

DECENTRALIZATION WITHOUT HUMAN RIGHTS?

LOCAL GOVERNANCE AND ACCESS TO JUSTICE IN POST-MOVEMENT UGANDA

J. Oloka-Onyango

Copyright © Human Rights & Peace Centre, 2007

ISBN 9970-511-11-x

HUR�PEC Working Paper No. 12

June, 2007

TABLE OF CONTENTS

Acknowledgments.....	ii
Summary of the Report and Main Recommendations.....	iii
List of Abbreviations.....	vii
List of Tables.....	viii
I. INTRODUCTION.....	1
1.1 <i>Decentralization, Access to Justice and Human Rights in Uganda: A Background Note.....</i>	1
1.2 <i>Surfacing the Problem.....</i>	4
II. AN HISTORICAL SURVEY.....	8
III. DEVOLUTION, DELEGATION OR DECONCENTRATION? CONCEPTUAL AND METHODOLOGICAL ISSUES.....	10
3.1 <i>On Scope and Scale.....</i>	12
3.2 <i>The Constitution and Local Government Legislation.....</i>	14
3.2.1 <i>The 1995 Constitutional Framework.....</i>	15
3.2.2 <i>The Local Government Act.....</i>	17
3.2.3 <i>The Case of Local Judicial Power and Access to Justice.....</i>	20
3.2.4 <i>Reassessing the Decentralization Policy Framework.....</i>	21
IV. LOCAL GOVERNANCE AND HUMAN RIGHTS IN THE AFTERMATH OF THE MOVEMENT SYSTEM OF GOVERNANCE.....	24
4.1 <i>From the Movement to Multipartism: Old Wine, or New Bottles?.....</i>	24
4.2 <i>Central and Local State violations of Civil and Political Rights.....</i>	26
4.3 <i>The Case of Economic, Social and Cultural Rights.....</i>	28
4.4 <i>Probing the Main Actors on the Local Government Scene.....</i>	29
4.4.1 <i>The Ministry of Local Government (MoLG).....</i>	29
4.4.2 <i>United Nations Volunteers (UNV) and other Donors.....</i>	30
4.4.3 <i>UHRC.....</i>	32
4.4.4 <i>What About Civil Society?.....</i>	32
4.5 <i>The Potential of Local Governments: Attitude, Capacity and Competence.....</i>	33
4.6 <i>The Human Rights Implications of Recentralization.....</i>	35
V. CONCLUSION AND RECOMMENDATIONS: ADDRESSING THE CHALLENGES.....	40
REFERENCES.....	45

ACKNOWLEDGMENTS

This Working Paper provides an overview to the constitutional, legal and policy issues that affect the link between local government and human rights. It is the background paper for HURIPEC's project on *Decentralization and Human Rights*, supported by the Danish International Development Agency (DANIDA), and which set out to explore the main challenges facing districts and lower levels of local government in both promoting and protecting human rights. The author is grateful to the participants at the HURIPEC review workshop held on March 2, 2007 and to other commentators. Thanks are also due to Rose Ssengendo and James Nkuubi who provided background research assistance, and to the Uganda National Council for Science and Technology for research permission.

SUMMARY OF THE REPORT AND MAIN RECOMMENDATIONS

Uganda's actions in the arena of decentralization have received critical acclaim for introducing a number of important changes to the practice of local government. Needless to say, after more than 20 years in place, the system is confronted by a number of serious challenges, none more significant than the promotion and protection of human rights, and improving access to justice at the local level. There are three main levels at which the challenges must be tackled, namely,

- (i) Policy, Concept and Legislation;
- (ii) Implementation and Action, and
- (iii) Support, Monitoring and Evaluation.

This Working Paper conducts a critical audit of the extent to which the process of decentralization has taken on board the issue of human rights—civil and political, as well as economic, social and cultural. The main conclusions of the study are that a great deal remains to be done in order to make local governments more sensitive to the human rights of the populations they are supposed to service. At the same time, important stakeholders in the State and civil society outside it are yet to design appropriate strategies to comprehensively address the issue. In particular, the paper makes the following observations and conclusions:

A. REASSESSING NATIONAL POLICY:

Decentralization is under pressure from several threats, not least of which the phenomenon of recentralization, which has witnessed marked reversals in the policy of devolution and has left local governments with fewer resources and more dependent on the largess of central government. These policy reversals must be critically interrogated and corrected in relation to both the wider goals of decentralization (devolution) and the more specific improvement of the local context for human rights protection. Specifically, at the national level there is a need to:-

- (i) Sensitize and train officials of the Ministry of Local Government (MoLG)—especially those who deal with local councils—in basic human rights principles;
- (ii) Assist the MoLG in designing a check-list by which to assess the state of human rights in the districts and institute a regular system for monitoring the situation in the districts;
- (iii) Critically review the place of local government structures and operations within a context of a functioning multi-party political system, and design appropriate guidelines for implementation at the lower level;

- (iv) Reconsider the role and function of the Resident District Commissioner (RDC), District Security Officers (DISOs), and other central government functionaries in order to ensure that their exercise of power does not violate human rights principles, or prevent the effective operation of local governments;
- (v) Impose a moratorium on the creation of new districts as they are of questionable viability, they undermine the essence of decentralization and they do little to enhance the promotion and protection of human rights;
- (vi) Inform all future policy initiatives and legislative reforms on decentralization by a rights-based approach, underlining the need to recognize and assert the necessity for compliance with the country's human rights obligations, whether international, regional or national;
- (vii) Highlight the central place and necessity for human rights in decentralization during the process of reforming the Local Government Act (LGA);
- (viii) Conduct a human rights audit of all the bye-laws, regulations, policies, and actions by local governments. Such audit would examine the objectives, design and implementation of these various instruments and be accompanied by a Human Rights Institutional Assessment (HRIA), comprising an examination of the existing institutions at the local level that are supposed to ensure that human rights are promoted, respected, and implemented.
- (ix) Support and improve the initial steps taken by the Uganda Human Rights Commission (UHRC) in decentralizing its operations, and foster a movement beyond regional offices.

B. BUTTRESSING LOCAL CAPACITIES ON RIGHTS AND JUSTICE

The biggest impediment to the elaboration of a concrete program at the local level is the low-level of capacities for officials to do either human rights monitoring, or for them to ensure implementation of the Human Rights Based Approach to Development (HRBAD). In this regard, it is necessary to:

- (i) Support the proposed establishment of human rights desks in all districts with a more rational approach that covers sufficient training, and the elaboration of basic guidelines for their establishment and operation;
- (ii) Local Government officials and district councilors need human rights sensitivity in all their actions, thus basic training should be conducted on human rights principles, and on the implications of their work to the better protection and implementation of them, as well as on

the rights based approach (RBA) to human rights programming;

- (iii) HRBAD needs to be thoroughly interrogated and localized. As much as possible, local resources and local interpretations of what human rights mean should be a main guiding principle of the reform process, and
- (iv) Reinforce Local Council Courts (LCC) with appropriate mechanisms and training to improve the administration of justice at this level.

C. IMPROVING ACCESS TO INFORMATION

Local Government officials suffer from a dearth of information on human rights. More importantly, there is a general lack of a culture of publicizing the information which is in the possession of officials and which may be relevant to persons seeking to assert their rights. Despite the recent passing of the Access to Information Act, there is an absence of guidelines from the Ministry of Information on the obligations of public servants (including Local Government officials) in relation to the provision of information to the general public. Local Governments need to:-

- (i) Establish information desks providing information on the work of the local government, and
- (ii) Improve the flow of information and the levels of transparency in local government.

D. PROCESSING INFORMATION TOOL-KITS ON HUMAN RIGHTS

The simplification of documents on the Bill of Rights in the Constitution, and other relevant information on rights and duties needs support and duplication. In this regard,

- (i) Existing fliers and pamphlets need to be updated and disseminated at the local government level.
- (ii) The less well-known economic, social and cultural rights (i.e. to health, shelter and housing, decent conditions of employment, food and the right to an adequate standard of living) should be included in future 'tool-kits.'
- (iii) Information tool-kits should be understandable by all local government officials and also made widely available in different languages.

E. IMPROVING CSO ENGAGEMENT

Civil society organizations (CSOs) and Community Based Organizations have several obligations with respect to local government, among them:

- (i) Conduct more research on the nature and prevalence of human rights violations in the different localities around the country;
- (ii) Begin a process of prioritization of necessary actions to be taken;
- (iii) Move from a reactive to a proactive posture on human rights developments in a bid to prevent the occurrence of human rights violations;
- (iv) Not be apolitical, but avoid being partisan;
- (v) Focus on women and other marginalized groups in terms of improving their rights, and supporting their more effective participation in leadership at the local level;
- (vi) Improve human rights oversight (monitoring and evaluation) of the activities of local governments;
- (vii) Lobby Local governments to place at least one human rights issue per quarter or every half-year among the priorities dealt with by the local body, and
- (viii) Encourage more networking among the key actors in the area, e.g. the Police, Prisons, human rights activists, and development practitioners as well as actors involved in service delivery.

LIST OF ABBREVIATIONS

CBOs	Community Based Organizations
CHOGM	Commonwealth Heads of State & Government Meeting
CGPs	Central Government Prisons
CSOs	Civil Society Organizations
DHRD	District Human Rights Desks
DHRPP	District Human Rights Protection Sub Committees
DPS	District Public Service
DPSF	District Policy Strategy Framework
DSC	District Service Commission
FDC	Forum for Democratic Change
HRBAD	Human Rights Based Approach to Development
HRIA	Human Rights Institutional Assessment
IDPs	Internally Displaced Persons
JCMCCs	Joint Civil-Military Cooperation Centres
JLOS	Justice, Law & Order Sector
LABF	Legal Aid Basket Fund
LAPs	Local Administration Prisons
LC	Local Council
LCCA	Local Council Courts Act.
LCCs	Local Council Courts.
LG	Local Government
LGA	Local Government Act
LoGSIP	Local Government Sector Investment Plan
MDGs	United Nations Millennium Development Goals
MoLG	Ministry of Local Government
NGOs	Non-governmental Organizations
NOPSP	National Objectives and Principles of State Policy
NRA/M	National Resistance Army/Movement
NRM-O	National Resistance Movement—Organization
PEAP	Poverty Eradication Action Plan
PPOA	Political Parties & Organizations Act
PSC	Public Service Commission
TPP	Ten Point Programme
UAC	Uganda Amnesty Commission
UHRC	Uganda Human Rights Commission
ULGA	Uganda Local Government's Association
UNV	United Nations Volunteers
VAGs	Voluntary Action Groups

LIST OF TABLES

- I. THE STRUCTURE OF UGANDA'S LOCAL GOVERNMENT SYSTEM
- II. GENDER PROFILE OF LOCAL GOVERNMENT LEADERSHIP
- III. MARCH 2006 ELECTIONS FOR KAMPALA MUNICIPALITY
CHAIRPERSONS (LC 3)

I. INTRODUCTION

1.1 Decentralization, Access to Justice and Human Rights in Uganda: A Background Note

Uganda's experiment with the decentralization of state power has received critical acclaim for the manner in which it has allegedly empowered ordinary people and given them a feeling of inclusiveness and participation in the affairs of governance.¹ When originally conceived, the resistance councils and committees (otherwise known as "RCs") were viewed as a radically different form of governance from the systems of central control and hegemony that had been in existence in the country since the colonial period. RCs formed part of a bid to create a local government system that would be democratic, participatory, efficient and development-oriented; a system that would empower communities to take charge of their own destiny through local institutions of self-governance and resource mobilization.²

For the first time, previously marginalized groups such as women, the youth and persons with disabilities found voice within the framework of the RCs.³ Perhaps even more importantly, RCs considerably improved the right to access to justice, by providing localized, simple and direct forms through which the general population—independent of one's social or economic status in society—could seek the civic resolution of their disputes. Put another way, RCs provided a context in which basic and fundamental human rights—those rights which a person possesses simply because one is a human being—were given more articulate expression, even if this was only implicitly so. RCs filled the vacuum left by the collapse of the state in the areas where the NRA/M based its guerilla war, and later extended to the whole country.⁴

Human rights have been part of the international family of laws and treaties to which all countries are bound since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. Several additional international, regional and national human rights instruments and documents that spelling out fundamental rights and freedoms have been enacted over the last six decades. Although Chapter Four of Uganda's 1995 Constitution is specifically about human rights and fundamental freedoms, the whole document has been described as 'a human rights constitution' because virtually every provision of the instrument has a relationship to the promotion and protection of fundamental human rights. This was a positive development and represented a process of continuous struggle in which Ugandans had been engaged from the time the country came into existence. Furthermore, Article 178 (b) of the Constitution stipulates that decentralization

¹ See, for example, Manor, 1995, Villadsen & Lubanga, 2000, Mitchinson, 2004, and Steiner, 2006.

² Ahikire, 2002.

³ For an examination of the impact of decentralization on gender equality, see Saito, 2002.

⁴ The extension of the system followed the recommendations of a Commission of Inquiry led by Prof. Mahmood Mamdani.

shall be the principle applying to all levels of local government and in particular, from higher to lower local government units to ensure people's participation and democratic control in the process of decision-making.

Recently, the government has incorporated policy on decentralization into two main framework documents, namely, the Decentralization Policy Strategic Framework (DPSF)⁵ and the Local Government Sector Investment Plan (LGSIP),⁶ which in turn are informed by the Poverty Eradication Action Plan (PEAP) as well as by the United Nations Millennium Development Goals (MDGs).⁷ The actual functioning of districts and lower-level local governments is guided by the Local Governments Act (LGA) that came into force in 1997,⁸ as well as the more recent Local Council Courts Act (LCCA), which governs the administration of justice at the local level and defines the jurisdiction, powers and procedure of local council courts (LCCs).⁹

Decentralization in Uganda has been pursued and developed as one of the main pillars of the public sector reforms that have transformed the structures of government in the country. Needless to say, Uganda's history of turmoil, mass struggle and reconstruction has a lot to tell about the nature of the local government system in place in the country today. Consequently, although there have been attempts to put that past behind us, vestiges of government excess, administrative abuse and outright human rights violations remain and continue to plague the country's populations. Moreover, questions persist about the extent to which central government is actually genuinely willing—both conceptually and in practice—to allow local government to flourish without intervention. In a nutshell, decentralization has produced more ambiguous results than its proponents suggest.¹⁰ Certainly, it is highly debatable whether decentralization *per se*, improves the promotion and protection of human rights across the board, in the same way as it raises questions regarding the issue of access to justice.

