# EAST AFRICAN JOURNAL OF PEACE & HUMAN RIGHTS

Journal of the Human Rights and Peace Centre (HURIPEC)
School of Law, Makerere University

**Volume 29, Number 2**
**December 2023**

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The *East African Journal of Peace and Human Rights*, ISSN: 1021-8858 is a bi-annual published by the School of Law, Makerere University under the auspices of the Human Rights and Peace Centre (HURIPEC). Contributions for publication should be original. The text of the article, including footnotes, should be double-spaced. Footnotes should be placed at the bottom of each page and citations should follow *A Uniform System of Citation* (15th ed). Contributors are requested to indicate their professional, academic, and other qualifications as well as their e-mail and physical address for communication. Published authors will receive a free copy of the Journal in which their contribution appears.

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This journal should be cited as EAST AFR. J. PEACE HUM. RIGHTS.

Further inquiries should be directed to:

Busingye Kabumba
HURIPEC
School of Law
Makerere University
P.O. Box 7062
Kampala
UGANDA
Telephone: (256-414) 532-954
Fax No: (256-41) 543-110 or 532-956
E-mail: busingye.kabumba@mak.ac.ug

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# ENFORCEMENT OF THE PUBLIC ORDER MANAGEMENT ACT AND ITS IMPACT ON FREEDOM OF ASSEMBLY IN UGANDA: A COMPARATIVE ANALYSIS

Gaudius Turyasingura*

**ABSTRACT**

*This article argues that while the right to freedom of assembly is fundamental in a democracy, it must be balanced with the need to maintain public order in a country. It examines the enforcement of Uganda's Public Order Management Act (POMA) of 2013 and its impact on the right to assemble, analyzing whether its implementation aligns with constitutional and international human rights standards. This article explores how similar laws are enforced in other jurisdictions and assesses the best practices that ensure both security and civil liberties. It also examines the challenges posed by the POMA's enforcement, particularly the discretionary powers granted to law enforcement agencies. Comparing Uganda's approach with international standards, the article critically evaluates whether the Act meets the threshold of justifiable limitations on assembly in a free and democratic society. It contributes to the ongoing discourse on human rights and governance by providing insights into how Uganda can adopt a rights-based approach to public order management, while ensuring democratic freedom.*

## I. INTRODUCTION

Uganda is one of the countries in the region with an exemplary mode of compliance regarding the enactment of laws required for the domestication of international conventions to which it is a signatory, especially those relating to human rights.[1] However, much controversy surrounds the enforcement of some of these laws. The right to freedom of peaceful assembly, expression, and association is fundamental to democracy, as it allows citizens to engage in political discourse and influence governance. In Uganda, these rights are constitutionally guaranteed, but subject to limitations under Article 43.[2] But as Justice Mulenga noted in *Charles Onyango Obbo*

* Doctor of Laws (LLD) Candidate, Master of Laws (LLM) (MUK), Bachelor of Laws (LLB) (UCU), Post Graduate Diploma in Legal Practice (PGDLP) (LDC), Ag. Head, Rule of Law Department, Uganda Law Society. Email: <turyasinguragaudius@gmail.com>.

1. E Elau 'The Public Order Management Act: The demise of freedom of assembly in Uganda' 24 July 2019 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3425140 (accessed 15 November 2023).

2. Constitution of the Republic of Uganda, 1995 (as amended).

*and Andrew Mwenda v Attorney General*,[3] any restriction must align with democratic values. However, the enforcement of the Public Order Management Act (POMA) has raised concerns over its selective application, often suppressing opposition political actors while permitting gatherings aligned with the government.

The POMA was intended to regulate public assemblies and maintain order; however, its implementation has been widely criticized.[4] Instead of facilitating peaceful gatherings, authorities have frequently denied opposition groups permission to assemble, and used excessive force, including tear gas and gunfire, to disperse protests. While riots are spontaneous and difficult to regulate, peaceful assemblies are organized and should be managed through lawful means.[5] However, the heavy-handed enforcement of the POMA undermines democratic participation, fosters political intolerance, and erodes fundamental freedoms.[6] This article examines the enforcement of the POMA, its implications for the right to freedom of assembly, and the need for reforms that align with constitutional and international human rights standards.

The author employed a mixed-methods approach,[7] combining qualitative and quantitative techniques to explore the enforcement challenges of the POMA. This included comparative analysis, interviews with some purposively selected respondents, and a documentary review to capture a broad range of perspectives.

## II. BACKGROUND

In 2011, the Ministry of Internal Affairs and the Uganda Police Force proposed a Public Order Management Bill, which later became the POMA in 2013.[8] This law was passed by the Parliament of Uganda amidst resistance from a considerable section of the public because it severely restricted the enjoyment of the right to freedom of assembly beyond

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3. *Charles Onyango Obbo and Andrew Mwenda v Attorney General* Supreme Court Constitutional Appeal No. 2 of 2002.

4. F Muwema 'Does the Public Order Management Act (POMA) create order or chaos?' 4 May 2019, https://nilepost.co.ug/opinions/43168/muwema-does-the-public-order-management-act-poma-create-order-or-chaos (accessed 15 November 2023).

5. Geneva Academy 'Facilitating peaceful protests' January 2014 https://www.geneva-academy.ch/joomlatools-files/docman-files/Facilitating%20Peaceful%20Protests%20.pdf (accessed 15 November 2023).

6. Human Rights House Foundation 'Severe attacks on essential freedoms in Uganda' 15 April 2011 https://humanrightshouse.org/articles/severe-attacks-on-essential-freedoms-in-uganda (accessed 15 November 2023).

7. S Allison & S Joanna 'Mixed methods research: expanding the evidence base', https://ebn.bmj.com/content/20/3/74 (accessed 15 November 2023).

8. P Kimumwe 'Media regulation and practice in Uganda: A Journalist's Handbook' (2014) 38.

what was acceptable and demonstrably justifiable in a free and democratic society.[9] The Act governs the regulation of public meetings and outlines the duties and responsibilities of the police, organizers, and participants. It also establishes measures to maintain public order and addresses other related matters. From the Preamble, the law could be said to have been necessary for the regulation of public assemblies and demonstrations; however, there has been a lot of concern regarding its application and enforcement.[10] An assembly is an intentional and temporary gathering in a private or public space for a specific purpose, including demonstrations, meetings, strikes, processions, rallies, or even sit-ins. Assemblies play a significant role in mobilizing the populace, articulating grievances and aspirations, facilitating the commemoration of events, and influencing public policies.[11] As envisioned by legislators at the time of its enactment, the Public Order Management Act (POMA) was intended to regulate public meetings and related activities. However, attempts to hold such meetings have resulted in disorder. As opposition groups are routinely blocked by police from holding public assemblies, such gatherings have become the exclusive domain of groups aligned with the ruling party—the National Resistance Movement (NRM).

Public order management is one of the most important areas of policing. Public order is characterized by the absence of widespread criminal and political violence, such as kidnapping, murder, riots, arson, and intimidation against targeted groups or individuals.[12] When there is public order, such activity is reduced to an acceptable minimum, perpetrators are pursued, arrested, and detained, and the local population can move freely about the country without fear of undue violence. Public disorder can profoundly destabilize societies emerging from conflict. It can instill constant fear in the local population, undercut efforts to strengthen state security institutions, and jeopardize the success of the peace process. Criminal and politically motivated activities are often accompanied by widespread violations of human rights, including torture, rape, cruel, inhuman, or degrading treatment, and arbitrary arrest and detention.[13] The population has few means to address these threats, and the police are usually in short supply, with a legacy of abuse and corruption. There are few judges, and confidence in their ability to adjudicate cases independently is low. Without public order, people can never build confidence in the public security system and seek security from other entities such as militias and warlords.

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9. Kimumwe (n 8) 4.

10. Human Rights House Foundation (n 6) 15.

11. Human Rights House Foundation (n 6) 26.

12. Elau (n 1) 23.

13. UN General Assembly & Human Rights Council *Annual Report of the Special Rapporteur on Extrajudicial, Summary or arbitrary executions,* A/HRC/17/28, 23 May 2017, https://www.ohchr.org › Session47 › Document) (accessed 15 November 2023).

Uganda's President, Yoweri Kaguta Museveni has previously justified the use of force in suppressing protests, asserting that individuals who engage in forceful demonstrations assume a criminal status, as such actions may incite uprisings similar to those observed in Libya and Syria,[14] and that the protestors are usually agents of foreign imperialists in the country. He further added that 'according to the police procedures, if people are protesting you have to stop them by the use of fire and arrest them for rioting and causing danger to other people.'[15] He also cautioned those who intended to hold a public meeting or procession to coordinate with the police to avoid endangering the lives of others or the destruction of their property. The President accused some elements of the opposition of failing to follow the procedures regulating assemblies and processions, and opting to hold meetings or processions near markets or through crowded streets without legitimate reasons.[16] The key questions that arise here are: what defines a 'legitimate reason' for holding a public assembly? Who determines what is considered legitimate? How can the concept of legitimacy be consistently applied without infringing on the right to free expression and assembly?

The enactment of the POMA was hoped to contribute to the maintenance of peace and public order. Those responsible for implementing the Act were ideally expected to ensure the maintenance of public order while safeguarding individuals' rights and freedoms, including the right to assemble freely. However, the enforcement of the Act has proven to be problematic.[17] Over the past decade, the POMA has been perceived as a stringent legislative measure enacted to curtail the activities of individuals identified as anti-government, particularly those within opposition political circles, while leaving the supporters of the ruling government unaffected.[18] Every attempt to implement the POMA seems to have resulted in even more chaos and disorder. As the primary enforcers of the law, police frequently employ enforcement mechanisms that include consistently denying permission for public assemblies. This often leads to the use of violent measures, such as gunfire, water cannons, and tear gas

14. J Muchucha 'Uganda's ruler Museveni defends violent crackdown in bid for 6th term', 12 January 2021 https://www.npr.org/2021/01/12/953580506/ugandas-ruler-museveni-defends-violent-crackdown-in-bid-for-6th-term (accessed 15 November 2023).

15. H Kasacca '*Challenges and implications for freedom of assembly in Uganda: A case of public meetings organized by political parties* (2013 - 2019)' (2019) *Konrad-Adenauer-Stiftung* 11-16.

16. Muchucha (n 14).

17. AN Makubuya 'The vagina monologues' saga and free expression in Uganda: Exploring the limits' (2005) 11 *East African Journal of peace and Human Rights* 165.

18. HURINET-Uganda 'Ugandans still Have the Right to Assembly and Expression Irrespective of the Public Order Management Act' February 2019, http://www.hurinet.or.ug/press%20release.pdf (accessed 15 November 2023).

canisters to disperse public gatherings or processions.[19] Peaceful assemblies, protests, and other such gatherings are usually consciously organized, the objectives are known, and they can be monitored by the police. However, riots are spontaneous, as they erupt without being planned. Consequently, these cannot be regulated.[20] They can only be contained, put down or dispersed.

Several factors affect how the police execute their mandate. These include: i) the absence of any known police ideology; ii) the history of police as a colonial tool for the suppression of protests; iii) the nature of training, which is increasingly militarized, and makes the police view the crowds it is controlling as the enemy to be crushed, the nature of command structure; and iv) the politicization of police, turning it into a tool for regime survival. If the root causes of the police's unacceptable behavior are not addressed, there is a potential for public dissatisfaction with the law, which could lead to conflicts, suspension of international financial assistance and other forms of support, and a heightened risk of civil unrest in the nation. While the need to maintain public order cannot be denied, it requires a broad spectrum of measures that go beyond merely forceful actions. Therefore, there is a need for a comprehensive review of the POMA to assess its efficacy in facilitating the realization of the right to assembly, with a view of bringing it in conformity with the Constitution and internationally accepted standards.

Therefore, this article explores the challenges in the enforcement of the POMA and draws comparisons with other public order legislation elsewhere, with specific references to the United Kingdom, South Africa, Kenya, and Singapore to benchmark and draw lessons for Uganda.

## III. THEORETICAL FRAMEWORK

This article is theoretically grounded in public and social order on the one hand and human rights on the other. Over time, people have been portrayed as behaving in an orderly, thoughtful, and respectful manner in public spaces for different reasons. However, this depends on socially accepted definitions of good behavior, order, and respect, as well as the definition of illegitimate crowd violence.[21] For some, public order policing is about protecting communities and citizens from serious threats, such as

19. Human Rights and Peace Centre (HURIPEC) 'The Abuse of Civil and Political Rights in the Era, Kisanja Hakunamuchezo' 7 June 2021, http://huripec.mak.ac.ug › Docs › Publications) (accessed 15 November 2023).

20. Judgement of Justice Kenneth Kakuru, in *Kenneth Mwandha v Attorney General* Constitutional Petition No. 05 of 2007.

21. Kimumwe (n 8) 21.

violent demonstrations and strikes.[22] Others argue that it should also include managing large events, such as processions and sports fixtures, and consider terrorist threats.[23] Different theories have been proposed regarding the concept of social psychology. These include drive, positioning, crowd, attribution, and schemata theories. This article adopts the crowd theory based on the particularly helpful insights it provides for understanding the implementation of the POMA.

Research in social psychology indicates that when police adopt a theoretical perspective on crowds similar to Gustavé Le Bon's 'classic' crowd psychology, it can unintentionally lead to practices that heighten public disorder..[24] Social psychologists have developed several theories to explain how the study of crowd science differs from and interacts with that of the individuals within it.[25] This field relates to the behaviors and thought processes of both individual crowd members and the crowd as an entity. The behavior of people organized in a crowd is usually influenced by many factors, including loss of responsibility in the course of participation and the general concept of the universality of behavior. These two factors are exacerbated by an increase in crowd size.

According to Le Bon, crowds exist in three stages: submergence, contagion, and suggestion.[26] During submergence, individuals in a crowd lose their sense of self and personal responsibility. This is significantly induced by the anonymity of the crowd. Contagion refers to the tendency of individuals in a crowd to unquestioningly follow the predominant ideas and emotions of the crowd. In Le Bon's view, this effect is contagious and can spread between 'submerged' individuals, much like a disease. Suggestion refers to the period in which the ideas and emotions of a crowd are drawn primarily from a shared unconscious ideology. Crowd members become susceptible to any passing idea or emotion. This behavior originates from an archaic norm in nature and is therefore uncivilized. It is limited by the moral and cognitive abilities of the least capable members.[27] Crowd members feel a lessened sense of legal culpability because of the difficulty in prosecuting the individual members of a mob.[28] In short, the individual submerged in the crowd loses self-control as the 'collective mind' takes over,

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22. B Baker 'Unchanging public order policing in changing times in East Africa' (2015) 53 *The Journal of Modern African Studies* 365.

23. J Hoggett & S Clifford 'Crowd psychology, public order police training, and the policing of football crowds (2010) 33 *Policing: An International Journal of Police Strategies & Management* 218.

24. Kasacca (n 15).

25. D Schweingruber & R Wohlstein The Madding Crowd Goes to School: Myths about crowds in introductory sociology textbooks" (2005) 33 *Teaching Sociology* 136.

26. Above, 4.

27. Hogget & Clifford (n 23) 12.

28. Schweingruber & Wohlstein (n 25) 7.

and makes the crowd member capable of violating personal or social norms.[29] On the contrary, this researcher believes that human beings possess conscience and do not lose self-control. They make informed decisions to act in the way they always do, including choosing to neglect their conscience. Le Bon's idea that crowds foster anonymity and generate emotion has been contested by some critics. Clark McPhail points out studies which show that 'the madding crowd' does not take on a life of its own, apart from the thoughts and intentions of members.[30] Similarly, Norris Johnson, after studying a panic at "the who concert" in 1979, concluded that the crowd was composed of many small groups of people, mostly trying to help each other. Additionally, Le Bon's theory ignores the sociocultural context of the crowd, which some theorists argue can disempower social change.

Furthermore, Brown disputes the assumption that crowds are homogenous, suggesting instead that participants exist on a continuum, differing in their ability to deviate from social norms. Previous studies have argued that this model leads the police to view the crowd as heterogeneous in composition but also as homogenously dangerous. This ideological position then combines with tactical constraints to lead the police to treat the crowd uniformly in situations where disorder is expected.[31] This article supports and develops this contention. It highlights how the focus of police training is on the control and disruption of suspected ringleaders. This analysis suggests that it is not simply because they are perceived as an inherent threat to public order, in and of themselves, but also because of their perceived ability to influence an irrational crowd.

However, this article also suggests that it places the police in a problematic position. It is often difficult to identify and isolate rowdy and riotous individuals in a crowd.[32] In this situation, the police tend to fall back on the threat or use of force against the crowd. This is understandable and leads them to assert that the very presence of the minority renders the crowd dangerous and in need of strict control. Such a view of the crowd also leads to a relative lack of reflexivity regarding the potentially negative impact that such indiscriminate tactics can and do have on ordinary individuals and crowd dynamics.[33]

It is imperative to note that the most important aspect uncovered is the calm dispersal of crowds. Before ordering the forced dispersal of a civil disturbance, the police should consider the option of determining whether less drastic alternatives are

29. Schweingruber & Wohlistein (n 25) 2.
30. Schweingruber & Wohlistein (n 25) 4.
31. Hogget & Clifford (n 23) 6.
32. Hogget & Clifford (n 23) 35.
33. Hogget & Clifford (n 23) 39.

effective. These alternatives include: i) the use of containment and dialogue; ii) establishment of contact with event organizers or crowd leaders to assess their intentions and motivations and develop a mutually acceptable plan for de-escalation and dispersal; iii) communication to the participants that their assembly violates the law and that the police wish to resolve the incident peacefully, and that acts of violence will be dealt with swiftly and decisively; iv) targeting specific violent or disruptive individuals for arrest prior to issuing dispersal orders; and v) ensuring that all potentially necessary law enforcement, fire, and Emergency Medical Services (EMS) equipment and personnel are on hand to successfully carry out tactical operations and that logistical needs for making mass arrests are in place.

Therefore, the approach and response of the police to crowds determine the subsequent atmosphere of order or disorder. The tactical polyvalence of crowd theory is illustrated by showing how the irrational conception of crowds has given rise to different strategies for crowd management. Once this is done, public order can be enforced while simultaneously allowing those who intend to assemble or associate to enjoy their constitutional rights, as explained above.

## IV. LEGAL AND REGULATORY FRAMEWORK ON THE RIGHT TO FREEDOM OF ASSEMBLY

The right and freedom to assemble peacefully is a fundamental right protected by domestic and international legal and regulatory frameworks.[34] This freedom is a vehicle for the exercise of many other civil, cultural, economic, political, and social rights, allowing people to express their political opinions, engage in artistic pursuits and religious observances, form and join trade unions, as well as elect leaders to represent their interests, and hold them accountable.[35] The right to freedom of peaceful assembly is enshrined in several international and regional human rights instruments. However, this freedom cannot be separated from public order.

Under both domestic and international law, the term 'public order' refers to the general conditions that must exist for individuals to enjoy their rights and freedoms. States worldwide have an obligation to defend and promote public safety. However, in all circumstances, even when taking measures to defend public order, governments must respect fundamental human rights.[36] The following discussion explains how

34. Justice Access Point 'Pocket Guide Book on freedom of assembly in Uganda: principles, rights, obligations and responsibilities' https://jap.or.ug/wp-content/uploads/2023/05/Pocket-Book-Guidelines-Principles-on-Freedom-of-Assembly-2022.pdf (accessed 15 November 2023).

35. Justice Access Point (n 34) 13.

36. Justice Access Point (n 34) 20.

international and domestic laws foster public order and enjoyment of the right to freedom of assembly. Under international law, there is no generally agreed-upon definition of public order. According to Wallace, public order refers to the state of normality and security that is needed in a society and that should be pursued by the state to facilitate the exercise of constitutional rights and thus benefit the harmonious development of society.[37]

In line with the definition of public assembly, the case of *Kivenmaa v Finland*[38] stated that the term must be interpreted in conformity with the customary, generally accepted meaning in national legal systems considering the object and purpose of this traditional human right. Not all individual assemblies require special protection. Rather, only intentional and temporary gatherings of several people for a specific purpose are afforded the protection of freedom of assembly.[39] In *Kivenmaa v Finland* (supra), gatherings, on the other hand, were defined as any assembly or procession of more than 15 persons in or on any public place. The decisive element for the determination of an assembly, as opposed to a more or less accidental gathering (for example, people waiting for a bus, listening to a band, etc.), is the intention and purpose of the individuals who come together.[40]

International law recognizes the importance of safeguarding public order by allowing governments to take measures derogating from their obligations to safeguard and defend the human rights of their citizens, to the extent strictly required by the urgency of a given situation. The necessity and proportionality of such restrictions on human rights may be submitted for judicial review before domestic and regional courts.[41] Governments have a duty to maintain or re-establish law and order using legitimate means. The obligation to respect these 'legitimate means' denotes that, even during efforts to restore public order in situations of unrest or conflict, the state must protect the fundamental guarantees to which individuals are entitled under international human rights instruments, including the right to freedom of assembly.

Internationally, human rights are guaranteed by various instruments, conventions, treaties, and declarations. Under international law, all individuals have the right to freedom of assembly. This right must be respected and promoted in all democratic societies. It entails the freedom to hold meetings, strikes, rallies, events and protests, both offline and online. It also involves the right of all individuals to meet and

37. RM Wallace *International Law: A Student Introduction* (1997) 53.

38. *Kivenmaa v Finland* Communication No. 412/1990, U.N. Doc. CCPR/C/50/D/412/1990 (1994).

39. M Nowak *U.N. Covenant on Civil and Political Rights, CCPR Commentary* (1993).

40. Hogget & Clifford (n 23) 39.

41. V Denysov & L Falalieieva 'Derogation in the Field of Human Rights: International Legal Instruments and Practice of Ukraine' (2020) 20 *International and Comparative Law Review* 7.

organize themselves to collectively express, promote, pursue, and defend common interests, including, but not limited to, forming, joining, and participating in the activities of trade unions and taking part in the conduct of public affairs. The right to freedom of peaceful assembly is provided for under several instruments.[42] Uganda is a party to the First Optional Protocol to the ICCPR, which allows individuals to lodge complaints with the Human Rights Committee alleging state violations of the human rights enshrined in the Covenant.[43]

According to Maina Kiai,[44] restrictions must meet a strict test of necessity and proportionality to be considered acceptable. Freedom must be the rule, not the exception. Restrictions should never impair the essence of the right. It is important to note that international law only protects assemblies that are peaceful, and the peaceful intentions of those assemblies should be presumed. According to the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles),[45] in the dispersal of violent assemblies, a law enforcement official may only use a firearm against a specific individual where this is necessary to confront an imminent threat of death or serious injury or a grave and proximate threat to life.

At the regional level, Uganda is a State Party to the 1981 African Charter on Human and Peoples' Rights (commonly known as the Banjul Charter).[46]Article 11 of

42. Denysov & Falalieieva (n 41) 21. These include: the Universal Declaration of Human Rights 1948 (Article 20); the International Covenant on Civil and Political Rights (Article 21); the International Convention on the Rights of the Child (Article 15); the Convention on the Elimination of All Forms of Discrimination Against Women (Article 7(c)); the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families (Article 26 and 40); the 1951 Convention Relating to the Status of Refugees (Article 15); the International Convention for the Protection of All Persons from Enforced Disappearance (Article 24(7)); and the Convention on the Rights of Persons with Disabilities (Article 29).

43. I Obadia 'A critical analysis of the Public Order Management Act, 2013' (2013) https://ir.kiu.ac.ug/items/96e3c97d-fe5d-40f5-b53b-819a83b1e429 (accessed 15 November 2023).

44. K Maina '*Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association'* 14 April 2014 https://www.refworld.org/pdfid/539063984.pdf (accessed 15 November 2023); Metropolitan Police Territorial Support Group 'Public Order Policing' (2022) https://en.wikipedia.org/wiki/Metropolitan_Police_Territorial_Support_Group (accessed 15 November 2023).

45. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August - 7 September 1990 https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/firearms.pdf (accessed 15 November 2023).

46. D Mukalazi 'Respect inherent right of public assembly' 04 July 2019 https://www.independent.co.ug/comment-respect-inherent-right-of-public-assembly/ (accessed 15 November 2023).

the Charter provides that every individual shall have the right to assemble freely with others, and that the exercise of this right shall be subject only to necessary restrictions provided for by law, particularly those enacted in the interest of national security, safety, health, ethics, and rights and freedoms of others.[47] In addition, Uganda is a party to the 1998 Protocol on the African Court on Human and Peoples' Rights, although it is yet to accept the court's competence in receiving individual communications.[48]

The Declaration of Principles on Freedom of Expression and Access to Information in Africa is also relevant. This Declaration was adopted by the African Commission during its 65th ordinary session, which was held in Banjul, Gambia, in 2019. It was made pursuant to Article 45(1) of the African Charter, which obligates the African Commission to promote human and people's rights by laying down guidelines and principles aimed at ensuring the protection, promotion, and fulfilment of the right to freedom of expression and assembly.[49] This Declaration affirms the principles of the African Charter that guarantee an individual's right to protest, gather, and meet, among others.[50]

In its latest State Report to the African Commission on Human and Peoples' Rights (African Commission),[51] Uganda observed that many times the assembling individuals are not cognizant of the obligations that come with this right, namely: issues of national security, public safety and the rights and freedoms of those who are not part of the assembly.

Regarding the deployment of force and chemical agents, the use of tear gas under windy conditions poses a risk of contamination to law enforcement personnel, bystanders, nearby residences, and businesses. By ordinary standards, the police would be liable when they opt to use such a method of crowd control that may be unduly dangerous and inappropriate in light of the character of a specific place and its surroundings. Most often, a large, diverse, and differentially susceptible group is exposed, posing the risk of unnecessarily injuring non-violent, potentially vulnerable people. The decision to use chemical agents in specific environmental conditions and

47. A Lupia & M Mathew *The democratic dilemma* (1998) 34. The right is also guaranteed under the African Charter on the Rights and Welfare of the Child (Article 8), and the African Charter on Democracy, Elections and Governance (Articles 12(3), 27(2) and 28).

48. Mukalazi (n 46) 42.

49. As above.

50. B Tusasirwe 'The judicial enforcement of the rights to freedom of political assembly and association in Uganda' PhD Thesis, Makerere University 2019 47, https://makir.mak.ac.ug/handle/10570/8848 (accessed 15 November 2023).

51. African Commission, *6th – 8th Periodic Report, 2013-2022* 18th August 2023 https://achpr.au.int/en/state-reports/uganda-sixth-6th-8th-periodic-report-2013-2022 (accessed 15 November 2023).

social contexts should not be taken lightly. If conventional means are insufficient and tear gas or any similar gas is used to disperse crowds, the police must ensure that the gases have no unacceptable humanitarian consequences. The use of chemical irritants should be strictly limited to situations of imminent harm that cannot be effectively policed with safer methods.[52]

It is common for the Uganda Police Force to resort to tear gas as a tool for managing violent outbreaks, containing riots, and ensuring public order; however, its use remains highly controversial. This is mainly because of the absence of official guidelines and self-help advice on health protection against the side effects of tear gas exposure. In light of the potential effects, use of teargas during processions may constitute the use of a deadly weapon due to the effects it may cause to even bystanders especially when used in a way that causes or is likely to cause death or serious bodily hard.[53] The use of tear gas as a tactical tool to disperse a crowd is distinguishable from its use by a criminal during a robbery. Where its widely used as a mode of quelling riots, it is not safe when used indiscriminately. It is unsurprising that the Chemical Weapons Convention of 1993 prohibits its use. The indiscriminate nature of chemical weapons, rather than their lethality, is most likely the impetus behind efforts to ban their use in warfare. Low lethality alone should not determine the humane nature of a weapon. The prohibition of indiscriminate attacks must be given due consideration, even when used for law enforcement purposes.

At the East African Community (EAC) level, peace and security have been acknowledged as critical to creating the right environment for fostering regional integration in all aspects. Without public order and respect for human rights in the region, integration is merely a myth. Against this background, the EAC Council of Ministers, upon recommendation by the Sectoral Committee on Interstate Security, established an expert group to develop a regional strategy on regional peace and security, supported by a practical implementation plan. The strategy, developed through a highly consultative and inclusive process, will anchor Peace and Security Sector activities, giving form to areas of cooperation in addressing regional peace and security threats. The strategy was adopted by the 13th Council of Ministers meeting, which was held in November 2006 in Arusha, Tanzania, to guide EAC-level interventions in the Peace and Security Sector. The Peace and Security Sector remains committed and dynamic in responding to the nature and form of ever-evolving security threats. Advancements in technology, knowledge dispersal, and globalization continue to

52. Mukalazi (n 46) 12.

53. Under section 286 (3) (a) (ii) of the Penal Code Act, a deadly weapon is defined as 'any substance, which when used for offensive purposes is capable of causing death or grievous harm or is capable of inducing fear in a person that it is likely to cause death or grievous bodily harm.'

influence crime and its trends. To address these changes, the strategy remains a guiding framework and, at the same time, is inclined to accommodate new and emerging security challenges. Article 124 of The Treaty for the Establishment of the East African Community also recognizes the need for peace and security within the East African Partner States.[54]

In *James Katabazi v Secretary General of EAC*,[55] the court noted that while it did not have jurisdiction over human rights violations per se, it might still consider such cases if they fell under one of the provisions of Article 27(1) which sets out the jurisdiction of the court. It added that one role of the court is to interpret the treaty, which includes respect for the rule of law (Article 6(d)). The court also stated that the Secretary General of the EAC could investigate a human rights violation if it was brought to his attention. In *Attorney General of Kenya v Independent Medical Legal Unit*,[56] the court affirmed the decision in *Katabazi* that lack of direct jurisdiction over human rights disputes under Article 27(2) will not prevent the court from exercising jurisdiction over disputes under some other basis (including rule of law under Article 6(d)) just because they involve human rights issues. Similarly, in *Venant Musenge v Attorney General of Burundi & Secretary General*,[57] while making reference to Article 14 of the African Charter on Human and Peoples' Rights and the provisions of the Burundian Constitution, the court held that the failure by the appropriate authorities of the Republic of Burundi to ensure the protection of the applicant's property rights was fundamentally inconsistent with Burundi's express obligations under Article 6(d) and 7(2) of the EAC Charter to observe the principles of good governance, including the protection of human rights.

Therefore, the EAC treaty recognizes human rights as an element of good governance within the Community. While it does not have express provisions on the right to freedom of expression and assembly, the above progressive decisions by the court show that it recognizes the fundamental human rights that all states must promote and protect. Therefore, public order management is an issue that the Community cannot ignore. The responsibility to prevent disturbances in public order that may threaten the collective security of individuals lies solely with the government. To defend public order from such threats, states may limit some individual rights if their exercise presents an imminent danger of disturbing law and order. However, such

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54. Maina (n 44) 6.

55. *James Katabazi v Secretary General of EAC* Reference No. 1 of 2007.

56. *Attorney General of Kenya v Independent Medical Legal Unit* Appeal No.1 of 2011 [2012] EACJ 4.

57. *Venant Musenge v Attorney General of Burundi & Secretary General,* EACJ Application No.5 of 2012 (Arising from Ref. No. 9 of 2012).

restrictions must be proportionate and should not infringe on individuals' rights to freedom of assembly.

Chapter Four of the 1995 Constitution of the Republic of Uganda provides for the protection of fundamental rights and freedoms, including the right to freedom of expression, assembly, and association, the right to life, and the rights of women and children. According to Article 29(1) (d), every person has the freedom to assemble and demonstrate together with others peacefully and unarmed, and to petition the government.

Following the public disturbances that the country has experienced since the 2000s as well as the subsequent Constitutional Court's decisions in *Muwanga Kivumbi v Attorney General,*[58] and *Moses Mwandha v Attorney General,*[59] that declared Sections 32, 33, 34, 35, 36, 37, and 40 of the Police Act[60] (which gave the police the discretion to prohibit assemblies) as unconstitutional and inconsistent with Articles 20(1)(2) and 29(1)(1) of the Constitution, there was arguably a need for a law that would regulate demonstrations and public assemblies. However, whereas the right to freedom of assembly is not absolute, as held by Justice Mulenga in *Charles Onyango Obbo and Andrew Mwenda v Attorney General*,[61] any limitations must pass the test as set out under Article 43(2)(c) of the Constitution, which provides that any limitation of the enjoyment of the rights and freedoms prescribed by the Constitution must be acceptable and demonstrably justifiable in a free and democratic society.

In *Muwanga Kivumbi v Attorney General,*[62] Lady Justice Byamugisha stated, *inter alia,* that in every society there is always tension between those who desire to be free from annoyance and disorder on one hand, and those who believe that they have the freedom to bring the attention of their fellow citizens to matters which they consider important on the other. A society, especially a democratic one, should be able to tolerate a good deal of annoyance or disorder to encourage the greatest possible freedom of expression, particularly political expression. This shows that peaceful assemblies and protests are a vital part of every society, as they can be a powerful tool for enjoying other rights. It also shows that some of the rights and freedoms that many countries enjoy today were gained because some people were able to go out on the street and protest.

The POMA requires the organizers of public assemblies and processions to notify the police of their plans, which the police have interpreted as a request for

58. Constitutional Petition No. 09 of 2005.
59. Constitutional Petition No. 05 of 2007.
60. Police Act Cap. 303 (As amended).
61. Supreme Court Constitutional Appeal No. 2 of 2002.
62. Kasacca (n 15) 11-16.

authorization. Section 5 of the POMA states that the notification must be made at least three days before the planned event. Section 6(1) permits the government to refuse permission to hold a proposed public meeting because 'notice of another public meeting on the date, at the time and at the venue proposed has already been received by the authorized officer; or the venue is considered unsuitable for purposes of crowd and traffic control or will interfere with other lawful business.'

Section 8 authorizes the police 'to stop or prevent the holding of a public meeting where the public meeting is held contrary to the Act' and to order the dispersal of a public meeting where it is reasonable in the circumstances. However, enforcement officers have largely misused these provisions. Typically, law enforcement decisions made in the context of riot control are viewed generously because of the exigent circumstances involved. The danger posed to innocent bystanders depends on various factors, including location (activities within or in the vicinity of a mob), terrain, accuracy of the mechanism used to lob the canisters (greater or lesser dispersion, depending on the trajectory, range, etc.), weather conditions (visibility, wind, etc.), the specific behaviour of the mob, and the technical skill of the police officers (random dropping of canisters when unable to hit the intended target). All these factors must be considered whenever an attack can incidentally hit non-participating people and objects. Section 10 requires organizers to provide sufficient stewards for an assembly and ensure that it is concluded peacefully before 7:00 pm. Participants are advised not to obstruct traffic and avoid disorder. Failure to comply with these requirements may result in criminal prosecution and liability.

The 1994 Police Act [63] inadequately regulates the use of force by the Uganda Police Force. There is no general obligation to use only necessary and proportionate force. Section 36 of the Act regulates the use of force in the dispersal of an 'unlawful' assembly, as determined by national law. This provision states:

> if upon the expiration of a reasonable time after a senior police officer has ordered an assembly to disperse ... the assembly has continued in being, any police officer, or any other person acting in aid of the police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming that resistance, and shall not be liable in any criminal or civil proceedings for having by the use of that force caused harm or death to any person.

63. Police Act Cap. 324 (as amended).

However, these provisions are not compliant with international law. Indeed, in May 2019, in *Mwandha v Attorney General*, the Constitutional Court ruled that the provisions of the Police Act authorizing the police to disperse public assemblies, including the broad power of the police to use force to disperse an assembly under Section 36, were unconstitutional. They were declared inconsistent with the right to freedom of expression and assembly guaranteed under the Bill of Rights in Uganda's Constitution and applicable international norms.

The Police Act[64] specifically governs the use of firearms by the police. It provides that a police officer may use a firearm against, 'a person charged with or convicted of a felony who escapes from lawful custody; a person who, through force, rescues another person from lawful custody; a person who, through force, prevents the lawful arrest of himself or herself or of any other person.' This is an extremely permissive authority that contravenes international law. The right to peaceful assembly is the individual and collective right of people to gather to promote or pursue shared ideas.[65] It is one of the core political rights recognized in a democracy.

In addition, Uganda restricts the fundamental right to freedom of assembly through the POMA. As stated earlier, Uganda lacks a well-considered law to ensure public order. The current framework under the POMA has several flaws, as discussed below.

