

**HUMAN RIGHTS PERSPECTIVE: A REVIEW OF THE ROLE OF THE 9TH
PARLIAMENT IN PROTECTING AND PROMOTING HUMAN RIGHTS (2011-2016).**

Susan Mirembe Nalunkuma,
Consulting Partner,
Development Law Associates.

TABLE OF CONTENTS

1. INTRODUCTION.....	3
1.1 Parliament Structure and Role.....	3
1.2 The Parliamentary Committees; the Human Rights Committee.....	4
1.3 Parliament Rules of Procedure, 2012	5
2. OVERVIEW OF KEY PIECES OF LEGISLATION	7
2.1 Prohibition and Prevention of Torture Act, 2012.....	7
2.2 Anti-Pornography Act, 2014.....	8
2.3 The Anti-Homosexuality Act, 2014.....	9
2.4 HIV/AIDS Prevention and Control Act, 2014	10
2.5 Anti-Terrorism Act, 2015	11
2.7 Some notable Bills being discussed by the 9 th parliament.....	13
2.7.1 The Tobacco Control Bill, 2014.....	13
2.7.2 Marriage and Divorce Bill, 2009.....	14
2.7.3 The Persons with Disabilities Bill, 2014	14
2.7.4 The NGO Bill 2015.....	15
2.7.5 The Constitution Amendment Bill, 2015.....	16
2.7.6 The Children’s Amendment Bill.....	16
3. PUBLIC INTEREST ISSUES UNDER THE 9 TH PARLIAMENT	18
3.1 Parliamentary petitions	18
3.2 Land evictions	19
3.3 Environmental engagement	19
3.4 Role of Parliament with regard to Civil Society Organizations.....	21
4. CONCLUSION.....	24
4.1 Criticisms about Parliament’s role	24
4.1.1 Budgetary allocations	25
4.1.2 Independence of Parliament	25
4.1.3 Education of the public	26
4.2 Recommendations	27

1. INTRODUCTION

The 9th Parliament of Uganda comprises of approximately 375 representatives, including women representatives of districts, representatives of constituents, persons living with disabilities, representatives of workers, and ex-officio members. As one of the three arms of government, Parliament serves several functions other than the overall law making mandate; these include conducting field visits, and making budgetary allocations. The general task for Parliament is “to pass laws for the good governance of Uganda,” and as we draw closer to the end of the 9th Parliament term, there is a need to assess how well the August House has served the interests of the public, particularly with regard to human rights.

The objective of this paper is to scrutinize Parliament’s oversight role of government policy and administration through the tools that are available to it; the pre-legislative scrutiny of Bills referred to the Parliamentary committees by Parliament, and to consider how Parliament scrutinizes the various objects of expenditure and the sums to be spent on each hence assuring transparency and accountability in the application of public funds, and monitoring the implementation of Government programs and projects.

Parliament serves its role through key actors like the office of the Speaker of Parliament, the Office of the Clerk and Parliamentary committees including Standing Committee, Sessional and Select committees. Over the past five years, Parliament has considered over 83 Bills and Acts as indicated on the Parliament Watch website. Using the criteria set by the Constitution, the Parliamentary Rules of Procedure and through the Human Rights Checklist, this paper makes an assessment of the role played by the 9th Parliament in protecting and promoting human rights through the laws that have been passed. The paper starts by looking at the structural set-up of Parliament, an overview of some legislation passed or considered by Parliament so far, key issues arising during this time and conclusions.

1.1 Parliament Structure and Role

Parliament, like any other government body has a duty to respect and promote human rights. As part of its role in this regard, Parliament, through its Human Rights Checklist, has set four criteria for assessing the compliance of a piece of legislation: the purpose of the Bill, the rights to which the Bill relates, whether the stated purpose is consistent with the law and if not, what is the extent of any

inconsistency with the Bill of Rights under the Constitution. It is also important to note that Parliament has put emphasis on the importance of Article 21 on non-discrimination and equality, particularly as it relates to gender, as one of the fundamental rights that it will uphold when considering legislation. The House has also emphasized the need for paying attention to affirmative action, neutrality of language in Bills and policies, appointment of persons, access to services, and paying attention to the international human rights obligations. Parliament's structure and role is established through the Parliamentary Rules of Procedure which set up various Committees based on subject matter, and serve an important role in presenting motions to move Parliament to action or present concerns on a matter. The discussion below highlights the relevance of each of the Parliamentary mechanisms and how they contribute to Parliament's ability to address human rights issues.

1.2 The Parliamentary Committees; the Human Rights Committee

Parliament is comprised of various committees; these include the Appointments Committee, The Public Accounts Committee, The Committee on Budgets, and The Committee on Equal Opportunities among others. "Membership of Standing Committees is for the entire life of Parliament while Sessional Committees are constituted at the beginning of every session of Parliament, and their functions are similar to those of Standing Committees."¹

The Human Rights Committee is one of the Standing Committees and it uses a checklist which Hon. Rebecca Kadaga, the Speaker of Parliament has termed as "the first of its kind in the history of our Parliament" set up to provide "a mechanism to quickly alert Members of Parliament on the human rights implications of the provisions of a Bill, strategy, policy or government program handled in Parliament."² The need for such a committee has been evident over the past few years since according to Hon. Kadaga, "there is no strategy to alert members of Parliament to the likely and possible inconsistencies that are embedded within the Bills, policy statements, budgets or other business presented to Parliament." The existence of such a committee should therefore be applauded as a step in the right direction since it brings 'expertise' in the area of human rights. However, the criterion for appointment onto these committees does not always take into consideration whether the members

¹ Parliament of the Republic of Uganda, available at, <http://www.parliament.go.ug/new/index.php/parliamentary-business/committees>.

² Hon. Rebecca Kadaga, The Human Rights Committee, Checklist for compliance with human rights in policy, Bills, budgets, government programs and all business handled by Parliament.

have minimum qualifications or experience to inform their input in these areas. Moreover, since membership on Standing Committees runs for the lifetime of Parliament, there is no room for adjustments to be made if the members are not efficiently serving the Committee.

