



# MAGISTRATES' MANUAL

ON THE ADJUDICATION OF ADEQUATE LIVING  
RIGHTS CASES UNDER THE HUMAN RIGHTS  
ENFORCEMENT ACT, 2019

**CENTER FOR FOOD AND ADEQUATE  
LIVING RIGHTS**

Plot 66 - 67 Kiriwawanvu lane, GACCETA Estate, Gayaza-Kalagi Road  
Tel: +256 414 660 813 | Toll-Free: +256 800 111 433 | [info@cefroht.org](mailto:info@cefroht.org)

# FOREWORD

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This Manual has been developed by the Centre for Food and Adequate Living Rights (CEFROHT) with the support of the International Development Law Organization to enhance sustainable access to justice for adequate living rights in rural vulnerable communities of Buyende, Kiboga, and Kyankwanzi. The manual comes after carrying out a training needs assessment for justice actors (judicial officers, the court officers, the appointed court mediators, and other local duty bearers) to identify knowledge gaps on the use of the Human Rights (Enforcement) Act 2019 to frame and redress adequate living issues from a human rights perspective. CEFROHT is a human rights organization whose mission is to promote social justice in food, health, and trade systems, through the use of Legal tools and social accountability approaches such as social justice and strategic litigation, community empowerment, legal and policy advocacy to advance the right to a standard of living adequate for health and wellbeing in Uganda and Africa.

This manual for magistrates has been developed as a guiding document for training of the judicial officers, court officers, and appointed court mediators. The manual will detail (i) the procedures on framing adequate living issues as human rights issues and (ii) redress mechanisms on solving adequate living claims from a human rights perspective. This manual will be used by CEFROHT and the Judicial Training Institute as a resource for future use to induct new magistrates.

CEFROHT very graciously appreciates the partnership and support of the International Development Organization (IDLO) for funding this process. CEFROHT appreciates the Judicial Training Institute for providing technical support and guidance in the development of this manual.

CEFROHT would also like to thank Dr. Busingye Kabumba and Ms. Nona Tamale the consultants who have provided technical support in the development of the manual. Special thanks go to Mr. Kiddu Gonzaga and Mr. Obbo Geoffrey Derrick who provided support in the review of the manual.

Finally, we hope that this Manual will be used to enhance legal empowerment, social accountability, and the creation of awareness about the effective and sustainable opportunity of the Human Rights (Enforcement) Act 2019 to solve adequate living claims.



**Mr, Kabanda David**  
Executive Director  
CEFROHT

# LIST OF ACRONYMS

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<b>ACHPR</b>	African Charter on Human and People's Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ADR</b>	Alternative Dispute Resolution
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities.
<b>CSW</b>	Commission on the Status of Women
<b>ECOSOC</b>	United Nations Economic and Social Council
<b>FAO</b>	Food and Agriculture Organisation
<b>HREA</b>	Human Rights (Enforcement) Act, 2019
<b>HRC</b>	Human Rights Council
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organisation
<b>NGO</b>	Non-Governmental Organisation
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>SDG</b>	Sustainable Development Goals
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations

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# 1.0 INTRODUCTION

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The enactment of the Human Rights (Enforcement) Act, 2019 operationalized Article 50(4) of the 1995 Constitution of Uganda by laying out the procedure for human rights adjudication and expressly granting Magistrates' Courts competent jurisdiction to handle such matters. The Centre for Food and Adequate Living Rights (CEFROHT) has developed this Magistrates' and other Justice Actors' Manual on Procedures (hereinafter referred to as the "Magistrates Manual") to serve as a guide in the adjudication of adequate living rights under the Human Rights (Enforcement) Act, 2019 (HREA).

Access to justice is a central tenet of the rule of law but remains a goal far from achievement in Uganda.<sup>1</sup> Prior to enactment of the HREA, jurisdiction over human rights cases lay solely with the High Court.<sup>2</sup> With the enactment of the HREA, which makes provision for filing of cases with Magistrates courts,<sup>3</sup> more life has been breathed into human rights enforcement in Uganda. The Act has been welcomed by human rights organisations and activists for its progressiveness, increased accountability for violations, and more elaborate procedures.<sup>4</sup> However, it is paramount to engage with judicial actors, particularly magistrates who are new players in handling of human rights matters in the court system, to acquaint them with procedures to adjudicate human rights cases.

It is the hope of CEFROHT that this Magistrates Manual will equip justice actors with competencies to handle claims of adequate living rights, acquaint them with the procedures under the HREA, and ultimately promote and facilitate access to justice for persons/communities seeking remedies for violations of their adequate living rights.

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<sup>1</sup>Although 86% of Ugandan adults are aware of their right to seek justice, only 32% have knowledge about the courts of law. See Uganda Bureau of Statistics (UBOS), "2017 National Governance, Peace and Security Survey Report," available at

[https://www.ubos.org/wp-content/uploads/2018/07/The\\_GPSS\\_Report\\_2017\\_12\\_7\\_2018.pdf](https://www.ubos.org/wp-content/uploads/2018/07/The_GPSS_Report_2017_12_7_2018.pdf) at p. 30-31.

<sup>2</sup>Rule 3 of Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules, 2008 (repealed).

<sup>3</sup>Section 5 of the HREA.

<sup>4</sup>Jjuko, A. and Mirembe, P. (2020), "Introducing the Future of Human Rights Enforcement in Uganda – The Human Rights (Enforcement) Act, 2019" in Human Rights Awareness and Promotion Forum (HRAPF) (2020), "The Human Rights Enforcement Act, 2019: A New Dawn for the Enforcement of Human Rights of Groups in Uganda" the Human Rights Advocate, seventh Issue – December 2020.

## 2.0 OBJECTIVES OF THE MAGISTRATES MANUAL

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The primary objective of objective is to engage justice actors on using the Human Rights (Enforcement) Act 2019 to adjudicate violations of adequate living rights. Specifically, it seeks to:

- i) equip justice actors with tools on the procedures and redress mechanisms for framing and solving adequate living claims from a human rights perspective;
- ii) familiarize justice actors, especially Magistrates, with adjudication of human rights under the HREA; and
- iii) promote and facilitate access to justice for individuals and communities seeking remedies for violations of their adequate living rights.

## 3.0 METHODOLOGY

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The Magistrates Manual is a product of qualitative research involving intensive desk review of both primary and secondary sources of law. The desk research covered:

- i) A brief introduction to human rights, their categorizations, and general principles.
- ii) The substantive elements of the right to an adequate standard of living under national, regional, and international human rights instruments as well as decided cases;
- iii) The procedures and redress mechanisms under the HREA; and
- iv) An analysis of existing secondary literature on adequate living rights and enforcement of human rights

This Magistrates Manual was developed following a training needs assessment conducted with judicial actors including Magistrates, court clerks and appointed court mediators to understand the knowledge gaps with respect to adjudication of claims of violation of the right to adequate standard of living. The assessment targeted judicial actors in Buyende, Kiboga and Kyankwanzi districts. The consultations revealed that the training of judicial actors should aim at “enhancing the knowledge of participants on human rights with particular focus on an in-depth understanding of the history and categorization of human rights, meaning of “adequate living,” the role of judicial officers in the protection and promotion of human rights, and the general context regarding human rights in Uganda with respect to judicial enforcement.”<sup>5</sup>

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<sup>5</sup>CEFROHT Training Needs Assessment for Justice Actors (Judicial Officers, the Court Officers, the Appointed Court Mediators, and Other Local Duty Bearers) to Identify Knowledge Gaps on use of Human Rights (Enforcement) Act 2019 to Frame and Redress Adequate Living Issues from a Human Rights Perspective.

This Manual seeks to fill in the gaps that have been identified during the needs assessment; the first part shall deal with an examination of the concept of human rights –internationally, regionally and at the domestic level; the second section shall examine adequate living rights at all levels-looking at all parties involved ranging from the rights holder to the obligations of the state. The third section will aim at examining human rights enforcement procedures under the HREA as well as existing provisions in the Constitution and the role of judicial officials in the enforcement of human rights.

## 4.0 BASICS OF HUMAN RIGHTS

Human rights as a concept is argued to have been in existence for over centuries taking on different forms, dependant on a particular culture and morphing to embrace modern times to which the rights were in at the time.<sup>6</sup> Some scholars have argued that the idea of human rights has been embodied in a myriad of legal instruments, such as the Magna Carter, the American Declaration of Independence that recognised and embodied civic rights protecting a number of inalienable rights, the French Revolution of 1789 and the passing of the Declaration of the Rights of Man and of the Citizen in 1791, the African concept of Ubuntu,<sup>7</sup> and in more contemporary times, the Universal Declaration of Human Rights and all subsequent international, regional and domestic human rights instruments.<sup>8</sup>

Human rights became a “universal phenomenon”<sup>9</sup> following World War II, the United Nations Charter, 1945<sup>10</sup> and the promulgation of the Universal Declaration of Human Rights, 1948.<sup>11</sup> Due to such a complex history where rights are decided in numerous ways– by the people through a revolution or by the United Nations General Assembly following the implications of World War II– it seems increasingly difficult to define in concrete terms what a right is and the extent of its boundaries

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<sup>6</sup>Waltz, S. (2002), “Reclaiming and Rebuilding the History of the Universal Declaration of Human Rights” Third World Quarterly, Vol.23, No. 3, Pages 437-448 available at <https://library.fes.de/libalt/journals/swetsfulltext/13640294.pdf>

<sup>7</sup>Metz, T. (2011), “Ubuntu as a Moral Theory and Human Rights in South Africa” African Human Rights Law Journal, Volume 11, Issue 2, available at <https://journals.co.za/doi/10.10520/EJC51951>

<sup>8</sup>Waltz, S. supra.