The POMA generally fails to provide for the rights of the media. It also grants law enforcement authorities, such as the police, broad powers to use force to disperse assemblies, with no guidance on alternative methods for managing public disturbances. However, force has always been an ineffective way to resolve issues.[66] The Act also fails to make provision for the facilitation and protection of simultaneous and counter demonstrations. The law is not precise and gives the state and its agencies broad discretion to deny permission or reject the notification. The law does not stipulate the obligations of the police, for example, upon receiving a notification from the organizers. This is because it does not provide definitions for very important terms under the Act, for example, 'organizers.' This has led the police to categorize everyone as an organizer without a specific test. In turn, this has created a lack of uniformity in the decisions of the police in allowing people to enjoy their right to public assembly, which has attracted much criticism from several sections of the public. Several people belonging to opposition political parties, such as the president of the National Unity Platform, Robert Kyagulanyi (also known as Bobi Wine), have previously been arrested for organizing public assemblies, which the police described as unlawful. Based on the

64. Police Act Cap. 324.
65. Kimumwe (n 8) 17.
66. *Kizza Besigye v Civil Aviation Authority & Another* HC CS No. 732 of 2016.

aforementioned flaws, the researcher opines that the POMA does not meet internationally recognized standards for regulating public order.

In *Human Rights Network Uganda & 4 Ors v Attorney General*,[67] the Constitutional Court of Uganda declared section 8 of the POMA unconstitutional. The court ruled that the provision was inconsistent with Articles 29, 43, and 92 of the 1995 Constitution, as it effectively reinstated the powers of the Inspector General of Police (IGP) to prohibit public assemblies—powers that had previously been declared unconstitutional in *Muwanga Kivumbi v Attorney General*. The court found that section 8 of the POMA granted the police broad discretion to stop and disperse public gatherings, violating the fundamental right to freedom of assembly. The ruling significantly impacted the enforcement of the POMA, leading to the repeal of Section 8, thereby limiting police powers to arbitrarily block or break up peaceful assemblies. The judgment reinforced the constitutional requirement that any restrictions on assembly be regulatory rather than prohibitive, ensuring greater protection of civil liberties in Uganda.

Although it is true that a peaceful assembly may indeed turn violent, the police's duty and obligation is to ensure that such occurrences are minimized, and that when they occur, only reasonable force is used to contain them.[68] Disorder, protests, riots, and communal violence can be focal, distributed, or networked phenomena. A riot is judged to occur when one or more individuals in a gathering engage in violence against people or property.[69]

In *Jane Akello v Attorney General*,[70] Judge Mubiru, in a decision issued in 2020 (on the use of tear gas and similar irritants in quelling a demonstration or gathering) stated that whoever employs instrumental violence must ensure that the violence remains within its designated limits and that it only affects the persons or property it ought to affect. Any reasonable police officer should be able to perceive that persons within the vicinity of the intended target of tear gas deployment are so closely and directly affected by the act of its deployment that such officer ought reasonably to have in their contemplation as being so affected. When directing their minds to the questioned deployment of tear gas, any violent act by law enforcement officers must meet the requirements of nondiscrimination and protection of the innocent. The police have a duty to avoid harm to innocents that they could and should have foreseen. If

67. *Human Rights Network Uganda & 4 Ors v Attorney General* Constitutional Petition No. 56 of 2013.

68. *Uganda v Lule David, Katongole Julius, Nyanzi Fred Ssentamu, Sebufu Edward & Hon. Kyagulanyi Robert aka Bobi Wine* Constitutional Reference No. 022 of 2020.

69. JP Sullivan & A Elkus 'The strategic challenge of riots' (2012) 21 *Small Wars Journal* https://archive.smallwarsjournal.com/jrnl/art/strategic-challenge-riots (accessed 15 November 2023).

70. *Jane Akello v Attorney General* Civil Suit 9 of 2009.

conventional means are insufficient and tear gas or any similar gas is used to disperse crowds, the police must ensure that the gases have no unacceptable humanitarian consequences.

Furthermore, in *Rights Trumpet & 2 Ors v AIGP Asan Kasingye & 5 Ors* and *Mucunguzi Abel & 9 Ors v Attorney General & 2 Ors*,[71] on determining issues relating to the right to freedom of assembly, the court quoted Article 29 of the Constitution, and noted that it does not provide restrictions to the rights. The court interpreted this provision and held that the Uganda Police Force was not justified in deploying with a view to arrest the demonstrators but rather to ensure that the demonstration by the applicants was peaceful and orderly.

Scholars such as Oloka-Onyango have extensively examined the enforcement of the POMA in Uganda, highlighting a range of challenges. He argues that the Act has been selectively enforced, often to curtail opposition political gatherings while allowing ruling party events to proceed with minimal hindrance. This selective enforcement raises concerns about the Act's potential for political manipulation, undermining its intended purpose of impartially maintaining public order.[72] Oloka-Onyango further emphasizes the lack of clear guidelines for the implementation and training of law enforcement officers tasked with enforcing the POMA. This deficiency in operational procedures and training has contributed to inconsistent and, at times, heavy-handed enforcement, leading to instances of excessive use of force and violations of citizens' rights to assemble peacefully.

## V. PUBLIC ORDER MANAGEMENT IN OTHER JURISDICTIONS

Public order management legislation worldwide is, or ought to be, aimed at maintaining law and order in public gatherings as opposed to stifling people's rights. This section explores the modes of implementation of similar legislation and the enjoyment of the right to freedom of assembly in the United Kingdom, South Africa, Kenya, and Singapore.

### *A. United Kingdom*

In the United Kingdom, the right to peaceful protest is entrenched as a vital expression of British democracy. Every year, tens of thousands of people march and assemble in

71. *Rights Trumpet & 2 Ors v AIGP Asan Kasingye & 5 Ors* and *Mucunguzi Abel & 9 Ors v Attorney General & 2 Ors* HC Consolidated Miscellaneous Cause 17 of 2017.

72. J Oloka-Onyango 'Laws on public order, gays and 'miniskirts' are birds of a feather' (2014) *The Observer* 6.

public spaces to commemorate, celebrate, or demonstrate for or against events, causes, and issues. Over 5,000 protests occur in London alone each year, and most of them pass off peacefully.[73]

The right to peacefully protest and assemble is the cornerstone of a liberal democratic society. In the UK, these rights are protected by the European Convention on Human Rights.[74] Although the UK left the European Union (EU), it is still bound by the provisions of the European Convention on Human Rights. This commitment was established before the current Trade and Cooperation Agreement was finalized at the end of 2020.[75] In 2019, the Political Declaration (PD) agreed between the EU and the UK, which outlined the shape of the future relationship between the two entities, stated under 'core values and rights' that,

> The future relationship should incorporate the United Kingdom's continued commitment to respect the framework of the European Convention on Human Rights (ECHR), while the Union and its Member States will remain bound by the Charter of Fundamental Rights of the European Union, which reaffirms the rights as they result in particular from the ECHR.

The PD also stated that the parties agreed that the scale and scope of future arrangements should achieve an appropriate balance between rights and obligations. It should also be underpinned by long-standing commitments to the fundamental rights of individuals, including continued adherence to and implementation of the ECHR. As such, this stance set the scene for the European Union-United Kingdom Trade Agreement and cemented the UK's commitment to the ECHR.[76] However, the agreement lacks this commitment, and there is no guarantee that it will continue in the future.

In addition, Article 12(1) of the European Union Charter states that everyone has the right to freedom of peaceful assembly at all levels, be it political or civic

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73. Hogget & Clifford (n 23).

74. Maina (n 44) 20.

75. AJ Reiss *Policing to Promote the Rule of Law and Protect the Population: An Evidence Based Approach* (2021).

76. HM Government *'Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom'* 19 October 2019, https://assets.publishing.service.gov.uk/media/5daaaba040f0b6598f806460/Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom.pdf (accessed 15 November 2023).

matters, to serve their interests and those of the public.[77] Otton J, in the case of *Hirtst & Agn v Chief Constable of West Yorkshire,* commented that 'the courts have long recognized the right of free speech to protest on matters of public concern and to demonstrate on the one hand and the need for peace and good order on the other.'[78] This shows that the right to freedom of assembly is highly recognized in the UK.

UK citizens have the right to protest and assemble freely.[79] However, this right is not absolute. Restrictions can be imposed on protests to maintain public order. These rights must be balanced against the disruption and stress caused to residents. There is what is called public order policing, which includes the policing of planned and spontaneous public events (such as protests and football) and the policing of any events or trigger incidents which result in, or may result in, public disorder. Under the Public Order Act 1986, chief officers may place conditions on assemblies and public processions to prevent serious public disorder, serious damage to property, or serious disruption to the life of the community. The UK does not have a specialist paramilitary police force to control public order, such as Sweden's Reinforced Regional Task Force (RRTF) or France's Compagnies Républicaines de Sécurité (CRS). Instead, officers are trained and equipped to perform this function if necessary. However, the metropolitan police has a Territorial Support Group (TSG), which some claim is a paramilitary force.[80]

In addition to relevant criminal laws, civil remedies can be used to contain protests. Provisions in the Protection from Harassment Act 1997 allow individuals and organizations to apply for civil injunctions to prevent protestors from demonstrating in a way that causes harm or harassment. Section 3 grants the court the authority to issue an injunction to prevent an individual or organization from engaging in conduct that causes harassment, alarm or distress. In the case of *Barankevich v Russia,*[81] the European Court of Human Rights (ECtHR) held that it was a breach of the laws on public order for the police to have simply imposed a ban on a procession, resorting to employing radical measures intended to deny the applicant in the case a chance to peacefully assemble with others. The police should have allowed the procession to continue, in addition to imposing measures to ensure that it proceeded peacefully.

Section 11(1) of the Public Order Act[82] provides that written notice shall be given of any proposal to hold a public procession intended to demonstrate support for

77. Tusasirwe (n 50) 47.
78. [1987] QBD 150.
79. A Heard *Chimeras in Sheep's Clothing* (1997).
80. Metropolitan Police Territorial Support Group, 2022.
81. Application No.10519/03 3.
82. Cap. 64 (Laws of UK).

or in opposition to the views or actions of any body of persons, to publicize a cause or campaign or to mark or commemorate an event. However, this section does not apply where the procession is commonly or customarily held in the police area in which it is supposed to be held.[83] Section 11(3) provides that the notice must specify the date when it is intended to hold the procession, the time when it is intended to start, the proposed route, and the name and address of the person proposing to organize it. The notice must be delivered to a police station in the area where the procession is proposed to start.

The notice must be delivered no less than six clear days before the date on which the procession is intended to be held. If not delivered in less than six clear days, the notice may be delivered by post by the recorded delivery service.[84] According to Section 11(7), the organizers of a public procession are guilty of an offence if the requirements of Section 11 on notice have not been satisfied or if the date when it is held, the time when it starts, or its route differs from those specified in the notice. A person guilty of an offence under subsection 7 is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Under Section 12 of the Public Order Act, if the senior police officer, having regard to the time and place at which the circumstances in which any public procession is being held reasonably believes that it may result in serious public disorder, serious damage to property or disruption to the life in a community, and in the case of England and Wales, the noise generated by persons taking part may result in serious disruption of activities or the purpose of the persons organizing it is the intimidation of others with a view to compelling them not to do an act they have a right to do; may give directions imposing on the persons organizing or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions. Under Section 12(4) of the Public Order Act, a person who organizes a public procession and fails to comply with a condition imposed under Section12 is guilty of an offence. Similarly, a person who participates in a public procession and fails to comply with a condition imposed under Section 12 is guilty of an offence. Under Section 13 of the Act, where the chief officer of police reasonably believes that because of particular circumstances existing in any district, the powers under Section 12 will not be sufficient to prevent the holding of public processions in that district or from resulting in serious public disorder, they must apply to the council of the district for an order prohibiting, for a period not exceeding three months as may be specified in the application, the holding of all public processions in

83. Public Order Act, Cap. 64 sec 11(2).
84. Public Order Act, Cap. 64 sec 11(6).

the district. When the council receives this application, it may, with the consent of the Secretary of State, make an order either in terms of the application or with such modifications as may be approved by the Secretary of State.

Although Section 13(1) does not apply to the city of London or the metropolitan police district in the city of London, if at any time the commissioner of police of the metropolis reasonably believes that, because of particular circumstances existing in the area, the powers under Section 12 will not be sufficient to prevent the holding of public processions in that area, they may, with the consent of the secretary of state, make an order prohibiting for such a period not exceeding three months as may be specified in the order. A person who organizes a public procession that they know is prohibited by virtue of an order under this section commits an offence. Under Section 13(8), a person who takes part in a public procession that they know is prohibited by virtue of an order commits an offence.

According to Section 14 of the Public Order Act, if a senior police officer, with regard to the time and place at which any circumstances in which any public assembly is being held or is intended to be held, reasonably believes that it may result in serious public disorder, serious damage to property, or serious disruptions to the life of the community, the noise generated by persons taking part in assembly may result in serious disruption of activities of an organization or of the persons organizing; it is the intimidation of others with a view to compelling them not to do an act they have a right to do; the senior police officer may give directions imposing on the persons organizing or taking part in the assembly conditions as may appear to the officer as necessary to prevent the disorder, damage, disruption, impact, or intimidation. According to subsections 4 and 5 of Section 14, a person who organizes a public assembly and fails to comply with the condition is guilty of an offence, as is a person who participates and fails to comply with the condition.

In the case of *Directorate of Public Prosecution v Jones,*[85] the defendant and others were convicted for being part of a peaceful demonstration on a highway on which there was a prohibition of trespassory assembly in force according to Section 14A of the Public Order Act 1986. On appeal against the conviction, it was held that the public highway was a place of lawful assembly. Acts that do not involve a nuisance cannot be regarded as trespass, and a right of peaceful assembly to lawfully use the highway could exist subject to complying with restrictions.

Following the criticism of the police's handling of the G20 protests in 2009, particularly regarding the use of force and the failure to facilitate constructive dialogue with the G20 protestors, reforms of policing tactics were instituted, especially in dealing

85. (1999) 2 AC 249.

with protests. The current police guidelines emphasize that officers should start with a presumption of peaceful protests. The Guidelines allow the use of force only as a last resort and advise officers to maintain open communication with protestors before, during, and after a demonstration.

In 2019, police chiefs and ministers drafted a Public Order Bill in reaction to the so-called 'extinction rebellion' climate demonstrations of the same year, which caused major disruptions in public areas across London.[86] The Bill provided police chiefs with the power to impose more conditions on protests, such as setting start and finish times and noise limits. It also sought to criminalize climate activists' tactics, such as blocking public infrastructure, including buildings, transport, and roads.[87]

More recent protests in the UK have raised questions about the current framework for policing demonstrations. Some argue that police power against protestors should be strengthened.[88] It is argued that stronger legislation could enable the police to intervene more robustly against protests that cause lengthy and serious disruption. In response to these concerns, the government introduced new legislation to strengthen the police's powers. Part 3 of the Police, Crime, Sentencing and Courts Bill (the PCSC Bill) would make major changes to the way protests are policed in England and Wales. Among other things, it would significantly amend the police powers in the Public Order Act of 1986 to impose conditions on protests. Under Sections 12 and 14, the police can impose conditions on protests if they believe that the demonstration may result in serious disruption to the life of the community, serious damage to property, significant public disorder or intimidation of others. The amendments further allow the police to restrict the location, duration, and noise levels of protests. Notably, the Bill also removes the distinction between processions and static protests, implying that the same restrictions apply to both types of demonstrations. Protesters who fail to comply with these conditions may face criminal penalties, including imprisonment or fines.

As stated above, Articles 9, 10, and 11 of the ECHR form the basis for an individual's right to participate in peaceful protest. This can also be seen in the UK Human Rights Act of 1998. The right to freedom of peaceful assembly under Article 11 of the ECHR protects the right to protest peacefully (including static protests,

86. Reiss (n 75).

87. C Hilson, 'Public order bill: new law is designed to stop climate protests – but it could actually give activists a legal tool' 22 November 2022, https://research.reading.ac.uk/research-blog/2022/11/04/public-order-bill-new-law-is-designed-to-stop-climate-protests-but-it-could-actually-give-activists-a-legal-tool/ (accessed 15 November 2023).

88. J Brown 'Police powers: protests' https://blacklivesmatter.uk/Resources/SN05013.pdf (accessed 15 November 2023).

marches, parades and processions, and rallies).[89] It does not include participation in violent protests. This provision places both negative and positive duties on police officers. According to the case of *Plattform Ärtze für das Leben v Austria*,[90] the negative duty requires that the police must not prevent, hinder or restrict peaceful assembly except to the extent allowed by Article 11(2) of the ECHR. They must not impose unreasonable indirect restrictions on persons exercising their right to peaceful assembly, for example, by imposing a condition on the location of a protest that effectively negates its purpose. Preemptive measures taken by the police that restrict the exercise of the right to peaceful assembly are subject to strict scrutiny.

The police have the power to ban a public procession under the Public Order Act but no power to ban public assembly. Banning a public procession is justified only in extreme circumstances where there is a real threat of serious public disorder that cannot be prevented by other less stringent measures. The mere fact that a public procession may annoy or offend others is not a sufficient basis for banning it. Section 13 of the Public Order Act allows a chief officer of the police to apply to the local council for an order prohibiting the holding of a public procession for a period of up to three months, where the chief officer of the police reasonably believes that in particular circumstances, the powers to impose conditions on a public procession will not be sufficient to prevent serious public disorder. The council must obtain consent from the Secretary of State before imposing a ban. The blanket application of a ban on all public processions in a particular district raises issues of proportionality because there is no ability to consider the particular circumstances of each individual procession when such a ban is imposed.

### *B. South Africa*

South Africa is one of the countries with a unique history of protests and riots; therefore, it has the richest jurisprudence on public order management on the African continent.[91] The Public Order Police (POP) in South Africa is mandated by Section 205(3) of the Constitution of the Republic of South Africa, 1996, to maintain public order and protect and secure the inhabitants of South Africa and their property. The mandate implies that the POP maintains public order, first by ensuring public order during public gatherings and demonstrations, and then by intelligence-driven crime combatting and prevention. Public assemblies are governed by the Regulation of

89. *Bukta and Others v Hungary* (2007) (App. No. 25691/04) 51 EHRR 25.

90. (1988) 13 EHRR 204.

91. *In Re: Ex parte Minister of Safety and Security* [2002] ZACC 6; 2002 (4) SA 613 (CC); 2002 (7) BCLR 663 (CC) (Walters) para 26.

Gatherings Act No. 205 of 1993, which amended the 1966 Act. Section 36 of the Constitution of South Africa lists the factors that bear on the proportionality assessment that guides what constitutes a justifiable limitation in a democratic society. These factors include the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose, and the existence of less restrictive means to achieve the purpose of the limitation. It should be noted that the word 'including' in section 36 implies that the list is not exhaustive.

In *Mlungwana v The State of South Africa*,[92] Ndita J stated that the right to free assembly was not only pivotal to the freedom that gave rise to the Constitution, it remained a vital tool for the country's democracy and that a statutory provision criminalizing the convening of more than 15 people without notice was inconsistent with the constitutional right to freedom of assembly. The limitations of the provision were neither reasonable nor justifiable in an open and democratic society. This case followed a protest that occurred on September 11, 2013. Fifteen members of the Judicial Service Commission (JSC) travelled from Khayelitsha to the Civic Centre in Cape Town, pursuant to the decision to organize a gathering at the Civic Centre. They walked together in groups of five to the staircase leading to one of the entrances to the Civic Centre. There, they chained themselves to the railings. Although the JSC had decided to limit the number of participants in the assembly to 15 to avoid rendering the gathering notifiable, the applicants were cognizant of the risk that some other members might join the gathering.

They were joined by other participants. Despite the increased numbers, the gathering remained peaceful. Members of the public were not denied ingress to or egress from the Civic Centre. The police who were summoned to the Civic Centre requested that the protesters disperse. When the protesters failed to heed the police's call to disperse, they were arrested without resistance. Subsequently, 21 protesters were charged in the Magistrates' Court with contravening section 12(1) (a) of the Act, and alternatively attending a prohibited gathering (Section 12(1)(e)).

The Constitutional Court of South Africa, has also, while adjudicating on a public order management issue in *South African transport and Allied workers Union* (*SATAWU) & Anor v Garvas*,[93] held *inter alia* that;

> it is through the exercise of each other's right to freedom of assembly that the civil and other similar groups in our country are able to influence the political process, labor or business decisions and even

92. [A431/15] [2018] ZAWCHC 3.
93. 2013 (1) SA 83 CC.

> matter of governance and service delivery. The right to freedom of assembly is central in our constitutional democracy. It exists primarily to give a voice to the voiceless. This right will in many cases be the only mechanism available to them to express their legitimate concerns.

This means that the mere legislative regulation of gatherings to facilitate the enjoyment of the right to assemble peacefully and unarmed, demonstrate, picket, and petition may not, in itself, be a limitation of the right to freedom of public assembly. However, this should facilitate rather than suppress the enjoyment of this right.

Despite appreciable progress in the transformation of policing, South Africa has also faced significant reversals, as illustrated by police conduct in the infamous Marikana massacre of 2012, where the police killed 34 miners and seriously injured 78. This presents the need for critical innovations in policing accountability and demonstrates the need to transform police culture, even where strong institutions have been in place for several years.

### *C. Kenya*

According to the Right to Protest Report,[94] Kenyans frequently take to the streets to protest against a wide range of issues from education to sexual violence, corruption and environmental degradation, among others.[95] While appropriate measures prescribed by law are taken to organize peaceful protests, protesters' rights are often violated by law enforcement officers, resulting in deadly violence. Between January 2018 and July 2019, at least seven protesters were killed and 21 were injured during or as a result of protests.[96]

Article 37 of the Constitution of Kenya provides for the right to freedom of assembly. However, this is not absolute and can be limited under Article 24(1)(d) to ensure that the rights and freedoms of others are not prejudiced. Public order is governed by the Public Order Act, Cap. 56. Under Section 5 of the Act, no person is allowed to hold a public meeting or procession, except in accordance with the provisions of this section. Section 8 of the Act empowers the Cabinet Secretary for the Interior, on the advice of the Inspector General of the National Police Service, to impose a curfew on a given area if it is in the interest of public order and under such

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94. ARTICLE 19 'Uganda: Public Order Management Act, October 2013' (Available at http://www.article19.org/resources.php/resource/37331/en/uganda:-public-order-management-act) accessed 15 November 2023).

95. ARTICLE 19 (n 94) 7.

96. ARTICLE 19 (n 94) 3.

terms as are contained in the curfew order. In the case of *Ferdinand Ndung'u Waititu & 4 others v Attorney General & 12 others,*[97] it was stated that'in striking the balance certain controls on the individual's freedom of expression may in appropriate circumstances be acceptable in order to respect the sensibilities of others.' In addition, in *Gitali v National Organizations Board*,[98] court stated that every restriction on basic rights must pass the test of reasonableness and overriding public interest. Restrictions can be imposed and freedom may be curtailed provided this is justified by the 'clear and present danger' test enunciated in *Saia v New York*,[99] that is to say, that the mischief must be extremely serious and the degree of imminence very high.

Similarly, the East African Court of Justice (EACJ) in an appeal against the government of Tanzania in *Christopher Mtikila v Attorney General of Tanzania*,[100] held, in reference to the Constitution of Tanzania, that a law which seeks to limit or derogate from the basic right of the individual on grounds of public interest will be saved by Article 30 (2) of the Constitution only if it satisfies two essential requirements: First, such a law must be lawful in the sense that it is not arbitrary. It should make adequate safeguards against arbitrary decisions and provide effective control against abuse by those in authority when using the law. Second, the limitation imposed by such a law must not be more than what is necessary to achieve a legitimate objective. This is known as the principle of proportionality. If the law does not meet both requirements, it is not saved by Article 30 (2) of the Constitution of the Republic of Kenya and is null and void. However, the provisions of the Public Order Act do not meet these requirements. It is at the absolute discretion of the District Commissioner to determine the circumstances conducive to the organization of an assembly or a procession. There are no adequate safeguards against the arbitrary exercise of that discretion, and there are insufficient mechanisms for challenging the Commissioner's determination. The requirement for a permit infringes on the freedom of peaceful assembly and procession and is therefore unconstitutional. It should also be noted that, in the Tanzanian context, this freedom is rendered illusory by virtue of the fact that the power to grant permits is vested in the cadres of the ruling party.

The 2010 Constitution of Kenya explicitly requires policing to be conducted in accordance with the Bill of Rights. The Constitution provided for an operationally independent police service, headed by an Inspector-General, and guided and restrained in its operations by the principles of human rights, professionalism, non-partisanship, and accountability to the public. In this regard, there have been several developments

97. Civil Application No. NAI 140 of 2016 [2016] eKLR.
98. Petition No. 440 of 2013.
99. (1948) 334 US 558.
100. Ref No. 2 of 2007.

in Kenya concerning the enforcement of public order, aimed at transforming the police service and replacing the culture of police-public confrontations in protests and public gatherings. The National Police Service Act of 2011 sets out the process and conditions under which the police can use force. This is supplemented by new Service Standing Orders to guide police conduct. Within the police service, the Internal Affairs Unit was established to receive and investigate complaints of police misconduct. In addition, police recruitment and human resource management are now placed under an Independent National Police Service Commission. Furthermore, the Independent Policing Oversight Authority (IPOA) was created with the mandate of investigating serious cases of use of force by the police, as well as deaths resulting from police action. However, there is an emerging development in terms of the Public Order Management Amendment Bill of 2019, which seeks to create offences in relation to the breach of the provisions of the Act, extending powers to other stakeholders beyond the police.

### *D. Singapore*

Singapore is ranked at the top position for the safest country, with the highest levels of public order.[101] Public order management is governed by the Public Order and Safety (Special Powers) Act of, 2018 which repealed the Public Order (Preservation) Act.[102] The 2018 Act extends police powers to prevent and respond to any incident or likely incident involving serious violence or large-scale public disorder in the country. Under the Act, a police permit is required for a public assembly or procession if the purpose of the event is to demonstrate support for or opposition to the views or actions of any person, group of persons, or any government, publicize a cause or campaign, mark, or commemorate any event.

To apply for a police permit for an assembly or procession, one has to visit the 'go business licensing portal' for both the procedure and the actual application. Organizing or participating in a public assembly without a police permit is illegal and constitutes an offence under the Public Order Act. The enforcement of public order laws, like other policing laws, is principally led by the Singapore Police Force (commonly referred to as 'SPF')' and supported by other agencies, including the Singapore Investigations Bureau, Internal Securities Department, and the Singapore Checkpoints Authority. Furthermore, some law enforcement powers may be exercised

101. Institute for Economics and Peace (IEP) '2022 Safety Perceptions Index' https://www.visionofhumanity.org/10-most-peaceful-countries-in-the-world-in-2022/ (accessed 15 November 2023).

102. Public Order (Preservation) Act (Chapter 258 of the 1985 Revised Edition).

by non-governmental entities, such as auxiliary police forces and security officers.[103] Singapore's law enforcement system has resulted in crime being extremely low compared to that of other developed nations and the world. According to the Economic Intelligence Unit (EIU) Safe Cities Index, Singapore is often ranked as the safest or one of the safest places in the world, especially in terms of digital, personal, and infrastructure security.[104]

In January 2016, during Singapore's second Universal Periodic Review (UPR), the city-state received six recommendations urging the government to ensure the realization of the right to freedom of peaceful assembly.[105] The government delegation responded by justifying the severe restrictions on the exercise of this right with the need to ensure 'society's need for order and stability.' In June 2016, the government refused to accept four of the six recommendations, describing them as 'predicated on unfounded assertions' or 'based on inaccurate assumptions.'[106] It claimed that Singapore's laws allowed its citizens to enjoy the rights to freedom of expression and freedom of peaceful assembly, 'while protecting the larger public interests of preserving public order and security.' The government also stated that the rights to freedom of peaceful assembly had to be exercised 'in the context of broader societal interests.'

Further, on 1 October 2021, during the adoption of the third UPR of Singapore, its Permanent Representative to the UN in Geneva claimed that the country's laws on public assemblies ensured 'adequate space for an individual's rights of peaceful assembly and expression while preserving public order.'[107] Additionally, on 19 November, 2021, during the review of Singapore's initial report by the UN Committee on the Elimination of Racial Discrimination (CERD), the government reiterated these arguments. It noted that Singapore aimed to balance the right to freedom of assembly and the right to safety and security with the right of its people to go about their business without the disorders that might arise from protests, particularly given that the country was one of the smallest and most densely populated in the world.[108]

While a police permit is usually required for public assemblies or processions, [109] it is not required for certain activities. Some exempted activities include weddings, funerals, sporting competitions, the 7th Month Festival marts, charity events, and media

103. Public Order Act, Cap 256 sec 92; Singapore 'Crime & Safety Report' (2020) 3.

104. The Economist 'Cities Index' (2021).

105. United Nations Human Rights Council Universal Periodic Review – Singapore (2016) 5.

106. Mukalazi (n 46) 44.

107. Ministry of Foreign Affairs of Singapore, Adoption of the Outcome of Singapore's Third Universal Periodic Review 01 October 2021 https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2021/10/20211001-UPR-adoption (accessed 15 November 2023).

108. UN Committee on the Elimination of Racial Discrimination, 2021.

109. Ministry of Home Affairs, Maintaining public order in Singapore, 2020.

conferences.[110] Furthermore, an indoor public assembly is exempted from the police permit requirement if it meets certain criteria, including that it is held wholly inside a building or enclosed premise, the organizers and speakers are all Singaporeans, do not deal with any matter that relates directly or indirectly to religion, or may cause feelings of enmity, hatred, ill will, or hostility between different racial and religious groups in Singapore. This is fairly good legislation that aims to prevent and deter any attempts to disrupt social harmony, stability, or public peace while allowing the exercise and enjoyment of people's right to freedom of assembly.

## VI. CONCLUSION AND WAY FORWARD

The ability to assemble and act collectively is vital to democratic, economic, social, and personal development; to the expression of ideas; and to fostering engaged citizenry, which is the very essence of a free society. Apart from the good intentions of the law, the litmus test should be the likely effect of the restriction if improperly administered by those entrusted with enforcement. Once the right to assemble and associate is curtailed, all other rights suffer. In a law-abiding nation, the law plays a significant role in maintaining peace and public order. Like most African countries, Uganda has witnessed increased violence and social conflict due to inequality and political challenges. Consequently, this negatively affects people's freedom of assembly and public participation. The management of public order in democracies, especially emerging ones, presents unending dilemmas, questions, and challenges that speak to the theory and practice of policing. Politics and poor policing culture are largely to blame for the disrespect of human rights, especially the right to freedom of assembly.

Maintaining public order and stability in accordance with the rule of law is important for a country's prosperity and international standing. The underlying principle of managing public order is to regulate the exercise of the freedom to assemble and demonstrate peacefully and unarmed with others. What is necessary are laws, policies, and enforcement mechanisms that balance the competing interests of ensuring adequate space for the individual's rights of speech, assembly, and political expression with the need to maintain public order and stability in our multi-ethnic, multi-religious, and multi-party state. Unless respect for the rule of law is restored, efforts aimed at protecting and promoting human rights in general and the realization of the right to freedom of assembly in particular are unlikely to yield much. The government owes it to Ugandans to ensure that the impunity and lawlessness exhibited by members of the security forces comes to an end and that members of security agencies involved in

110. 1st and 2nd schedule Public Order (Exempt Assemblies and Processions), 2009.

violating the law are held accountable.

In addition, the police should develop comprehensive guidelines for law enforcement agencies to follow when managing public assemblies. These guidelines should emphasize the importance of facilitating peaceful assemblies while minimizing the use of force. Relatedly, these guidelines should inform the enactment of Public Order Management (Enforcement) Regulations pursuant to the powers conferred upon the Minister under Section14 of the POMA. In these Regulations, the Minister should prescribe fines and sanctions for law enforcement agencies that violate the law.

Finally, the Uganda police and other security agencies should be trained to manage peaceful assemblies, focusing on the principles of neutrality, transparency, and independence. Police must proactively work towards helping defuse tension and prevent dangerous escalations through interaction and dialogue.

# GENERATIVE ARTIFICIAL INTELLIGENCE: FANNING THE FLAMES OF DISINFORMTION IN UGANDA

Emor Benjamin*

**ABSTRACT**

*The Fourth Industrial Revolution has ushered in significant disruptions across various sectors of daily life. Among its most transformative developments is generative Artificial Intelligence (AI), which, while offering immense benefits, has also emerged as a powerful and largely unregulated vehicle for the spread of disinformation across Uganda's digital media platforms. This article examines the role of generative AI in worsening the disinformation crisis, its broader societal implications and assesses whether Uganda's current legal framework is adequately equipped to respond to these emerging challenges. It highlights the destructive link between generative AI and disinformation and notes the absence of a comprehensive legal framework against this phenomenon. Drawing on a comparative analysis, this article examines the legal and policy interventions adopted in other jurisdictions to combat disinformation, with the aim of informing Uganda's path towards possible solutions.*

## I. INTRODUCTION

Disinformation is rapidly becoming the cancer of our times. It refers to the deliberate spread of inaccurate or misleading information intended to deceive.[1] This differs from misinformation, which involves the sharing of false information without the intent to harm.[2] The key distinction lies in the element of malicious intent. With the rise of new digital technologies, the spread of both has become easier, but disinformation poses the greater threat – so much so that the European Union has identified it as a major concern[3]. In the digital age, disinformation is evolving rapidly, with social media platforms like Tiktok, Facebook, and X serving as powerful tools for its dissemination

* LL. B (Hons) MUK. Email: <emorbenji@gmail.com>.

1. N Bontridder & Y Poullet 'The role of artificial intelligence in disinformation' (2021) 3 *Data & Policy* e32.

2. As above.

3. European Commission 'A strengthened EU Code of Practice on Disinformation' https://commission.europa.eu (accessed 23 July, 2023).

to millions around the world.

The authors of disinformation are either instigators or agents.[4] Instigators create or fabricate false content while agents distribute and spread this content to the public.[5] In Uganda, platforms such as WhatsApp, Instagram, Tiktok, and X are key channels for both the creation and dissemination of disinformation. These platforms provide fertile ground for a multitude of tactics and tools that are employed in the artificial intelligence—disinformation alliance. Bots which are automated social media accounts run by computer programs are designed to generate posts.[6] ChatGPT is yet another generative artificial intelligence model that has become widespread. In *Sancton v OpenAi*,[7] the court noted how ChatGPT had gotten over 100 million users in only three months, which evinced its meteoric rise. With a simple prompt, it can be exploited to generate disinformation that quickly circulates across online platforms.

The motivations behind disinformation can be categorized as political, economic, or reputational.[8] Politically, disinformation is used to manipulate public opinion and advance specific agendas. With Uganda's general elections scheduled for 2026, the risk of political disinformation reaching its zenith is real. Economically, disinformation is premised on the clickbait model that attracts users to fake information so as to drive traffic.[9] Various Ugandans are vulnerable to such clickbait tactics given the wide use of social media by people of all ages. Reputationally, disinformation is driven by the desire for social validation. This includes seeking approval, attention or status within peer groups, families, or online communities.[10] The instigation, agency, and motivations are all buttressed by artificial intelligence which acts as the wind beneath the wings of the disinformation campaigns online.

## II. THE LINK BETWEEN GENERATIVE AI AND DISINFORMATION

Professor Klaus Schwab coined the term 'Fourth Industrial Revolution' to describe an era, beginning at the turn of the century, marked by rapid innovation, increasing

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4. C Colomonia and others 'The impact of disinformation on democratic processes and human rights in the world' (2021) *Brussels: European Parliament* 1-19.

5. As above.

6. S Earle 'Trolls, bots and fake news: The mysterious world of social media manipulation' *Newsweek* (New York) 14 October 2017.

7. *Sancton v OpenAI, Inc and others* 1:23-cv-10211 para 38.

8. T Hwang *Digital disinformation: A primer* (2017).

9. Colomonia and others (n 4).

10. C Wardle & H Derakhshan 'Information Disorder: Toward an interdisciplinary framework for research and policy making' Council of Europe Report DGI (2017).

sophistication, and seamless integration of computing technologies into everyday life. This revolution is transforming society and the global economy.[11] Artificial intelligence (AI) is one of its defining products and is attributed with the capacity to think and act in ways that resemble human intelligence.[12] Generative AI in particular, relies on large language models such as Chat GPT and is capable of generating original content including text, music, images and videos in response to text prompts from a user.[13] The development of text-to-image generative models and their multimodal counterparts has been transformational. These models can convert written prompts into detailed images or videos that are often indistinguishable from real photographs or human created media. They require no programming skills and are widely accessible[14] (often at no cost) through platforms like Dall-E-2, Stable Diffusion, Midjourney, Leondardo.ai, Sora and others.[15] Companies such as Open Ai, Microsoft and Google have introduced these tools to the consumer market, promoting their use in education, creative expression and knowledge acquisition.[16] What sets generative AI apart is its ability to condense traditionally complex and time consuming tasks such as writing, drawing, and filmmaking into an automated process driven by nothing more than language.[17]

### *A. Generative AI as a tool for Disinformation*

*1. The Global Perspective*—Artificial intelligence has enabled the rapid and large-scale dissemination of false and misleading information due to the efficiency and accessibility of its systems. These systems, particularly generative AI, enhance the realism and perceived credibility of such content. As Jerry Kaplan notes:

> When it comes to creating legitimate-sounding communications with minimal effort and expense, nothing so far comes close to the potential of [generative AI] GAI. Messages customized to interest a specific

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11. K Schwab *The Fourth Industrial Revolution* (2016) 11-13.