The 26 member Human Rights Committee serves an important role though their mandate to reflect on each Bill in accordance with Rule 118. Parliamentary Committees are empowered to conduct field visits under Rule 33 of the Parliament Rules of Procedure and to present their findings in the form of a report to be discussed by Parliament. The committees are required to analyze Bills, Petitions and Budgeting in the sectors which they operate. Under Rule 22 (1) of the Parliament Rules of Procedure, the sittings of these committees are public thereby allowing interest groups to voice their concerns directly to the legislators. Committees are empowered to initiate Bills in their area of competence in accordance with Rule 110. These provisions highlight the importance of Committees (especially the Human Rights Committee) in making interventions to ensure that laws which are passed or considered by Parliament comply with Uganda's human rights obligations.

The Committees face a number of challenges including access to adequate funds to enable them to carry out their mandates in a more practical and effective manner. Further, members of these committees are overburdened with a heavy workload³ which affects their efficiency. The recommendation is that membership on the various committees should reflect some expertise in the subject matter that is handled by the Committee.

1.3 Parliament Rules of Procedure, 2012

The Parliament Rules of Procedure have been a useful tool in setting up structures to enable Parliament to fulfill its oversight role and to better serve the interests of the people with regard to human rights. Rule 116 prohibits the introduction of any Bill which is deemed to be a violation of fundamental human rights by the Speaker of Parliament. This prohibition also applies to laws which are "likely to result in the derogation from the enjoyment of any of the particular human rights and freedoms specified in Article 44 of the Constitution."

³ Ruth Mubiri 2012, Uganda Radio Network, 'Parliament splits social services committee,' available at <http://ugandaradionetwork.com/story/Parliament-splits-social-services-committee>.

In addition to Parliament's general mandate, the Sectoral Committees set up under Rule 177 of the Parliamentary rules serve as oversight bodies scrutinizing and commenting on laws and policies before they are passed. These set-ups under the Rules of Procedure allow Parliament some flexibility in ensuring that its objectives are met, and in some cases, these provisions have been used to present valuable input on legislation that is necessary to fulfill Uganda's human rights obligations. This can be illustrated through Rule 110, which also permits the tabling of a private members' Bill; the Children's (Amendment) Bill, 2015 is one such law that has been tabled under this provision. Parliament also has the authority to consider legislation that is deemed urgent without publication of the Bill beforehand, thus allowing the Bill to go through all its stages in a day under Rule 108.

While these structures serve as useful tools, the challenge is that the public is still ignorant and misinformed about Parliamentary procedures thus making it difficult for them to continuously engage with Parliamentary processes. There is need to disseminate information in a manner that is accessible to the wider population with regard to what Parliament is empowered to do, thus enabling groups to engage with their representatives in order to highlight their concerns.

2. OVERVIEW OF KEY PIECES OF LEGISLATION

As mentioned above, the 9th Parliament has considered over 80 pieces of legislation, some of which were carried forward from previous legislatures. There are numerous analyses about many of these laws thus this part of the paper serves as a recap of some of the key human rights issues in those laws. The assessment on these is based on Uganda's human rights pledge under Chapter Four of the 1995 Constitution (as amended) and the various human rights instruments to which Uganda is a party.

2.1 Prohibition and Prevention of Torture Act, 2012

This law was passed in July 2012 criminalizing torture, giving effect to Article 24 of the 1995 Constitution of Uganda and actualizing Uganda's obligations as a State party to the UN Convention Against Torture which Uganda ratified on November 3rd, 1986. The Prohibition and Prevention of Torture Act was passed after continuous lobbying in both the regional and international human rights bodies.

The Bill has been “applauded for; criminalizing torture, imposing liability on both state and non-state actors, demystifying defence of superior orders or ‘orders from above’ by imposing liability on public officials who sanction acts of torture and compliments section 24 of the Evidence Act CAP 6, that renders inadmissible evidence obtained by means of torture. Lastly, torture being an extraditable offence is novel as it identifies torture as one of the major criminal and human rights concerns. This provision creates no haven for perpetrators of torture.”⁴

There have been various criticisms about this law; aside from the criminalization of torture, Parliament has not legislated on the needs of torture victims particularly when the perpetrator is the state. There is still a need to set up specialized government centers to deal with these injuries outside of the mental health places like Butabika. Additionally, the law provides avenues for reporting acts of torture but the witness protection mechanisms that would ensure more reporting mechanisms have not been implemented. This poses a challenge for individuals who may have valuable information but fear the repercussions of their cooperation with law enforcement, especially since law enforcement agencies have been identified as some of the perpetrators of torture.

⁴ Foundation for Human Rights Initiative, “Submissions to the legal and Parliamentary affairs committee’ available at <http://www.fhri.or.ug/index.php/component/content/article/48-fhri-beyond-2011/136-torture-Bill.html>

2.2 Anti-Pornography Act, 2014

This is the law enacted to prohibit pornography.⁵ Pornography has a broad definition that covers “any cultural practice, radio or television program, writing, publication, advertising, broadcast, upload on internet, display, entertainment, dance, picture, audio or video recording, show, exhibition or any combination of the preceding that depicts, among others, a person engaged in explicit sexual activities or conduct.” The law has been widely criticized as sexualizing body parts, particularly those of women by classifying ordinary body parts like breasts, thighs and buttocks as sexual parts. The law also uses terms like “behavior tending to corrupt morals,” which are vague terms whose interpretation can be arbitrary.

The Bill which was tabled by Hon. Simon Lokodo, a former catholic priest (having been excommunicated from the Catholic Church for joining politics⁶), has made women the target of public acts of sexual harassment as the public has taken to enforcing the law without recourse to the courts. The inequality of this law was reflected in how it was perceived by the public immediately after it was passed. Parliament acted in violation of its human rights obligations by enacting such a vague law whose foreseeable consequences were the continued sexual harassment of women across the country. In the cultural context where nudity is part of the norm in certain places of the country, Parliament failed to take into consideration the practical consequences of this law on the people. This law creates a subjective test with which women’s dress code is to be assessed and punished. The law violates not just autonomy, but equality, and freedom of expression guaranteed under Article 21 and 29 of the 1995 Constitution. Are the restrictions on expression and equality placed under this law justifiable in a free and democratic society? The answer is No. It is important to assess the relevance of this law considering the fact that the Penal Code Act already has provisions that criminalize ‘indecent exposure’ of various kinds. This factor ought to have been taken into consideration by the Human Rights Committee of Parliament before the law was passed. Sexual harassment continues to pose a challenge to women (and some men) in many sectors in Uganda yet Parliament continues to brush over such issues by passing a law that would fuel continued violations of women’s human rights.