<sup>9</sup>Das, JK. (2018), “Three Generations of Human Rights: Present and Future Role of NHRC,” Journal of the National Human Rights Commission India, Volume 17, 2018, at page 220 available at [https://nhrc.nic.in/sites/default/files/JOURNAL\\_V-17\\_2018.pdf#page=218](https://nhrc.nic.in/sites/default/files/JOURNAL_V-17_2018.pdf#page=218)

<sup>10</sup>United Nations Charter available at <https://treaties.un.org/doc/publication/ctc/unCharter.pdf>

<sup>11</sup>Universal Declaration of Human Rights (UDHR) available at [https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)

Gavison, R. “On the Relationships Between Civil and Political Rights and Social and Economic Rights” available at <https://archive.unu.edu/unupress/sample-chapters/ghr-chapter1.pdf>



Nevertheless, it has been argued by scholars that the definition of what constitutes a “human right” is dependent on both the instrument that creates it and the judicial interpretation of the right. With regard to international human rights, it has been stated that they constitute “human needs that have received formal recognition through the sources of international law.”<sup>12</sup> A more concrete definition of human rights has been put forward by some scholars as; “... rights that ‘belong’ to every person and do not depend on the specifics of the individual or the relationship between the right holder and the right grantor.”<sup>13</sup> They are characterised as universal in the sense that they accrue to all people regardless of geographical location, they are moral, and ‘prelegal rights’ that are neither granted by people nor taken away by them.<sup>14</sup>

The categorization of human rights is in three major groups; first, second and third generation human rights. The Universal Declaration of Human Rights mentioned the first and second generation of rights without prioritization of one generation of rights over another. The first-generation rights– also termed as the classical rights– are the civil and political rights enshrined in the International Covenant on Civil and Political Rights (ICCPR).<sup>15</sup> They include; the right to life, freedom from torture and cruel inhuman degrading treatment, freedom of speech and expression, freedom of assembly and association the presumption of innocence and the right to a fair trial amongst others. Second generation rights are those enshrined in the International Covenant on Economic Social and Cultural Rights (ICESCR)<sup>16</sup> and include; the right to work, adequate housing, the right to food, clean water, sanitation amongst others. The final category is the third-generation rights which are the defined as ‘collective’, ‘group’ of ‘peoples’ rights.<sup>17</sup> They include the right to self-determination, the right to economic development, the right to a healthy environment, the right to participation in cultural heritage.

This categorization is both academic and historical. The first- and second-generation rights dichotomy was due to global ideological tensions at the time and the third categorisation calling for solidarity and collectiveness was a response to colonialism.<sup>18</sup> Nevertheless, in practice, these rights are interlinked and interdependent and ought to be treated as such for the benefit of the individual as well as the community at large. This position was espoused in the Vienna Declaration and Programme of Action which stated that all human rights are “universal, indivisible, interdependent and interrelated.”<sup>19</sup> The instrument emphasised that state parties have an obligation to treat human rights globally in a fair and equal manner and to promote all fundamental rights and freedoms on the same footing. In effect, this instrument concretised the universality of fundamental human rights.

The Universal Declaration of Human Rights (UDHR) read together with the Vienna Declaration and Programme of Action set the principles for human rights interpretation. Universality is the bedrock of all international human rights law and is repeated throughout international human rights instruments.<sup>20</sup>

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<sup>12</sup>Marks, S. “Emerging Human Rights: A New Generation for the 1980s” HeinOnline 33 Rutgers L. Rev. 436 1980-1981.

<sup>13</sup>Gavison, R. supra.

<sup>14</sup>Ibid.

<sup>15</sup>International Covenant on Civil and Political Rights (1966) available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>16</sup>International Covenant on Economic Social and Cultural Rights available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

<sup>17</sup>Das, JK., supra.

<sup>18</sup>Ibid.

<sup>19</sup>Article 5 of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, available at <https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>

<sup>20</sup>Article 1 of the Universal Declaration of Human Rights (UDHR), Article 1 and Paragraph 1 of the Preamble of the International Covenant on Civil and Political Rights (ICCPR), Preamble and Article 2 of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).



It means that all people everywhere are entitled to human rights regardless of their geographical position. The second principle is inalienability; which means that human rights cannot be taken away from a person except in special situations and with due process of the law.<sup>21</sup> Indivisibility and interdependence is another principle that means that one set of rights –that is to say civil and political rights or economic social and cultural rights– cannot be fully enjoyed in exclusion of the other.<sup>22</sup> For instance, the right to food is interlinked to the right to life, as will be further expounded upon in later sections.

## AN OVERVIEW OF HUMAN RIGHTS FROM THE UGANDAN PERSPECTIVE

In Uganda, human rights are embodied in domestic, regional and international legal framework. The regional and international aspects of human rights arise from the ratification of a number of regional and international human rights instruments thereby creating a legal obligation on the Ugandan Government to comply with the standards therein. At the domestic level, the 1995 Constitution embodies the bill of rights, Chapter 4, which contains the fundamental rights and freedoms as well as the National Objectives and Directive Principles of State Policy which call for the State to ensure that all institutions charged with the mandate to respect fundamental rights and freedoms are working effectively through the provision of adequate resources,<sup>23</sup> ensure that all peoples' rights to social justice are fulfilled,<sup>24</sup> that the rights of women<sup>25</sup> and persons with disabilities<sup>26</sup> are respected and ensure that international law and all treaty obligations are fulfilled<sup>27</sup>.

In the Ugandan context, fundamental rights and freedoms are protected under Chapter 4 of the 1995 Constitution. Article 20 (1) provides the first principles governing these rights, which is that they are inherent in every human and are not granted by the State. The Ugandan courts of law set out further principles that govern the adjudication of human rights. For instance, in the case of *Centre for Health Human Rights and Development and Another vs Attorney General*,<sup>28</sup> wherein the Constitutional court reiterated the principles set out in the Vienna Declaration and held as follows;

“...The Vienna Declaration and Program of Action 1993 captured it aptly when it declared that “all human rights are universal, indivisible, interdependent and interrelated”. Indeed, the above principles are enshrined in the various articles of the 1995 Constitution quoted throughout this judgment...”

<sup>21</sup>United Nations Human Rights Office of the High Commissioner, “What are Human Rights” available at <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>

<sup>22</sup>Ibid.

<sup>23</sup>Objective V of the National Objectives and Directive Principles of State Policy.

<sup>24</sup>Objective XIV of the National Objectives and Directive Principles of State Policy.

<sup>25</sup>Objective XV of the National Objectives and Directive Principles of State Policy.

<sup>26</sup>Objective XVI of the National Objectives and Directive Principles of State Policy.

<sup>27</sup>Objective XXVIII (b) of the National Objectives and Directive Principles of State Policy.

<sup>28</sup>*Centre for Health Human Rights and Development and Another vs Attorney General*, Constitutional Petition No. 64 of 2011.

Further, Justice Mulenga, in the case of Charles Onyango Obbo and Andrew Mwenda vs Attorney General,<sup>29</sup> explained the relationship between democratic societies and the protection of fundamental rights and freedoms by connecting the same to upholding the social contract, a theory constructed by JJ. Rousseau. Justice Mulenga states that the State's obligation to uphold and protect the fundamental rights and freedoms of its people is of pertinent importance to her citizens because, as per the social contract which is to the effect that individuals surrender their rights and freedoms to the State in exchange for protection, as such the State has an obligation to ensure that an individual's self-fulfilment and advancement is achieved as well as recognising their fundamental rights and freedoms which are inherent to humanity. His Lordship finally emphasised that the "protection of the fundamental human rights therefore, is a primary objective of every democratic constitution, and as such is an essential characteristic of democracy."

From the above statement, it is clear that the importance of fundamental human rights in a democratic country, such as Uganda, is of at utmost importance. As discussed above, rights are indivisible, interdependent and inherent in all human beings. Whereas this manual is one that is focused on the right to adequate living, we shall see as discussed in the subsequent sections that this right is interlinked with other rights such as the right to life, dignity and freedom from discrimination. It follows therefore that human rights interpretation, regardless of which right, should be given a wide interpretation in order to fully enhance an individual or community's advancement. Uganda's legal framework regarding human rights is rich with both domestic, regional and international instruments. This level of protection shall provide adequate ground for judicial officers to give the utmost protection and enforcement of fundamental rights and freedoms.

## 5.0 THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

This section of the paper defines what is meant by "adequate living" and lays down the components of the right specifically, the right to food, right to housing and use and access to land. It presents the international, regional and national legal framework which upholds the right to adequate standard of living in Uganda.

### 5.1 Adequate Living Rights Defined

The right to adequate standard of living entails the enjoyment of rights attached to human survival: adequate food and nutrition, water, housing, clothing, health, and social security, especially for sections of the population impacted by lack of means of survival, including older persons and persons with disabilities.<sup>30</sup> This right necessitates that everyone in society should be able to realize their basic needs in conditions of dignity without deprivation or degradation.<sup>31</sup>

<sup>29</sup> Charles Onyango Obbo and Andrew Mwenda vs Attorney General, Constitutional Appeal No.2 of 2002.

<sup>30</sup> Article 11 of the International Covenant on Economic, Social and Cultural Rights. (ICESCR) and Article 25 of the Universal Declaration of Human Rights (UDHR).

<sup>31</sup> Icelandic Human Rights Centre, "The Right to an Adequate Standard of Living" accessed at <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living>

According to the United Nations (UN) Committee on Economic, Social, and Cultural Rights, what amounts to an adequate standard varies according to the context.<sup>32</sup> The right to an adequate standard of living has been equated to the World Bank's definition of living above the poverty line which encompasses two elements: "the expenditure necessary to buy a minimum standard of nutrition and other necessities and a further amount that varies from country to country, reflecting the cost of participating in the everyday life of society."<sup>33</sup> According to the World Food Programme (WFP), 19.7% of the population of Uganda is currently living below the poverty line.<sup>34</sup>

The 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas illustrates and expands on the right in the context of the rural economy.<sup>35</sup> This is relevant for the Ugandan context where the majority of the population lives in rural areas and works in the rural economy.<sup>36</sup> As such, this Manual will aim to link the right to an adequate standard of living to the protection of the livelihoods, wellbeing, and survival of Ugandans, especially for people living in rural areas. The right, as stated above, is an all-encompassing right covering several other rights required for adequate living, however, the primary focus of this Manual shall be on the right to food, right to housing, rights associated with land, a key factor of production, and economic rights in the rural economy.

## 5.2 The International and Regional Human Rights Framework on the Right to an Adequate Standard of Living

The right to an adequate standard of living is enshrined in several international and regional human rights which Uganda has ratified. The various components of these rights have been further expounded upon in General Comments and reports by different bodies within whose mandate interpretation of these rights falls. In addition, the United Nations (UN), through its recent Declaration on the Rights of Peasants and Other People Working in Rural Areas, has expanded on the adequate living rights of people in rural areas.

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<sup>32</sup> ICESCR General Comment No. 12.

<sup>33</sup> Icelandic Human Rights Centre, *ibid*.