Against the preceding background, it is quite clear that Uganda's local government system is faced by several challenges with respect to the promotion and protection of human rights. This is because local government structures are entrusted to deliver a wide range of services that directly influence the quality of life of most people.¹¹ There is no doubt that with decentralization, local government powers have been tremendously increased. Democracy has been strengthened at the local level and new power centers have been created, while several responsibilities have been devolved to them. Simultaneously, human rights have become a central

⁵ MOLG, 2006a.

⁶ MOLG, 2006b.

⁷ MOLG, 2006a.

⁸ Cap. 243, Laws of Uganda, 2000.

⁹ See Act No.13 of 2006.

¹⁰ Beall, 2004.

¹¹ International Council on Human Rights Policy, 2004.

element of both national and international policy. At the same time, human rights advocacy and protection has not been devolved to the districts and lower local councils to the same extent. One is hard-pressed to think of a human rights organization that interacts with district governments and other agencies in any systematic and engaged fashion.

Human rights groups are largely silent about the activities or the control of Local Defense Units (LDUs); the powers of chiefs, or the preservation of the rights of minorities where dominant groups seek to impose their attitudes or ways of life within a particular district. All the above have important implications for human rights. Finally, while in many people's minds decentralization is primarily associated with service delivery, there are many human rights dimensions to this activity too. Questions such as the *availability, accessibility, acceptability* and *adaptability* of the services which are delivered are all critical issues that are not often given significant attention. Unfortunately, the dominant philosophy is *the more, the merrier!* In the words of Ahikire the emphasis, "... is still laid within a welfarist approach that does not fundamentally engage the question of rights."¹² And yet, qualitative issues are just as important from a rights perspective as quantitative ones. It is also necessary to pay attention to the other side of the coin and to ensure that there is full participation, non-discrimination, accountability, protection of the rule of law, and transparency in all such activities, i.e. that civil and political rights are genuinely respected and fully observed.

It is thus the main contention of this working paper that local government in Uganda has been largely free from either human rights accountability or indeed from the critical scrutiny of human rights non-governmental actors for several years. In other words, the Ugandan system is characterized by a process of 'decentralization *without* human rights.' This means that decentralization took place in the absence of attention to the human rights implications of the move to shift power from central to local government. Indeed, it was also largely a top-down, state-driven process.¹³ Although, the government has now woken up to the idea that human rights is important at the local level, one could argue that what is taking place at the present time may be both too little and too late, unless more concerted efforts are taken to address the situation.¹⁴

In the pages that follow, this working paper explores the above issues in a more detailed manner. To do so, it is divided into five (5) parts, the first of which provides some background before zeroing in on the nature of the problem with

¹² Ahikire, 2002 at 3.

¹³ Ts'oele and Goldman state that Uganda has been very successful in decentralizing considerable administrative functions to local governments, but less so in terms of fiscal decentralization. "However, they have been less successful at promoting active participation of citizens, and promoting a decentralization process build on mobilization of communities at local level, where decentralization is demanded from below, rather than just certain powers being released from above." Ts'oele & Goldman, 2006 at 7.

¹⁴ See Part IV, *infra.*, which discusses the move to establish Human Rights Desks in all districts.

which we are grappling. It moves on in Part II to provide an historical background to the evolution of the local government system, with a particular focus on the place of human rights therein. Part III of the study critically engages with the overall constitutional, legal and policy framework within which the process of decentralization has unfurled from 1986 to date. Part IV brings the analysis up to date with a consideration of the contemporary operation of the local government system and its relationship to human rights, while Part V concludes the study and makes several recommendations.

1.2 Surfacing the Problem

Decentralization is a process of reform designed to strengthen local governments and enable them deliver the specific services for which they are responsible to populations living in the areas they administer. It is the antonym of centralization and refers to anything that reverses the political and economic hegemony of central government.¹⁵ In the words of Richard Ssewakiryanga, decentralization policy is based on two basic generic assumptions:

*The first one is that decentralization brings public services closer to people and secondly that decentralization will contribute to more effective participation of citizens in the design and delivery of Government services that would be the case in centralized government systems.*¹⁶

Given the above, it is not surprising that decentralization has attracted considerable political and academic attention in recent years.¹⁷ However, most of the emphasis has been put on decentralization in service delivery and poverty reduction, and its role in relation to governance and democratic reforms.¹⁸

Very little, if anything, has been done to examine local government and decentralization specifically in relation to the topic of human rights. Those working in local governments or involved in decentralization processes may be unfamiliar with human rights concepts and the national and international systems that define and protect these rights. Furthermore, there is a running presumption that because local councils are able to exercise judicial power, access to justice has improved. In contrast to the expensive, rather elitist and cumbersome state courts, such councils provide a much more simplified and accessible forum through which 'popular' justice can be effected. But this is a narrow reading of the phenomenon of access to justice. Access to justice should also provide a mechanism for civil society and local populations to challenge government actors who fail to follow the rules that govern how the public should be consulted, thereby enforcing access to information and public participation which are

¹⁵ See Mukandala & Peter 2002, at 2.

¹⁶ Ssewakiryanga, 2004 at 3.

¹⁷ See Fauget 2004, for some idea on the scale of the decentralization debate.

¹⁸ See, for example, Olum 2005.

crucial factors in the empowerment of local populations.¹⁹

There is consequently a need to critically examine local government administration in a bid to respond to several questions, including the following:

- *In what ways does the devolution of power influence the respect for human rights?*
- *How has the process of decentralization improved the right of access to justice in the broader sense?*
- *What mechanisms are in place to ensure that decentralized structures effectively promote and protect human rights?*
- *What are the most crucial capacity needs for districts to ensure that they are ensuring that human rights are not violated?*
- *To what extent is civil society (whether at the national or local level) paying attention to the promotion and protection of human rights at the districts?*
- *What opportunities arise for human rights advocacy in relation to local governance?*

Given these questions, it is important to underline the point that human rights and local governance are both essentially concerned with the protection of certain guaranteed entitlements. Local governments have increasingly become the most visible interface between government and the majority of its citizens. A rights-based approach to local government administration would allow for a more critical interrogation of the relationship of people to local government institutions and the relations that emanate from them and how the entire process relates to human rights. In other words, the critical issue of empowerment should be the main point of concern.

At the same time, a human rights approach to decentralization should open up new methods of governance that differ from those which have traditionally been in place at the central level. In the words of Lind and Cappon: "The outcomes of decentralization are not limited to predetermined and anticipated ends. Rather, multiple options may unfold as decentralization is practiced by different actors, by different communities and in different environments."²⁰ The point is that we should not lock ourselves into a box labeled 'decentralization and human rights' and view that as the only space within which we allow ourselves to operate. Looking outside the box will reveal interesting and alternative approaches to a

¹⁹ See Mwebaza, 2003, at 44.

²⁰ See Lind & Cappon, 2001, at 70.

resolution of the problem. Thus, to take just one example, the creation of new districts has been justified on the grounds that it is a response to both perceived inequality and discrimination, and the need to better access services. In this respect, the establishment of a new district is often seen as the culmination of a struggle for the realization of human rights, particularly the right to self-determination.

However, to what degree are human rights issues being addressed in the process of the creation of the new entity and even after it has been put in place? Indeed, as Ahikire points out, the new districts themselves face new demands from local communities and individuals who still feel marginalized.²¹ Moreover, while the early spate of 'districtization' could be justified in terms of both service delivery and the desire to eliminate marginalization, currently it has been turned into a project to satisfy the interests of the local elite. The danger in terms of human rights is that the recourse to claims of 'ethnicity' and 'culture' have the effect of consolidating the interests and demands of the more powerful members of that community, whether such power is defined in terms of gender, ethnicity, class or age.

It is important to emphasize that the strategy of district proliferation has also been adopted by President Museveni as a means of dispensing patronage, and ultimately of splintering challenges to central government hegemony and control. At the time of passing the 1995 Constitution, there were a total of 56 districts, which represented more than a three-fold increase since the NRM came to power in 1986. Thirteen (13) new districts were created effective July 1, 2005, and another eleven were established on July 1, 2006.²² The blatant politicization of this process is captured in a recent assessment of the state of democracy and governance in the country:

*The creation of the districts did not follow any established parameters, neither was the process informed by administrative necessity or economic rationale. Instead, the President announced their creation via presidential decrees, often to reward politicians threatening to withdraw support for the NRM, or to punish those who had.*²³

Finally, with respect to the conceptual questions that arise when examining the issue of decentralization, is the issue of devolution versus deconcentration or delegation. At core is not only the type of power that is transferred to the local government, it is also what residual power remains at the centre, and how much control the centre exercises over the local government. Deconcentration primarily involves the transfer of some powers and responsibilities to lower administrative units which are operated by officials appointed by the central authority, who

²¹ Ahikire, 2002 at 16.

²² See ARD Inc., 2005, at 41.

²³ See Art.3(1), *European Charter of Local Self-Government*, European Treaty Series, No.122.

implement defined functions under tight central control. Delegation is power that is transferred, but which can be recalled at the instance of the party which gave the power in the first instance.

Devolution implies a much higher degree of the relinquishment of government power, and conversely a higher level of autonomy exercised by the local government. These two elements are captured in the European Charter of Local Self-Government, which describes 'local self government' as, "... the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population."²⁴ That autonomy is reinforced by a limited supervisory power: "Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles."²⁵

Despite claims to the contrary, Uganda's decentralization has clearly oscillated between deconcentration, delegation and devolution, at both the conceptual level and in practice. The reasons for that oscillation are varied and complex, but lie both in the historical experience of the colonial and immediate post-independence eras, as well as the more recent encounter with the transformation of state power that has taken place from the 1980s to date. Of course, one would also expect a degree of resistance from central government entities, because decentralization obviously translates to many as a loss of power and resources. Thus, the tendency of central government ministries has been hegemonic, and generally reluctant to give up what was previously their exclusive domain.

An added dimension to the complexity of the decentralization debate has since come to the fore in the discussion about '*federo*' (or *fedulo*) and federalism. The two words are often used inter-changeably, but have entirely different meanings.

The latter refers to a situation in which largely independent governments make decisions about the public sector and provide greater opportunities for citizen participation at the sub-national levels.²⁶ It usually involves the demarcation of the state into sub-national entities that stand on an equal footing in relation to the centre.

In contrast, *federo* refers to the demand—mainly by Buganda—for a re-negotiation of its relationship with the central government, and is an echo of the situation that existed at independence in 1962.²⁷ In that context, there was an asymmetrical 'three-tiered' federalism in that certain entities—the kingdom of Buganda in its

²⁴ Id., Art.8(2).

²⁵ Work, 2002 at 7.

²⁶ For a broad analysis of the issue, see Kayunga 2000.

²⁷ See Art. 178 of the 1995 Constitution. Art.178(3) stipulates that the regions of Buganda, Bunyoro, Busoga, Acholi and Lango shall be deemed to have formed regional governments.

own special category, and those of Ankole, Toro and Bunyoro, and the territory of Busoga in a second one—enjoyed a higher degree of autonomy from the centre than the remaining districts, which were more centralized. Although *federo* advocates have consistently stated that the argument is not simply about the interests of Buganda alone, it has been an uphill battle to convince the non-Buganda public about the merits of the case. A compromise was arrived at in the introduction of the regional tiers with the 2006 amendment to the Constitution. Despite certain districts having been ‘deemed’ to have come together under that arrangement, it has so far proven unsatisfactory, and the tier regime has not been adopted, whether by Buganda or by any other districts.²⁸ Nevertheless, even at this level, human rights issues have not featured prominently in the debate.

The debate around decentralization and its implications is made even more convoluted by the contradictory actions of current President Museveni, who instinctively exerts a tighter control over affairs at the local level, while at the same time presenting the appearance of giving more autonomy to the local governments. This explains the evolution of office of the RDC, which began as a link between local and central government and has essentially evolved into a mechanism of central government control over local government action, which in many instances has led to clashes over the exercise of power by the local authorities. It also explains how the President can simply abolish local taxes (among them Graduated Tax, Market dues, and Property taxes) without either consulting the local governments or involving them in a discussion about alternative ways of addressing the issue comprehensively.²⁹ While there can be no doubt of the popularity of the move, it simply underscores the point that political expediency often intervenes to overturn the alleged commitment to the increased devolution of powers.

II. AN HISTORICAL SURVEY: RIGHTS AND DECENTRALIZATION IN UGANDA

Human Rights observance and protection has never been a prominent feature of the Ugandan local government landscape. A quick perusal of the legislation on local government during the colonial period clearly demonstrates that the key elements being promoted were administrative efficiency and the prevention of political challenges to the system. At the national level, rights were confined to the colonial masters and their agents, extending from limited political rights to

²⁸ See Steiner, 2006 at 12-13 for a discussion of the implications of the abolition of the taxes on the running of local governments. It is also important to point out that the President’s action even skirted the constitutional provision on this issue which empowers local governments to levy taxes approved by Parliament. See Art.191(2). Also see Golola, 2001, at 12.

²⁹ The point needs to be underscored that the colonial system was essentially a two-tiered one, with the majority of rights reserved to the White colonial administrative minority, while the majority of Black people were denied any. For a broader examination of this issue, see Mamdani 1996.

be involved in governance, to rights to property and residence.³⁰ As a matter of fact, the local government system was a site for particularly egregious human rights violations. Such violations centred on the local chief, who not only fused all administrative, judicial and cultural power in his office, but who also exercised that power without regard to its impact on the local people.³¹ Reform of the system came very late in the life of the colonial regime, first, with the African Local Governments Ordinance in 1949,³² and followed by the District Administration (District Council) Ordinance of 1955 which devolved some power to local administration over service delivery, as well as permitting the election of district council members and the collection of some local revenue.³³

Following independence, there was some change in the local government system, both conceptually and in practice. The 1962 Independence Constitution introduced a bill of rights outlining the basic protections to which all Ugandans were entitled. The federal and semi-federal arrangements in place for the four kingdoms and the territory of Busoga assured a greater degree of autonomy. The Local Administrations Ordinance of 1962³⁴ granted certain powers to local councils on matters such as their composition, oversight of land, local roads, rural water supply, education, local tax collection and certain health services.³⁵ The 1966 crisis brought the non-observance of human rights to a peak, not simply with the attack on the *Lubiri* and the subsequent dismantling of the kingdoms, but also with the assault that was occasioned to the system of local governance in the non-kingdom districts. Thus, under the 1967 Constitution, any semblance of an autonomous local government system disappeared and was followed through with the enactment of the Local Administration Act of 1967, which reverted the control of local government to what it was in pre-1950s colonial Uganda.

