual is a member of the society.¹⁹ The rhetoric of child rights seeks to empower the powerless especially if they do not accept the status quo. The rights of the powerless can only be guaranteed by actions of the powerful actors.

In this article, we adopted the ecological system model²⁰ to analyze the environment that enables children to recognize and enjoy their rights as well as child protection structures that guarantee rights and protection against any form of abuse. Child protection necessitates developing and strengthening protective factors at multiple levels in line with the ecological model of child development.²¹ In this case, a child is the basic unit in the model, but the environment or setting is divided into four domains of micro, meso, exo, and macro-system.²² The four domains are discussed below:

According to Bronfenbrenner's ecological model, child protection and healthy development depend on the care and protection accorded by the caretakers, especially the immediate family. The model assumes that child development occurs within the micro, meso, exo and macro-environments.²³ Below is the description of the Bronfenbrenner's ecological system model of human development:²⁴

First, the micro-system is the immediate setting in which the individual lives or finds themselves. It includes relationships between a child and close interactions within the home, the school such as the classroom, playground, recreation center, friend's home and close neighborhood. However, these micro-systems also exist or operate as part of systems on their own – in meso-systems.²⁵

Secondly, the meso-system is the interrelations among two or more settings in which the developing child actively participates such as, the relations among homes, schools, and neighborhood peer groups.

18. UNICEF, *supra* note 12.

19. B.K. Gran, *Comparing Children's Rights: Introducing the Children's Rights Index*, 18(1) THE INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS 1-17 (2010).

20. Bronfenbrenner, *supra* note 5; Turner, *supra* note 6.

21. Bronfenbrenner *id.*

22. Turner, *supra* note 6.

23. Turner *id.*; Bronfenbrenner, *supra* note 5. See also, A.J. Onwuegbuzie, M.T. Kathleen & R.K. Frels, *Foreword: Using Bronfenbrenner's Ecological Systems Theory to Frame Quantitative, Qualitative, and Mixed Research*, 7(1) INTERNATIONAL JOURNAL OF MULTIPLE RESEARCH APPROACHES 2-8 (2013).

24. Development is viewed as a product of the interaction between the individual's perceptions of the immediate environment and the environment itself. 'Development' is defined as a set of enduring changes in the individual's perceptions, feelings, and behaviors. See, Turner *id.*

25. Turner *id.*

Thirdly, the exo-system level refers to one or more settings that do not involve the developing person as an active participant; but in which events occur that affect or are affected by what happens in the setting containing the developing person. For example, schools are not isolated systems but exist within communities and are part of a larger system.

Fourthly, the macro-system exists at the level of the subculture or the culture as a whole, along with any belief systems or ideology. Macro-systems include a nation's legal, policy, political, and economic systems. It is important to note that these four systems in the ecological model are interlinked.

At each of the different ecological systems, actors should in one way or another create a protective environment for children. Children need protection—whether at home, school, or in the community—if they are to grow to their full potential. Child protection systems bring together formal, statutory elements and non-statutory elements intertwined within the ecological systems. However, family and community level mechanisms are crucial since they constitute the immediate environment within which children are born and nurtured. These levels also feed into the bigger child protection systems. Therefore, Bronfenbrenner's ecological model was useful in analyzing children's level of awareness and knowledge of their rights and their perception of formal and informal protection structures within their environment.

III. STUDY METHODOLOGY

The study upon which this article is based applied a cross-sectional descriptive research design to examine children's awareness of rights, their perceived capacity to demand for protection services from duty bearers and child protection structures. The area of study was determined using a multi-cluster sampling. The clusters were the geographical regions: central, eastern, south-west, western and northern regions of Uganda. From these clusters, 10 districts were randomly selected. Using the local council village sampling frame of households, 520 children between 8-17 years both in and out of school were randomly selected from each of the districts. Below is table one showing the study sample.

Table 1: Study Respondents by District

Region	District	Respondents
Central	Kampala	53 (10%)
	Wakiso	54 (10%)
Eastern	Iganga	51 (10%)
	Mbale	55 (11%)
South-West	Mbarara	42 (8%)
	Bushenyi	54 (10%)
Western	Kasese	51 (10%)
	Kabarole	55 (11%)
Northern	Gulu	53 (10%)
	Lira	52 (10%)
Total		520 (100%)

Source: Field survey data

A. Study results

The study findings are based on two research questions: What is the children's level of knowledge and awareness their rights? What is the perception of children towards formal and informal child protection structures? The presentation of the results is preceded by the profile of children and their family as the micro-environment.

1. Profile of children and family environment—Childhood is a stage of life from which children usually emerge and are helped to develop by those that have most power over them.²⁶ In this research study, we surveyed 520 children, of which 53% were male and 47% female. All the study participants had ever attended school; 76% had studied up to primary level, 21% secondary and only 3% had attained technical certificate level. The highest number of children attending school is attributed to the Universal Primary Education (UPE) programme which was introduced in 1997. Primary school enrolment has increased from about 7 million pupils in 1999/00 to about 11 million in 2012/13, and to 9.4 million in 2016/17.²⁷

26. S. Norozi & T. Moen, *Childhood as a Social Construction*, JOURNAL OF EDUCATIONAL AND SOCIAL RESEARCH (2016). doi: <https://doi.org/10.5901/jesr.2016.v6n2p75>.

27. UGANDA BUREAU OF STATISTICS (UBOS), UGANDA NATIONAL HOUSEHOLD SURVEY (UNHS) 2016 (2017).

In terms of disability, overall, 97% of the children did not have any form of disability (difficult to walk, hear, see and memory). However, 2% had physical disability (difficult to walk), and 1% had a hearing impairment. Out of the 3% children with disability, majority were reported in South-western region (5% with physical disability, 5% visual impairment and 2% mental disability), and Eastern region (2% physical disability and 4% visually impaired), and none in central and western region. The diversity of the socio-demographic characteristics notwithstanding, all children are a vulnerable category that bear substantive risk of suffering physical, social, psychological, mental and emotional harm.²⁸

In addition, children have a right to a good family environment for their growth and development. Children are entitled to live with their parents, with proper care and providence.²⁹ In terms of the household composition, 57% of children were from households with one to three children, 32% from households with four to six children, 7% from those with seven to nine children, and only 4% were living in households with more than 10 children. The central districts of Wakiso and Kampala (75%) had the highest number of children from small households, followed by the northern districts of Gulu and Lira with 60%, and southwestern district of Mbarara and Bushenyi with 53%. While western districts of Kasese and Kabarole had 49%, and eastern-Iganga and Mbale had 47% of children from households with the least number of one to three children. The occurrence of many children in households is a national-wide phenomenon. For example, according to Uganda National Household Survey of 2016, most households in Uganda have a higher likelihood to have children, 55% have children, and 45% did not have.³⁰

The study findings also revealed that overall, 77% of children lived with their family or parents, 81% of the children that lived with their family or parents were from the south, 80% from the northern, 78% from the central, 75% from the west and only 70% in eastern region. Twenty-three percent of children lived with other family members or relatives; most of these were from the Eastern (15%), central region (15%), South western (14%) and western (11%). The above observation reveals that a number of children live with other relatives and friends this reduces their chance of full enjoyment of their rights since relatives and friends may not be protective and caring as the parents. However, our study did not focus on the vulnerability of children in

28. UBOS *id.* See also, J.E WALAKIRA, D. MUHANGI, S. MUNYUWINY, F. MATOVU, E. AWICH, I.D. NYANZI, J. KAYIWA, J. AKELLOT, P. MUBIRI, J. MAJUGO, A. MUTEBI & M. RUIZ-RODRIGUEZ, THE STATE OF THE UGANDAN CHILD: AN ANALYTICAL OVERVIEW, KAMPALA/WASHINGTON DC: USAID/QED (2016).

29. Children (Amendment) Act, 2016, section 42B (2)(f)-(h).

30. UBOS, *supra* note 27.

terms of orphanhood, but in terms of abandonment, household poverty; child laborers, children in need of legal protection, street children and children living in child headed households.

2. Knowledge and Perception of Children Rights—The first research question for this study was: what is the children's level of knowledge and awareness of their rights? Consequently, the findings revealed that 67% of all children knew their rights and associated these with children entitlements as human beings and minors. A big proportion of the children were familiar with the right to education (32.6%) and right to play (24.3%). Very few children had knowledge about a child's right to life as a fundamental one: it is taken for granted as they ought to live anyway; the right to ownership and access to property. This means that children could not explicitly differentiate between survival rights, protection and participation rights. Remarkably, all the children were aware of their right to stay with their parents or guardians and attend school; majority of them (81%) were aware of their right to take part in family decisions. The central region (94%) and Northern (90%) had most children who were aware of right to take part in family decisions. Awareness of child rights was slightly lower in the eastern (69%) and western (66%) regions.

A significant statistic is that majority of the respondents (91%) said that children with disabilities had the same rights as those without disability. There was however a misperception by 33% of children, who defined children's rights as the freedom to do anything they desired whether socially and legally acceptable or not. Nonetheless, the high level of awareness of child rights is a very good starting point for children as rights holders to demand for respect of their rights and seek appropriate protection, as well as report any abuse.

Although the Children (Amendment) Act, 2016 provides for empowerment of children with knowledge and skills to enable them prevent and report violence, abuse and exploitation, across all study regions only 23% of children were aware of any child protection laws more especially the Children Act. The low level of awareness of child protection laws is a barrier to actualization of the agency of children as right-holders. This makes children less likely to stand up against some violation. However, as minors, the children may not be expected to know or comprehend with great depth all child protection laws. This implies that children have to depend on those actors at micro, meso, exo and macro-levels of their ecological system that are aware of such legal provisions. This implies that child care-takers, parents, schools, religious institutions, community and law enforcement agencies should uphold the rights and welfare of children. It has been argued that efforts to protect children and promote respect for

their dignity displays appreciation of the self-image of responsible parenting.³¹ Other scholars have observed that the economic conditions of the parent are a cause of children's rights not being optimally fulfilled because insufficient parental income causes stress, inattention by the parents and early entry into child labor.³²

The appeal to children's rights has political importance like is the case with other oppressed social groups such as working classes, racial minorities whose rhetoric has served well. However, the appeal to rights will have little chance of empowering, especially those that are still too young and unable to respond to the rights appeal.³³ While children may be strong advocates for their own rights, adult members need to create opportunities and spaces for children to express themselves.³⁴ This nuances Bronfenbrenner's model, where development is viewed as a product of the interaction between an individual's perceptions of his/her immediate environment and the environment itself.³⁵ Thus, proper child development requires a balanced supportive micro, meso, exo- and macro systems.

3. *Prevalence of Child Abuse*—According to the State of Uganda's Child Analysis Report of 2016, child protection is still a major challenge. Many children still face abuse and neglect despite the existence of an elaborate legal and policy framework guaranteeing children's protection of children.³⁶ In addition, a survey of Violence Against Children (VAC) in selected countries revealed the prevalence of violence. According to the survey, half to three quarters of boys and from a quarter to two thirds of girls in Nigeria, Zimbabwe, Kenya have experienced physical violence. The survey further noted that one in three children, ranging from 17% of girls and 20% of boys in Nigeria to 35% of girls in Haiti and 38% of boys in Zimbabwe, Nigeria, Haiti, Zimbabwe have faced emotional violence.³⁷

Our study revealed that most children are aware of the dominant forms of child abuse namely: physical abuse, which was reported by 31% and child neglect by 22%. In terms of geography, physical abuse was grossly reported by children across the five

31. F. Schoeman, *Protecting Intimate Relationships: Children's Competence and Children's Rights*, 4(6) ETHICS AND HUMAN RESEARCH (1982).

32. L. Yupita & M.H.U. Dewi, *The Impact of Poverty on the Neglect of Children's Rights*, 7(12) JOURNAL OF CRITICAL REVIEWS (2020).

33. O. O'Neill, *Children's Rights and Children's Lives*, 98(3) ETHICS (1988) 445-63.

34. N.C. Blanchet & A. Fernandez, *Women as Generators of Children's Rights. The Story of Promoting Indigenous Children's Rights in Venezuela*, 11(1) INTERNATIONAL JOURNAL OF CHILDRENS RIGHTS (2003) 33-49.

35. TURNER, *supra* note 6.

36. WALAKIRA, et al, *supra* note 28.

37. MGLSD, *supra* note 10.

regions, with 36% in south-west, 34% in central, 32% in eastern, 30% from western and only 27% in northern region. Child neglect is mostly reported in central (32%) and 23% in western region. Sexual abuse was mainly reported in western (21%), northern and southwestern 17%; only 4% was reported in central region. Child sacrifice was mentioned mainly by children in eastern region (18%), southwestern (16%), and less than 10% in each of the other regions. Child labor was mostly reported by children in northern region (21%) and eastern (20%). Nevertheless, child labor was least reported in the central and southwestern regions. In addition, emotional abuse was mostly experienced by children in southwestern (21%) and central regions (19%).

In addition to the legal framework that protects children from all the forms of abuse, there exists other child protection structures from the local to the national level. The most important of these are those at the community level. These include the local council committees, family/kinship structures, religious/faith-based groups, women's groups youth and children's groups. The effectiveness of these structures in protecting the children depends on whether the children are aware of them and can seek redress from them when necessary.

4. Knowledge and Perception of Child Protection Structures (CPS)—Uganda has both formal and informal child protection structures. The formal agencies are mandated by the 1995 Uganda Constitution and the Children (Amendment) Act, 2016 among other legislations, to ensure child protection. There are also a number of government policies such as the National Orphans and Vulnerable Children Policy (NOVCP) 2004 and the Child Labor Policy 2006 that form the basis for the formal child protection structures. The formal child protection structures include Local Council (LC) Executive, Child Protection Committees, the Police, the Courts of Law, and the Probations and Social Welfare Office.

Consequently, the research study sought to explore children perceptions about the capacity and trust of formal child protection structures. All the study participants were aware of the existing formal child protection structures especially the police, local councils and courts of law. Overall, the most trusted formal structures were the local councils (94%), followed by the courts of law (86%) and the police (76%). The Probation and Social Welfare Office (PSWO) were the least trusted formal child protection structures. In addition, there were wide variations in as far as trust of formal structures is concerned. The police was most trusted in northern, central and eastern regions, while the PSWO was most trusted in the western but least trusted in the northern part of the country, as illustrated in table 2 below.

Table 2: Percentage of level of trust of children about CPS

Regions	Child Protection Structures			
	LC 1	Police	Courts of Law	PSWO
Central	94%	79%	87%	69%
Eastern	94%	79%	91%	57.5%
South-western	95.5%	53%	77.5%	65.5%
Western	93.5%	86%	94%	70%
Northern	91.5%	81%	78.5%	34%
Overall	94%	76%	86%	59%

Source: *Field Survey Data*

From the above findings in table 2, it was not surprising that the LCs are the most trusted formal child protection structures. This is because the LC executives are the lowest local government structure in proximity to the rights-holders. Some rights-holders and parents or child care-takers also participate in the periodic elections of LCs through universal adult suffrage. The LC system is thus easily accessible at limited or no cost. It is the first point of reference for handling some cases of child abuse within the community. In contrast, the courts of law, police and the PSWO is geographically distant, based at the district and sub-county levels, which makes it hard to access in terms of transport, time and other logistics. In most cases, the PSWO and the courts of law handle cases referred by the LCs. Nonetheless, the varied positive and negative perception of formal child protection structures was attributed to several factors.

Table 3 below shows the children's opinions and perceptions about formal child protection structures.