⁵ Parliament Watch Uganda, available at <http://Parliamentwatch.ug/Bills/anti-pornography-Bill-2011/>

⁶ Ian Katusiime, The Independent, ‘Catholic church leadership on trial’, March 28th, 2013, available at <http://www.independent.co.ug/cover-story/7608-catholic-church-leadership-on-trial>.

2.3 The Anti-Homosexuality Act, 2014

The object of the law was to establish a comprehensive consolidated legislation to protect the traditional family by prohibiting homosexuality. This law, passed by Parliament in the same week as the Anti-Pornography law (the Anti-Pornography law was passed on 19th December 2013 and the Anti-homosexuality law was passed on 20th December 2013) has been widely condemned both within and outside Uganda. Stella Mukasa writing for the Daily Monitor has stated that, “both laws deserve to be condemned on grounds that they promote polarization and the violation of fundamental human rights.”⁷ The Act sought to criminalize what was termed as “recruitment” and “promotion” of homosexuality, terms which are vague and thus subject to be abused by law enforcement authorities. The existence of such laws creates a permissive environment for family members and others in the community to discriminate against, harass and intimidate Lesbian Gay Bisexual Transgender and Intersex (LGBTI) people.⁸ Students are evicted from schools, people are evicted from their homes, bars are raided and venues closed down.⁹ Even as these concerns arise, the Human Rights Committee has not taken action to ensure that these effects are addressed by Parliament.

The Anti-Homosexuality Act drew criticism for being repetitive and unnecessary because there was already a criminal regime prohibiting homosexuality. Uganda is one of about 79 countries that criminalize homosexuality across the world¹⁰ and homosexuality is already a criminal offence under Section 145 and 146 of the Penal Code Act CAP 120 which criminalizes ‘carnal knowledge against the order of nature’ and attempts to commit the same offence respectively. Moreover, these Penal Code provisions were hardly enforced, with nearly no recorded convictions under this provision. The Anti-homosexuality Act singled out otherwise law abiding citizens and made them criminals without due regard to Article 21(1) of the Constitution which provides that all persons are entitled to the equal protection of the laws. The overbroad criminalization of adult, consensual same-sex relations was criticized as infringing on the protection for personal liberty under Article 23, the right to dignity under

⁷ Stella Mukasa, The Daily Monitor, “The Anti-Pornography Act, a setback for gains made in women’s rights” March 19th, 2014, available at <http://www.monitor.co.ug/OpEd/Commentary/Anti-Pornography-Act-a-setback/-/689364/2249082/-/aywph5/-/index.html>.

⁸ Amnesty International, ‘Making love a crime: Criminalization of same sex conduct in Sub-Saharan Africa’, Amnesty International Publications, United Kingdom

⁹ Amnesty International, *ibid*

¹⁰ Erasing 76Crimes, ‘79 Countries where homosexuality is illegal’, July 9th, 2015, available at <http://76crimes.com/76-countries-where-homosexuality-is-illegal/>.

Article 24, and the right to privacy under Article 27 of the Constitution since law enforcement authorities would have to break into people's homes to prove the offence.

Parliament's disregard for the various opinions on this subject was shown when the House hurriedly passed the Bill without quorum, giving the courts ground to strike it down. This law has also had some direct impact on the right to health and accessibility of services for all people, yet the Human Rights Committee did not raise these concerns. The 9th Parliament has since started the process to table a similar Bill to further criminalize homosexuality. Despite the obvious unjustifiable human rights concerns, media reports indicate that "shortly after the court nullification, lawmakers led by Kawempe North MP Latif Ssebagala began collecting signatures in support of a plan to immediately reintroduce the law."¹¹ These actions have received more support than condemnation in the House, indicating a disregard for the concerns raised by the various stakeholders.

2.4 HIV/AIDS Prevention and Control Act, 2014

This Act which was passed by Parliament on May 13th, 2014 has received continuous criticism since the day it was tabled before Parliament. The Act criminalizes HIV transmission, attempted transmission and behavior which may result into transmission by a person who knows their HIV status. While Uganda has previously been applauded for the gains she has made in reducing the spread of HIV, the Act in its current form has provisions which are "contrary to international best practices and violate fundamental human rights"¹² like the right to dignity under Article 24 of the Constitution.

This law has been criticized for infringing the right to privacy under Article 27 of the Constitution as it provides for mandatory HIV testing under Section 13 and 14 of the Act and disclosure of the test results without consent to third parties under Section 18(2)(e) and (h) coupled with criminalization of attempted transmission of HIV under Section 41. These provisions have been criticized from various sectors including health practitioners, activists and scholars. Some of the biggest criticism is that the law will result in "people shying away from prevention, treatment, care and support services which

¹¹ Solomon Arinaitwe and Isaac Imaka, The Daily Monitor, September 3rd, 2014, available at <http://www.monitor.co.ug/News/National/MPs-start-process-to-re-table-gay-Bill/-/688334/2438860/-/f02btj/-/index.html>.

¹² Human Rights Watch, 'Uganda: deeply flawed HIV Bill Approved', May 13th, 2014, available at <https://www.hrw.org/news/2014/05/13/uganda-deeply-flawed-hiv-Bill-approved>.

may end up escalating the HIV Prevalence.”¹³ These provisions are also overly broad, subject to arbitrary interpretation and therefore difficult to enforce.

On the other hand, the Act has some positive provisions which are worth mentioning here including the prohibition of discrimination at the workplace under Section 32, in schools under Section 33, and in public service under Section 35 on the basis of one’s HIV status. These provisions are in line with Article 21 of the Constitution which guarantees equality and freedom from discrimination. However, “for Uganda to address its HIV epidemic effectively, it needs to partner with people living with HIV, not blame them, criminalize them, and exclude them from policy making,” said Dorah Kiconco, executive director of Uganda Network on Law, Ethics & HIV/AIDS.¹⁴

As of 2011, estimates by the Uganda AIDS indicator Survey commissioned by the Ministry of Health indicate that there are about 1.4 million people living with HIV/AIDS and the country has a prevalence rate of about 7.3%.¹⁵ Parliament should therefore have an interest in ensuring that the legislation that is passed serves the health interests of the country. This Act must be reformed in order to match government responses to the needs of the people in accordance with the Constitution.