<sup>34</sup> World Food Programme (WFP), "Uganda" available at <https://www.wfp.org/countries/uganda>

<sup>35</sup> Adopted by the UN General Assembly on 17 December 2018 accessed at <https://www.geneva-academy.ch/-joomlatools-files/docman-files/UN%20Declaration%20on%20the%20rights%20of%20peasants.pdf>

<sup>36</sup> "Uganda's economy is predominantly rural, with more than 80% of its population and 95% of the poor living in rural areas." See Republic of Uganda (2018), "State of Uganda Population Report 2018" at p. 23 accessed at <http://npcsec.go.ug/wp-content/uploads/2013/06/SUPRE-2018-.pdf>



International/Regional Instrument	Provision
Universal Declaration on Human Rights (UDHR)	Article 25(1) provides that everyone has the right to a standard of living adequate for the health and well-being of himself and his family. It lists some elements of this right to include food, clothing, housing, medical care, and social security for the sick, unemployed, persons with disabilities, widowed, older persons, and other circumstances of lack of livelihood.
International Covenant on Economic, Social and Cultural Rights (ICESCR)	<p>Article 11 provides that everyone has the right to an adequate standard of living.</p> <p>Specific to the right to food, everyone has a right to be free from hunger and specific measures are required of governments to improve production, conservation, and distribution of food.”</p> <p>right to adequate housing (General Comments 4 and 7)</p> <p>right to food (General Comment 12)</p> <p>right to water (General Comment 15)</p>
The Convention on the Rights of the Child (CRC)	Article 27 provides that States Parties shall recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral, and social development
The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)	Article 14 is specific to the needs of rural women who play a central role in the economic survival of their families. It requires governments to eliminate discrimination against these women, and ensure that they benefit from social security programs, access healthcare, organize and participate in self-help groups and co-operatives, access credit, and enjoy adequate living conditions including housing and water.
The Convention on the Rights of Persons with Disabilities. (CRPD)	Article 28 guarantees the right of PWDs to adequate living rights including food, housing, water services, social protection without discrimination.
The African Charter on Human and People’s Rights (ACHPR)	<p>The Charter does not have a specific or express right on the right to an adequate standard of living but it has been read into the following provisions:</p> <p>Article 4 – Every human being shall be entitled to respect for their life and the integrity of their person.</p> <p>Article 5 – Every individual shall have the right to respect the dignity inherent in a human being and to recognition of his legal status.</p>



	<p>Article 14 – The property right shall be guaranteed</p> <p>Article 16 – Every individual shall have the right to enjoy the best attainable state of physical and mental health.</p> <p>Article 24 – All peoples have the right to a general satisfactory environment favorable to their development.</p>
African Charter on the Rights and Welfare of the Child	Article 14 of the Charter guarantees the rights of children to health, including access to health services, adequate nutrition, and safe drinking water.
Protocol on the Rights of Women in Africa	<p>Article 13 – protects the economic and social welfare rights of women including support for economic activities of women in the informal sector.</p> <p>Article 15 - Right of women to nutritious and adequate food, clean drinking water, land, and domestic fuel.</p> <p>Articles 14 and 16 guarantees the right to health including access to services and the right to adequate housing respectively</p>
UN Declaration on the Rights of Peasants and Other People Working in Rural Areas	<p>Article 2 – State shall protect the rights of peasants and other people working in rural areas, paying particular attention to the specific needs of older persons, women, youth, children, and PWDs.</p> <p>Article 4 – States should eliminate discrimination against peasant women and ensure their access to health, direct benefit from social security programs, access to financial services, and employment and income-generating activities.</p> <p>Article 13 – Peasants and people working in rural areas have the right to work including the right to choose the way they earn their living.</p> <p>Article 15 – Peasants and people working in rural areas have the right to adequate food and the fundamental right to be free from hunger. The State shall take measures to ensure access to adequate food, combat malnutrition in children, and include peasants and people in rural areas in decision-making processes on food policy.</p> <p>Article 16 – Peasants and people working in rural areas have the right to an adequate standard of living and to access to means of production necessary to achieve this including production tools, technical assistance, credit, insurance, and other financial services.</p>

The State should ensure access of peasants and people in rural areas to equitable access and participation in local, national, and regional markets and that policies, including on trade and investment, contribute to local livelihood.

Article 17 – Peasants and people working in rural areas have the right to have access to, sustainably use, and manage land to achieve an adequate standard of living.

## 5.3 Components of the Right to an Adequate Standard of Living

Through its General Comments No. 12 on the right to adequate food, No. 4 on the right to adequate housing, No. 7 on forced evictions, the UN Committee on Economic, Social and Cultural Rights has expounded on the right to adequate standard of living and its component rights.

### 5.3.1 The Right to Adequate Food

The right to food is core to human survival, central to human dignity, and essential for the enjoyment of other human rights.<sup>37</sup> As such, the realization of the right to food is closely aligned to poverty reduction and the improvement in the wellbeing of people in society. Uganda is grappling with malnutrition and high levels of food insecurity presently,<sup>38</sup> with a disproportionate effect on poor households, women, children, and vulnerable groups, such as refugees.

<sup>39</sup> Following the COVID-19 pandemic, the Karamoja region as well as other urban areas in Kampala, Wakiso, Gulu, Kasese, Mbarara, and refugee settlements have been severely affected by food insecurity.<sup>40</sup>

<sup>37</sup> Paragraph 4, General Comment No. 12 on the Right to Adequate Food.

<sup>38</sup> According to the Food and Agriculture Organisation (FAO), “12 percent of the total population in the country is chronically food insecure.” See FAO, “Uganda at a Glance” available at <http://www.fao.org/uganda/fao-in-uganda/uganda-at-a-glance/en/> See also, World Food Programme (WFP) (2021), “WFP Uganda Country Brief” available at [https://docs.wfp.org/api/documents/WFP-0000125197/download/?\\_ga=2.146435575.270391248.1625292388-504691368.1625292388](https://docs.wfp.org/api/documents/WFP-0000125197/download/?_ga=2.146435575.270391248.1625292388-504691368.1625292388)

<sup>39</sup> FAO in Uganda (2020), “Government of Uganda, FAO, WFP Release Report on Food Security, Showing Ugandans in Urban Areas Experiencing Food Crisis Due to COVID-19 Pandemic” available at <http://www.fao.org/uganda/news/detail-events/en/c/1312573/>

<sup>40</sup> Integrated food Security Phase Classification (IPC) (2020), “Uganda: Overview of the IPC Acute Food Insecurity and Acute Malnutrition Analyses of Karamoja Area, Urban Areas, Refugee Settlements and Host Community Districts” IPC available at [http://www.ipcinfo.org/fileadmin/user\\_upload/ipcinfo/docs/IP-C\\_Uganda\\_AcuteFoodInsec\\_AcuteMalnutrition\\_2020 June2021Jan.pdf](http://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IP-C_Uganda_AcuteFoodInsec_AcuteMalnutrition_2020 June2021Jan.pdf)

The right to food is expressly guaranteed under Article 11 of the ICERCR, Article 28 of the CRC and Article 13 of the Protocol on the Rights of Women in Africa. Specific to peasants<sup>41</sup> and persons living in rural areas, the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas states that they have a right to adequate food and freedom from hunger, including the right to produce their food.<sup>42</sup>

Expounding on Article 11(1) of the ICESCR on the right to food, the Committee on Economic, Social and Cultural Rights in its General Comment No. 12 on the Right to Adequate Food, explains that “adequate food” is not limited to a minimum calorific value of food which must be consumed by everyone but rather, the government should take measures to progressively realise the elements of the right (see below) to the maximum of its available resources. <sup>43</sup>In times of calamities or natural disasters which expose people to food insecurity as with the recent COVID-19 pandemic, governments are required to take urgent action to mitigate and alleviate hunger.<sup>44</sup>

The core elements of the right to food have been elaborated upon under General Comment No. 12 on the Right to Adequate Food to include:<sup>45</sup>

Element	Meaning
<p><i>Availability</i></p>	<p><i>Availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals.</i></p> <p>This implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.</p> <p>Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breast-feeding, while ensuring that changes in availability and access to food supply at the very least do not negatively affect dietary composition and intake.</p>

<sup>41</sup>Peasants is defined in Article 1 of UN Declaration on the Rights of Peasants and Other People Working in Rural Areas to mean “any person who engages or who seeks to engage, alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land.”

<sup>42</sup>Article 15 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.

<sup>43</sup>Para 6, General Comment No. 12 on the Right to Adequate Food.

<sup>44</sup>Ibid.

<sup>45</sup>Paras 8-13, *ibid.*

Element	Meaning
<p><i>Availability</i></p>	<p><i>Availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals.</i></p> <p>This implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.</p> <p>Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breast-feeding, while ensuring that changes in availability and access to food supply at the very least do not negatively affect dietary composition and intake.</p>
<p><i>Accessibility</i></p>	<p><i>Economic accessibility:</i> financial costs should not be an impediment to acquire food for an adequate diet and should not threaten the attainment and satisfaction of other basic needs. For vulnerable groups including landless persons and communities, special programmes are required to meet their dietary needs.</p> <p><i>Physical accessibility:</i> that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill.</p> <p>Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.</p>
<p><i>Quality/Food Safety</i></p>	<p>Food should be free from adverse substances. States should establish a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.</p>



<i>Acceptability</i>	Cultural or consumer acceptability implies the need also to take into account, as far as possible, perceived non-nutrient based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.
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### 5.3.2 The Right to Adequate Housing

The right to adequate housing is core to the realisation of the right to adequate standard of living and several human rights, including the right to inherent dignity and health.<sup>46</sup> This right is guaranteed in numerous provisions of international and regional human rights instruments including Article 25 of the UDHR, Article 11 of the ICESCR, Article 14 of the CEDAW, Article 27 of the CRC and Article 28 of the CRPD.

In the same way that the right to food extends beyond calories and nutritional value, the right to housing is more than having a roof to sleep under. It also means “the right to live somewhere in security, peace and dignity.”<sup>47</sup> The core elements of the right to housing under General Comment No. 4 on the Right to Adequate Housing include:<sup>48</sup>

Element	Meaning
<i>Legal security of tenure</i>	All persons should have a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. Measures should be taken to confer legal security of tenure on persons and households which lack this protection.
<i>Availability of services, materials, facilities and infrastructure</i>	An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, sanitation facilities among others.