Table 3: Reasons for Children's Trust of Formal CPS

Structure	Reason for perceived reason	Reason for mistrust
LC I Executive	<ul style="list-style-type: none"> ■ Child-friendly - offer counselling and guidance ■ Arrests child violators and perpetrators ■ Make referrals to other CPS 	<ul style="list-style-type: none"> ■ LCs have no time / very busy ■ Don't know ■ Ineffective and corrupt
Uganda Police Force	<ul style="list-style-type: none"> ■ Has capacity to arrest perpetrators ■ Conduct community sensitization ■ Take matters to court and referrals to another formal CPS 	<ul style="list-style-type: none"> ■ Corruption ■ Not easily accessed / distant ■ Not known to children / ignorance about police
Courts of Law	<ul style="list-style-type: none"> ■ Sentence perpetrators to prison ■ Implement and impose strict laws 	<ul style="list-style-type: none"> ■ Not known to children / ignorance about courts of law ■ Corruption ■ Not easily accessed / distant
PSWO	<ul style="list-style-type: none"> ■ Child-friendly – offer counselling and guidance ■ Follow-up of cases on child abuse 	<ul style="list-style-type: none"> ■ Not known to children ■ Not easily accessed / distant

Source: *Field Survey Data*

The above findings show that children's trust of formal child protection structures was based on factors that included but were not limited to: the quality of services provided, children's knowledge and awareness of the child protection structures, accessibility and convenience, credibility, perceived capacity of the structure to prosecute child offenders, and the legal mandate of the formal CPS. The research study shows that CPS

that are in micro and meso environment of the child are more trusted than those in the exo and macro systems. However, in their study, Kanya and Walakira observe that children in conflict with the law face gross human rights abuses by the police in the process of enforcing the law. Other evidence indicates that most victims of human rights violations do not report to the police because of fear and in some instances due to lack of funds to facilitate the Force to respond to an incident. Thus, the would-be agencies to protect the children instead turn against them. This is not unique to only children in conflict with the law, but also other children as well. Most importantly, in case the micro, meso, exo and macro child protection systems are effectively interlinked, this enhances the level of trust by rights holders.

B. Children's Perception of Informal CPS

Informal CPS include parents, extended family members, neighbors and religious leaders. The informal CPS are within the core micro and meso environments for child development and growth. The research study explored children's perception about trust and capacity of informal CPS to guarantee child protection and a child-friendly environment. Evidence showed that 90% of children perceived the extended family and community members to have more capacity to protect them against abuse. On the other hand, 74% trusted religious leaders and only 35% trusted their parents / close family members as far as protection against child abuse was concerned. However, although family or parents ought to be the micro and primary mandated structures for childcare and support and to provide the basic needs, on average, it is the least trusted informal CPS. This was worrying because the family is the micro-ecological system where children ideally spend most of their childhood for nurture and development. If the micro-ecological system (frontline custodians) do not play their part either out of negligence or structural constraints like poverty,³⁸ the realization of children's rights remains a distant dream and mere political rhetoric.

Studies have shown that the micro and meso environment: the neighborhood social cohesion, play a protective role such as meeting a child's basic needs.³⁹ This however does not negate the existence of potential abuses against children even in the micro and meso systems.

The research study interrogated the reasons for children's varied trust of informal CPS. The findings revealed a number of reasons for trust in the informal CPS or the lack of it. On the one hand, some children trusted informal CPS because they were perceived to be child friendly: accorded love, care and security, had capacity to

38. Yupita & Dewi, *supra* note 32.

39. Maguire & Showalter, *supra* note 4.

report abusers to formal CPS, and advised community members on how to take care of children. On the other hand, children who do not live with biological parents did not trust their family, often suffered abuse or neglect by the extended family members. Some religious leaders are also not capable of providing for the neglected children. Table 4 below shows the reasons for trust or not, of the informal CPS.

Table 4: Reasons for children's trust of informal CPS

Structure	Reason for perceived trust	Reason for perceived mistrust
Parents / guardians	<ul style="list-style-type: none"> ● Parental care, love and security ● Provide basic needs / welfare needs such as medical care and school fees 	<ul style="list-style-type: none"> ● Not living with biological children ● Parents never at home ● Some parents perpetrate child abuse; e.g. child beating
Extended family	<ul style="list-style-type: none"> ● Provide welfare needs / act as parents ● Organise family meetings ● Report and confront offenders 	<ul style="list-style-type: none"> ● Family wrangles ● Other family members also have their own children to take care of / do not care about other children
Religious leaders	<ul style="list-style-type: none"> ● Child-friendly ● Advise the community on how to take care of children ● Get sponsors (financial support) for children ● Report cases of child abuse to formal CPS 	<ul style="list-style-type: none"> ● Geographical distance ● Some are not trust worthy ● Not capable for providing for the children

Source: *Field survey data based on children opinions and perceptions.*

C. Child Abuse Case Reportability

The ability to discern rights violations and report to the relevant authorities can be one way through which rights-holders can ensure respect of their rights. First, reporting of rights abuse by children as rights-holders is vital since it is the entry point for seeking

redress in case of any violations. Secondly, reporting of child abuse may reduce on impunity as violators are apprehended and subjected to the due process of the law. The study findings indicate that despite the high level of awareness of both formal and informal CPS, there was low level of reportability of child abuse by rights-holders. The low reportability was attributed to: fear of revenge by the perpetrators, ignorance about child protection structures; ignorance about own rights and fear that would be child protectors can turn into perpetrators.

In addition, some children do not report cases because no one would believe them, especially in case the perpetrator is a family member and a community leader. This is due to social cultural constraints to the agency of children: they are obliged to respect adult members of society even when they abuse their rights. In some communities, there is a belief that adult members are always 'right' and children ought to respect community leaders. Lastly, additional reasons for not reporting rights violations: uncertainty about effective redress of child abuse, long distances and cost to reach formal CPS and remorsefulness of the perpetrator. It is imperative to note that most of the above reasons for non-reportability revolve around children's ignorance about their rights, victim-perpetrator power relations, ignorance of child protection laws and weak micro and meso systems and the exo and macro social cultural context where children are socialized into submissiveness even when the actions of the adults violate their rights.

IV. DISCUSSION OF RESEARCH FINDINGS

The discussion of study results is skewed to two research questions: What is the children's level of knowledge and awareness of their rights? What is children's perception of formal and informal child protection structures in terms of their role and efficacy in protecting them against rights violations? Results reveal that majority of the children live within micro and meso environments of their close family and households. Ideally, the family as a basic micro-unit remains the most appropriate system for child growth and development. In this case, the family, households and neighborhood are the most immediate micro and meso environment of the ecological human development model.⁴⁰ The family plays an important role in socialize children, protecting them

40. Bronfenbrenner, *supra* note 5; Turner, *supra* note 6.

against child abuse and ensuring child welfare.⁴¹

For the case of Uganda, the proportion of the population under the age of 18 years [over 17.1 million] puts more pressure on the family and households as micro systems to ensure child rights, protection and welfare.⁴² Equally so, the legal and policy framework provide for every child to live with her/his parents or guardian and joint guardianship (responsibility) and proper child development.⁴³ It is evident that a big proportion of the children (67%) were aware of their survival, development and participation rights.⁴⁴ This revealed some potential agency of the rights-holders to demand and seek protection of their rights at all level of the ecological model. This may however only be actualized if the rights holders are empowered.

On the one hand, the level of awareness of child rights was however compromised by the limited level (23%) of awareness of child protection law. While child rights are conceptualized within the micro environment of the family, legal instruments are macro level systems. At the macro level, legal instruments such as the Children (Amendment) Act 2016, the Employment Act 2006, the Anti-Trafficking in Person's Act 2009, the Penal Code Act (amended in 2000), and the Education Act 2008 have been enacted. These legal instruments have, however, not been translated in the local languages of the rights-holders to understand.

On the other hand, less than half of the children were not confident of their family and parents to protect their rights. This puts the realization of children's rights in jeopardy. This is true especially with child abuse that is perceived of as 'appropriate' or punishment for correction of a child deemed to be in the wrong. Child discipline acts (punishment) are embedded in cultural and social realms, some of these sometimes result in child abuse. Although the family and the household are primary agents in the micro-system, school, religious institutions and leisure activities are also micro-level domains. Thus, child development always occurs in the interaction with and within these immediate systems.⁴⁵

However, the micro-systems also exist or operate as part of systems of their own in meso-systems. There is an indistinct line between micro and meso systems, for

41. Boakye A. Boaten, *Changes in the Concept of Childhood: Implications on Children in Ghana*, 3(10) JOURNAL OF INTERNATIONAL SOCIAL RESEARCH (2010).

42. UBOS, *supra* note 27; Walakira et al, *supra* note 28.

43. *See*, Constitution of Uganda 1995 (amended); Children (Amendment) Act, 2016.

44. V. Seguro & L. Jacott, *Representation of Primary Students and their Families about Children's Rights and their Participation in different Social Contexts*, in IDENTITIES AND CITIZENSHIP EDUCATION: CONTROVERSY, CRISIS AND CHALLENGES (P. Cunningham ed., 2013).

45. Turner, *supra* note 6.

example immediate household environment, neighborhood, community and schools. Neither the rights-holders nor the parents and guardians clearly delineate the fusion of child abuse and corrective punishment. Such fusion perpetrates child abuse by parents and guardians who constitute the micro structures for children protection and development. As rightly asserted, some family members perpetrate child abuse instead of being protectors of children in close interactions within a home, friend's home and neighborhood.⁴⁶ Nevertheless, according to Bronfenbrenner, child protection and development depends on care and protection accorded by the care-takers especially the micro family systems.⁴⁷

Basing on the ecological model of human development, we argue that actors in the micro, meso and macro systems do play a frontline role in ensuring the respect of the rights and welfare of children. The frontline role of CPS as enshrined in the legal instruments provides a basis for the rights-holders to report cases of rights violation, seek redress and appropriate protection. The perceived trust or the lack thereof, of formal and informal CPS is hinged on quality of service offered, children's knowledge and awareness, accessibility and convenience, credibility (corruption), perceived capacity of the structure to prosecute offenders and the legal mandate of the formal CPS. The formal CPS are more inclined to the exo and macro systems which limits accessibility to justice in case of violations of child rights.

On the contrary, the informal CPS are more aligned to the micro, meso, and to small extent exo systems level of the ecological model. There is however, no clear distinction of four ecological domains as far as child protection by formal and informal CPS is concerned. Hence, there is an unannounced interwoven relationship of the micro, meso, exo and macro-systems between both formal and informal CPS. The interlinkage of informal and formal CPS within the four ecological systems is more likely to enhance the positive perception and trust levels of rights holders.

The research study further revealed low awareness and knowledge levels of child protection laws, as a result few children reported cases of child abuse. Many rights-holders do not comprehend the boundary between acceptable treatment and abuse. Given the cultural context where physical punishment is regarded as a 'genuine' way of child nurture and discipline, it is possible many children do not perceive certain abuse as gross violations, especially when the right-holders believe they are in wrong. Some children suffer silently for reasons ranging from fear due to their weak agency

46. Onwuegbuzie et al, *supra* note 23.

47. Bronfenbrenner, *supra* note 5.

and unequal power relations with the duty bearers. Ignorance about where and how to report cases of abuse perpetrates violations.

For example, in addition to the physical reporting of cases to appropriate CPS, Uganda's Ministry of Gender Labor and Social Development (MoGLSD) established a toll-free Uganda Child Helpline (CHL) 116, where rights-holders and concerned stakeholders can call and report cases of abuse.⁴⁸ The Uganda Child Helpline 116 is an intervention aimed at increasing the reportability by both victims and community members as witnesses of child abuse. By 2015, the CHL received over 20,000 calls. However, this caseload represents a tiny fraction of incidence of violence against Ugandan children.⁴⁹ Low reportability of cases is attributed to the inability of some children to access a handset or phone booth where they can call to report cases amidst social-cultural barriers and the weak agency of the rights holders. In some cases, the poor coordination of informal and formal CPS at all domains of the ecological systems hinders effective reporting of cases by minors.

It is important to note that Uganda ratified the UN Convention on the Rights of the Child and is further committed to child protection as exemplified with the proclamation of the 1995 Constitution, the Children (Amendment) Act 2016, and other legal instruments. Nonetheless, it has been argued that while many countries have ratified several conventions on human rights, this has not translated into the enjoyment of rights, especially by the vulnerable children in the Global South.⁵⁰ The instruments are more aligned to the exo and macro systems of most developing countries with less alignment to the micro and meso systems where most child rights violations happen. This explains the persistence of child abuses in form of physical, emotional, sexual and other violations. This research study reveals that while the legal framework is strong, child protection is embedded within the capacity of the agency of rights holders to know their rights, demand for a fair hearing in case of violations. However, the agency of rights holders operates within an unfair micro, meso exo and macro environments. Uganda's social and cultural exo-macro systems are skewed to child abuse with limited boost of the agency of children as right holders. The cultural context blurs rights violations, as the other social actors do not give children's rights the requisite attention.

48. The CHL is already active in Uganda, providing telephone responses on a 116 emergency number, taking walk-in cases, compiling U-reports, receiving online child sexual abuse reports, and carrying out community awareness activities. See, MGLSD, *supra* note 10.

49. MGLSD *id.*

50. J. Grugel, *Children's Rights and Children's Welfare after the Convention on the Rights of the Child*, 13(1) PROGRESS IN DEVELOPMENT STUDIES (2013) 19-30.

V. CONCLUSION AND RECOMMENDATIONS

We note that despite the fact that children deserve and need to be protected from any abuse, many of them are ignorant about the existing child protection laws. They are however aware of survival, participation and child development rights. Government, as a duty bearer, should translate and publish relevant child rights laws into various local languages to increase the level of awareness by both the rights-holders, informal duty bearers and the community as a whole. This calls for strategic engagement and sensitization of community members and children as rights-holders about the relevant laws, underscoring the child rights as enshrined in the law. There is need for the integrated civil society organization advocacy for children's rights and increase community awareness about existence of formal and informal CPS. At the macro level, the formal CPS are sometimes not comprehended by minors. Therefore, there is the need for increased visibility and accessibility of formal CPS especially in remote and rural areas. Visibility and accessibility of CPS is much more than just proximity, but must be child-friendly, with adequate capacity to prosecute and convict perpetrators. As a result, more children will be more attracted to report case of rights abuse.

Amidst child right violations, the micro and meso systems of the community, parents and guardians remain the first stewards of child rights and welfare. Hence, there is need for households and family members to protect children against any form of abuses. The family as micro system should not perpetuate practices of abuse. The community and family structures should be well integrated with support of formal CPS such as police, courts of law to compliment the efforts of informal structures. Family and community members ought to report cases of child abuse, cooperate with formal CPS by giving evidence of child abuse when and as required. Thus, there is a close nexus of both informal and formal CPS to ensure the observance of child rights and improvement of welfare. In addition, effective enforcement of child rights is vital. The government of Uganda, through her agencies, should ensure the enforcement of child related laws, prosecute perpetrators, and follow up on all cases of child abuse. CPS should perform their mandate with utmost confidence and credibility for the rights holders and community members to trust and collaborate with them.

BEYOND ETHNIC PATRIOTISM: PAULO NGOLOGOZA, POLITICS OF GEOGRAPHY AND THE MAKING OF RESIDENCE-BASED *BANYAKIGEZI* IDENTITY IN UGANDA

Evarist Ngabirano*

ABSTRACT

The idea that East Africans and Ugandans in particular derived their mobilizing power from their ethnic membership has been a subject of vigorous debate. Recent studies on East Africa that support this argument have categorized some historically outstanding personalities such as Paulo Ngologoza as ethnic patriots who enforced native customs. The chief aim striven for in studies is to emphasize human agency over structure of political power in the making of a modern world in formerly colonized spaces. The argument thus goes that culture, longstanding experience, and practice have greater affective power of fomenting ethnic hatred than structures of indirect rule that survived colonialism. Such argument, however, does not capture the ways in which the agency of Ngologoza per se stepped outside the parameters of indirect rule to reproduced pre-colonial modes of political mobilization that focused on residence as opposed to ethnicity/ancestry in Kigezi. In this article, I use the colonial archive of the then Kigezi District, Ngologoza's family and private papers, and oral interviews as primary sources to place Ngologoza in a historical context that enabled him to think more of Kigezi in geographical rather than ethnic terms. It is this focus area of residence that explains why groups of people in Kigezi mobilize politically along their residence as opposed to ethnicity/ancestry. This accordingly explains why Kigezi, though multi-ethnic in social composition like many other regions of colonial-modern Uganda, has not generated ethnic separatist movement, similar to that of Rwenzururu in Toro.