12. M U Scherer 'Regulating artificial intelligence systems: Risks, challenges, competencies, and strategies' (2016) 29 *Harvard Journal of Law & Technology* 360.

13. UN Human Rights (UNHR) 'B-TECH Generative AI Human Rights Due Diligence Project Concept Note' May 2023 https://www.ohchr.org/sites/default/files/documents/issues/business/b-tech/B-Tech-Generative-AI-concept-note.pdf (accessed 3 October 2023).

14. As Above.

15. As Above.

16. UNHR (n 13).

17. World Bank 'Generative Artificial Intelligence' (2023) 5 *Emerging Technologies Curation Series* 20.

> individual or appeal to their preconceptions can be churned out in unprecedented volumes.[18]

The shift from a supply-driven to a demand-driven model of content production means that generative AI has placed the tools of content creation directly into the hands of consumers. This has led to the rise of highly personalised content,[19] which poses an even greater challenge in regulating and combating disinformation. One of the most infamous generative tools is deepfake technology.[20] Its genesis can be traced back to 2017 when a reddit user named 'deepfakes' used it to superimpose the faces of celebrities onto pornographic videos.[21] Since then, its use has expanded to more dangerous domains, including fabricating evidence in court, spreading political propaganda, manipulating public opinion and eroding trust in democratic institutions.[22] In 2023, a deepfake video US President Joe Biden making transphobic remarks circulated widely online and was initially accepted as authentic.[23] That same year, Freedom House released a report[24] warning that generative AI has the potential to supercharge disinformation campaigns.[25] The report documented how deepfakes and similar tools were used in state-linked campaigns to smear political opponents.[26] In Venezuela, videos featuring fictional anchors from fake international news channels promoted pro-government narratives.[27] In Turkey, a video falsely portraying presidential candidate Kemal Kılıçdaroğlu as supporting an outlawed Kurdish militant group was widely circulated.[28]

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18. J Kaplan *Generative Artificial Intelligence; What one needs to know* (2023) 114.
19. As above.
20. M Masood and others 'Deepfakes generation and detection: State-of-the-art, open challenges, countermeasures, and way forward' (2023) 53 *Applied intelligence* 3974.
21. M Schreiner 'Deepfakes: How it all began - and where it could lead us' The Decoder (web blog) 28 April 2022, https://the-decoder.com/history-of-deepfakes/ (accessed 3 June 2023).
22. M Smerconish 'The Problem with Deepfakes' 19 February 2022 https://edition.cnn.com/videos/us/2022/02/19/the-problem-with-deepfakes.cnn (accessed 3 June 2023).
23. Reuters Fact Check 'Video does not show Joe Biden making transphobic remarks' 10 February 2023 https://www.reuters.com/article/fact-check/video-does-not-show-joe-biden-making-transphobic-remarks-idUSL1N34Q1IW/ (accessed 3 June 2023).
24. A Funk and others 'Freedom on the Net 2023: The Repressive Power of Artificial Intelligence' 21 November 2023 https://freedomhouse.org/report/freedom-net/2023/repressive-power-artificial-intelligence (accessed 07 December 2023).
25. Funk and others (n 24) 1.
26. As above.
27. Funk and others (n 24) 11.
28. Funk and others (n 24) 12.

In its supplementary paper on generative artificial intelligence, the UN B-Tech Generative AI project drawing from the UN Guiding Principles on Business and Human Rights made recommendations on how various actors can leverage these principles to tackle the risks posed by generative AI.[29] The paper outlines risk scenarios that illustrate the ways in which this technology can undermine the rights to freedom of expression and access to information:[30]

> Generative AI may be leveraged by malicious actors to create false but convincing content that is weaponised in targeted ways to threaten free expression–for example, the use of generative AI-created disinformation to harass journalists or political opponents into self-censorship. Female public figures are especially at risk of targeted online harassment. (b) The proliferation of inaccurate internet content created with generative AI tools–whether disinformation or misinformation–may drown out or obscure evidence-based and fact-checked information online, broadly threatening individuals' and communities' right to access information. The consequences of this, including an erosion of public trust in news media and political processes, may negatively impact a variety of other rights as well as democratic governance more broadly. (c) The underperformance of generative AI systems for speakers of low resource languages threatens these communities' right to freely express themselves using generative AI, including by limiting their ability to access information through generative AI systems. (d) The tendency of generative AI model outputs to overrepresent culturally hegemonic groups may result in a failure to produce a diversity of opinions and information by and about minority or historically oppressed groups. The resulting dearth of this information in online spaces represents a risk to the right to access information broadly. (e) Overbroad moderation of generative AI output may result in limitations to freedom of expression (e.g., prohibiting users from generating graphic outputs which may be intended for purposes of artistic expression or satire, or limiting the potential of generative AI to aid individuals with disabilities in

29. UN B-Tech Project 'Taxonomy of Generative AI Human Rights Harms: A B-Tech Gen AI Project supplement' 02 November 2023, https://www.ohchr.org/en/documents/tools-and-resources/taxonomy-generative-ai-human-rights-harms-b-tech-gen-ai-project (accessed 7 December 2023).

30. UN B-Tech Project (n 29) 10.

communicating their thoughts or emotions).

These risks speak to not only the misuse of the technology itself but also the broader dangers of leaving such powerful tools unregulated. Without safeguards, generative AI will continue to drive the spread of disinformation.

*2. The Ugandan Perspective*—Artificial Intelligence is deeply engrained in everyday life, shaping key aspects of human existence like education, healthcare, entertainment, culture, and industrial processes.[31] Recognizing its transformative potential, Uganda's National Task Force on the Fourth Industrial Revolution devised a plan to integrate artificial intelligence into the country's development agenda. In Uganda, AI powered tools are increasingly common. Digital assistants like Siri, and Alexa are in use, while transport applications such as Uber, Faras, and Safe Boda rely on artificial intelligence to connect drivers and riders to passengers. However, despite its immense promise, artificial intelligence also poses significant risks such as its role in fanning the flames of disinformation. This happens in two main ways: first, through the creation and manipulation of audio, text and video content; and second, through the rapid and wide-scale dissemination of that content online.[32]

At the start of 2023, Uganda had 11.77 million internet users,[33] about 24.6 per cent of the country's total population. Social media users numbered around 2.05 million, representing 4.3 per cent of the population. Between January and December 2023, social media users in Uganda increased by 10.3 per cent.[34] Although these numbers appear dismal in comparison to the larger economies, they represent a sizeable segment of the population who may be potential victims or perpetrators of disinformation.

During the Corona Virus (COVID-19) pandemic, disinformation campaigns heightened around the credibility of vaccines. Uganda's Ministry of Health was not spared. A deepfake video circulated online, showing the Minister for Health, Dr. Jane Ruth Aceng. allegedly being injected with an empty syringe.[35] The video sparked public hysteria and undermined trust in the vaccines. This posed a significant threat to

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31. FO Agama 'Safeguarding human rights in the age of Artificial Intelligence: The legal perspective' (2021) 3 *International Review of Law and Jurisprudence* 1.

32. Bontridder & Poullet (n 1).

33. Datareportal https://datareportal.com/reports/digital (accessed 3 June 2023).

34. As above.

35. The UG Post 'Health Ministry calls out journalists for spreading DeepFake videos of COVID-19 vaccination' 11 March 2021 https://theugpost.com/health-ministry-calls-out-journalists-for-spreading-deep-fake-videos-of-covid-19-vaccination/ (accessed 3 June 2023).

the public health efforts meant to protect against the spread of a highly infectious virus. Politicians have blamed AI for the spread of fake videos by opponents on several occasions. These cautions are not unfounded. There is a high likelihood of an escalation of disinformation campaigns facilitated by generative AI with the 2026 elections fast approaching. Uganda's 2021 general elections already showed such a pattern. Yet, there appears to be no concerted effort to address the risks posed by the misuse of such technology, even as it continues to rapidly evolve and become more accessible.

Generative AI has been linked to majority of the incidents discussed above. The rapid pace of technological advancement driven largely by big tech companies, continues with minimal regulatory oversight and poses a growing threat to the country. As demonstrated, both individuals and the state can be perpetrators of disinformation. This is why there is need for a regulatory legal framework that not only facilitates innovation but also protects the public.

## III. THE LEGAL FRAMEWORK ON DISINFORMATION

### *A. Constitution of the Republic of Uganda, 1995*

Under the Constitution, every Ugandan citizen has the right to express themselves.[36] In *Charles Onyango Obbo & Anor v Attorney General*,[37] the court affirmed that every individual has the right to hold their own opinion and that the freedom of expression extends to all kinds of ideas, whether they are true or false. However, disinformation, as previously explained, is inherently false information spread with malicious intent. Social media has worsened the problem. Platforms like Facebook, Instagram, WeChat, WhatsApp, and X have become dominant spheres for public discourse and are thus fertile grounds for the spread of disinformation.[38] Generative AI has heightened this risk. Its ability to produce images, texts and videos (through tools such as ChatGPT) with just a prompt creates a convenient avenue for generating and disseminating disinformation.

While the Constitution guarantees rights, it also provides for limitations where it is necessary to protect the public interest and prevent the infringement of other

36. Constitution of the Republic of Uganda 1995 art 29.

37. [2004] UGSC 1.

38. S A Mcmillan 'Antisocial Media: Internet Defamation, Online Libel and Free Speech in the Social Networking Era' 1 November 2019 https://www.bowlesrice.com/media/publication/1341_05-McMillan.pdf (accessed 3 June 2023).

rights.[39] In the *Charles Onyango Obbo* case, the court further clarified in what it called 'a limitation upon a limitation', that is: even these limitations must meet the threshold of being demonstrably justifiable in a free and democratic society. Disinformation that is fueled by artificial intelligence threatens the very fabric of a democratic society. Sovereignty rests with the people who must be able to choose their leaders through free and fair elections.[40] When generative AI is used to create fake publications or clone voices of political candidates (through tools like Eleven labs), it manipulates public opinion and undermines voter autonomy.

There is an important distinction to be made between free expression and hate speech. Disinformation campaigns, particularly those powered by AI generated text may be used to target vulnerable and marginalized individuals or groups. In Uganda, women in positions of authority have frequently been subjected to AI fueled disinformation, which is an exposition of the patriarchal attitudes within the society. Such acts go beyond mere expression. When the use of AI generated content infringes upon other constitutional rights such as the right to information,[41] equality,[42] privacy,[43] and the rights of women, it cannot be shielded under the protection of free speech. Clear and decisive measures should be taken to combat disinformation in the digital age. Failing to do so not only undermines rights, but the collective integrity of Uganda's democratic process.

### *B. Computer Misuse Act, Cap 96*

The purpose of the Act is to prevent the misuse and abuse of information systems.[44] Information systems, as defined under the Act denote any system for generating, storing, sharing, processing information and includes the internet.[45] social media denotes web applications that enable the exchange of user-generated content.[46] Social media applications like Facebook and WhatsApp have been popularized for communication and information sharing.

The convergence of artificial intelligence and information systems lies in AI's increasing ability to infiltrate, manipulate and exploit these platforms. Social media

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39. Constitution of Uganda (n 36) art 43.
40. Constitution of Uganda (n 36) art 1.
41. Constitution of Uganda (n 36) art 41.
42. Constitution of Uganda (n 36) art 21.
43. Constitution of Uganda (n 36) art 27.
44. Computer Misuse Act, Cap 96, Laws of Uganda, long title.
45. Computer Misuse Act (n 44) sec 1.
46. Kaplan (n 18) 59-68.

platforms such as X, WhatsApp and Facebook have become primary sources of information for many users, rendering them susceptible to coordinated campaigns of misinformation and abuse.

The Principal Act recognized the various ways in which computers could be misused such as through cyber harassment,[47] and cyber stalking,[48] However, it fell short of recognizing the transformative role of social media in amplifying the scale and impact of such abuses. The Amendment Act sought to address this gap.[49] It introduced key provisions aimed at curbing disinformation. Notably, hate speech, defined as any written or shared content that ridicules or demeans a person, is prohibited.[50] Disinformation campaigns frequently target individuals in public life, including celebrities and political leaders, employing tactics deliberately designed to damage reputation and erode public trust. Here, artificial intelligence becomes a powerful instrument in the service of such campaigns. Deepfake technologies enable the generation of deceptive videos, images and texts, which distort reality and provoke hostility, often targeting already marginalized groups such as women who are objectified and attacked with impunity.

Another important provision introduced by the Amendment Act is the offence of malicious information.[51] Section 28 provides that no person shall share malicious information about another through a computer system. Disinformation, by its very nature, often qualifies as malicious – it is false information disseminated with the intent to cause harm. The penalty for contravention is a fine not exceeding seven hundred and fifty currency points, imprisonment for a term not exceeding seven years, or both. This provision ensures that individuals who disseminate disinformation are held accountable for their actions. It reflects two fundamental rationales of criminal punishment: specific deterrence which seeks to prevent the offender from reoffending and general deterrence which aims to discourage similar conduct by others in society.

The role of social media in the broader context of computer misuse is also acknowledged under the Act.[52] It provides that any person who uses social media to distribute information prohibited under the laws of Uganda commits an offence. This provision not only recognizes the growing influence of digital technologies but also reflects the potential of social media to serve as a conduit for harm. Artificial

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47. Computer Misuse Act (n 44) sec 24.

48. Computer Misuse Act (n 44) sec 25.

49. Computer Misuse (Amendment) Act, 2022. These amendments have since been incorporated into the Computer Misuse Act, Cap 96 in the 7th Edition of the Revised Laws of Uganda.

50. Computer Misuse Act (n 44) sec 26(1)(a).

51. Computer Misuse Act (n 44) sec 28.

52. Computer Misuse Act (n 44) sec 29.

intelligence must be examined not only in terms of content creation but also its role in amplifying and disseminating that content.[53] Social media applications such as Facebook, WhatsApp, X and Tiktok serve as vehicles to spread disinformation. Often, disinformation is spread through fake accounts deliberately created to mislead the public. This trend becomes especially pronounced during election periods, where such accounts are used to propagate falsehoods across various online platforms. Social media also played a notable role in fostering vaccine hesitancy during the COVID-19 pandemic as fake accounts circulated conspiracy theories and false claims regarding the virus' origins and supposed cures.

### *C. Penal Code Act, Cap 128*

The Penal Code Act is Uganda's principal statute on criminal law. It criminalizes defamation.[54] Any person who by printing, writing, effigy or other non-verbal means unlawfully publishes defamatory matter with intent to defame another commits the offence of libel.[55] Defamation has continued to evolve alongside changes in media from traditional print and digital platforms. Artificial intelligence has introduced an entirely new dimension where disinformation is no longer confined to physical publications but is instead generated and disseminated digitally through screens and algorithmically driven platforms.

A defamatory matter is any matter likely to injure the reputation of a person by exposing them to ridicule or hatred or harming their standing in their profession. The challenge however, lies in the fact that defamatory law in Uganda predominantly covers traditional forms of publication such as print. This raises the critical question of whether AI generated texts, videos and images fall within the scope of 'publications' capable of constituting a charge for libel. A publication is broadly defined as 'print, writing, painting' or any other means by which defamatory matter is conveyed.[56] The traditional view is that libel is confined to expression in the physical form. However, the current criminal defamation law in Uganda does not explicitly extend to on-screen or digital publications that are defamatory in nature. In other jurisdictions, internet postings have been interpreted as falling within the scope of libel.

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53. Bontridder & Poullet (n 1).
54. Penal Code Act, Cap 128, Chapter XVI.
55. Penal Code Act (n 54) sec 62.
56. Penal Code Act (n 54) sec 164.

In *Too much Media LLC v Hale,*[57] the New Jersey Supreme Court held that defamatory internet postings constitute libel and are actionable under defamation law. As technology advances, so do the methods of defamation. What was once limited to print can now be posted and widely disseminated through online platforms. Online disinformation campaigns are a new arrow in the defamatory quiver, weaponized by anonymous actors hiding behind screens, often with artificial intelligence amplifying their impact. The law on defamation in Uganda remains underdeveloped in this regard and fails to reflect the essential legal principle that the law must evolve to meet the changing demands of the society.

A publication must be accompanied by the requisite intent. Under the Penal Code Act, the act of publishing defamatory matter must be done with the intent to defame.[58] Malicious intent in defamation should be distinguished from general malice in criminal law, as the former refers to situations where the defendant knowingly publishes a false statement.[59] The core objective of disinformation is to damage an individual's reputation. Deepfakes and texts disseminated through online platforms such as X and Facebook that are often targeted at specific individuals or groups intending to lower their reputation in the eyes of right-thinking members of society.

Defamation as a criminal offence under the Penal Code does not sufficiently reflect the realities on ground, particularly in light of online disinformation campaigns that deliberately target individuals in power or marginalize women through character assassination. From a civil perspective, as held in *AK Oils & Fats Ltd v Bidco Uganda Ltd,*[60] defamation is established where it is shown that a person's reputation had been lowered in the estimation of right-thinking members of society. Viewed through a political lens, disinformation can achieve this effect by fabricating images and audios that are widely disseminated through online platforms. Defamation has evolved, and the digital era has altered the modes through which defamatory content is spread. This is a reality to which the law must catch-up with.

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57. *Too Much Media LLC v Hale* 30 Media L. Rep. 1849 (N.J. 2011).

58. Penal Code Act (n 54) sec 162.

59. LYG Tenzer 'Defamation in the Age of Artificial Intelligence' (2023) 80 *NYU Annual Survey of American Law* 135.

60. *A.K Oils & Fats (U) Ltd V Bidco Uganda Ltd* (HCT-00-CV-CS-0715-2005) [2009] UGHC 80 (5 March 2009).

### *D. Presidential Elections Act, Cap 179*

Under the Presidential Elections Act, the candidates for the presidential elections are guaranteed the right to freedom of expression during their campaigns.[61] However, the Act prohibits the use of defamatory language or any language intended to incite hatred.[62] Under the same law, any person who, before or during an election, knowingly makes or publishes a false statement about a candidate's personal character with the intent to influence the election outcome commits an offence.[63] Generative AI complicates this safeguard. It can be used to fabricate videos, clone voices, and simulate statements that a candidate never made, thereby giving an unfair advantage to their opponents. Uganda heads to the polls in 2026, and platforms such as X, Facebook will likely be fertile grounds for the germination of disinformation. Voice cloning tools like Eleven labs require only a small sample to produce convincing imitations, while face-swapping technology can be deployed to create realistic yet entirely false portrayals of political figures.

The question to ask is whether the law is adequate to combat disinformation that is spread through AI. This provision can effectively combat disinformation given that it embodies elements of liability, like a person an AI generated false statement about a presidential candidate to gain unfair advantage. However, the problem is exacerbated when the perpetrator is a foreign entity or person. The internet is like a global universe that can connect persons worldwide, making it easier for persons to commit crimes across different jurisdictions by merely using communication platforms like Facebook or WhatsApp. The potential of persons from outside Uganda to interfere in the upcoming elections cannot be ignored. The danger that could spell armageddon for the Ugandan electoral process is foreign interference by actors outside from abroad who would employ generative artificial intelligence to do their bidding.

### *E. National Information Technology Authority Act, Cap 200*

The mandate of the National Information Technology Authority (NITA-U)[64] is to, among other roles, coordinate, supervise and monitor the utilization of information technology in private and public spheres.[65] According to the Act, information

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61. Presidential Elections Act, Cap 179 sec 24(1).
62. Presidential Elections Act (n 61) sec 24(3).
63. Presidential Elections Act (n 61) sec 71.
64. National Information Technology Authority Act (NITA Act)Cap 200, sec 3.
65. NITA ACT (n 64) sec 4(c).

technology includes 'any equipment or interconnected systems that are used in the acquisition, storage, manipulation or processing movement or reception of data and information'.[66] It is questionable whether this definition is sufficiently broad to cover all forms of information technology. The wording in the statute however mentions 'interconnected systems' used in the movement of data and information. In the current digital era, social media has become a major medium for the storage and exchange of data. Thus, social media amounts to an 'interconnected system' and therefore arguably falls within the scope of the Act and the mandate of NITA-U.

Furthermore, according to the NITA-U Regulations, information technology products[67] include hardware, software and peripherals.[68] Generative AI squarely falls within this definition of information technology because it is software that uses large language models and algorithms to generate data. These regulations require that any person who provides information technology products must be certified by NITA-U.[69] However, the common generative AI variations like ChatGPT and Eleven labs that are used for generating texts and audios are not certified. NITA-U continues to face challenges in the implementation and enforcement of the law.

### *F. Electronic Transactions Act, Cap 99 and the Regulations thereunder*[70]

The Electronic Transactions Regulations define a service provider as 'any public or private entity that provides to the users of its service the ability to communicate by means of a computer system'.[71] The Regulations mandate a competent public authority which requires information from a service provider regarding an alleged illegal activity in accordance with section 31(2) of the Act,[72] to request for the information from the service provider through the Authority.[73] The lawmakers envisaged investigation processes in line with dealing with unlawful activities committed by service providers (such as social media services) and the technical ability of the Authority to retrieve this

66. NITA ACT (n 64) sec 1.

67. The National Information Technology Authority, Uganda (Certification of Providers of Information Technology Products and Services) Regulations (NITA Regulations), 2016.

68. NITA Regulations (n 67) reg 2.

69. NITA Regulations (n 67) reg 3.

70. Electronic Transaction Act (ETA), Cap 99; Electronic Transactions Regulations (ETR), 2013.

71. ETR (n 70); ETR (n 70) reg 2.

72. ETA (n 70) sec 31(2).

73. ETA (n 70); ETR (n 70) reg 19.

information. Section 28 of the Act[74] states that,

> a service provider shall not be subject to civil or criminal liability in respect of third-party material which is in the form of electronic records to which he or she merely provides access if the liability is founded on publication and dissemination or infringement of any rights subsisting in relation to the Act.

This provision insulates social media companies and others from liability for actions of their users. Nevertheless, the profit motive may incentivise such companies against taking actions that tackle disinformation because they would stand to lose active users.

*G. Data Protection and Data Privacy Act, Cap 97*

Disinformation relies heavily on data. Data goes beyond just text and includes images, sounds, codes, computer programs and databases. As a result, Ugandan law offers protection (though indirectly) against disinformation because it prohibits the collection and processing of data without consent. Section 3 of the Act lays down the principles of data protection, one of which is accountability to the data subject of the data used. Section 35 also makes it an offence to 'unlawfully obtain, disclose or procure the disclosure to another person of personal data held or processed by a data collector'. It seeks to involve the data subject at all points during which their data will be used. This is a safeguard against illegal use of data which includes acts of disinformation especially where it involves personal data and special personal data.

## IV. IMPACT OF AI ON HUMAN RIGHTS IN UGANDA

Artificial intelligence has a nexus with human rights. Human rights are inherent to all human beings. Every person is entitled to them without discrimination of any kind based on religion, age or other prohibited grounds.[75] In Uganda, these rights are enshrined in chapter four of the 1995 Constitution. The state is obligated to respect, protect and promote these rights and freedoms.[76] These obligations may be positive for the state to fulfill these rights or negative with respect to not infringing on them.

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74. ETA (n 70).
75. Agama (n 31) 1-8.
76. Constitution of Uganda (n 36) art 20.

In the current and rapidly evolving digital landscape, generative AI presents many risks to human rights.

### *A. Right against discrimination*

The Constitution of Uganda protects all persons against discrimination on the basis of 'sex, race, colour, ethnicity, origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability'.[77] However, generative AI plays a major role in disseminating economic, political and social biases that exacerbate already existing manifestations of discrimination. It makes it possible to generate discriminative information faster and more efficiently. Therefore, with the increasing rate of disinformation campaigns in Uganda by use of social media accounts, generative AI's continued unregulated growth poses a direct threat to persons in as far as their right against discrimination is concerned.

Disinformation promotes hate speech, digital violence, cybercrime and digital repression, all of which infringe on the rights of different groups of people to freely express themselves. This frustrates the pluralistic character of a democratic society. Notable examples of these are Sri Lanka and Malaysia where Muslims are targeted.[78] A tragic case study is Myanmar. For over half a decade, members of the Myanmar military conducted a disinformation campaign on Facebook which targeted the Rohingya, and paved the way for widespread genocide, brutal attacks, persecution, and rape against this group. The disinformation campaign against the Rohingya was particularly effective because Facebook is so widely used in Myanmar, and many of its 18 million internet users regularly confuse the social media platform with the Internet itself.[79] Politicians have also alleged the use of this technology against them on the basis of their political ideology or opinion.

### *B. Right to privacy*

The act of interfering with the privacy of person, home or other property is prohibited under Uganda's Constitution.[80] Uganda is also a signatory to the International

77. Constitution of Uganda (n 36) art 21(2).

78. A Ethirajan 'Discrimination and harassment haunt Sri Lanka's Muslims' 14 January 2022 https://www.bbc.com/news/world-asia-59900733 (accessed 3 June 2023).

79. B Epstein 'Why it is so difficult to regulate disinformation online' in WL Bennett & S Livingstone (eds) *The Disinformation Age Politics, Technology, and Disruptive Communication in the United States* (2021) 193.

80. Constitution of Uganda (n 36) art 27.

Covenant on Civil and Political Rights (ICCPR) whose Article 17 (1) provides that:

> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation; and (2) everyone has the right to the protection of the law against such interference or attacks.

The ICCPR goes beyond the Constitution and includes 'honour and reputation' in the normative content of the right to privacy of a person. If a person's image is used without his/her permission[81] or for purposes beyond what they permit, this act could amount to a breach of privacy.[82] The use of generative AI in Uganda allows for the production of images and texts of people without their consent, and the duplication and alteration of videos which damage the image and reputation of persons. One such example was the creation of deepfake videos of the American actor Tom Cruise which spread on TikTok of him doing things that he would ordinarily not do.[83] The videos were so believable and appreciated that it prompted their maker, Chris Ume to found a deepfake company. The videos had so many views in such a short period of time and this perfectly illustrates the danger of generative AI as a tool of disinformation.

### *C. Freedom of expression*

This right is internationally recognized under various human rights instruments like the Universal Declaration of Human Rights,[84] the International Covenant on Civil and Political Rights,[85] and the African Charter on Human and Peoples' Rights.[86] The 1995 Constitution of the Republic of Uganda guarantees every person a right to express themselves.[87] The question that is always canvassed is the extent of that constitutionally

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81. *Asege Winnie v Opportunity Bank (U) Ltd & Anor* (High Court Civil Suit No. 756 of 2013) [2016] UGCommC 39 (accessed 2 May 2016).

82. As above.

83. R Metz 'How a deepfake Tom Cruise on TikTok turned into a very real AI company' 6 August 2021 https://www.cnn.com/2021/08/06/tech/tom-cruise-deepfake-tiktok-company/index.html (accessed 3 June 2023).

84. UN General Assembly, Universal Declaration of Human Rights (1948) art 19.

85. UN General Assembly, International Covenant on Civil and Political Rights, United Nations, (1966) art 19.

86. Organization of African Unity (OAU), African Charter on Human and Peoples' Rights (1981) art 9.

87. Constitution of Uganda (n 36) art 29.

guaranteed freedom: every individual has a right to express themselves, but does this encompass false information? In *Charles Onyango Obbo & Anor v Attorney General*,[88] the court made mention of the fact that the right of freedom of expression extends to opinions and all information whether false or true. However, this is to be counterbalanced with the limitation under Article 43. The court pronounced that the freedom of expression is a competing interest between two objectives, one being the primary objective which is dominant, protecting freedom of expression, and the other secondary to limit in exceptional circumstances. One of the two scenarios where the freedom of expression can be limited is, in the public interest where, for instance, such expression results into alarm, fear or disruption of public order. Disinformation is a legitimate ground for the limitation of the freedom of expression because not only is the information false but it also infringes on other fundamental human rights.

The digital age especially in the era of artificial intelligence has significantly shaped the enjoyment of freedom of expression. On the one hand, these technologies enable and structure online speech; on the other, the algorithms behind them increasingly obstruct that very freedom. The appeal of artificial intelligence lies in its capacity to breed creativity. Generative AI has revolutionized how information is produced, imparted, and received. The media and the press, long regarded as 'public watchdogs,' play a critical role in monitoring and informing the public. However, generative AI has disrupted the media landscape, challenging the traditional role of mainstream media.

Journalistic institutions are now forced to compete with an always-active, borderless digital force disseminating information (accurate or otherwise) across platforms like X, TikTok, and Facebook. The press, once entrusted as a reliable conduit of public information, now finds its authority weakened by the pervasive potential of AI-generated content to fabricate and distort. Deepfake videos and images are always in circulation on the online platforms, with publications being posted and such information being reposted and shared whether innocently or deliberately. The online disinformation campaigns deliberately use the digital environment to fabricate information which spreads like a bush fire. The fallout of this is that the quality of the information being imparted on the public is tainted by the proverbial brush of falsehoods and mistruths.

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88. *Charles Onyango Obbo and Anor v Attorney General* (Constitutional Appeal 2 of 2002) [2004] UGSC 1 (10 February 2004).

### *D. Right to information*

The right to access information is a fundamental right guaranteed under the Constitution.[89] This right includes the ability to impart and receive information. Nevertheless, the right of access to information does not invariably mean that people must have access to the truth. Irrespective of this, it is important to note that the spread of fake news is against established international standards. This right to receive information is directly hamstrung by disinformation campaigns. Generative AI programs like ChatGPT3 and DALLE have shown enormous potential to generate persuasive text and imagery which has raised alarm bells over the potential use of such technologies as a vehicle for disinformation. The fabrication of fake news using AI brings this aspect into a finer light. Fake news in this context refers to newspapers and articles that are factually incorrect but are designed to appear credible.[90] The use of generative AI is intended to cloth such fake news with perceived credibility. This blurs the lines between falsehoods and truth.[91]

Generative AI has been used to fabricate information on social media with the creation of deep fake videos, texts, audios, among others. Generative AI tools have also been used to distort the reality of information or even cloth false information with perceived legitimacy. Like the proverbial sheep and goats, it has now become difficult to separate false from true. Generative AI tools have the ability to generate false information that is later disseminated on social media platforms which have many users in Uganda. When persons see this information, they further circulate to friends and family which creates a chain of persons receiving and sharing false information.

### *E. Rights of women*

Under the 1995 Constitution, women are accorded equal rights and dignity as men.[92] Disinformation may disrupt this constitutional design. This is because there is a more insidious form of disinformation preys on gender.[93] Gendered disinformation in its full array encompasses the deliberate spread of false information or misleading narratives that reinforce harmful gender stereotypes, marginalize women, and preclude their full

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89. Constitution of Uganda (n 36) art 41.
90. As above.
91. As above.
92. Constitution of Uganda (n 36) art 33.
93. ME Veritasia and others 'Gendered disinformation: a pernicious threat to equality in the Asia Pacific' (2023) *Media Asia* 1-9.

participation in the all spheres of life.[94] Gendered disinformation is an attack on the dignity of women, especially when such disinformation is fueled by using artificial intelligence and other modern technologies.

Generative AI is a weapon that is often used to discredit women through disinformation campaigns. The disinformation campaigns include smear campaigns, character assassination and use of deepfakes. Deepfake pornography videos reflect an epitome of the weaponization of AI to spread disinformation so as to destroy women's rights. Jess Davies, in her documentary, warned about the dangers of such technology when she said 'imagine a world where any woman could end up in a porn film. Without their consent…This is digital trafficking. This is a sex crime.'[95] These words resonate with what is currently happening globally, especially with the deepfake production of pornography. In the United States, for instance, artificial intelligence is used to create deepfake pornography videos. Deepfake Lab (DFL) is famous in the United States as the software that generates the most deepfake pornography videos. Further, the page *MrdeepFakes* has a myriad of subscribers. *Mrdeepfakes'* videos are AI deepfake generated pornography videos of female celebrities that feature women like Jenna Ortega, Ariana Grande, Scarlett Johansson, among others, which are easily accessible with typing in the words in the google search engine.

A 2016 survey revealed that 41.8 per cent of women in parliaments worldwide were victims of gendered disinformation, with humiliating and sexualized images of them being disseminated on social media.[96] Disinformation campaigns in the Ugandan context are majorly geared towards women in leadership positions. Gendered information seeks to discredit, marginalize females in positions of power who threaten the traditional patriarchal structures.[97] In Uganda, gendered disinformation includes manipulation of information through artificial intelligence. The political arena being a major battlefield for gendered disinformation is rooted in the increased visibility of

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94. As above.

95. BBC News 'Deepfake porn: Could you be next?' BBC Documentary 21 October 2022 https://www.bbc.com/mediacentre/proginfo/2022/42/deepfake-porn-could-you-be-next (accessed 3 June 2023).

96. E Judson 'Gendered disinformation: 6 reasons why liberal democracies need to respond to this threat' 12 July 2021, https://demos.co.uk/blogs/gendered-disinformation-6-reasons-why-liberal-democracies-need-to-respond-to-this-threat/ (accessed 3 June 2023).

97. K Wilfore 'The gendered disinformation playbook in Germany is a warning for Europe' 29 October 2021 https://www.brookings.edu/articles/the-gendered-disinformation-playbook-in-germany-is-a-warning-for-europe/ (accessed 3 June 2023).

women in politics.[98] The rhetoric that gendered disinformation employs is often meant to perpetuate rape culture and the sexual objectification of women.[99] Deepfake pornography videos that are created and circulated on social media platforms like Facebook and X are an epitome of this. Gendered disinformation perpetuates inequality. In the decision of *Uganda Association of Female lawyers & Ors v Attorney General,*[100] Justice Mpagi asserted that inequality that is based on gender is a colonial appendage that is inconsistent with the principle of equality enunciated under Uganda's constitution.

### *F. Right to vote*

This right is broadly understood as the right of individuals to take part in public affairs and to vote.[101] In Uganda, citizens of eighteen years and above are entitled to vote under the Constitution.[102] In *Kizza Besigye v Electoral Commission and Yoweri Museveni*,[103] the Supreme Court held that the right to vote is an enunciation of the right of persons to choose their leaders, which expresses sovereignty. Throughout Uganda's murky history, significant threats to the right to vote have been recorded like suspected disenfranchisement of voters, and electoral misconduct during elections as evidenced in some of the cases that have been filed in court before.

However, artificial intelligence, especially generative AI, would present unprecedented election dynamics in the election field. The divisive nature of politics pushes persons to adopt means to win at all costs and therefore artificial intelligence, especially in the wake of the upcoming Ugandan election in 2026, would offer the necessary means to gain an advantage. Yet, just as generative AI has targeted celebrities, politicians are equally vulnerable during electoral processes. Elevenlab has the potential to clone voices of politicians when sample audios are uploaded to the software, thereby fabricating information and making them say things that they have never said.

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98. S Bradshaw & A Henle 'The gender dimensions of foreign influence operations' (2021) 15 *International Journal of Communication* 23.

99. Veritasia (n 93) 1-9.

100. *Uganda Association of Female lawyers & Ors v Attorney General* Constitutional Petition No.2 of 2003.

101. ICCPR (n 85) art 25.

102. Constitution of Uganda (n 36) art 59.

103. *Besigye v Electoral Commission & Museveni* (Election Petition No.1 of 2006) [2007] UGSC 24 (30 January 2007).

Under General Comment No. 25 on article 25 of the International Covenant on Civil and Political Rights on the right to vote, the Human Rights Committee pronounced that voters should express their will to vote without any influence nor distortion of that expression.[104] Generative artificial intelligence through its ability to create deepfake videos and to manipulate audios can spread disinformation which is targeted against a political rival to ruin their reputation. However, the overarching impact here is the infringement of the right to vote given that many Ugandans have access to platforms like twitter, WhatsApp, Facebook where such information can be disseminated and can influence persons' decisions in the polls.

### *E. Right to health*

Under the International Covenant on Economic Social and Cultural Rights, it is provided that all persons are entitled to the highest attainable standard of physical and mental health.[105] Under the Ugandan constitution, the right to health is not explicitly stated. However, it is entrenched in a specific provision under Chapter Four which provides that all other rights not mentioned under the chapter are not negated.[106] General Comment No. 14 on the right to health elucidates on the normative content of the right to health.[107] The facet that is relevant in this discussion is the right to information. Under the aforementioned General Comment, it is stated that one strand of the right to health is accessibility to health-related information.[108] Therefore, persons have the right to receive information about health-related issues.