<sup>46</sup>Para 1, General Comment No. 4 on the Right to Adequate Housing.

<sup>47</sup>Para 7, General Comment No. 4 on the Right to Adequate Housing.

<sup>48</sup>Para, 8, *ibid*.

<i>Affordability</i>	The financial costs associated with housing should not threaten the attainment and satisfaction of other basic needs. The State should offer protection from high housing costs including through subsidies, protection of tenants from unreasonable rent and ensure availability of natural materials for building, where relevant.
<i>Habitability</i>	Adequate housing must be habitable. This means that it must provide the inhabitants with adequate space and protection from the cold, damp, heat, rain, wind or other threats to health, structural hazards, or disease vectors.
<i>Accessibility</i>	Housing must be accessible to everyone including vulnerable groups such as the older persons, children, PWDs, victims of natural disasters and other groups should be ensured some degree of priority in housing.
<i>Location</i>	Adequate housing should be in a location which facilitates access to services including health services, schools, employment options and other services. It should not be in polluted sites or close to sources of pollution which could affect the health of inhabitants.

### 5.3.3 Protection of the Right to Use and Access Land

Although there is no human right to land, access to and use of land is integral to the enjoyment of the right to adequate standard of living and its components, including the right to food and housing.<sup>49</sup> This is elaborated in the recent UN Declaration on the Rights of Peasants and Other People Working in Rural Areas which captures the centrality of land to human survival and realisation of human rights. Article 17 protects the right to land, individually or collectively, as a means “to achieve adequate standard of living [and] to have a place to live in security, peace and dignity.” The Declaration also provides that the right to produce food is a component of the right to adequate food under Article 15, further elaborating on the importance of land as a means of production.

Similarly, the Food and Agriculture Organisation (FAO) has adopted guidelines further expounding on the importance of land for the realization of the right to adequate food.<sup>50</sup> They urge States to conduct land reforms to promote equitable access to productive resources, including land, especially for poor people and women.

<sup>49</sup>FIAN International (2017), “The Human Right to Land” Heidelberg, Germany, accessed at [https://www.fian.org/fileadmin/media/publications\\_2017/Reports\\_and\\_Guidelines/FIAN\\_Position\\_paper\\_on\\_the\\_Human\\_Right\\_to\\_Land\\_en\\_061117web.pdf](https://www.fian.org/fileadmin/media/publications_2017/Reports_and_Guidelines/FIAN_Position_paper_on_the_Human_Right_to_Land_en_061117web.pdf)

<sup>50</sup>Guideline 8, Food and Agriculture Organisation (FAO) Guidelines to Support the Progressive Realization of the Right to Adequate Food accessed at <http://www.fao.org/3/y7937e/y7937e00.pdf>

Particularly for historically marginalised and oppressed groups, such as women and persons with disabilities (PWDs), their access to, use of and control over land and other productive resources are essential to ensuring their right to equality and to adequate standard of living. These resources help to ensure that they are able to provide for their day-to-day needs and those of their families. In addition, women’s access to land and other productive resources is integrally linked to discussions around global food security, sustainable economic development, the pressing fight against the HIV/AIDS epidemic as well as prevention of and responses to gender-based violence.<sup>51</sup>

### 5.3.4 The National Legal Framework on the Right to Adequate Standard of Living

The Constitution of the Republic of Uganda, 1995, provides for adequate living rights which have been further consolidated under legislation, including the Children Act, Persons with Disabilities Act, the Land Act and the Water Act. The recent passing of the Human Rights Enforcement Act, 2019 operationalized Article 50 of the Constitution insofar as it provides the procedure for litigants to follow in approaching the courts of law for the enforcement of their human rights.

Specific constitutional and legal provisions that guarantee the right to adequate standard of living in the national context include:

Legislation	Provision
The Constitution, National Objectives and Directive Principles of State Policy, Paragraph VII	The State shall make reasonable provision for the welfare and maintenance of the aged.
The Constitution, National Objectives and Directive Principles of State Policy, Paragraph XIV	The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that; (a) all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and (b) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.
The Constitution, National Objectives and Directive Principles of State Policy, Paragraph XXI	The State shall take all practical measures to promote a good water management system at all levels.

<sup>51</sup>UN Office of the High Commissioner for Human Rights (OHCHR) (2013), “Realizing Women’s Rights to Land and other Productive Resources”, accessed at <https://www.ohchr.org/documents/publications/realizingwomensrightstoland.pdf>

<p>The Constitution, National Objectives and Directive Principles of State Policy, Paragraph XXII</p>	<p>The State shall –  (a) take appropriate steps to encourage people to grow and store adequate food;  (b) establish national food reserves; and  (c) encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy State.</p>
<p>Article 8A of the Constitution</p>	<p>(1) Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy.</p>
<p>Article 26 of the Constitution</p>	<p>(1) Every person has a right to own property either individually or in association with others.</p> <p>(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied;</p> <p>(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and</p> <p>(b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for—</p> <p>(i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and</p> <p>(ii) a right of access to a court of law by any person who has an interest or right over the property.</p>
<p>Article 26 of the Constitution  Article 33 (2) of the Constitution</p>	<p>The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.</p>
<p>Article 40 of the Constitution</p>	<p>(2) Every person in Uganda has the right to practise his or her profession and to carry on any lawful occupation, trade or business.</p>
<p>Article 45 of the Constitution</p>	<p>The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.</p>



<p>Article 50 of the Constitution</p>	<p>It provides for the enforcement of rights and freedoms and states that, 'Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.</p>
<p>Section 4 of the Children Act, 2016</p>	<p>(1) Every child shall have the right to -  (g) ... access to basic social services;  (l) exercise in addition to all the rights stated in this Act, the rights set out in the United Nations Convention on the Right to the Child and the Organization of African Charter on the Rights and Welfare of the Child with appropriate modifications to suit circumstances in Uganda that are not specifically mentioned in this Act.</p>
<p>Section 27 of the Land Act as amended (rights of women, children and persons with a disability regarding customary land)</p>	<p>Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, except that a decision which denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void.</p>
<p>Section 38A of the Land Act as amended</p>	<p>(1) Every spouse shall enjoy security of occupancy on family land.</p> <p>(2) The security of occupancy prescribed under subsection (1) means a right to have access to and live on family land.</p> <p>(3) For the purposes of subsection (2), the spouse shall in every case have a right to use the family land and give or withhold his or her consent to any transaction referred to in section 39, which may affect his or her rights.</p>
<p>Section 39 of the Land Act as amended</p>	<p>1) No person shall—</p> <ol style="list-style-type: none"> <li>1. (a) sell, exchange, transfer, pledge, mortgage or lease any family land;</li> <li>2. (b) enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land; or</li> <li>3. (c) give away any family land, inter vivos, or enter into any other transaction in respect of family land; except with the prior consent of his or her spouse.</li> </ol>

Section 7 of the Water Act, Cap 152	<p>Provides for general rights to use water and notes that, a person may while temporarily at any place; or being the occupier of or a resident on any land, where there is a natural source of water, use such water for domestic use, fighting fire or irrigating a subsistence garden.</p> <p>In addition, the occupier of land or resident on land may, with the approval of the authority responsible for the area, use any water under the land occupied by him or her or on which he or she is resident on or any land adjacent to that land.</p>
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As can be deduced from above, a majority of the components of the right to adequate standard of living are not expressly included in Chapter Four of the Constitution but are instead encompassed within the National Objectives and Directive Principles of State Policy (NODPSP). This position has drawn a lot of debate as to the nature of Uganda’s obligation to fulfil these rights and their justiciability in the courts of law. A 2005 amendment of the Constitution introduced Article 8A (1), a close reading of which, coupled with the interpretation of the provision by courts of law, implies that the objectives and principles are justiciable.<sup>52</sup> Article 8A states thus “Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy.”

The Supreme Court has pronounced its position on justiciability of the NODPSP in the case of *Centre for Health Human Rights and Development and Ors v Attorney General*.<sup>53</sup> The appellants were challenging a decision of the Constitutional Court in which the court absolved itself from determining a petition challenging the failure of the State to provide maternal healthcare services relying on the political question doctrine.<sup>54</sup> In finding that the matter was one which falls solely within the purview of the Legislative and Executive arms of government, the court stated that it did not have the “power to determine or enforce its jurisdiction on matters that require analysis of the health sector government policies... and their implementation.”<sup>55</sup>

The Supreme Court departed from the reasoning of the Constitutional Court Justices to hold that Constitutional court had the requisite jurisdiction to hear the matters raised in the petition and ordered for the case to be heard on its merits, as it raised competent questions on interpretation of the Constitution under Article 137 (4). On the NODPSP and Article 8A, Justice Katu-reebe opined that where a citizen challenged policy actions or omissions as inconsistent with the Constitution, including under the objectives and principles, as in this petition, the Constitutional court would be obliged to hear and determine the matter and consider Article 8A in doing so.<sup>56</sup>

*In Male Mabirizi & Ors v Attorney General (Constitutional Petition-2017/) [2018] UGCC 4,*<sup>57</sup> both the Constitutional and Supreme Courts further bolstered the enforcement of the NODPSP stating that “pursuant to Article 8A, the Objective Principles are now justiciable.”<sup>58</sup> As such, adequate living rights can be enforceable in the courts of law in Uganda.

<sup>52</sup>Kansiime MT. and Kabagenyi L. (2019), “Long Walk to Justiciability: Article 8A and Uganda’s National Objectives and Directive Principles of State Policy” Volume 15 Issue 2, Makerere Law Journal, pp 1-17 available at <https://www.makererelawjournal.org/gallery/t%20&%20k%2012-1-1.pdf>

<sup>53</sup>Constitutional Appeal No. 1 of 2013.

<sup>54</sup>Centre for Health Human Rights and Development and ors v Attorney General, Constitutional Petition No. 16 of 2021.

<sup>55</sup>Constitutional Appeal No. 1 of 2013.

<sup>56</sup>Ibid at p. 17-18.

<sup>57</sup>Constitutional Petitions Nos. 49 of 2017, 3 of 2018, 5 of 2018, 10 of 2018, and 13 of 2018 and Constitutional Appeals no.2, 3 and 4 of 2018.

<sup>58</sup>Ibid. cited in Kansiime, MT. and Kabagenyi, L. (2019), supra.