Most importantly, institutions such as the Police became even more centralized, just as the Minister in charge of local government was granted sweeping powers of oversight, control and sanction. The Idi Amin regime divided the country into 10 regions, but with an emphasis much more on administrative efficiency, rather than as part of an attempt to seriously devolve power to lower levels of governance. With the return to power of Milton Obote in the 1980s, an attempt was made to revive the pre-Amin system, but given the nature of the crisis faced by the state at the time, this did not meet much success. Chiefs and UPC Party chairpersons effectively operated as units for the extension of the repressive central state apparatus.

³⁰ See for example, the powers contained in the Native Administrations Ordinance (No.8 of 1938).

³¹ Ordinance No.2 of 1949.

³² See Ordinance No.1 of 1955.

³³ Act No.23 of 1962.

³⁴ The one exception to this was the case of Karamoja, which throughout the colonial period and into the independence era, was treated as a special case, requiring the application of different (largely draconian) measures to control what was regarded as a security threat. See the Administration (Karamoja) Act, Cap.26, 1964 Laws of Uganda.

³⁵ UHRC, 2006.

III. DEVOLUTION, DELEGATION OR DECONCENTRATION? CONCEPTUAL AND METHODOLOGICAL ISSUES

Since the 1986 emergence to power of Yoweri Kaguta Museveni and the National Resistance Army/Movement (NRA/M), Uganda has gone through several phases in the development of its human rights situation, and in relation to the operation of local government. In the main, human rights violations have been a lasting feature of those areas that have been afflicted by conflict (most prominently Northern Uganda, but also the Northeastern, and Western parts of the country). Needless to say, even outside the conflict zones an assortment of different freedoms—ranging from the right to assemble freely, to the freedom of movement—have at various times been under assault. Despite the absence of a law on detention-without-trial, the offence of treason has been extensively utilized in order to deal with political opponents. Although the Media is relatively free to report on matters of public concern, the number of criminal prosecutions against reporters is inordinately high. Finally, torture remains a major issue of concern, whether in Police or Military centres of detention, or within the context of the so called ‘Safe House’ system that the government introduced.³⁶

At the same time, a number of pragmatic and institutional developments mark out the NRA/M from its predecessors, including the establishment of new institutions directed to the prevention of human rights violations, such as the Uganda Human Rights Commission (UHRC) and the Inspectorate of Government (IG). The 1995 Constitution put in place provisions that led to a reinforced Judiciary that is much less beholden to the Executive, although it still faces some problems in asserting its autonomy and independence. Civil society actors—ranging from those concerned with the environment, to women’s groups, and those addressing conflict—have also sprouted. With the return to a multiparty dispensation, the one remaining legal impediment to the freedom of political association and organization was removed. On the face of it therefore, Uganda is human rights compliant. Indeed, the boast that for the first time since independence Uganda’s citizens are able to actually exercise their rights, is not an idle one.

Unfortunately, the system of governance introduced by the NRA/M was also inherently anti-human rights. Indeed, one could describe it as a ‘Jekyll and Hyde’ system, in that in many respects it gave rights with one hand, which it removed with the other. Thus, although RCs became the main instrument for the exercise of voting rights, the general right to association was severely proscribed. This had implications for the freedoms of organization, expression and assembly, to mention only a handful. The claim that RCs were a system of ‘popular’ selection based on the ‘individual merit’ of the candidates who stood for office was severely undermined by the fact that the state (which was controlled by the NRM) intervened heavily in support of some candidates, while it actively decampaigned, intimidated and blackmailed others. The peak of hypocrisy was

³⁶ Kasfir, 2000.

reached when President Museveni declared “We have won!” following the 1993 elections for the Constituent Assembly which were originally supposed to be run on a ‘no party’ basis. Who was the ‘we’ in such a situation?

Over the years, it became more glaringly obvious that the Movement ‘system’ was a thinly-disguised one-party state. Decentralization took place with regard to everything else, except organized politics, which remained centralized and monopolized. Even though the government did not expressly outlaw opposition political activity, the arena for alternative political organization was severely proscribed. Indeed, over the years the government embarked on a process of extending, rather than reducing the limitations imposed on the right to political expression. The debate over the Political Parties & Organizations Act (PPOA), which took place over a period of five years, clearly demonstrated that the government was unwilling to countenance any real challenge to its authority.

In other words, the democracy practiced over this period was guided and controlled, not to emphasize that it was also limited. Provided political activities did not directly challenge the regime’s hold on power, they were allowed to take place.³⁷ This effectively confined those parties which remained after the 1986 NRM assumption of power—namely UPC and DP—basically to their headquarters. Attempts to challenge the barriers to effective political organization or association, whether via legal means or otherwise, were met with brute force. Thus, the return to a multiparty political system of governance should have dealt with what were fairly egregious and obvious violations of human rights principles to which not only the government, but also the people of Uganda ascribed. This is a point to which I shall return after examining some of the conceptual and methodological issues raised by this examination.

³⁷ The 2005 amendment to the Constitution introduced yet another level—the regional tier—which although not yet functioning, is certain to add yet another dimension of complexity to the system.

3.1 On Scope and Scale

Before proceeding with a more incisive analysis of the state of human rights at the local government level, it is important to point out a number of limitations inherent in a broad analysis such as that undertaken in this study. In the first instance, Uganda's decentralized system of local government consists of ten levels, outlined in the following table:

TABLE I
THE STRUCTURE OF UGANDA'S LOCAL GOVERNMENT SYSTEM, 2007

TYPE	NAME	DESIGNATION	NUMBER
A. LOCAL GOVERNMENTS			
	1. Regional Tiers*	LC 6	16
	2. District Councils and Kampala City Council	LC 5	80
	3. Sub-county Councils	LC 3	920
	4. City Division Councils	LC 3	5
	5. Municipal Councils	LC 4	13
	6. Municipal Division Councils	LC 3	34
	7. Town Councils	LC 3	92
	8. County Councils	LC 4	151
B. ADMINISTRATIVE UNITS			
	9. Ward or Parish Councils	LC 2	5,725
	10. Village Councils	LC 1	>45,000
SOURCE:	Ministry of Local Government	Districts of the Republic of Uganda as at 1 st July, 2006	

* See Arts.5 and 178 and the 1st and 5th schedules to the 2006 Constitution of the Republic of Uganda

The above table shows that, we are talking about nearly 50,000 units of administrative and political organization. What is thus immediately apparent is the vast number and scale of what can be described as Uganda's local government system.³⁸ Implicit in that scale is the fact that generalizations about human rights issues cannot be applied across the board. This is particularly important not simply because comparing village councils and district councils is like comparing groundnuts and guavas, but also because there are several other distinguishing elements that need to be taken into account. Among them are the rural/urbandivide; the distinction between conflict/post-conflict and no/low-

³⁸ For a consideration of the scale of just the phenomenon of 'political corruption,' see CBR (2005).

conflict areas, and a host of demographic, socio-economic, cultural and political questions, especially in light of the transition to a multiparty system of government. Thus, while the issue of Female Genital Mutilation (FGM) may be a problem confined to a single part of the country and in only a handful of districts, it obviously transcends every level of the system in the particular district in which it takes place. In contrast, an issue of corruption may be most acute only at the level where state resources are concentrated, eliminating a good number of the bodies in the system, such as the village councils, although these may be afflicted by a different kind of corruption from that of their higher-level counterparts.³⁹

Needless to say, there is a sense in which human rights issues cut across the whole spectrum of the local government regime. For example, with respect to the issue of access to information, the treatment of marginalized groups, or the question of accessing health or educational services in a non-discriminatory fashion.⁴⁰ Broader questions such as accountability, transparency and the fairness of local government officials also cut across the board. The rights of minorities, non-indigenous residents (so-called 'settlers') and the volatile question of access to land and property rights are equally of concern across the system. Hence, while taking note of the distinctions, it is possible to make general observations about the manner in which human rights issues are implicated by the system of local government as a whole.

In a multiparty system of governance, it is particularly important to be sensitive to discrimination based on party affiliation, regardless of whether it is conducted by the party in power, or by the opposition. In this respect, it is rather absurd for a RDC (who is invariably a ruling party supporter and presidential appointee) to be charged with the task of 'monitoring' the implementation of local government services in the district.⁴¹ Although seemingly logical, the provision in the LGA stipulating that the RDC can also, "...draw the attention of any relevant line Ministry to the divergence from or noncompliance with Government policy by any council within his or her area of jurisdiction," is an area ripe for confrontation.⁴² Those tensions can be greatly magnified where you have RDCs who come from one party, while the LC 5 chairpersons come from a different one. But most importantly, what does the imposition of an unelected, political appointee over elected local representatives say about the much-touted right to vote on which virtually the whole of Uganda's system of local government is constructed?

³⁹ This is apparent for example, through the introduction of Local Council Health Committees and Health Unit Management Committees, which were designed to improve the delivery of health services at the local level. Although they have been recognized as an improvement on the pre-existing systems, there is still much remaining to be done to boost their operations. See Kyomuhendo *et al* 2000.

⁴⁰ See Art. 203(3)(a).

⁴¹ For a broader analysis see Kabumba 2007, especially 34-35.

⁴² As per Art.2(1), 1995 Constitution of Uganda (as amended in 2005).

There is an additional conceptual problem when discussing the issue of human rights and decentralization in the Ugandan context. Too often, the term 'human rights' is taken to refer exclusively to civil and political rights, for example, the freedoms of association, speech and assembly, among others. More critically, it relates to the right to life, freedom from torture, and a host of political freedoms such as being able to freely assemble. Only rarely is reference made to economic, social and cultural rights. The latter cover rights such as those to adequate shelter or housing, the right to education and rights belonging to workers, such as the right to withhold labour, or the right to strike. It also covers rights of cultural expression, which cover linguistic and other related rights.

Paradoxically, it is this latter category of rights which are of crucial importance and concern at the local level, and specifically to groups who have been traditionally marginalized such as women, people with disabilities and minorities. Indeed, an immediate conceptual problem exists in that many people (in government and out of it) do not consider this category of rights as rights at all. They are more likely to be treated as 'gifts' of a benevolent and 'caring' government, rather than as entitlements to which one has a basic right as a citizen. Indeed, the politicization of public goods has become a central tenet of government policy, whether on education, the rights of women or on micro-finance (*bonna bagagawale*).

When treated as gifts, it is very difficult to secure a binding obligation from the state to provide them. Thus, when the 'gift' runs out, or the state is unable to provide it any more, the most likely response to be given is that there is a lack of resources. Such an argument essentially closes the door to an effective engagement with the rights issues involved. However, even in a situation of minimal resources, human rights can still be respected. The little available should be shared equitably, without discrimination and ensuring that the vulnerable members of the community are specifically targeted and protected. In order to better appreciate this point, it is necessary to turn to a consideration of the legal and policy framework within which human rights in Uganda is embedded.

3.2 The Constitution and Local Government Policy and Legislation

Constitutions are important in that they outline the broad conceptual and philosophical framework within which a specific government policy is supposed to draw inspiration. As such, they are useful indicators of the underlying motivations and intentions of the framers of the instruments and of the kind of vision of governance that was entertained during the drafting of the document. More importantly, they are a reflection of the broader political struggles and compromises that were taking place at a particular point in time. Policy and legislation are more directly reflective of the needs and interests of the dominant political actor of the day, and as such they present a more precise picture of the specific issues being addressed and of the obstacles sought to be overcome. This part of the paper looks at both.

3.2.1 The 1995 Constitutional Framework

The 1995 Constitution of Uganda provides that the rights and freedoms in the instrument shall be upheld and promoted by all organs and agencies of government and by all persons. It further provides for other rights such as equality and freedom from discrimination, rights to a fair hearing, freedom of conscience, expression, movement, religion, assembly and association, civic rights, and the right to just and fair treatment in administrative decisions, among others. It is important to note that human rights are held by all persons equally, universally and forever. They are the basic standards without which people cannot live in dignity. To violate someone's human rights is to treat that person as though he/she is not a human being. To advocate for human rights is to demand that the human dignity of people be respected. In claiming these human rights, everyone also accepts the responsibility not to infringe on the rights of others and to support those whose rights are abused or denied. It is important to emphasize that human rights are inalienable, indivisible and interdependent.

Despite the fact that the 1995 Constitution proclaims that the Constitution is supreme and shall have "... binding force on all authorities and persons in Uganda,"⁴³ it is largely focused on the activities of central government. Put another way, the conception of government embodied in this instrument is of a strong centralized state, with power devolved to the local level primarily at the instance and will of the central government. This is clear from the provisions of the chapter on local government,⁴⁴ as well as from the designation of functions and services for which the government is stated to be responsible.⁴⁵ The language of the Constitution also betrays its centrist inclinations. For example, Article 189(2) states as follows:

*District councils and the councils of lower local government units may, on request by them, **be allowed** to exercise the functions and services specified in the Sixth Schedule to this Constitution or **if delegated to them** by the Government or by Parliament by law.*

⁴³ See Chapter 11.

⁴⁴ See Art.189 and the Sixth Schedule to the Constitution, which lists 29 broad functions and services, that cover virtually the whole arena of government.

⁴⁵ It is interesting to note that in the National Objectives and Directive Principles of State Policy (NODPSP) (regarded as a sub-Preamble), the Constitution states: "The State shall be guided by the principle of decentralization and devolution of government functions and powers to the people at appropriate levels where they can best manage and direct their own affairs." Of interest is the fact that this statement is stronger than the one in the main body of the Constitution, a fact which may be explicable in terms of the prevailing view that these Principles are non-binding. This is of course a debatable point, made even more contentious by the introduction of Article 8A (alongside the other *Kisanja* amendments of 2005) which states that "Uganda *shall* be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy."

The highlighted words in this provision demonstrate the degree to which central authority continues to assert itself over Uganda's system of decentralization, an assertion that can only be described as an addiction to central control.⁴⁶ Indeed, that addiction manifests itself in bold relief in the provisions of Article 202, which concern the takeover of a district administration by the President. In the first instance, the main initiative for the takeover vests in the President—the primary officer of central government in the country. Secondly, approval of the measure is fortified by reference to Parliament, another central government authority. Although the provision states three circumstances in which the action may be taken, two of those relate to conditions determined by the central government. These are relatively old provisions and date back to the original limited conception of decentralization that informed the making of the 1995 Constitution, but they nevertheless reflect the same addiction we are concerned about.