2.5 Anti-Terrorism Act, 2015

This is an amendment to the anti-terrorism act of 2002 and it is intended “to provide for expeditious freezing, seizure and forfeiture of assets and property suspected to be linked to terrorist activities.” Uganda, as one of the founding members of the Eastern and Southern African Anti-Money Laundering Group¹⁶ sought to strengthen its anti-money laundering provisions as they relate to terrorism.

This Bill has been criticized for giving the Inspector General of Police too much power under Section 17A (1) with regard to seizure of assets where there is a suspicion of terrorism activities. Doing the consultations and Parliamentary debate, the public recommended that freezing of assets should only

¹³ Winnie Watera, Parliament Watch Uganda, available at <http://Parliamentwatch.ug/policies-a-silent-enemy-in-the-battle-against-hiv-amongst-sexual-minorities/>.

¹⁴ Human Rights Watch, ‘Uganda: deeply flawed HIV Bill Approved’, op.cit.

¹⁵ Ministry of Health Uganda 2011, AIDS indicator survey; key findings, available at http://health.go.ug/docs/UAIS_2011_KEY_FINDINGS.pdf.

¹⁶ Parliament of Uganda 2015, ‘The report of the Committee on Defence and Internal Affairs on the Anti-terrorism amendment Bill 2015’, June 2015, available at <http://Parliamentwatch.ug/wp-content/uploads/2015/06/DIA3-15-Report-on-the-Anti-terrorism-Amendment-Bill-2015-Including-Minority-Report1.pdf>.

be done after due process of the law.¹⁷ Further, the Minority Report on this Act criticized the broad definition of terrorism under the previous Act and Section 7 of this amendment because the provision could be abused for political gain. Members of Parliament also opposed the clause on damage to property and prejudicial to public security, saying it should be deleted for it is open to abuse and manipulation.¹⁸

The discussions of this law do not seem to have taken into consideration the human rights aspects, considering the prevalence of torture and discriminatory practices in anti-terrorism efforts. The minority report in Parliament indicated that there has been continuous infringement of Article 43 prohibitions on the limitations of fundamental rights in the name of public interest. There is no evidence on record indicating that Parliament took this assertion seriously. This law is likely to be used to target political opponents by freezing their assets thus infringing on rights like the right to privacy under Article 27, and freedom of association under Article 29, among others.

2.6 Public Order and Management Act, 2013

This Act was passed by Parliament in 2013 and received a lot of criticism for setting a requirement that police permission must be sought before any public meeting is allowed to take place under Section 3 of the Act. This has drawn criticism from legal scholars and practitioners across the country because the Constitutional Court of Uganda has previously ruled against a similar provision under Section 32 of the Police Act stating that the powers under that law were prohibitive and not regulatory and therefore contravened the Constitutional provisions.

A public meeting is defined under Section 4 of the Act as “a gathering, assembly, procession or demonstration in a public place or premises held for the purpose of discussing, acting upon, petitioning or expressing views on a matter of public interest.” This definition of a public meeting carries the risk that even individuals who are gathered for casual conversations about matters of public interest would require police authorization to do so. This law has already been used to harass opposition politicians and prohibit them from holding public meetings about their views on various subjects. The restrictions under this law do not only affect the right to participate in peaceful activities

¹⁷ Parliament of Uganda 2015, ‘The report of the Committee on Defence and Internal Affairs on the Anti-terrorism amendment Bill 2015’, *ibid*.

¹⁸ Ismail Musa Ladu 2015, The Daily Monitor, ‘House Passes anti-terror Law amidst opposition protests’, June 20th, 2015, available at <http://www.monitor.co.ug/News/National/House-passes-anti-terror-law-amid-Opposition-protests-/-/688334/2758110/-/15mrxuv/-/index.html>.

under Article 38(2) but also have an impact on freedom of expression and association under Article 29, and the right to education under Article 30 .

2.7 Some notable Bills being discussed by the 9th parliament

These are Bills and Acts which also have human rights implications. There has been a lot of debate around some of these laws and this section only seeks to highlight some of the key concerns and the Constitutional Provisions on which they have an impact.

2.7.1 The Tobacco Control Bill, 2014

Parliament recently passed this Bill on July 28th, 2015.¹⁹ This Bill was proposed by the Parliamentary Committee on Health led by Hon. Chris Baryomunsi as it seeks to protect the right to health and the right to life guaranteed under the Constitution. Smoke-related health hazards were previously regulated by outdated laws and this Bill sought to set up protections for non-smokers and to regulate smoking habits. The Bill sets an age of majority prohibiting minors from the purchase of cigarettes. Under Clause 15(1), “the same law further makes it unlawful to sell or operate tobacco-related products or smoke a cigarette within 50 meters from any public facility or place such as a school or a hospital.”²⁰ The Bill has, however, been criticized for defining a minor as a person under the age of 21 yet Uganda’s age of majority is 18 years.

Parliament should be applauded for using evidence based criteria in assessing and justifying the need for this law noting that tobacco is one of the leading causes of preventable death worldwide. The Bill, once signed into an Act, allows for a 12 month grace period to allow the public and stakeholders to make the necessary adjustments in order to comply with the law. The Uganda Human Rights Commission has also raised concerns that the Bill does not provide for education and public awareness around smoking thus limiting the purpose of the law.

¹⁹ Ismail Musa Ladu 2015, The Daily Monitor, ‘House passes new anti-tobacco law’, July 29th, 2015, available at <http://www.monitor.co.ug/News/National/House-passes-new-anti-tobacco-law/-/688334/2812698/-/xog6qb/-/index.html>.

²⁰ Ismail Musa Ladu 2015, The Daily Monitor, ‘House passes new anti-tobacco law’, *ibid*.

2.7.2 Marriage and Divorce Bill, 2009

This Bill was saved by the 9th Parliament in 2009 and is perhaps the longest shelved piece of legislation in Uganda's history as it has been in Parliament for "almost 5 decades."²¹ The law which provides for the principle of co-ownership of land, sharing of property and cohabitation has faced stiff resistance from various groups despite Parliament's display of commitment by saving this law from the previous Parliament. The long waiting period indicates a lack of political will to pass a piece of legislation that would go a long way in promoting equality of women especially in marriage and other such relationships (e.g. cohabitation).

