



ASHAH RAZYN FOUNDATION

ARF REPORT ON STATE OF HUMAN RIGHTS OBSERVANCE AND OR VIOLATION IN UGANDA

Organization Profile

Ashah Razyn Foundation (ARF) is an independent human rights organisation with a track record of human rights activism and public interest litigation in Uganda. To this end, it provides free legal services to vulnerable, marginalized and indigent individuals and communities, both non-national and Ugandan, who are victims of unlawful infringements of their constitutional rights.

Vision : A society accessing quality legal assistance and free from all kinds of human rights abuses. The ARF envisages a just and equitable society.

Mission: To build and strengthen a sustainable, transparent, accountable and democratic society free from Human Rights abuse through legal representation, civic education information; sound legal research and advise; monitoring and follow up of human rights violations, advocacy for reforms of policies, laws and practices in conformity to national and international human rights standards, implementation and partnership at all levels. We believe that strong local and international partnerships are crucial to achieving our mission, vision and the sustainable development of Uganda.

INTRODUCTION

Uganda has ratified the nine core treaties of the UN human rights system as well as the major human rights treaties and conventions of Africa. However, it has yet to implement them adequately at the national level. The human rights-based approach is not systematically integrated in the policy making process. Besides lack of implementation, there is also no accountability nor monitoring by independent public institutions and informed citizens. Many people, especially women, people with disabilities and ethnic, religious and sexual minorities, are unable to assert their rights. Human rights defenders and civil society organizations that advocate for the rights of disadvantaged groups or report on human rights violations, often find their work obstructed. Non-governmental organizations and the media can neither report freely and adequately on discrimination and human rights violations, nor inform the citizens about how to protect themselves and assert their rights. The United Nations Office of the High Commissioner on Human Rights (OHCHR) Uganda, launched a report on the human rights situation in Uganda in February 2014. Which highlights some of the major achievements and hence indicate developments in incommunicado detention with creation of CMI Human Rights desk in April 2012. Uganda also achieved robust prison decongestion, reduction in average stay on remand periods, 30% increase in JLOS efforts to expand prison capacity, establishment of Judicial Case Backlog Committee, and increase in appointment of judges with expanded DPP offices. ARF has prepared this comprehensive report on the current state of human rights observance and violations in Uganda and this way therefore shall tackle different key human rights issues as highlighted here under;

The Prevention and Prohibition of Torture Act 2012.

In regard to the Prevention and Prohibition of Torture Act 2012, ARF is concerned about the numerous violations that fall under the act and at the same time according to the UHRC report 2012 report shows that Torture still leads in violations of human rights investigated. OHCHR 2012 reported 178 complaints

and 64 complaints with 53% in Karamoja region from OHCHR 2013 report. 8 cases were reported of persons detained in barracks, severely tortured and later dumped in Police cells. This is mainly subjected to treason and terrorism suspects. In addition, investigations are still a challenge due to absence of judicial control and oversight as well as judicial independency. The major Emerging Issues indicate that Government needs to work with NGOs and Civil Society Organizations (CSOs) in order to realize some of the plans set out for example initiatives on mapping documentation on truth telling under Transitional Justice. On the other hand, ARF argues government and CSOs to consider developing a report on Torture, given the wide scope of work they engage in, since government last produced a report on Torture in 2004.

Human Rights Violations in the oil reserve areas

When billions of barrels of oil reserves were found in Uganda five years ago, the discovery seemed like a gift from heaven to many in this poor, landlocked country. The expected revenue of up to \$2 billion a year could propel Uganda into the strata of middle-income countries, where few sub-Saharan African countries rank. A refinery would be built as well as infrastructure promised. This is to the contrary. A new report by the Uganda Human Rights Commission (UHRC) highlights a lot of human rights violations in the petroleum sector. The report, "Oil in Uganda: Emerging Human Rights Issues", was released following complaints of human rights violations in the oil communities. In May 2015, UHRC received a petition from residents about human rights violations in the refinery area of Kabaale parish, Buseruka sub-county, Hoima district. In addition to the petition on the refinery, the commission had also received numerous allegations of violations in areas of Nwoya, Nebbi and Amuru districts. These included irregularities in the valuation and disclosure of compensation rates, coercion of the affected residents to accept unfair compensation rates and delayed payments, land grabbing among others. A case in point is where failure to prepare for the influx of mostly male construction workers results in increased sexual exploitation of or abuse against local women and children. There are several allegations of sexual harassment within oil camps,"

Media freedoms

The laws regulating the media and access to information can either enhance or frustrate the role and impact of the media as HRDs. Article 29 of the Constitution of Uganda recognises freedom of speech and expression defined to include freedom of the press and other media. The right is developed further in section 3(1) of the Press and Journalists Act (PJA), Cap 105 which provides that, "a person may subject to the provisions of this Statute publish a newspaper". Section 3(2) of the Act provides "No person or authority shall, on ground of the content of a publication, take any action not authorised under this Statute, or any other law to prevent the printing, publication or circulation among the public". The Constitution and the subordinate laws on the media provide reasonable foundation for the enjoyment of the freedom of the press. This foundation has been strengthened by judicial precedents especially that of the Supreme Court which in the case of Charles Onyango Obbo & Andrew Mujuni Mwenda v. Attorney General.