I. INTRODUCTION

The most pervasive idea in the existing scholarly literature considers all East African Community builders as tribal/ethnic leaders who perpetuated tribalism/ethnic

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nationalism into the postcolonial politics. This claim is deduced from the general knowledge scholars have about Africa and East Africa in particular. It is in this perspective that Paulo Ngologoza, like all East African patriots, is considered to have founded his tribe/ethnicity, the Bakiga, through his inspirational history book: “Kigezi and Its People”. In this work, Ngologoza is believed to have documented his forefathers customs, traditions and hierarchy to validate and authenticate contemporary Bakiga leadership.¹

Mahmood Mamdani suggests that the tribe was the bearer of custom. “The more custom was enforced the more the tribe was restructured and conserved....”² and the chief who enforced custom became a despot because he did so with an iron hand. Derek Peterson portrayed Ngologoza as defending Bakiga custom against revivalist movement in Kigezi with a whip in hand.³ I critique this opinion because as a community builder Ngologoza focused on building an identity based on a geographical area of residence—Kigezi—as opposed to his ethnicity—the Bakiga. In this endeavor, he and other community builders in Kigezi have succeeded in their work in so far as Kigezi politics have not been defined by majoritarian effort to suppress and ostracize minority groups.

While acknowledging that his ethnicity—the Bakiga—have no lineage upon which his contemporary political leadership could be validated and authenticated, he recognized the Bashambo dynasty to the North of Kigezi and Tutsi aristocracy in Bufumbira South of Kigezi. This focus on the multi-ethnic dimension and the emphasis on the identity based on the area of residence rather than ethnicity explains why tribalism/ethnic nationalism was suppressed in Kigezi in the post-independence politics of Uganda. I utilize the Kigezi district archives at Kabale District Local Government, private and family papers of Ngologoza and oral interviews of key informants to place Ngologoza in his own historical context. The question that I seek to answer is: What could be the factors that enabled community builders like Ngologoza in Kigezi to focus on the identity based on the geographical area of residence as opposed to ethnicity at a time when elsewhere in Uganda tribalism/ethnic nationalism was the norm?

1. DEREK PETERSON, *ETHNIC PATRIOTISM AND THE EAST AFRICAN REVIVAL: A HISTORY OF DISSENT, c. 1935-1972*. CAMBRIDGE: CAMBRIDGE UNIVERSITY PRESS (2012).

2. MAHMOOD MAMDANI, *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM*. JOHANNESBURG AND KAMPALA: WITS UNIVERSITY PRESS AND MAKERERE INSTITUTE OF SOCIAL RESEARCH, 51 (2017).

3. Peterson, *supra* note 1.

II. NGOLOGOZA'S LIFE CONTEXT

Paulo Ngologoza was a key figure in the politics of Kigezi in Uganda, yet his intellectual and political works have been undermined and/or unfairly criticized by historians of East Africa. My claim in this article is that Ngologoza was an exceptional leader in the politics of Kigezi and elsewhere in Uganda. My argument is that his history book "Kigezi and its people" focused on building an inter-ethnic solidarity and/or a residence-based identity of the *Banyakigezi* as opposed to his ethnicity, the Bakiga. I claim that Ngologoza received inspiration from a multiplicity of sources including pre-colonial, colonial and the socio-economic aspirations of his time to think of Kigezi in terms of geography as opposed to his ethnicity.

A. Ngologoza's family

Ngologoza's father was Banjarana, who was a son of Maheesi, son of Ruhiira, a descendant of Kainika.⁴ He was therefore a Mwinika by clan. Ngologoza was the second born to a family of four children, namely: Ndereya Rubale, Paulo Ngologoza, Elizabeth Banyagente and Yozeph Nyamugyema. They were bereft of their father at an early age but grew up to become responsible citizens in Kigezi. Apart from Banyagente who became an Anglican, the rest professed Catholicism.⁵ Ngologoza married Marita Kairaza Ngologoza and together they had ten children who include Lazaro Rwabishari, Stephano Bakesigaki, Anastazia Kibuhweire, Posiano Rwamuhanda, Magdalena, Mariserina Nyakamaga, Robert Tibahurirwa, Paulina, Francisca Tibimanywa and Pakomo Barekye. Apart from Pakomo Barekye, the last born of Ngologoza who gave the author of this article this account, the rest have since passed on. Some sources say that Ngologoza had a brother called Gabriel Katabazi but Pakomo Barekye explained away this account giving it a political perspective. Katabazi was not a biological brother to Ngologoza but a clanmate who moreover belonged to a different lineage. He was a Mwinika who like Ngologoza became a political leader in Rukiga. It is from this account that Katabazi and Ngologoza received political brotherhood. Another clanmate of Ngologoza that is widely known in Kigezi is Robert Kitariko, the former Secretary General of the Democratic Party (DP) in Uganda.

4. PAULO NGOLOGOZA *KIGYEZI NABANTU BAMWO*. NAIROBI, DAR ES SALAAM AND KAMPALA: EAST AFRICAN LITERATURE BUREAU (1967).

5. Pakomo Barekye, *Interview*, Bukinda, Rukiga, 9 June 2018.

Ngologoza is also survived by grand children and great grand children. One of his grand children, Hilary Mugisha, son of Posiano Rwamuhanda, became a Roman Catholic priest of Kabale Diocese.

B. Education and work

Ngologoza had a humble background given his lack of formal education but rose through the ranks so quickly. However, available evidence indicates that Ngologoza knew how to read and write despite his lack of formal education.

Contrary to the widely held view that Ngologoza had a personal secretary who wrote everything for him, several documents found in his family papers are written in his own handwriting. This is corroborated by his trademark signature found in the family papers that he himself wrote and elsewhere in the official documents in the Kigezi district archives. Pakomo Barekye, the only Ngologoza's surviving son, relates how in addition to catechism lessons his father acquired these skills from the Baganda when he worked for them as a houseboy.⁶ In particular, Pakomo mentions one Ikazire, a Muganda chief in Kigezi who is believed to have taught him Luganda and Swahili in addition to reading and writing.

Pakomo recounts how Ikazire's visits to Ngologoza's home in Bukinda were always memorable ones involving good feeding including goat roasting. As an appreciation from the Ngologoza's, it became a tradition that Ikazire would serve meat to the family and carry away roasted meat on his departure.⁷ Born in 1897 at Rwanyena in Rubaya, Kabale in Kigezi, Ngologoza attended catechism lessons and was baptized a Catholic at Kitabi in Ankole in 1922.⁸ He started serving Kigezi as a village chief in 1923, promoted to Parish Chief in 1925 and became Gombolola Chief of Kikongyere in 1929.⁹ He became a Saza Chief of Kinkizi in 1936 long after the native Bakiga had replaced Baganda Chiefs. He was transferred to Rukiga as a Saza Chief in 1942 and

6. *Id.*

7. *Id.*

8. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Telegram from the District Commissioner, 28 August 1952 mentions Paul Ngologoza's approximate date of birth as 1899. But, PAULO NGOLOGOZA, KIGYEZI NABANTU BAMWO. NAIROBI, DAR ES SALAAM AND KAMPALA: EAST AFRICAN LITERATURE BUREAU (1967), mentions 1897 as the approximate date of birth.

9. Ngologoza *id.* Also see, Box 92. Administration. Honors: List of holders of honors, eligibility file. Telegram from the District Commissioner, 28 August 1952.

became the first Secretary General of Kigezi in 1946, a position he held for nine years.¹⁰ He was appointed a Chief Judge in 1956 and Chairman of the Appointments Board in 1959.¹¹

C. Comparing Ngologoza with his peers

When compared to his peers such as Mukombe, Paul Rukeribuga, Paul Kakwenza and Thomas Rwomushana, it becomes obvious that Ngologoza did exceptionally well. Mukombe for instance worked with the Native Administration Police in 1912. He became a Station Chief in 1920, Gombolola Chief in 1921 and replaced a Muganda as a Saza Chief of Ndorwa in 1930.¹² This record of progress shows that Mukombe was senior to Ngologoza. However, in 1946, Ngologoza became superior to his senior when he (Ngologoza) was appointed the first Secretary General of Kigezi. The Secretary General was the highest rank one could have in the district. In terms of influence, it was Paul Kakwenza, the Saza Chief of Ndorwa, who was ranked second to Ngologoza, the Secretary General in the district in 1953.¹³ Ngologoza and Thomas Rwomushana were the first Bakiga to receive certificates of honor from the colonial government in 1934.¹⁴ However, while Rwomushana received the honor as a county chief, Ngologoza was a mere Sub-county Chief. To deserve this, Ngologoza had consistently proved to work hard. In 1930 and 1932, the District Commissioners described him as the “best chief in the county”.¹⁵ This shows that Ngologoza was an exceptional chief.

10. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Telegram from the District Commissioner, 28 August 1952.

11. Ngologoza, *supra* note 4.

12. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Form of Recommendation for honors of Mr. Mukombe, Record of Public Service, District Commissioner Kigezi, 4 February 1949.

13. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Form of Recommendation for honors, Grounds of recommendation for Mr. Paul Kakwenza, District Commissioner, Kigezi, 24 January 1953.

14. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. List of Holders of Honors in Kigezi District. District commissioner, Kigezi to the Provincial commissioner, Western Province, Masindi, 10 May, 1949.

15. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Paulo Ngologoza, Comment, 1930, J. E. Phillips, Comment, 1932, J. R. Bell.

D. Ngologoza, the first Mukiga to fly by air

It is believed that Ngologoza was the first Mukiga to fly by an euro-plane. This widely held view is also expressed in the traditional Bakiga song of *enanga* (trough zither) commonly known as *endegye* (euro-plane) in praise of Ngologoza.¹⁶ Contrary to the view that Ngologoza travelled abroad in that euro-plane, Pakomo explains how the euro-plane was a military aircraft that the British used to airlift Chiefs to convince them that Britain was well prepared for the impending war against Germany.¹⁷ It was at Nyakasharara in Mbarara where all chiefs from Western Province had gathered in 1939 that the British displayed this show of might. Mukombe (mentioned in the song) who had been selected from Kigezi is believed to have declined the offer to board the aircraft in fear of death, but Ngologoza courageously took on the challenge. After flying in the aircraft, the chiefs would then help to mobilize the native young men to join the army.

Whereas Mukombe and his colleagues who feared are believed to have done so on account of advancing age,¹⁸ available evidence indicate that there was only six years of age difference between Mukombe and Ngologoza. For instance, in 1949, Mukombe was 56 while Ngologoza was 50 years old.¹⁹ Moreover, both men had families to look after. It is for instance alleged in the traditional song that Ngologoza bade farewell to his son, Rwabishari and requested him to take care of his property as the heir in case he (Ngologoza) died in the aircraft.²⁰ Pakomo relates how his elder brother —Rwabishari — joined the army (African Rifles) to participate in the British war against Germany in the World War II at the encouragement of their father Paulo Ngologoza.²¹

16. *Endegye* is the traditional song of *enanga* (trough Zither), a music instrument that is unique for Bakiga and Banyarwanda in Africa. My elder sister Jasinta Ntegyerize knows how to play *enanga* and used to do so and sing for us *endegye* in praise of Ngologoza on the fireplace at home.

17. Pakomo Barekye, *Interview*, Bukinda, Rukiga, 5 May 2018. Pakomo is the only surviving son of Paulo Ngologoza.

18. *Id.*

19. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Form of Recommendation for honors, Name and age of Mukombe, G. B. Moss, District Commissioner, Kigezi, 4 February 1949. Also see, Box 92. Administration. Honors: List of holders of honors, eligibility file. Form of Recommendation for honors, Name and age of Paulo Ngologoza, District Commissioner, Kigezi, 4 February 1949.

20. Rwabishari, the first born of Ngologoza, died and is survived by a widow and children who live in Kyanamira on a very large stretch of land that he inherited from his father (Paulo Ngologoza). He is mentioned in the *endegye*, Bakiga traditional song.

21. Pakomo Barekye, *Interview*, Bukinda, Rukiga, 9 June 2018.

E. Ngologoza's honors and awards

Ngologoza received accelerated promotions and awards on account of his hard work. This is evident from the comments of Kigezi District Commissioners. In 1936, A. G. N Jenkins described him as “a delightful personality and a man of outstanding merit.”²² In 1939, Ngologoza was described as an excellent chief who organized and controlled his county well.²³ By 1945, L. A. Mathias could describe him as the “most progressive and sensible chief in the district.”²⁴ On his recommendation of Ngologoza to receive a King’s Medal for African Chiefs for Kings birthday honors in 1949, the DC would write: “I do not think that there is any doubt that Paulo Ngologoza deserves a King’s Medal... He has now done twenty years, and what service may lack in length, has certainly been made up for in hard work.”²⁵ In 1947, the DC had already observed about Ngologoza over the same award: “I think a special case can be made for the award. Ngologoza is an outstanding man.”²⁶ Ngologoza’s peers and namesakes who include Paul Kakwenza and Paul Rukeribuga, the Mutwale of Bufumbira though with same years of service were to receive similar honor in 1953 (four years later).²⁷

F. Ngologoza's character

Ngologoza was a man of good character, a team player and influential. This is manifested in the confidence that the district team and his fellow chiefs had in him when they appointed him Secretary General even when he had no formal education. Ngologoza himself humbly acknowledges the support he received thus: “What could

22. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Paulo Ngologoza, Comment, 1936, A. G. N. Jenkins.

23. *Id.*

24. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Paulo Ngologoza, Comment, 1945, L. A. Mathias.

25. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. G. B. Moss, District Commissioner, Kigezi, The Provincial Commissioner, western Province, Masindi, 4 February 1949.

26. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Notes, District Commissioner, 17 January 1947.

27. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Form of Recommendation for honors for Paul Kakwenza 50, Recommendation and order of preference, Queen’s Medal in Silver-Gilt. J. A. Burgess, District Commissioner, Kigezi, 24 January 1953. Then, KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Form of Recommendation for honors for Paul Rukeribuga 50, Recommendation and order of preference, Queens Medal in Silver, 24 January 1953.

I do, a person who never got education or even a glimpse of schooling? On the other hand, I had the confidence of my colleagues, the Saza Chiefs, because they had appointed me and the following people helped me more than I can tell: Messrs. Karegyesa, Mukombe, Rukyeribuga, Kakwenza and others-good luck to them.”²⁸ Despite this humility, on recommending him for an award of Honorary Member of the British Empire (M. B. E.) in 1952, the DC described Ngologoza as a man of “considerable strength of character, tact and a progressive political sense”, an excellent example to all officers of government and “an outstanding African to whom Kigezi owes much.”²⁹

G. Ngologoza; a church and state’s man.

Paulo Ngologoza was devoted to the building of state and Church alike. Besides the honors bestowed on him by the colonial government, Ngologoza became a Papal Knight equivalent to the honor of K. S. G Knight of St. Gregory in 1980.³⁰ The Church had also in 1950 sponsored Ngologoza’s trip to Rome to attend a holy year pilgrimage becoming one among the first people from Kigezi to travel to Europe. Available evidence indicate that the protectorate government in Uganda agreed to provide further funding to enable him extend his trip to the United Kingdom where he would “spend three to four weeks at government expense.”³¹ On his return, Ngologoza shared his experience with the people of Kigezi and continued to serve the protectorate government until he retired in 1960. However, even after his retirement, Ngologoza would be called upon as a compromise candidate to serve on the District Council and to give expert advice in time of crisis.

H. Ngologoza and post independence politics in Kigezi

Ngologoza believed in change as a factor of life and in progress and not in custom. Although he was a Catholic, Ngologoza was of a Democratic Party (DP) leaning. He

28. Ngologoza, *supra* note 4, at 101-102.

29. KigDA Box 92. Administration. Honors: List of holders of honors, eligibility file. Form of Recommendation for honors for Paul Ngologoza, Recommendation and order of preference, Hon. M. B. E., District Commissioner, Kigezi, 28 July 1952.