Disinformation, especially when it is fanned by artificial intelligence, infringes on that right. This was evident in the disinformation campaigns during the Covid 19 pandemic. The outbreak of the Covid 19 pandemic correlated with an increase in information consumption, the fall out being fake news, pseudoscience and conspiracy theories.[109] The European Union called out a myriad of disinformation during the Covid 19 pandemic like, for instance, that drinking bleach or alcohol can cure

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104. UN Human Rights Committee 'CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (1996).

105. UN General Assembly 'International Covenant on Economic, Social and Cultural Rights (1966) art 12.

106. Constitution of Uganda (n 36) art 45.

107. UN Economic and Social Council 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant) (2000) para 8.

108. ICESCR (n 105) art 12(b).

109. Colomonia and others (n 4).

coronavirus,[110] and that coronavirus is a creation of the world elite to reduce world population.[111] Such disinformation put lives at risk given that people chose to ignore professional advice and engaged in risky behavior. During the Covid 19 pandemic, social media acted as a double-edged sword where on the one hand it was used as a platform to provide health related information to the general public while on the other it was a vehicle for disinformation.[112] Social bot spreaders on social media were used to disseminate this disinformation.

A social bot is an algorithm that produces content and interacts with humans on social media.[113] Social bots are able to spread disinformation in two ways; first by amplifying interactions with the content as soon as it is created or by clothing it with legitimacy, thereby increasing public exposure to the created content.[114] This tactic enabled posts on conspiracies about the Covid 19 pandemic to be widely circulated on the internet. The effect was that such disinformation gravely affected people's health as scientific guidelines were ignored. Vaccine hesitancy around the world was evident, owing to the fake news and controversies that surrounded covid-19 vaccines like Johnson and Johnson.[115]

### *F. Right to freedom from torture*

The Ugandan Constitution prohibits subjecting any person to torture, cruel or degrading punishment or treatment.[116] In *Attorney General v Susan Kigula and others*,[117] the court asserted that under no circumstances can torture or cruel or degrading treatment be permitted. Torture includes both physical and mental acts that cause extreme suffering. The mental or psychological element of torture is much ignored yet mental or psychological torture can be as excruciating as physical torture.

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110. European Commission 'Tackling Coronavirus disinformation' https://commission.europa.eu/strategy-and-policy/coronavirus-response/fighting-disinformation/tackling-coronavirus-disinformation_en (accessed 3 June 2023).

111. As above.

112. As above.

113. E Ferrara and others 'The rise of social bots' 1 July 2016 https://cacm.acm.org/research/the-rise-of-social-bots/ (accessed 3 June 2023).

114. K Shu and others 'Combating disinformation in a social media age' (2020)10 *Wiley Interdisciplinary Reviews: Data Mining and Knowledge Discovery* e1385.

115. A Fichera 'Post Misleads on J&J Vaccine, DNA' 2 February 2023. https://apnews.com/article/fact-check-johnson-johnson-vaccine-adenovirus-dna-101266877973 (accessed 3 June 2023).

116. Constitution of Uganda, (n 36) art 24.

117. Constitutional Appeal No 03 of 2006

Disinformation which, as already mentioned is false information that is deliberately spread, can have a massive impact on the mental state of individuals. The psychological torture aspect can also be seen through the prism of generative artificial intelligence being used to create nonconsensual sexualized pornographic deepfake videos of women and girls, which greatly affects their psychological welfare.[118] Such deepfakes are circulated on social media like twitter and Facebook, greatly affecting the victims given that their public image is lowered among the right-thinking members in the community. The psychological impact can be elucidated through the tort of defamation. In *Best Kemigisha v The Red Pepper Publication,*[119] Justice Ssekana defined a defamatory publication as a publication of a statement that tends to lower the reputation of a person in the opinion of right-thinking members of the community. Defamation has evolved through print, radio, television and the internet.[120] The age of artificial intelligence has exacerbated the disinformation problem.

In the *Ben Kiwanuka v Obote (1964)* case, the court was emphatic that it was not sufficient that the statement lowered the reputation of the person amongst the Baganda but had to be amongst the right-thinking members in Uganda. Uganda has very many individuals who use social media. If these false statements are made concerning public figures, they could cause great emotional stress on the individuals defamed. The motivation behind disinformation involves falsely spreading false information to harm someone. The reputation of someone being tainted brings about psychological torture that cannot be undermined. The fast-paced development of generative artificial intelligence is bound to change the dynamics of defamation, especially as we fully transition to a digital age era.

From the preceding discussion, it can be deduced that disinformation has implications on the enjoyment of human rights. It is a substantial threat to the democratic principles protected and enshrined in the Constitution. It deepens the human rights crisis, and leads to the loss of trust of public institutions in Uganda. 'Fake news' gets as much attention as genuine important and credible news. Its impact has the potential to, or perhaps already has, altered the manner in which our society behaves. Information is the heart of current times and feeds all areas of society. If the heart is infected, the rest of the body organs are at risk of failure. The development of

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118. United Nations Office of the High Commissioner for Human Rights 'Taxonomy of Human Rights Risks connected to Generative AI' https://www.ohchr.org/sites/default/files/documents/issues/business/b-tech/taxonomy-GenAI-Human-Rights-Harms.pdf (accessed 3 June 2023).

119. *Best Kemigisha v The Red Pepper Publication* Civil Case no. 162 of 2012.

120. Tenzer (n 59).

technology has worsened this phenomenon by providing faster, easily accessible and more efficient means for the spread of disingenuous information. Uganda, unlike the United Sates, has a chance to get ahead of the problem with less than ten percent of its population active social media users. It is no longer the actions of a few but actions of sophisticated powerful and wealthy individuals and organisations who have effectively built an industry of disinformation. A case in point is the scenario where Russia was accused of allegedly meddling in the US elections and the use of state entities in various countries.

Our society is governed by two phenomena; the force of law and social norms.[121] Credible information is a key component of the two. Ignorance of the law, for example, is not a defence in law. One must, if he cannot be in the know all the time of all laws, at the very minimum, not become subject to false portrayals of what the law is. As to social norms, credible information is an enabler of society's own system of accountability. Leaders will be ostracised for abuse of power and criminal actions once information of such acts is made available to the public.[122] Voters must also use information to make an informed decision on the candidate of their choice. Government bodies, and various entities that deal with protecting rights of citizens, including the police, rely on information to act. The above argument therefore illustrates the importance of genuine credible information for a free and democratic society and the need to take measures to safeguard it. These measures must be cognisant of the sophistication of the problem and it is likely that dealing with it will not be business as usual.

## V. CONCLUSION AND RECOMMENDATIONS

There is a consensus among experts that self-regulation remains the most suitable type of regulation for Artificial intelligence systems. This would require that they follow a set of guidelines and implement the same on their systems for users. This methodology has been applied to the regulation of social media platforms such as Facebook. This has however left certain gaps that encourage the commission of cyber-crimes. One example is the *Muwema v Facebook case*[123] in which the plaintiff sought injunctions for defamatory content to be taken down. Court denied these because Facebook's potential defence of innocent publication would succeed and that the injunction could not do much in any case. This presents some of the risk with leaving such platforms or

121. Bennett & Livingstone (n 79) 163-164.
122. As above.
123. *Muwema v Facebook Ireland Ltd* [2016] IEHC 519.

systems to self-regulate. The CEO of Facebook himself admitted that his platform had too much power and committed to create an independent board that could review appeals by users.[124]

### *A. Regulation*

In order not to stifle innovation therefore, the creation of an independent body tasked with dealing with disinformation would ensure a focused and targeted fight against the vice. This body must be independent from government in order to function effectively without political manipulation. The threat of disinformation enhanced by generative AI requires as much resources and focus as it can get.

A separate government body could also be established to actively counter false information in relation to its institutions. This is possible because the government has the resources needed to review millions of accounts on social media and offer accurate information. Alternatively, disinformation committees could be formed within different government departments tasked with the same role. Examples include the Cybersecurity and Infrastructure Security Agency in the United Sates which dispelled false information during the 2020 elections.

In regard to generative AI systems, as already mentioned The NITA (Certification of Providers of Information Technology Products and Services) Regulations, 2016 requires certification and registration before rolling out of a product or service.[125] Whether a Gen AI system qualifies could be up to contention due to the definition of information systems in the regulations. A better definition would be one specifying and encompassing AI systems.

### *B. Fact checking*

This can be a panacea to the disinformation problem that is fueled by artificial intelligence. There are various fact checking organizations that are established to counter disinformation. At the African regional level, *Check* is the oldest fact checker which was established in 2012. The organization has worked diligently in countries like Nigeria, Kenya and Senegal to fact-check widely circulated media about prominent persons. *PesaCheck* is another organization that has been at the fore front of the fight against online disinformation that is fueled by generative artificial intelligence. *Uganda PesaCheck*, for instance, has been responsible for screening and fact checking various

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124. Bennet & Livingston (n 79) 200.
125. NITA Regulations (n 67) reg 3.

information and declaring fake news events like the Museveni's arrest, among others. These fact checking organizations are able to detect and sieve out the false information from what is actually true. The reach and speed are vital cogs in the wheel of fact checkers and the conundrum that is faced is that these fast checkers do not reach a wide enough number of users fast enough.[126] The problem is exacerbated by the fact that persons are not aware of the presence of these fact checkers, which makes them more vulnerable to the receipt of fake news in a digital age where various stories and headlines are not only communicated in mainstream media but also the social media platforms like Facebook, Tiktok, X, among others.

### *C. Trust enhancing practices*

Online platforms should veer towards the adoption of trust enhancing practices. This involves measures that leverage on artificial intelligence and machine learning to tackle the disinformation phenomenon.[127] Media curation whereby credible sources of information are pointed out in the digital environment can be adopted to counter the fallout of disinformation. Generative AI has the ability to create images, videos that obscure the lines between the falsity and the reality. The circulation of such disinformation hampers the trust of the persons in their governments. Media curation enables the trust to be built amongst the public in the information that they receive given that they have constitutionally guaranteed right of access to information.[128]

### *D. Media and Information Literacy*

Media and information literacy programs can be adopted to address the disinformation phenomenon. These include education programs that are geared towards reducing the appeal of conspiracy theories. The Covid-19 pandemic is emblematic of the threat of conspiracy theories that brought about vaccine hesitancy. In such times, what would have been needed is the media and other stakeholders to come together to educate the public on what is true and what is blatant falsehood. This is not the panacea to the disinformation phenomenon, but it can go a long way in making the people aware of the capability of deep fake technology and how they can fact check such information.

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126. European Commission 'A multi-dimensional approach to disinformation' https://www.ecsite.eu/sites/default/files/amulti-dimensionalapproachtodisinformation-reportoftheindependenthighlevelgrouponfakenewsandonlinedisinformation.pdf (accessed 3 June 2023).

127. As above.

128. As above.

In conclusion, it has been clearly demonstrated that AI tools have advanced tremendously over the past few years, leading to the creation of voice cloning, deepfakes and related technologies that are much easier to access and more efficient than the tools that were used in the past. Whereas the advancement of such technology has been regarded as progress, these tools have however fuelled the spread of disinformation. Intentional dissemination of false information is now easier and more believable, orchestrating the decline in trust in institutions, democracy and elevation of existing human rights challenges. Uganda must pay more attention to this vice before it does any more damage as the article above suggests has already done so. There is an ever-growing need for a harmonised artificial intelligence law to adequately focus on the novel developments in this area such as the use of generative artificial Intelligence to disinform. The unique problem as identified above is the lack of efforts towards mitigating the vice in the country. It is taken lightly and as such continues to threaten fundamental human rights in Uganda.

# BEYOND THE BATTLEFIELD: THE PERSPECTIVES OF SOUTH SUDANESE REFUGEE SURVIVORS OF MALE RAPE IN UGANDA

Robert Senath Esuruku* & Pius De-Saxone Ojara**

**ABSTRACT**

*Male rape is a taboo subject in many societies and South Sudan is no exception. Yet the country's protracted conflict has revealed the disturbing extent to which men and boys are subjected to rape and other forms of sexual violence. The notion that men cannot be victims of sexual violence in conflict has been debunked by the South Sudanese experience. The socially endorsed mannerisms of masculinity that do not permit men to be victims because they are 'strong' and 'cannot be sexually violated' are a mere delusion. Throughout the conflict, rape has been condoned, normalized, and weaponized to terrorize women, girls, men, and boys across South Sudan. Perpetrators have targeted men because they believe that they are the pillars of their communities and to violate them is to destroy the community fabric itself. Rape has thus become a weapon of war, used to humiliate, emasculate and subjugate perceived enemies by undermining their cultural identity and dignity. This article examines the perspectives of South Sudanese refugees on male rape, focusing on men both as perpetrators, and as victims. It explores the lived experiences of survivors, the context in which these violations occur and the lasting impact of male rape on their lives. Finally, it offers policy recommendations to address the phenomenon of male sexual violence.*

## I. INTRODUCTION

In December 2013, a ferocious civil war broke out in South Sudan between the Sudan People's Liberation Army (SPLA) led by President Salva Kiir, and the armed opposition group, the Sudan People's Liberation Movement/Army-in Opposition (SPLM/A-IO) led by current First Vice President, Riek Machar, along with other armed

* Associate Professor in the Faculty of Management Science at Muni University. Email: <rs.esuruku@muni.ac.ug>, or <robert.esuruku@gmail.com>.

** Director of the Refugee Law Project, Makerere University. Email: <dir@refugeelawproject.org>, or <piusojara@gmail.com>.

groups and allied militias.[1] Sexual violence, particularly male rape, is part of the weapons used in the South Sudanese civil war. The violent conflicts between communities, which are mainly associated with competition over land, cattle, and grazing, have resulted in the death of hundreds of thousands of people, with many others subjected to rape and forced displacement. Political and military leaders have actively fueled this violence by arming the communities involved.[2] Additionally, ongoing conflict in parts of Central Equatoria between the government forces and the armed opposition group – the National Salvation Front – has resulted in attacks and rape of civilian populations.

The scale and severity of sexual violence in South Sudan increased with the escalating conflict between the SPLA and the SPLM/A-IO.[3] The fighting rapidly escalated into a brutal conflict that primarily affected the Unity, Upper Nile, and Jonglei states. This conflict led to the breakdown of social and justice systems in many parts of the country and exacerbated an already pervasive culture of impunity.[4] As a result, perpetrators are emboldened to continue committing acts of sexual violence while survivors are denied access to justice and support. The widespread acts of rape and sexual violence in this armed conflict can be attributed to South Sudan's patriarchal society (maintained by state institutions) that relegates women to an inferior status and creates the conditions in which such violence thrives.[5]

The conflict has been largely perceived as ethnic, with Kiir and the SPLA representing the interests of the Dinka, and Machar and the SPLM-IO representing the interests of the Nuer.[6] The SPLM-IO characterizes Kiir and the SPLA as an

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1. T Edwards *A bloody Nile: How South Sudan imploded just two years after independence* (2016); RS Esuruku 'Ethnically-charged wartime sexual violence: The agony of the South Sudanese refugees in Uganda' in OS Úrsula & HG Brauch (eds) *Decolonising conflicts, security, peace, gender, environment and development in the Anthropocene* (2021); C Pinaud *War and genocide in South Sudan* (2021).

2. Pinaud (n 1).

3. Amnesty International 'We did not believe we would survive: Killings, rape and looting in Juba' 24 October 2016, https://www.amnesty.org/en/documents/afr65/5028/2016/en/ (accessed 19 August 2023).

4. Human Rights Watch (HRW) 'They are killing us: Abuses against civilians in South Sudan's Pibor County' 12 September 2013, retrieved from https://www.hrw.org/sites/default/files/reports/southsudan0913_ForUpload_3.pdf (accessed 19 August 2023).

5. UN Human Rights Council 'Conflict-related sexual violence against women and girls in South Sudan - Conference room paper of the Commission on Human Rights in South Sudan' (A/HRC/49/CRP.4) https://reliefweb.int/report/south-sudan/conflict-related-sexual-violence-against-women-and-girls-south-sudan-conference (accessed 19 August 2023).

6. Edwards (n 1); Pinaud (n 1).

authoritarian regime only interested in securing Dinka hegemony.[7] The Government of the Republic of South Sudan (GRSS) characterizes the SPLM-IO as a group of Nuer nationalists whose goal is to take power at any cost. In reality, ethnicity is just one element of a far more complex and multi-faceted conflict, rooted in two decades of civil war in Sudan and in which political, cultural, and socioeconomic factors play significant roles. The failure to resolve grievances from previous conflicts, a proliferation of arms, conflict over natural resources, lack of economic development, a pervasive culture of impunity, and a lack of separation between the political and military spheres are all factors that have contributed to the current crisis.[8]

The scale and severity of sexual and gender-based violence (SGBV), particularly conflict-related sexual violence, has increased significantly since the outbreak of the December 15 conflict.[9] The main perpetrators of this violence are often men known to the survivors as well as members of security forces and militia groups.[10] Reports attribute acts of rape, gang rape, abduction, sexual assault, sexual slavery, castration, and forced stripping to the SPLM/A and SPLM/A-IO, militias allied to both armed groups and unidentified uniformed men.[11] Conflict-related sexual violence has been inflicted on men, women, and children in large numbers, particularly in Unity State.[12] Sexual violence in South Sudan has been weaponized: used as a reward and incentive for young men and fighters, and as a tool of building ethnic solidarity to mete out retribution against perceived enemies.[13] The objective is to destabilize, displace and destroy the very fabric of communities. This scourge has had the most profound and devastating impact on victims, their families, and communities.

It is extremely difficult to measure the true scale of SGBV in South Sudan due to insecurity and very low levels of reporting.[14] However, anecdotal evidence from humanitarian workers and journalists on the ground suggests that in areas like Bentiu and Nyal in Unity State, the majority of women have been raped. While all forms of SGBV appear to have risen since December 2013, the most dramatic increase has been

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7. As above.
8. As above.
9. Amnesty International (n 3).
10. As above.
11. Edwards (n 1); Pinaud (n 1).
12. Human Rights Watch (HRW) 'They burned it all: Destruction of villages, killings, and sexual violence in Unity State, South Sudan' 22 July 2015, retrieved from https://www.hrw.org/sites/default/files/report_pdf/southsudan0715_web_0.pdf (accessed 19 August 2023).
13. HRW (n 4).
14. Pinaud (n 1).

in sexual violence perpetrated by armed men linked to security forces and militias.[15] The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) assessment team in South Sudan found that sexual violence is a common feature of village attacks carried out during the conflict. Rape and gang rape are the most prevalent forms of such violence and are committed both during and after the attacks.[16]

According to the South Sudan Law Society (SSLS), such violence is most prevalent in the Greater Upper Nile region.[17] Unity State has been particularly hard hit since March 2015, when the GRSS launched an offensive to take control of portions of central and southern areas occupied by SPLM-IO forces. Sexual violence is trivialized by law enforcement officials and the community, with survivors often forced to marry the perpetrators as a remedy.[18] Outside the urban areas, medical, psychosocial, and legal services are almost non-existent, leaving survivors with little reason to report these crimes or seek support. There is no functioning justice system in South Sudan capable of providing accessible and predictable justice for civilians nationwide.[19]

The notion that men are always perpetrators and women are always victims of sexual violence reinforces harmful gender stereotypes and obscures the reality faced by male victims. Recognizing men as victims of sexual violence challenges traditional gender norms and highlights the vulnerability of men in conflict situations. This article examines the perspectives of South Sudanese refugees on male rape, shedding light on the experiences of men both as perpetrators and victims of male rape. It seeks to understand the context in which male rape occurs and its impact on the lives of survivors. The study also provides policy recommendations to address the phenomenon of male sexual violence.

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15. HRW (n 12).

16. UNOCHA 'South Sudan: Response to the Sudan Crisis Situation Report No. 11' 19 September 2023, https://www.unocha.org/publications/report/south-sudan/south-sudan-response-sudan-crisis-situation-report-no-11-15-september-2023 (accessed July 17 2023).

17. Legal Action Worldwide 'Accountability for sexual violence committed by armed men in South Sudan' 19 May 2016, https://www.legalactionworldwide.org/wp-content/uploads/Legal-Action-Worldwide-Report-on-Accountability-for-Sexual-Violence-Committed-by-Armed-Men-in-South-Sudan-1.pdf (accessed 17 July 2023).

18. HRW (n 12).

19. UNHRC (n 5).

## II. MASCULINITY, CIVIL WAR, AND MALE RAPE

There is growing interest in researching male rape in Africa, as it has become increasingly common, with thousands of men estimated to be affected.[20] Yet the issue is often underreported due to stigma, shame, and cultural norms. This makes it critical to understand the full scope of the problem. The limited understanding of male rape in war contexts hinders the development of appropriate support systems and services for survivors. Breaking the silence and challenging the stigma around male rape is crucial for promoting justice, healing, and integration of survivors. Researching male rape in war contexts not only offers insights into gender and masculinity but challenges traditional notions and stereotypes about male victimhood.[21] Understanding the trauma and mental health impacts on male survivors can help inform effective care and treatment strategies.

Investigating male rape in war contexts exposes human rights violations and promotes advocacy for protection and support. Documenting male rape cases can support efforts to hold perpetrators accountable and advocate for justice and reparations. Research can inform the development of tailored support and services for male survivors addressing their unique needs and challenges.[22] Further, studying male rape in African conflicts contributes to a broader understanding of sexual violence in war globally and informs more inclusive international responses and policies. Conducting research with survivors of male rape in war can promote a deeper understanding of this complex issue, support the healing of the survivors, and advocate for justice and accountability.

Dominant feminist and humanitarian discourse has historically focused on women and girls as the primary victims of sexual violence, perpetuating the

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20. J Depraetere and others 'Big boys don't cry: A critical interpretive synthesis of male sexual victimization' (2020) 21 *Trauma, Violence & Abuse 991 - 1010; H Liebling and others 'South Sudanese refugee survivors of sexual and gender-based violence and torture: Health and justice service responses in Northern Uganda' (2020) 17 International Journal of Environmental Research and Public Health* 1685; T Olaluwoye and others 'Forms of sexual violence perpetrated in conflict and post-conflict settings against South Sudanese men resettled in two communities in Uganda: an exploratory qualitative study' (2023) 17 *Conflict and Health* 49; R Traunmüller and others 'The silent victims of sexual violence during war: Evidence from a list experiment in Sri Lanka' (2019) 63 *Journal of Conflict Resolution* 2015-2042.

21. P Schulz *Male Survivors of Wartime Sexual Violence: Perspectives from Northern Uganda* (2021) 26–47.

22. GBV AoR 'Guidance to gender-based violence coordinators addressing the needs of male survivors of sexual violence in GBV coordination' 11 November 2021, retrieved from https://gbvaor.net/sites/default/files/2021-11/Guidance%20Note%20Male%20Survivors_FINAL29.9.21.pdf (accessed on 29 August 2023).

misconception that sexual violence is exclusively a female experience.[23] This narrow focus has contributed to the erasure of male rape survivors and the entrenchment of harmful gender stereotypes and heteronormative assumptions. This article employs an intersectional lens to examine the experiences of South Sudanese male rape survivors in Uganda. Intersectionality theory recognizes the interconnected nature of social factors such as gender, sexuality, ethnicity, displacement, and masculinity in producing unique forms of marginalization and oppression.[24] We employ this framework to analyse how these intersecting factors shape the lived experiences of South Sudanese male rape survivors in Uganda.

We argue that dominant feminist and humanitarian discourses have contributed to the invisibility of male rape survivors by reinforcing harmful gender stereotypes and heteronormative assumptions. Our analysis explores the complex ways in which intersectional factors shape the lived experiences of male rape survivors, often leading to the denial of their suffering, the erasure of their identities, and the lack of access to support services. The main focus of our analysis is the intersectional invisibility of South Sudanese male rape survivors in Uganda. We emphasize the need for an intersectional approach that recognizes the diverse experiences and responds to the specific needs of survivors. This analysis prioritizes the voices and experiences of survivors to promote a more inclusive and equitable response to sexual violence in refugee settings.

## III. RESEARCH METHODOLOGY

Researching male rape presents distinct and complex ethical challenges that require careful preparation, sensitivity and thoughtful dissemination approaches of the research findings. The participants of this study included both survivors of conflict related sexual violence and individuals who had not experienced such violence. Most of the survivors were male individuals, along with the institutions providing them with support. To protect the safety and confidentiality of the participants, all data obtained in the research was recorded anonymously. The research participants were advised not to discuss their involvement with others to minimize the risk of misunderstandings and social stigma.

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23. GE Cunniff 'Vulnerability and victimization: Rethinking key concepts in feminist discourses on sexual violence' (2016) 42 *Signs: Journal of Women in Culture and Society* 71-98; P Scully 'Expanding the concept of gender-based violence in peacebuilding and development' (2010) 5 *Journal of Peacebuilding & Development* 21–33.

24. K Crenshaw 'Mapping the margins: Intersectionality, identity politics, and violence against women of color' (1991) 43 *Stanford Law Review* 1241-1299.

In the study, we preferred oral consent to written forms, and in some cases (such as where gatekeepers required written consent) consent forms were signed by the research team on behalf of the participants to preserve anonymity while adhering to ethical standards. This ensured that the signed forms could not be traced back to individual participants. Participation was entirely voluntary and all respondents were informed of their right to decline or withdraw from the exercise at any point.

During our study, we discovered that some of the male survivors of sexual violence were also perpetrators of male rape who had taken sanctuary in the refugee settlements due to fear of revenge. There were also cases where participants had taken refuge in refugee settlements because of threats against their lives in their country of origin. Some participants had fled from their communities to escape shame and dishonour and find a sense of healing in a new environment. In all these cases, assurances of confidentiality were very critical, and we repeated them at the end of each interview to help ease any remaining fears or anxieties.

### *A. Study area and respondents*

This study was conducted in Adjumani district, located in the Ma'di sub-region which shares borders with Moyo, Obongi, Amuru districts and South Sudan. The district has a projected population size of 463,694 comprising 240,800 host communities and 222,894 refugees and asylum seekers. There are 19 refugee settlements scattered throughout the district.[25] As shown on the map below, most settlements are in relatively underdeveloped areas.

25. Office of the Prime Minister and United Nations High Commissioner for Refugees Uganda Comprehensive Refugee Portal (2023), https://data.unhcr.org/en/country/uga (accessed 29 August 2023).

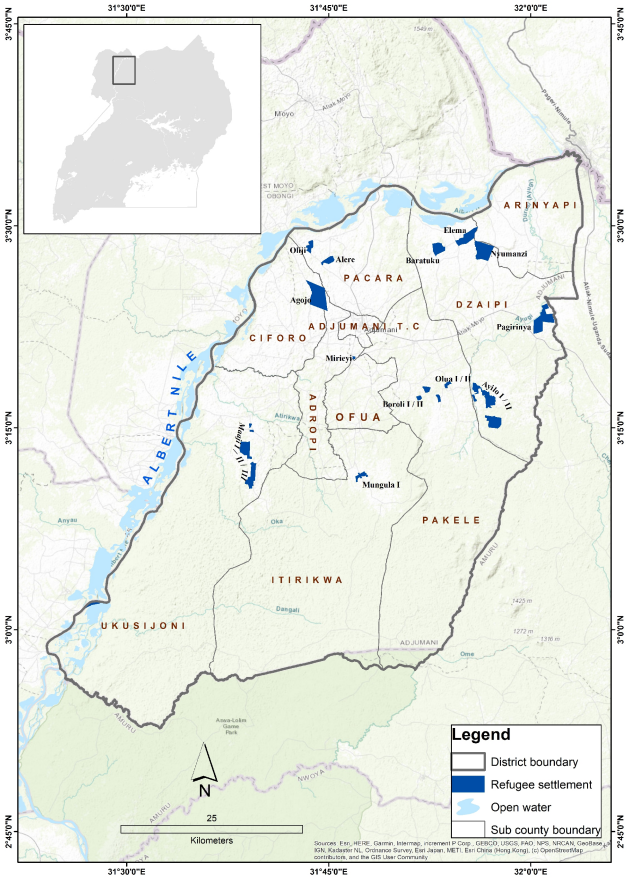


*Fig 1: Map Showing Refugee Settlements in Adjumani District*

The respondents for this study were drawn from Mirieyi, Elema, Ayilo I, Ayilo II, and from self-settled refugees residing in Adjumani town. Through snowball sampling, we managed to reach 21 survivors of male rape residing in the above refugee settlements. The researchers had a clear understanding of the local context and the major languages spoken in the refugee settlements, such as Juba Arabic, English, Swahili, Ma'di, and other South Sudanese languages.

### *B. Gaining access and recruitment of respondents*

Gaining access to survivors of South Sudanese male rape was difficult due to stigma, fear, and mistrust. Recruiting participants proved difficult due to the nature of the delicate topic we were studying. In the beginning, some survivors were ashamed or embarrassed to disclose their experiences due to societal expectations of masculinity. Others were reluctant to share their experiences fearing that it may undermine their perceived strength and masculinity. One survivor, during a telephone conversation to schedule an interview asked plainly whether he could trust us. This highlights the distrust survivors may feel towards researchers, fearing judgment, blame, or betrayal. Addressing these challenges required sensitivity, cultural competence, and a trauma-informed approach to create a safe and supportive environment for male survivors to share their experiences.

We relied on our earlier research experience and relationships to gain access to the participants of this study.[26] Building on established relationships with the respondents from our previous work, we were able to reconnect with them and expand our reach. Utilizing snowball sampling, we asked our participants to refer survivors who were willing to participate in the study. This approach had tremendous results because the initial participants acted as gatekeepers referring to us others they trusted, thus creating a chain of trust. The participants were also connected to other participants with similar experiences, increasing the relevance of the sample. The snowball sampling allowed us to gain a deeper understanding of the context of the study. Through social networks and trust, we were able to reach the South Sudanese male rape survivors in the refugee settlements.

Societal beliefs and stigma surrounding masculinity often perpetuate the silence and secrecy around male rape. Traditional gender roles and expectations can make it difficult for men to disclose experiences of sexual violence.[27] Addressing this challenge requires a nuanced and culturally sensitive approach to challenge the harmful gender stereotypes. This necessitates collaborating with local leaders and communities to help raise awareness and promote support for the survivors of male rape. Culturally appropriate language and terminologies can help to reduce stigma and promote understanding. For example, using proverbs such as 'a man's strength is not just in his muscles' or 'a wounded lion still roars' can help reframe traditional masculinity.

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26. Esuruku (n 1).

27. A Ghosh & A Kumar 'Cruelty Against Men: Neglected Narrative from a Male's Perspective' (2024) 6 *Journal of Psychosexual Health* 117.

Using non-judgmental language is essential in creating a safe and supportive space for the survivors of male rape. Employing metaphors such as 'big man' (*rajul kabir*) can help convey the phenomenon of male rape without casting blame or judgement. In certain environments, communities referred to the survivors as 'brave men' (*alrijal alshujean*) or 'men of courage' (*rijal alshajaea*), terms which recognize the survivors' strength in sharing their experiences. These descriptions acknowledge the harm without shame or blame. In our study, we chose to use the expression 'warrior' (*muharib*), a term that acknowledges strength and reliance in the face of trauma. The phrase 'men of honour' (*rijal alsharaf*) was also used to restore the dignity and respect of survivors of male rape. Such descriptions help to rebuild lost masculinity in a way that is culturally sensitive and empowering without perpetuating harmful gender stereotypes.

### *C. Ethical considerations*

Conducting sensitive research on the subject matter of survivors of South Sudanese male rape in a refugee context poses unique challenges that can impact the validity, reliability, and ethics of the study. Sensitive research such as this often involves vulnerable populations, requiring extra precautions to ensure participants' safety and privacy. We had to navigate complex ethical guidelines, obtain informed consent, and maintain confidentiality. We were aware that breaches of confidentiality or exploitation can have severe consequences, damaging participants' trust and reputations.

We were also aware that our own biases, experiences, and positionality could influence data collection and analysis, potentially leading to flawed conclusions. Acknowledging and addressing these biases was crucial to avoid distorting our findings. Unchecked biases can lead to inaccurate or incomplete results, perpetuating harmful stereotypes or reinforcing existing social exclusion and misrepresentation. Biased research can violate ethical principles of objectivity, respect for participants, and fairness compromising research integrity. We were also aware that biased research can damage our credibility, leading to mistrust and skepticism among the participants. By acknowledging our own biases, we were able to take deliberate steps to mitigate their impact, increase the credibility of the research, and promote more inclusive and equitable findings. For example, in some cases, we found ourselves making assumptions that some survivors bore responsibility for their assault or viewing male survivors solely through the lens of vulnerability. In other moments, we overlooked how cultural differences shape the understanding and experience of sexual violence. Recognizing and addressing these biases was critical as it allowed us to prioritize the voices and experiences of survivors ensuring that the research remained respectful, inclusive, accurate and grounded in the realities of those most affected.

After our in-depth interviews with the survivors, we referred them to the Transcultural Psychosocial Organization (TPO) for support. TPO is a non-governmental organization dedicated to providing mental health and psychosocial support to vulnerable populations. Since 1992, TPO has provided mental health psychosocial support services to refugees in Adjumani district, and other refugee hosting districts in the West Nile region with support from UN Women and the Government of Japan. However, we are unable to confirm whether the survivors followed through with the referrals since TPO reported that they did not receive them at their facilities.

## IV. WHY DO MEN RAPE IN WAR?

The use of sexual violence as a weapon of war against men is being reported more often than it was in the past. Sexual violence against men in wartime has been the subject of growing attention by scholars in recent years.[28] Historically, wartime sexual violence has largely focused on the rape of women, which has often been seen as symbolic of conquest. Raping the civilian population of a conquered territory was the consummation of the conquistador's victory and the ultimate defeat of the conquered.[29] According to Bronmiller, men of a conquered nation traditionally view the rape of 'their' women as the ultimate humiliation, a sexual *coup de grace*.[30] Rape by a conquering soldier destroys all the remaining illusions of power and property for the men of the defeated side. The body of a raped woman becomes a ceremonial battlefield, a parade ground for the victors. The act inflicted upon her is a message passed between men as proof of victory, loss, and defeat for the other.[31]

In the case of the South Sudan civil war, the respondents gave several reasons why rape is often used as a weapon of war. It is a way for the perpetrators to assert power and control over their victims and community.[32] Rape is also used to terrorize, humiliate, and destroy communities as provided in Table 1 below:

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28. S Sivakumaran 'Sexual violence against men in armed conflict (2007) 18 *European Journal of International Law* 253-276; RC Carpenter 'Recognizing gender-based violence against civilian men and boys in conflict situations' (2006) 37 *Security Dialogue* 83-103; W Russell 'Sexual violence against men and boys' (2007) 27 *Forced Migration Review* 22-23; S Solangon & P Patel 'Sexual violence against men in countries affected by armed conflict' (2012) 12 *Conflict, Security & Development* 417 - 442.

29. R Garrido 'Mapping the invisible rape: Men and boys as victims of sexual violence in armed conflict' (2021) 159 *Nação & Defesa* 151-168.