The Bill has received a lot of opposition from religious groups especially with regard to polygamy which is an acceptable Islamic practice and cultural practice. Christian groups have also objected to the Bill because it seeks to recognize and guide the sharing of property in some cohabitation relationships under Clause 117 of the Bill. It should be noted that Uganda does not have a State religion under Article 7 of the Constitution but guarantees the freedom to practice one's religion. The refusal to pass the law based on religious concerns is a violation of Article 21 of the Constitution which guarantees non-discrimination. It is also a violation of people's protection of religious freedoms under Article 29 to impose these religious views on the whole country.

The Marriage and Divorce Bill is one of the key pieces of legislation which, if passed, could go a long way to protect and promote the dignity of women, the right to privacy, the right to property and most importantly, promote equality of women in these relationships. Parliament has an obligation to ensure that this law is passed, but the 9th Parliament has fallen short in this regard.

2.7.3 The Persons with Disabilities Bill, 2014

The PWD Bill seeks to strengthen Uganda's laws with regard to persons living with disabilities as well as to harmonize Uganda's with its international and regional human rights obligations. "This Bill replaces and reforms the existing law on persons with disabilities. It operationalizes Article 35 of the Constitution."²² Some clauses in the Bill still do not offer adequate guideline for services for PWDs for example, Clause 9 of the Bill provides for accessibility to buildings. A simple observation of some

²¹ Godiva Monica Akullo 2015, Parliament Watch Uganda. "How long shall we wait? An analysis of the marriage and divorce Bill 2009"

²² Parliament Watch Uganda, available at <http://Parliamentwatch.ug/Bills/the-persons-with-disabilities-Bill-2014/>.

of the buildings within the city centers indicates poor construction. Parliament should endeavor to set acceptable standards for such provisions.

The first law directly addressing matters relating to Persons with Disabilities was enacted in 2006. However, the 9th Parliament has noted that this law had many vague provisions which made enforcement difficult thus necessitating this law. Uganda is a signatory to both the Convention on the Rights of Persons Living with Disabilities and the African Charter on Human and Peoples Rights, both of which provide for protection and promotion of rights of people living with disabilities. Parliament can therefore learn from the provisions in these instruments, as well as contributions from the general public to set up an acceptable legal regime.

2.7.4 The NGO Bill 2015

This Bill seeks to repeal the NGO Act Cap 113 and to regulate the registration, financing and accountability by NGOs in Uganda. The Bill has received criticism for restricting freedom of association and expression under Article 29 by setting strict requirements for registration and formation. NGOs not only require registration, but also require a renewable permit before they can operate in Uganda. In a separate statement by the Minister for Internal affairs, some provisions in the Bill seek to restrict the formation of loose coalitions to address various issues of public interest as they arise. Under Clause 33(1) the Board may revoke the NGO's permit on various grounds including "public interest." This is a vague term and is not justifiable in a free and democratic society like Uganda.

The Bill seeks to subject NGOs to disciplinary action from the Board under Clause 7 through suspensions, blacklisting the organization, or 'other disciplinary action that the Board may deem fit.' Further, Clause 31 of the Bill prohibits any organization from operating without registration with the Board. It should be noted that under the freedom of association protection, there should be no requirement for formal registration in order for groups to organize according to their interests.

The Bill can be applauded for setting up regional offices under Clause 19 for the National Board of NGOs which would allow accessibility to registration services thus making it easier for NGOs to set up outside urban centers as has previously been the case. The recommendation is that this Bill should be amended to foster growth on NGO space and encourage dialogue between government and these bodies rather than imposing these unjustified strict measures.

2.7.5 The Constitution Amendment Bill, 2015

This Bill was tabled by government as one of “a series of amendments”²³ in an effort to get ahead of the next general elections which are scheduled for 2016. The Bill introduces amendments to change the name of the Electoral Commission to ‘The Independent Electoral Commission’ under Clause 1 of the Amendment. This Amendment follows calls by numerous interest groups for electoral reforms in order to ensure free and fair elections. While the steps being taken can be applauded, Parliament should focus on the substantive concerns rather than nomenclature. According to a Parliament Watch Analysis, “many proposals have been made to the effect that the way in which the Commissioners of the IEC are appointed is very crucial in gauging the independence of the IEC. It is therefore recommended that more emphasis is placed on this area.”²⁴

This Bill does not make any attempts to strengthen the human rights protections in the country for example, there is a need for urgent protection of the right to health yet this area has not been raised in this amendment. “Attempts to pursue the right to health, as an independent right, through the courts, in order to hold State actors to account have thus far been futile, save for the recent landmark decision in which the right to health was declared justiciable in Uganda by the High Court in *Center for Health, Human Rights and Development and 4 others vs. Nakaseke District Local Administration – Civil Suit No. 111 of 2012*’.²⁵ The right to health is one of the fundamental human rights that is necessary to enjoy all other rights. The Human Rights Committee should take steps to ensure that this right to health is embedded in the Constitution so as to offer some guidance on how to enforce Uganda’s obligations.

2.7.6 The Children’s Amendment Bill

At the start of 2015, Parliament was considering two Bills to amend the Children’s Act; one Bill which was tabled by the Ministry of Gender and the other, a private members’ Bill. The Government, however, chose to withdraw its Bill in July 2015 after the Gender committee directed Parliament’s Directorate of Legal and Legislative Services to scrutinize the parallel Bills and merge them. The

²³ Parliament of the Republic of Uganda, ‘Constitution (Amendment) Bill tabled’, available at <http://www.Parliament.go.ug/new/index.php/about-Parliament/Parliamentary-news/593-Constitution-amendment-Bill-tabled>.

²⁴ Parliament Watch Uganda, ‘The Constitution Amendment Bill; An analysis’, available at <http://Parliamentwatch.ug/the-Constitution-amendment-Bill-2015-an-analysis/>.

²⁵ Parliament Watch Uganda, *ibid*

Committee found that the government Bill would require about 77% amendment before it could be taken on by Parliament, thus pushing forward the Private Members' Bill.²⁶

Inter-country adoption is one of the key considerations in these Bills as the law seeks to set strict guidelines for grant of adoption to foreigners. The Bills also seek to incorporate various children's rights protections prohibiting child labor in certain circumstances, protecting children from harmful cultural practices and promoting the rights of children in Uganda.