30. Ngologoza, *supra* note 4.

31. KigDA Box 35. Administration. Visit of Uganda Africans to other territories file. Mr. Paulo Ngologoza’s visit to Rome and the U.K, District commissioner, Kigezi to All Saza chiefs, Kigezi, 3 May 1950.

changed to become a supporter of Uganda People's Congress (UPC) and the *Rutakirwa engabo ya Kigezi* institution in early 1960s not because he believed in custom but because it was a popular institution politically at the time. He believed in the saying: "the tree bends wherever the wind blows". He is known to have advised his fellow Catholics to join UPC for the benefit of their religion.³² He served the UPC government diligently although this did not provide immunity to discrimination by the UPC on account of religion. Having generously donated land to the Rwanyana Catholic Mission, a primary school was built there and named after him—Paulo Ngologoza Primary School—in his honor. However, the name has since been removed and erased from the records due to fear of discrimination. According to the Vicar General of Kabale Catholic Diocese, Fr. Silverio Twinomugisha, this was done during the UPC government.³³

It is also alleged that the *Banyama*-UPC group "B" destroyed Ngologoza's coffee plantation either for his support of the *Rutakirwa* or for his religious affiliation to Catholicism or both.³⁴ He was appointed the Vice Chairman when the UPC rift between the *Baboga* — who were the supporters of the constitutional monarchy (UPC groups "A") — and the *Banyama* — which was a progressive UPC group "B" faction that resented the constitutional monarchy in Kigezi.³⁵ These factions threatened to tear part of the Kigezi District Council.³⁶ He was also among the elders identified to resolve the *Banyama-Baboga* political impasse in the district following the election of *Rutakirwa engabo ya Kigezi* as a UPC regional chairman. In 1967, Ngologoza was appointed the deputy district Speaker. In this position, he used his skills and experience to help a well-educated but ill suited speaker to negotiate and resolve conflicts at a time when Kigezi was still 'a blaze with factional politics'.³⁷ Muniini Mulera describes him

32. Silverio Twinomugisha (Fr. Dr.), Vicar General Kabale Diocese, *interview*, Rushoroza, Kabale, 6 June 2018.

33. *Id.*

34. Pakomo Barekye, *Interview* Bukinda, Rukiga, 9 June 2018.

35. KigDA Box 16. Administration. Confidential Flimsies file. E. W. S. Kamwaka, District Commissioner, Kigezi to the Permanent Secretary, Ministry of Regional Administration, Kampala, Kigezi District Council Meeting, 2 August 1965. The correspondence indicates that the district council had nominated Mr. Ngologoza with 58 votes and Mr. Buraaro with 21 votes. Also see, Charles Kabuga, *The Banyama-Baboga Controversy*, in *A HISTORY OF KIGEZI IN SOUTHWESTERN UGANDA* (Donald Denoon, ed., 1972), at 286-297. He confirms that Paulo Ngologoza was returned as the Deputy Chairman of the District Council by the appointing authority, the Minister of Regional Administration.

36. Kabuga *id.*, at 286-297.

37. Muniini K. Mulera, *Paulo Ngologoza of Kigezi: The Tragedy of Neglect*, DAILY MONITOR, Thursday, April 3, 2018.

as a man revered by his people and whose name is “synonymous with honor, integrity and visionary leadership”.³⁸ Ngologoza held many other leadership positions in the evening of his years until he died in 1984.

III. THE MAKING OF ‘KIGEZI AND ITS PEOPLE’

Mahmood Mamdani examines how colonialism created bifurcated states of natives and non-natives each with a separate law.³⁹ In introducing this binary, the British were following the advice of Henry Main who advised that the best way to govern the natives of India was through native customs.⁴⁰ When this system of governance was replicated in Africa, it defined who a native was and created homelands, which were ethnic with customary law for the natives and civil law for non-natives. For Kigezi, which had three tribes—Bakiga, Bahororo and Banyarwanda—it implied that each tribe would have its own native law, which would discriminate not only Europeans and Indians but also tribes from different homelands in Kigezi and elsewhere in Uganda.

The Bakiga native law, for instance, would on the one hand discriminate Bahororo and Bafumbira and on the other discriminate tribes from outside Kigezi, the Europeans and Indians. The civil law however, applied only to non-natives including Europeans, Indians and non-natives of other ethnic homelands. In the process tribalism would develop because a theory of ethnic history supported by the colonial administration framed the agency of the native, which in the colonial sense of power and knowledge was considered tribal.⁴¹ Therefore, Mamdani described tribalism as “culture pinned to the homeland, culture in fixity, politicized so that it does not move.”⁴² Everywhere in Africa, tribalism as defined became the norm. In Kigezi, however, the response from native leaders like Ngologoza stepped outside the parameters of tribalism to focus attention on building a residence-based identity in Kigezi. I claim that Ngologoza received inspirations from a multiplicity of sources including pre-colonial, colonial and the socioeconomic aspirations of his people, to think more of ‘Kigezi and its people’ as opposed to his ethnicity, the Bakiga.

38. *Id.*

39. Mamdani, *supra* note 2.

40. HENRY MAIN, ANCIENT LAW: ITS CONNECTION WITH THE EARLY HISTORY AND ITS RELATION TO MODERN IDEAS. NEW YORK: HENRY HOLT AND COMPANY (1906).

41. MAHMOOD MAMDANI, DEFINE AND RULE: NATIVE AS POLITICAL IDENTITY. KAMPALA: MAKERERE INSTITUTE OF SOCIAL RESEARCH, (2013) 7.

42. *Id.*, at 7.

A. Pre-colonial and Colonial approaches in 'Kigezi and its People'

In studying the making of 'Kigezi and its people', my motivation is to explain the historical context within which Ngologoza was shaped as a state builder and the circumstances that enabled him to focus on the residence-based political identity of Kigezi as opposed to Bakiga nativism and ethnic homeland. In this section, I want to focus on the pre-colonial and colonial sources of inspiration to Ngologoza.

Firstly, the Bakiga defied the British administrative practice of nativism, and homelands. When in 1912, Captain R. E. Critchley Salmonson, the then Acting colonial officer of Kigezi gathered prominent men at Ikumba to form native governments, Rwambuka, a Musigi had suggested that the Bakiga were not ready to govern themselves.⁴³ Rwambuka who had entered into blood pact with Yowana Ssebalijja, a Muganda who came with the British, requested that the British should maintain the Baganda in Kigezi to advise the Bakiga in the art of government.⁴⁴ Indeed, while Salmonson succeeded in appointing well-known traditional leaders such as Makobore as Saza chief of Rujumbura in Mpororo and Nyindo as Saza chief of Bufumbira, the appointment of Rwagara, a Musigi as Saza chief of Ndorwa to lead the Bakiga ended in a dismal failure. Fellow Bakiga from other clans including the Basigi of a different lineage rejected Rwagara. The British had no option but to appoint Ssebalijja as the Saza chief of both Ndorwa and Rukiga. They also assigned Baganda agents to Makobore of Rujumbura and Nyindo of Bufumbira.

The above arrangement implies two most significant closely linked orientations for Kigezi. The first is that the British did not identify and work with one of the traditional leaders in Kigezi to defend and protect their interests. The second is that the British did not therefore enforce the customary law of any of the three tribes in Kigezi. This fact therefore implies that the British recognized the multi-ethnic character of Kigezi. Elsewhere in Uganda, the approach was different. For instance in Toro, the British installed Kasagama as the *Omukama* or King of Toro and signed an agreement with him as an enforcer of customary law. Consequently, the 1900 agreement created the nativity of Toro privileging one tribe, the Batoro, over other tribes. Unlike Kigezi therefore, the British did not recognize the multi-ethnic character of Toro.⁴⁵ Thus far, a combination of pre-colonial and colonial approaches fused together to inform

43. Yowana Ssebalijja. *Memories of Rukiga and Other Places*, in A HISTORY OF KIGEZI IN SOUTH-WESTERN UGANDA (Donald Denoon, ed., 1972), at 179-199.

44. *Id.*, at 179-199.

45. This is discussed in details in the chapter on "the making of Toro and tribal politics"

Ngologoza's focus on Kigezi and its people as opposed to his tribe, the Bakiga.

The second factor that could have inspired Ngologoza to think more of Kigezi than his tribe, the Bakiga, is the Baganda agency and colonial response. Once the Baganda entrenched themselves in the leadership of Kigezi, they developed a feeling that they were indispensable.⁴⁶ For nineteen years (from 1910-1929), the Baganda chiefs determined the traditions and customary laws in Kigezi. Ngologoza explains the skewed nature of the Baganda laws: "In dealing with cases they did not distinguish between criminal and civil cases, for the simple reason that they wanted all cases to involve fines so that they could acquire goats and cows."⁴⁷

The colonial archive of Kigezi district testifies to the extortion by the Baganda chiefs.⁴⁸ It is believed that the British were opposed to the perpetual rule of the Baganda in Kigezi and overwhelming evidence is available to support this idea because as early as 1918, the British supported the appointment of the natives as chiefs. The British believed that the Baganda chiefs were alien to Kigezi and therefore required temporarily until such a time when natives would acquire sufficient knowledge to govern themselves.⁴⁹ It would seem however, that this idea arose out of native response to the colonial rule of the British and their Baganda agents. First, there was the Nyakishenyi rebellion led by Ntokibiri, in 1917. The rebellions in Kigezi often manifested themselves with Nyabingi, which was a real threat to the colonial establishment. To this end, the DC, Kigezi would write: "I should therefore very much like if possible to get the changes disposed of and the new people settled in at once especially in view of the Belgian prediction of possible Nyabingi activity in these six months."⁵⁰ While the British saw Nyabingi activism as resistance against alien rule, they also believed that the Baganda were unaffected and therefore good shock absorbers. This is also evident in the letter of the DC, Kigezi:

I can see no excuse for retaining Baganda sub-agents here. On the other hand, the terror inspired by the supernatural activities of the anarchic Nyabingi movement operating from outside the district and

46. Ngologoza, *supra* note 4.

47. *Id.*, at 78.

48. The details of "Baganda Agency" are found in the chapter on "the Making of Kigezi".

49. KigDA Box 87. Administration. Native affairs: General file. Provincial commissioner, Western Province, Fort portal to the District Commissioner, Kigezi, 17 December 1918.

50. KigDA Box 28. Administration. Kigezi District-Appointment and Dismissal of Chiefs file. Retirement of 'alien' Agents in favor of indigenous Chiefs, J. E. T. Philips, District Commissioner, Kigezi to the Provincial Commissioner, Western Province, 6 February 1929.

unlikely to disappear before the present generation, it probably is prudent simultaneously to abolish supervisory functions of the county advisors who alone are unaffected by such influences and might be retained at least until the end of the year.⁵¹

In response, the Provincial Commissioner agreed that alien advisers and agents should be dispensed with at the earliest possible time but hesitated to recommend the abolition of all agents in Rukiga at once in view of possible Nyabingi trouble.⁵² Besides the Nyabingi threat, the overriding factor for the use of aliens for such long period seem to have been that of preparing natives for the task of leadership. To this end, the British decided to take on a more direct intervention in preparing the natives when they started a school to train leaders. Captain J. E. T. Philips, the DC, founded the school that brought together Bakiga, Bahororo and Banyarwanda in Kisoro in 1920 to be trained as leaders of a multi-tribal district, but in what looks like tribal distinction, the school was split into two; one for the Banyarwanda located at Sesema in Kisoro and another for the Bakiga and Bahororo natives was moved to Rugarama in Kabale in 1922.⁵³ What is remarkable is that in what looks like a calculated move to detribalize the politics of Kigezi, the British emphasized the teaching of Swahili in the Schools.

Thirdly, the colonial enforcement of a uniform culture in Kigezi as opposed to native cultures could have inspired Ngologoza to think more of Kigezi as opposed to his tribe, the Bakiga. While the British were content to use the Baganda agents in ruling Kigezi, they seem to have been averse to the entrenchment of either Baganda or any single native traditions and customs in Kigezi. This could explain why the British encouraged the teaching of Swahili and not Luganda in Kigezi. Alongside the Baganda chiefs, the British brought in Baziba from Tanzania to serve as Clarks and to teach Swahili to the natives. Available evidence indicates that Swahili became the language of communication both in written and verbal form in 1920s and 1930s. This also meant that natives of Kigezi who had received training from the colonial schools at Seseme in Kisoro and Rugarama in Kabale could be posted anywhere regardless of their ethnic affiliation.

51. KigDA Box 28. Administration. Kigezi District-Appointment and Dismissal of Chiefs file. Retirement of 'alien' Agents in favor of indigenous Chiefs, J. E. T. Philips, District Commissioner, Kigezi to the Provincial Commissioner, Western Province, 6 February 1929.

52. KigDA Box 28. Administration. Kigezi District-Appointment and Dismissal of Chiefs file. Provincial Commissioner, Western Province to the District Commissioner, Kigezi, 27 March 1929.

53. Ngologoza, *supra* note 4.

There is adequate evidence to prove this approach of intertribal appointment of chiefs in Kigezi. For example, Bakiga chiefs worked in Bufumbira and Mpororo while Bafumbira were appointed as chiefs in Rukiga. Knowing Kiswahili as opposed to native language became one of the qualifications for the appointment. In recommending the appointment of two indigenous Bakiga as chiefs in Rukiga county, the DC, Kigezi wrote: "They have long years of exemplary service, are active men, speak good Swahili and are liked by the peasantry and have an unusual driving force of character."⁵⁴ As early as 1921, the DC was recommending William Biteyi, a Muhororo, for a position of Gombolola Chief among his tribesmen in Rujumbura on the basis of his knowledge of Kiwahili that he learnt in the colonial school. The DC, Kigezi described him as, "an intelligent and useful boy who has been taught the three R's and Kiswahili."⁵⁵ Ngologoza himself explains how his knowledge of Kiswahili helped him in doing his work as a Chief. Though he had no knowledge of English, having acquired no formal education, he overcame the problems of communication because he knew Swahili.⁵⁶ Swahili had become a medium of communication that even the Provincial Commissioner (PC) could write to the chiefs in Swahili. For instance, to the Mutwale of Bufumbira, the PC wrote: "*Nimefuraha sana kuwona Bwana DC amenifahamisha kama umefanya kazi mzuri sana katika Bufumbira tangu ulichaguliwa kuwa Mutwale,*"⁵⁷ (I am very happy to see the DC informing me that you have done good work in Bufumbira from the time you were chosen as Mutwale).

The British also tried to erase the Baganda traditions and customs by replacing Ganda names of chieftainships with Swahili names. The colonial language board meeting for instance suggested that the names *Saza*, *Gombolola* and *Muluka* be retained for the three grades of chieftainship apart from the latter, which should change to *Mluka* to suit the Swahili variation. In addition, it was recommended that the chiefs themselves be called *Mwenyi Saza*, *Mwenyi Gombolola*, and *Mwenyi Mluka*.⁵⁸ While

54. KigDA Box 28. Administration. Kigezi District-Appointment and Dismissal of Chiefs file. J. E. P. Philips, the District Commissioner, Kigezi to the Provincial Commissioner, Western Province, 28 November 1929.

55. KigDA Box 29. Administration. Appointment of Chief's file. J. E. Philipps, District Commissioner, Kigezi to Provincial Commissioner, Western Province, 1 February 1921.

56. Ngologoza, *supra* note 4.

57. KigDA Box 29. Administration. Appointment of Chief's file. C. Sullivan, Provincial Commissioner, Western Province, Fort Portal to the Mutwale of Bufumbira, 31 October 1929.

58. KigDA Box 29. Administration. Appointment of Chief's file. The Chief Secretary to the Provincial Commissioners, Eastern, Western and Northern Provinces, 6 June 1929. It follows that the Swahili language policy did not only apply to Kigezi region but to the Eastern and Northern Provinces as well. However, it seems this policy did not apply to Buganda since its Provincial Commissioner was not

the British were getting rid of the alien Baganda customs, they did not emphasize native ones, a factor that could help explain the intertribal comity in Kigezi. I claim that Ngologoza's thinking received inspiration from this colonial approach that enforced a uniform identity on Kigezi. My argument is that this colonial approach was able to inspire natives like Ngologoza because it emphasized the pre-colonial residence-based mode of political mobilization.

B. The Socio-economic aspirations of natives in 'Kigezi and its People'.

In this section, I focus my attention on Ngologoza and the resettlement of the Bakiga⁵⁹ in North Kigezi, Ankole and Bunyoro. I claim that this event underscores the socio-economic aspirations of natives in Ngologoza's time. I examine three mainly closely linked realities to explain how this event inspired Ngologoza to think more of 'Kigezi and its People' as opposed to his tribe, the Bakiga. The first is the idea of nativity and homeland, which occupied a central position in the project of resettlement. The second reality is that Kigezi native leaders needed to strike a compromise with tribal leaders outside Kigezi. The third reality is on how the Kigezi native identity would be preserved outside Kigezi. I begin with the idea of nativity and homeland. The native chiefs and L. A. Mathias, the DC held divergent views over the resettlement of the Bakiga.