30. S Brownmiller *Against our will: Men, women and rape* (1975); Carpenter (n 28).

31. Brownmiller (n 30); Carpenter (n 28).

32. HRW (n 12).

Table 1: Why Men Rape Men in War

| Why Men Rape Men in War | Explanation |
|---|---|
| Destruction of masculinity | Rape is used to destroy a man's sense of masculinity, making them feel vulnerable and powerless. |
| Humiliation and Shame | Humiliate and shame men, making them feel inadequate and emasculated. |
| Control and Dominance | Assert control and dominance over men, stripping them of their dignity and autonomy. |
| Destruction of Cultural Identity | Destroy cultural identity and heritage, including traditional masculine roles and expectations. |
| Intimidation and Fear | Instill fear and intimidation, making men less likely to resist or fight back. |
| Breakdown of Social Structures | Breakdown social structures, including family and community, leading to chaos and disorder. |
| Psychological Warfare | A form of psychological warfare aimed at destroying men's mental and emotional well-being. |
| Gender-based Violence | A form of gender-based violence aimed at destroying traditional gender roles and expectations. |

Source: *Summaries from In-depth Interviews & Key Informant Interviews; Human Rights Watch, 2015; Legal Action Worldwide, 2016; Amnesty International, 2016.*

The respondents noted that male rape in the South Sudanese war has its origins in the earlier wars between the Government of Sudan and the people of Southern Sudan. During that time, sexual violence was mainly committed by the Sudanese Armed Forces against the people of Southern Sudan, and primarily targeted women and girls. They observed that it was not as widespread as it is today. The use of male rape has become more common in the ongoing South Sudanese conflict as one participant observed:

> Rape of men in civil war and intercommunal wars in South Sudan was not common. We only heard stories of the Sudanese Armed Forces raping men in Darfur and southern Sudan, but it was not extensive. Rape of men in war became noticeable in the South Sudanese civil war which was started by *Dut Ku Beny*, a Dinka special force in Juba, against other tribes, especially the Nuer. This inhuman act then

> degenerated into revenge and later spread to other parts of the country. Rape of men is also now used in intercommunal wars to destroy and subdue communities.[33]

Our findings from the in-depth and key informant interviews indicate that rape in war affects entire communities. As Pinaud, observes, on the evening of 15 December 2013, the Nuer and Dinka factions of the Tiger Battalion split after an attempt to disarm Nuer soldiers. Fighting quickly spread from the SPLA barracks in Giyada to the ammunition store in New Site, as both groups sought control of the weapons. The violence intensified on the morning of December 16, when the Dinka militia known as *Dut Ku Beny*—recruited by President Kiir and General Malong and including members of *Mathiang Anyoor*—reinforced the government side. The *Dut Ku Beny*, also referred to as the Luri boys, raped and killed Nuer civilians in New Site along Bilpam Road, and later in Gudele and Mia Saba.[34]

### *A. Men as Perpetrators of Male Rape*

The role of men as perpetrators of male rape in war is a disturbing and often overlooked aspect of sexual violence. However, it is important to acknowledge that men can be perpetrators of male rape, and that rape can occur in various contexts. In the South Sudanese war, male rape was used in detention centers, displacement camps, and during military raids. Perpetrators used sexual violence as a weapon of war to humiliate and demoralize enemies, assert dominance and control, punish or intimidate civilians, enforce conscriptions or loyalty, and dismantle cultural and social structures. Notably, acts of male rape in war are not limited to enemy forces but are also committed by fellow soldiers, commanding officers, and allied groups.

In South Sudan, the perpetrators of male rape include government forces, opposition forces, militia groups, tribal militias, armed cattle herders, foreign forces, and even UN peacekeepers.[35] The primary targets of sexual violence are civilians – especially women and girls – who are often subjected to it as a weapon of war, a means of control, and a tool of intimidation.[36] The reasons for sexual violence are multifaceted and include factors such as ethnic rivalries, revenge, the assertion of dominance, displacement, and the exploitation of already vulnerable populations. Its persistence

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33. In-depth interview, Elema Refugee Settlement.
34. Pinaud (n 1).
35. Edwards (n 1); UNHRC (n 5).
36. Edwards (n 1).

is further enabled by a culture of impunity, weak military command structures, and harmful gender stereotypes.[37]

The conflict in South Sudan has seen the widespread use of sexual violence, with various forces implicated in acts of male rape. Government forces, including the SPLA and its affiliated militias, have been accused of committing numerous acts of sexual violence against men and boys.[38] These forces have used rape as a weapon of war, targeting civilians, particularly those perceived to be supporters of the opposition. For instance, the *Mathiang Anyoor* militia, a Dinka-dominated group loyal to President Salva Kiir, has been implicated in numerous cases of gang rape and sexual assault against men and boys in Unity State.[39] Opposition forces, such as the SPLM/A-IO, have also been implicated in sexual violence.[40] These groups have used rape as a tactic to intimidate and terrorize civilian populations. The Nuer White Army, a militia allied with the SPLM/A-IO, has been accused of committing numerous acts of sexual violence against men and boys in Unity State.[41]

Militia groups, including the Gelweng Militia, the White Army, and the Shilluk Militia, have also been involved in sexual violence. These groups often target civilians from rival ethnic groups, using rape as a means of humiliation and degradation. The Gelweng Militia has been accused of raping men and boys in Unity State, often in front of their families as a deliberate act of psychological and social degradation. Tribal militias, such as the Dinka, Nuer, and Murle, have also been involved in sexual violence.[42] These groups often target civilians from rival tribes, using rape as a means of asserting dominance and control over territory. The Murle have been accused of conducting cattle raids and abducting women and girls from the neighbouring communities.

Foreign forces, including the Sudanese and Ugandan troops, have also been implicated in sexual violence. These forces have used rape as a means of intimidation

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37. Amnesty International 'South Sudan: Do not remain silent: Survivors of sexual violence in South Sudan call for justice and reparations' 23 July 2017, retrieved from https://www.amnesty.org/en/documents/afr65/6469/2017/en/ (accessed 20 December 2023).

38. Pinaud (n 1).

39. UNMISS 'Indiscriminate attacks against civilians in Southern Unity' 5 April 2018, https://unmiss.unmissions.org/sites/default/files/unmissohchr_report_on_indiscriminate_attacks_against_civilians_in_southern_unity_april-may_2018.pdf (accessed 20 December 2023).

40. Edwards (n 1).

41. UNHRC (n 5).

42. H Wild and others 'The militarization of cattle raiding in South Sudan: How a traditional practice became a tool for political violence' (2018) 3 *Journal of International Humanitarian Action* 1-11.

and control over the civilian population.[43] Sudanese troops, for example, have been accused of raping men and boys in the contested border region of Abyei. The involvement of foreign military actors has further intensified the scale and severity of sexual violence in the conflict. In some instances, these forces have either collaborated with, or failed to prevent, the abuses committed by South Sudanese government and opposition forces. The absence of accountability and the entrenched culture of impunity have emboldened perpetrators, deepening the crisis of sexual violence across South Sudan.

### *B. Men as Victims of Male Rape*

Male rape in South Sudan is a significant and often overlooked issue, particularly during periods of conflict and instability. Various ethnic groups have been disproportionately affected by this heinous crime. The Nuer ethnic group has been one of the most severely affected, particularly during the 2013-2014 conflict.[44] Government forces and affiliated militias, such as the *Mathiang Anyoor*, have targeted Nuer men and boys, using rape as a weapon of war. Although Dinka men are often perceived as perpetrators, they have also been victims of sexual violence, especially during inter-ethnic conflicts. Opposition forces, like the SPLA-IO, have been implicated in such acts.[45] The Shilluk people, residing primarily in Upper Nile State, have been targeted by both government and opposition forces. Rape has been used as a tool of intimidation and social control. The Murle ethnic group, known for their nomadic lifestyle and cattle raiding, has also experienced male rape. Both government and opposition forces have been accused of targeting Murle men and boys. Numerous ethnic groups, including the Bari, Equatorian tribes, and smaller ethnic groups, have also been affected by male rape.[46]

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43. UNHCR 'Sudan: UN Fact-Finding Mission documents large-scale sexual violence and other human rights violations in newly issued report' 29 October 2023, https://www.ohchr.org/en/press-releases/2023/10/sudan-un-fact-finding-mission-documents-large-scale-sexual-violence-and (accessed 20 December 2023).

44. FD da Costa 'The politics of being Murle in South Sudan: State violence, displacement and the narrativisation of identity (2023) 17 *Journal of Eastern African Studies* 404–423.

45. Amnesty International 'South Sudan: Sexual violence "on a massive scale" leaves thousands in mental distress amid raging conflict' 24 July 2017, retrieved from https://www.amnesty.org/en/latest/news/2017/07/south-sudan-sexual-violence-on-a-massive-scale-leaves-thousands-in-mental-distress-amid-raging-conflict/ (accessed 20 December 2023).

46. Edwards (n 1).

Several factors contribute to the prevalence of male rape in South Sudan and these include deep-rooted ethnic tensions (particularly between the Dinka and Nuer) which have fueled violence. Rape is used as a tool to assert power and dominance over rival groups. Perpetrators often target men and boys to humiliate and degrade them. Harmful cultural norms and practices, including rigid gender norms and the emphasis on masculinity, have contributed to the normalization of sexual violence. The lack of accountability mechanisms against perpetrators of sexual violence has emboldened them to continue committing these atrocities unchecked. The context itself – a period of war and conflict – has created a climate of lawlessness and impunity, that allows widespread sexual violence to thrive.

The primary victims of male rape in South Sudan are men and boys from various ethnic groups, including the Nuer, Dinka, Shilluk, Murle, and Bari. These groups have been targeted by various perpetrators, including government forces, opposition forces, militia groups, and tribal militias. The reasons for male rape in South Sudan are complex and multifaceted. They include ethnic rivalry, political allegiance, cultural and economic factors, gender and masculinity, fear and intimidation, historical grievances, and geographic location. In many cases, male rape has been used as a weapon of war to humiliate, degrade, and terrorize the victims. It has also been used to assert dominance and control over rival groups and to force displacement.

Recognizing men as victims of male rape in conflict is crucial to acknowledging the full scope of wartime sexual violence.[47] Male victims of war-related sexual violence experience rape, sexual assault, castration, genital mutilation, forced nudity, and sexual humiliation.[48] These acts are not incidental, but are calculated weapons of war used to terrorize, dominate and destabilize communities. Importantly, such violence is not limited to any particular tribe or group as the research participants observed:

> All parties to the conflict have been accused of committing sexual violence, and it is a grave human rights violation that requires accountability, support for survivors, and efforts to address the root causes of sexual violence in conflict. It is also important to recognize that sexual violence affects not only women and girls but also men and

47. H Touquet and others 'From "it rarely happens" to "it's worse for men": Dispelling misconceptions about sexual violence against men and boys in conflict and displacement' (2020) 2 *Journal of Humanitarian Affairs* 25-34.

48. VK Vojdik 'Sexual Violence Against Men and Women in War: A Masculinities Approach' (2014) 14 *Nevada Law Journal* 15.

> boys, and it is essential to provide support and services to all survivors, regardless of their gender or ethnicity. These cases are likely underreported, and sexual violence has been used as a weapon of war across ethnic lines, with all parties to the conflict implicated.[49]

The United Nations Security Council formally recognized for the first time that men and boys are targets of sexual violence both in wartime and in post-conflict settings.[50] Resolution 2467 calls upon UN member states to strengthen policies to provide help for victims.[51] The specific mention of men and boys in Resolution 2467 reflects the growing international attention to sexual violence directed against men and boys in conflict and post-conflict settings, including acts perpetrated by the state and by non-state armed groups.[52] Recognition of sexual violence against men and boys by the Security Council is an important step in challenging the shame and stigma surrounding this concept. Sexual violence against males has mostly been framed and reported as torture. While sexual violence against men or women can amount to torture, approaching wartime sexual violence against men and boys only through the lens of torture may obscure the nature of such violence.[53] Thus, this Resolution is a ground breaking step in challenging taboos and stereotypes that keep men from reporting their experiences and as a result deny survivors the assistance they need.

During the South Sudanese civil war, rape was not only widespread but condoned, normalized, and weaponized to terrorize women, girls, men, and boys. Male victims were specifically targeted because they were seen as the backbone of their communities. To violate and break them was to weaken, and ultimately destroy, the entire social fabric of those communities. The documentation of male rape victimization across South Sudanese ethnic groups reveals a disturbing pattern of sexual violence used as a strategic tool of conflict.[54] The Nuer experience, with perpetrators primarily from the SPLA and its allies, demonstrates the calculated deployment of rape to inflict

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49. Key Informant Interview, Elema Refugee Settlement.

50. UN Security Council Resolution 2467 (2019), S/RES/2467(2019): Strengthens justice and accountability and calls for a survivor-centered approach in the prevention and response to conflict-related sexual violence https://www.un.org/shestandsforpeace/content/united-nations-security-council-resolution-2467-2019-sres24672019 (accessed 20 December 2023).

51. As above.

52. Human Rights Watch 'Men can experience sexual violence in war too' 3 May 2019, https://www.hrw.org/news/2019/05/03/men-can-experience-sexual-violence-war-too (accessed 2 September 2023).

53. As above.

54. As above.

collective trauma and dismantle social structures within a protracted ethnic conflict. The targeting of Nuer men, particularly during the 2013-2014 crisis, highlights the instrumental use of this violence. The dominance of Dinka perpetrators, including the national army, indicates a deliberate effort to consolidate power by systematically degrading Nuer masculinity, driven by motivations of humiliation, political subjugation, and territorial control.

Conversely, the victimization of Dinka men, attributed to the SPLA-IO and allied groups, illustrates the reciprocal nature of sexual violence in the conflict. The targeting of Dinka men, often framed as retaliation and a means to undermine government authority, exposes the cyclical pattern of violence and the weaponization of sexuality. The assertion of tribal dominance and the intentional emasculation of Dinka men underscores the gendered dimensions of conflict and the use of rape as a tool of symbolic annihilation. The experiences of the Shilluk, Murle, and Bari communities further exemplify the vulnerability of marginalized groups within the South Sudanese conflict. The targeting of these communities, attributed to government forces, allied militias, and rival ethnic groups, reveals the convergence of ethnic rivalry, territorial disputes, and resource control. The motivations, including the assertion of dominance, the exploitation of resources, and the imposition of fear, highlight the systemic nature of sexual violence and its role in enforcing social hierarchies.

The perception of men as defenders of the family and community is particularly important in a conflict setting, where there is a very real threat of danger.[55] Perpetrators exploit this perception by using sexual violence against men as a deliberate strategy to dismantle family structures and fracture communities. It is not only a man's inability to defend himself from sexual violence that sanctions his silence, but also the perception that he will not be able to protect his family. Male victims are therefore put in a situation where they are required to choose between speaking out about human rights violations against them or maintaining their family relationships. Male victims of sexual violence may not come forward and claim their human rights for fear of destroying community and family bonds if family members deem them unable to serve their protective duties, as presented here:

> We are aware of the situation of our men, especially those who are here in the refugee settlements in Uganda. When you see a very humble South Sudanese man who is afraid to talk to women, you can immediately draw your conclusion that he has been feminized. I

55. Sivakumaran (n 28).

> suspect that most of the fighters who have abandoned war and are living alone in their huts need help, but they are afraid to come out because they are overwhelmed by their miserable state of survivors of male rape.[56]

Sexual violence against males has mostly been framed and reported as torture. However, approaching wartime sexual violence against men and boys only through the lens of torture may obscure the nature of the violence.[57] In dominating men, perpetrators of sexual violence in conflict disempower communities, increasing their feelings of vulnerability. Men who believe that family members do not know of the sexual violence they experienced may therefore choose to keep it hidden. In situations where other family and community members are witnesses to the assault or are themselves victims, it would appear that the societal damage and stigma are enough to encourage group silence as explained below:

> In avoiding speaking about these crimes, men inherently avoid damaging their reputation and that of their peers. In South Sudanese communities, it is believed that victims of sexual violence are women, so male victims of sexual violence are comparable to women, and being seen as a woman brings too much shame to men, even to report the crimes committed against them. This is more so in conflict situations when gender stereotypes are amplified, and it dictates that men should not report sexual violence against them.[58]

As previously discussed, male victims of sexual violence in conflict are frequently feminized by their attackers, their communities, or even themselves. The act is not only intended to inflict physical harm but also to strip the victim of his perceived masculinity and social standing. By equating victimhood with weakness, vulnerability, and womanhood, perpetrators reinforce harmful gender norms that regard becoming 'like a woman' as a degradation. This deliberate feminization is intended to humiliate and socially demote the survivor. The resulting stigma and internalized shame have severe consequences for the physical and psychological well-being of male survivors, as explored in detail in the following section.

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56. Key Informant Interview, Elema Refugee Settlement.
57. HRW (n 52).
58. Key Informant Interview, Adjumani Town.

### *C. Impact of Male Rape on Survivors*

War-induced male rape has a profound impact on survivors, affecting their physical, emotional, and psychological well-being. The physical, emotional, psychological, and economic effects of war-induced male rape on survivors are profound and long-lasting, affecting various aspects of their lives. Male rape can lead to a sense of lost masculinity as survivors may feel they have failed to meet societal expectations of male strength and invincibility. This can result in feelings of shame, guilt, and inadequacy, making it essential to address and reclaim masculinity in a positive, empowering way through healing and support. In a Key Informant Interview extract below, a survivor explained his ordeal.

> I cannot speak for all survivors of male rape because each one of us had different experiences and our circumstances are different. It is only the survivor who knows what has been taken away from him. The feeling a man gets after rape by a man is like your world has collapsed and you have nothing left to hold to. You are no longer the same and there is no pretense about this at least in my case. When people tell survivors of male rape to seek help, sometimes I think they don't know what they are talking about because they don't understand what it means to be raped by a man in a culture like mine. When it happens to you, you are no longer a man. You cannot defend yourself before your people, and your family. Now you understand why I am a refugee and alone.[59]

The violation of the male body is often unacceptable from a collective perspective, because the male body symbolically epitomizes the symbiotic link between masculine strength and a national or group culture.[60] The existence of sexual violence against men is therefore frequently collectively denied or silenced, especially in contexts where national or ethnic identities are seen as weakened or threatened, which is almost always the case in conflict and post-conflict settings. Male survivors of direct rape victimhood may experience physical and emotional trauma, including post-traumatic stress disorder

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59. Key Informant Interview, Adjumani Town.

60. BK Widanaralalage and others 'I didn't feel I was a victim: a phenomenological analysis of the experiences of male-on-male survivors of rape and sexual abuse' (2022) 17 *Victims & Offenders* 1147-1172.

(PTSD), depression, anxiety, and feelings of shame, guilt, and isolation.[61] Indirect male rape victimhood can manifest in various ways such as emotional distress, feeling of guilt, shame, or helplessness. In some cases, it may result in difficulty in forming healthy relationships as well as struggling with masculinity and gender roles.

Survivors of male rape often endure severe physical and psychological harm, both in the short and long term. These include physical injuries, fear, anxiety, despair, post-traumatic stress disorder (PTSD), diminished self-esteem, social withdrawal, and, in some cases, suicidal ideation.[62] In addition to the psychological and physical effects, male rape survivors often face severe socioeconomic consequences, including inability to work, school dropout, community stigma, and social exclusion. These challenges are further compounded by an increased risk of sexual and reproductive health complications.[63] Although men are perceived to be less affected by sexual victimization, evidence shows that male victims are affected as much as female victims and they may even be associated with worse results.[64] Survivors have experienced mood swings and difficulty regulating their emotions. They struggle with trust, experience feelings of helplessness, and contemplate suicide.[65] Survivors have lost their livelihoods, most of them have become unemployed, and rely on others for financial support. They face difficulties with education or career advancement due to stigma and discrimination in the workplace. Additionally, increased healthcare costs associated with treatment and therapy further strain their financial resources. Beyond these core impacts, survivors also experience social isolation, family rejection, community stigma, and difficulty with daily life tasks. They suffer from flashbacks, nightmares, avoidance behaviour, hyperarousal, and hypervigilance. Self-blame and self-doubt can further compound their suffering.[66]

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61. CJ O'Brien and others 'Don't tell: Military culture and male rape' (2015) 12 *Psychological Services* 357-365.

62. Depraetere and others (n 20).

63. R Asgary and others 'Systematic review of prevention and management strategies for the consequences of gender-based violence in refugee settings' (2023) 5 *International Health* 8591.

64. ZD Peterson 'Prevalence and consequences of adult sexual assault of men: Review of empirical findings and state of the literature (2011) 31 *Clinical Psychology Review* 1-24.

65. JC Thomas & J Kopel 'Male victims of sexual assault: A review of the literature' (2023) 13 *Behavioral sciences* 304.

66. SE Mgolozeli & SE Duma 'Whenever I think about this, I feel like killing myself, because life has no meaning to me anymore: an exploration of the consequences of rape victimization for men' (2023) 20 *International Journal of Qualitative Studies on Health and Well-Being* 2437-905.

### *D. Support Seeking Strategies*

Contemporary scholarship on conflict-related sexual violence against men focuses on the prevalence, forms, causes, and consequences of sexual violence against men, the diverse care needs of survivors in the aftermath of rape, and barriers to care, including how masculinity norms hinder access to care and threaten their well-being.[67] A study conducted by Weare established that the barriers to disclosure faced by male rape survivors are likely to differ considerably from those for female rape survivors.[68] Holistic care models offering medical, psychological, socioeconomic, and legal support for survivors of conflict-related sexual violence have largely been designed with female survivors in mind. As a result, male survivors often find themselves excluded or underserved within these women-centered frameworks.[69] Furthermore, when men are subjected to sexual violence by other men, their masculine attributes are considered to have been taken away, and they are subjected to ridicule and shame by community members.[70] Although there are institutions in Uganda (See Table 2 below) that may support the South Sudanese survivors of male rape, most survivors do not seek care due to the shame and stigma associated with sexual violence.

*Table 2: Organizations that Support Survivors*

| Organizations | Support |
|---|---|
| Refugee Support Initiative (RSI) | Offers counselling, legal aid, and community support. |
| Refugee Law Project (RLP) | Provides legal assistance, counselling, and advocacy. |
| Centre for Victims of Torture (CVT) | Provides counselling, physiotherapy, and legal assistance. |
| South Sudanese Refugee Association in Uganda (SSRAU) | Provides community support and advocacy. |
| UNHCR Uganda | Offers protection services, including |

67. AB Alexandre 'Individual agency and social support in healing from conflict-related sexual violence: A case history from eastern DRC' (2023) 19 *Global Public Health* 2308717.

68. S Weare and others'Nobody believes you if you're a bloke: Barriers to disclosure and help-seeking for male forced-to-penetrate victims/survivors' (2023) 30 *International Review of Victimology* 596.

69. Alexandre (n 67 above).

70. M Christian and others 'Sexual and gender-based violence against men in the democratic Republic of Congo: Effects on survivors, their families and the community' (2021) 27 *Medicine, Conflict and Survival 227-246. https://doi.org/10.1080/13623699.2011.645144* (accessed 17 November 2023).

| | |
|---|---|
| | support for survivors of sexual violence. |
| International Organization for Migration (IOM) Uganda | Provides counselling, medical care, and legal support. |
| Local Hospitals and Health Centers | Offer medical care and documentation of evidence. |

The survivors of male rape strongly believe that lost masculinity can be a significant aspect of their trauma, and healing may involve reclaiming and redefining masculinity in a positive, empowering way. This can be achieved through traditional healing practices, counselling, support groups, and ceremonies that restore honour and dignity. Most survivors we interviewed believed that traditional healing practices can restore a sense of masculinity, pride, and purpose, helping individuals reclaim their identity and reconnect with their cultural heritage. However, it is important to note that these ways may vary across cultures and communities and should be approached respectfully and sensitively. It is believed that spiritual and cultural revitalization offers a holistic approach to restoring masculinity, addressing the physical, emotional, and spiritual aspects of a person's life.

## V. CONCLUDING REMARKS AND RECOMMENDATIONS

This study has underscored the urgent need to reframe our understanding of sexual violence in conflict settings, moving beyond the dominant paradigm of female victimhood to acknowledge the experiences of South Sudanese male rape survivors in Uganda. The findings underscore the urgent need for a paradigm shift in academic and policy discourse, moving beyond the dominant feminized framing of sexual violence to acknowledge the gendered and sexualized nature of male rape. Through this study, we have an understanding of male rape in war and refugee environments. The findings of this research serve as a stark reminder of how gender norms and stereotypes can perpetuate harm and silence in the context of displacement. There is a need to prioritize the voices and needs of the survivors of male sexual violence and work to create spaces for healing, justice, and reparation. This requires a commitment to challenging dominant gender narratives and power structures within academic and policy circles.

Ultimately, the stories shared by these South Sudanese refugee survivors of male rape in Uganda serve as a powerful testament to the resilience of the human spirit and a call to action for a more inclusive and nuanced approach to addressing sexual violence in conflict settings. Policy and lawmakers must recognize male rape as a war crime and a grave breach of international humanitarian law, ensuring accountability and reparations for survivors. Service providers must tailor their support to address the

unique needs of survivors of male rape, challenging harmful gender norms and promoting gender equality. They must prioritize the voices and experiences of male rape survivors, supporting research and documentation initiatives to inform policy and programme development. By centering the perspectives of South Sudanese survivors of male rape in Uganda, we can work towards a more inclusive and equitable response to sexual violence in conflict settings, one that acknowledges the complex and nuanced experiences of all survivors.

# DEMOCRATIC OR AUTOCRATIC?: INTERROGATING THE ELECTORAL COLLEGE SYSTEM FOR PARLIAMENTARY REPRESENTATIVES OF PERSONS WITH DISABILITIES IN UGANDA

Jackie Bukaayi Guma*

**ABSTRACT**

*Uganda has a robust legal framework guaranteeing the right to vote, including for Persons with Disabilities (PWDs). However, the law requires PWDs to elect their parliamentary representatives through an electoral college, arguably limiting political participation. This study analyzes the effectiveness of the electoral college system in achieving electoral democracy for PWDs in Uganda using qualitative methods and data from 119 respondents between 2020 and 2023. The study findings indicate that while the electoral college saves resources, it is discriminatory and infringes on PWDs' right to vote. It also promotes bias in favor of the ruling National Resistance Movement (NRM) and encourages the manipulation of voters with disabilities. Moreover, the elected representatives lack accountability to most PWDs. These weaknesses undermine electoral democracy. This article recommends amending electoral laws to allow PWDs to vote through universal adult suffrage, aligning Uganda's system with international conventions and ensuring greater political inclusion for PWDs.*

## I. INTRODUCTION

Under Article 1 of the 1948 Universal Declaration of Human Rights (UDHR) 'all human beings are born free and equal in dignity and rights.' In addition, in terms of Article 2 of the Declaration, everyone is entitled to the rights under that document 'without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' However, it has become clear that not all people enjoy all human rights, in part because these rights are founded on the idea of autonomous individuals.[1]

* LLD Candidate, School of Law, Makerere University; LLM (Makerere); Dip Legislative Drafting (ILI), PGD LP (LDC), LLB (Makerere); Advocate. Orcid.org 0009-0006-8537-5750.

1. M Strømsø 'Places of Participation: The Lived Experience of Persons with Disabilities in Kampala, Uganda' Masters thesis, Norwegian University of Science and Technology, 2008, 15. https://ntnuopen.ntnu.no/ntnu-xmlui/handle/11250/265246. (accessed 27 January 2022).

In Uganda, representatives of Persons with Disabilities (PWDs) in Parliament are elected through the electoral college system.[2] This article analyzes the functionality of the electoral college system of electing PWDs' representatives to Parliament in relation to electoral democracy. This article specifically seeks, in the context of Uganda, to i) examine the general understanding of the right to vote for PWDs; ii) explore the evolution of electoral democracy for PWDs; iii) examine the legal and institutional framework for the election of parliamentary representatives of PWDs; and iv) examine the utility of the electoral college system in relation to electoral democracy.

The article draws upon both a comprehensive review of primary and secondary materials and in-depth interviews from a wide range of respondents with demonstrable knowledge and lived experience in the conduct of elections for parliamentary representatives of PWDs.[3]

## II. BACKGROUND TO THE STUDY

The World Health Organization (WHO)[4] and the World Bank (WB) assert that defining disability is complicated because it is 'dynamic, multidimensional and contested.'[5] Article 2 of the Convention of Rights of Persons with Disabilities (CRPD) refers to 'disability' as 'a long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder a person's full and effective participation in society on an equal basis with others.'[6] The 2011 World Report on Disability indicates that over a billion people (approximately 15 per cent of the world's population) have some form of disability.[7] The World Health Organization observes

2. Persons with Disabilities Act, Act 3 of 2020.

3. The Author interviewed 119 key informants, well experienced and knowledgeable in elections and election processes of PWDs at the different levels. These were composed as follows; two (2) representatives of PWDs in Parliament; one (1) staff from the Department of Elderly and Disability Affairs at the Ministry of Gender, Labour and Social Development; one (1) staff from the Electoral Commission Headquarters working with Special Interest Groups; two (2) members of NCPD (a leader and staff); one (1) leader from NUDIPU; two (2) PWDs Lawyers; eighty-six (86) delegates from the various local council levels of the Electoral Colleges; four (4) ordinary PWDs; eight (8) district staff of the Electoral Commission and twelve members (12) members of the district National Council for PWDs.

4. The World Health Organization is a specialized agency of the United Nations responsible for global public health. It is headquartered in Geneva, Switzerland, and has six regional offices and 150 field offices worldwide.

5. World Health Organisation & World Bank *World Report on Disability* (2011) 3. https://apps.who.int/iris/handle/10665/44575. (accessed 24 February 2022).

6. UN General Assembly *Convention on the Rights of Persons with Disabilities: resolution/Adopted by the General Assembly* (2007) https://www.refworld.org/docid/45f973632.html. (accessed 25 February 2022).

7. World Health Organisation & World Bank (n 5).

that developing countries have a greater number of PWDs – approximately 1 in 5 people, or 20 percent of the population – due to their greater vulnerability to natural disasters and less developed service provision.[8]

As a signatory to the CPRD, Uganda adopted a rights-based approach to disability in the Persons with Disabilities Act of 2020 (PWDs Act). The Act defines disability as 'the substantial functional limitation of a person's daily life activities caused by physical, mental or sensory impairment and environment barriers, resulting in limited participation in society on an equal basis with others.'[9] The Act also categorizes disability by: (i) physical disability (caused by congenital diseases, accidents, trauma, violence, etc.); (ii) hearing disability, including complete deafness and hard-of-hearing disability; (iii) visual disability, including complete blindness and low-vision disability; (iv) mental disability, including psychiatric disability and learning disability; (v) little persons; (vi) albinism; and (vii) multiple disabilities.[10]

The last National Population and Housing Census (NPHC) in 2014,[11] conducted by the Uganda Bureau of Statistics (UBOS),[12] did not indicate the overall number of persons living with disabilities in Uganda. The 2014 statistics indicate a disability prevalence rate of 12.4 per cent for the population aged two years and above and 14 per cent for those five years and above.[13] In terms of sex differentials, disability is higher among women than men; thus, the percentage of women with disabilities was 27 compared to 21 for men.[14]

A situational analysis conducted by the Ministry of Gender, Labour, and Social Development (MoGLSD) and UBOS on PWDs in Uganda provides more up-to-date data on disability.[15] According to the analysis, 8.5 per cent of Ugandans have a disability.[16] The prevalence of disability increases sharply with age, with approximately 40 per cent of older persons aged 65 years and above having a disability, rising to 57

8. World Health Organisation *Fact sheet on Disability* https://www.who.int/en/news-room/fact-sheets/detail/disability-and-health. (accessed 10 February 2022).

9. Persons with Disabilities Act, sec 1.

10. Persons with Disabilities Act, schedule 3.

11. National Population and Housing Census (NPHC) *Main Report* (2014) 22.

12. The Uganda Bureau of Statistics is mandated to carry out census under the Uganda Bureau of Statistics Act, Cap 310, sec 3(2)(a)(i) and sec 3(3)(c).

13. Figures derived from NPHC (n 11) 23, figure 4.2 of the on Levels of Disability by sex and Residence.

14. As above.

15. Ministry of Gender Labour and Social Development & Uganda Bureau of Statistics 'Situational Analysis of Persons with Disabilities in Uganda' (2020) https://www.developmentpathways.co.uk/wp-content/uploads/2020/09/Webready-DP1294-ESP-Disability-Uganda-Sept-2020. (accessed 10 November 2021).

16. As above.

per cent among those aged 80 years and above.[17] The situational analysis also revealed that although disability was most prevalent among older persons at the time of the survey, since Uganda has a young population, there is a likelihood of an increase in PWDs below the age of 15 years in the years to come.[18]

The concept of electoral democracy is enshrined in Article 21(1) of the UDHR, which guarantees the right of every person to participate in the government of their country, either directly or through freely chosen representatives.[19] Similarly, the Collins Dictionary defines electoral democracy as a system of government in which the people choose their leaders by voting in elections.[20] In addition, Gavazzi defines democracy as a form of government in which power is exercised directly or through elected representatives.[21] Electoral democracy comprises voting, the ability of citizens to participate in the conduct of public affairs, and the opportunity to register as a candidate, campaign, be elected, and hold office at all levels of government.[22] Without the opportunity to participate in politics, individuals are effectively denied citizenship and potentially rendered inconsequential to those who hold power.[23]

The right to electoral democracy and voting is internationally recognized and guaranteed by various international conventions and treaties.[24] Agran and Hughes argue that voting represents the most important right and responsibility of citizens in any country.[25] Similarly, Elkit and Reynolds assert that elections are central to the democratization process and serve as instruments for delegating authority from citizens to their representatives.[26] They note that for authority to be effectively delegated, the

17. As above.

18. As above.

19. United Nations 'Universal Declaration of Human Rights' (UDHR) (1948) https://www.un.org/en/about-us/universal-declaration-of-human-rights. (accessed 22 February 2021).

20. Collins 'Definition of democracy' (2021), retrieved from https://www.collinsdictionary.com/dictionary/english/democracy (accessed 22 February 2022).

21. S Gavazzi 'Democracy in Uganda' (2018) https:// Democracy in Uganda | Simone Gavazzi - Academia.edu. (accessed 23 February 2022).

22. As above.

23. As above.

24. UDHR (n 19) art 21 (1) and United Nations ' International Covenant on Civil and Political Rights' (ICCPR) UN General Assembly resolution 2200A (XXI). https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. (accessed 21 February 2021). the International Convention on Civil and Political Rights (CCPR) art 25.

25. M Agran & C Hughes 'You Can't Vote-You're Mentally Incompetent: Denying Democracy to People with Severe Disabilities' (2013) 38 *Research and Practice for Persons with Severe Disabilities* 58.

26. J Elklit & A Reynolds 'The Impact of Election Administration on The Legitimacy of Emerging Democracies: A New Comparative Politics Study Agenda' (2002) 40 *The Journal of Commonwealth & comparative politics* 86.

electoral process must be perceived as fair by voters, parties, candidates, and civil society.[27] Furthermore, Virendrakumar and others assert that in Africa, PWDs are underrepresented in public life, yet they also have the right to elect and be elected.[28] They also observe that PWDs have been excluded from exercising their human rights, including the right to political participation.[29]

In addition, the Office for Democratic Institutions and Human Rights (ODIHR) observes that the exclusion of PWDs from participating in making choices of their representatives is worsened by society, which, over the past decades, has regarded disability as something to be feared, pitied or cured.[30] As a corrective measure to this discrimination against PWDs, the member states of the United Nations recognized the need to consolidate disability-related activities and develop policies and structures that ensure that PWDs are mainstreamed. Their aspiration resulted in the adoption of the CRPD[31] and its Optional Protocol.[32] The Convention adopted a human rights perspective of disability and required state parties, including Uganda, to implement a non-discriminatory electoral process that provided voters with disability-related accommodation and other facilitative measures to enable their equal right to vote.[33]

Uganda boasts of a robust legal framework regarding the right to vote for citizens, including PWDs. The 1995 Constitution of the Republic of Uganda guarantees every citizen of Uganda aged 18 years and above the right to vote.[34] Parliament is also mandated to make laws to facilitate the registration and voting of citizens with disabilities.[35] The Constitution further provides for five representatives of PWDs in Parliament.[36] In compliance with the law, the government has so far organized six

27. As above.

28. B Virendrakumar and others 'Disability inclusive elections in Africa: a systematic review of published and unpublished literature' (2018) 33 *Disability & Society* 509.

29. As above.

30. OSCE/ODIHR 'Guidelines on promoting political participation of Persons with Disabilities' (2019) https://www.osce.org/files/f/documents/b/6/414344.pdf. (accessed 28 February 2022). Uganda signed the CRPD on 30 March 2007 and ratified the CRPD and the Optional Protocol on 25 September 2008.

31. United Nations 'Convention on the Rights of Persons with Disabilities' (UNCRPD) (2006) https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html. (accessed 28 February 2022).

32. Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006) https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/optional-protocol-to-the-convention-on-the-rights-of-persons-with-disabilities.html. (accessed 15 March 2022).