²⁶ Olive Eyotaru 2015, Uganda Radio Network, 'Government withdraws Children's amendment Bill', June 22nd, 2015, available at <http://ugandaradionetwork.com/story/government-concedes-to-withdraw-childrens-amendment-bill>.

3. PUBLIC INTEREST ISSUES UNDER THE 9TH PARLIAMENT

Parliament has been faced with a number of public interest issues during its tenure. Although some of these have not resulted into legislation, the prevalence of instances creates the need to highlight them in this paper. Public interest generally refers to a matter of ‘common good’ for what would be an average Ugandan. This usually means that it affects a significant number of people in the public or if it raises matters of broad public concern. On the other hand, matters which affect disadvantaged or marginalized groups like people living with disabilities, pregnant women or indigenous communities can be a matter of public interest too. One such matter is the Tobacco Control Bill which seeks to regulate manufacture, use and sale of tobacco products.

3.1 Parliamentary petitions

The Parliamentary petitions are enshrined in Article 29(1) (d) of the Constitution of Uganda and Rule 29(1) of the Parliamentary Rules of Procedure. “The 9th Parliament has so far received at least 118 petitions as of December 2014...most petitions in Parliament relate to land eviction grabbing (over 25 petitions), a vice that is depressingly sinking the country, education (14), health (8), trade (16), labor (13) concerns and agriculture (4) among others.”²⁷ These are all areas governed by the human rights provisions under the Ugandan Constitution. However, the 9th Parliament has not passed any legislation to address the issues raised in the majority of these petitions.

Additionally, Parliamentary petitions are bogged down with so many formalities and petitions may be thrown out for non-compliance with the formalities thus making them inaccessible for the general public. The Parliamentary Rules of Procedure require that all petitions be presented by a Member of Parliament under Rule 29(3) and are bogged down with formalities which make this option inaccessible for the general public. Rule 29(8) requires that the petitions presented should be disposed of within 45 days of being received. However, this has not been the case in the 9th Parliament and Wamajji notes that of all the petitions presented to this Parliament, only 26 have been handled and only 1, in the time frame prescribed in the law. The majority of the petitions are handled within two to three years, if they are indeed handled.”²⁸

²⁷ Reagan Wamajji, Parliament Watch Uganda, available at <http://Parliamentwatch.ug/petitioning-Parliament-is-it-more-ritualistic-than-functional/>.

²⁸ Reagan Wamajji, Parliament Watch Uganda, *ibid*.

3.2 Land evictions

Land evictions are some of the leading concerns raised by the public through the Parliamentary Petitions. The Parliamentary committee on physical infrastructure has played a key role in highlighting the continued land evictions in Uganda although no further legislative actions have been taken. Parliament has received a number of petitions on this issue including a 2014 petition from people who were evicted from their property by KCCA and the Police on behalf of Uganda Railways Corporation (URC) and Rift Valley Railways (RVR).²⁹ Parliament has also received petitions from residents of Kiryandongo district after a Presidential directive to compensate them was unfulfilled in 2013. However, little else has been done by Parliament as a whole to address the concerns raised by these petitions.

The land evictions are often carried outside the parameters prescribed by the law especially with regard to Article 26 of the Constitution which protects the individual's right to property and the Land Acquisition Act which provides for fair and adequate compensation for the lawful acquisition of land. A notable factor is that the evictions have been carried out by individuals, government bodies (like KCCA) and multinational corporations and perhaps this explains the challenge that Parliament is faced with in trying to address this matter. Despite all these petitions and reports, the 9th Parliament has not taken any steps to address land reform as a key issue during its tenure.

3.3 Environmental engagement

The 9th Parliament has been faced with a number of human rights concerns that relate to environmental rights, and Parliament has received numerous petitions raising issues of eviction from land which is deemed a wetland by the National Environmental Management Authority (NEMA) and other government bodies.

In 2014, Parliament received a petition by elders and residents of Kawaala zone (II) LC 1, Namungoona Zone and Kasubi Parish-Lubaga Zone against imminent mass Eviction and Environmental Hazards faced as a consequence of Kampala Capital City Authority, NEMA, Uganda National Roads Authority And The National Water And Sewerage Corporation operations. This petition, presented to the Committee on Physical Planning on November 6th 2014 is yet to receive Parliamentary feedback through a Committee report on the matter. The petition also raised concerns

²⁹ Parliament Watch Uganda, <http://Parliamentwatch.ug/motion/unlawful-and-forceful-evictions-of-residents-of-banda-and-kireka/>.

about the construction of sewage treatment plant at Lubigi wetland, something that the petitioners claimed to violate their right to a clean and healthy environment.

Uganda's environmental protection obligations arise from the Article 39 of the 1995 constitution, which recognizes the right to a clean and healthy environment, and other human rights instruments that the country has ratified. Under the National Objectives and Directive Principles, Uganda has undertaken to "promote the sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations."³⁰ Uganda's recent discovery of oil poses environmental challenges in case of an oil spill and waste disposal management. The National Environmental Policy developed to address this issue has not been publicized, leaving various stakeholders ill-equipped to hold government and investors accountable for their actions. The 9th Parliament has not carried out adequate public sensitization on environmental issues leading to the continued abuse and impunity with regard to environmental protection.

Parliament is further empowered to make laws and policies for protection, preservation, and management of the environment under Article 245. One of the biggest highlights for the 9th Parliament with regard to protection of the environment has been the ban of polythene bags. The National Association of Professional Environmentalists reports that "Government of Uganda with approval of parliament, some time back in 2009 banned the importation, manufacture and use of polythene bag, popularly known as *kaveera* of gauge below 30 microns."³¹ The ban was aimed at addressing the drainage clogging challenges which in turn affect water filtration and land degradation due to the fact that the bags do not decompose. Parliament and National Environmental Management Authorities' recommendations faced opposition from the executive³² which was followed by mixed communication from the government side, making enforcement difficult. "NEMA started implementing the ban on polythene bags, effective April 15 this year. The ban was first implemented in June 2007, when government first slapped a ban on the importation, use and production of

³⁰ Objective XXVII(1) of the National Objectives and Directive Principles of State Policy, The 1995 Constitution of Uganda (as amended).