L. A. Mathias wanted to resettle the whole villages from Ndorwa and Rukiga to Ankole especially in the areas of Mwizi, Kabatanagi in Rwampara "for their suitability since the altitude was high being in hills with cool air that could match the lives of the Bakiga".⁶⁰ In his view, it was not necessary to seek for the consent of the natives. Mukombe, the main proponent of resettlement, and other native chiefs who visited Ankole and the less populated areas of Kigezi objected to the idea of settling people outside Kigezi. The native chiefs believed that the British had hidden motives

copied. It is also possible that such a policy did not apply to Kingdom districts such as Toro and Ankole where the British emphasized native custom.

59. Resettlement is the term used to refer to the process/places where the people of South Kigezi were to officially be moved due to population pressure. It is the word used in minutes and correspondences found in the Kigezi district archives. The term Bakiga here refers to the people who migrated from South Kigezi to North Kigezi, Ankole and Bunyoro. It does not necessarily mean Bakiga tribe in the colonial sense of the word because it also involved other groups of people such as Bafumbira. Resettlement can be used interchangeably with the word migration, settlers with migrants. Resettlement carries a connotation of forced movement while migration refers to seasonal movements.

60. Ngologoza, *supra* note 4, at 88.

in their push for settlement of the whole Bakiga villages to areas outside Kigezi. Besides reducing population pressure on the land, the native chiefs thought that the British wanted to grab the land that would be left behind by Bakiga. This fear raged on because some areas of Kigezi had been set apart for European farms to grow pyrethrum. Two Europeans were already in possession of Bisiika, Kigarama, Rwakigarama and part of Karengyere hills, all in densely populated areas of Ndorwa and Rukiga.⁶¹ Overwhelming evidence indicates how the native chiefs objected to the idea of resettlement of Bakiga outside Kigezi on grounds of nativity.

A standing committee on resettlement and the District Council recommended the following: Firstly that an agreement be made and confirmed by the governor of Uganda saying that the land of Kigezi being small and not enough to feed the people of Kigezi, the protectorate government will find an alternative land in Ankole district but the people of Kigezi should decide for themselves to go.⁶²

Secondly, it is not allowed that the land of Kigezi should be taken by the people who are not Africans or Africans who are not natives of Kigezi (*enzarwa za Kigezi*) but non-Africans or Africans who are allowed by the District Council to put the land to use for the benefit of the whole country.⁶³

Thirdly, it should be confirmed that the land given to the people of Kigezi in Ankole belongs to them and no one else shall at some point in future years repossess that land.⁶⁴

Fourthly, any person resettled is at peace to return to Kigezi where he came from, if he feels unhappy with the new place or if he gets problems there.⁶⁵

Fifthly, people who are resettled should go with their leaders (*nabami babo*): if they are One hundred (100 people), Parish Chief (*owomluka*), five hundred (500 people), Sub-county Chief (*Owegombolola*), One thousand (1000 people), County Chief (*Oweishaza*); all should be natives of Kigezi from where the settlers come from.⁶⁶

The Governor resolved the divergence between L. A. Mathias and the native chiefs in favor of the latter. He ruled, “the people should be resettled inside Kigezi and should not be compelled to leave Kigezi. But after the areas within Kigezi have been

61. Ngologoza, *supra* note 4.

62. KigDA. Minute Book. Minute 2/50, *Okufururira Omuri Ankole*, 3 February 1949.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

filled up, the people should be advised to move to other areas outside Kigezi.”⁶⁷ The point I want to drive home here is that the resettlement project focused its attention on Kigezi as an area of residence for the natives of Kigezi. The idea here is that the Bakiga and Bafumbira of South Kigezi once resettled to the North of Kigezi would still be considered as natives of Kigezi regardless of tribe. I claim that this approach reflected the pre-colonial mode of political mobilization from which Ngologoza derived inspiration to think more of ‘Kigezi and its People’ as opposed to his tribe, the Bakiga.

The second reality that is closely linked to the first is that Kigezi native leaders would have to strike a compromise with tribal leaders outside Kigezi to secure land for resettlement of Bakiga. Ngologoza here became a key leader because he was progressive and believed in compromise. He was well aware of the difficulties involved in securing land for the Bakiga. He is therefore believed to have travelled to Ankole, Toro and Bunyoro, kneeling before the kings to request for land for the Bakiga settlement.⁶⁸ To win the favor of the kings, Ngologoza would tell them that the Bakiga would work for the kings and natives as laborers in return for land.⁶⁹ Moreover, in the protectorate government policy, the Bakiga had been identified as a reserve force for labor in the mines and plantations. In Toro for instance, the Bakiga dominated the labor force in the tea plantations and Kilembe mines.

In the allocation of land for resettlement to the Bakiga, periphery areas were identified intentionally to create buffer zones between the wild/game reserves and the natives of Toro. In Kibale County of Kamwenge in Toro district for instance, the resettlement area was an area west of the current main road to Kamwenge town stretching to the Kibale forest and game reserves. There were complaints on crop raiding on the one hand and forest and game encroachment by the settlers on the other. No non-native was allowed to settle in the area east of the current road to Kamwenge.⁷⁰ This was probably one way the Bakiga would work for the natives outside Kigezi. The point I want to emphasize here is that Ngologoza had dropped the idea of nativity and homeland in favor of striking a compromise with ethnic leaders outside Kigezi.

The arrangement above produced lasting political ramifications. For instance, whenever there is a political contest in which a Mukiga participates in Toro, the natives

67. Ngologoza, *supra* note 4, at 88.

68. Silverio Twinomugisha, *Interview*, Rushoroza, Kabale, 6 June 2018.

69. Pakomo Barekye, *Interview*, Bukinda, June 7, 2018.

70. Tumuhairwe John (Fr.), *Interview*, Virika, Fort Portal, 3 July 2018. John Tumuhairwe is a Catholic Priest of Fort Portal Diocese who worked as a Parish Priest of Kahungye in Kamwenge which was mainly established by the Bakiga settlers.

constantly reminds the Bakiga that they came to work on the land and not to rule; “*mukeija kulima, mutaije kulema*” (you came to dig, you did not come to rule). It is until the settlers aspired to become a political majority that the natives became hostile. I identify two events that illuminates this claim. The first is the 1992 brutal eviction of the Bakiga from the Kibale forest and game reserve against research recommendations.

A study team from Makerere Institute of Social Research (MISR), Makerere University and Land Tenure Center, University of Wisconsin-Madison, USA had argued against the application of the general government policy towards eviction on the Bakiga of Kibale game reserve.⁷¹ Nevertheless, the eviction was effected in a manner that appeared as ethnically motivated. The second event is when the request for a district of Kamwenge, a predominantly Bakiga area, was advanced. The Toro natives protested arguing that the Bakiga were requesting for tribal independence in native Toro. Available evidence suggests that the Kigezi native council had foreseen this. In their opposition to L. A. Mathias, the council argued against resettling ‘a nation into another nation’ (*okufurura eihanga, okuritwara omwihanga erindi*).⁷² In their view, the settlers would forever be referred to as visitors/migrants.

Drawing from the opinion of the Administrative Officer who projected that Uganda would be overpopulated in 35 years time, the council observed that like Kigezi, Ankole and other districts would also be overpopulated and in need of expansion. This would lead to the expulsion of ‘our people’.⁷³ In such a scenario, they would have nowhere to settle. The council then envisaged that the settlers would then be like the Israelites who were expelled from Europe to return to their homeland Palestine already occupied by the Arabs, which resulted into endless wars.⁷⁴ The council therefore resolved that the unsuitable areas of Kigezi particularly in the north be improved for the resettlement of the Bakiga.⁷⁵ However, the council did not prevent people who wished to migrate to Rwanda or Ankole as they ‘have always done in the past’.⁷⁶

71. John Aluma *et. al.*, Settlement in Forest Reserves, Game Reserves and National Parks in Uganda: A Study of Social, Economic and Tenure Factors Affecting Land Use and Deforestation in Mabira Forest Reserve, Kibale Forest Reserve and Kibale Game Reserve-Corridor.” Makerere Institute of Social Research, Makerere University, Kampala and Land Tenure Center, University of Wisconsin, Madison, USA (1989).

72. KigDA. Minute Book. Minute 2/50, *Ebyayongerwa ha No. 2: Okufurura-Re Ankole Resettlement Scheme*, 12 May 1949.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

The third reality was on how to keep the Kigezi native identity outside Kigezi. The above assessment of the Kigezi native council advances three pronged interpretations: First that the native council perceived of Kigezi as a nation that belonged to people in Kigezi regardless of tribe. Second is that the native council recognized the existence of other nations in which the Bakiga/Kigezi natives would never be accepted as natives. Third, while the council recommended internal migration, they would not restrain Kigezi natives from migrating at their own will to Ankole or Rwanda as they had always done individually. While holding the same perceptions, Ngologoza orchestrated the resettlement of people from South Kigezi to both North Kigezi and outside Kigezi. The people would be induced to migrate on their own will. They would be expected to prosper and to learn new customs in the resettlement area without forgetting where they used to live.

The concept Bakiga has often times been used generically to refer to all people who migrated from South Kigezi to North Kigezi, Ankole, Toro and Bunyoro. It is possible that Ngologoza also applied the concept Bakiga generically to refer to the people of South Kigezi. So, when Ngologoza says, “they must never forget the good customs and characteristics of the Bakiga, nor forget their language, and they must feel that they are Bakiga, remembering where they used to live”⁷⁷ he most certainly did not refer to the Bakiga tribe but to all the people of Kigezi who migrated regardless of tribe. They would all remember Kigezi where they used to live in geographical terms as opposed to tribe. I argue that this claim is manifested in the Banyakigezi associations in Ankole, Toro and Bunyoro in which the migrants identify themselves and mobilize for their socio-economic advancement.

III. THE INTERPRETATION OF NGOLOGOZA IN ‘KIGEZI AND ITS PEOPLE’

Ngologoza did not focus on only Bakiga customs to produce Bakiga solidarity but on the multi-ethnic customs to produce an inter-ethnic solidarity in Kigezi. In his work; “Kigezi and its People”, Ngologoza paid attention to Bakiga, Bahororo and Bafumbira customs alike. Moreover, Ngologoza recognized the Bahororo and Bafumbira traditional leadership in Kigezi. I claim that Ngologoza received inspiration from the pre-colonial, colonial and the socio-economic aspirations of his time to think in terms of ‘Kigezi and its People’ as opposed to his tribe, the Bakiga.

77. Ngologoza, *supra* note 4, at 88.

Moreover, the Bakiga neither confined themselves in boundaries nor professed a common political identity until the British fixed the borders of Uganda and enfolded the Bakiga of Uganda into a territory the British came to call Kigyezi after *ekigyezi* (a lake) found in Bufumbira, the current district of Kisoro. Indeed, the Bakiga were only an amalgamation of clans. The British called them Bakiga because they lived in Rukiga. The British tried to constitute the Bakiga into a tribe without success. By the time the Bakiga became politically conscious they belonged more to Kigyezi than their ethnic homeland, Rukiga. In this section, I want to focus on three main points of concern about Ngologozo's life and work. The first point of concern asserts that Ngologozo set out to create structures of governance, identify institutions that enforce customs and elevate personalities under which Bakiga could draw inspiration. The second point of concern emphasizes that Ngologozo antagonized himself with revivalists (Barokole) in Kigezi in defense of Bakiga hierarchy and customs. The third concern is on the legacy of Ngologozo in Kigezi.

Firstly, Peterson claims that Ngologozo like all native leaders in Africa spent many of his work giving detailed biographies of prominent tribes men, the Bakiga. That Ngologozo's aim was to "anchor contemporary political and religious authorities within an inspiring past and thereby impart to Kiga leadership both validity and authenticity."⁷⁸ My claim is that Peterson's assertion is deductive in the sense that just like others that use binary opposites and analogies, he simply categorizes all native leaders as 'ethnic patriots'. To clarify my point, let me highlight a few weaknesses of Peterson's claim. I begin with the assertion that Magyengye, a Mukiga leader, occupies half a page of Ngologozo's work. This claim is not true because Ngologozo talks about Magyengye in only one sentence that opens up a paragraph: "Magyengye son of Rwamushwa was a *Mukuru* of Bakongwe at Mukyante."⁷⁹ It is Katuregye, the warlord and young brother to Magyengye, that Ngologozo talks about in a few more lines of the same paragraph not as a hero but a villain who uses Batwa pygmies to annihilate the Bakiga.⁸⁰

On the contrary, Ngologozo paid tribute to the Muhororo king, Makobore, the *Omukama* of Rujumbura. In almost two pages, Ngologozo traces Makobore's lineage from king Kahaya of the Bashambo dynasty of Mpororo whom even the Bakiga respected and praised in their famous expression: '*Oshe Kahaya ka Ruguru*'.⁸¹ It would

78. Peterson, *supra* note 1, at 75.

79. Ngologozo, *supra* note 4, at 24.

80. *Id.*, at 24.

81. *Id.*, at 28.

therefore be these Bahororo leaders that Ngologoza would be seen to identify and elevate as leading figures with an inspiring past but not fellow Bakiga tribesmen as Peterson suggests.

In the Makobore lineage, Ngologoza identified his (Makobore's) son, Karegyesa, and grandson, F. Kitaburaza, who became leaders of contemporary Kigezi. This contrasts Ngologoza with tribal nationalists such as George Kamurasi Rukidi III whose work 'the Kings of Toro' sought to validate and authenticate Batoro leadership by identifying Batoro kings upon whom contemporary political authority in Toro would anchor,⁸² Ngologoza recognized the multi-ethnic identity of Kigezi and devoted his efforts on building a residence-based Banyakigezi identity as opposed to his tribe, the Bakiga.

Certainly, Ngologoza's work is in no way comparable to the work of colonial ethnographers such as Tom Stacey and May Edel who wrote to establish the authenticity of the Bakonzo and Bakiga ethnicity. The need to write about the history of Kigezi started in late colonial period when in 1962, the district council discussed the idea. Minute 42/52 about "*ebyafayo bya Kigezi*" (the history of Kigezi) explains it well.⁸³ The council members appreciated the idea and recommended that anybody interested and willing to write should do so. They agreed that the East African Literature Bureau would help such a person in producing a book desired by all people in Kigezi.⁸⁴

Paulo Ngologoza's private papers illustrate how he took on this project. The correspondences that he made with the Runyankole-Rukiga Committee, Festo Karwemera, a contemporary Rukiga language expert, and the East African Literature Bureau, the publishers, is an abundant manifestation of the guiding hand that he received to produce the book that was desired by all in Kigezi. By 1969, Ngologoza's book "Kigezi and its people" is reported to have been on high demand in Ankole and Kigezi.⁸⁵ In contrast, the work of the Bakonzo Life history Society (BLHRS) represented the ideas of a tribal separatist movement that sought to establish the

82. George Kamurasi Rukidi III, "The Kings of Toro", unpublished hand written work, translated by Joseph R. Muchope, Makerere University College (n.d).

83. KigDA. Minute Book. Minute 42/52, *ebyafayo bya Kigezi*, October 21-29, 1952.

84. *Id.*

85. Paulo Ngologoza's Private papers, Kigezi Nabantu Bamwe file, Paulo Ngologoza, Bukinda, Kabale to Mr. N. L. M. Sempira, EAL. Bureau, Nairobi, 22 May 1969. "A number of people are requesting for the copies of Kigezi N' Abantu Bamwe, and add on to say that they are not found in Bookshops. I am now asking you kindly to send as many copies in the Bookshops, Kigezi and Ankole Schools, Kilembe Mines and Jinja where most of the employees are Bakiga and Banyankole."

solidarity and authenticity of the Bakonzo tribe in a bifurcated multi-ethnic district of Toro. Their work like that of George Kamurasi Rukidi III never got published and was never discussed in the native council of Toro. It suffices here therefore to argue that the reductionist approach in the existing literature led Peterson to generalize African native leaders and their literature as artifacts of ethnic nationalism.