33. As above.

34. Constitution of the Republic of Uganda, 1995 (As ammended) art 59(1).

35. Constitution (n 34) art 59(4).

36. Constitution (n 34) art 78(1)(c).

elections in which PWDs have participated. The first of these was held in June 1996,[37] and the most recent was held in January 2021.[38]

Namukasa and others observe that although Uganda has a robust legal framework and measures to realize the enjoyment of parliamentary democracy by PWDs, the breadth and implementation of this framework remains defective due to barriers which curtail the full enjoyment of this right.[39] They further observe that the greatest defect in the law is mandating the Electoral Commission (EC) to conduct the elections of representatives of PWDs to Parliament through an electoral college system.[40] Similarly, the European Union Observation Mission observed that 'while promoting the rights of PWDs is desirable, the system of electoral colleges, by which representatives of PWDs to a unicameral Parliament are elected rather than by universal and equal suffrage, is not in line with international best practice.'[41]

It has been argued that electoral colleges are a form of disenfranchisement, as the right of the majority of PWDs to directly cast their vote is taken away and given to a few persons who constitute the colleges.[42] Electoral colleges also have a number of anomalies, which include: i) inadequate mobilization and sensitization of the concerned persons during the formation of the colleges and during the actual conduct of elections; ii) absence of a budget and proper planning by the EC for the process; iii) absence of voter materials specific for PWDs, such as braille ballot papers; and iv) discrimination in terms of types of disabilities.[43] For instance, Schedule 7 of the PWDs Act reveals that electoral colleges flout the principle of universal suffrage due to the restrictive nature of those entitled to vote – five members per district represent the rest of the PWDs in

37. IFES Uganda: Long-Term Observation of 1996 Presidential and Legislative Elections (1996). https://www.ifes.org/publications/uganda-long-term-observation-1996-presidential-and-legislative-elections-may-july-1996 (accessed 8 March 2022).

38. Electoral Commission 'The Electoral Commission Report on the 2020/2021 General Elections'. https://www.ec.or.ug/general-elections-report-2020-2021. (accessed on 8 March 2023).

39. L Namukasa and others *Participation of Persons with Disabilities in Electoral Processes in Uganda'* (2017) 8-46, https://ncpd.go.ug/sites/default/files/202203/NOBLEED_Uganda%20inclusive%20elections%20study%20report_V8.pdf (accessed 15 September 2021); C Kaheru 'At elections cater for people with Disabilities' *The New Vision (Kampala)* 21 December 2009, retrieved from https://www.newvision.co.ug/news/1199050/elections-cater-people-disabilities (accessed 20 September 2021).

40. Namukasa (n 39) 20.

41. European Union 'Uganda Presidential, Parliamentary and Local Council Elections' Preliminary Statement *20 February 2016* https://aceproject.org/ero-en/misc/uganda-preliminary-statement-general-elections-eu (accessed 20 August 2021).

42. Namukasa (n 39) 15, electoral colleges tend to favour the persons with physical disability contrary to the principle of disability balance.

43. Namukasa (n 39) 20.

that district to elect representatives to Parliament.[44]

Therefore, with such conspicuous challenges of electoral colleges, it is debatable whether the right to vote and, ultimately, parliamentary electoral democracy of PWDs, as guaranteed under international, regional, and domestic law, is realized in Uganda. Based on this background, this article analyzes the effectiveness of the electoral college in attaining electoral democracy for PWDs in Uganda.

## III. THEORETICAL FRAMEWORK

This article interrogates the functionality of electoral colleges using two theories. The first is the delegate model of representation, and the second is the social and human rights model of disability.

The delegate model of representation is a model of representative democracy—a form of governance in which the people exercise their right to make political decisions through their elected representatives.[45] The Roman Republic was the first known State in the Western world to have a representative government.[46] It was followed by other States such as Britain, where Simon de Montfort[47] – one of the fathers of representative democracy – held two parliaments during his time of power.[48] This model of representation is derived from the writings of James Mill and John Tyler, who asserted that representatives ought to adhere to the instructions of their citizens.[49] In this model, citizens elect representatives as delegates of their respective constituencies.

Under the delegate model of representation, delegates act only as agents of their constituents who cannot realistically participate in all legislative procedures and decisions.[50] For example, before a representative takes any position affecting the constituency, they are expected to seek majority support from the constituents and explain government policies and decisions to them. This implies that the representative

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44. Persons with Disabilities Act, schedule 7.

45. S Haxhiu & AH Alidemaj 'Representative Democracy – its Meaning and Basic Principles' (2021) 17 *Acta Universitatis Danubius* 97-112.

46. Livy *The early history of Rome. Books I-V of The history of Rome from its foundation*: (1971).

47. Sometimes referred to as Simon V de Montfort [12th August 1208 - 4th August, 1265] to distinguish him from his namesake relatives, was a nobleman of French origin and a member of the English peerage, who led the baronial opposition to the rule of King Henry III of England, culminating in the Second Barons' War.

48. Simon De Montfort's parliament - UK Parliament (accessed 20 February 2022).

49. M Russell 'Trustee or Delegate: A Legitimate Question Facing Political Representation' (2012) 2 *Student Research Briefing Series* 1-26.

50. As above.

is accountable to the constituents who elected them and should consider themselves as delegates for the constituents.[51] For their part, constituents must constantly indicate their preferences to their representatives.[52]

This delegate model of representation is applicable to the elections of representatives of PWDs in Uganda because those who constitute the National Electoral College (NEC) do so on behalf of all PWDs in the country.[53] The theory is essential in analyzing the functionality of electoral colleges to determine whether the members who constitute the NEC consult and act as delegates of the majority of PWDs. It is also helpful for understanding whether the PWDs' representatives elected to Parliament represent the interests of both the majority of PWDs (indirect electors) and those who constitute the National Electoral College (direct electors).

The social and human rights model of disability is a combination of the social and human rights models of disability. Since the 1960s, different models of disability have been used to define disability.[54] The medical and social models were developed by scholars of disability in the 1980s and were considered the most important models of disability for a period of time.[55] More recently, in the 20th century, the medical model has been phased out in favour of the social model.[56] Nonetheless, the social model has also been found to fall short of putting PWDs on equal footing with other persons.[57] This has led to the emergence of the 'human rights model of disability.'[58] The social model of disability perceives disability as a social construct created through discrimination and oppression.[59] It focuses on how society and the environment interact with the impairment of a person.[60] The social model of disability is important in understanding the right to electoral democracy of PWDs because it creates an obligation for states to ensure that legal, social, and other barriers that may lead to disability are removed.

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51. ME Ethridge & H Handelman *Politics in a changing world* (1997).

52. As above.

53. As above.

54. T Degener 'A human rights model of disability' (2014) *Routledge Handbook of Disability Law and Human Rights* 1-30 https:/A human rights model of disability (researchgate.net). (accessed 15 February 2022).

55. D Wasserman 'Disability: definitions and models (2011) *Stanford Encyclopaedia of Philosophy* https://plato.stanford.edu/entries/disability/ (accessed 15 February 2022).

56. D Rice 'Human Rights Model of Disability: Disability, Inclusion, Practices' (2021) https://www.edi.nih.gov/blog/communities/human-rights-model-disability (accessed 15 February 2022).

57. As above.

58. As above.

59. As above.

60. As above.

The human rights model of disability emerged with the adoption of the United Nations CRPD in 2006.[61] It recognizes disability as a natural part of human diversity which must be respected and supported in all its forms, that is to say 'PWDs have the same rights as everyone else in society,' and disability 'must not be used as an excuse to deny or restrict people's rights.'[62] It places the individual at the center of all decisions that affect them. The model embraces the principles of non-discrimination and equality and contextualizes them in terms of disability.[63] This model of disability is important for appreciating electoral democracy with regard to parliamentary representatives of PWDs. As a signatory to the CRPD, Uganda is obliged to embed human rights principles in disability strategies, policy, and legislation.

## IV. THE EVOLUTION OF ELECTORAL DEMOCRACY IN UGANDA

Uganda was governed as a British Protectorate from 1894 to 1962.[64] The United Kingdom initially established control through agreements, such as the 1900 Buganda Agreement, which acknowledged British sovereignty. Governance relied on indirect rule, with Buganda as a key ally in the administration of the other regions.[65] Legislative power evolved with the 1920 Order-in-Council, which created an unelected Legislative Council (LEGCO).[66] African representation began in 1945 and gradually increased over time. Direct elections were introduced in 1958, but they were unrepresentative due to limited African participation. In 1962, Uganda gained independence under a coalition government led by Apollo Milton Obote.

From 1964 to 1971, Uganda's political stability unraveled, marked by tensions within the ruling coalition of the Uganda People's Congress (UPC) and Kabaka Yekka (KY).[67] In 1966, Obote abrogated the 1962 Constitution, introducing the authoritarian 'pigeon-hole Constitution', which centralized power under an executive presidency and reduced the influence of traditional leaders. Another Constitution was adopted in 1967,

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61. Degener (n 54) 20.

62. Degener (n 54) 21.

63. As above.

64. GW Kanyeihamba *Constitutional and political history of Uganda from 1894 to present* (2010).

65. HB Hansen & M Twaddle *Religion and Politics in East Africa: The Period Since Independence* (1995); Human Rights Watch 'Hostile to Democracy: The Movement System and Political Repression in Uganda' https://www.hrw.org/legacy/reports/1999/uganda/Uganweb-06.htm#P555_78607 (accessed 15 March 2023).

66. PM Mutibwa *Uganda Since Independence: A Story of Unfulfilled Hopes* (1992).

67. GF Engholm & AA Mazrui 'Violent constitutionalism in Uganda (1967) 2 *Government and Opposition* 585.

which largely drew upon the pigeonhole Constitution. In 1969, Obote faced an assassination attempt, banned opposition parties, and established a one-party state. Elections ceased after 1964, and Uganda descended into military rule under Idi Amin in 1971, leading to tyranny, anarchy and prolonged civil conflict.

After Amin's overthrow in 1979, Uganda's interim government, the Uganda National Liberation Front (UNLF), established the National Consultative Council (NCC) as the Third Parliament. Expanded to 120 members, the NCC governed until the controversial 1980 elections, which brought the Uganda People's Congress (UPC) to power. In 1986, the National Resistance Movement (NRM) came to power and established its legality through Legal Notice No. 1 of 1986. Legislative power was vested in the National Resistance Council (NRC) and the President. Initially comprising 38 members, the NRC expanded to 278 after the 1989 elections. The NRM was governed under a movement system or no-party system, where individuals contested for elections on personal merit, and the system included marginalized groups such as women, youth, and persons with disabilities through mandatory representation. This inclusivity marked the birth of the 'special interest group' elections.

The NRC also initiated constitutional reforms and established a Constitutional Commission in 1988. The draft constitution was completed in 1993, and elections for a Constituent Assembly (CA) followed in 1994. The CA finalized its work, and a new constitution was promulgated on October 8, 1995, shaping Uganda's governance framework. The 1995 Constitution established Uganda's Electoral Commission (EC), which is responsible for ensuring regular, free, and fair elections. It also provided for the election of representatives of Special Interest Groups, including PWDs, who were to be elected through electoral colleges. The EC conducted the first presidential and parliamentary elections in 1996, ushering in the Sixth Parliament. The EC thereafter organized the 2001 elections and subsequent multiparty elections (in 2006, 2011, 2016, and 2021) after the 2005 referendum reinstated multi-party governance.

Regarding elections for PWDs, the development of electoral democracy evolved from a history of exclusion to gradual inclusion. Disability advocacy began in 1954 with the Uganda Foundation for the Blind Act, emphasizing separation and charity. Broader inclusion efforts emerged in 1987 with the formation of the National Union of Disabled Persons of Uganda (NUDIPU), which mobilized PWDs and influenced the Constitutional Commission to include disability-specific provisions. In 1996, the first parliamentary elections for PWDs were held under the 1995 Constitution, organized by NUDIPU. Subsequent elections from 2001 to 2011 followed this structure. This process eventually faced a legal challenge in the case of *Robinson*

*Kasozi and 3 others v. Attorney General.*[68] The petitioners argued that it disenfranchised non-NUDIPU members, thereby violating their constitutional voting rights, a contention that was upheld by the Constitutional Court. Reforms came with the 2013 and 2020 legislative changes, empowering the EC and revising the election structures. However, challenges persist, including the exclusion of persons with intellectual and psychosocial disabilities from electoral frameworks.

## V. RELEVANT INTERNATIONAL AND REGIONAL LEGAL STANDARDS

### *A. International legal framework*

*1. Universal Declaration of Human Rights (UDHR)*—The UDHR was adopted by the United Nations General Assembly on December 10, 1948.[69] It is the foundational text in the history of human rights, consisting of 30 articles that enshrine basic rights and fundamental freedoms and affirm their universal character as inherent, inalienable, and applicable to all human beings.[70]

To date, the UDHR has been adopted by 193 member states of the United Nations, including Uganda.[71] Although not legally binding, the UDHR's contents have been elaborated and incorporated into subsequent international treaties, regional human rights instruments, and national constitutions and laws. Indeed, there is a consensus that many of its provisions are binding as customary international law.[72]

Article 2 of the UDHR provides for the equal recognition of individuals within a state's territory without distinction of any kind. Article 21 recognizes the right of every individual to participate in the governance of their country, either directly or through freely chosen representatives. This participation is facilitated through periodic and genuine elections, which must be conducted by universal and equal suffrage and held by secret ballot or equivalent free-voting procedures.

Uganda has domesticated the UDHR through Articles 1, 59, 35, and 78 of the Constitution and Sections 8 and 8H of the Parliamentary Elections Act, which provide for PWDs' right to vote. The challenge mainly relates to the implementation of the law and non-compliance with Article 21(2), which requires Uganda to conduct elections using universal and equal suffrage.

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68. Constitutional Petitions No. 37/2010; 40/2010; 48/2010.

69. UDHR (n 19).

70. As above.

71. As above.

72 . C Green '70 Years of Impact: Insights on the Universal Declaration of Human Rights' (2018) United Nations Foundation https://unfoundation.org/blog/post/70-years-of-impact-insights-on-the-universal-declaration-of-human-rights/ (accessed 21 February 2021).

*2. International Covenant on Civil and Political Rights (ICCPR)*—The ICCPR was adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976.[73] Uganda ratified the ICCPR on 21 June 1995, thereby assuming the obligations stated therein.

Article 25 of ICCPR provides for the right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives; and to vote and to be elected at genuine periodic elections, which must be by universal and equal suffrage and must be held by secret ballot.

*3. The Convention on the Rights of Persons with Disabilities (CRPD)*—In 2006, a landmark treaty, the CRPD, was unanimously adopted by the United Nations General Assembly. By the end of 2021, the Convention had been ratified by 182 States Parties.[74] On 30 March 2007, Uganda signed the CRPD and the Optional Protocol to the Convention. Both instruments were ratified without reservation on 25 September 2008.[75] Article 29 of the CRPD guarantees the political rights of PWDs. In particular, it requires States to guarantee the right of PWDs to vote and be elected,including by protecting their right to vote by secret ballot in elections without intimidation and ensuring the free expression of their will as electors.

*B. Regional Legal Framework*

*1. The African Charter on Human and Peoples' Rights (Banjul Charter)*—The Banjul Charter was intended to promote and protect human rights and basic freedoms in Africa.[76] It emerged under the aegis of the Organisation of African Unity (which has since been replaced by the African Union), and entered into force on 21 October 1986.[77]

Article 13 of Charter provides for the right of every citizen to participate freely in the government of their country, either directly or through freely chosen representatives in accordance with the provisions of the law. The African Commission reiterated the right to political participation of people with psychosocial disabilities in

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73. CCPR (n 24).

74. CRPD (n 31).

75. Signed Convention and Optional Protocol signatures and ratifications (2017)http://www.un.org/disabilities/documents/maps/enablemap.pdf (accessed 21 February 2021).

76. Organisation of African Unity African (Banjul) Charter on Human and People's Rights' Organisation of African Unity (OAU) (1981) https://www.achpr.org/legalinstruments/detail?id=49 (accessed 21 February 2021).

77. As above.

the case of *Purohit and Moore v. The Gambia.*[78] The case involved the automatic institutionalization of people with psychosocial disabilities under the Gambian Lunatics Detention Act. The complainants argued that this practice amounted to discrimination under Article 2 of the Banjul Charter. The Commission held that the right to political participation extends to all people, including those with psychosocial disabilities.

*2. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol)*—The African Disability Protocol was adopted on 29 January 2018 during the 39th Ordinary Session of the African Union Summit in Addis Ababa, Ethiopia.[79] The Protocol was aimed at ensuring the equal enjoyment of human rights by all PWDs in Africa.

Although the Protocol shows increasing awareness of disability on the continent, several countries are yet to ratify the treaty, including Uganda. Currently, only nine countries have signed this treaty. Nonetheless, the Protocol remains important insofar as it affirms the rights of PWDs in Africa to participate in public affairs and choose their representatives.[80] Once in force, it will go a long way in guaranteeing electoral democracy for PWDs in Africa.[81]

## VI. NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK

Uganda has a rich legislative and institutional framework for disability inclusion. It specifically provides for the right of PWDs to vote for their representatives to Parliament, with the electoral college as the mode of election.[82] Uganda's national laws and policies are discussed in detail below:

78. *Purohit v. Gambia* Communication No 241/2001, 16th ACHPR AAR Annex VII (2002-2003).

79. African Union 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (African Disability Protocol) (2018) https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa. (accessed 30 February 2021).

80. African Disability Protocol (n 79) art 21.

81. See also the African Charter on Democracy, Elections and Governance (2007) art 31(1) which explicitly calls upon state parties to promote the participation of social groups with special needs, including PWDs, in the governance process.

82. National Council for Disability (NCD) 'Disability Status Report' (2019) https://african.org/wp-content/uploads/2019/08/Disability-report-2019-p-1.pdf. (accessed 10 March 2022).

### *A. National legal framework*

*1. The 1995 Constitution of the Republic of Uganda*—The Constitution of Uganda is the supreme law of the land and has binding force on all authorities and persons throughout the country.[83] Objective XVI of the National Objectives and Directive Principles of State Policy recognizes the right of PWDs to respect and human dignity. The Constitution also recognizes the equality of all persons under the law in all spheres of life, including politics.[84] It also prohibits discrimination against persons on the basis of disability,[85] sets out the commitment of the state to take affirmative action in favour of marginalized groups,[86] and enjoins Parliament to enact laws appropriate for the protection of PWDs.[87]

Furthermore, Article 1 of the Constitution gives all power to the people, who are to exercise their sovereignty in accordance with its terms. Article 1 (4) empowers the people to express their will and consent regarding who should govern or represent them.[88] This provision entitles all Ugandans who qualify to vote to be accorded the right to choose their representatives. The Article is in consonance with the delegate model of representation, which recognizes that elected representatives should be chosen by the will of the people.

The Constitution takes special cognizance of PWDs' right to vote. To this end, it grants every citizen of Uganda aged eighteen years and above the right to vote,[89] and obliges the State to take all necessary steps to ensure that all citizens qualified to vote register and exercise their right to vote.[90] It also mandates Parliament to make laws to provide for the facilitation of citizens with disabilities to register and vote.[91]

In compliance with Articles 59(1) and (2), the government has endeavored to ensure that adult Ugandans register to vote in public elections and that this opportunity is availed to all, including PWDs. However, challenges remain in the effective implementation of this provision. In particular, the government has not fully implemented Article 59(4), given that: (i) visually impaired persons have no provision for Braille voting paper; (ii) polling agents have not been trained to understand sign

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83. Constitution (n 34) art 2(2).

84. Constitution (n 34) art 21 - provides for equality of all persons and freedom from discrimination.

85. Constitution (n 34) art 21(2).

86. Constitution (n 34) art 32.

87. Constitution (n 34) art 35.

88. Constitution (n 34) art 1(4).

89. Constitution (n 34) art 59 (1).

90. Constitution (n 34) art 59 (3).

91. Constitution (n 34) art 59 (4).

language; (iii) there is no provision for the movement of PWDs to and from the polling stations, except for those who are part of the electoral college; and (iv) accessibility to registration centers is still a challenge.

The Constitution also provides for the composition of Parliament to include representatives of the army, youth, workers, PWDs, and other groups as Parliament may determine.[92] It obligates Parliament to determine the representation of special interest groups for the purposes of retaining, increasing, or abolishing any such representation;[93] and to prescribe by law the procedure for elections of PWDs' representatives.[94]

The intention of the framers of Article 78(1) was to recognize the voting rights of special interest groups, including PWDs, whose inclusion in the composition of Parliament was by way of affirmative action to bridge the gap created by factors such as historical discrimination. The first legislative representation for PWDs was in the Constituent Assembly, followed by the NRC (two representatives) and subsequent parliaments (five representatives each). According to the 2019 Disability Status Report prepared by the National Council for Disability, the recognition of PWDs under the Constitution provided a basis for enacting laws to realize the rights of PWDs in Uganda.[95]

*2. The Persons with Disabilities Act, 2020*—The Persons with Disabilities Act of 2020 was intended to ensure compliance with the CRPD.[96] While the language of the PWDs Act employs a human rights-based approach, the Act also relies on the medical approach for the determination of disability.[97]

Section 3 of the Act guarantees PWDs the right to enjoy fundamental and other human rights and freedoms enshrined in the Constitution. The provision domesticates the obligations enshrined in the Constitution and the CRPD by urging the government and all persons in Uganda to respect, uphold, and promote the fundamental and other human rights and freedoms of PWDs.

In addition, under Section 43, the Act operationalizes Article 78(4) of the Constitution as far as it provides the electoral structure of the representatives of PWDs. It re-echoes Section 8H of the Parliamentary Elections Act by elaborating on the use of

92. Constitution (n 34) art 78 (1)(c).

93. Constitution (n 34) art 78 (2).

94. Constitution (n 34) art 78 (4).

95. National Council for Disability (NCD) (n 82).

96. The PWDs Act of 2020 Act repealed that of 2006, which was enacted prior to the entry into force of the CRPD. Section 50 of the Act also repealed the National Council for Disability Act, 2003 and the Uganda Foundation for the Blind Act, Cap. 58. As such, the Act now consolidates the legislative framework for disability inclusion in Uganda.

97. As above.

an electoral college for PWD representatives to Parliament. Section 43 and Schedule 7 of the Act impose a duty on the EC to facilitate the formation of an electoral college and to appoint returning and presiding officers to conduct the elections. Section 43 also provides for PWDs elections at the national level to be conducted by secret ballot.

Under the Act, PWDs in each village assemble to elect five executive committee members.[98] The executive committee members from each village then assemble at the parish or ward and elect five executive committee members.[99] The parish or ward PWDs executive committee members subsequently assemble at the sub-county or division to elect five PWDs executive committee members at that level.[100] The sub-county, town, or city division executive committee members also assemble at the district to elect five district PWDs executive committee members.[101] Finally, the five executive committee members from each district form the national electoral college to elect the representatives of PWDs to Parliament.[102] The Act requires that the five delegates at each level ensure representation in terms of categories of disabilities and gender, where relevant.[103]

*3. The Parliamentary Elections Act, No. 17 of 2005*—The Parliamentary Elections Act (PEA) operationalizes Articles 59(4) and 78(1)(c) of the Constitution, which provide for the right to vote or choose representatives of PWDs to Parliament. Section 8H states that representatives of PWDs in Parliament must be elected in accordance with the National Council for Disability Act 2003 (NCD Act). However, the NCD Act was repealed by Section 50 of the PWDs Act, 2020.[104] Therefore, Section 8H of the PEA needs to be amended to reflect this revision.

Section 56 of the PEA affirms the right of PWDs to vote by allowing a voter who, by reason of visual impairment, illiteracy, old age, or any other disability, is unable to fix the authorized mark of choice on the ballot paper, to seek assistance from another person.[105] However, the Section has a limitation in that it is only helpful to PWDs who are aware of the existence of this right and are sufficiently prepared to utilize the opportunity. The application of Section 56 is further limited by the fact that

98. Persons with Disabilities Act (n 2) schedule 7.

99. As above.

100. As above.

101. As above.

102. As above.

103. As above.

104. The Persons with Disabilities Act, 2006, the National Council for Disability Act, No. 12 of 2003 and the Uganda Foundation for the Blind Act, Cap. 58 are repealed.

105. Section 56 has a number of SubSections that state the conditions under which this freedom is guaranteed and the exceptions to the application of the freedom.

Sub-Section (3) subjects the authorization to grant assistance to PWDs to the will and satisfaction of the presiding officer.[106] Consequently, in a situation where the presiding officer is not well conversant with the law or has a personal vendetta against a PWD voter, there might be prejudice against such voters. Additionally, Sub-Section (5) subjects the assistance to be granted only if the PWD voter voluntarily requests assistance. Given the insufficient civic and voter education of PWDs, the Section does not seem helpful in a situation where the voter is not aware of their rights.

*4. The Electoral Commission Act, Cap 140*—The Constitution, PEA, PWDs Act, and Electoral Commission Act (ECA) mandate the EC to organize, conduct, and oversee elections of PWDs in Uganda.

Article 61(1)(g) of the Constitution identifies voter education as one of the EC's mandates. In addition, Section 12 (1) (g) of the ECA requires the Commission to educate citizens regarding voting procedures, including, where practicable, the use of sign language. However, even with this clear mandate, the EC did not indicate any PWD-specific voter education in its report on the 2021 general elections.[107]

The Act is otherwise silent on the duties of the Commission with respect to the right to vote for PWDs, the provision of disability-friendly voting materials, a conducive voting environment in terms of accessibility, and the right to secrecy of PWDs (especially visually impaired persons) in the voting process. The absence of such provisions contravenes Article 29 of the CRPD.

The Constitutional Court considered parts of this legislative framework in the consolidated petitions of *Robinson Kasozi v Attorney General*;[108] *Legal Action for Persons with Disabilities v Attorney General*;[109] and *Moses Mauku and Another v Attorney General*.[110] The three petitions were filed in 2010 challenging the constitutionality of different aspects of the law relating to the election of special interest groups (workers, youth, and persons with disabilities) to Parliament. In the consolidated petition, it was contended, among other things, that Section 8(4) of the PEA provided a procedure for election of PWDs' representatives which was different from that for other special interest groups such as women and youths, and was therefore discriminatory. For instance, while women's representatives were elected by all women qualified and registered to vote, PWDs' representatives were voted by an unelected

106. A presiding officer shall not allow a person to assist a voter to vote unless that officer is satisfied that is ti permitted under SubSection (1).

107. Electoral Commission 'The Electoral Commission Report on the 2020/2021 General Elections'. https://www.ec.or.ug/general-elections-report-2020-2021 at 83 (accessed 8 September 2023).

108. Constitutional Petition No. 37 of 2010.

109. Constitutional Petition No. 40 of 2010.

110. Constitutional Petition No. 48 of 2010.

electoral college convened by NUDIPU, and without a voter's register maintained by the EC. The Petitioners also noted that NUDIPU neither operated, nor had affiliates, in all districts in Uganda, which excluded PWDs in districts it did not cover. In addition, the conduct of elections through an electoral college, which was convened in Kampala, required that the PWDs be transported from other districts, which not only excluded those who were unable to travel but also greatly inconvenienced those who travelled owing to their disabilities. Finally, it was argued that giving NUDIPU, a non-governmental organization, control over the process for the election of the parliamentary representatives of PWDs was an abrogation by the government of its constitutional obligation to take all necessary measures to ensure that all citizens exercised their right to vote.

The Court upheld the petitioners' contention that it was unconstitutional for NUDIPU, as a non-governmental organization, to be empowered to determine the composition of the electoral college for PWDs' parliamentary representatives. Participation in those elections was necessarily restricted to members of NUDIPU, which disenfranchised non-members of the organization, contrary to the right to vote under Article 59 of the Constitution and the right to freely associate under Article 29 (1) (e) of the same document. It should be noted that the Constitutional Court did not, in this consolidated petition, invalidate the electoral college for the election of PWDs' parliamentary representatives (which was not a matter put before it), but only required that the voting process be handled by the government as opposed to NUDIPU.[111]

### *B. Institutional framework*

The institutional framework for disability inclusion in Uganda is grounded in the Constitution and various Acts of Parliament, as discussed above.[112] These include the EC, the Ministry of Gender, Labour and Social Development (MoGLSD), the National Council for Persons with Disabilities (NCPD), and NUDIPU.

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111. See also *Ddamulira v. Attorney General* UGSC [2015] 10. The applicant sought orders against the respondent staying the implementation of the National Council for Disability (Amendment) Bill, 2015. He argued that it would require elections for PWDs' representatives to be by queuing behind one's preferred candidate, as opposed to a secret ballot – which would violate the right to a free and fair election under Article 59 (4) of the Constitution. In the event, the Court dismissed the application as premature and speculative, since it challenged a Bill and not an actual Act of Parliament.

112. Second Global Disability Summit (2022), retrieved from https://www.globaldisabilitysummit.org/resources/global-disability-summit-2022-report. (accessed 10 February 2023).

*1. The Electoral Commission*—The EC was established by Article 60(1) of the Constitution.[113] Under Article 61, the functions of the Commission include ensuring that regular, free, and fair elections are held.[114] The Commission is generally mandated to ensure that PWDs participate in the electoral process and is also tasked with facilitating the formation of the electoral college, including appointing returning and presiding officers to conduct the elections.[115] To this end, the Commission issued guidelines for the election of parliamentary representatives for PWDs ahead of the 2021 general elections.[116]

Over the years, the EC has taken commendable strides in improving the conduct of elections of parliamentary representatives for PWDs. However, a number of respondents interviewed in this study – most of whom have previously participated in PWD elections conducted by the EC – identified several ways in which the Commission continues to struggle to execute its mandate. These shortcomings include: (i) failing to sufficiently train polling assistants to handle the special needs of PWDs; (ii) inadequate voter education; and (iii) insufficient provision for assistive devices, relevant technologies, and other requirements for fully accessible voting environments.

*2. The Ministry of Gender, Labour and Social Development (MoGLSD)*—The MoGLSD is responsible for coordinating disability-related matters in Uganda. This mandate is administered through the Department of Disability and Elderly Affairs (DDEA), which is headed by a Commissioner,[117] under the political supervision of the State Minister for Disability Affairs.[118]

The DDEA has several programs and activities that support PWDs in Uganda. These include training PWDs in employable skills, drafting relevant policy documents, such as the Policy and National Plan of Action on Disability, and facilitating capacity-building sessions for PWDs through Organizations of Persons with Disabilities (OPDs).[119]

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113. It provides that there shall be an Electoral Commission which shall consist of a chairperson, a deputy chairperson and five other members appointed by the President with the approval of Parliament.

114. Constitution (n 34) art 61(1)(a).

115. Persons with Disabilities Act (n 2) sec 43(2).

116. Guidelines for Election of Representatives of Persons with Disability (PWDs) in Parliament, 2017. According to Guideline 6, for example, these elections were to be conducted by secret ballot, with the electoral college being comprised by the five PWDs' executive committee members from each district

117. An interview was conducted with the Commissioner for Disability and Elderly Affairs on 14 October, 2022.

118. Interview with the Minister of State for Disability Affairs in 2021.

119. Ministry of Gender, Labour and Social Development. https://mglsd.go.ug//elderly-and-disability/ (accessed 24 December 2022).

To fulfill its mandate, the Ministry works closely with District Community Development Officers (DCDOs), who usually hold the portfolio of District Focal Persons for Disability. The Ministry also oversees the National Council for Persons with Disabilities (NCPD) and the Equal Opportunities Commission (EOC).

*3. The National Council for Persons with Disabilities (NCPD)*—The NCPD was first established under the National Council for Persons with Disabilities Act of 2003 as the National Council for Disability (NCD). However, the 2003 Act was repealed in 2020 under Section 50 of the PWDs Act. In terms of Section 16 (1) of the PWDs Act, the NCD was re-established as the National Council for Persons with Disabilities (NCPD).

According to Section 17 (1) (a) of the PWDs Act, one of the functions of the NCPD is to monitor the implementation of the Act by governmental and non-governmental agencies, corporate bodies, and private persons. Unlike the NCD – which under Section 6 (i) of the repealed 2003 Act was specifically mandated to assist the EC in organizing elections for parliamentary representatives of PWDs – the NCPD is not given a pronounced role in this regard under the 2020 PWDs Act.[120] Instead, the role of the NCPD under Section 16 (i) of the 2020 Act is the more general one of 'mobiliz[ing] persons with disabilities to participate in elections, sports and other co-curricular activities for persons with disabilities at all levels.' Moreover, the NCPD has not been able to discharge this diminished role due to insufficient financial allocations from the government.[121] The result is that many PWDs are not aware of a significant number of critical programs, including electoral processes, which affects their participation in the same.

*4. The National Union of Disabled Persons of Uganda (NUDIPU)*—As noted earlier, NUDIPU was formed in November 1987 as an umbrella organization aimed at advocating for the inclusion of PWDs and their concerns in mainstream development processes.[122]

A critical success in this regard was NUDIPU's ability – and the various structures formed under its aegis – to persuade the Constitutional Review Commission to include disability-specific provisions in the draft Constitution and to successfully

120. Physical interview with the Vice Chairperson, NCPD on 17 October 2022 at the Offices of the National Council for Persons with Disabilities.

121. As above.

122. National Union of Disabled Persons in Uganda (NUDIPU) 'Who We Are' https://nudipu.org/about/ (accessed 21 June 2021).

lobby for the representation of PWDs in the 1994 Constituent Assembly (CA).[123] This representation in the CA was instrumental in ensuring that the Constitution adopted in 1995 recognized and responded to the needs of PWDs.

From 1996 to 2011, elections for parliamentary representatives for PWDs were conducted through NUDIPU structures. However, from 2015 – following the legal challenge to this process presented in the consolidated case of *Robinson Kasozi and Others*, discussed above – this mandate has since been transferred to the relevant government Ministries, Departments, and Agencies (MDAs), particularly the EC.

In these circumstances, NUDIPU now concentrates on supporting electoral processes for PWDs in its capacity as a non-governmental organization. In particular, it advocates for equal opportunities for – and strengthening of participation of – PWDs in democratic electoral processes to ensure that they are not disfranchised.[124]

## VII. ANALYZING THE UTILITY OF THE ELECTORAL COLLEGE IN A DEMOCRATIC SYSTEM

This section analyses the utility of the electoral college in the context of electoral democracy. This is done in two dimensions: i) by examining the process of formation of an electoral college and ii) by assessing the strengths and weaknesses of this mechanism.

### *A. Formation of the electoral college*

As noted earlier, the process of forming electoral college structures for parliamentary representatives of PWDs is clearly laid out in Section 43 and Schedule 7 of the PWD Act, 2020. Simultaneously, interviews with various PWD key informants revealed that most voters at the different Local Council levels have very limited knowledge of this process.[125]

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123. As above. PWDs were represented in the Constituent Assembly by one representative – Hon. Eliphazi Mazima.

124. I Wandubile 'NUDIPU Fights for PWDs Electoral Inclusion' *Mulengera News* (2021) https://mulengeranews.com/nudipu-fights-for-pwds-electoral-inclusion/ (accessed 02 March 2022).

125. Interview with a PWD male Local council III councillor from Kabale District, conducted on 28 December 2020 in Kabale District. The respondent observed as follows; 'We elect PWD leaders through electoral colleges; five (5) from each level, that is to say, LC I elect five (5) people, these converge at LC II and also elect five (5) people, these converge and elect representatives to go to LC III, those at LC III elect five (5) people to go to LCV. The five (5) delegates elected at the LCV in all the districts in Uganda constitute the National Electoral college that elect the PWD representatives to Parliament.'

Indeed, the practical steps for the formation of the electoral college are fairly complicated.[126] The process begins at the village level, with the EC conducting village verification exercises. This involves villages councils being asked to identify PWDs within their jurisdiction. This information is forwarded to the parish election officers, who then forward it to the District Returning Officers (DROs) for compilation. A register for PWDs who qualify to vote is then compiled and displayed in every village for 21 days to enable the general public to confirm the correctness of the particulars and suggest any amendments.

Any queries must be notified to the Election Officer (EO) within 6 days from the end of the 21 days of display. Under Section 25 of the ECA, the EO must then refer the complaint to the *ad hoc* Parish Tribunal appointed by a magistrate in that jurisdiction. The Tribunal submits its decision to the EC, which incorporates those findings in the compilation of the final register. The register is not displayed again. The EC then appoints days for the nomination of candidates for the village executive committees. This process takes place at the sub-county level, where all villages in the area converge. If the position is unopposed, the person nominated is declared by the EC as elected for that position. Where it is contested, the candidates proceed to campaigns, followed by polling for each village executive committee member. Every executive committee – at any level – is composed of a Chairperson, Vice Chairperson, General Secretary, Publicity Secretary and Treasurer.[127]

As noted earlier, the five members of the executive committee elected at the village level form the electorate and candidates for the parish executive committee in respect of that village. The five elected parish executive committee members then elect the executive committee of the sub-county, who in turn convene to elect the district executive committee. The five members of each district executive committee constitute the delegates to the national electoral college, who elect the parliamentary representatives of PWDs at a national conference organized by the EC for that purpose.[128]

The process of forming the electoral college, as described above, arguably undermines the two theories adopted by this study, that is, the delegate model of representation and the social model of disability.

It will be recalled that the delegate model of representation posits that delegates should be elected by the will of the majority and that they should take decisions in consultation with the broader electorate. However, from the description of the process

126. Interview with a Senior Election Officer of the Electoral commission, conducted on 18 October 2022 at the Electoral Commission Headquarters, Kampala - Uganda.