³¹ National Association of Professional Environmentalists, 'NEPA reacts to government's lack of commitment to ban kaveera (polythene bags) in Uganda', April 17th, 2015, available at <http://nape.or.ug/nape-has-government-an-ultmetam-of-three-weeks/>.

³² Jeff Andrew Lule 2015, The New Vision, 'Government accused of failing NEMA on kaveera ban', April 18th, 2015, available at <http://www.newvision.co.ug/news/667182-govt-accused-of-failing-nema-on-kaveera-ban.html>.

polythene bags of 30 microns and below, which are usually very thin. But this did not last long as NEMA was overwhelmed by the manufacturers.”³³

Parliament needs to have stronger cooperation mechanisms among the various committees in order to produce effective policies and laws for better environmental protection. Passing a law on environmental conservation could go a long way in addressing this since law has a binding effect unlike the policies which offer mere guidelines and cannot be enforced in courts of law.

3.4 Role of Parliament with regard to Civil Society Organizations

Civil society is defined as “the part of society that consists of organizations and institutions that help and look after people, their health and their rights.”³⁴ The term Non-government Organization (NGO) is sometimes used to refer to civil society. The current legal regime is governed by the NGO Act Cap 113 which requires NGOs to be registered by the NGO board, managed by the Minister of Internal Affairs (currently a military man, General Aronda Nyakairima). This poses obvious questions as to the Board’s ability to use unbiased criteria to grant licences to NGOs, including those that would potentially criticize the regime.

Civil society (including Non-Government Organizations) has played an important role during the tenure of the 9th Parliament. One of the notable achievements in the past years has been the formation of various coalitions and pressure groups like the Uganda Children’s Rights NGO Network which has spearheaded calls for reform in children’s rights, The Anti-Corruption Coalition Uganda, and the Civil Society Coalition on Human Rights and Constitutional Law among others. Civil society has also played an important role in bridging the gap where service provision and advocacy falls short. For instance, the African Centre for Treatment and Rehabilitation of torture victims has played an important role in providing services for torture victims and ensuring that the general public is aware of what the anti-torture laws mean to them.³⁵

³³ Jacky Kemigisa 2015, Parliament Watch Uganda, ‘Government did not lift ban on kavera-Hon. Jim Muhwezi clarifies’, available at <http://parliamentwatch.ug/govt-did-not-lift-ban-on-kavera-hon-jim-muwhezi-clarifies/>.

³⁴ The Macmillan Dictionary, available at <http://www.macmillandictionary.com/dictionary/british/civil-society>.

³⁵ See African Centre for Treatment and Rehabilitation of torture victims, ‘Simplified version of the Prohibition and Prevention of Torture Act’, available at http://www.kampala.diplo.de/contentblob/4431982/Daten/5043471/2014_12_18_Anti_Torture_Act.pdf.

However, Parliament remains silent on the deteriorating political situation where dissent is continuously suppressed through arrests and armed police deployment on the streets.³⁶ The Human Rights Watch report is a useful document for this analysis because the research was carried out at the beginning of the tenure of the 9th Parliament in 2011 and as we draw to the close of their season, we can draw comparisons as to what improvements Parliament has made over the past 5 years. There has been public outcry that the recently tabled NGO Bill threatens to shrink civil society space in Uganda thus affecting their ability to serve as a check on government activities. This law can be categorized as “punitive bureaucratic interference.”³⁷ These legal restrictions are an infringement of the freedom of association and expression guaranteed under Article 29 of the 1995 Constitution of Uganda. Parliament has an obligation and an opportunity to ensure that the law is not passed in its current state as this would serve as a blow to the democratic ideals by which Uganda is governed. Moreover, the fact that “...the government is putting serious pressure on civil society, particularly on organizations that might be seen as infringing upon the officials’ political and financial interests”³⁸ can be seen as an interference with Article 38(2) of the Constitution which provides for the right to participate in peaceful activities to influence the policies of government.

Human Rights Watch reporter Maria Burnett has made recommendations that, “civil society should have space to conduct research and take part in policy debates without fear of government reprisals.”³⁹ Parliament should take a more active role in ensuring that the democratic space facilitates dialogue which will in turn guide Parliament on how to fulfill Uganda’s human rights obligations. NGOs operate within the communities and close to the everyday lives of Ugandans, an advantage that Parliament does not always have. Their activities often inform the advocacy that they carry out including presenting their findings to Parliament and to the public. It therefore serves the interests of Parliament to ensure a vibrant civil society which is able to support Parliament in its legislative work. Parliament should consider passing laws that protect human rights defenders, and activists from state harassment and abuse of power.

³⁶ Human Rights Watch, ‘Curtailling criticism, Intimidation and obstruction of civil society in Uganda’, August 21st, 2012, available at <https://www.hrw.org/report/2012/08/21/curtailling-criticism/intimidation-and-obstruction-civil-society-uganda>.

³⁷ Human Rights Watch, ‘Uganda, Growing intimidation, threats to civil society’, August 21st, 2012, available at <https://www.hrw.org/news/2012/08/21/uganda-growing-intimidation-threats-civil-society>.

³⁸ Human Rights Watch, ‘Uganda, Growing intimidation, threats to civil society’, Ibid.

³⁹ Human Rights Watch, ‘Uganda, Growing intimidation, threats to civil society’, ibid.

4. CONCLUSION

In conclusion, it can be said that the 9th Parliament understands its human rights obligations and that good faith efforts have been taken to remain consistent with her obligations. This analysis acknowledges that human rights are not all absolute and the limitations on these rights must be those justifiable in a free and democratic society. Parliament still has a role to play to restore and uphold people's faith in the system with regard to timing of legislation and the initiatives that are taken.

The 9th Parliament has placed a lot of emphasis on civil and political rights like the right to life, freedom of association and expression and the right to vote. However, as mentioned earlier in this analysis, there has been little emphasis on social-economic rights like the right to health, the right to education, and the right to a clean and healthy environment. This conduct goes against internationally recognized principles on the indivisibility and interdependence of human rights whereby the failure to observe some rights directly affects the ability to exercise other rights. In that regard, Parliament needs to do more to ensure that all the rights are respected and promoted equally to ensure the enjoyment of a full life by the average Ugandan.