Second, Peterson explains Ngologoza's antagonism with the Balokole (revivalists) in Kigezi as a defense of hierarchy and Bakiga customs. Revivalists and in particular Juliana Mufuko who constantly preached outside Ngologoza's door in Bukinda disturbed peace and the established order.⁸⁶ Peterson elaborates:

Where Kiga chiefs sought to cultivate the habits of respect and obedience among their subjects, converts openly flouted chief's authority. Where cultural conservatives defended the sartorial and culinary practices that upheld social hierarchy, converts made a point of dressing and eating indiscriminately. In Kigezi, the 'pilgrims' progress was an engine for dissenting cultural politics.⁸⁷

Vincent Kanyonza, an elderly priest of the Catholic Church at Rushoroza, said that Ngologoza was indeed a man of discipline and a faithful servant of the colonial state.⁸⁸ But Peterson believes that Ngologoza was also acting in defense of Bakiga culture and customs. I claim that Peterson failed to recognize the force of religion behind this politics of antagonism. Silverio Twinomugisha, another Catholic priest at Rushoroza, believes revivalists were a threat to Catholicism and to Ngologoza's political position because they (revivalists) resented everything that was not protestant.⁸⁹ However, Festo Karwemera believes that Ngologoza disliked them because they converted Catholics into Anglicanism.

Karwemera suggests that Ngologoza was able to become a political leader in Kigezi because the Catholics supported him. However, this is disputed because Pakomo was able to explain how the Catholics were not the majority in the district council that elected the Secretary General in the 1940s. The Protestants did not like

86. Peterson, *supra* note 1, at 65.

87. *Id.*, at 52.

88. Vincent Kanyonza (Fr. Dr.), *Interview*, Rushoroza, 6 June 2018.

89. Interview with Silverio Twinomugyisha, Vicar General, Kabale Diocese, Rushoroza, Kabale, 6 June 2018.

him because in Karwemera's opinion, he was favoring Catholics.⁹⁰ Indeed, Juliana Mufuko's intention in camping at Ngologoza's door in Bukinda was to convert Ngologoza to Protestantism. Cecilia Tibahurira, Ngologoza's daughter-in-law, recounts how Mufuko used to say that Ngologoza was lost as a Catholic; that if he became a Protestant, he would rule the world.⁹¹

Peterson himself shows how revivalism went hand-in-hand with constituted authority and custom elsewhere in Uganda. He, for instance, explains how Toro royalists found the revival to be a useful tool to enhance their kingdoms reputation. He acknowledged that royals such as Ruth Komuntale reinforced Toro's political position while on their mission of the revival.⁹² Peterson says, "Ruth Komuntale and other Toro polity builders moved fluidly between royalist nationalism and revivalist evangelism."⁹³ While in Toro revivalists found it possible to be patriots, in Kigezi converts were the chiefs leading antagonists. "They would go to Ngologoza's door preaching that if you don't get saved you are going to hell."⁹⁴ This confirms the position of Twinomugyisha, Karwemera and the narrative of Tibahurira with regard to the Ngologoza-Barokole antagonism. Moreover, John Bikangaga, the only polity builder in Kigezi to become a constitutional king of Kigezi in postcolonial Uganda, was a Murokole Anglican who like Toro's royalist found it possible to be patriotic.⁹⁵

Generally, Uganda's patriots cultivated a close alliance with the Anglican Church because this aligned them with the British monarchy. Peterson acknowledges that this was the case in Toro. It was also the case in Buganda, Ankole, Bunyoro and elsewhere in colonial and postcolonial Uganda. In Kigezi however, Ngologoza's affiliation to Catholicism alienated him from patriotism attracting sharp criticism from the revivalist Anglicans. To become protestant was being patriotic and Catholicism was unpatriotic. That is the politics that the British bequeathed Uganda and Kigezi in particular. Ngologoza should have converted to Protestantism to become patriotic.

The third concern is about the legacy of Ngologoza. How significant is he in Kigezi politics today? Pakomo relates how Ngologoza is not given due recognition as a patriot even in the current politics of Kigezi. To substantiate his claim, Pakomo gives

90. Festo Karwemera, *Interview*, Rugarama, Kabale, 07 June 2018.

91. Cecilia Tibahurira, *Interview*, Bukinda, Rukiga, 6 June 2018.

92. Peterson, *supra* note 1.

93. *Id.*, at 260.

94. Mentioned in Peterson *id.*, at 67.

95. GEORGE. W. KANYEIHAMBA, *CANON JOHN BIKANGAGA: HIS LIFE AND SERVICE*. KAMPALA: CENTENARY PUBLISHING HOUSE (2003).

the example of the district proposal to erect the Nglogoza portrait at the main and only round about of Kabale town but politics have instead supported the erection of portraits of gorillas that greet the first visitor of the town at the same spot.⁹⁶

Similarly, in naming the streets of Kabale, Ngologoza's name has been relegated to the most insignificant street.⁹⁷ Even in family, Ngologoza was no patriot. He bequeathed his house and estate in Kabale town to his daughter at the expense of his family lineage and clan. After his death, his home in Bukinda was abandoned and his private papers vandalized. His son, Pakomo blamed it on Tanzanian soldiers but his family itself does not escape the blame. Although Pakomo handed to me three files full of material, he admitted that many more papers could be found in the homes of Ngologoza's grand sons. Osbert Rwamuhanda, one of Ngologoza's grandson, said that some of his grandfather's private papers were burnt because they considered them untidy to keep in their newly constructed house.⁹⁸

Arinaitwe Jude Taddeo, also Ngologoza's grandson whom I found in possession of his grandfathers certificates, also believes that Ngologoza was no patriot because of the conflicts he had with his sons. "If my father was bad, were the rest of his brothers also bad",⁹⁹ he wondered. The Ngologoza's live independent of the other and it is possible to find some among his grandchildren who do not know or have not met each other due to lack of coordination and family reunions. Among Ngologoza's sons, only one, Robert Tibahurira, became a chief following the footsteps of his father but Ngologoza had conflicts with him. His popular and first-born son, Rwabishari also antagonized himself with Ngologoza over an estate in Katokye, Kyanamira in Kabale. In sum, there is no hierarchy and custom that Ngologoza sought to defend or leave behind; be it tribal or family. He was just a servant of the colonial government who moreover did not align himself to the royal family and customs of the British monarchy in his belief. That is the man who composed 'Kigezi and its people'. He is certainly not the patriot that Peterson wants us to imagine. He is simply not a tribal man. The consequence of all this on Ngologoza is that he conceived of Kigezi in terms of geographical area of residence as opposed to his tribe, the Bakiga.

96. Pakomo Barekye, *Interview*, Bukinda, Rukiga, June 7 2018.

97. *Id.*

98. Osbert Rwamuhanda, *Interview*, Mwanjari, Kabale, 7 June 2018.

99. Jude Taddeo Arinaitwe, *Interview*, Rwakaraba, Kabale, 7 June 2018.

IV. CONCLUSION

Attempts have been made in this section to examine the processes through which Paulo Ngologoza, as a community builder, contributed to the making of 'Kigezi and its people' of Southwestern Uganda. It shifts from the reductionist approach that has defined the study of Africa for long naturalizing the postcolonial predicament of tribalism. The argument was that Africa is an amalgamation of tribes, which keep reproducing themselves. Colonialism served to enhance this condition and natives responded in unison. This makes it difficult to think of a postcolonial state in which inter-ethnic political solidarity is possible. It is from this perspective that Peterson makes sense of African community builders including Paulo Ngologoza.

This chapter departs from such reading of Ngologoza and the 'making of Kigezi and its people'. While Kigezi like Toro is multi-ethnic, this has not generated ethnic antagonism and separatist movements in postcolonial Kigezi as it has in Toro. This could be explained through the study of historical processes that contributed to the making of Kigezi focusing on both native and colonial agency. While the British did not tribalize the politics of Kigezi as they did in Toro and elsewhere in Uganda, the natives provided raw material upon which inter-ethnic politics could be built.

Paulo Ngologoza, a native chief and first Secretary General of Kigezi, became the main architect of 'Kigezi and its people'. Contrary to the view that his work illuminates ethnic patriotism, Ngologoza was no patriot to his lineage and tribe/ethnicity. He did not believe or align himself to the royal family and customs of the British monarchy. For instance, unlike Toro royalists who found it possible to use religion to enhance the reputation of their ethnic institution, Ngologoza vehemently rejected such patriotism. Thus, contrary to a popular colonial tradition of Protestantism, Ngologoza subscribed to Catholicism. This could not propel him to the position of ethnic patriot in the colonial sense of the word. Thus, even in his writing, Ngologoza distanced himself from tribe/ethnicity. He concentrated on the geographical area of residence 'Kigezi' to produce an inter-ethnic form of political solidarity.

Unlike the work of Tom Stacey; "The Tribe: The Hidden History of the Mountains of the Moon" which seeks to validate and authenticate the Bakonzo tribe, Ngologoza recognized the multi-ethnic character of Kigezi. Moreover, while recognizing that his tribe/ethnicity the Bakiga did not have a lineage of royalty, Ngologoza acknowledged that the Bahororo and Bafumbira had a lineage of kingship. Thus, Ngologoza did not seek to validate or authenticate the Bakiga tribe/ethnicity to

justify his position as a political leader.

It should be noted that residence and not tribe continue to define the identity of the people of Kigezi. For instance, in foreign countries, urban centers, and higher institutions of learning, the Banyakigezi Associations have become the popular way through which the people of Kigezi can be mobilized. Unlike Toro and elsewhere in postcolonial Uganda where people mobilize on tribal basis to demand for autonomy as kingdoms or districts, post-colonial Kigezi continue to mobilize along inter-ethnic basis based on area of residence ‘Kigezi’ to meet their social, political and economic objectives.

My claim is that Ngologoza received inspiration from a multiplicity of sources to produce a dialectical relationship between his thought and the idea of ethnic institutions. The sources include, the pre-colonial, colonial and the socioeconomic aspiration of his time. Firstly, I claim that Ngologoza’s intellectual thought in “Kigezi and its People” reflects the residence-based pre-colonial mode of mobilization. Secondly, I focus on the colonial mode of governance that emphasized inter-ethnic solidarity through the establishment of leadership schools in Kisoro and Kabale that focused on the development of the Banyakigezi identity through culture and language. In these schools, Kiswahili language was emphasized and Ngologoza confesses that it helped him a lot in his work. Thirdly, the high population growth of Kigezi that put pressure on land made Ngologoza to think beyond his ethnic homelands. To meet the socioeconomic aspirations of his people, Ngologoza led the resettlement scheme that took him to Ankole, Toro and Bunyoro in search for land. This I argue could also explain why Ngologoza’s intellectual thoughts in “Kigezi and its People” challenged the colonial mode of political mobilization that focused on ethnicity as opposed to residence.

THE ROLE OF ISLAM IN DIVERSITY MANAGEMENT OF MULTI-RELIGIOUS COMMUNITIES: THE CASE OF THE INTER-RELIGIOUS COUNCIL OF UGANDA

Huthaifah Busuulwa*

ABSTRACT

Following the terrorist attacks on America in 2001, the world experienced a wave of heightened hostility towards Muslims. However, what is interestingly striking is that in many African countries which normally follow the West, instead of deteriorating relations, there seem to have developed better and mutual relationships among the diverse religions. Recep Senturk's Diversity Management theory offers the best explanation of why civilizations clashes in Africa have been largely put at bay, which in turn has helped to protect the existence of the different religions harmoniously. Diversity management as a social discipline is new and currently overshadowed by conflict resolution studies. I argue that in order to protect civilization and religion, it is critical to espouse the various tools of diversity management. In this article, I discuss how this has been practiced in Africa in general and Uganda in particular. Muslims have taken a leading role in engendering this environment of peace and harmony. These Muslim actors have generally been motivated by the Islamic teachings and principles that favour co-existence and harmony with members of the rest.

I. INTRODUCTION

Contemporary Muslim thinkers have been struggling to revive the glory of the Islamic civilization, and to solicit for broader international recognition for the same. However, the means to achieve this goal have been conflicting. In order to revive Islamic civilization, it is critical for Muslim thinkers not to look at ameliorating only the problems within Islamdom, but rather to find solutions that affect humanity as a whole. Thus, it is not by a mistake that this article is not entirely grounded in theology but more in Islamic social science.

Secondly, it is my intention to highlight the examples from communities of

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Muslims in sub-Saharan Africa because the experiences of the Muslims in this part of the world are often neglected in the mainstream academia. As my venture delineates, these experiences can also easily be replicated in other regions. This article follows from my research on the Inter-Religious Council of Uganda (IRCU), an association of religious leaders that was established to manage religious interests in the country. The trend of establishing such similar councils in many other countries also merits our investigation to ascertain whether these shall bear fruit, and to render advice in that regard.

I have thus set to address this question in both historical and contemporary terms; historical by analyzing the relationship between Islam and others in history, and contemporary by discussing the case of Islam and other religions in Uganda under the umbrella of the Inter-Religious Council of Uganda. Because of space and time limitations, we cannot exhaust all events and issues in the 1400 years of Islamic history, thus we have selected some key events which we believe to be directly relevant to the question. The Umayyad rule in Andalusia, the Ottoman Empire and the Mughal rule in India are classic examples of such Muslim empires where diversity was appreciated. These were noticeably Muslim majority regimes. The work is unique and challenging in another way. I have sought to emphasize the case of Uganda where Muslims are a minority. This is because most of the works in this field focused on cases where Muslim power dominated, where Muslims were the majority.

Now, I seek to highlight the role of Islam in a Muslim minority setting, showcasing the efforts of the key Muslim leaders in bridging relations with the non-Muslim communities. One such classical example is al-hajj Salim Suwari of the Suwarian tradition in West Africa, Prince Nuhu Mbogo of Buganda and the contemporary Inter-Religious Council of Uganda. In addition, I selected Islam in Uganda because despite Muslims being a minority, Islam was the first Abrahamic religion to arrive in present-day Uganda. Muslims from then onwards have featured prominently in the socio-economic and political life of Uganda. They have managed to shape the way they relate with non-Muslims through prominent leaders such Prince Nuhu Mbogo, Prince Badru Kakungulu, President Idi Amin Dada and the current Mufti Shaban Ramadhan Mubajje. The latter is one of the pioneers of the Inter-Religious Council of Uganda and an executive member of the Religions for Peace Africa.

IV. MUSLIM AND NON-MUSLIM RELATIONS

“Islamic law played a significant role in shaping the relations not only within the Islamic society but also between Muslim and non-Muslim communities in a wide geography for an extended period of time.”¹ The legal relations between Muslims and non-Muslims depend on whether the State laws are based on Islamic laws (*Dar al-Islam*) or not (*Dar al-Kufr/Harb*). The latter is especially emphasized by communalists who argue that “a law must be made by the authority that can enforce it.”² In the contemporary world, there are no states governed purely by Islamic laws and therefore the relationship cannot be based on the legal principles but rather on the moral and religious principles laid down from the sources of Islamic jurisprudence.

In his book titled *Islamic Jerusalem and its Christians: A History of Tolerance and Tensions*, contemporary scholar Maher Y. Abu-Munshar argues that the Quran and the Sunna indicates the role of Islam in “building solid relations between Muslims and non-Muslims (in a Muslim State).”³ Although his thesis was based on the Muslim State, Abu-Munshar observed that “No Muslim state has ever been without non-Muslims” thus “Appropriate rules had to be created to cover their rights and obligations.”⁴ These rules and obligations are referred to as the *dhimmah* pact.⁵ There are arguments as to whether the *dhimmah* pact represents tolerance towards non-Muslims or intolerance. The proponents of the former point to a culture of harmony and peace that existed in Muslim-ruled societies like Andalusia where Muslims and non-Muslims “seem to have existed without substantial turmoil or persecution.”⁶ To them, the role of the pact was “to regulate the attitude and the way that Muslims should treat non-Muslims.”⁷

The relationship between non-Muslims with Muslims is determined by the status established in the Quran. There are two categories of non-Muslims—that is, the

1. W. MCNEIL, *THE RISE OF THE WEST: A HISTORY OF THE HUMAN COMMUNITY*, XXV-XXVI (1991).

2. R. S. ENTURK, *Sociology of Rights: Inviolability of the Other in Islam between Communalism and Universalism*, in *CONTEMPORARY ISLAM* (ed. Abdul Aziz Said, Mohammed Abu-Nimer, and Meena Sharify-Funk), at 30.