It is also interesting to note that the observation, protection and promotion of human rights is not one of the 7 principles which are applied to the local government system enshrined in the Constitution.⁴⁷ Instead, preference is given to terms such as 'democratic governance,' which is a highly nebulous and flexible term that can be easily manipulated and turned into whatever the person seeking to use it desires. Perhaps, the one provision that has had a direct influence on the better observation and protection of human rights at the local level is Art.180, which stipulates the reservation of one-third council membership to women, and upholds the principle of affirmative action.⁴⁸ The same provision is repeated in Section 47(3) of the LGA.

Even with this provision in place this does not mean that *de facto* discrimination does not operate in these local areas.⁴⁹ Actual practice varies considerably from one situation to the next, but the tendency has been to interpret the one-third as a maximum. In other words, women, Persons with Disabilities (PWDs), youth and the elderly continue to face discriminatory attitudes and practices even though this has been clearly outlawed.⁵⁰ As Dora Byamukama argues, "... decentralization in Uganda does seem to offer opportunities for marginalized social actors to participate. But that this could lead to a broader emancipatory project that transforms the larger gender terrain remains questionable, especially in view of the electoral and political system."⁵¹ It needs to be recalled that since 1997, there has been only one woman elected as LCV chairperson, despite the fact that there are now over 80 districts.⁵² Indeed, the gender profile of the upper levels of local government is rather disturbing, as illustrated in the following table:

⁴⁶ See Art.176(2).

⁴⁷ See Art.180(2)(c).

⁴⁸ For an analysis of the disparity between principle and practice with particular respect to the situation of women, see Byamukama, 2006 at 18-19.

⁴⁹ See Nsamba, 2006.

⁵⁰ Ahikire, 2002 at 45.

⁵¹ Byamukama, 2006 at 6.

TABLE 2
GENDER PROFILE OF LOCAL GOVERNMENT LEADERSHIP

DESIGNATION	FEMALE (%)	MALE (%)	TOTAL
Local Council V	1: (1.144%)	68 (98.87%)	69
Municipality/City Division Chairpersons (LC III)	1: (5.55%)	17 (94.44%)	18
Sub-county chairpersons (LC III)	11: (1.12%)	969 (98.87%)	980

Source: Byamukama, 2006 at 18.

In light of the above data, the absence of the term ‘human rights’ from the provisions of the Constitution on local government is not, in my view, accidental. As a matter of fact, Uganda’s experiment in the devolution of central government power has largely centred on one single right, *viz.*, the right to vote, which is supposed to be a component of the right to participate in the affairs of government.⁵³ In other words, RCs (the predecessors to Local Councils) were established essentially as political bodies.

Given the chequered history of the right to vote in Uganda’s experience, it is perhaps understandable why so much attention was given to this particular human right. However, there are clearly problems in reducing the right to participate, which is a fairly broad right, to the right to vote, which is narrow and episodic and does not guarantee continued participation in the affairs of government beyond the mere fact of casting the ballot. Indeed, Goloba-Mutebi⁵⁴ has pointed out that elections are not a good measure of participation, even though the fact that Ugandans now have an abundance of elections is often pointed to as an indicator of the democratic health of the country. It is a false indicator.

3.2.2 The Local Government Act

What does the Local Government Act say about human rights? Despite being a fairly large legislation—stretching to 188 sections—the LGA is largely silent on the issue of human rights,⁵⁵ and only refers to them by implication, particularly in the provisions which outline the objectives of the law, and the functions of

⁵² Thus, 73 of the 188 sections of the Local Governments Act relate to the issue of elections, representing nearly 40% of the contents of the legislation.

⁵³ Goloba-Mutebi 1999.

⁵⁴ This point is important especially because the LGA does state that one of its objectives is to “... establish a democratic, political and *gender-sensitive* administrative setup in local governments.” See S.2(c).

⁵⁵ Thus, s.13(2) which covers the functions of the Chairperson, enjoins him/her to “... abide by, uphold and safeguard the Constitution, district laws and other laws of Uganda and shall endeavour to promote the welfare of the citizens in the district.”

various officers.⁵⁶ And yet, one could point to several provisions where human rights principles clearly have a role to play in the exercise of power at the local level of governance. The first is with respect to the functions of the district executive committee, which include the formulation of policy and extend to the resolution of disputes from lower local councils.⁵⁷ The Act also provides for the censure of a member of the district executive committee. The only nod to human rights is in allowing the censured member the right "... to be heard."⁵⁸ Lower local government executive committees are designated with the power to "...initiate, encourage, support and participate in self-help projects and mobilize people, material and technical assistance in relation to self-help projects," which is a fairly extensive power. On the face of it, this provision may appear fairly innocuous. However, what if the Committee uses coercive measures in order to mobilize members of the community, or what if it discriminates in how it initiates these 'self-help' projects?

Among one of the most important functions of local government (especially at the district level) is the recruitment of competent personnel to carry out its activities. Indeed, provision is made in the LGA for the establishment of a District Public Service, with a District Service Commission (DSC) for each district.⁵⁹ Under Section 55 of the LGA, the DSC is supposed to conform to the standards established by the Public Service Commission (PSC). There are two presumptions here. The first is that these standards are known and readily available. The second is that the standards are applied in an equitable, just and non-discriminatory manner. In other words, are DSCs and lower Local Governments equal opportunity employers? Indeed, one of the most contentious areas of rights-application is in the area of employment. As Dora Byamukama has pointed out, in this regard there is often a divergence between the law and economic reality:

*Most labour legislation is outweighed in practice by various forms of gender discrimination. It is therefore, worth exploring whether at Local Government level, women are employed in equal proportion to men, and at what level, in order to ascertain whether they equally benefit from having such local structures. Taking into account that most women are employed in the informal sector at the local levels, there is also need to explore whether Local Governments have programs that specifically address issues of women in the informal sector...*⁶⁰

⁵⁶ See s.17.

⁵⁷ s.21(5). It is important to recall that the issue of censorship in Parliament was initially executed without due regard to human rights and natural justice principles, eventually resulting in the amendment of the Rules of Procedure of the House in order to be more rights-sensitive.

⁵⁸ See Part VI, LGA.

⁵⁹ Byamukama, 2006 at 10-11.

⁶⁰ See s.39.

Other areas that could raise similar concerns about human rights and their application include health and education.

Against the above background, the power to make byelaws is supposed to be consistent with the Constitution,⁶¹ but tales abound of instances where local councils have passed legislation that has violated the human rights of residents of a council.⁶² Although the Act provides for an elaborate process of vetting by various agencies (including the Attorney General in the case of a bill passed by a district council), the competencies of many of the bodies that do the vetting is questionable. As such, the possibility of laws that violate human rights being implemented is not beyond imagination. Furthermore, where criminal sanctions are imposed, as is permitted under Section 40 of the Act, the possible danger to the protection of human rights is even more detrimental.

Finally, Section 69 provides that there will be a chief in each subcounty and in each parish. Chiefs are to be the administrative head and accounting officers of the respective subcounty or parish. Obviously, the powers of the chiefs under the LGA are but a pale shadow of what they were like during the colonial era and in the aftermath of independence, particularly within the context of the civil tensions that afflicted the country. Nevertheless, even minimal power can be abused, and without sufficient checks and balances, that abuse can amount to a human rights violation if it is not sufficiently countered by institutional and administrative mechanisms designed for the purpose. Moreover, if one considers the functions for which district councils are responsible, ranging from education services to medical, health and water services, it is fairly clear that the implications of their actions on human rights can be extensive. For example, how many officers in charge of education are aware that it is not permissible to exclude children from accessing UPE, and what action do they take when they discover that a child has in fact been excluded?

In sum, although the LGA is quite elaborate in terms of the voting aspect of the right to participate, it falls rather short of checking the actual implementation of that right by securing human rights for those who might be affected by those who have been given the power to exercise the function of government on behalf of the citizenry. The structures of local government are thus not inherently sensitive to human rights concerns, nor indeed, do they provide sufficient mechanisms for holding those who violate them accountable. Thus, the LGA is rather vague on what happens to local councils which engage in improper, unlawful or inefficient behaviour.⁶³ If an offence by a local council has been disclosed, this is to be reported to the "... relevant authority for appropriate action." The time for the report to move upwards and for a response to return can be inordinate, and the measures of discipline inadequate.

⁶¹ In the famous case of *Salvatori Abuki v. AG* (Constitutional Petition No.2 of 1997), the Constitutional Court ruled as unconstitutional an Exclusion Order which purported to ban a person suspected of the practice of witchcraft from his usual place of residence.

⁶² Steiner, *op.cit.*, at 20.

⁶³ See LABF & UNDP/UNCDF at 2.

3.2.3 The Case of Local Judicial Power and Access to Justice

Both critics and supporters of Uganda's local government system have focused a great deal of attention on the judicial function of local councils, virtually since the introduction of resistance councils (RCs) in 1988 as bodies with some level of judicial power. In giving RCs such power, an attempt was made to hit two birds with the proverbial single stone: popular participation being ostensibly transformed into 'popular justice.' Many activists and scholars initially praised the idea because it reflected the noble intention of allowing local people to settle their disputes in a manner different from the established judicial bureaucracy, as well as helping to reduce the overload that afflicted the courts at all levels.

For the majority of Ugandans, the local context is the primary one in which they seek to assert their rights and to resolve their disputes, hence it makes infinite sense that a good deal of attention and emphasis is given to the decentralization of judicial power in both its administrative and substantive aspects. Indeed, Ugandans have literally 'voted with their feet,' with some studies establishing that over 80% of the population utilize local council courts for the settlement of disputes.⁶⁴ The benefits usually cited include the use of conciliatory approaches, the speed with which disputes are resolved, the familiarity of the court and their relative cheapness.⁶⁵

While there is no doubt about the empowerment entailed through the local settlement of disputes, it is nevertheless important not to romanticize that power. Serious issues of access, discrimination and human rights abuse can arise both from the content of the law applied (whether statute or customary) or from the process through which the adjudication of disputes is carried out. It is trite to point out that in the various powers LCCs exercise, ranging from reconciliation to attachment and sale, there are numerous human rights implications. Furthermore, issues of gender, ethnic, class and age bias may also factor into the ultimate resolution of the dispute, giving an unfair advantage to those who are able to manipulate these criteria to their own benefit. The 2006 LABF Survey pointed to several failings that could be classified as human rights abusive practices on the part of the Local Council Courts (LCCs) they surveyed, including bias against vulnerable groups, the failure to follow correct procedure and instances of nepotism/cronyism.⁶⁶

A recent study by Grace Tumusiime raises serious doubts about the effectiveness of LCCs in dealing with the problem of domestic violence, for a variety of reasons, ranging from simple gender bias to prevalent attitudes that do not consider the vice as a human rights violation.⁶⁷ Obviously, human rights principles have a major role to play in relation to the operation of local justice, and to prevent

⁶⁴ *Id.*, at 21-22.

⁶⁵ *Id.*, Table 3.9 at 22.

⁶⁶ Tumusiime, 2006.

⁶⁷ Ahikire, 2002 at 19.

decentralization being turned, "... into an instrument of local oppression under the guise of local participation and democracy." ⁶⁸

The law governing the judicial power of local councils dates back to the early 1990s and a quick examination of it will reveal that human rights principles only featured implicitly in the various provisions governing both the form and the substance governing the exercise of judicial power. Subsequently, the Ministry of Local Government (MoLG) produced a guide for the operation of local council courts, plus a training manual for use by the trainers of LC officials in their judicial powers. In late 2006, Parliament passed the Local Council Courts Act, which has attempted to streamline the judicial operation of these courts. Likewise, the Justice, Law & Order Sector (JLOS) Strategic Plan, 2006-2011 prioritizes the strengthening of LCCs through training and supervision. ⁶⁹

It is thus surprising that human rights principles do not find any express mention in the new law, and only obliquely in the JLOS Strategic Plan. Section 24 of the LCC Act, which refers to 'Principles of Natural Justice,' outlines a few of those principles, but it is nowhere nearly as comprehensive as the counterpart provision in the Constitution which covers the right to a fair hearing. Rather, the law seems to have been content only to adapt a minimalist position on natural justice and the exercise of judicial power. ⁷⁰ Given that the Guide is now outdated, and the Ministry is in the process of developing a new one, ⁷¹ this is the time to incorporate a more comprehensive outline of principles than the one contained in the Act. Hopefully, the review will also incorporate a more comprehensive rights-based approach than has hitherto been the case.

3.2.4 Reassessing the Decentralization Policy Framework

It is striking that despite the fairly radical and far-reaching developments effected in the arena of local government, until the end of 2006, there was no single coherent document that outlined the policy framework of decentralization in Uganda. ⁷² Indeed, this is a generic problem commonly found in Uganda's policy framework wherein policies are *ad hoc* and scattered. Therefore the law on decentralization

preceded the policy—a problem which the UHRC has noted only serves to make implementation expensive. ⁷³ Needless to say, the anomaly in relation to our subject-matter was rectified by publication of the Decentralization Policy Strategic Framework (DPSF) in November, 2006. For this reason, we end the analysis of

⁶⁸ JLOS, 2006, at 6.

⁶⁹ Cf. Arts. 28 and 126 of the 1995 Constitution.

⁷⁰ Interview with Patrick Mutwabwire (Commissioner for Local Councils, MoLG); February 20, 2007.

⁷¹ See MoLG, 2006a at 3.

⁷² UHRC, 2006 at 88.

⁷³ DFSP, 2006a at 7.

the legal-political framework of decentralization with a review of the DPSF because it came much later in time than either the Constitution or the Acts that have been examined in some detail above. The Mission of the DPSF is “To fundamentally transform society by empowering citizens to take charge of their development agenda so as to improve their livelihood,” which is a noble agenda if somewhat economic in focus. Needless to say, the hangover of central control remains, as one of the goals of the policy is to “...strengthen the central role of the Ministry of Local Government in promoting and coordinating the implementation of decentralization in the country.”⁷⁴

On its part, the Local Government Sector Investment Plan (LGSIP) which runs over the ten year period from 2006 to 2016 provides an insight into the thinking of the Ministry with respect to the most important strategic interventions required in the sector. For our purposes, the most important elements of the plan relate to what it says about cross-cutting issues, since we have identified human rights as one of them. The Plan lists Environment, Gender Analysis, Support to the National Anti-Corruption Strategy, HIV/AIDS mainstreaming, Poverty Analysis, and Monitoring and Evaluation. In so far as the Strategic Investment Areas are concerned, the Plan mentions the areas of Local Service Delivery, Political and Administrative Decentralization, Good Governance, and Local Economic Development.