## 6.0 CASE LAW ON THE RIGHT TO ADEQUATE STANDARD OF LIVING

### 6.1 National Case Law on Adequate Living Rights

Ugandan Courts have in a number of cases been put to task to breathe life into the right to adequate standard of living albeit indirectly through its various components particularly; the right to food, the right to livelihood; the right to life; the right to property and protection from illegal evictions. This section looks at key decisions and analyses their contribution to expanding the interpretation of these rights.

One of the first decisions to expound on adequate living rights in Uganda, linking them to the right to life, was the Supreme Court judgment in *Attorney General v Salvatori Abuki*.<sup>59</sup> The respondent was convicted and sentenced to imprisonment on charges of witchcraft and banished from “his home” for ten years after serving his sentence under an exclusion order. The petitioners successfully challenged the exclusion order in the Constitutional Court which found that it amounted to cruel, inhuman and degrading treatment, a breach of Articles 24 and 44 of the Constitution, and deprived him of shelter, means of earning a livelihood, in essence, posing a risk to their lives, a violation of Article 22. The Supreme Court upheld this decision. Justice Oder, JSC, expounding on the implications of the exclusion order, noted thus:

The effect of the order, in my view, is clear. Considering that the respondent who lives in a rural part of Uganda and appears to depend on his 100 acres of land for shelter, food, economic and physical existence, the order prohibited him from his home and land for 10 years. The prohibition, no doubt, deprived him of his shelter, food and other means of subsistence dependent on his land. It also deprived him of the company and services of members of his family if he had a family... As a result of the exclusion order made against him, the respondent may become a pauper, a destitute, shelterless, and a beggar for food and other necessities for life. He may also be ostracised by people who know him in his village and elsewhere. In my view, the conditions resulting from the exclusion order in question were not only dehumanising but also threatened the respondent’s very existence and his life.

More recently, the High Court upheld the adequate living rights in *Hon. Okupa & 2020 ors v Attorney General & 3 Ors*.<sup>60</sup> The Court stated that the right to livelihood, though “not expressly provided for in the Constitution of the Republic of Uganda... is justifiable by virtue of the provisions of Article 8A and 45 which recognize rights and freedoms not expressly provided for by the Constitution.” Relying on the *Salvatori Abuki* case above and the Supreme Court decision of India decision in *Olga Tellis & ors v Bombay Municipal Council*,<sup>61</sup> the High Court held that as a result of policies of the State which allowed Karimojong warriors to own firearms, with which they conducted cattle rustling and an insurgency, the applicants lost their homes, property as well as means of earning a livelihood, in contravention of the Constitution. The State, through its agents, was held liable and ordered to compensate the victims.

<sup>59</sup>*Attorney General v Salvatori Abuki*, Constitutional Appeal-1998/1) [1999] UGSC.

<sup>60</sup>Miscellaneous Cause-2005/ [2018] UGHCCD 10.

<sup>61</sup>[1985] 2 supp SCR 51.



Similarly, in *Center for Food and Adequate Living Rights (CEFROHT) v Attorney General*,<sup>62</sup> the High Court recognised that although not expressly provided for under the Bill of Rights, the right to food is implied from the rights to livelihood and life. Justice Nambayo stated that "it is not in dispute that the Constitution of the Republic of Uganda, 1995 (as amended) recognizes the right to adequate food and other economic, social and cultural rights," citing National Objective and Directive Principle of State Policy No. XXII on the State's obligation to take steps to encourage people to grow and store adequate food and establish national food reserves. In this case, the petitioner challenged the government of Uganda's response during the COVID-19 pandemic, including failure to issue guidelines on food access and availability for vulnerable people and to establish food reserves. The Court disagreed and found that the government had discharged these obligations.

There has also been progressive jurisprudence in recent years which extends protection to women whose land rights are threatened by laws and cultural practices which perpetrate injustices. In *Kolya v Kolya*<sup>63</sup> the plaintiff, a paternal grandson of the defendant alleged that the defendant illegally obtained letters of administration for the estate of her husband, the deceased, without annexing a will yet he had made one. The plaintiff was informed by his father that his deceased grandfather had bequeathed his home to the father of the plaintiff, which he in turn bequeathed to the plaintiff.

The defendant stated that she was married to the deceased with whom she had six children. She alleged that her deceased husband acquired the suit property prior to their marriage but he built the house during their marriage, and that she contributed to its construction, including through making the bricks and assisting in building. She denied all the allegations that she had concealed the will and averred that she was legally granted letters of administration for the estate of the late husband following the agreement and decision of family members to dispense with the will, since the same was defective. Her deceased husband had stated in his will: "My land and main home I mentioned above at Namirembe, I give it to my heir, but my wife has to stay there until she dies or unless when she remarries then the heir is free to own the whole property."

The court found in her favour that the land in dispute was matrimonial property, noting that the deceased had wrongly prioritised his heir over the widow. The court noted that cultural practice which allows for an heir to inherit a matrimonial home thus denying the widow her proprietary rights is discriminatory in nature. It was determined that it was unlawful for the deceased to bequeath the matrimonial property to his heir without his spouse's permission and the same could not devolve to the son while the widow survived him. The court held that since marriage is dissolved upon death, the defendant as a surviving spouse, was entitled to inherit from her husband and benefit from his estate.

The courts have also gone further to offer security of occupancy on land to women who are not legally married but have cohabiting with their partners for several years. In *Baryamureeba v Kabakonjo & 6 Ors (Civil Suit-2013/20) [2020] UGHCCD 27*, the plaintiff wished to sell the suit land located in Kabale, some of which he inherited from his late father and mother as well as some that he had purchased. Around October 1970, the plaintiff started a family with the 1st defendant, although no marriage ceremony took place, and had six children – the 2nd to 7th defendants. The family lived in Kabale, Kampala and Jinja. The conflict between the plaintiff and defendant arose in 2005 when the plaintiff wanted to sell part of the family land in Kabale to meet his medical and other needs but was opposed by the defendants. The plaintiff sought

<sup>62</sup>Miscellaneous Cause-2020/75) [2020] UGHCCD 157.

<sup>63</sup>Civil Suit-2016/150) [2020] UGHCFD 4.



of court to empower him to sell part of his inherited and purchased land alleging that the land in issue did not constitute matrimonial property and the defendants do not derive their sustenance therefrom.

The court acknowledged that there was no existence of any valid marriage between the plaintiff and the 1st defendant. However, evidence was adduced showing that the land in question included not only the homestead but also a farm, and other plantations, showing that the 1st defendant ordinarily resided on the land. Both the plaintiff and defendants testified that the 1st defendant began cultivating on the land that was inherited from the Plaintiff's father in 1978.

Based on the above, court found that the suit land fell within the definition of family land under the Land (Amendment) Act 2004 and could not be the subject of a sale without the consent of the other party, citing Section 38 A (1), (2), (3) of the Land (Amendment) Act provides for security of occupancy on family land. Expounding further on the application of this section to cohabitants, Justice Adonyo stated:

The broader import of this section is to give security to spouses. In the instant case, although the court has not found sufficient proof of marriage, this entire section must be interpreted broadly to include even those that are not married as per the laws governing marriages in Uganda.

The intention of the legislature was to avoid situations where one party to such unions would try to deprive another of their rights to property through claims that they are not legally married. As such in this situation before me, the court will avoid a strict interpretation of the section, or of the definition of the term 'spouse' to prevent absurdities. The Plaintiff and the 1st Defendant lived together for over 35 years, bore children and derived sustenance from the land. I find that the Plaintiff and the Defendant were constructively married and thus fit within the meaning of section 38A.

## 6.2 Comparative Case Law on Adequate Living Rights

A vast majority of the judgments analysed under this sub-section are decisions made by the African Commission on Human and People's Rights (African Commission). This jurisprudence is instrumental insofar as it provides a wide interpretation of the right to adequate standard of living and its component rights. These comparative decisions offer guidance to our courts on interpretation and key elements of the right as well as the nature and extent of state obligations. Some of the decisions, including the landmark judgment of the Supreme Court of India in *Olga Tellis & Ors V Bombay Municipal Council*, have been relied on as persuasive authorities by the Supreme Court in determining cases of this nature.<sup>64</sup>

In *Olga Tellis & Ors V Bombay Municipal Council*,<sup>65</sup> the Supreme Court expanded the scope of the right to life to include the right to livelihood. The petitioners challenged the decision of the respondents to demolish pavement dwellings and the slums in Bombay on the grounds that evicting a pavement dweller from his habitat amounts to depriving them of their right to livelihood, and essentially, their right to life. The respondents argued that no deprivation of life,

<sup>64</sup>See AG v Salvatori Abuki case, supra.

<sup>65</sup>[1985] 2; SCR No 51 Supreme Court of India.

either directly or indirectly was occasioned by the eviction of the slum and pavement dwellers from public places since the municipal corporation had a statutory obligation to remove obstruction on pavements, public streets and other public places.

The Supreme Court held that the right to life is wide and far reaching, encompassing the right to livelihood. The court stated:

no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live... If there is an obligation upon the State to secure to the citizens adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”

The court relied on expert studies which revealed that one of the main reasons of the emergence and growth of squatter-settlements in the cities was the availability of job opportunities lacking in the rural sector. Since the petitioners had nowhere else to live, the court noted that for them, losing the pavement or slum equated to loss of their job in the city which would ultimately result in the deprivation of their livelihood, and ultimately their life.

This notwithstanding, the court acknowledged that the right to livelihood is not an absolute right and any deprivation should be in accordance with just and fair procedure. In this case, the petitioners had been granted the right to be heard and the government action was found to be reasonable in the circumstances. The Supreme Court however instructed the State to delay the evictions, provide alternate sites for resettlement to the slum dwellers who had been counted in the last census, and prohibited the demolition of slums which had been in existence for 20 years or more, unless the land was required for public purposes, in which case alternative sites would have to be provided.

African Commission expounded on the rights of indigenous communities who depend on their ancestral land for survival in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2009)*.<sup>66</sup> The Complainants alleged that the Kenyan government forcibly removed the Endorois community from their ancestral lands, without proper prior consultations, adequate and effective compensation, a violation of the African Charter on Human and People’s Rights, the Constitution of Kenya and international law. The complainants claimed that prior to their eviction to pave way for the creation of the Lake Hannington Game Reserve in 1973, and a subsequent re-gazetting of the Lake Bogoria Game Reserve in 1978, the Endorois way of living was inextricably linked to their ancestral land for centuries. The community further alleged that the actions of the State amounted to a violation of their rights to practice their religion and culture, disrupted the community’s pastoral enterprise due to lack of access to the green pastures on their traditional land, and deprived them of access to clean water.