Below are some of the criticisms and the areas which Parliament could address to improve its human rights record.

4.1 Criticisms about Parliament's role

Parliament has been criticized for failing to address a number of areas including land evictions, the health sector (in particular maternal and reproductive health), civic education and domestic relations through the marriage and divorce laws. Uganda still has a high percentage of people dying of preventable diseases like malaria as indicated in the recent Parliamentary session. During its tenure, the weaknesses in the health sector remain significant as shown by the numerous donation drives for people in need of medical assistance including some government officials like the Secretary Public Service who received Ushs 0.093bn to receive treatment abroad. If Parliament could use the same enthusiasm as it used for the Anti-homosexuality Act, the Public Order and Management Act, and the Anti-terrorism Act, it could achieve significant human rights impact for Uganda.

4.1.1 Budgetary allocations

During the recent Parliament accountability sessions, it became clear that a big percentage of the supplementary budgets go to the administrative costs and not the substantive requirements. While it is important to ensure the smooth running of the government bodies that are responsible for ensuring respect for human rights, the rights themselves cannot be actualized without the proper financial backing. Uganda's budgetary allocation to the health sector is still below the recommended targets under the Abuja declaration target of 15% and the Health Sector Strategic & Investment Plan (HSSIP) target of 10%. Parliament is in a position to address this by ensuring better financial allocation to substantive issues in the key sectors.

4.1.2 Independence of Parliament

There have been questions raised over the independence of Parliament thus affecting its ability to fulfill its human rights obligations. The subject of Parliament's independence is discussed in detail by Parliament Watch's Reagan Wamajji⁴⁰ where he raises concerns about the manner in which various pieces of legislation have been passed during the tenure of the 9th Parliament. According to Wamajji, "The burning question therefore is, 'whose interests do our legislators serve?' Certainly not those of the people they represent or those of the legislative body they are part of." Wamajji finally notes that, "quite often the NRM caucus has demanded its members to vote on issues and laws as dictated by party leadership, regardless of their own convictions or opinions." This, with the majority that they hold in power means that a good number of legislation passed is subject to only one ideology.

It is also worth noting that Parliament often faces immense pressure from outside bodies to pass legislation. During the submissions for the Anti-Terrorism Amendment Act 2015, members of the Financial Intelligence Authority expressed that they were under immense pressure to ensure that the law was passed "within the set timeframes."⁴¹ The independence of Parliament is called into question by the fact that Parliament is more concerned with meeting external deadlines rather than the substance of the laws and their human rights implications. While Parliament must remain aware of the necessities of the laws, the House should consider taking reasonable time frames to allow consultations and debates on the laws.

⁴⁰ Reagan Wamajji, 'Do we have an independent legislative body in Uganda?', available at <http://Parliamentwatch.ug/do-we-have-an-independent-legislative-body-in-uganda/>.

⁴¹ Parliament of Uganda 2015, 'The report of the Committee on Defence and Internal Affairs on the Anti-terrorism amendment Bill 2015', supra?????? which note

4.1.3 Education of the public

Finally, it would be moot to conduct an analysis on the human rights perspective of the 9th Parliament without looking into the impact on the public. In order to hold Parliament accountable for its role, it is important that people know their rights in the first place. The task of educating the public about their human rights lies with government as a whole and Parliament has a role to play in this. However, the 9th Parliament, like its predecessors has not taken this task seriously and this is evident in the way the general public has failed to hold Parliament to task for its human rights obligations.

Recommendations

Although Parliament's human rights record as discussed above is limited to these Bills, the budgetary role of Parliament is essential to the fulfillment of Uganda's human rights obligations. The budget analysis for the 9th Parliament should be taken into consideration to determine how well this Parliament has served Uganda. The budget determines whether the institutions that are set up to oversee human rights compliance are able to do their job. Through its oversight role, Parliament could ensure that the Human Rights Committee holds government and the private actors accountable in the same manner that the Public Accounts Committee remains active.

Parliament has passed numerous laws that have an impact on the criminal regime, and it would be helpful for the next Parliament to consider a review of the criminal laws through the Penal Code to ensure that the various laws are aligned in one accessible criminal law statute. Additionally, Parliament should continuously engage with the regional human rights standards that have been set and ratified by Uganda's membership to the African Charter and continued reporting to the African Commission on Human and People's Rights to strengthen Uganda's adherence to its human rights obligations.

The 9th Parliament has had challenges in finding an acceptable middle ground between culture and human rights. There has been laxity of Parliament in critically analyzing and debating Bills in regard to general impact, before passing them and their human rights implications to minority groups which tend to be neglected in all discussions. While Uganda is indeed a cultural society, this can no longer be used as a justification to create and uphold discriminatory practices—more so through legislation. Many of the laws that create inequality continue to impact on other human rights like the autonomy, right to life, right to privacy, freedom of association and expression. Parliament and morality legislation remains a huge hindrance to the full enjoyment of human rights by all people because the standards of morality set are those of a few people and not the public as a whole and these laws need to be reversed and not merely condemned in one Parliamentary session.

Even though this analysis is focused on Parliament's role, it is important to note that government as a whole has a role to play in improving the human rights situation in the country. Specifically, the judiciary has occasionally proved to be a stumbling block for holding Parliament accountable by failing to adjudicate on matters in a timely manner. For instance, a 2009 case challenging the NGO Act had not been scheduled for hearing by 2011, and the Adrian Jjuuko case challenging Section 15(6)(d) under

the Equal Opportunities Commission Act has not received judgment in over 7 years. The Government is made up of three arms; the executive, the legislature and the judiciary.

Parliament should endeavor to incorporate progressive policy statements into law. These policies do not have legal authority since Parliament is the primary law making body in Uganda. There have been a number of policy documents adopted by various Ministries that would guide Parliament on the current human rights challenges in Uganda and how to address these challenges through the laws that are passed, the 2010 National NGO policy adopted by the ministry of Internal Affairs⁴² is one such document which has also been praised as a “commitment...for the Government of Uganda to respect the autonomy and independence of NGOs.”⁴³

⁴² The NGO Forum, ‘Launching of the National NGO policy 2010’, available at <http://ngoforum.or.ug/the-launching-the-national-ngo-policy-2010/>.

⁴³ The NGO Forum, ‘Launching of the National NGO policy 2010’, *ibid*.