127. Persons with Disabilities Act (n 2) schedule 7.

128. Interview with Senior Elections Officer (n 126).

for the formation of the electoral college for PWDs' parliamentary representatives, it is evident that ordinary voters with disabilities only effectively participate at the village level. Thereafter, the electorate and candidates must come from the membership of the committees at each level. Therefore, the majority of PWDs are eliminated at the village level, with the remaining elections left in the hands of a few people who never consult the broader constituency as to whom to vote.

On the other hand, the social model of disability asserts that disability is a social construct that arises from the failure of the state to put in place proper mechanisms to eliminate those barriers that impair critical life activities. In my view, a national electoral college that excludes the majority of PWDs from exercising their right to directly vote for their parliamentary representatives constitutes an instance of such a socio-politically constructed barrier to full interaction and participation.

### *B. Strengths and weaknesses of the electoral college*

#### *1. Strengths*

*i) Legal basis*—The most significant strength of the electoral college for PWDs' parliamentary representatives is that, as highlighted above, it is established under the Constitution and laws of Uganda. As such, any transition from this system is only possible through the amendment of the existing legal framework.

*ii) Affordability*—The electoral college system is also cheaper to run – in terms of financial, logistical, human and other resources – logistics as compared to elections by universal adult suffrage.[129] As a sub-county supervisor in the Gulu District observed:

> [holding] elections through [the] electoral college is cheap in terms of the distribution of election materials and … the fact that the election is organized in one place at the same time.[130]

The affordability of electioneering under this system is also beneficial to candidates who tend to only campaign to the delegates who constitute the national electoral college. According to the Commissioner for Disability at the MoGLSD:

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129. Interview with Senior Elections Officer (n 126).

130. Interview with a staff of the Electoral Commission, conducted on 28 December 2020 in Gulu District.

> …voting by electoral college reduces the cost of election financing on the part of the candidates, [since] the candidate's manifesto is presented mostly to the delegates of the national electoral college and not to all PWDs across the country, which would be very expensive.[131]

Evidently, the electoral college – composed of a few representatives of PWDs rather than all voters with disabilities – is cheaper for both the organizers of elections and the candidates who take part in them.

*iii) Transparency*—It would also appear that the electoral college is relatively transparent, from the processes of choosing delegates at different levels to the final voting for PWDs' parliamentary representatives at the national level. A male respondent from an association of persons with disabilities in Kabale District stated: '[t]he college system is transparent … It is also easy to count votes...'.[132] This is especially true because the EC takes charge of the elections and covers the transport, accommodation, and out-of-pocket expenses of the delegates who constitute the electoral college.[133] In these circumstances, the danger of undue external influences subverting the will of the electors is somewhat mitigated. Nonetheless, as noted below, substantial challenges remain in this respect.

*iv) Geographical coverage*—The national electoral college covers a wide electoral area, which exposes the candidates for election to the challenges of PWDs in almost all parts of the country. According to a program officer with the National Union of Women with Disabilities in Uganda (NUWODU):

> The best part of the election is that candidates get to know the problems of PWDs across the country, [which] enables them to have a uniform voice to advocate for [their] issues ... [134]

To an extent, therefore, the PWDs' parliamentary representatives elected through this process approach their mandate with a more holistic and national perspective.

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131. Interview with the Commissioner for Disability and Elderly Affairs on 14 October 2022 at Ntinda, Kampala.

132. Interviewed on 29 December 2020 at Kabale District.

133. See interview with a Senior Elections Officer (n 126).

134. Interview with a Program Officer, National Association of Women with Disability, conducted on 27 December 2020 in Gulu District.

*v) Transparency*—In the words of a male respondent from an association of persons with disabilities in Kabale District, 'The college system is transparent. There is less corruption and bribing. [There is also] no sectarianism because we elect capable people not race, religion or otherwise. It is also easy to count votes...'[135] So, it is the Electoral Commission that takes charge of the elections,[136] including the transport, accommodation and upkeep of all the delegates hence minimizing any external influences of the election process. To this end, it could be asserted that the elections are transparent because all the delegates are accorded similar treatment by the Commission.

*2. Weaknesses*

*i) Infringement of PWDs' right to vote*—As noted earlier, the process of forming the national electoral college ultimately impedes the right to vote for most PWDs in Uganda, as it progressively excludes them at each succeeding level. The only opportunity available for most PWDs to vote for their leaders is at the village level. Thereafter, five-member committees participate in the elections at subsequent levels up to the elections for the representatives to Parliament. As the Chairperson of the NCPD noted, '[E]lectoral colleges have never been a vehicle to democracy in a developing world … because it is only a few PWDs who decide for the majority.'[137] Similar sentiments were shared by most of the PWDs interviewed in this study. The respondents noted that the parliamentary representatives voted by the electoral college usually did not reflect the true wishes of most PWDs in Uganda, especially since the delegates seldom, if ever, bothered to consult with their broader constituencies.[138]

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135. Interviewed on 29 December 2020 at Kabale District.

136. See interview with a Senior Elections Officer (n 126).

137. Interview with the Chairperson, National Council for Persons with Disabilities, conducted on 17 October 2022 at NCPD Headquarters in Bukoto, Kampala.

138. A sub-county supervisor working with the Electoral Commission in Gulu District said: '…the majority PWDs rarely participate in the elections and are at the same time disenfranchised'. Incidentally, similar observations were made a decade ago in 1996 by Hon. Karusoke Constatirino (a Member of Parliament in the 6th Parliament), who observed during the debate on the use of electoral colleges during the consideration of the Parliamentary Elections (Interim Provisions) Bill, 1995, that; '*The system of electoral colleges denies the majority of voters in a given area the right to elect their representative. For example, those of us who came here in 1989, 1 will give our own example. I was elected by 94 voters out of 150, in the whole county; and my county has over 30,000 people. So, the majority of the people in my county were denied the right to elect me…'* - Parliamentary Debates (Hansards) National Assembly Official Report Issues No. 43 Ninth session- first meeting of 31st January (1995-1996) https://www.parliament.go.ug/documents/107/hansards-1996 (accessed 21 November, 2021).

*ii) Failure to guarantee secrecy of the ballot*—Under Section 43 (5) of the PWDs Act, elections at the village, parish or ward, sub-county, division, and town council levels must be conducted by the electorate lining up behind the candidates nominated for the office, or their representatives, portraits, or symbols. As noted earlier, these elections are key to the constitution of the national electoral college. Clearly, the method of voting stipulated under Section 43 of the Act does not ensure the secrecy of the ballot as required under international, regional, and national law.

*iii) Absence of disability-inclusive voter registration and nomination of candidates*—Under the PWDs Act, the electorate at the village level is constituted by 'all willing persons with disabilities' in a given area.[139] The PWDs Act requires all willing PWDs in each village to assemble to elect five executive committee members. However, a Senior Elections Officer in charge of Special Interest Groups revealed that, contrary to the provision of the law, PWDs are identified by members of a village committee in the area of jurisdiction. This means that a disabled person who is not known to the leaders of the village may be left out of the process, which derogates the PWDs exclusive right to association by free will. In addition, there is inadequate information about the registration process to enable those not known by the leaders to register voluntarily. Some of the registration centers are far away, hence inaccessible to certain categories of PWDs. The forms used for registration are not convenient for the visually impaired or illiterate PWDs.

*iv) Manipulation of voters*—The theory of the delegate model of representation posits a social contract in which the supremacy of the general will of the people is key to attaining electoral democracy. However, it was noted that in most cases, the delegates are not elected by the will of the electorate, rather by bribery, which makes some delegates remain in power for a long period. Because of bribery, some of the delegates pay their way into leadership and inadvertently negate the equal opportunities principle by Rawl. The respondents complained that; 'There is a lot of bribery including buying voters'[140]. Another respondent explained that;

> Everything is commercialised and the PWDs have to incur some costs for transportation so when a candidate offers to pay their transport and a little extra, they are forced to vote for him/her whether the person is

139. Persons with Disabilities Act (n 2) schedule 7, para 2.

140. Interview with a female PWD from Nyamabale, Northern Division Sub-county, Kabale District on 26 December 2020.

capable or not.[141]

A female councilor from Pece sub-county in Gulu District[142] commented that; 'Few people using money decide for the majority, they make poor choices that at the end of the day yields little positive at the community level'.

*v) Inadequate voter and civic education and absence of clear communication channels*—The research revealed that there is low voter and civic education of PWDs about the structure of elections. Article 61 (g) of the Constitution mandates the Electoral Commission to conduct voter education. Voter education and publicity create awareness and knowledge among voters regarding electoral processes. It also spells out the roles of stakeholders in the electoral process. Voter education is an important aspect that promotes the credibility of an election, as it empowers citizens with knowledge of how to exercise their right to vote in any election. However, the respondents showed limited knowledge of the functionality of the electoral system, which makes them more susceptible to manipulation.

A sub-county supervisor working with the Electoral Commission from the Northern Division of Kabale District[143] noted that; 'our challenge is that majority of the PWDs are not aware of their rights'. The situation was not any different in Bududa district where a field focal person[144] working with an NGO dealing with PWDs commented that; 'PWDs leaders need to learn and explain to the masses their constitutional rights. The higher the degree of education the higher the exposure and participation and vice versa.' The program officer of the National Association of Women with Disability[145] in Uganda, Gulu District added that; 'The majority of the PWDs do not know their rights to voting.' The author agrees with the respondents, given that voter education is the avenue through which individuals can be sensitized about their constitutional rights, thereby enabling them to make better choices of leaders. If voter education is not adequately provided, poor choices of leaders will continue to be made, in addition to PWDs not fully embracing their right to participate.

*vi) Absence of a PWDs inclusive complaint mechanisms during the processes*—When a voter's name is eliminated or wrongly placed in a different voting

141. Interview with the Program Officer, National Association of Women with Disability in Uganda, Luweero Town Council, Luweero District on 27 December 2020.

142. Interview with a female councilor from Pece Sub-county in Gulu District on 28 December 2020.

143. Interviewed on 28 December 2020 at Kabale.

144. Interviewed on 27 December 2020 at Gulu.

145. Interviewed on 27 December 2020 at Gulu.

area, the affected voter is only given six days to raise the complaint to the election officer. A person who is disabled, is by nature limited in activity compared to an ordinary person in terms of movement; hence, the six days given for raising a complaint are not sufficient. Additionally, assigning an ad hoc tribunal constituted by members of the community to handle the complaint may lead to the denial of natural justice if a member of the tribunal is biased against the complainant. In addition, after the complaint is handled by the Tribunal, the register is not displayed the second time for the general public to scrutinize it, which is also a flaw against the principles of natural justice and human rights.

*vii) The ruling party (NRM)'s influence which impedes multiparty democracy*—The research found that one of the weaknesses of electoral colleges is that they do not avail the opportunity for multiparty democracy. Respondents argued that the ruling party members tend to influence the electoral processes, thereby negatively influencing the electors from supporting candidates from the opposition parties or independents. A male PWDs' Councillor from one of the sub-counties in Bududa district argued that; 'Multipartism does not exist in the elections of the PWDs, if the representative is on the opposition side, his or her voice is not even heard.' Another respondent from Kabale District argued that, 'Sometimes the Government imposes their candidates that are not the choice of the PWDs. There is a lot of corruption in the system.'

*viii) Illiteracy of PWDs*—The study found a high number of illiterate PWDs who cannot read or write and therefore shun electoral processes. The Equal Opportunities Commission confirmed in its 2013 report that there is a high rate of illiterate PWDs, and representatives attributed this to historical injustices. The Chairperson of NCPD expressed that the high illiteracy among the PWDs is as a result of most schools in Uganda not being disability inclusive; 'the PWDs' electoral college structures are non-inclusive to the illiterate class of PWDs who do not understand the process of forming the structures, this pushes them away from participating in the elections.' A senior staff member of the Electoral Commission said that,

> Due to the high levels of illiteracy, many PWDs do not benefit from voter education and most communication made by the Electoral Commission because it is done by television, radio, fliers, and SMS, among other forms, which cannot be understood by an illiterate person.

Illiteracy has caused the infringement of the right to vote of the illiterate PWDs, and leadership is continuously held in the hands of a few who keep on being elected by the electorate with no competitors.

*ix) Disability imbalance*—This research revealed another form of discrimination, known as disability imbalance/ableism. The electoral colleges seem to favor the physically disabled more than the other categories of disabilities and yet the Persons with Disabilities Act[146] urges the Electoral Commission to ensure balance of the different categories of disabilities as much as it is applicable. Schedule 3 of the Persons with Disabilities Act lists the recognized categories of disabilities in Uganda as follows: (1) physical disability caused by cerebral palsy, amputation of a limb, paralysis, or deformity; (2) hearing disability, including deafness and hard of hearing; (3) visual disability, including blindness and low vision; (4) deaf and blind disability; (5) mental disability, including psychiatric and learning disabilities; (6) little people; (7) albinism; and (8) multiple disabilities. The research revealed that even though the law on disability recognizes the categories of disability, the electoral college system seems to favour the physically disabled persons to the detriment of other categories.

A delegate councilor from Bududa District[147] said that; - 'More often than not the physical disabilities in terms of limbs are oversubscribed and therefore the persons with other disabilities are underrepresented and some categories like the mentally disabled, blind and albinos are not represented in the parliament of Uganda'. The Bududa District Community Development Officer also averred that, 'Worst of all, the items to help other disabilities like sign language interpreters or braille, guides and other assistive devices are often absent during the elections. These assertions confirm that PWDs have faced discrimination among themselves due to differences in categories of disabilities, contrary to Section 43 and Schedule 7 of the Persons with Disabilities Act and other mentioned legal frameworks.

The Constitutional Court of Uganda has pronounced itself on the issue of discrimination in terms of the category of disability in the case of *CEHURD and another v. Attorney General*.[148] The petition was filed to contest the constitutionality of laws, practices, and usage towards persons with mental disabilities in the criminal justice system embodied in the provisions of Sections 45 (5) and 86(2) of the Trial on Indictments Act, Cap. 23 (TIA) and Section 130 of the Penal Code Act, Cap. 120

146. Persons with Disabilities Act (n 2) schedule 7.1 - The five (5) delegates at each level shall ensure representation in terms of categories of disabilities and gender, where applicable.

147. Interview with a delegate councilor from Bududa District on 29 December, 2020 in Bududa district, Uganda.

148. Constitutional Petition 64 of 2011 [2015] UGCC 14 (30 October 2015).

(PCA). The petitioners averred specifically that Section 82(6) of the TIA is discriminatory in so far as it provides that if an accused is acquitted, he or she shall be immediately discharged from custody unless he or she is acquitted by reason of insanity, thereby setting different treatment between other people and persons with mental disabilities, contrary to Article 21 of the Constitution. Section 45(5) of the TIA adjudges a person who is not proven guilty as a criminal by referring to him as a criminal lunatic, contrary to Article 28(3) of the Constitution. Section 130 of the PCA was unconstitutional as it referred to persons with mental disabilities as idiots and imbeciles, which discriminates on the ground of disability, contrary to Article 21 of the Constitution. The Constitutional Court agreed with the petitioners and held that the impugned provisions denigrated the personal integrity and dignity of mentally disabled persons by referring to them as 'idiots' and 'imbeciles,' thereby contravening the Constitution. In essence, the court set the bar for non-discrimination based on categories of disabilities.

*x) High costs of election financing*—Another challenge presented by the use of a National Electoral College is that Section 43 and Schedule 7 of the Persons with Disabilities Act make the entire country a constituency for the candidates, and so they have to traverse the entire country to market their manifesto and to interact with the delegates living in the different districts of the country. This, in a way, derails the candidates financially and physically since they are already disadvantaged by their impairments. This challenge was confirmed by the Hon. Alex Ndeezi, a representative of PWDs in the 10th and 11th Parliament, who said that;

> Before the amendment of the PWDs Act in 2020, it was already difficult to move through the region to canvass for votes from the members of the electoral college, as a number of districts make up a region. But with the amendment, this has been worsened as I have to move to all the regions and hence across the entire country and this is very expensive and also physically draining since I have to move with other people to facilitate my meetings and the entire cost is on me.[149]

*xi) Absence of assistive devices to facilitate the PWDs during elections*—The movement to and from polling and registration centers poses significant challenges for Persons with Disabilities (PWDs) owing to mobility issues related to their disabilities. A male PWD from the Luweero District highlighted the difficulty of transportation to

149. Interview with Hon. Alex Ndeezi, Representative of PWDs in the 10th and 11th Parliament, conducted on 3 December, 2020 at Kampala, Uganda.

voting locations, especially for those advancing to the next electoral level. The Electoral Commission staff acknowledged these challenges, citing limited resources for transport and communication, as well as inadequate materials for voters with disabilities, including the deaf and the blind.

The lack of disability-friendly voting materials, such as braille for the visually impaired and sign language interpreters further complicates the process. These limitations are attributed to insufficient funding for the Electoral Commission to fully support accessible elections. Additionally, long queues deter voters with invisible disabilities, and the absence of helpers or assistants poses barriers. Individuals with intellectual disabilities face unique challenges, including emotional relapses and anxiety due to prolonged waiting periods.

## VIII. CONCLUSIONS AND RECOMMENDATIONS

The discussion in this article leads to the conclusion that while Uganda boasts a robust legal framework that ostensibly guarantees the right to vote, it imposes limitations on Persons with Disabilities (PWDs) by mandating the election of their parliamentary representatives through a National Electoral College composed of only five delegates per district. Thus, the Electoral College system is not effective in attaining electoral democracy for the PWDs in Uganda. This system restricts the broader PWD community's ability to vote directly for their representatives, concentrating decision-making power in the hands of a few delegates who often prioritize personal interests over the collective will. This exclusionary approach deprives ordinary PWDs of meaningful participation in shaping their representation and offers no legal recourse to address delegate misconduct. Consequently, the National Electoral College system undermines electoral democracy for PWDs in Uganda, contravening both international and domestic legal principles advocating inclusive governance. To safeguard the electoral democracy of PWDs, the author suggests the following reforms, which, if implemented, could significantly enhance the participation of persons with disabilities in achieving true parliamentary electoral democracy.

Since voting by the National Electoral College for the representatives of PWDs is entrenched in the legislative framework of the country, changing the status quo would necessitate Parliament, as the legislative arm of the government, to review and amend the electoral laws to align with international and domestic legal standards that emphasize inclusive participation and non-discrimination in political representation. These include granting PWDs the right to vote for their representatives through a Universal Suffrage System rather than a limited electoral college.

Arising from the interviews conducted with PWDs, there was a proposal that if Universal Adult Suffrage is financially unfeasible in the short term, the government could consider allowing PWDs to vote at the regional level. This approach would increase PWD participation in the electoral process while making it easier for candidates and voters to interact with each other. Regional representation, often based on kinship, fosters greater engagement between representatives and their constituents, ensuring a more inclusive and accessible electoral process.

Another proposed suggestion is to expand the size of the electoral college to increase the number of delegates who constitute the electoral colleges to enable more participation of the PWDs. This could be achieved by allowing the National Electoral College to constitute all five-member committees in all sub-counties in Uganda. This proposal is a multifaceted solution because it will also reduce bribery, as it is harder to bribe a larger number of voters than a small number. The expanded college will eliminate some electoral offences, such as bribery (contrary to Section 68 of the EC Act) and the obstruction of voters (contrary to Section 71 of the EC Act), which are common occurrences with Electoral College elections.

The research revealed that the challenges extend beyond the existing legal framework, which establishes electoral colleges, to the institutions responsible for its implementation. Although the institutional framework is clearly outlined in the Constitution and other laws, many institutions are not fully executing their mandate to coordinate and monitor disability inclusion in policies and programming. This is partly due to overlapping roles and, more significantly, insufficient funding to support these activities. To enhance efficiency and prevent resource wastage, institutions with similar or related mandates on PWDs should build synergies and collaborate effectively to ensure a more coordinated approach to disability inclusion.

The article recommends a deliberate move by the government to increase the budget for the elections of PWDs to enable the Electoral Commission to avail assistive devices, train personnel to handle PWDs elections, choose polling stations that are conducive for PWDs, and establish a database for PWDs. The government should also release budgeted funds on time and eliminate delays that affect planned activities. This will ensure the provision of an equal opportunity for PWDs to enjoy their electoral democracy as much as ordinary Ugandans do. It will also ensure proper planning of the electoral colleges, thereby improving their effectiveness. Adequate and timely funding will also enable the Electoral Commission to fully facilitate the training of election officials and polling assistants in the language of the blind, deaf, and other forms of communication for PWDs to ensure that the returning officers have the ability to effectively communicate in a language understood by the different categories of PWDs.

The article suggests deliberate efforts by the Electoral Commission to carry out voter and civic education for the PWDs electorate to sensitize them on how electoral colleges operate. This will enable voters to participate in the processes from the grassroots, thereby ensuring the attainment of electoral democracy. Effective communication and availing information (in a way that is understood by the different types of disabled persons) about the operations of electoral colleges, the time of constituting the colleges, how to register as a PWDs, how to participate, among other issues, will enable all the willing PWDs to participate and hence deliver electoral democracy to the PWDs.

The author believes that implementing the above proposals will help ensure that Persons with Disabilities in Uganda can fully exercise their right to political participation and enjoy true electoral democracy in line with both national and international legal frameworks.

# TRANSFORMATION OF COMMUNITIES' PERCEPTIONS TOWARDS WOMEN'S PARTICIPATION IN UGANDA'S POLITICS

Peace Regis Mutuuzo*, Sabiti Makara** & Sarah Ssali***

**ABSTRACT**

*Despite the fact that Uganda reserves 30% of electoral seats for women alongside open seats to promote gender equality in politics, the increase in women's political representation is largely due to these reserved seats and not success in the open seat contests. This study investigated whether communities' perceptions have shifted to support equal gender representation in politics. It specifically assessed the local communities' willingness to vote for a woman competing against a man for an open seat, and the willingness of Members of Parliament (MPs) to support a policy of equal gender representation in politics. The study used a cross-sectional design and employed random sampling techniques to collect both qualitative and quantitative data from 400 respondents across four Ugandan districts: Kasese, Mukono, Jinja, and Arua. It also included 16 gender-segmented focus group discussions and 38 Key Informant Interviews (KIIs). Findings revealed that communities' perceptions have transformed. For instance, 91.8 per cent of respondents expressed willingness to vote for a woman contesting with a man on an open seat. The main reasons for this willingness were; leadership qualities, ability to represent women's issues, and transparency. However, actual voting patterns did not reflect this willingness. In addition, male MPs expressed unwillingness to support a gender parity policy, citing concerns about losing dominance over women, disruption of the male-led social order, and a belief that women are adequately represented in other sectors. The study recommends amending Articles 79 and 189 of the Ugandan Constitution to guarantee equal gender representation in all elective positions and close the gender gap in politics.*

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* PhD (Gender Studies), School of Women and Gender Studies, Makerere University. Email; <pmutuuzo@gmail.com>.

** PhD (Political Science), Professor, Department of Governance, Kabale University, Uganda. Email: <sabitiem@gmail.com>.

*** PhD (International Health Studies), Professor and Dean, School of Women and Gender Studies, Makerere University, Uganda. Email: <sssaline2@gmail.com>.

## I. INTRODUCTION

Globally, there is a growing consensus on the importance of achieving gender equality as an integral part of genuine democracy. Women and their engagement in electoral processes is a key indicator of a country's democratic maturity.[1] Research shows that greater gender equality enhances the prospects for democracy within a nation.[2]
Women have long been marginalized in politics due to entrenched patriarchal norms that define their roles as primarily placed within the private sphere of the household.[3] In societies where traditional norms and values prevail, women get limited opportunities in politics,[4] because such norms dictate that their primary responsibilities lie in domestic caregiving rather than public leadership.[5] These societies perceive leadership as a male domain,[6] and stereotypically associate leadership qualities with masculinity.[7] As a result, women are viewed as only symbolic leaders, while their male counterparts influence decisions in society.[8]

Women constitute almost half (49.7 per cent) of the global population,[9] yet their political representation remains significantly lower, highlighting a persistent gap in political gender equality. As of 2021, 5.9 per cent of women held head of state positions

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1. WA Dessie 'Determinants of electoral participation of women in Addis Ababa, Ethiopia' (2023) 9 *Heliyon* 13950.

2. E Lombardo and others 'De-Democratization and Opposition to Gender Equality Politics in Europe' (2021) 28 *Social Politics* 521.

3. A Modupe and others 'Women and Political Marginalization in Nigeria' (2019) 11 *Journal of Education and Policy Review* 2277–0100.

4. R Inglehart & P Norris *Rising tide; Gender Equality and Cultural Change around the World* (2023); B Morrison 'The Role of Gender Stereotypes in a Political Campaign' (2020) 5 *Political Science Undergraduate Review* 9–16.

5. EC Mariaceline & MK Chinonso 'Socio-Cultural Values and Women Political Participation in Nigeria'(2023) 1 *American Journal of Multidisciplinary Research & Review* 10.

6. KL Winfrey & JM Schnoebelen 'Running as a Woman (or Man): A review of research on political communicators and gender stereotypes' (2019) 7 *Review of Communication Research* 109–138; S Connor and others 'Perceptions and Interpretation of Contemporary Masculinities in Western Culture: A Systematic Review' (2021) 15 *American Journal of Men's Health* 1-17.

7. LK Davidson-Schmich and others 'Crisis, Gender Role Congruency, and Perceptions of Executive Leadership' (2023) 19(3) *Politics and Gender* 900–907.

8. P Hatzipetrakos 'How Do Women Affect Politics and Legislation Among Distinct Nations?' Master's thesis, State University of New York, 2019, retrieved from https://scholarsarchive.library.albany.edu/cgi/viewcontent.cgi?article=1030&context=honorscollege_pos (accessed 22 November 2023).

9. United Nations 'World Population Prospects 2022: Summary of Results' 15 November 2022 https://www.un.org/development/desa/pd/content/World-Population-Prospects-2022 (accessed 03 March 2023).

and 25.5 per cent held parliamentary seats worldwide.[10] Although efforts to enhance women's representation in politics have been ongoing through various international legal frameworks, such as the 1995 Beijing Platform for Action, progress towards equal representation has been slow over the past three decades.

Africa has witnessed significant milestones in women's political leadership, with the appointment of female heads of state such as Sahle-Work Zewde in Ethiopia, Samia Suluhu Hassan in Tanzania and Ellen Johnson Sirleaf in Liberia.[11] Moreover, nations like Rwanda have attained gender parity in Parliamentary representation through quota systems.[12] Nevertheless, the landscape of women's political engagement is complex and uneven. It is influenced by several factors including sexist and patronage-based political cultures, gender-based economic household inequalities, cultural and historical legacies, economic circumstances, and societal perceptions. All these factors contribute to the scope and manner of women's participation in political spheres.[13]

Since independence in 1962, Uganda experienced political upheavals and transitions that influenced women's participation in parliament. At the time of independence, the landscape of women's involvement in national politics was notably limited. Only two women, Pumla Kisosonkole and Sarah Ntiro (both British appointees) were engaged in national politics Additionally, at the local government level, there was just one woman serving as the mayor (Janet Wesonga) of Mbale district in 1967.[14] During Idi Amin's regime, turbulent years of political instability further marginalized women's political involvement, as the focus shifted towards survival rather than inclusive governance. Only four women held ministerial positions during his rule. Between 1979 and 1980, just two women served as MPs, and from 1980 to 1985, this number dropped to one.[15]

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10. Inter-Parliamentary Union 'Women in politics 2021) 1 January 2021 https://www.ipu.org/women-in-politics-2021 (accessed 03 March 2023).

11. Africa Union Commission 'Women of Impact: Inspiring Stories of African Women Leaders'1 August 2023 https://au.int/en/documents/20230801/women-impact-inspiring-stories-african-women-leaders (accessed 12 November 2023)

12. Inter-Parliamentary Union 'Women in Parliament' 5 March 2021 https://www.ipu.org/women-in-parliament-2020 (accessed 03 March 2023).

13. Ecoomic Policy Reseach Centre 'Women's Participation in Politics At the Local Government Level in Uganda' https://africa.unwomen.org/sites/default/files/2022-06/Women%20Participation%20in%20Politics%20at%20the%20LG%20in%20Uganda_Occasional%20Paper%2053.pdf (accessed 03 March 2023).

14. A Tripp *Women in Ugandan Politics and History: Collective Biography* (2020) 1–22.

15. As above.

A significant increase in women's representation in Parliament was first realized in the 1989 elections under the National Resistance Council (NRC) led by President Yoweri Kaguta Museveni.[16] During this period, 18 per cent of parliamentary seats were held by women, marking a notable achievement attributed in part to the introduction of reserved seats for women. This initiative positioned Uganda with the highest rate of female representation in Parliament in Africa.[17]

In 1994, the Constituent Assembly was constituted to draft the 1995 Constitution which provides reserved seats for women in Parliament and Local governments under Articles 78 and 189. These provisions reserve one-third of the membership in the local government councils for women and provide for one woman district representative in Parliament. The design adopted was in line with the 30 per cent critical mass strategy to achieve gender equality. In addition, having reserved seats did not take away the rights of women to compete on the open seats with men. In fact, the intention of the Constituent Assembly, which maintained the open seat provision, was to provide women an advantage that will fast-track equal gender representation. Indeed since 1986, women have taken advantage of both the open seats and reserved seats to increase their number in politics significantly from 18 per cent in 1996 to 34 per cent in 2021 as shown in Table 1. Reserved seats alone ushered in a substantial number of women in Parliament from 14 per cent in 1989 and 1996 to 18 per cent in 2001, 25 per cent in 2006, and 29 per cent in 2011.[18]

Although there is significant progress in the number of women in politics from 18 per cent in 1995 to 34 per cent in 2021, this success has been attributed to the reserved seats. The contribution from open seats has been consistently low (less than 5 per cent) and fluctuating from 1989 to 2021, as depicted in Table 1.

Table 1: Trend in Numbers of Women in Politics in Uganda's National Parliament

| Year | No. of districts | Reserved seats | Open seats | Others | Total women | Total MPs |
|---|---|---|---|---|---|---|
| 1989 | 39 | 39 | 2 (0.7%) | 9 | 50 (18%) | 280 |
| 1994 | 39 | 39 | 8 (2.8%) | 3 | 50(17.4% | 286 |

16. D Mwesigwa 'Towards enhancing local citizen participation in Uganda' (2021) 1 *Dynamics of Politics and Democracy* 15–28.

17. Tripp ( n 14).

18. J Ahikire and others 'Making A Difference Beyond Numbers : Towards women's substative engagement in political leadership in Uganda (2014) http://preventgbvafrica.org/wp-content/uploads/2014/05/Making-a-Difference-Report-2014.pdf ( accessed 16 June 2023).

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|---|---|---|---|---|---|---|
| 1996 | 39 | 39 | 8 (2.9%) | 4 | 51(19%) | 276 |
| 2001 | 56 | 56 | 13(4.3%) | 6 | 75 (24.4%) | 304 |
| 2006 | 79 | 79 | 14 (4.4%) | 1 | 100 (31%) | 319 |
| 2011 | 112 | 112 | 11 (2.9%) | 8 | 131 (35%) | 375 |
| 2016 | 112 | 112 | 18 (4.2%) | 9 | 139 (33%) | 428 |
| 2021 | 146 | 146 | 16 (2.9%) | 27 | 189 (34%) | 552 |

Source: *Robert Bosch Stiftung*[19]

In addition, Wang & Yoon have shown that women MPs elected through reserved seats rarely transition to contest for the open seats. This shows that women have entered in the political space largely because of the 30 per cent reserve seats. There is therefore a need to understand whether the increased number women in politics has changed the communities' perception towards women's participation in politics.

### *A. Situating the problem*

Despite the existence of reserve seats along with open seats for the past 28 years to fast-track gender equality in politics, disparities in gender representation persist. While reserved seats have increased the number of women in politics, progress in women contesting for and winning open seats has been slow. Thus, the number of women in politics has stagnated at 34 per cent. This stagnation is attributed to the limited number of women who contest for and win in the open seat races. This study therefore sought to examine whether the presence of women in politics has influenced other women to compete against men and win in open seat races so as to achieve gender equal representation in politics.

Research indicates that women in politics are change agents who transform societal perceptions and attitudes regarding women's political roles and gender equality.[20] This transformation is driven through increased awareness and the active challenge of harmful gender stereotypes and norms. It is further argued that the increased visibility of successful female leaders contributes to transforming these

19. S Nakaweesi-Kimbugwe and others 'Country Analysis : Leadership in Advancing Women's Rights in Public Decision-Making Pocesses in Uganda' October 2018 https://www.bosch-stiftung.de/sites/default/files/publications/pdf/2019-08/Uganda Country Analysis_0.pdf (accessed 27 January 2024).

20. C Bertini & A Ceretti *Women and girls as change agents: the global mandate for girls' education* (2020).

cultural norms and values.[21] The 30 per cent reserve seats were intended to influence societal acceptability of women in politics that would in turn challenge patriarchal gender norms that marginalize women's participation in politics.

Evidence on how women in politics have transformed community perceptions towards them and other women is still lacking. Existing research in Uganda focuses on the performance of the increase of women in politics in terms of speaking on the floor of parliament, and the number of policies passed.[22] Studies from other countries show mixed evidence on the effect that the increased representation of women in politics has on the societies' perception towards more women joining politics. For example, Bezzina and others[23] found an overwhelming support of voters towards gender equality in Malta's Parliament. In addition, a strong positive voter perception towards gender-equal political parties was found in Germany.[24] However Hansen[25] reports that cultural norms and traditions remain deeply rooted even after introduction of gender quotas that led to a clear increase in female political representation and participation. In addition, Morrison[26] provides evidence that gender stereotypes continue to undermine women's chances in seeking elected office as they influence how both voters and party leaders view female candidates. In both Turkey and Germany, despite an increase in the number of women in parliament, there was limited improvement in cooperation on

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21. M Yoon 'Review of the both Women and Power in Postconflict Africa by Aili Mari Tripp, New York' (2017) 33 *Asian Women* 99; K Baker & S Palmieri 'Can women dynasty politicians disrupt social norms of political leadership? A proposed typology of normative change' (2023) 44 *International Political Science Review* 122; G Waylen 'Nudges for gender equality? What can behaviour change offer gender and politics?' (2018) 1 *European Journal of Politics and Gender* 167.

22. A Clayton 'How do electoral gender quotas affect policy?' (2021) 24 *Annual Review of Political Science* 235-252; A Clayton 'Quotas and women's substantive representation: Evidence from a content analysis of Ugandan plenary debates' (2017) 13 *Politics & Gender* 276-304; RL Muriaas & V Wang 'Executive dominance and the politics of quota representation in Uganda' (2012) 50 *The Journal of Modern African Studies* 309; A Clayton and others 'Present without presence? Gender, quotas and debate recognition in the Ugandan parliament' (2014) 50 *Representation* 379-392.

23. F Bezzina and others 'Gender balance in national parliament: voters' perceptions towards the gender corrective mechanism in Malta' (2021) 29(4) *Democratization* 655–672.

24. J Wäckerle *The Representation of Women in European Politics*, Phd thesis, 2021 University of Cologne https://kups.ub.uni-koeln.de/61756/%0Ahttps://kups.ub.uni-koeln.de/61756/1/PhD_Dissertation_Waeckerle.pdf (accessed 17 April 2023).

25. J Hansen *Political Gender Quota in Rwanda; Has increased female inclusion in politics lead to a decrease in domestic gender-based violence?,* Senior Thesis, Lund University https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=8918957&fileOId=8918958 (accessed 17 April 2023).

26. Morrison ( n 4) 9–16.

gender-related issues like domestic violence and childcare.[27]

How the increase of women in politics has transformed community perceptions and attitudes towards women contesting with men for open seats remains underexplored in Uganda. This study aims to fill this gap by examining whether the increased inclusion of women in politics through reserve seats has changed communities' attitudes regarding their competition with men for open seats. The findings from this study will provide policymakers with evidence-based insights to design and implement gender-sensitive policies to address systemic barriers and create opportunities for women's meaningful participation in decision-making processes. In addition, civil society actors will have access to data-driven narratives that will help in monitoring progress, identifying challenges, and collaborating with policymakers to drive positive change in societal attitudes and practices. The study will also contribute to the existing body of knowledge on women's political participation, serving as a foundation for further research.