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<sup>66</sup>AHRLR 75

The African Commission held in favour of the petitioners, drawing a linkage between the right to property and life in the context of traditional African communities because the survival of their unique particular way of life is dependent on their access and protection of their rights to their traditional land and the natural resources thereon.

The African Commission has also expanded on the right to food in its decision in *Social and Economic Rights Action Centre (SERAC) and another V Nigeria (2001) AHRLR 60 (ACHPR 2001)*. The Commission noted that the right to food is inseparably linked to the inherent dignity of a human being, and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation.

In this case, the complainants alleged that the oil companies operating in Ogoniland exploited oil reserves without due regard for the environment, demonstrated by the poor toxic waste disposal and numerous oil spills. As a result, the local communities suffered environmental degradation, serious health problems, deprivation of food and clean water. The government of Nigeria had been directly involved in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), a majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC).

It was held that Nigerian government failed to meet its obligations with respect to the right to food. The African Charter on Human and Peoples' Rights and international law obligate the State to protect existing food sources and to ensure access to adequate food for all citizens. The African Commission emphasized that the minimum core of the right to food requires that the State refrains from destroying or contaminating food sources and ensures that private actors do not interfere with the enjoyment of the right, a duty the State failed to discharge.

The Commission also pronounced itself on the obligation of the State to protect people from forced evictions in *Sudan Human Rights Organisation and another v Sudan (2009)*.<sup>67</sup> Relying on the decision of the UN Committee against Torture in *Hijrizi v Yugoslavia*,<sup>68</sup> the African Commission held that forced evictions and destruction of homes by third parties amounted to cruel, inhuman and degrading treatment, and the State was culpable for failing to perform its duty to protect the victims. In the present case, the respondent State and its agents actively participated in the forced eviction of the civilian population from their homes and villages. This also amounted to a violation of the right to property, as the victims' homes and possessions were destroyed, and health, due to the reported poisoning of water sources.

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<sup>67</sup>AHRLR 153 (ACHPR 2009).

<sup>68</sup>CAT/C/29/D/161/2000.



## 7.0 STATE OBLIGATIONS IN REGARD TO THE RIGHT TO ADEQUATE STANDARD OF LIVING

Article 2(1) of the ICESCR is instructive on state obligations for economic, social and cultural rights. It requires States to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realisation of these rights by all appropriate means, including particularly the adoption of legislative measures. These state obligations are explained in detail in the General Comment No. 3 on the nature of State parties' obligations, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Limburg Principles on the Implementation of the ICESCR and Africa Commission Principles and Guidelines on the Implementation of Economic, Social, Cultural Rights in the African Charter on Human and Peoples' Rights.

### 7.1 The Obligations to Respect, Protect and Fulfil

Economic, social and cultural rights impose these three types of distinct obligations on States. These duties are the threshold by which it is determined whether a violation of these rights has occurred.<sup>69</sup>

#### 7.1.1 The Obligation to Respect

This obligation imposes a negative duty on States to refrain from interfering with the enjoyment of economic, social and cultural rights.<sup>70</sup> It also requires States to take positive measures to the government organs do not violate these rights. In specific reference to the right to adequate standard of living, the obligation to respect the right to adequate food requires States not to take any measures that inhibit the existing access to food.<sup>71</sup> In the case of the right to housing, the States is required to refrain from conducting forced evictions and is required to apply principles of proportionality and reasonableness in the exceptional circumstances where forced evictions must occur.<sup>72</sup>

In *Sudan Human Rights Organisation & Centre on Housing and Evictions (COHRE)*,<sup>73</sup> the Commission found that the Sudan government failed to discharge the duty to protect its population from forced evictions perpetrated by its agents and third parties which constituted a violation of the right to housing of the victims. Similarly, in *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001)*,<sup>74</sup> the African Commission on Human and Peoples' Rights held thus:

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<sup>69</sup>Para 6 of the Maastricht Guidelines on Violations of economic, Social and Cultural Rights.

<sup>70</sup>Ibid.

<sup>71</sup>Para 15, General Comment No. 12 on the Right to Adequate Food.

<sup>72</sup>Para 7, General Comment No. 7 on the Right to Adequate Housing.

<sup>73</sup>African Commission Communication 279/03-296/05.

<sup>74</sup>AHRLR 60 (ACHPR 2001).



the State's obligation to respect housing rights requires it, and thereby all its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legislative measures violating the integrity of the individual or infringing upon his or her freedom to use those materials and other resources available to them in a way that they find most appropriate to satisfy individual, family household and community housing needs.

### 7.1.2 The Obligation to Protect

This obligation requires States to take positive steps to ensure that non-state actors including foreign and local companies or individuals do not violate economic, social and cultural rights.<sup>75</sup>

As such, the State is required to monitor and regulate the activities of third parties in order to prevent rights abuses.<sup>76</sup> The obligation to protect existing access to adequate food requires the State to take measures to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.<sup>77</sup>

In *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001), the African Commission found that the government of Nigeria facilitated the destruction of Ogoniland despite its obligation to protect people against interferences in the enjoyment of their rights, including the right to housing. Failure to monitor the operations of oil companies and ensure that the required safety measures were taken caused devastating impacts on the health, lives and wellbeing of the Ogoni people.

### 7.1.3 The Obligation to Fulfil

Under this obligation, States are obliged to take appropriate measures aimed towards the realization of economic, social and cultural rights. These may be legislative, judicial, administrative and budgetary measures which must be comprehensive, transparent and measurable.<sup>78</sup> With respect to the right to adequate food, the State is required to take measures which improve access to resources for people to improve their livelihoods and achieve food security.<sup>79</sup> Where people are unable to enjoy their right to adequate food, for instance in the aftermath of calamities or natural disasters, the State is required to directly provide for them.<sup>80</sup>

## 7.2 Progressive Realisation

This obligation recognises that the realisation of economic, social and cultural rights is dependent on the resources available to the State. As such, it requires States to make progress continually and expeditiously towards full achievement of the rights. This involves committing adequate resources and implementing "a reasonable and measurable plan, including set achievable benchmarks and timeframes for the enjoyment over time" of these rights.<sup>82</sup>

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<sup>75</sup>Paras 5 and 6 of the Africa Commission Principles and Guidelines on the Implementation of Economic, Social, Cultural Rights in the African Charter on Human and Peoples' Rights.

<sup>76</sup>Ibid.

<sup>77</sup>Para 15 of the General Comment No. 12 on the Right to Adequate Food.

<sup>78</sup>Para 6 the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. and Para 10-12 of the Africa Commission Principles and Guidelines on the Implementation of Economic, Social, Cultural Rights in the African Charter on Human and Peoples' Rights.

<sup>79</sup>Para 15 of the General Comment No. 12 on the Right to Adequate Food.

<sup>80</sup>Ibid.

<sup>81</sup>Para 13 of the Africa Commission Principles and Guidelines on the Implementation of Economic, Social, Cultural Rights, *supra*.

<sup>82</sup>Ibid at para 14.

Although progressive realisation is contingent on the available resources, the State is legally bound to take measures expeditiously towards the full realisation of human rights, including the right to adequate standard of living.

The above notwithstanding, there are some obligations which impose immediate obligations on the State including:

***i. The obligation to take steps***

States have an immediate obligation to take steps towards the full realisation of economic, social and cultural rights. This obligation is of immediate effect and is unqualified by other considerations which means that, regardless of the level of development of the country, the State must take deliberate, concrete and targeted steps to achieve these rights, including adoption of legislative measures.<sup>83</sup>

***ii. Minimum Core Obligations***

Regardless of available resources, the State is required to meet the minimum essential levels of economic, social and cultural rights, including the right to adequate standard of living and its components. Specifically, for the right to adequate food, the minimum level is freedom from hunger and where a State is unable to meet this obligation, it is expected to demonstrate that it has made sufficient efforts to the maximum of its resources at hand.<sup>84</sup>

***iii. The obligation to abstain from taking deliberately retrogressive measures***

The State is prohibited from taking measures which reduces the existing protection or enjoyment of the right to adequate standard of living.<sup>85</sup> Where a State adopts such measures, it is required to demonstrate that it took the most careful consideration prior, demonstrate that the retrogression was fully justified.<sup>86</sup> The African Commission Principles and Guidelines on the Implementation of Economic, Social, Cultural Rights are instructive on the considerations which will determine whether a retrogressive measure amounts to a violation of a right including:<sup>87</sup>

- a) Whether there was a reasonable justification for the action;
- b) Whether alternatives were comprehensively examined and those which were least restrictive of protected human rights were adopted;
- c) Whether there was genuine participation of affected groups in examining the proposed measures and alternatives;
- d) Whether the measures were directly or indirectly discriminatory;
- e) Whether the measures would have sustained impact on the realisation of the protected right;
- f) Whether the measures had an unreasonable impact on whether an individual or group was deprived of access to the minimum essential level of the protected right; and
- g) Whether there was an independent review of the measures at a national level.

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<sup>83</sup>Ibid. at para 18.

<sup>84</sup>Para 17 of the General Comment No. 12 on the Right to Adequate Food.

<sup>85</sup>General Comment No. 3, supra.

<sup>86</sup>Ibid. at para 9.

<sup>87</sup>Para 20 of the Africa Commission Principles and Guidelines on the Implementation of Economic, Social, Cultural Rights, supra.

As such, some illustrations of retrogressive measures include:<sup>88</sup>

- a) Adoption of laws or policies which have a negative effect on the enjoyment of the right to adequate standard of living or are discriminatory against some sections of the population;
- b) Repeals any laws or policies which guarantee the right to adequate standard of living except where it is outdated or replaced with others which offer equal or more protection;
- c) Unjustified reductions in public expenditures devoted to implementing the right to adequate standard of living without providing adequate compensatory measures to protect individuals and communities who would be most affected.

### 7.3 The Obligation of Non-Discrimination

Non-discrimination is a fundamental principle of human rights law. As an immediate obligation, States are mandated to eliminate all forms of discrimination in the enjoyment of the right to adequate standard of living and its components.<sup>89</sup> Special attention is required for groups which have historically been discriminated against including women, persons with disabilities.