3. Y.M. ABU-MUNSHAR, *JERUSALEM AND ITS CHRISTIANS: A HISTORY OF TOLERANCE AND TENSIONS* 7 (2007).

4. *Id.*, at 8.

5. ABU-MUNSHAR, *supra* note 3, at 25.

6. A.M. EMON, *RELIGIOUS PLURALISM AND ISLAMIC LAW: DHIMMIS AND OTHERS IN THE EMPIRE OF LAW* 325 (2012).

7. ABU-MUNSHAR, *supra* note 3, at 25.

People of the Book (Ahl al Kitab) who are Jews and Christians and the Idolaters or atheists. The People of the Book are closer to Muslims when compared with others.⁸ The commonalities between Islam and the People of the Book can be summarized as below:

- (i) Judaism, Christianity, and Islam all believe in one Creator.
- (ii) They all believe in prophet hood.
- (iii) They all believe in divine revelation.
- (iv) They all believe in divine punishment.

The specifics and details of those beliefs are contested. However, that framework indicates that common ground can be found. In order not to establish a wall between Islamic beliefs and that of the People of the Book, the Quran prohibits the mistreatment of the People of the Book and argues against all their beliefs⁹. Prophet Muhammad espoused this policy in his early approach to Christian and Jewish leaders. In the letters that the Prophet sent to the various kings such as Negus of Abyssinia, he stressed the issues that are common and sought to strengthen the relations from that point. Similar messages were sent to Muqawqas of Egypt, Hercules of the Byzantine Empire, among others. We can rightly deduce that although Prophet Muhammad acknowledged that the traditional messages had existed and were sanctioned by God, they could no longer be followed since the Quran had replaced all previous messages and that he was the seal of the prophets. From him, no new messenger was to be sent by God, and the religion that man around the world had to follow was Islam, and that it was complete.

In the early Christian era, there were different views on the nature of Jesus. Some of these were close and in line with the Islamic teachings on the matter. However, these views were among those that were branded as hearsay, and punishments as severe as death were imposed on those who adhered to them or even for simply being in possession of any literature of the same. Such views included Arianism, which is a non-Trinitarian view close to the Islamic teachings on the contentious issue of the dogma of trinity.

According to Islam, God sent similar a message to all His prophets, Jesus inclusive. The core of the message is to "remain steadfast in religion and to make no

8. *Id.*, at 9.

9. Qur'an 29:46.

division therein."¹⁰ Following from the above belief, perennial philosophy school of thought developed in the early twentieth century out of a conviction that a common ground can be found among the major religions of the world. The perennial philosophers sought to find in religions paths to the Divine presence. Most adherents of this school eventually converted to Sufi Islam. This was partly because they attempted, and to a large extent, successfully to find the divine connection that exists in the major religious traditions.

According to the traditional school, each sacred religion possesses certain principal possibilities contained in it but not all religions have at their disposal all the possibilities in a state of actuality. "Religions decay and even die in the sense that their earthly careers terminate."¹¹ The teachings of Islam on the matter regarding former religions is that the message of the People of the Book was corrupted and required renewal and replacement. The truth in them was not denied but rather incorporated in the new universal system.

The concept of diversity is discussed in several verses of the Quran. The Quran sought to guide humankind by addressing the question of status and superiority complex that was so prevalent at the time. God cautions believers against undermining or looking down at other people basing on race.¹² In the verse, God orders against belittling fellow believers based on their status. It was God's wish to create people with diverse characterized and the Quran points out that had God willed to do otherwise, all people could have been the same. But, He created tribes and nations to facilitate the protection of lineage.¹³ According to this verse, a person's status is not linked to the tribe or race. Instead, a person's position is determined by the level of worship.

It is important to remember that Islam brought with it a social and moral revolution that addressed racial relations. Thus, many of the early converts were slaves and former slaves who found messages of hope and inspiration from the teachings of Prophet Muhammad and from the inclusive character of the new faith. In this community, Ummah, the differences in language, colour and race, was only to be taken as a sign of Allah's power.¹⁴

Good relations were ordered not only between members of the Muslim community but with other members of the humankind. In many instances, God espoused the term

10. Qur'an 42:13.

11. A. HUXLEY, *THE PERENNIAL PHILOSOPHY* 27 (1948).

12. Qur'an, 49:11.

13. Qur'an 49:13.

14. Qur'an 30:22.

‘Mankind’ (*Yaa Ayyuha Nans*) encapsulating not only Muslims but also others in His warnings and guidances. In other instances, God uses the term *Bani Adam* (Children of Adam) in His calls. According to al-Sarakshi, God addressed all people including non-Muslims “because Prophet Muhammad was sent to humanity as a whole”.¹⁵

Scholars formulated an abstraction to depict this universal call- *Adamiyyah*.¹⁶ Literary *Adamiyyah* means Adam-hood or Humanity. Hanafite scholars placed more emphasis on the importance of humanity than other schools. This was manifested by the development of two separate schools of thought on the issue of human rights in Islam namely, the Universalist school and the Communalist school.

The Universalist and Communalist schools contest on the issue of human rights in Islam. The Universalist school was founded by Imam Abu Hanifa, while the Communalist school was supported by Imam Maliki, Imam Shafie, and Imam Hambal. According to the Universalists, *Ismah* (inviolability) is accorded to a person by virtue of their being human.¹⁷ That means that even the non-Muslims are protected and accorded their full rights as humans, *adamiyyah*. However, the communalists disagree with this. According to them, non-Muslims have no *ismah* and they only get it if they pay tax *jizya* for their protection. Perhaps one reason why Muslims have been assessed more negatively in the recent decade has been the misunderstood concept of Jihad and the horrors of terrorism that have often been attached to Muslims.

The Muslim community by embracing universality embraces the idea that human rights are entitled to all mankind by virtue of being humans. Valuing human life is at the centre of the Muslim Universalists. This is very important for diversity management because the central tenet is respect for individual rights, especially the right to life. The Quran succinctly elucidates that, “to put a life to death without justice means to put all humanity to death.”¹⁸ This is because God honoured human life with the highest level of dignity and sanctity. God created man in the most perfect and fairest mold.¹⁹ He made angels and jinn bow before man,²⁰ made him His viceroy on earth²¹ and harnessed everything in the world to his service.²² In his farewell sermon,

15. A.M, A. AL SARAKSHI, USUL AL-SARAKSHI (A. W AL-AFGHANI ED., 1984), at 83.

16. R. Senturk, *Adamiyyah and Ismah: The Contested Relationship between Humanity and Human Rights in Classical Islamic Law*, 8 TURKISH JOURNAL OF ISLAMIC STUDIES (2002), at 44.

17. S,enturk, *supra note 2*, at 34.

18. Qur’an 5:32; 6:151; 25:68.

19. Qur’an 15:29; 38:75; 95:4.

20. Qur’an 2:34; 17:61; 18:50.

21. Qur’an 2:30.

22. Qur’an 14:32; 27:60-61; 31:20; 36:71-73.

the prophet said: "The greatest sins are to associate something with God and to kill human beings."²³ Abdul Hameed Siddiqi concluded that: "On close analysis of those verses of the Holy Quran, we find that human life has been made sacred by God and its security is, therefore, the foremost duty of mankind."²⁴

Following the above Islamic teachings, the Muslim leadership in multi-religious communities has a spiritual basis for pursuing peace and cooperation with their non-Muslim compatriots.

The understanding of the concept of Jihad, which has been loosely understood as holy war, has featured prominently in the Muslim's quest for peace-making. Many Muslim scholars have ventured to explain the detailed meaning of Jihad and how the prophet espoused it in his daily interactions. Tariq ibn Shihab observed that "A man asked the Messenger of Allah, peace, and blessing be upon him, What is the best jihad? The prophet said, a word of truth in front of a tyrannical ruler."²⁵ The above Hadith clearly shows that jihad is not just about a bloody war. It has a universal meaning in the Quran and in the Hadith. When God states: "And those who strive for Us- we will surely guide them to Our ways. And indeed, Allah is with the doers of good."²⁶ The Arabic word, jihad as used in the verse and in other verses in the Quran²⁷ does not always refer to fighting but rather it refers to striving hard to win the pleasure of God. And, there are many paths that lead to the pleasure of God. These could be intra-personal and interpersonal paths to God.

As an individual, a devout Muslim is required to struggle to lead a spiritual life, perform righteous deeds and follow the teachings of Islam, believe in God and His messenger, pray five times a day, pay alms (zakat), fast during the month of Ramadhan, and make pilgrimage to Makkah. Struggling to fulfil this is an intra-personal struggle—one between the urge to fulfil them or not. At the interpersonal level, a Muslim is expected to please God through his relationship with the others, his/her kin and family, his/her fellow Muslims, his/her fellow humans and even fellow creatures that are non-human. Striving to create the best intrapersonal and interpersonal relationships is the best path to earning the pleasure of God.

23. M. Köylü, *Islam and Its Quest for Peace: Jihad, Justice, and Education*, 15 CULTURAL HERITAGE AND CONTEMPORARY CHANGE SERIES (2003).

24. A.H. SIDDIQI, JIHAD IN ISLAM, 14 (1979).

25. Musnad Ahmad: 18449.

26. Qur'an 29:69.

27. Qur'an 5:32; 6:151; 25:68.

What is required of a Muslim is to enjoin good²⁸ and forbid evil.²⁹ It is the obligation of Muslims to promote social order, peace, and justice. Sometimes to pursue those ends, war is necessary. But Islam imposes strict conditions on waging war. Generally, Muslim scholars agree that war is necessary for the defence of religion, property, life, progeny and intellect. Other Muslim scholars believe that war is also necessary for efforts to expand Muslim territories. Both are dependent on the concepts of *dar al-Islam* (Muslim land) and *dar al-Harb* (Enemy Lands). However, it is important to note that these conceptions were relevant in the medieval international relations systems. In the contemporary world, the categorization of *dar al-Islam* and *dar al-Harb* is inapplicable.

Maintaining a stable social order is one of Islam's main guiding principles. Justice is at the core of the Islamic philosophy. Concerted efforts to achieve justice are for sure embraced by Islam. Today in many multi-religious communities, the best way to achieve justice is by working together with members of other faiths. I argue that it is necessary to work in concert if that relationship guarantees that Islamic principles are upheld. Indeed, if the protection of faith, property, life, progeny and intellect is best achieved through dialogue and collaborating with religious leaders of other faiths, then it is necessary that such cooperation is embraced.

III. DIVERSITY MANAGEMENT AND OPEN CIVILIZATION THEORY IN ISLAM

Research on peace and violence is relatively new, the first venture, Peace Research developed in the early twentieth century with works of Pitirim Sorokin and Quincy Wright.³⁰ Understanding the causes of war became the fundamental issue handled by peace researchers and most scholars favoured history-oriented comparative methodologies in their quests. Conflict resolution studies is rather a recent one that gained momentum from the early 1980s. However, its literature grew significantly in the subsequent decades and continues to receive significant scholarly attention to this day. Following from the weakness of these two approaches is research on Diversity Management which was pioneered by a Turkish scholar Recep Sentürk.

28. Qur'an 3:104.

29. Qur'an 3:110.

30. See for instance, W. Eckhardt, *Pioneers of Peace Research III: Pitirim A. Sorokin: Apostle of Love*, 10(2) INTERNATIONAL INTERACTIONS 147 (1983); and F. Clinton & C. Wright, *Quincy Wright on War and Peace: A Statistical Overview and Selected Bibliography*, 14 J. CON. RES. 543 (1970).

Recep Şentürk defines diversity management as governing diversity of ideas, interests, innate and inherited qualities by accommodating them. According to him, Diversity Management involves governing of ideas at the ideal level among societies, preventing differences from becoming explicit at social level which would prompt conflicts.³¹ Şentürk further observes that most of the conflicts today are caused by the failure of social management systems. He argues that open civilization accepts the existence and values of the others and coexists with them in peace.³²

Closed civilization, on the other hand, does not recognize the right of others to exist alongside it. The goal of diversity management institutions should thus be cementing open civilization, pushing for values that are tolerant and accepting of the others as significant and accord them respect. Peace is the end of open civilization. Closed civilization, on the other hand, always leads to clashes and conflicts. Therefore, we can argue that in order to manage diversity, open civilizations, open culture must triumph over the closed civilization.

Managing global diversity thus requires organizing a global ethics based on the axis of values that cherish open interactions. Şentürk further argues against trying to universalize a particular value system to other parts of the world. Attempting to impose one civilization on others cannot be successful since it was tried in the past and it failed. The Westernization project that was alluded to by scholars such as Francis Fukuyama cannot help bring about a healthy social order. Instead, Şentürk argues, a global ethics can regulate and manage the ever-increasing diversity.³³

Before Recep Şentürk's thesis, scholarship on Diversity Management has been concentrated in the field of business and organizational management, which I argue is a narrowing of its potential and scope. In the organizational management perspective, it refers to the voluntary organizational actions that are designed to create greater inclusion of employees from various backgrounds into the formal and informal organizational structures through deliberate policies and programs.³⁴ It is this deliberate effort that qualifies the project as Diversity Management, as without it there is obviously no management. In the societal perspective, deliberate management aims at avoiding conflicts from occurring as a result of antagonistic forces that are competing

31. R. Şentürk, *Diversity Management in the Era of Open Civilization: A Call to Multiplexity*, Alliance of Civilizations Institute (2010) (Unpublished).

32. *Id.*

33. Şentürk, *supra note 2*.

34. M.M. BARAK, *MANAGING DIVERSITY: TOWARD A GLOBALLY INCLUSIVE WORKPLACE* 235 (2014).

for the scarce resources in the community.

In a multi-religious society, this involves countering the growth of the "we/they" line, the assumption that one is essentially different from the others and thus other people's religion is seen as strange, different and not like one of the judging individuals³⁵. This involves a lot of efforts in form of education, advocacy, and dialogue that bring people together. In Uganda, for instance, public religious (*in Jiri*) debates bring together missionaries and curious people from the various religions and this helps in discovering of the many commonalities that exist among the different religions and also reducing the level of isolation of each group from another.

The process of identification ends up with two main groups, the Majority, and the Minority. Sometimes the majorities are the weaker group in a society with the minorities yielding greater influence and power. In Syria, the Alawis-who are the minority-are the ruling group and the Sunnis-who are the majority-are in opposition. Absolute monarchies depend on the system where the royal class, often a minority lives separately in wealth and honour compared to the others.

In Uganda, Muslims are a minority, but they yield considerable influence in society. Unlike in Europe and the Americas where Muslim populations have to struggle for recognition and freedom to participate fully as equal members in society, Muslims in Uganda have the opportunity to live and pursue their lives as the rest. It is not difficult to find Muslims serving as elected representatives even in the countryside with fewer Muslim populations.

Islam was the first Western religion in Eastern Africa south of the horn of Africa, in the West of Africa and it attracted influential members of the nobility class. Even when the Christian missionaries came with a stronger commitment to converting people towards their religion, Muslims remained committed to their faith, led by members of the royal family like Prince Nuhu Mbogo, King Kiweewa, and King Kalema of Buganda, among others. The surge in the numbers of Christians did not leave Muslims completely without say in society, despite losing the war against Christians in the late nineteenth century.

In multireligious communities, the risk of conflict is usually very high. If the interests of the different groups are not managed well, then conflicts are inevitable. The process of managing interests and preventing them from escalating into violence may seem an enormous task, but in reality, as history has shown us, this can be achieved

35. F. WIJSEN, SEEDS OF CONFLICT IN A HAVEN OF PEACE: FROM RELIGIOUS STUDIES TO INTERRELIGIOUS STUDIES IN AFRICA 46 (2007).

through continuous efforts in peace research and in fostering cooperation among the groups through diplomacy.

In Uganda, for instance, there have been incredible achievements ever since the establishment of the Inter-Religious Council of Uganda. In Uganda, religion is not merely a faith but rather a complete system of culture. Religions in the country define the cultures of their followers and they become distinct from one another. The devout Muslim man, for instance, grows a beard, keeps a turban on the head and favours putting on a *Kanzu* (The Arab long tunic). The Christian, on the other hand, may only do the same as a gesture or as a reach-out to the Muslims, especially by politicians. Therefore, it is important to note that Interreligious relations in the country are also simultaneously intercultural.