2016 Human Right violations arising from Presidential elections

Uganda is at political cross-roads due to raw power contestation between re-elected president Yoweri Museveni and the Opposition led by Dr Kizza Besigye. Like in the past, Dr Besigye has rejected as "sham" the outcome of the February 18, presidential vote whose results the former Independent candidate Amama Mbabazi is challenging at the Supreme Court. Heavily-armed soldiers have placed the capital, Kampala's, central business district under a lock down and continue to patrol other urban areas, dissent

is criminalized, critical social media posts invite arrests and a more militant police have found a new target to prey on: journalists. In the past fortnight since the presidential election was held, Ashah Razyn Foundation estimates that about 20 journalists have been detained, and all released without charge, for covering the police's handling of Dr Besigye. Arrest of journalists has come to symbolize media practitioners caught in the crosshairs following brutal arrest of them e. g Miss Remmy Bahati this week (28th -6th March 2016) while reporting live events unfolding at Dr Besigye's home in Kasangati . It was the last of 10-days within which any aggrieved party could challenge the presidential election results, and journalist huddled close to the politician's residence to establish if he would eventually take the court option. But police, who effectively placed Dr Besigye under house arrest since the election day, had other ideas. They placed all the journalists on surveillance throughout the day, closely monitoring what they reported, before closing in to brutally arrest those that spurned their orders to vacate the place. Police officers chased an out-of-breathe Bahati, still giving live updates to the studio, through an open field and cornered and subdued her on the slope of a dirt road. They twisted her arm to the back and her undergarments were exposed when she bent over to a position of less pain. Now the case of Remmy Bahati is just one of the so many brutal arrests of Ugandan journalists, not forgetting one whose arm was broken by a one police officer at Old Kampala police station.

Cases of Torture and Arbitrary Detention. According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Uganda has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It has not, however, made a declaration under Article 22 of the CAT allowing the Committee Against Torture, the United Nations (U.N.) body which monitors compliance with the CAT, to consider complaints by individuals from Uganda. Nor has it ratified the new Optional Protocol to the CAT allowing visits to Uganda by the Committee against Torture's Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Despite these government commitments in international and national law, torture is on the increase and, during the period under review [2011-2016), more many human rights violations in breach of the rights to life, liberty and security of person have been recorded across police stations.

Accessing protection and remedies to Human Rights Defenders

Many HRDs in Uganda are employees of organisations working on human rights issues or are by the nature of their work engaged actively in the task of promoting and protecting human rights. A typical example in the latter category is that of journalists. There is no specific law to provide protective mechanisms for HRDs. While they pointed out that they sometimes go to the police, the courts or to the Uganda Human Rights Commission in cases where their rights are violated, these mechanisms were not effective enough to address their unique problems as Human Rights Defenders. Ugandan police do not give serious consideration to their complaints, while accessing the court system is expensive if one is to use legal experts to effectively present a case. In particular HRDs who are journalists feel that penal laws are being used disproportionately to prosecute journalists with a view to intimidating them and exercising undue control on what they can express publicly. These testimonies hence forth show that HRDs in Uganda feel very vulnerable. Ashah Razyn Foundation therefore calls for the establishment of a solidarity forum for HRDs to facilitate access to the protective measures that are available under the law. Such a forum will bring defenders together regularly to strategize on how to protect themselves.

Restrictive Legal and Policy framework for CSOs. There is a very strong sentiment against the policy and legal framework which generally restricts the space for civil society to carry out their activities. Government has been introducing subtle measures to restrict the space in which activists promoting and defending democracy and human rights operate. Some of these measures relate to the introduction of

new laws and regulations to control and restrict the operation of civil society in ways that can frustrate the very objectives for which they were formed. Indeed, the Non-Governmental Organizations Act and its implementing regulations can be cited as they give the Government considerable control over the operations of NGOs. The Act prohibits any NGO from operating unless it is registered by the NGO Board, which can impose conditions or directives as it deems fit. The law also requires annual renewal of licenses, the issuance of which is at the discretion of the Board. The public order and management Act is a very limiting law with so many loop holes. Government and Parliament need to remove existing legal restrictions to public freedoms that are not in accordance with relevant international, regional and domestic human rights standards.

Use of disproportionate force” by the authorities to disperse assemblies and demonstrations. As ARF, we are concerned regarding the use of lethal force and failure to investigate and persecute those perpetrating these violations. The deployment of the police together with the military to handle civil protests is considered a troubling development that is scaring many HRDs. Connected with this is the inhuman manner in which people involved in what are considered unlawful assemblies are arrested and treated. There are reported incidents in which suspects were not told the reasons for their arrest and were subjected to long unwarranted interrogations. The practice of detainees being blindfolded, held in unknown places and detained incommunicado for long periods are examples cited as practices that discourage HRDs from fully undertaking their responsibilities.