## 8.0 ENFORCEMENT OF THE RIGHT TO ADEQUATE STANDARD OF LIVING IN UGANDA

This Section covers the enforcement of human rights in Uganda under the Human Rights (Enforcement) Act and the enforcement prior to it under the Constitution. The section will examine Article 50 and Article 137 of the Constitution as the major provisions for human rights enforcement prior to passing the aforementioned Act. It will examine the wide interpretation that the Courts of law have given in human rights matters as well as the restrictive ones. Further, it shall lay down the relevant procedure for filing of human rights claims, including violations of adequate living rights, jurisdiction, as well as the remedies available to claimants.

### 8.1 Enforcement of Human Rights prior to the Human Rights (Enforcement) Act, 2019

Prior to the enactment of the HREA, both Articles 50 and 137 have been used by litigants as avenues to bring matters before Courts of law in the event of human rights infringement

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<sup>88</sup>Icelandic Human Rights Centre, “The Right to an Adequate Standard of Living” accessed at <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living>

<sup>89</sup>General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights.



## 8.1.1 Enforcement of Human Rights under Article 50

Litigants relied on Article 50 of the Constitution to institute claims within courts for the abrogation of human rights. This presented a number of challenges for litigants and courts since guiding procedure had not been clearly spelt out and the jurisdiction to handle such matters was limited to the High Court. On reading Article 50, it is clear that it provides a wide protection of fundamental rights and freedoms in terms of locus standi, allowing for any person who alleges that a fundamental right enshrined in the Constitution has been infringed upon can bring the matter before the High Court and seek redress.

The case of *Asiimwe Davis Barigye, Nakacwa Maria and Sabika Moses Ivan v. Leaf Tobacco and Commodities Limited and National Environmental Management Authority*<sup>90</sup> espouses this position succinctly. Justice Wilson Musene, in his judgement reiterated the purpose of Article 50 (1) and (2) which is to provide locus standi to any person who alleges that a fundamental right and freedom has been violated should apply to a competent Court of law and seek redress or compensation. His Lordship quoted Justice Ruby Aweri Opio in the case of *Advocates Coalition for Development and Environment v. Attorney General*, Miscellaneous Cause No. 100 of 2004 wherein she stated that;

“...The importance of the above law is that it allows any individual or organization to protect the rights of another even though that individual is not suffering the injury complained of or does not know that he is suffering from the alleged injury. To put in Biblical sense, the Article makes all of us our “brother keepers” in that sense, it gives all the power to speak for those who cannot speak for their rights due to their ignorance, poverty or apathy...”

Furthermore, Justice Wilson Musene emphasised the procedural flexibility that should be applied to Article 50 (1). His Lordship quoted Justice Tsekooko in the case of *Charles Harry Twagira v. Attorney General*, Supreme Court Civil Appeal No. 4 of 2007, wherein his Lordship exhibited the flexibility that should be applied to instituting a claim under Article 50 (1) either by Ordinary Plaint or Notice of Motion. His Lordship stated as follows;

“...In general, and with the greatest respect to the Court of Appeal, I agree with the contention of the Appellant that the Court erred when it held that an action under Article 50 of the Constitution can only be instituted by Plaint. In my considered opinion, a person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened, can institute an action in competent court by plaint, or can seek declarations by Notice of motion depending on the facts of the complaint within the meaning of Article 50...”

From the above cases, it follows therefore that, with regard to human rights matters, a wide interpretation ought to be given particular to procedural matters. In other words, the substance of the matter should take precedence over the procedural questions. This is what the HREA seeks to ensure by empowering Magistrates Courts, in addition to the High Court, to determine human rights matters and simplifying the procedure for filing of claims, as will be discussed below.

Further, the HREA came into being to streamline the procedure for enforcement of fundamental human rights in Uganda. In 2008, the Rules Committee established under Section 40 of the

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<sup>90</sup>Miscellaneous Cause No. 43 of 2013.



Judicature Act issued the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules Statutory Instrument 55 of 2008. The purpose of the Rules was to provide for a procedure to be followed when applying to courts of law for enforcement of human rights.

The Committee has a duty to make rules regulating the procedure and practice of the High Court. Despite the intended usage, the Rules were never relied on. While the Constitutional Court nullified the Rules on the basis that they were unconstitutional as their issuance amounted to the usurping of powers of Parliament, the Supreme Court overturned this decision and upheld the constitutionality of the Rules.<sup>91</sup> This, notwithstanding, the HREA was enacted to fill the gap under Article 50 (4) of the Constitution which required the Parliament to make laws for the enforcement of human rights and freedoms under the bill of rights.

### 8.1.2 Human Rights Litigation under Article 137

Another avenue that is used by litigants who alleged a violation of a fundamental rights is Article 137 of the Constitution. Under this provision, the Constitutional Court has a special mandate to determine:<sup>92</sup>

- (a) Any questions of interpretation of the Constitution;
- (b) Whether an Act of Parliament, any other legislation or anything done under the authority of the law contravenes the Constitution; and
- (c) Whether any act or omission by any person or authority is inconsistent with the Constitution.

With respect to interpretation of the Constitution, this special power lies only with the Constitutional court which has the jurisdiction to hear such matters.<sup>93</sup> In the case of *Foundation for Human Rights Initiative vs Attorney General*,<sup>95</sup> Justice Dr. Kisaakye explained the power of the Constitutional Court as follows:

“The Petition, from which this appeal arose under Article 137 of the Constitution. Under this Article, the Constitutional Court is vested with power to interpret and declare whether an Act of Parliament is inconsistent with or contravenes the Constitution. The Constitutional Court therefore had a duty to consider and resolve all the claims made in the Petition presented before it and to determine whether the impugned legal provisions were unconstitutional or not.”

Consequently, if any legal provisions or any legal instrument is contrary to provisions within the bill of rights that affect the right to adequate standard of living or those in the National Objectives and Direct Principles, parties seeking interpretation of the impugned provisions or legal provisions may obtain a declaratory judgment from the Court stating that the said laws are unconstitutional and thus null and void given the supremacy of the Constitution.<sup>95</sup>

In the case of *Uganda Network on Toxic Free Malaria Control Limited vs Attorney General*, Constitutional Petition No. 14 of 2009, the Justices referred to Justice Mulenga in the case of *Ismael Serugo vs Kampala City Council and Attorney General*, Constitutional Appeal No. 2 of 1998, wherein his Lordship put succinctly the jurisdiction of the Constitutional Court when it came to enforcement of human rights;

<sup>91</sup>Bukenya v Attorney General (Constitutional Appeal-2011/3) [2017] UGSC 18.

<sup>92</sup>Article 137 (1) and (3) of the Constitution of Uganda, 1995.

<sup>93</sup>Ismael Serugo vs Kampala City Council and Another Constitutional Appeal No. 2 of 1998 and The Attorney General of Uganda vs David Tinyefuza, Constitutional Appeal No. 1 of 1998.

<sup>94</sup>Foundation for Human Rights Initiative vs The Attorney General, Constitutional Appeal No. 3 of 2009.

<sup>95</sup>Articl 137 (4) of the Constitution of Uganda, 1995.

“...It seems to me that what Mr. Mbabazi may have misconstrued is the holding, variously expressed in several of the Judgments, that the Constitutional Court was “a competent Court” for purposes of Article 50 to which an application (for redress) may be made when such right or freedom is infringed or threatened. It must be noted however that this holding is subject to a rider, again variously expressed in the several Judgments, to the effect that such application for redress can be made to the Constitutional Court, only in the context of a petition under Article 137 brought principally for interpretation of the Constitution...It follows that a person who seeks to enforce a right or freedom guaranteed under the Constitution, by claiming redress for its infringement or threatened infringement, but whose claim does not call for an interpretation of the Constitution, has to apply to any other competent Court. The Constitutional Court is competent for that purpose only upon determination of a petition under Article 137(3) ...”

Article 137 (3) of the Constitution has been interpreted more liberally to allow litigants to bring matters before the Constitutional court challenging acts or omissions which are inconsistent with the Constitution as demonstrated in the Supreme Court appeal of CEHURD & ors v. AG.<sup>96</sup> The Constitutional court had initially dismissed the matter as one of enforcement purely, stating that the matter did not involve questions of interpretation of the Constitution. The Supreme Court overturned this stating that the Constitutional Court had the jurisdiction under Article 137 (3) to determine the petition since the petitioners had clearly stated the acts/omissions of government which they were challenging and cited the relevant provisions of the Constitution which they alleged were being infringed upon.

With respect to remedies, Article 137 (4) empowers the Constitutional Court to make declarations and offer redress where needed. It may also refer the matter to the High Court to determine the appropriate redress.

## 8.2 The Human Rights (Enforcement) Act, 2019

The Human Rights Enforcement Act, 2019 (HREA) gives effect to Article 50(4) of the Constitution by providing for the procedure of enforcement of human rights under Chapter 4 of the Constitution. The Act introduces new aspects in human rights adjudication in Uganda including empowering Magistrates Courts to hear and determine human rights matters.<sup>97</sup>

### 8.2.1 Procedure for Filing Claims

- (a) A person acting on behalf of another person who cannot act in their own name;
- (b) A person acting as a member of, or in the interest of a group or class of persons;
- (c) A person acting in public interest; or
- (d) An association acting in the interest of one or more of its members.

<sup>96</sup>CEHURD & ors v. AG (2015) Supreme Court Constitutional Appeal No. 1 of 2013.

<sup>97</sup>The Human Rights Enforcement Act, Section 2 and 5 (1).

## ***How are Claims Filed?***

The Act also does away with strict and rigid adherence to rules of procedure and technicalities for applicants by providing that suits may be instituted orally and in any language in the Magistrates Courts.<sup>98</sup> The Court has a duty to translate the litigants' application and reduce it into writing where this procedure has been adopted.<sup>99</sup> In addition, the Act bars suit dismissal or rejection on the grounds that a litigant failed to comply with any procedure, form or technicalities.<sup>100</sup>

Unlike other matters brought against the State, human rights matters shall not require statutory notice as typically required in civil suits against the government and statutory bodies.<sup>101</sup>

The human rights suit shall be filed against the person(s) whom the claimant is entitled to obtain redress. Section 6 (2) stipulates that where there is doubt as to whom redress can be obtained from, the claimant may join two or more parties to the suit and leave it to the Court to determine the liable person(s).