In general, the Plan highlights the key issues that face local governments in Uganda today. However, a rights-based approach is obviously lacking from most of the investment areas targeted. In the one area where rights are indeed mentioned explicitly, the language is rather coy. Thus, in speaking about the main challenges in the area of Good Governance for example, the focus is primarily on the issue of corruption and abuse of office:

*Decentralization of service delivery is a complicated process that involves a multitude of transactions at different governance levels. This may enhance the potential for corrupt and self-serving tendencies in the handling of public affairs if not properly designed and implemented. It is imperative, therefore to strengthen integrity systems to leave little scope for corruption and abuse of office.*⁷⁵

⁷⁴ MOLG, 2006b, at 32.

⁷⁵ Id.

The links between Good Governance and the promotion and protection of human rights are obvious. However, this statement completely skirts them. In listing the interventions that would require to be taken to respond to the challenge, the Plan is more forthright: "Developing and implementing a civic education strategy and programme to sensitize citizens on their rights and obligations."⁷⁶ However, without having highlighted the broader issues of rights violations beyond corruption and abuse of office, the nature of the intervention developed could likewise be narrow in focus.

The main point that emerges from the above review is that while the LGSIP is certainly sensitive to human rights issues in a broad sense, there is a need for more targeted interventions that focus more aggressively on the specific human rights issues that are involved in meeting the challenges posed by the various Strategic Investment Areas outlined in the Plan. Furthermore, it is striking that even though the Plan was written in the year that the first election for a multiparty system was held in the country, no mention is made of the implications of this change in the political context to the perceived strategic interventions that would have to be made within the operations of local government. In the next section of the study, I thus turn to a more focused examination of what human rights issues should be highlighted at the local level, and how best they should be approached, particularly given the ostensibly changed political framework within which Uganda is now operating.

⁷⁶ See for example, UHRC, 2006 at 69, which stated that "... overall, the Commission considers the political transition process from the Movement political system to a multiparty political system commendable despite some shortcomings that were registered." The outcome was 'successful' and reflected the 'general will' of the majority of voters.

IV. LOCAL GOVERNANCE AND HUMAN RIGHTS IN THE AFTERMATH OF THE MOVEMENT SYSTEM OF GOVERNANCE

Most observers of the transition from the Movement system to multipartism hailed the move as a positive one.⁷⁷ Despite the initial ‘hiccups’ in the 2006 election surrounding the arrest, detention and trial of presidential challenger Kizza Besigye of the Forum for Democratic Change (FDC), the actual balloting passed without much incident. However, there is a need for some circumspection here. The return to a pluralist system of government was never part of the agenda of the ideologues of the Movement system when they assumed power in 1986. Indeed, the Movement was billed as a permanent substitute to the multiparty system that had allegedly so bedeviled Ugandans for the larger part of our independent history. Reintroducing multipartism was tagged to the rise of a ‘strong middle class’ and to the introduction of certain necessary economic conditions, such as industrialization. Both events were not likely to occur in the foreseeable future, and indeed remain problematic 20 years after the Movement system was introduced to the country: why then did the Movement leadership agree to a return to a system of multiple parties?

By the time the decision to open the ‘political space’ had been made in early 2003, the possibilities for continuing with the Movement system intact had greatly reduced. Pressure came from various quarters: within the system itself, and from adherents of the multiparty system outside the Movement. More importantly, given the level to which Uganda depends on foreign assistance, it also came from several donor countries. Given that only three years earlier (in the disputed referendum on political parties) the population had voted for the continuation of the Movement system of government, the transition was translated as a ‘purification’ of the Movement. It was billed as an opportunity for the Movement to get rid of internal opponents (*tubejjeko*), and to renew itself as the premier political organization in the country, not to mention to meet the demand of what were described as ‘our external partners, the so-called donors.’ This calls into serious question the degree to which there was a genuine commitment to political change in the country.

4.1 From the Movement to Multipartism: Old Wine in New Bottles?

Although certainly more democratic than any other political organization in Uganda’s history, the Movement suffered from many serious deficiencies. Power was built and developed around the principle of hierarchy and top-down directives and bottom-up reporting mechanisms, with the Movement Secretariat playing a significant role in this respect. The influence of the person of the President was critical in terms of pushing through the party agenda.⁷⁸ This was supported by a repressive state security apparatus that severely crippled the activities of the political opposition. Despite the transition, the above features remain. There is a considerable overlap between government and party, as in the operation of

⁷⁷ See Carbone, 2005.

⁷⁸ To emphasize this point, the District Security Committee is chaired by the RDC.

the office of the RDC who is tellingly a politician and not a civil servant. Furthermore, Executive power (as exercised by the President) is extremely dominant in the national policy-making process, as well as at the local level, whether directly by the President, through his ministers, through the RDCs, or through the other organs of central government authority, such as the Police and the Intelligence services. To compound matters, there are no mechanisms within the NRM-O by which power is formally controlled, such that the influence of the Party President (who doubles as the President of Uganda) is inordinate and excessive, and has been growing since the *kisanja* amendment of 2005 that removed presidential term limits.

Presidential influence was apparent in the process of amending the 1995 Constitution to provide for the removal of term limits; it was present in the run-up to the 2006 election, and it persists until the present time. This explains the performance of the opposition parties at the local government level. In the first instance, only the NRM-O was truly 'on the ground' and thus able to canvas all the constituencies and to field candidates at virtually every level. Being on the ground was the consequence of the Movement monopoly and the advantage of having structures intricately linked up to those of the state. It was also reflective of the fact that alternative political organizations had been shut out of the local arena. Secondly, the NRM was the largest and financially best-endowed party, by dint of its advantageous links to the State. Conversely, other parties were unable to make much of an impact at the local level, partly because of resource difficulties, but also given the context in which the election took place which allowed very little time for mobilization. Although the election was billed as a multiparty one, *in effect*, it was still held under the framework of the movement system.

As a consequence of the prevalent attitudes to multipartism, there are currently several problems that persist within the structure of Ugandan politics. The first is that the Movement structures and philosophy remain intact, even if at the formal level they have been disbanded (like the Movement Secretariat) or abandoned (such as the Movement 'mobilizers'). Secondly, the divorce between the Movement and the State has not yet been accomplished, such that all the institutions of the State which were previously deemed to be part of the Movement, such as the Police, local government and various other public institutions are expected to pay primary allegiance to the governing party rather than to the state or to the Constitution. As a result, the movement system of governance still exercises a considerable degree of influence over both the process and the implementation of the elections for local government. This was apparent in the overlap between local government leaders at all levels, and the leadership of the Movement in the districts.

Thus, it is obvious where the loyalties of the LCV chairperson who doubled as the District Movement chairperson lay.

The point is that it is not simply in the structural conditions, but also in the attitudinal ones that the Movement system continues to be entrenched in Uganda's body politic. It is trite to point out that attitudes are much more difficult to change than structures. If political opposition is equated to military insurrection or rebellion, the methods designed to deal with it will obviously assume a more militaristic posture than a political one. This is evident in the treatment of public assemblies and in the harassment of the opposition even after the election. More specifically, what are the main human rights challenges facing local government in the aftermath of the transition?

4.2 Central and Local State violations of Civil and Political Rights

Just as is the case at the level of central government, the whole range of civil and political rights are implicated in the work of local governments. The difference is in scale and degree, as well as in the specific conditions that exist on the ground; obviously, what affects Terego in the Northwest will not necessarily be the same issue on the table in Rakai in the south. Nevertheless, rights of association and assembly, torture, the excessive use of force or a lack of transparency and accountability by local government personnel, as well as the lack of access to information would be some of the problems common to all local governments. Issues of non-discrimination, inequality of treatment, and the non-application of principles of affirmative action also abound. The approach to addressing these issues must thus be both proactive (preventative) and aggressively responsive. This means that local governments need to adopt policies of zero-tolerance towards human rights violations and the perpetrators of them, while at the same establishing mechanisms which pre-empt the commission of human rights violations in the first place.

The relationship between local and central governmental power further complicates matters because local governments have very little influence over security matters, whether military or Police.⁷⁹ While this may be justifiable concerning the former, regarding the latter several issues require closer scrutiny. For example, virtually all police powers are centralized in the Inspector General of Police (IGP), such that neither district, nor lower-level police commanders are able to take decisions independent of the central authority, regardless of whether or not such actions may violate human rights, or not be in conformity with the Constitution. Because the prevalent view within the Police—of course acting on orders from above—is that opposition must be curtailed, the same attitude percolates down to the local level. Given that the level of opposition political party activity in the districts is still low, the degree of state-supported negative reaction is likewise on an ebb. Nevertheless, if the state response to high-level opposition activity is any judge (as is the case in Kampala), then one does not need to speculate very much on what the situation would be outside the Capital.

⁷⁹ Interview with Robert Kirenga, Principal Human Rights Officer, UHRC on February 23, 2007.

The case of Local Defence Units (LDUs) and of other local militias, also raise several human rights accountability problems in terms of both oversight and control. The establishment of the Joint Civil-Military Cooperation Centres (JCMCCs) in the conflict areas of the north certainly helped to ensure closer cooperation and harmony between the local populace and both the local and central government security agencies.⁸⁰ While that cooperation proved most successful in the Teso region, and to a lesser extent in Acholiland, the collapse of the system in the case of Karamoja and the recent outbreak of hostile action there, reflects both a lack of sensitivity to local sensibilities, as well as the absence of a human rights approach to the resolution of the crises related to the twin phenomena of cattle rustling and disarmament. Indeed, the reaction of the government to the Karamoja problem is a classic example of an approach absent any human rights sensitivity.

Among the other problematic elements in the activities of Local governments is the enactment of local laws (especially by-laws). Some of these have been at odds with both the Constitution and different national laws, e.g. on freedom of movement, residence, expression, security, environment, the treatment of immigrants and refugees etc. Even though some local leaders may be acting within the parameters of powers conferred upon them by their local byelaws and ordinances, it is the powers which have been conferred that are questionable in the first instance. Of course, this points to the larger problem, which is that the system of oversight has not been sufficiently developed in order to catch these kinds of problems before they get out of hand.

One could say that the core problem is the lack of training and sensitivity to human rights issues; a combination of attitude and capacity. However, there is the broader issue of knowledge about the purpose and effect of law-making in general.⁸¹ Despite a few attempts by the Movement Secretariat in the early-1990s and later efforts by a number of different actors to sensitize local council officials—especially on their judicial powers—there continue to be many problems in terms of appreciating the implications on civil and political rights of the laws which local governments make. Finally, in this respect, Civic Education (CE) has been a song and dancesince the days of the Constituent Assembly. The naked fact is that neither the state agents billed with this task such as the UHRC or non-governmental actors operating at whatever level, have taken the duty of conducting civic education programs in a concerted and consistent fashion. Thus, CE is only episodic and mainly confined to the period of electoral politics. At that time, the main focus is not Civic, but Voter Education.

⁸⁰ For example, there is a problem in Gulu District with finding competent personnel to draft byelaws on the issue of land, which (given the context of displacement and return) is now a burning issue. Interview with Norbert Mao, Chairman, LCV, Gulu District (February 20, 2007).

⁸¹ See, for example, Joel Ogwang, 'Town Council to Evict Market Vendors,' *New Vision*, March 1, 2007 at 33.

4.3 Assessing the Right to Livelihood: The Case of Economic, Social and Cultural Rights

Although the 1995 Constitution makes only scant reference to economic, social and cultural rights (ESCRs), there is no doubt that rights to healthcare, shelter/housing, water and food are of paramount importance to the local citizenry. Indeed, the Human Rights Based Approach to Development (HRBAD) focuses in large part on this category of rights. While over the last two decades there have been numerous achievements in this category of rights, ranging from the introduction of Universal Primary Education (UPE) to developments in the provision of healthcare and access to water to larger cross-sections of society, it has largely progressed without much attention to some of the key concerns of human rights practitioners. Some of the concerns relate to unlawful evictions whether from public or private land, thereby violating respect for housing rights.⁸² The many evictions and removals of roadside kiosks and shelters in the wake of the 'CHOGM' Summit that are currently taking place along the Kampala/Entebbe Corridor raise several questions regarding respect for housing and livelihood rights.

Of course, one of the key elements in ensuring that ESCRs are realized is rooted in the degree of accountability, responsiveness and openness of local government officials to the members of the community in the provision of these services.⁸³ According to several accounts, local governments are perceived to face a serious problem of corruption, which has an obvious link to human rights, especially those of an economic and social nature.⁸⁴ Even though it is a perception and the truth may be otherwise, it clearly points to the need for local governments to construct mechanisms that are more open and transparent than those which currently exist. Moreover, this can be done with minimal expenditure, such as the publication of the annual budget showing how allocations across sectors have been done, or through opening a Public Information Desk which outlines what the local government does (and can do) and what it does not (and is prohibited from doing).

Finally, one of the key issues in the realization of ESCRs is with respect to ensuring that all persons regardless of status, gender, ethnicity or other distinguishing feature, are treated in the same fashion. In other words, there should be no discrimination whatsoever against the indigent, persons with disabilities, and women in terms of access. Local governments should make a special effort to ensure that whatever services are provided are given in a fashion that is not discriminatory. This implies both a sensitization of local government personnel on issues of equality, but also through ensuring that the public at large is aware that the service is available independent of their status or position in society. It

⁸² See Mbazira, 2006 at 14.

⁸³ Mikaili Sseppuya, 'Local Government Third Most Corrupt Institution,' *New Vision*, January 4, 2007 at 17.

⁸⁴ See letter from A.A. Amuge to all District Chairpersons and CAOs, Ref.ADM/92/319/01, dated January 3, 2007.

also implies a more prominent role on the part of non-governmental actors, particularly CBOs and NGOs, who form part of the group of main actors in the area of local governance.

4.4 Probing the Main Actors on the Local Government Scene

The scene of local government in Uganda is populated by several different actors, all of whom have a bearing on the human rights situation at this level. Most prominent among them is the central government, or the State, which has been the most significant determinant of the pace of change and transition at the local level. I shall return to the role of the State in the last section of this part of the study, but want to first review the placement of the other actors on the scene. Among them, the most prominent is obviously the Ministry of Local Government (MoLG), which although part of central government, has a unique position as the primary supervisory body over the operations of local government. This section of the paper will also look specifically at the work of the United Nations Volunteers (UNV), the Uganda Human Rights Commission (UHRC) and at the case of civil society.