Challenges Related to Civil and political rights

The context within which civil and political rights are protected in Uganda elicits challenges for those who defend them. This is because of the sensitivity associated with promoting these rights. One respondent in western Uganda alleged that one of their staff members faced arbitrary arrest and detention following an awareness campaign organized by their organisation to promote civil rights related to voting and elections. The organisation was restricted from continuing with their sensitization campaigns in the area until they had explained to the local leaders and RDC the objectives of their work. It can be intimated that in promoting civil and political rights there is “a likelihood of being labelled partisan. This is particularly so with regard to the right to participate in governance and the right to demand accountability.

Lesbian, Gay, Bisexual, Transgender and Intersex rights (LGBTI). These rights elicit considerable controversy in Uganda. This is illustrated by Anti-Homosexuality law which was suspended after not so long being assented to. The extent of the controversy surrounding LGBTI rights is illustrated by statements of church leaders rebuking the notion of LGBTI rights and deriding those who advocate for such rights. The respondents who work on LGBTI issues mention obstacles that arise because of the controversial context of LGBTI rights in Uganda. For instance, they “can’t identify their organisation with a name even when opening a bank account.” They cannot register the organisation because of the nature of its work. A respondent mentioned that although commitment to human rights causes exists in Uganda, “when it comes to LGBTI issues people become selective.” Respondents also mentioned that they cannot approach state authorities when their rights are violated because of laws criminalizing homosexuality.

Disability Rights. HRDs that defend the rights of persons living with disabilities (PWDs) face unique challenges. Under Objective XVI of the National Objectives and Directive Principles of State Policy, the Constitution of Uganda provides that society and the State shall recognize the rights of persons with disabilities to respect and humanity. Objective XXIV(c) provides that the State shall promote the development of a sign language for the deaf. Although there are constitutional provisions in place to protect the rights of PWDs, most people have a negative attitude towards those that promote and defend the rights. They generally do not know much about disability rights.

Recommendations on the Situation of Human Rights violations. This section presents recommendations on what needs to be done so that all people in Uganda can enjoy their human rights.

- Government needs to end impunity for human rights abuses by government security, police, armed forces, and other armed organizations, particularly violations of the right to life and fair trial; the right to be charged before a judge within forty-eight hours of arrest; the right to be detained solely in gazetted or legal places of detention; and freedom from torture and ill-treatment, arbitrary arrest, and prolonged arbitrary detention.
- Government should review the laws that are restrictive and repeal the ones that hinder enjoyment of rights especially freedom of expression, assembly and association i.e. Public order and management Act.
- Legal aid. The process of legalizing the legal aid policy should speed up since legal providers are currently operating to help indigent persons but with no clear guidelines. Government should as well should fund legal aid for defense by counsel of their choice of those charged with capital crimes in civil courts and courts martial.
- To address legal and policy challenges due to the restrictive legal and policy framework. The laws, particularly the Non-Governmental Organizations Act which regulates the environment in which HRDs operate, should be reviewed to accommodate the concerns of HRDs and CBOs in general. While these concerns have been brought to the attention of Government to no avail, urgent appeals to the Government must continue.
- All allegations of torture and mistreatment should be fully investigated, and the perpetrators brought to justice and, where there is evidence that a crime has been committed, tried in accordance with principles of international law.
- Make a Declaration under Article 22 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), allowing the Committee against Torture to consider individual complaints
- Conduct a medical examination of each detainee at the time he or she is detained and when the detainee is transferred to the jurisdiction of the court.
- Disband state security agencies that have not been created pursuant to an act of Parliament.
- Compensate victims of torture, ill-treatment and arbitrary detention adequately and speedily.
- Revise the constitutional provision that allows pre-trial detention of 360 days without bail in cases triable only by the High Court, such as terrorism and treason to ensure that the constitution permits bail unless the state presents to a judge prima facie evidence that the defendant is implicated in a recognizable crime.
- Undertake a prompt and comprehensive review of national legislation governing treason, terrorism, and other public order charges to ensure compliance with international human rights standards.
- Publish or encourage the publication of the report of the Parliamentary Committee on Defence and Internal Affairs (PCDIA) investigation into safe houses, torture, and related abuses.
- Government of Uganda should specifically give the UHRC and the PCDIA the authority and mandate to conduct investigations and visits to any place in Uganda, including military barracks, where there are allegations of detention of any person; assure that they have the power to conduct such investigations and visits without notice. The UHRC should remain an independent agency, not under the jurisdiction, control, or supervision of the Inspector-General of Government (IGG) or other arm of the executive, judicial, or legislative branches of government.
- To the Judiciary: · Use judicial powers to appoint a judicial agent to visit, without prior notice, prisons, police stations, military garrisons and barracks, and any other facility where persons are alleged to be held or treated in violation of their rights by state agents.

“Uganda is sovereign country but should adhere to international human rights standards, Uganda is for all, not just a few”