## ***Timeline for Claims***

Human rights matters may be instituted within ten years of the occurrence of the alleged violation with the exception of the non-derogable rights under Article 44 of the Constitution.<sup>102</sup> Where such time has elapsed, the victim shall have to prove justifiable reasons to be allowed to bring a human rights claim.<sup>103</sup>

## **8.2.2 Jurisdiction of Magistrates Courts**

The jurisdiction of the Magistrates Courts has been clearly laid out in Section 5. The courts may determine all human rights matters with the exception of:<sup>104</sup>

- (a) Non-derogable rights and freedoms guaranteed in Article 44 of the Constitution;
- (b) other rights and freedoms which are not specifically mentioned in Chapter 4 of the Constitution as envisaged in Article 45;
- (c) rights and freedoms restricted under a law made for the purposes of a state emergency; and
- (d) where the remedy sought by an applicant exceeds the pecuniary jurisdiction of the Magistrate's Court.

With respect to geographical jurisdiction, Section 6 (1) provides that the suit shall be instituted in the court where the alleged violation occurred.

Specific to the right to adequate standard of living, the HREA provides that where the State is failing to take adequate steps towards the progressive realisation of these rights under the Bill of Rights and international treaties, matters may be filed with the High Court for redress.<sup>105</sup> This, however, does not preclude Magistrates Courts from determining matters alleging violation of economic, social and cultural rights.<sup>106</sup>

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<sup>98</sup>The Human Rights Enforcement Act, Section 5(2).

<sup>99</sup>The Human Rights Enforcement Act, Section 5 (3).

<sup>100</sup>The Human Rights Enforcement Act, Section 6(5).

<sup>101</sup>The Human Rights Enforcement Act, Section 6(4).

<sup>102</sup>The Human Rights Enforcement Act, Section 19 (1).

<sup>103</sup>The Human Rights Enforcement Act, Section 19 (2).

<sup>104</sup>The Human Rights Enforcement Act, Section 4 (1).

<sup>105</sup>The Human Rights Enforcement Act, Section 13 (1).

<sup>106</sup>The Human Rights Enforcement Act, Section 13 (2).



### 8.2.3 Jurisdiction of the High Court

The High Court shall exercise original jurisdiction in human rights matters which fall outside the jurisdiction of the Magistrates Courts.<sup>107</sup> Where a party to a suit is aggrieved with a decision of a Magistrate Court, they may appeal to the High Court which shall have three months to hear and determine the appeal.<sup>108</sup>

### 8.2.4 Procedure for Hearing of Claims and Remedies available for Claimants under the HREA

With respect to the procedure to be followed, the Civil Procedure Act and Rules will apply to matters of enforcement of human rights. It is also anticipated that Rules will be passed to guide the courts on several aspects including prescribed fees, time for filing applications, service, summoning of witnesses, rules of evidence, facts to be proved and hearing of applications.<sup>108</sup>

The HREA has expanded the available remedies to victims of violations of human rights and fundamental freedoms to include the following orders, which are deemed civil debt to the victim:

- i. Compensation; <sup>111</sup>
- ii. Restitution of the victim to the original state before the violation; and<sup>112</sup>
- iii. Rehabilitation of the victim.<sup>113</sup>

The Act also introduces the remedy of satisfaction for human rights violations which encompasses:<sup>114</sup>

- i. Measures aimed at the cessation of the continuing violation of human rights and freedoms;
- ii. Verification of facts, full and public disclosure of the truth in a manner which does not cause further harm or threaten the victim and their relatives, witnesses and any other persons helping the victim to prevent the further violation;
- iii. Restoration of dignity, reputation and rights of the victim;
- iv. Public apology
- v. Criminal, judicial and administrative sanctions; and
- vi. Guarantees of non-repetition.

Specific to the right to adequate standard of living, Section 13 (2) provides that a Magistrates Court may order the government to “take measurable steps for the progressive realisation” of a right where it finds that realisation is impaired by resource constraints.

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<sup>107</sup>The Human Rights Enforcement Act, Section 4 (1).

<sup>108</sup>The Human Rights Enforcement Act, Section 16 (1) (a) and (2).

<sup>109</sup>The Human Rights Enforcement Act, Section 17.

<sup>110</sup>The Human Rights Enforcement Act, Section 18 (1) and (2).

<sup>111</sup>The Human Rights Enforcement Act, Section 9 (1).

<sup>112</sup>The Human Rights Enforcement Act, Section 9 (2) (a).

<sup>113</sup>The Human Rights Enforcement Act, Section 9 (b).

<sup>114</sup>The Human Rights Enforcement Act, Section 9 (2) (c).



Orders made under the HREA must be complied with within six months from the date of judgment or within the time determined by the court. Failure to comply with the order within the prescribed time, the victim or any other person is authorised to apply to the court which made the order to request for issuance of summons against the person required to comply with order.<sup>116</sup>

## 9.0 ROLE OF COURTS OF LAW AND JUDICIAL OFFICERS IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

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Judicial officers are custodians of the law, mandated to interpret it and make decisions of matters brought before them. There are two philosophies that explain the role of judicial officials in the interpretation of cases; judicial activism and judicial restraint. Judicial activism is a philosophy used to explain judicial departure from precedent and consideration of the implications of a particular decision on the community.<sup>117</sup> Judicial activism is usually seen in controversial political matters wherein a judge will consider the implication of their decision and decides to depart from precedent because sticking to precedent would be very detrimental to the community of group of people.<sup>118</sup> Judicial restraint is the antithesis of activism. Here the Judges abide strictly to precedence and defer to the executive or legislative arms of government and hesitate to declare a particular act or law unconstitutional.<sup>119</sup> It follows therefore that judicial activism in human rights matters would take a broad interpretation of human rights whereas judicial restraint would incline towards narrower interpretations.

From the two philosophies, it is clear that judicial officials are tasked to exercise their discretion in interpreting fundamental rights and freedoms. As seen from the discourse above, fundamental rights and freedoms are controversial political matters which require that judges take on an activist role and consider the implications of their decisions. Because human rights by nature question the life, safety or livelihood of a human being, a judicial officer must take careful stock of the implications of their decisions as the decision would have a bearing on the life of an individual or a community.

Perhaps the most interesting Ugandan jurisprudence that exemplifies the important role of the judiciary in human rights matters was the case of *Bukenya Church Ambrose v. the Attorney General*.<sup>120</sup> In this case, the Supreme Court was deciding on the constitutionality of the Judicature (Fundamental Rights and Freedoms) (Enforcement Procedure) Rules - as they were then - which were supposed to be enacted in compliance with Article 50(4) of the Constitution. The Court upheld the rules and emphasised the importance of Courts of law in the enforcement of fundamental rights and freedoms by stating as follows;

“...The Constitution did not provide for fundamental rights and freedoms to remain in abeyance. Courts have a role to enforce fundamental rights and freedoms and to uphold the Constitution. Therefore, Courts should not condone the violation of fundamental rights and freedoms, by turning away a litigant from their doors. Such an outcome would also relegate the application and enforcement of the Bill of rights in our constitution...”

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<sup>116</sup>The Human Rights Enforcement Act, Sections 12 (3) and (4).

<sup>117</sup>Sherry, S. and Herman O. “A Summary of Why We Need More Judicial Activism” available at <https://law.vanderbilt.edu/news/a-summary-of-why-we-need-more-judicial-activism/>

<sup>118</sup>Ibid.

<sup>119</sup>McWhinney, E., “Judicial Activism and the International Court of Justice” available at [https://legal.un.org/avl/pdf/ls/McWhinney\\_outline\\_CT.pdf](https://legal.un.org/avl/pdf/ls/McWhinney_outline_CT.pdf) [Accessed on July 29, 2021]

<sup>120</sup>*Bukenya Church Ambrose vs the Attorney General*, Constitutional Appeal No. 3 of 2011.

Further, the Ugandan Constitutional Court, in *Dr. Kizza Besigye & others vs Attorney General*, relied on the call upon the judiciary, by Justice Mahandia in the Kenyan case *Republic v. Amon Karuga Kavatu*, to “rise to the occasion and reclaim its mantle” as protectors of the law “by scrupulously applying the law that seeks to secure, enhance and protect the fundamental rights and freedoms...”<sup>121</sup> They held thus;

“...This call is very relevant to courts in Uganda... We think it is high time the judiciary reclaimed its mantle and apply the law to protect fundamental rights and freedoms of our people as the Constitution requires... if the Uganda Judiciary is to remain relevant, it has to rise to the occasion and reclaim its mantle by accepting responsibility for the maintenance of the rule of law that embraces the willingness to check executive action by awarding general damages as against the Attorney General who represents the state and all its reckless or incompetent staff and punitive damages against individuals who deliberately behave in a manner that violates the human rights and freedoms of other individuals in the course of performing their duties...”<sup>122</sup>

The Justices in the above case acknowledged the difficulty they face in judicial activism which is the doctrine of separation of powers. Nevertheless, in the face of human rights infringement, the Justices were not shy in stepping beyond the invisible line created by this doctrine and calling for the other arms of government to respect and promote fundamental rights and freedoms.

This position speaks to the weight of human rights. The Article 20 of the Constitution of Uganda acknowledges that human rights are inherent and not granted by the state as do regional and international instruments the State has ratified. This position ought to be upheld by judicial officers when dealing with the right to adequate living. It is clear that matters concerning human rights evolve as times change, therefore, courts of law have to be cognisant of this and apply judicial activism to such cases; giving a broad interpretation in the face of an alleged violation.

## 10.0 CONCLUSION

The Human Rights (Enforcement) Act (HREA) is still a fairly new legislation which has opened up more avenues for seeking recourse from the courts law by empowering Magistrates Courts to determine human rights cases. The Magistrates’ Manual has been developed to familiarise judicial officers, mediators and court clerks with both substantive and procedural aspects of adjudicating adequate living rights cases under this law.

Ultimately, the Manual seeks to facilitate access to justice for persons/communities in Uganda who face violations of these rights. Its content was informed by a training needs assessment conducted prior with court actors who identified these areas of interest. As such, it has covered several aspects of human rights adjudication, including the basics of human rights, meaning of adequate living rights and the applicable legal framework. In highlighting key national and comparative jurisprudence on these rights, it purposed to provide a reference tool for court actors in deciding matters of this nature. It also challenges court actors, as custodians of justice, to take up the mantle in similar fashion to defend and uphold human rights in Uganda. It is hoped that this Magistrates’ Manual will be a valuable and beneficial resource for court officers in this regard.

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<sup>122</sup>Ibid.