4.4.1 The Ministry of Local Government (MoLG)

As the main central government institution charged with the oversight of the process of decentralization, the Ministry of Local Government (MoLG) is obviously a key institution in the design and pursuit of a human rights agenda in the districts and below. Generally speaking, the Ministry has presumed that decentralization is a positive and human rights empowering measure *per se*, but it has not stepped back to conduct a deliberate assessment of the links between the two either conceptually or in practice. Reflecting the key place of local councils in the decentralization scheme, MoLG has a Commissioner charged with the oversight of policy regarding local councils. Nevertheless, most efforts on the part of the MoLG have focused on the operations of Local Council Courts (LCC), with a number of early projects focusing on training and sensitization. Two guides were produced for the operation of the local council courts and there has also been coordinative work with organizations such as the UNV and the UHRC in this area.

Although its earlier efforts did not reflect a strong commitment to the promotion of human rights at the local level, the Ministry now appears keen on seeing issues of human rights percolate down to the local communities. At the beginning of 2007, the Ministry issued a circular to all districts instructing them to establish human rights desks.⁸⁵ According to the letter, the desks are to comprise of District Local Government officials responsible for promoting and protecting human rights and monitoring human rights observance at the district level. The letter advised that the desks would help the country in meeting its commitments at the national, regional and international levels, and also be responsible for operationalizing the Rights Based Approach to Development (RBAD).⁸⁶

⁸⁵ Id.

⁸⁶ Id.

Rather than establishing a new office, the circular advises that the desks be headed by the Director Community Based Services, assisted by a committee comprising 3 persons from departments within the district, a representative of the Local Administration Police and Prisons, the District Planner and a representative of the umbrella grouping of NGOs, CBOs and CSOs.⁸⁷ The letter does not place any timeline to the establishment of the desks, but advises that when the structures have been established, operational guidelines and training materials will be developed by the UHRC. While it is still early days, at least one response has been received advising of the establishment of a desk in Hoima District Local Government.⁸⁸ Given that the initiative came from the United Nations Volunteers UNV), it is necessary to turn to an analysis of this project in order to grasp its objectives more clearly, before returning to examine its efficacy in relation to the ultimate objective of achieving more human rights sensitivity at the local government level.

4.4.2 The United Nations Volunteers (UNV) Project and other donors

There is no doubt that decentralization has been one of the main priority areas supported by donors agencies in Uganda since the early 1990s. Among, those with large programs are USAID, DANIDA, SIDA, DFID and the World Bank, to mention only a handful. However, none of them have linked the support given to decentralization - at either the national or local level - to the support that they have extended to human rights, whether this is defined as activities related to Governance, Accountability or the strengthening of key institutions of the state, such as Parliament or the Inspectorate of Governance (IGG). Indeed, only UNDP, through the United Volunteers (UNV), has given much attention to the area.

Set up in 2003, the UNV Project had three main objectives.⁸⁹ The first is the promotion of human rights awareness and voluntary action in select conflict and post-conflict districts of the country, through trainings and the establishment of Voluntary Action Groups (VAGs) in Western, Eastern and Northern Uganda. To this end the project set itself up in the six districts of Gulu in the North, Kasese, Bundibugyo and Kabarole in the west, and Soroti and Mbale in the east.

The second objective of the project is to improve the outreach capacities of national human rights institutions, namely the Ministry of Local Government (MoLG), especially Local Council I and II courts, the Uganda Human Rights Commission (UHRC) and the Uganda Amnesty Commission (UAC). Finally, the project aims to provide a linkage between UNDP policy dialogue and concrete human rights initiatives at the local level.

⁸⁷ See letter from Leonard Majara, for the CAO, Hoima District Local Government; Ref. CR.152/3; dated February 5, 2007.

⁸⁸ See <http://www.unvhumanrights.or.ug>

⁸⁹ DHRDs were established in 4 of the 6 pilot districts, while full Council Resolutions approving them were awaited in Mbale and Gulu.

Among its main activities the project conducted trainings and the sensitization of district and local leaders, local CSOs, local populations, Internally Displaced Persons (IDPs), schools and reporters (ex-insurgents). The UNV simplified fliers on several different aspects of human rights, among them the Bill of Rights of the Constitution, an explanation of the Rights of Internally Displaced Persons (IDPs), and a summary of the Amnesty Act. Perhaps its most important initiative and that of most relevance to the present analysis was its push for the establishment of District Human Rights Desks (DHRD) in the district local governments in which they worked.⁹⁰ The DHRDs involve the recruitment of human rights personnel who would be responsible for the promotion and protection of human rights, and for operationalizing the Human Rights Based Approach to Development (HRBAD) programming at the local government level. In the words of the project:

*The DHRD concept recognizes the centrality of human rights to all activities of an institution. It places value to the cross-cutting nature of human rights. In line with the initiative the Project encourages local governments in Uganda to establish the desks by employing full time, experienced and qualified human rights personnel at the district level responsible among other things for championing the promotion and protection of human rights.*⁹¹

An evaluation of the process of setting up the DHRD in Kabarole District noted several challenges, among them the low level of operation on account of the other work the volunteers were carrying out; the difficulty of integrating a new structure into the centrally-determined standard modules and a lack of adequate financial, human and material resources. Despite these challenges, note was taken of the 'thirst' among the local governments for human rights, which were described as cross-cutting. Despite the difficulties, the project recommended that local governments be given flexibility to establish the desks and to employ personnel to run them, and also provide adequate resources for them. These are no doubt commendable efforts. Indeed, the evaluation of the first phase of the project pointed to gains in terms of increased human rights awareness; re-ignition of the spirit of volunteerism, and engaging "...both the supply and demand side of rights."⁹²

Several other donors are active on the decentralization scene. However, with the exception of providing support for the training of Local Councils in the exercise of the judicial function, and in the assistance given to a variety of activities of centrally-located government agencies such as the UHRC, and CSOs such as HURINET and the Foundation for Human Rights Initiative (FHRI), support for human

⁹⁰ UNV 2006, at 1.

⁹¹ Okille & Nuwakora 2007 at 8-11.

⁹² See Art. 52, 1995 Constitution of Uganda; indeed, the article makes no mention of a link to local government.

rights work either within the district councils or in a bid to influence the overall context of human rights promotion and protection at that level has been minimal. In other words, there has been an over-emphasis on the judicial function of local governance, whereas there are several other dimensions to the human rights issue that also need to be addressed.

4.4.3 The Uganda Human Rights Commission (UHRC)

Although the Uganda Human Rights Commission is given a national brief outlined in the Constitution,⁹³ over time it has found that it has invariably become involved in local activities, such as in relation to the activities of militias, or the condition of prisons under the control of local government authorities. UHRC's internal decentralization process commenced in 2000 with the establishment of the Gulu Regional Office, that was mandated to oversee the better observation and protection of human rights within the context of the conflict afflicting Northern Uganda.⁹⁴ Following Gulu, offices have been established in Soroti, Jinja, Mbarara, Moroto and Fort Portal,⁹⁵ while a seventh is expected to be established during the current financial year.⁹⁶ The Commission has paid special attention to the conflict-afflicted districts of Northern Uganda and has been active in the establishment of District Human Rights Protection Sub Committees (DHRPP), whose main brief is to ensure that the rights of IDPs are protected.⁹⁷ Recently, the Commission instituted a system of circuit tribunals, which entails the holding of sessions away from Kampala, in a bid to reduce the backlog of pending cases, but also to give a more national 'face' to the body.

Despite these positive developments, local issues still find their way into the work of the Commission primarily in an *ad hoc* manner. For example, in its last report there is very little that specifically speaks about the situation of human rights in the districts, with the exception being an account of the inspection made of 103 Local Administration Prisons (LAPs). The report noted that while there has been some improvement in the treatment of prisoners, conditions in the LAPs still lagged behind those in central government prisons (CGPs). UHRC has nevertheless committed itself to closer partnerships with District Local Councils, among others.⁹⁸

4.4.4 What About Civil Society?

Civil society organizations stand in a complex relationship to districts and the authorities there. So too, do the views of them vary. A recent DENIVA report quoted the RDC of Kamwenge stating that CSOs are government's 'partners,' such that "... the arms of government have expanded to include CSOs and

⁹³ Kirenga Interview.

⁹⁴ UHRC (n.d.), *Basic Facts About the Commission* (brochure).

⁹⁵ Kirenga Interview.

⁹⁶ See UHRC, *Report of the Uganda Human Rights Commission/Basket Fund Donor Review Meeting*, August 29, 2006.

⁹⁷ ID., at 10.

⁹⁸ DENIVA, 2005 at 39.

media.”⁹⁹ DENIVA offers an interesting explanation for the generally positive view that RDCs have of CSOs:

*It is possible that these RDCs benefit from free information from CSOs. Secondly, corruption at local level is not directed at the RDC but the CAO's office. Also CSOs hardly make financial demands to the RDC's office. In short, their interests do not conflict.*¹⁰⁰

In contrast, the same report notes that the relationship between CSOs and local governments is not so rosy, and there is evidence of suspicion and mistrust on both sides, with local government technical officers and politicians dismissing most as ‘briefcase NGOs.’¹⁰¹

Overall, national CSOs have not been actively engaged in the promotion and protection of human rights at the local level, with the exception of the several that have engaged in the training of Local Council Courts on the exercise of their judicial powers. To the extent that there are any interventions, these are few and far between, with the majority of them centering on the issue of corruption.¹⁰² Human rights organizations must become more actively engaged with the issue of human rights at the local level. Obviously, CSOs face many obstacles to more active engaged with human rights issues at the local level, not least of which is the recently-passed NGO (Amendment) Act.¹⁰³ The law makes it more cumbersome for civil society actors to operate in general, and at the local level there are numerous red-tapes that have to be crossed. Although Community Based Organizations (CBOs) are not required to be incorporated, they must nevertheless register with the District Administration of the area in which they operate. Most ominously, under the recent amendment, now the NGO Board is empowered to “...develop guidelines for community based organizations.”¹⁰⁴ There is no indication of what principles such guidelines have to comply with, or indeed, whether they will respect the organizational autonomy of these bodies.

4.5 The Potential of Local Governments: Attitude, Capacity and Competence

Local governments in Uganda still operate very much under the shadow of the pervasive influence of both the Movement system of old, and of the general perception that human rights issues are national rather than local. In other words, there are still critical attitudinal issues that continue to affect the manner in which local governments approach their work. The views on the capacities of local government staff vary from those who believe they are highly trained, to those who consider them abysmal. Ts’oele and Goldman take the view that

⁹⁹ Id., at 39.

¹⁰⁰ Id., at 41.

¹⁰¹ Id., at 45

¹⁰² Act No.25 of 2006. .

¹⁰³ Id., s.7.

¹⁰⁴ Ts’oele and Goldman 2006, at 6.

local governments in Uganda are well-staffed and state:

*Districts (in Uganda) play a more strategic role, employ all local government staff, and support lower level local governments. They have well qualified staff with PhDs. Subcounties are headed by subcounty chiefs, all with degrees and field staff are seconded to them. A Harmonized Participatory Planning Guide has been developed, based on the community-based planning methodology which promotes participatory planning at parish level, informed by villages and which in turn informs subcounty development plans.*¹⁰⁵

However, a contrasting opinion comes from Steiner:

*...local governments also struggle with a shortage of educated and experienced manpower. Both politicians and civil servants are often inadequately trained.... With regard to the administrative and service provision structures, there is a general lack of civil servants, such as accountants, planners, engineers, teachers, and health workers, and remote areas face particular difficulties to recruit and maintain education personnel. Subsequently, delays and inconsistencies in the planning and budgeting as well as poor service delivery are prevalent in many local governments.... A further constraint is the fact that some local governments appoint staff on the basis of ethnicity or residence rather than merit, which also has adverse effects on the quality of administration and service provision.*¹⁰⁶

Whatever the resource capacities may be—and they differ from one district to the next—there are clear issues that arise with respect to the ability of local governments to adopt and pursue a human rights agenda. In the first instance, as we noted in the analysis of the Policy framework, human rights is not regarded as a cross-cutting issue. Obviously, with respect to those issues that are regarded as cross-cutting such as gender mainstreaming and environmental protection, there are still capacity deficits extending from the attitudinal to the practical. Secondly, while certain human rights principles are easy to grasp and disseminate, others—especially under the framework of the HRBAD—are more complicated. Finally, although the MoLG has put its authority behind the establishment of the HRDDs, quite clearly there is a great deal more to be done in terms of providing the intellectual tools necessary for the desks to make any real difference. However, the larger problem of capacity is ultimately a political one, and is captured most dramatically in the issue of recentralization.

¹⁰⁵ Steiner, op.cit., at 14.

¹⁰⁶ Joshua Kato, 'Without Graduated Tax, How Do LCs Meet Their Budgets?', New Vision, November 9, 2006, at 19.

4.6 Recentralization and the Role of the State

There is no doubt that a great deal can be achieved by focusing on local government *per se*, and designing strategies to release both the energies and capacities at that level in order to buttress the promotion and protection of human rights. However, in tandem with the transition from the Movement system to multipartism, the country has also witnessed a process of recentralization, which has serious implications for the ability of local governments to actually perform the role of bulwark against human rights violations at the local level. Aspects of the recentralization process have been apparent in the creation of new districts, which process has the effect of balkanizing the local governments, and effectively making them totally beholden to the centre for any sustainable activities. The fact is that the more districts there are, the less viable they become, the more dependent all of them are on the centre. Besides, despite the procedure for establishing new districts being clearly laid out in the Constitution, the ease with which these provisions are circumvented raises questions about how effective they really are.

Recentralization has manifested itself in several other detrimental ways, dating back to the introduction of fiscal recentralization through the mechanism of conditional grants. It has continued and become more pronounced, for example with the abolition of graduated tax, or in the removal of other levies that used to comprise a high percentage of local government income.¹⁰⁷ Indeed, the fact that the local councils were unable to either reject or respond to such proclamations underlines the overall control exercised by the central state, and raises questions about the extent to which the central government is committed to the full process of devolution. Some commentators have argued that the loss of income occasioned by the abolition of graduated tax has been minimal. For example in a *New Vision* editorial last year, it was argued that

*... local authorities should stop using the abolition of GT as an excuse for failure to implement their programmes. GT accounted for a smaller percentage of revenue in most districts. It was abolished because it was an outmoded tax, unfair, expensive to collect, the tax payers were tortured in the process and it was a tax riddled with corruption. Perhaps the local government authorities are moaning its abolition because it was a tax they could easily divert unlike the Central Government grants that have proper accountability measures.*¹⁰⁸

¹⁰⁷ 'Utilise Local Revenue Efficiently,' (Editor's Comment), *New Vision*, November 9, 2006 at 20.