### *B. Theoretical framework*

This study was anchored on liberal and social feminism theories. Liberal feminism advocates for achieving gender equality through institutional reforms within existing societal structures.[28] It focuses on women's rights as individuals and emphasizes equal opportunities, particularly in areas such as education, employment, and political participation. This theory asserts that gender equality can be achieved through changes in laws and policies that remove discriminatory barriers and promote equal opportunities for women in all spheres of life, including politics. It emphasizes the importance of women's rights as individuals, advocating for the recognition of women's autonomy and agency in decision-making processes, including their right to participate in political leadership roles. It addresses systemic barriers that hinder women's participation in politics, such as discriminatory laws and cultural norms. The theory advocates reserve seats for women as mechanisms to promote women's political participation and challenge traditional gender norms. Liberal feminism provides a lens to understand how reforms can contribute to shifting societal perceptions and attitudes towards gender equality in political representation. However, liberal feminism has been

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27. B Taşkın 'Cherry-Picking in Policymaking: The EU's Presumptive Roles on Gender Policymaking in Turkey' in R Süleymanoğlu-Kürüm and FM Cin (eds) *Feminist Framing of Europeanisation. Gender and Politics* (2021) 131.

28. BE Enyew & AG Mihrete 'Liberal feminism: Assessing its compatibility and applicability in the Ethiopia context' (2018) 10 *International Journal of Sociology and Anthropology* 59-64.

criticized for its narrow focus on legal and institutional reforms, which may overlook deeper social and cultural factors that perpetuate gender inequality. Thus, liberal feminism theory may not translate into substantive equality in practice, especially if societal norms and cultural attitudes remain unchanged.

Social feminism theory asserts that gender inequality is shaped by multiple dimensions of identity and power.[29] Thus, the theory advocates for structural transformation of economic, social, and cultural institutions to address root causes of gender inequality.[30] It addresses the complex interplay of gender, class, and other identities in shaping community perceptions towards women's political participation. Social feminism offers a framework to understand how economic and social transformations can contribute to changing community perceptions. Based on this theory, social feminists argue that quotas do not fully address the difficulties of balancing political careers with family responsibilities hence the need for gender transformation.[31]

### *C. Research methodology*

This study employed a cross-sectional research design. It was conducted in Mukono, Kasese, Arua, and Jinja districts to ensure regional diversity. A total of 400 respondents participated through a stratified random sampling method, with each district contributing 100 respondents to a structured questionnaire aimed at quantifying attitudes towards women in politics. Additionally, 16 gender-segmented focus group discussions (FGDs) and 38 key informant interviews (KIIs) with MPs were conducted to gather qualitative insights. FGDs explored gender norms and political participation, while KIIs focused on MPs' support for gender parity legislation. Data analysis involved SPSS for quantitative data to derive descriptive statistics and ATLAS for qualitative data to identify thematic patterns and interpret societal perceptions and experiences related to women in politics.

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29. E Armstrong 'Marxist and Socialist Feminism. Study of Women and Gender*' Faculty Publication, Smith College, Northhampton, MA. Study of Women and Gender*. https://scholarworks.smith.edu/cgi/viewcontent.cgi?article=1014&context=swg_facpubs (accessed 23 February 2024).

30. S Usmani and others 'Role of Feminist Theories in Addressing Issues of Gender Diversity' (2023) 11 *Kurdish Studies*, 439–452.

31. J McKay 'Having it All?' Women MPs and Motherhood in Germany and the UK' (2011) 64 *Parliamentary Affairs* 714–736.

## II. PRESENTATION AND DISCUSSION OF RESULTS

### *A. Demographic Characteristics of the Respondents*

Table 2 presents the detailed demographic characteristics of the respondents: The demographic characteristics of the respondents in this study were captured to provide a general understanding of the sample's composition.

Table 2: Description of the respondents of the study

| **Variable** | | **Percentage** |
|---|---|---|
| District | Arua | 24.75 |
| | Kasese | 25.25 |
| | Jinja | 25.00 |
| | Mukono | 25.00 |
| Urban or Rural location | Urban | 42.50 |
| | Rural | 57.50 |
| Gender | Female | 48.75 |
| | Male | 51.25 |

n=400
Source: *Field data*

Results showed that majority of respondents (57.50 per cent) were from rural areas, reflecting Uganda's predominantly rural demographics. On the other hand, a significant portion (42.50 per cent) came from urban areas. The finding was useful in capturing perspectives from both rural and urban environments. This rural-urban mix provides a detailed understanding of how location influences attitudes towards gender equality in politics.

Gender distribution among the respondents was nearly equal, with males slightly outnumbering females at 51.25 per cent to 48.75 per cent. This gender balance was vital for examining potential differences in perceptions and attitudes between men and women, which is central to understanding the dynamics of political participation and gender equality.

### *B. Local communities' willingness to vote for a woman contesting on an open seat*

This study used 'willingness to vote for a woman who chooses to contest on an open seat by the local community' as an indicator of transformation in society's perception

towards women in politics. It reflects the community's attitudes, beliefs, and acceptance towards women's political participation and leadership. In addition, it directly indicates how the community perceives women's capabilities and roles in politics, which is a crucial aspect of their overall perception of gender equality and women's empowerment in the political sphere. Results from the study are presented in Table 3.

*Table 3: Local community's willingness to vote for a woman contesting on an open seat*

| District | Yes (%) | | Yes Total (%) | No (%) | | No Total (%) |
|---|---|---|---|---|---|---|
| | Female | Male | | Female | Male | |
| **Arua** | **47.5** | **47.5** | **94.9** | **0.0** | **5.1** | **5.1** |
| Urban | 44.0 | 54.0 | 98.0 | 0.0 | 2.0 | 2.0 |
| Rural | 51.0 | 40.8 | 91.8 | 0.0 | 8.2 | 8.2 |
| **Kasese** | **48.5** | **45.5** | **94.1** | **2.0** | **3.0** | **5.0** |
| Urban | 47.1 | 45.1 | 92.2 | 3.9 | 3.9 | 7.8 |
| Rural | 50.0 | 46.0 | 96.0 | 0.0 | 2.0 | 2.0 |
| **Jinja** | **50.0** | **42.0** | **92.0** | **2.0** | **6.0** | **8.0** |
| Urban | 48.5 | 48.5 | 97.0 | 0.0 | 3.0 | 3.0 |
| Rural | 50.7 | 38.8 | 89.6 | 3.0 | 7.5 | 10.4 |
| **Mukono** | **43.0** | **44.0** | **87.0** | **2.0** | **11.0** | **13.0** |
| Urban | 35.1 | 51.4 | 86.5 | 2.7 | 10.8 | 13.5 |
| Rural | 47.6 | 39.7 | 87.3 | 1.6 | 11.1 | 12.7 |
| **Grand Total** | **46.7** | **44.1** | **90.7** | **1.8** | **7.3** | **9.1** |

*n=368*
Source*: Field Data*

Overall, the data indicates a strong willingness among the community members to vote for female candidates contesting on open seats. The total willingness across all districts was high, with 90.7 per cent of respondents indicating their support for women candidates. Notably, women expressed a bigger (46.1 per cent) percentage compared to men (44.1 per cent). This finding indicates an increasing level of acceptability to vote for women contesting on open seats. Public perceptions are evolving to see women not just as home caretakers, but also as capable leaders of even men. This finding reflects

transformation in the traditional and religious patriarchal norms and beliefs that historically infringed upon women's rights. For example, in the Muslim community, women were once barred from participating in politics, reserving such roles for men. However, as of today, Muslim women have successfully entered the political arena, with several now serving as MPs in parliament. These results are in tandem with those of another that reported a positive perception towards women contesting and become the president of the Swabi district in Pakistan, contrary to the Mordan district.[32] These findings are in agreement with those of Bezzina and others[33] who also found an overwhelming voter support of 88.5 per cent towards gender equality in Malta's parliament. Similar finding was also obtained in a study by Wäckerle.[34]

Although willingness was high across all districts, Arua district, exhibited the highest willingness (94.9 per cent) to vote for female candidates while Mukono showed the lowest level (87.0 per cent). Notably, across all districts, more urban men expressed high level of willingness to vote women on open seats compared to those in villages. This is probably because rural men often have strong attachment to traditional and religious values, gender norms and beliefs that discourage women from participating in politics, leading to a lower willingness to vote for women candidates on open seats. In contrast, urbanization generally brings about greater exposure to diverse ideas and awareness of individual rights. Urban communities often have a broader mix of cultures and social groups that create opportunities for social interaction and create an environment where traditional gender roles are increasingly redefined. This finding confirms the findings of Abbas and others,[35] and Jiyah and others[36] that urbanization increases awareness of individual rights and the waning of patriarchy particularly through digital activism and platforms.

Based on gender, generally more women (46.7 per cent) expressed willingness to vote for a woman on an open seat than men (44.1 per cent). Women from Kasese and Jinja expressed higher levels of willingness to vote a woman on open seats as compared to those in Arua and Mukono. This difference suggests that women in Kasese and Jinja are more supportive to female candidates than men probably due to the

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32. Common Wealth Foundation 'Attitudes Towards Women's Political Participation' https://archive.nyu.edu/bitstream/2451/33880/2/Survey-on-Challenges-to-Womens-Political-Participation.pdf (accessed 02 October 2023 ).

33. Bezzina (n 23).

34. Wäckerle (n 24).

35. S Abbas and others 'Status of Rural Women : Patriarchy and Inevitability of Subjugation ; A Study of Rural Area in Multan , Pakistan' (2018) 9 *Journal of Education and Practice* 107–114.

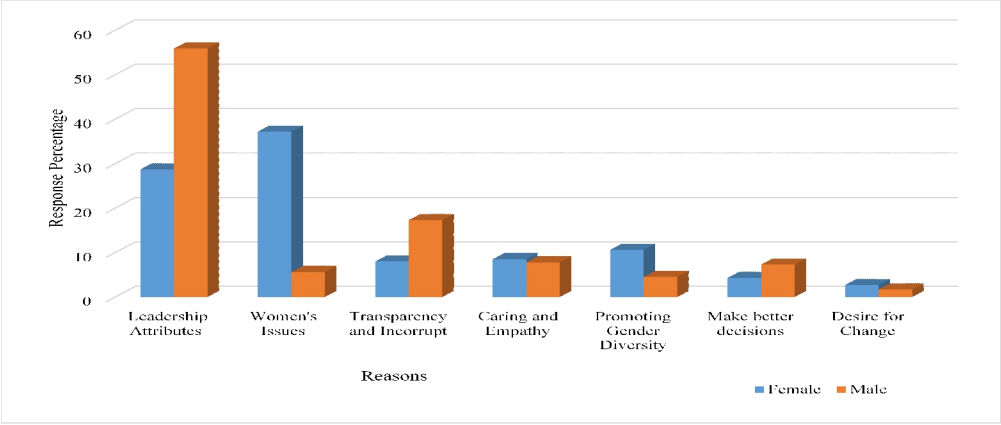
36. F Jiyah and others 'Review and relevance of gender revolution in urban and regional planning in Nigeria' (2023) 10 *African Journal of Humanities & Contemporary Education Research.*

influence of prominent female political leaders like Rebecca Alitwala Kadaga (first woman Speaker of Parliament) from Jinja and Winnie Kizza (Former first Leader of opposition) from Kasese. These famous women leaders played a significant role in transforming community perceptions and encouraging many women to participate in politics. Their visibility in these influential leadership positions raised the confidence in other local women. As a result, women in these regions gained more confidence and motivation to support women candidates, viewing them as capable leaders. This finding confirms the argument of the OSCE[37] that women can open the way for other women to be promoted, either as candidates or as party decision makers and leaders.

*C. Reasons for willingness to vote for a woman who chooses to contest on an open seat.*

The results presented in Figure 1 show diverse reasons influencing the respondents' willingness to support female candidates on open seats in politics. Those who expressed a willingness to vote for a woman contesting on an open seat were asked to provide reasons for their support.

Figure 1: Reasons for willingness to vote for a woman contesting on an open seat




*Source: Field Data Note; n number of responses*

37. *https://www.osce.org/files/f/documents/e/f/120877.pdf* (accessed on 19th December 2023).

*1. Political and Leadership Attributes*—The most dominant reason for supporting a woman on an open seat was the belief that she should have political/leadership attributes (42 per cent). This sentiment was reported by both female (55.9 per cent) and male respondents (28.7 per cent). This finding indicates that community voters are increasingly prioritizing leadership qualities such as experience, competence, decision-making ability and integrity rather than being influenced by the traditional gender roles when evaluating candidates for open seats. This finding reflects a significant shift in societal attitudes toward gender equality and political participation probably because of the growing awareness of gender equality in politics fueled by social media and pro-women civil society organizations (CSOs). Social media and CSOs have also significantly increased the visibility of women leaders, providing a direct platform to present themselves as competent leaders, thus making it easier for voters to connect with them based on their abilities.

Participants in the Urban Men FGD in Arua District expressed a sentiment that leadership qualities should be the basis for electing leaders, irrespective of gender, as one participant stated that ' … according to me, leadership should never be based on a man or woman, leaders should be elected depending on quality.' Similarly, in the Rural Men FGD in Kasese District, a participant highlighted the importance of a candidate's ability to deliver tangible results for the community. He stated that:

> As a leader, if she can convince me that she is going to lobby for us the common people, like our road network is poor, if she can convince us that through her lobbying skills, the road of Busongora connecting to town will be worked on, [then] I can vote for such a leader.

These quotes underscore the broader perspective that voters prioritize competence, advocacy, and tangible outcomes over gender. These findings corroborate with Dicker and others[38] who found that voters are willing to vote for female candidates, so long as they meet two basic prerequisites, that is; a deep understanding of community needs, evidenced by a track record of community service; and a willingness to 'help', evidenced by providing cash and material resources to individuals and families.

*2. Understanding Women's Issues*—Another reason for supporting a woman contesting on an open seat was the belief that women have a better understanding of

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38. K Dicker and others *The Influence of Gender Attitudes and Norms on Voter Preferences,* 10 May 2016 , https://procurement-notices.undp.org/view_file.cfm?doc_id=130124 (accessed 4 December 2023).

women's issues compared to men. This view was expressed by both female and male respondents, with a significantly higher percentage of females (57.2 per cent) holding opinion than males (5.6% per cent). This finding indicates that through direct experiences women specially are more likely to vote women to formulate policies that specifically address their needs and concerns. This is probably because through the direct experiences and gender-specific challenges that women leaders face, they are perceived to possess unique insights into issues such as gender-based violence and discrimination in the political arena. Findings from the FGDs were consistent with the broader survey findings. A participant from the Rural Women FGD in Jinja District highlighted this sentiment, stating:

> Men have disturbed us too much over land, and they have also discriminated against us over the same issue of land. When your husband dies, the clan people come and want to take all your land but when you run to your fellow woman, she helps and fights so hard and you eventually get all your property.

This quote underscores the importance of gender representation in addressing issues that directly affect women. Similarly, a male councilor from Kasese District noted that 'when men are more than women, they overpower the issues of women but if there are in equal numbers, their voices can be heard and some men can even support them.' This reflects a recognition of the value of gender parity in ensuring a fair representation of women's perspectives and concerns. These sentiments were crucial in justifying the purpose of affirmative action. One key justification for the introduction of reserve seats for women was that women tend to listen, are emotional, and pay attention to the pressing needs of their fellow women. Because women/girls in the past were not valued as men/boys, even their problems could not be taken care of by their male counterparts. For example, inheritance rights, girl child education, clean water, health care, and transport issues could not be seen as pressing for women until women came into the political space and raised their voices as one narrated. This finding is similar to that of Dingler and others[39] who found that in countries with more representatives in Parliament, women's preferences tend to be more accurately represented.

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39. SC Dingler and others'Do parliaments underrepresent women's policy preferences? Exploring gender equality in policy congruence in 21 European democracies' (2019) 26 *Journal of European Public Policy* 302–321.

3. *Transparency and Incorruptibility*—Another reason for willingness to vote a woman contesting on an open seat was the perception of transparency and incorruptibility reported more frequently by males (17.3 per cent) as compared to females (8.0 per cent). This finding indicates that men perceive women to have higher ethical standards and integrity in politics. Integrity is widely regarded as one of the most critical qualities in leadership, as it fosters trust, accountability, and transparency. By associating women with higher ethical standards, it suggests that voters may be more inclined to support female candidates who they believe will prioritize the public good over personal gain. Similar findings were revealed in the qualitative data. For example, a government official from Jinja City emphasized this point, stating:

> [B]y nature, women are careful and committed. They are not corrupt and fear risks. They therefore are better managers and give accountability for all the money that they are given. If you left 100 million shillings with a man and a woman, who of the two are you sure will have it at the end of the year?

This quote reflects the perception that women possess inherent qualities of accountability and financial responsibility. Furthermore, a participant from a rural women FGD in Arua District mentioned:

> Men are too greedy, the money they get is never enough for them and they use it for personal benefit such as; drinking and marrying other women on top of their wives, unlike women who are better planners and good at prioritizing and budgeting.

This statement highlights a belief in women's ability to prioritize public service over personal gain. Additionally, a participant from an Urban Men FGD in Jinja District compared the performance of male and female prime ministers, noting:

> We have had many men as prime ministers before and right now we have Nabbanja, how long does Nabbanja take to be on the site? Something male prime ministers would not do. We have seen differences already yet we just got Nabbanja last year but what she has done, her presence is being felt everywhere she goes.

This sentiment shows the perception of female leaders as proactive and impactful in their roles. These findings validate the arguments in a UNDP report[40] that corruption is lower when more women are in government.

*4. Caring and Empathy*—The perception of women as caring individuals is noted by 8.5 per cent of females and 7.8 per cent of males as another reason for voting a woman contesting on an open seat. This finding thus indicates that both female and male voters consider these qualities when deciding their leaders. Traditionally, women have been perceived to be more caring, empathetic and compassion, and attentive to the needs of others. Similarly, qualitative data from FGDs expressed a belief that women, due to their nurturing nature, bring a more sympathetic and honest approach to leadership. It was highlighted that women's inherent qualities, such as sympathy, motherliness, and honesty, make them better suited for delivering quality services. This belief is rooted in personal and observed experiences where women are seen as better caregivers and more attentive to the needs of others. For instance, some community members shared instances where female caregivers in hospitals provided more attentive and faster care compared to their male counterparts, reinforcing the perception of women as more empathetic and responsive.

Furthermore, the idea that women naturally gather people together was emphasized, suggesting that female leaders could foster stronger community cohesion. This ability to unify and connect with people is seen as a valuable trait for political leaders, enhancing their effectiveness in leadership roles. However, the results contradict with the role congruity theory[41] that traits community expects women to possess (such as empathy) do not align with those of a successful leader. To confirm this argument, Blinder and others[42] found out that even though women in America are more compassionate than men, this does not explain the political gender gap.

*5. Promoting Gender Diversity*—The sentiment towards promoting more women in politics, expressed by 10.6 per cent of females and 4.5 per cent of males, suggests a growing awareness of the need for gender balance and diversity in decision-

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40. United Nations Development Program 'Corruption, Accountability and Gender: Understanding the Connections', retrieved from https://www.undp.org/sites/g/files/zskgke326/files/publications/Corruption-accountability-and-gender.pdf. (accessed on 19 December 2023).

41. H Eagly and others 'Role congruity theory of prejudice toward female leaders' (2002) 109 *Psychological Review* 573–598.

42. S Blinder & M Rolfe 'Rethinking Compassion : Toward a Political Account of the Partisan Gender Gap in the United States' (2018) *Political Psychology* 889–906.

making bodies. This finding underscores the importance of inclusive representation and the benefits of varied perspectives in policy formulation and implementation. Respondents argued that the current representation of women in political councils is insufficient, highlighting the significant disparity between male and female council members. They emphasized the necessity of increasing women's representation to ensure that women's voices and concerns are adequately addressed. These insights reflect a broader push towards achieving gender parity in political spaces, recognizing that diverse leadership can lead to more comprehensive and equitable policy outcomes.

*6. Women Make Better Decisions than Men*—Another reason for voting a woman on an open seat was the belief that women make better decisions than men. This perception was reported by both men and women, particularly stronger among males (7.3 per cent) than females (4.3 per cent). This implies that a woman contesting with a man has an advantage to be voted for probably because women are non-discriminative in decision making thus benefiting both men and women. This finding confirms the view of the European Institute for Gender Equality[43] that the participation of more women in political decision-making has many positive effects on society that can help improve the lives of both women and men.

### *D. Understanding Voter Behavior and Electoral Outcomes*

This study analyzed secondary data from the Uganda Electoral Commission on three consecutive electoral cycles of 2011, 2016 and 2021 to understand actual voting trends of women contesting on open seats. Tables 4 and 5 offer a comprehensive view of contested and won seats in open elections, highlighting the participation and success rates of both male and female candidates from various political parties from three election years: 2011, 2016, and 2021.

Results from Table 4 revealed that across all electoral cycles (2011, 2016, and 2021), male candidates have consistently dominated the electoral contests. For example, in the 2021 elections, male candidates won over 95 per cent of the seats in most parties, with National Resistance Movement (NRM) and independent candidates achieving nearly 99 per cent success rates. In addition, male dominance is consistent across different political parties. For instance, the NRM and Independent candidates had extremely high male success rates, winning 98.7 per cent and 98.8 per cent of contested

43. European Institute for Gender Equality 'Gender equality in political decision-making' https://eige.europa.eu/sites/default/files/documents/2016.1523_mh0116064enn_pdfweb_20170511095720.pdf (accessed 10 December 2023).

seats respectively in 2021. Even parties that showed slight improvements in female representation, such as the Democratic Party (DP) and the National Unity Platform (NUP), still had predominantly male representatives. Compared to political parties, the Independent ticket showed a high proportion of women both contesting and winning the open seats.

*Table 4: Trends of elected men and women MPs that contested and won open seats from 2011 to 2021*

| **Political parties** | **2011** | | | **2016** | | **2021** | |
|---|---|---|---|---|---|---|---|
| | **Gender** | **Fielded** | **Won** | **Fielded** | **Won** | **Fielded** | **Won** |
| NRM | M | 96.3 | 96.4 | 92.3 | 94.8 | 86.7 | 95.7 |
| | F | 3.7 | 3.6 | 7.7 | 5.2 | 13.3 | 4.3 |
| INDEPE NDENT | M | 95.9 | 96.7 | 92.6 | 93.2 | 92 | 92.2 |
| | F | 4.1 | 3.7 | 7.4 | 6.8 | 8 | 7.8 |
| DP | M | 92 | 66.6 | 91.9 | 86.7 | 94.5 | 100 |
| | F | 8 | 33.3 | 8.1 | 13.3 | 5.5 | 0 |
| UPC | M | 97 | 85.7 | 100 | 0 | 93.3 | 85.7 |
| | F | 3 | 14.3 | 0 | 0 | 6.7 | 4.3 |
| FDC | M | 96.3 | 95.6 | 98 | 100 | 97.6 | 100 |
| | F | 3.7 | 4.4 | 2 | 0 | 2.4 | 0 |
| JEEMA | M | 0 | 0 | 100 | 0 | 85.7 | 100 |
| | F | 0 | 0 | 0 | 0 | 15.5 | 0 |
| PPP | M | 100 | 0 | 0 | 0 | 66.7 | 100 |
| | F | 0 | 0 | 0 | 0 | 33.3 | 0 |
| UFA | M | 96.3 | 0 | 100 | 100 | 0 | 0 |
| | F | 3.7 | 0 | 0 | 0 | 0 | 0 |
| OTHERS | M | 95.2 | 100 | 90.9 | 0 | 81.8 | 0 |
| | F | 4.8 | 0 | 9.1 | 0 | 18.2 | 0 |
| ANT | M | - | - | - | - | 91.3 | 0 |
| | F | - | - | - | - | 8.7 | 0 |
| NUP | M | - | - | - | - | 95.1 | 93 |
| | F | - | - | - | - | 4.9 | 7 |
| TOTAL | M | **96** | **95** | **93.6** | **93.7** | **92.8** | **95.2** |
| | F | **4** | **5** | **6.4** | **6.3** | **7.2** | **4.8** |

Source: *Electoral Commission 2023*

The situation at the district level did not differ materially from the parliamentary level. All cross all parties, there is a consistent trend of high rates by male candidates winning open seats across multiple election years. For example, in 2011, all the political parties listed had 100 per cent male representation among their elected district councilors. This included NRM, Independent candidates, Forum for Democratic Change (FDC), DP, and Uganda People's Congress (UPC) as shown in Table 5.

*Table 5: Trends of elected men and women district councilors that contested and won open seats from 2011 to 2021*

| **Political parties** | **2011** | | **2016** | | **2021** | |
|---|---|---|---|---|---|---|
| | **OPEN SEAT** | | **OPEN SEAT** | | **OPEN SEAT** | |
| | **M Freq (%)** | **F Freq (%)** | **M Freq (%)** | **F Freq (%)** | **M Freq (%)** | **F Freq (%)** |
| NRM | 100 | 0 | 99 | 1 | 98.7 | 1.3 |
| INDEPENDENT | 100 | 0 | 97.3 | 2.7 | 98.8 | 1.2 |
| FDC | 100 | 0 | 100 | 0 | 100 | 0 |
| NUP | 0 | 0 | 0 | 0 | 96.9 | 3.1 |
| DP | 100 | 0 | 100 | 0 | 96.3 | 3.7 |
| UPC | 100 | 0 | 100 | 0 | 100 | 0 |
| ANT | 0 | 0 | 0 | 0 | 100 | 0 |
| **TOTAL** | **100** | **0** | **98.9** | **1.1** | **98.6** | **1.4** |

Source: *Electoral Commission 2023*

In 2016, there were minor improvements in female representation, though males continued to dominate. Independent candidates saw a slight increase in female councilors to 2.7 per cent, while the DP's female representation rose to 3.7 per cent. Despite these small gains, parties such as NRM, FDC, UPC, and ANT maintained 100 per cent male representation, indicating that the overall trend of male dominance persisted.

The findings show that although the community expressed a high level of willingness to vote a woman on an open seat, this is not reflected in the actual voting patterns. The dominance of male candidates in every electoral cycle (2011, 2016, and 2021) highlights a persistent gender gap in political representation. The fact that women do not show up to contest in open seats shows that structural barriers still exist within the political landscape. These could include inadequate support systems such as political parties for women candidates, limited access to financial resources, and the

dominance of patriarchal norms within political institutions that discourage women from entering the political arena. These findings corroborate with Drumaru and Pene[44] who in their study on the perception of women in leadership in the Republic of Fiji, found out that although the public readily acknowledges women's capacity for leadership, politics remains an overwhelmingly male-dominated arena, which is indicative of the fundamental gender bias that continues to obstruct women's progress in political participation. Similarly, the finding confirms the argument of Dicker and others[45] that even though the number of voters willing to vote for a woman may be larger, the number of those that actually vote for a woman eventually reduce due to factors like cultural and resource constraints.

### *E. Analysis of Member of Parliaments' Willingness to Support a bill of Gender Parity in Parliament*

The policy of 50:50 gender representation is a crucial strategy for achieving equal gender representation in the political arena, addressing the structural barriers that often hinder women from entering politics. Attaining gender parity in politics requires men to actively champion and support the cause, rather than relegating it solely to women. This section used qualitative data to explore the perceptions and the willingness of MPs to support a bill on equal gender representation in Parliament. MPs' willingness to support such a bill not only indicates their commitment to gender equality but also reflects a broader acceptance and encouragement of women's participation in politics. This willingness serves as a critical measure of the political landscape's openness to gender parity and the potential for transformative change in representation.

The study revealed mixed results, with the differences in opinions between male and female MPs regarding their willingness to support a bill of equal gender representation in parliament. All female MPs and a few men expressed support for the policy, recognizing its potential to create a more balanced and inclusive political landscape. In contrast, male MPs overwhelmingly opposed the policy, citing concerns about its impact on their existing dominance in Parliament. This discrepancy highlights a significant gender divide in perceptions towards gender parity, reflecting broader societal attitudes and the entrenched patriarchal norms that persist within the political sphere. Based on the study's findings, perceived sentiments of MPs towards endorsing a bill aimed at achieving gender parity in parliament included:

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44. P Dumaru & S Pene 'Public Perceptions of Women in Leadership' December 2014 https://iwda.org.au/assets/files/Public-Perceptions-of-Women-in-Leadership.pdf (accessed 22 May 2023).

45. Dicker ( n 38).

*1. Perceived sufficiency of women's opportunities*—MPs expressed that women already have adequate opportunities and support and thus, no need of further measures for gender equality. Further, they explained that women have achieved a level of representation and empowerment thus additional support is unnecessary. They referred to it as 'babysitting', rather than empowering them. One male MP expressed this standpoint by stating that: 'Because women are represented in all aspects … any further support would not be women's emancipation; it would simply be babysitting.' This view was further emphasized by another MP who remarked, 'I don't think I would [support gender parity] ... I think that they can now do everything on their own and they don't need a man.' Here, the MP's statement reflects a perception that women no longer require assistance or support, as they are perceived as capable of independence and self-sufficiency. These voices challenge the need for ongoing initiatives aimed at addressing gender disparities. It reveals a perception among some MPs that the existing level of opportunities and support for women is sufficient, leading to skepticism about the effectiveness or relevance of additional measures for gender equality. This finding corroborates with those of Bos[46] who found that affirmative action policies for women in politics may have negative or unintended consequences for female candidates such as creating a stigma of incompetence of female candidates. In addition, Olaitan[47] argues that gender equality in politics does not imply numeric representation but instead substantive representation where both men and women have similar opportunities to access political power by running for any office. The critical mass of 30 per cent women in politics has created the unintended consequence of stratifying women from men, thus stagnating them at numbers less than their male counterparts.

*2. Perceived consequences about over-empowerment*—MPs also reported about the perceived negative consequences of empowering women too much. They raised fear that if women empowering women beyond a certain point could lead to undesirable outcomes or disruptions within society. For example, One MP voiced concerns by stating, 'It will be over-empowering the woman and it will cause a disaster.' Furthermore, another MP expressed similar sentiments, stating, 'I would not support that idea at all... it will be the destruction of our set norms and cultures.' This

46. AL Bos 'The unintended effects of political party affirmative action policies on female candidates' nomination chances.' (2015) 3 *Politics, Groups, and Identities* 73–93.

47. ZM Olaitan, Gender quotas and the substantive representation of women in African politics: Case studies of Botswana and South Africa, PhD thesis, University of Pretoria 2023. https://repository.up.ac.za/bitstream/handle/2263/91192/Zainab_Gender_2023.pdf?sequence=3&isAllowed=y (accessed 6 November 2023).

statement reflects a broader concern about the potential impact of increased female empowerment on established cultural norms and societal structures. By mentioning 'set norms and cultures', it indicates a desire to preserve existing traditions and values. These voices collectively indicate a fear among some male MPs that further empowerment of women could disrupt traditional gender roles, cultural norms, and societal stability. However, it is essential to critically examine these concerns in the context of evolving societal expectations, rights, and opportunities for women, as well as the benefits of greater gender equality in fostering inclusive and equitable societies.

*3. Religious Justifications*—Some MPs justified their position on gender parity based on religious beliefs, citing preservation of divine ordination that dictates specific roles and responsibilities based on gender. One MP invoked religious beliefs, stating:

> Me I still believe that God's creation is not by accident that God picked eve from Adams ribs, it is a symbol that men must always be there in bigger numbers to help the female sex to move on. So, I believe that we should respect God's principle and also respect our values which says that women must be there [in politics] but not to over dominate.

By referring to 'God's principle,' the MP implies that gender roles are ordained by a higher authority and should be respected as part of religious doctrine. These voices demonstrate how some MPs used religious justifications to support their opposition to gender parity measures. By framing their arguments within religious contexts, they stick to deeply held beliefs and values within society. However, finding a balance between respecting religious convictions and promoting gender equality is essential for fostering inclusive and fair societies.

*4. Concern about the quality of women entering politics*—Some MPs expressed concern regarding the perceived impact of gender parity on the quality of women joining the political space. They argued that the equal gender policy could lead to a situation where less qualified women could occupy positions of power. This would erode public's confidence in the competence of the elected officials. Some MPs argued that in striving to increase women in politics, emphasis should be on merit not gender, potentially allowing individuals with limited political experience or expertise to enter the parliament. They based on the argument that the gender parity bill prioritizes quantity over quality, leading to compromises in the selection and effectiveness of leaders. One MP articulated this concern by stating that 'we shall be getting low

quality… leaders who are not motivated to be leaders and I believe for me it is not right. Let it remain the way it is'.

This sentiment reflects a resistance to change and a preference for maintaining the current status quo, where women political leaders are selected based on merit. The MPs had a perception that that gender parity policy might bring in women that lack the necessary skills, experience, or commitment to perform well in leadership roles, which could negatively affect the overall effectiveness and motivation of political leaders. This finding is contrary to Rios and others [48] who posit that higher representation of women in parliaments improves the quality of women in politics and further reduces entry barriers faced by women in Europe while joining politics. In addition, a survey from the Inter Parliamentary Union[49] highlights also that equality in parliaments remains a long way off where women parliamentarians continue to face difficulties in their way to the political space.

## IV. CONCLUSION AND RECOMMENDATIONS

Uganda, in its efforts to promote gender equality in politics, adopted a policy that reserves 30 per cent of parliamentary seats for women, alongside open seats where all candidates, regardless of gender, compete. Despite the success of the 30 per cent reserved seat towards increasing the number of women in politics, fewer women candidates contest on open seats and the success rate is also low compared to their male counterparts. This study aimed to assess whether societal perceptions towards women contesting with men have evolved over nearly three decades of elections, particularly focusing on their ability to contest for open seats. It examined both the community's attitude towards voting for women in competitive open seat contests and MPs' support for gender parity policies in politics.

The study found positive perceptions from both men and women towards voting a woman contesting for open seats indicating transformation in the historical traditional patriarchal norms that prevented women from accessing political positions. Unlike in the past, where women were confined to domestic roles, they can now stand and contest with a man. This shift challenges a notion that leadership is inherently a male attribute and reflects a recognition that women, like men possess leadership capabilities. Reasons from the study for this shift in supporting women on open seats

48. V Rios and others 'Quality of government and women's political empowerment: Evidence from European regions' (2023) 102 *Papers in Regional Science* 1067–1096.

49. Inter-Parliamentary Union 'Equality in Politics: A survey of Women and Men in Parliaments' 2008 https://www.ipu.org/file/630/download (accessed 6 November 2023).

included individual political and leadership attributes where voters now place emphasis on the candidate's capability such as experience, competence, decision-making ability and integrity rather than being influenced by the traditional gender roles. Women were also perceived to be more understanding to the unique challenges faced by women in society. The community, especially women, expressed a growing trust in a woman candidate their vote they are attuned to creating policies that promote equality, justice, and the overall well-being of marginalized groups. Women were also perceived to be more transparent and less corruptible than their male counter parts. The community has developed public trust in women because they prioritize the needs of the people they serve over personal or political gain. In addition, women were perceived to be more caring and empathetic to the needs of the vulnerable people. However, while this is a valuable trait, it was illustrated that it can perpetuate a perception of viewing women as only suited to nurturing tasks, rather than a broad range of leadership responsibilities. Others reasons included, promoting gender diversity in the political space to reflect the needs and experiences of all citizens, better decision-making, and a desire for change.

However, it was found that actual voting patterns did not always reflect this willingness to vote for a woman. Factors influencing voting choices included; limited support from political parties for women candidates, economic considerations, religious beliefs, cultural norms, and marital status. Surprisingly, even education, often seen as a driver of gender equality, did not consistently translate into votes for women in open seat contests. These findings highlight the complex interplay of social, political, economic, and cultural factors that influence women's political participation and the need for comprehensive strategies to address barriers to gender parity in politics. MPs' willingness to support a policy on equal representation in politics unveils a clear divide, with male MPs exhibiting reluctance contrasted against their female counterparts' openness. Male MPs' resistance is rooted in concerns about losing dominance and societal norms, coupled with perceptions of women's sufficiency in other sectors and fears of over-empowerment. Religious justifications and apprehensions about women's independence also contribute to this reluctance. This highlights a substantial hurdle in advancing gender parity in politics, necessitating efforts to challenge entrenched beliefs and promote inclusivity for effective policy implementation.

The study recommends that there is a need for comprehensive sensitization campaigns targeting local communities MPs to highlight the significance and advantages of gender parity across all political levels. Additionally, it is recommended that the Parliament of Uganda re-evaluate Articles 79 and 189 of the Constitution, which currently reserve seats for women, to instead ensure a 50 per cent gender representation in both Parliament and local government bodies. Moreover, the development of gender-sensitive education curricula, starting from childhood and

extending to all educational levels, is crucial to promote equal participation of men and women in politics. This approach aims to dismantle existing patriarchal cultures and foster a more inclusive political environment. Furthermore, the study advocates for further research to delve into why the willingness to vote for women on open seats has not been translated into actual voting outcomes, providing valuable insights for addressing existing barriers to women's political representation.