It is my proposal, echoing Recep Senturk, that research in diversity management be increased so that it can replace conflict resolution studies.

A. Is Open Civilization Possible?

The Inter-religious cooperation that is evidenced in Uganda and other countries is a manifestation of open civilization. In Uganda, the Inter Religious Council of Uganda has been supporting the establishment of '*Khadi*' courts which deal with minor family related issues involving Muslims such as gender-based violence, inheritance, among others. The operation of such a system symbolizes a possibility of having legal systems that are open to divergent values. It is possible to have both secular and religious legal systems to cater for the same country. The Khadi courts are established under Article 170 of the Kenyan Constitution, and under Article 129 as one of the subordinate courts of Uganda.

Open civilization was also practiced in the past Muslim empires. The Islamic legal tradition that was employed set a precedent in theory and practice for an Open Law. Within the Islamic legal tradition, there were several schools Madhhabs each practicing its own law. The Hanafi, Maliki, Shafii and Hambali are the four well-known schools of thought that practiced in the same social milieu. The other religious communities also practiced their own separate laws; the Jews practiced the Jewish Law, the Armenians, Copts and other communities in the Ottoman Empire practiced their separate laws. This was the same in several other Muslim empires such as the Mughal Empire in India which allowed Hindus to practice their religious law.

We can also guarantee an open civilization for now and for the future through Open Education. Education is one of the most effective technologies for social order. Governments have used education to inculcate values of statehood, patriotism, nationalism among others and produced the kinds of people to serve them. Peace, social justice, appreciating and managing diversity requires an education curriculum that is designed to produce diversity-conscious citizens.

Its application was also followed by Muslim leaders in situations where Muslims were neither in power nor were they the majority. One of the best examples where it was practiced was in West Africa during the early days of Islam in the region. The famous Suwarian tradition, developed from the thirteenth-century scholar Al-Hajj Salim Suwari of Wa, ancient Mali in West Africa is one classic example of this phenomenon. Al-Hajj Suwari formulated a theological rationale that allowed for peaceful coexistence with the non-Muslim ruling classes. This praxis allowed Muslims, who were the minority, to benefit from society's resources without foregoing their religious obligations.

From the works of Imam Malik b. Anas and al-Mahalli, Suwari formulated a crucial Islamic diversity management philosophy as thus,

- i) Unbelief, *kufir*, is the result of *jahl*- ignorance rather than wickedness.
- ii) It is God's design for the world that some people remain in *jahiliyyah* longer than others.
- iii) True conversion can occur only in 'God's time', and to proselytize is to interfere with His will.
- iv) Jihad against unbelievers is an unacceptable method of conversion and the use of arms is permissible only in self-defence
- v) Muslims may accept the authority of non-Muslim rulers in so far as this enables them to follow their own life in accordance to the sunnah of the prophet.
- vi) The Muslims have to be an example to the unbelievers.
- vii) And the Muslims must ensure that by commitment to education and learning, they keep their observance of the law free from error.

This revered tradition enabled the then minority Muslim society to live in harmony with the pagan traditionalists, enabling Muslims to serve in positions of influence and becoming scholars which facilitated peace and stability for many generations. To reach

these conclusions, Al-hajj Suwari had dedicated his career to formulating an understanding that would allow Minority Muslims in non-Muslim lands to prosper.

Diversity Management entails the following key issues. These universal principles I lay can guide the researcher in Diversity Management studies and are universal.

1. The Triumph of Universality over Communalism—The main pre-condition for successful diversity management initiatives is the triumph of universality over particularity. Universalism is “a conviction that all human beings are inviolable by virtue of being humans, they share a common destiny.”³⁶

According to the Muslim Universalists, *Ismah* (inviolability) is accorded to a person by virtue of their being human. That means that even the non-Muslims are protected and accorded their full rights as humans, *adamiyyah*. However, the Communalists disagree with this. According to them, non-Muslims have no *ismah* and they only get it if they pay tax *jizya* for their protection.

I take the position of the Universalists because there should be as much choice to the human as possible in order for her to claim full responsibility for the action taken. As Sarakshi notes “*the purpose of God in calling humanity is to try them (ibtala)*.”³⁷ The key condition in regard to the fulfilment of this requirement is according to humanity with all necessary information and tools that can enable them to make choice, and this is the role the prophets and their successors are doing. Without freedom (*hurriyyah*) and free will (*ikhtiyar*) then actions would not be based on the intention of the heart as is required in Islam but by fear of the man's law contrary to the spirit of God's command.

In Multi-religious societies, history has proved that Universalism is the ideal approach for better diversity management. The idea of a shared Higher identity — a human identity that universalism envisages — calls for the continued understanding of fellow humans as basically like *Us* not *Them*. The Universalist mind is in practice the Higher mind. It sees human rights as necessary for every human without pre-conditions. Therefore, we expect that societies which adopt Universalism can easily become more tolerant and embracive of others.

2. Avoiding ethno-religiosity—One of the main factors that often inhibit the

36. Sentürk, *supra* note 31.

37. Sentürk, *supra* note 2.

spread of religious violence is the absence of a specified ethnic group to target. When different religions are shared across ethnic groups and races, it becomes difficult to identify members to subject to mass violence like ethnic cleansing, genocides, and persecution as second-class citizens. This can partly explain the absence of severe interreligious violence in Uganda because the religions were absorbed into many tribes without anyone belonging exclusively to one religion.

In many Multi-religious communities, there are several identities that one may oscillate in and avoid targeted mobilization. In Africa for instance, both religious and ethnic identities are of significant value. In such instances, the line between religion and tribe is thin as they are both held in high esteem. At one point, the individual may be in the congregation of tribe mates who include members of different religions and at the other be in the congregation of his religion mates who are members of different tribes. In such cases, there are many openings for understanding and even cooperation. Thus, we find that violence between Muslims and Christians is more rampant in communities that are separate and closed with distinct religion.

In Ivory Coast for example, despite the presence of the Inter-religious council which is highly respected, political manipulation of ethnicity succeeded in causing a wave of violence in 2011 following disputed elections between Laurent Gbagbo and Alassane Ouattara because both Muslims and Christians lived a separate existence. The south of Ivory Coast is dominated by Christians while the North is majorly comprised of Muslims. The same is true in Nigeria where Muslim Hausa dominate the North and Christians dominate the South. This division has often times been exploited for political reasons and violence was common.

Rationally, the reason why people organize themselves in an identity group is to be able to reap economies of scale benefits. The image that is developed of an identity is *dialogically*³⁸ constructed in the course of people's relations with each other. As most of the identities are created by the dictation of nature, belonging to one would be the easiest means of survival for a minority whose members would have otherwise languished into neglect as a result of the natural selection process. In this case, collective action is a remedy through which recognition, pride, and other such benefits can be gained. Yet others may organize to perpetuate their domination of the others.

38. A. GUTMAN, MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION 7 (1994).

3. *Managing by Symbolism*—Identity relations are mainly perceptual, developing out of people's perceptions amidst competition for resources, which therefore means that diversity management initiatives must invest considerable effort in symbolism. In multi-religious communities, this symbolism is more expressed through politics. In Tanzania and Nigeria which have large percentages of both Muslims and Christians, the presidency is symbolically shared in rotation between the two religions. In Tanzania, for instance, the first president Julius Nyerere, a Christian, was replaced by Hassan Mwinyi, a Muslim, himself replaced by Benjamin Mkapa, a Christian, then Jakaya Kikwete, a Muslim, and later John Pombe Magufuli, a Christian. In addition, it has become common practice for presidential candidates to select as vice president a member of a different religion. This strategy has proved effective both politically by attracting support from both groups and at the same time managing interests and perceptions of people in such multi-religious societies.

4. *Managing Core Interests*—Whether an identity group which is well mobilized and devoted to their cause lives separately or is scattered, they always have some core interests and red lines which have to be understood, tolerated or managed by those in authority in order to rally the people together for a shared common good.

For the case of Muslim communities around the world, there is an emphasis on the principle of permissible (halal) and impermissible (haram) products. A devout Muslim is concerned with pork and always tries to avoid it even if it appears in very small quantities. A Muslim also expects that her meat is prepared according to Islamic guidelines including among others, that it is slaughtered by a Muslim.

Today, one of the major threats to inter-religious peace in local communities is disputes that arise out of Muslims' disdain for pork. On many occasions, the Muslims and pork-loving clients have been engaged in bitter fights over the location of pork butchers, with Muslims accusing the butcher owners of provocation by setting them up in Muslim-dominated quarters, a claim which is always refuted by the other side which asserts that they are free to set up their businesses wherever they want as long as it is licensed under the law. Perhaps, this is one area the Inter-Religious Council ought to critically watch. The same issue is pertinent in other countries as well. In April 1993, thousands of Muslims in Tanzania staged demonstrations over the sale of pork and destroyed several Christian Butcher shops.³⁹

39. A. ODED, ISLAM AND POLITICS IN KENYA 167 (2000).

5. *Institutions of Diversity Management*—Actors are a key component of any conflict thus managing the elite interests is required to manage diversity. Successful implementation of this strategy requires espousing institutions such as faith-based organizations like the Inter-Religious Council of Uganda and other similar organizations.

Religious-based organizations have special attributes that they offer in promoting peace and managing diversity. The Interreligious Council of Sierra Leone (IRCSL) has been cited in many scholarly works as a successful case of the role of religious cooperation in conflict resolution and peace management.⁴⁰ Founded in 1997, the IRCSL was instrumental in the negotiation and signing of the Lome Peace Agreement⁴¹ between the government of Alhaji Ahmad Tejan Kabbah and the rebel Revolutionary United Front of Sierra Leone led by Corporal Foday Saybana Sankoh in 1999. The religious leaders were urged by people to take a more active role in stopping the violence because, as Turay noted, "*both mosques and churches were key players in the spiritual, cultural and socio-economic development of Sierra Leone before and after independence.*"⁴² Religion was a significant factor for both parties in the conflict. In the first place, it is possible conflict would not have occurred had there been an institution that would manage the interests of both parties for peace.

The inter-religious council trend has grown, with continental and global bodies affiliated with national and grassroot religious structures. Similar organizations were formed in Kenya (The Inter-religious Council of Kenya), in Ethiopia (The Inter-religious Council of Ethiopia), among others. The implication of this is the necessity to increase scholarly investigations to find out how relevant these structures are. I believe the impact has been significant. The adopted model allows for members of different faiths to simultaneously have deep commitment to their faiths while at the same time tolerant and not hostile towards the others.

For a successful management of inter religious relations, the council activity should concentrate on two levels out of at least four levels of inter-religious dialogue. According to Wijsen,⁴³ "*There is a level of living together as people of different faiths,*

40. See for instance, A.H. Hillary, *The Inter-Religious Council of Sierra Leone as Peace Facilitator in Post-1991 Sierra Leone*, 41 PEACE & CHANGE (2016).

41. T.M Turay, *Civil Society and Peacebuilding: The Role of the Inter-Religious Council of Sierra Leone*, in PAYING THE PRICE: THE SIERRA LEONE PEACE PROCESS (D. Lord ed., 2000).

42. *Id.*

43. WIJSEN, *supra* note35, at 44.

the dialogue of everyday life. There is also the level of working together for a common good, the dialogue of cooperation. Then there is the level of praying and worshipping together. Lastly, there is the level of reflecting together, which is inter-theological dialogue.” The Inter-Religious Council of Uganda has concentrated its efforts on maintaining an environment where people can live together and work for a common good, as is well demonstrated by their shared projects on peace, HIV/AIDs among others.

However, it seems deliberate that is eschewed from tempering in the theological relations of its members. Indeed, organizing theological debates could compromise the council and damage its potential to help forge a common future for its members. The duty of the council with regard to inter-religious theology is only to ensure that independent organizers of such functions and debate do so with care so that at the end of a long, spiritual debate, all members can resort back to living their daily lives together again and work for their common destiny.

The IRCU model is thus not one based on inter-religious theology or the theology of inter-religious relations. While in the process of coordinating religious knowledge about the other is often learned, but since it is not overt, the dangers of having the program misunderstood as a plot to propagate one’s religion using the institutional infrastructures are limited.

The September 11 terror attacks heralded a new era that threatened an escalation of religiously oriented clashes and religious extremism around the world. The events had an immediate spillover across the world with the rise of Islamophobia and Uganda was not an exception. Because the Western media has a huge presence in Uganda, it threatened escalating the already tense situation regarding Muslim-Christian relations. The Muslim-dominated ADF rebel forces were at the peak of its rebel activities in Western Uganda, the Born Again or Pentecostal churches were at the zenith of their influence and hostility towards Muslims — their main competitors for religious space — was at its peak. Muslim Tabligh youths were similarly uncompromising in their defense of values they hold dear, including among others defending the monopoly rights for meat slaughtering industry and isolating Pork from public spaces where Muslims take part.

Quick action was taken to avert the likely dangers of religious violence when religious leaders teamed up to establish a body that would unite them which they named the Inter-Religious Council of Uganda (IRCU) in 2001.

The Uganda Muslim Supreme Council, a Universalist and official leadership of the Muslim community, played a significant role in the creation of the Inter-Religious Council of Uganda. Within the Muslim community, reforms had been agreed upon that led to the drafting of a new constitution and organizing of elections for Mufti with support from all the factions in the country. Intra-religious wrangles within the Muslims were thus at their lowest point in over a century. The elected Mufti, Sheikh Shaban Ramadhan Mubajje, himself grounded in both religious and secular education, had a popular mandate from the Muslims to carry out development programs on behalf of Muslims.

On 31 March and 3 April 2001, Mufti Mubajje and other top religious leaders held private meetings with the Secretary General of Religions for Peace (RfP) International, Dr. William F. Vendley, in which the religious leaders unanimously agreed that it was necessary to establish a national inter-religious council.

The success of the initiative depended largely on two factors. Firstly, that the initiative is indigenous. Non-governmental Organisations (NGOs) that arise out of local needs tend to perform better than those that are brought from the outside. The level of participation in locally oriented forums like the Inter-Religious Council is a huge incentive for their operational success. Secondly, that it can reach the lower grassroots where actual Muslim-Christian relationships take place. The Inter-Religious Council meets both criteria well. It is an indigenous body that was established, albeit with external assistance, by the senior religious leaders upon realization of the necessity to organize one. It delivers services to religious leaders and religious structures that are nationwide, and most of which were found in existence and had been operational for at least some time. The Council's job was thus made easier, mainly about coordinating these structures to ensure that effective implementation of set programs and goals.

The structures that IRCU boasts of are of an ever-greater benefit. These infrastructures are cost-effective and sustainable, meaning that they can operate for a long time even when funding for certain programs is cut. As long as the main intention of maintaining harmonious relations in the multi-religious setting remain unchanged, the cut in donor funding may not seriously constrain the operation of the Council, thus proving an effective model for similar diversity management organizations elsewhere.

IV. CONCLUSION

Interreligious relations can be theological, relating to the discussions and argumentation on matters of faith or the relations can be based on cooperation outside the realm of theology. While both approaches could bring the different faith members on the debating table, and in turn promote understanding and common grounds, the former is more fragile in practice compared to the latter. Some scholars and commentators use the term interfaith relations instead of interreligious. However, the two terms differ at least slightly. The term interreligious encapsulates both the faith and the culture that is engendered by the faith in a way that interfaith does not.

Islamic culture has been distinct since the early years of Islam in the country distinguishing itself profoundly from the existing traditional cultures. Yet as we shall see, the accommodative nature of Islam has blended many aspects of traditional culture into Islamic culture, and as a result, a hybrid culture emerged.

With the establishment of the Inter-Religious Council, managing religious diversity became institutionalized and more effective. This is because the previous diversity management strategies largely depended on roles of individual elites acting independently without a clear forum to practice such diversity management tools such as preventive diplomacy, development cooperation among others. Nevertheless, the history of religious relations in a country clearly indicates that a successful diversity management program must focus on the actors, the elites in the distinct identity groups who have the capacity to mobilize members under them either to embrace others for peace, stability, and cooperation or agitate for more resources, recognition, and power.