¹⁰⁸ Grace Agaba, 'Otafiire Explains Transfer of Local Government Staff,' *New Vision*, March 1, 2007 at 34.

Whatever the reasons for Local Governments complaints about the abolition of the tax, it is nevertheless obvious that the process by which it was abolished clearly undermined the autonomy of these bodies, and worked against the principle of devolving powers. Furthermore, there have been complaints about the manner in which the government formulated its Graduated Tax compensation scheme. Recently, local governments have also witnessed the transfer of key personnel from the districts, prompting the Communications Officer of the Uganda Local Government's Association (ULGA) to declare, "... we should no longer talk of decentralization. The concept has been totally phased out."¹⁰⁹

Three other developments reflect a disturbing move towards *recentralization*, which may have implications for the link between decentralization and the protection of human rights in the future. The first is in the appointment of the Chief Administrative Officer (CAO), and of town clerks.¹¹⁰ The second is reflected in the debate about Kampala, and its reversion to administration by the Central Government,¹¹¹ while the third concerns the office of the Resident District Commissioner (RDC). All three amendments—effected in the *kisanja* reform process that took place in 2005—reflect a more centralizing, as opposed to a devolving tendency on the part of the state, and indeed could have serious implications for the autonomous operation of the districts. They are also reflective of the fear that the introduction of a multiparty system of government could reduce the hold of central government over the districts.¹¹²

With respect to the CAOs and Town Clerks, the ostensible reason for the amendment lay mainly in the allegation that local governments were immensely corrupt. As one newspaper reported:

*... queries by the Auditor General and the Inspectorate of Government about rampant non-accountability of funds, shoddy works and allegations of interference in the tendering process, have raised concern on the capacity of districts to manage devolved roles. Records from the parliamentary local government accounts committee show that at least sh100m goes missing annually from every district in the country.*¹¹³

The fact of corruption at the districts should be of no surprise, indeed, it is reflective of the national malaise on the issue. However, it is a debatable question whether local government is any more corrupt than the centre, and raises a critical question regarding how the issue of corruption at the local level should

¹⁰⁹ Arts. 188 and 200.

¹¹⁰ See Art.5, especially clauses 4, 5 and 6.

¹¹¹ To some observers, the recentralization executed in the amendment to the 1995 Constitution, in fact marked the termination of the government's attempt to undermine decentralization, not the commencement-point.

¹¹² Joshua Kato, 'Is Decentralization Failing,' *New Vision*, December 7, 2006 at 19.

¹¹³ Joshua Kato, 'Local Council Achievements and Failures in 2006,' *New Vision*, January 4, 2007 at 18.

be approached. It is a patently misguided notion that corruption can be effectively tackled by recentralizing the office of the CAO. The recentralization of the office of the CAO which took place through the 2005 Constitutional amendment removed important aspects of decentralization from the local authorities.¹¹⁴

This response of the central state amounted to throwing the baby out with the bath-water. Instead, the focus should have been on how the local mechanisms of accountability could be strengthened, as well as on how to improve the functioning of national agencies such as the Inspectorate of Government and the Auditor General to enable them deal more effectively with administrative vice at the local level. Why the CAO was recentralized was clearly also related to fears around the elections, with several powerful NRM officials accusing CAOs of being 'multipartists' and therefore of lacking the necessary partiality in their role as designated election returning officers. Despite the change, tensions continue.¹¹⁵

The case of Kampala raises several interesting dimensions to the recentralization debate and illuminates the political undercurrents by which it was informed. The 2005 amendments to the Constitution made several new provisions on Kampala, all of which are contained in Chapter Two of the document.¹¹⁶ Prior to the amendment, Kampala was treated as a district (LC5) and its 5 divisions as LC3. The ostensible reason for the change was that there was need to improve the administration of the capital city and to adopt the system used by several countries, e.g. USA (Washington DC), Australia (Canberra) and Nigeria (Abuja) which treat their capital cities in a special way. The more telling reason was political; Kampala has for a long time been a hotbed of political opposition; by recentralizing control over its administration, it was hoped that the political problem could be handled. While no bill has yet been presented to Parliament, the draft which is circulating takes away the remaining vestiges of autonomy originally enjoyed by the Capital city and places it under the thumb of the President.

¹¹⁴ See Article 5(4), (5), and (6).

¹¹⁵ See Fred Muzaale, "Mwesigye Reconciles Kayunga Boss, CAO," APRIL 11, 2007 at 15.

¹¹⁶ See Article 203 (1) and (2).

The following data summarizes the results of the last elections for the municipality chairpersonships (Local Council 3) in the divisions of Kampala and helps explain the government's problems with the city:

TABLE 3
MARCH 2006 ELECTIONS FOR KAMPALA MUNICIPALITY CHAIRPERSONS
(LC 3)

CONSTITUENCY	CANDIDATE	POLITICAL PARTY	VOTE TALLY	PERCENTAGE
KAMPALA CENTRAL	Amooti Nyakana Godfrey	NRM	15,923	50.7%
	Sserunjogi Charles Musoke	DP	15,479	49.3%
NAKAWA DIVISION	Kalumba Ben Ssebuliba	DP	15,989	40.4%
	Kintu Protasio Godfrey	NRM	32,590	59.6%
KAWEMPE DIVISION	Kasenge John Tom Fisher	NRM	21,351	47.5%
	Takuba Nasser Kibirige	DP	23,583	52.5%
MAKINDYE DIVISION	Kalungi Kirumira Moses	Independent	24,583	44.0%
	Kijjambu Deogratias	DP	15,864	28.7%
	Lukyamuzi Kakooza	NRM	14,568	26.4%
	Ssempala Isaac Ssebagala	Independent	511	0.9%
RUBAGA DIVISION	Kituka Charles		12,882	24.8%
	Makumbi Winnie Jane	DP	22,636	43.5%
	Sserubiri Paul Andrew	Independent	1,289	2.5%
	Ssendikaddiwa Justin	Independent	14,643	28.2%
SOURCE	Electoral Commission	April 10, 2007		

The table above illustrates that the NRM won only 1 (Kampala Central) out of the 5 seats under contest for the LC 3 elections, representing a 20% tally, in contrast to its national toll of 59% in the presidential election and 69% of parliamentarily seats. The NRM's Margaret Zziwa also lost the women's seat to FDC's Naggayi Ssempera (by a margin of 48.8% to 37.45%), and barely secured a single parliamentary seat out of the 8 available, 7 of which went to opposition elements.¹¹⁷ Kampala is clearly not a place where the NRM government feels at home.

On their part, RDCs were originally provided for in the 1995 Constitution.¹¹⁸ RDCs are appointed by the President,¹¹⁹ and the LGA went further to provide that they could be removed by the President provided there was a recommendation to that effect by the district council in a resolution supported by two-thirds of all the members of the council with grounds for the recommendation for such removal.¹²⁰ The 2006 amendment to the 1995 Constitution introduced a number of fundamental changes to the erstwhile position, the main one being to change the qualifications of the RDC from being a senior civil servant, to a politician.

The debate over this issue in Parliament was intense, with many arguing that it was yet another measure of recentralization. The fact that RDCs are no longer civil servants, means, in effect, that the function they are performing is no longer a technical one, but instead one of political accountability, to the appointing authority (the President). Indeed, RDCs have been controversially involved in countermanding the decisions of elected officials, particularly over land in urban areas. Several notorious cases involving Army veterans forcefully taking over land supported by RDCs have been recently reported.¹²¹ More tellingly, RDCs have come into open and sustained conflict with district leaders who come from the opposition political parties. It is trite to note that, the least conflicts--especially in Kampala -- are between the single district leader who comes from the ruling NRM, i.e. Godfrey Nyakana.

From the above, it is quite clear that Uganda's experiment in decentralization has come full circle. The fact is that the initial exercise of people's power grew in directions that threatened central power in more ways than one. As such, the move to recentralize is not simply a move of retrenchment, but ultimately has serious implications both on the degree to which a human rights agenda can be pursued at the local government level and also with respect to what such pursuit will ultimately mean.

¹¹⁷ Freddie Ruhindi took the Nakawa Division seat for the NRM, but against a divided opposition.

¹¹⁸ See section 73 of the Local Government Act. Other Officers who can be removed from office under the same section include the deputy or assistant Resident District Commissioner.

¹¹⁹ Only citizens of Uganda qualify for the post of Resident District Commissioner. Other qualifications considered include possession of a high moral character and proven integrity and considerable experience, demonstrated competence and high caliber in the conduct of public affairs: section 70 (1) and (2) of the Local Government Act, Cap. 243.

¹²⁰ See Robert Mwanje, 'KCC to Evict Veterans on Council Land,' *Daily Monitor*, March 8, 2007 at 14.

V. CONCLUSION, AND RECOMMENDATIONS: ADDRESSING THE CHALLENGES

From the preceding analysis, it is clear that although there has been some movement in addressing the human rights situation in local governments, there remain several challenges. There is no doubt that a great deal of work remains to be done in order to make local governments more sensitive to the human rights of the populations they are supposed to service. More effort is nevertheless required on the part of all actors in the arena, from government to CSOs, CBOs and ordinary individuals. In devising any strategy to address the situation of human rights in the districts, it is important to point out the challenges, which basically exist at three levels, namely,

- (i) Policy, Concept and Legislation;
- (ii) Implementation and Action, and
- (iii) Support, Monitoring and Evaluation.

◆ REASSESSING NATIONAL POLICY:

It is fairly clear that national policy on decentralization is faced by a number of challenges that arise with respect to human rights. The first relates to the phenomenon of recentralization that has been elaborated upon; there is a need to reconsider the impact of some of the main policy reversals that have been registered and to critically interrogate them in relation to both the wider goals of decentralization (devolution) and the more specific improvement of the local context for human rights protection. In this regard, the role and function of the Resident District Commissioner (RDC), DISOs, and other central government functionaries needs to be more clearly delineated in order to ensure that the exercise of power by these functionaries, does not violate human rights principles, nor should they be seen to be preventing the effective operation of local governments. In this respect, a moratorium should be imposed on the creation of new districts simply on account of the unviability of these new entities to effectively carry out their functions, leave alone enhancing the promotion and protection of human rights.

The second relates to the need to ensure that all policy initiatives on decentralization are informed by a rights-based approach from the national level. To buttress the reforms at the local level, all future policy and legislative reforms need to recognize and assert the necessity for compliance with the country's human rights obligations, whether international, regional or national. At a minimum, this would mean that the reform of the LGA (which is one of the strategic interventions being pursued at the present time) recognizes the need for human rights compliance. Future Acts should highlight the central place and necessity for human rights in decentralization.

It is also necessary for there to be a human rights audit of all the bye-laws, regulations, policies, and actions by local governments, in order to make sure that the most egregious practices are highlighted, and action is taken to ensure that there is no repetition of the same. The audit would examine the objectives, design and implementation of these various instruments and be accompanied by a Human Rights Institutional Assessment (HRIA), which comprises an assessment of the existing institutions at the local level that are supposed to ensure that human rights are promoted, respected, and implemented. Such assessment would cover the Local Government itself, institutions such as the Police and the Prisons, as well as the arms of local government dealing with services such as health and education. Ultimately, there is a need to transform the process of decentralization from the state-driven impetus which has largely informed the process, to one that comes from below.

◆ **BUTTRESSING LOCAL CAPACITIES:**

The biggest impediment to the elaboration of a concrete program at the local level is the low-level of capacities for officials to do either human rights monitoring, or for them to ensure implementation of the Human Rights Based Approach to Development (HRBAD). In the words of Jesse Ribot,

Capacity is an illusive quality—linked to skills, knowledge and legitimacy. Local institutions receiving powers they have never held may not have the skills to exercise those powers effectively. Capacity is essential to the exercise of power and to responsiveness. To be responsive to the needs of its constituents, local government may require the following: technical knowledge and skills, financial management skills, ability to call for technical expertise, ability to negotiate, and ability to use courts.¹²²

While the establishment of human rights desks in all districts will be a positive development, there is a need for a more rational approach and implementation of this process. In the first instance, the proliferation of districts has stretched human resources to their limits, especially in the new districts. Secondly, it is not enough to declare that officials should adopt a rights-based approach without providing sufficient training, or even basic guidelines for the establishment of the desks. There have been at least seven (7) different approaches through which human rights thinking is applied to development.¹²³ Moreover, the approach has not yet even been successfully implemented at the central government level.

¹²² Ribot, 2004 at 59.

¹²³ See Tsikata, 2004, at 2.

The positive action of establishing the Human Rights Desks needs to be followed through with effective training and the enlightenment of district councilors on the need for human rights sensitivity in all their actions. Local Government officials are in dire need of basic training both on human rights principles, and on the implications of their work to the better protection and implementation of them, as well as on the rights based approach (RBA) to human rights programming.

Human Rights Based Approaches to Development (HRBAD) need to be thoroughly interrogated and localized. While Human Rights are universal in terms of principle, for them to be effective they must be localized. As much as possible, local resources and local interpretations of what human rights mean should be a main guiding principle of the reform process. A recent evaluation of UNICEF programs around the country gives seven steps for the operationalization of such a program at the local level, including:

- Creation of common understanding and motivation for human rights and for the HRBAD;
- Development of requisite skills regarding assessment, analyses and action taking;
- Establishment of a critical mass versed in the approach at all levels of society;
- Preliminary community work to assess the degree of human rights enjoyment, and to decide on appropriate actions;
- Developing plans on what is to be done and identifying the duty bearers;
- Stimulating programmatic responses to the plans, and
- Co-implementation of the designed program, projects or plans.¹²⁴

◆ IMPROVING AND STREAMLINING ACCESS TO INFORMATION

There are two aspects to this challenge, the first being that local government officials do not have much access to information on human rights. Additionally, there is a general lack of a culture of publicizing the information which is in the possession of officials and which may be of relevance to persons seeking to assert their rights. As one report on civil society action has noted,

*By withholding information, they (i.e. Public Servants) tend to weaken the bargaining power of their customers or the public they are meant to serve. The deadlines for providing a service or solving a problem, the standards pertaining to the quality of services and the rights of the customers with respect to service provision are seldom disclosed to the people.*¹²⁵

¹²⁴ Kamchedzera *et al.*, 2006.

¹²⁵ Paul, 2002 at 20.

More importantly, despite the recent passing of the Access to Information Act, there is still an absence of guidelines from the Ministry of Information on the obligations of public servants (including Local Government officials) in relation to the provision of information to the general public. In this respect, even the establishment of a simple desk providing information on the work of the local government would be a positive step in improving both the flow of information and of the levels of transparency in local governments. It also links up to the issue of accountability and transparency and can act as a counter to the many allegations of corruption.

◆ **PROCESSING INFORMATION TOOL-KITS ON HUMAN RIGHTS**

The UNV documents simplifying the Bill of Rights in the Constitution, and providing other relevant information on rights and duties was a positive step that needs duplication. There is a need for updated versions of these fliers to be produced and disseminated at the local government level. Secondly, there is also a need to take into account that the larger framework of actions by local governments is in the arena of economic, social and cultural rights, as opposed to the civil and political rights that dominate the 1995 Constitution, and which were the focus of the UNV documents. In other words, there is a need to provide summary principles on, *inter alia*, the right to health, the right to shelter and housing, the right to decent conditions of employment, the right to food and the right to an adequate standard of living. The fliers should be understandable by all local government officials and also made widely available in different languages to the local populations. These 'tool-kits' on human rights would act as basic sources of information and education and as instruments of advocacy.

◆ **IMPROVING CSO ENGAGEMENT WITH LOCAL GOVERNMENT**

There is an obvious need for more research to be conducted to assess the nature and prevalence of human rights violations in the different localities around the country. From the perspective of CSOs, there is a need to begin a process of prioritization of what actions to take. Although all human rights issues are important, there is no doubt that depending on the specific situation in which one is operating, certain human rights issues are more striking than others. In one context it might be violence against women, while in another it could be torture. But, as the work on corruption has demonstrated, it is not enough to be reactive to developments in the districts as they unfold. Rather, CSOs need to become much more proactive in taking action designed to prevent the occurrence of human rights violations. As the DPSF itself notes:

It has emerged that citizen participation in decision-making and monitoring of development programmes is less dynamic than originally envisioned. Furthermore, citizens do not effectively hold local leaders to account, which undermines a critical assumption for the success of decentralization. Contributory

*factors to this situation include a fragile civil society and lack of a systematic and sustained civic education programme.*¹²⁶

At the same time, it is extremely important for CSOs not to be perceived to be taking sides, especially within the context of the multiparty system currently in place. CSOs need not be apolitical; but they have to be scrupulously non-partisan. Human rights abuses affect people across the political spectrum. There is also a need for CSOs to take on some of the strategies that were adopted with regard to other areas of empowerment. For example, there is no doubt that at least at the level of representation on districts councils, the one-third constitutional stipulation for women has been largely achieved.¹²⁷ One wonders however, why women have not been able to penetrate the upper echelons of the leadership structures in the districts and lower down. Furthermore, questions still remain about whether those women effectively participate in the deliberations and other activities of the councils. There is a need to focus on how women and other marginalized groups can be supported to participate in leadership at the local level.¹²⁸

It goes without saying that there is a need to improve the human rights oversight of the activities of local governments. Both the UHRC and CSOs should continuously monitor the human rights accomplishments and failures of the districts. Tools for such assessment need to be developed and incorporated into the assessment processes that such organizations already conduct. The MoLG can also establish a check-list which it uses in order to assess the state of human rights in the districts. CSOs can also lobby Local governments in order to place at least one human rights issue per quarter or every half-year among the priorities of the local body. Finally, CSOs need to encourage more networking among the key actors in the area, among them the Police, Prisons, and local activists.

¹²⁶ MoLG, 2006a, at 23.

¹²⁷ Statistics from the 2001 election illustrate this. See GoU, 2000.

¹²⁸ See Mugisha, n.d.

BIBLIOGRAPHY

Ahikire, Josephine (2002), *Decentralization in Uganda Today: Institutions and Possible Outcomes in the Context of Human Rights*, paper presented to the International Council on Human Rights Policy, Geneva, available at: <http://www.ichrp.org>.

_____ (2004), *Decentralization and the Promise of Democratic Participation in Contemporary Uganda: Examining the Gender Terrain of Local Council (LC) Elections*, CBR Working Paper No.90.

ARD, Inc. (2005), *Democracy and Governance Assessment: Republic of Uganda, 2005*, USAID, Kampala.

Asimwe, Delius & Nakanyike Musisi (eds.) (2007), *DECENTRALIZATION AND TRANSFORMATION OF GOVERNANCE IN UGANDA*, Fountain, Kampala.

Beall, Jo (2004), 'Decentralization and Engendering Democracy: Lessons from Local Government Reform in South Africa,' *Crisis Studies Programme Working Paper No. 54*.

Byamukama, Dora K., (2006), 'Decentralization, Local Politics and the Construction of Women's Citizenship: The Case of Uganda,' *Research Report submitted to the Centre for Basic Research, June*.

Carbone, Giovanni (2005), 'Populism visits Africa: The Case of Yoweri Museveni and No-Party Democracy in Uganda,' *Crisis Studies Programme Working Paper No. 73*.

Centre for Basic Research (2005), *The Impact of Political Corruption on Resource Allocation and Service Delivery in Local Governments in Uganda*, Final Report submitted to Transparency International, Kampala.

Fauget, Jean-Paul (2004), 'Does Decentralization Increase Government Responsiveness to Local Needs? Evidence from Bolivia,' *Journal of Public Economics*, Vol.88.

Goloba-Mutebi, Fred (1999), *Decentralization, Democracy and Development Administration in Uganda, 1986-1996: Limits of Popular Participation*, Unpublished PhD Thesis, London School of Economics & Political Science.

Golola, Moses (2001), *Decentralization, Local Bureaucracies and Service Delivery in Uganda*, UNU-WIDER Discussion Paper No.2001/115.

Government of Uganda & UNDP (2000), *Final Report on the District Resource Endowment Profile Survey (DREPS)*, Vol. III: Institutional Data Report.

- Justice Law & Order Sector (2006), *Reform Through a Sector Wide Approach: Strategic Investment Plan: 2006-2011*, JLOS, Kampala.
- Kabumba, Ijuka (2007), 'Conflicts Between Elected and Appointed Officials in Districts,' in Asiimwe & Musisi, *op.cit.*
- Kamchedzera, Garton, J. Arinaitwe-Mugisha & B. Ngonzi (2006), *Human Rights Based Approach to Programming in the 2001-2005 Government of Uganda and UNICEF Country Programme of Cooperation: Evaluation Report.*
- Kayunga, Sallie Simba (2000), *The Federo (Federalism) Debate in Uganda*, CBR Working Paper No.62.
- Khadiagala, Lynn (2001), 'The Failure of Popular Justice in Uganda Local Councils and Women's Property Rights,' *Development & Change*, Vol.32, No.1.
- Kyomuhendo, Swizen *et al* (2000), 'Assessment of Decentralized Arrangements for Health Service Provision in Uganda: The Case of Local Council Health Committees and Health Unit Management Committees,' *Mawazo*, Vol.7, No.3.
- Lind, Jeremy & Jan Cappon (2001), *REALITIES AND RHETORIC? REVISITING THE DECENTRALIZATION OF NATURAL RESOURCES MANAGEMENT IN UGANDA AND ZAMBIA*, ACTS Press, Nairobi.
- Legal Aid Basket Fund (LABF) and UNDP/UNCDF, (2006), *Joint Survey on Operations of Local Council Courts and Legal Aid Service Providers: Final Report*, July.
- Lokshina, Tanya (2002), *Decentralization and Human Rights in Contemporary Russia*, paper presented to the International Council on Human Rights Policy, Geneva, available at: <http://www.ichrp.org>.
- Makara, Sabiti (2000), 'Political and Administrative Relations in Decentralization,' in A. Nsibambi, Ed., *DECENTRALIZATION AND CIVIL SOCIETY IN UGANDA: THE QUEST FOR GOOD GOVERNANCE*, Fountain, Kampala.
- Mamdani, Mahmood (1996), *CITIZEN AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM*, Princeton University Press, Princeton.
- Manor, James (1995), 'Democratic Decentralization in Africa and Asia,' *IDS Bulletin*, Vol. 26, No.2.
- Mbazira, Christopher (2006), *Realizing Socio-economic Rights in the South African Constitution: The Obligations of Local Government (A Guide for Municipalities)*, Community Law Centre, University of the Western Cape, Cape Town.

Ministry of Local Government, (2006a), *Decentralization Policy Strategic Framework*, MOLG, Kampala.

_____, (2006b), *Local Government Sector Investment Plan (LGSIP), 2006-2016: Decentralization for Social-Economic Transformation*, MOLG, Kampala.

Mitchinson, Robin (2003), 'Devolution in Uganda: An Experiment in Local Service Delivery,' *Public Administration & Development*, Vol.23, No.3.

Mugisha, Maude, (n.d.), 'Gender and Decentralization: Promoting Women's Participation in Local Councils,' (paper on file with author).

Mukandala, Rwekaza & Chris Maina Peter (2002), *Local Government Effectiveness and Human Rights in Tanzania: The Case of Bukoba Rural and Mtwara-Mikindani Districts in Tanzania*, (paper on file with author).

Mwebaza, Rose (2003), 'Access to Information, Public Participation and Justice in Environmental Decision Making in Uganda,' *East African Journal of Peace & Human Rights*, Vol.9, No.1.

Nsamba, Adam Morris (2006), 'Unpacking Women Representation in Uganda's Local Government System: A Case Study of Lubaga Division in Kampala District,' Research Report submitted to the Centre for Basic Research, July.

Nsibambi, Apollo, Ed. (2000), *DECENTRALIZATION AND CIVIL SOCIETY IN UGANDA: THE QUEST FOR GOOD GOVERNANCE*, Fountain, Kampala.

Okille, Ashanut & Cliffs B. Nuwakora (2007), *Final Evaluation of the UNV Support to the Promotion of Human Rights in Uganda Project (UGA/02/V01)*; accessed at: <http://www.unvhumanrights.or.ug>.

Olum, Yasin (2005), *Local Governance and Poverty Situation in Uganda: The Role of Civil Society Organizations*, (paper submitted to the Development Network of Indigenous Voluntary Associations—DENIVA).

Paul, Samuel (2002), *HOLDING THE STATE TO ACCOUNT: CITIZEN MONITORING IN ACTION*, Karnataka, Books for Change.

Ribot, Jesse (2004), *WAITING FOR DEMOCRACY: THE POLITICS OF CHOICE IN NATURAL RESOURCE DECENTRALIZATION*, World Resources Institute, Washington DC.

Saito, Fumihiko (2002), 'Decentralization Measures and Gender Equalities: Experiences in Uganda,' *Ryukoku Journal of Economic Studies*, Vol.41, No.5.

Ssewakiryanga, Richard (2004), *Donor-Dependent Decentralization and the Political Economy of Aid in Uganda*, CBR Working Paper No.91.

Steiner, Susan (2006), *Decentralization in Uganda: Exploring the Constraints for Poverty Reduction*, GIGA Working Paper No.31, November.

Tsikata, Dzodzi (2004), *The Rights-Based Approach to Development: Potential for Change or More of the Same?* Accessed at: <http://www.cdra.org.za>

Ts'oele, Mpopo & Ian Goldman (2006), 'Case Study 1: Decentralization in Uganda,' *Sustaining Livelihoods in Sub-Saharan Africa*, Issue No.19, May.

Tumusiime, Grace (2006), *Addressing the Effectiveness of Local Council Courts in Handling Domestic Violence as a Gender Issue: A Case Study of Wakiso District*, Research Report submitted to the Centre for Basic Research, August.

United Nations Volunteers (2006), *Localising the Promotion and Protection of Human Rights Through the Establishment of District Human Rights Desks in Local Government of Uganda: A Case Study of Kabarole District Local Government (KDLG)*, UGA/02/V01/2006/Doc16; accessed at: <http://www.unvhumanrights.or.ug>

Villadsen, Søren & Francis Lubanga (2000), *DEMOCRATIC DECENTRALIZATION IN UGANDA: A NEW APPROACH TO LOCAL GOVERNMENT*, Kampala, Fountain.

Work, Robertson, 'Overview of Decentralization Worldwide: A Stepping Stone to Improved Governance and Human Development,' paper presented at the 2nd International Conference on Decentralization; July 25-27, Manila.

HURIEPEC WORKING PAPER SERIES

1. **Ronald Naluwairo**, *The Trials and Tribulations of Rtd. Col. Dr. Kizza Besigye & 22 Others: A Critical Evaluation of the Role of the General Court Martial in the Administration of Justice in Uganda* [October, 2006].
2. **Isaac Bakayana**, *From Protection to Violation? Analyzing the Right to a Speedy Trial at the Uganda Human Rights Commission* [November, 2006].
3. **J. Oloka-Onyango**, *The Problematique of Economic, Social and Cultural Rights in Globalized Uganda: A Conceptual Review* [March, 2007].
4. **John-Jean Barya**, *Freedom of Association and Uganda's New Labour Laws: A Critical Analysis of the State of Workers' Organizational Rights* [April, 2007].
5. **Ben Twinomugisha**, *Protection of the Right to Health Care of Women Living with HIV/AIDS (WLA) in Uganda: The Case of Mbarara Hospital* [April, 2007].
6. **Henry Onoria**, *Guaranteeing the Right to Adequate Housing and Shelter in Uganda: The Case of Women and People with Disabilities (PWDs)* [May, 2007].
7. **Sam B. Tindifa**, *Land Rights and Peace-Building In Gulu District, Northern Uganda: Towards An Holistic Approach* [May, 2007].
8. **F.W. Juuko & Constance Kabonesa**, *Universal Primary Education (U.P.E) in Contemporary Uganda: Right or Privilege?* [May, 2007].
9. **Godber Tumushabe**, *Food, Nutrition and Sustenance Rights in Contemporary Uganda: A Case Study of Teso Sub-Region* [June, 2007].
10. **Phiona Muhwezi Mpanga**, *Plenty of Water, but Scarcity Still Persists: Surveying the Status of the Right to Water in Uganda* [June, 2007].
11. **Kabann Kabanukye & Dorothy Kwagala**, *Culture, Minorities and Linguistic Rights in Uganda: The Case of The Batwa and The Ik* [June, 2007].
12. **J. Oloka-Onyango**, *Decentralization Without Human Rights? Local Governance and Access to Justice in Post-Movement Uganda* [June, 2007].