

DECENTRALIZATION AND THE SITUATION OF
SELECTED ETHNIC AND RACIAL MINORITIES:

A HUMAN RIGHT AUDIT

ROSE NAKAYI

Copyright© Human Rights & Peace Centre, 2007

ISBN 9970-511-13-6

HUR�PEC Working Paper No. 15

July, 2007

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	ii
SUMMARY OF THE REPORT AND RECOMMENDATIONS.....	iii
LIST OF ACRONMS/ABBREVIATIONS.....	v
I INTRODUCTION.....	1
1.1 <i>The Scope of the Study</i>	2
1.2 <i>Minorities: A general overview</i>	3
II. ETHNIC AND RACIAL GROUPS IN UGANDA.....	8
2.1 <i>Facts and Figures</i>	8
2.2 <i>Placing Ethnicity in Context</i>	11
III. LEFT OUT? THE CASE OF UGANDAN ASIANS.....	13
3.1 <i>Historical background</i>	13
3.2 <i>A Contested Citizenship</i>	15
3.3 <i>Decentralization and the Question of Ugandan Asians</i>	16
IV. THE BARULI-BANYALA QUESTION.....	20
4.1 <i>A Historical Prelude</i>	20
4.2 <i>The Baruli-Banyala in Kayunga District</i>	20
4.3 <i>Main Human Rights concerns of the Baruli-Banyala</i>	21
4.4 <i>Challenges Facing the Baruli-Banyala</i>	24
V. THE NUBIAN COMMUNITY IN GULU.....	25
5.1 <i>A Narrative History of the Nubian Community</i>	25
5.2 <i>Struggles for Land Rights, Freedom of Worship</i> <i>and Representation</i>	28
5.2.1 <i>The Question of Lost Land: Who Cares?</i>	28
5.2.2 <i>Addressing Rights to Political Participation</i>	29
5.2.3 <i>Education & welfare</i>	30
VI. CONCLUSION AND RECOMENDATIONS.....	31
REFERENCES.....	36

ACKNOWLEDGEMENTS

The author would like to deeply thank the various people who—during the several months in which this endeavour lasted—provided her with assistance. She is grateful to all participants at the HURIPEC review workshop for the good feedback and invaluable insights provided. She is also indebted to Monica Twesiime and Joerg Wiegratz for their helpful comments on the draft, without which the working paper would likely not have matured. To James Nkuubi and Stephen Oola, your research assistance was highly appreciated. Special thanks to the Danish International Development Agency (DANIDA) for supporting the project under which the working paper was written.

SUMMARY OF THE REPORT AND RECOMMENDATIONS

Uganda has an obligation to avail all rights in the international and regional human rights instruments to which it is party to all its citizens, irrespective of their social, economic, or cultural backgrounds. These rights—together with those specified in the 1995 Constitution—ought to be enjoyed by all nationals without discrimination on any grounds of sex, race, colour and ethnic origin. At the same time, Uganda is governed by the principles of the decentralization and devolution of power to the people at lower local government. Unfortunately, there is currently no interface between the state's obligation to protect the rights of people at the local level and decentralization. This paper weighs the extent to which the decentralized system avails rights to two select groups of ethnic minorities in the districts of Gulu and Kayunga viz., Nubians and Baruli-Banyala, and the situation of the racial minority known as Ugandan Asians in Kampala. The paper highlights the human rights concerns of these minority groups, and the efforts (or the lack thereof) of the local governments in dealing with such concerns. From the desk study and field research findings, the following observations are made:

- There is limited knowledge on the part of Local government leaders about the rights of ethnic or racial minorities, which has led to a situation in which there is no special effort to address their interests and concerns.
- Though their rights are guaranteed in the Constitution, Ugandan Asians in Kampala have not been vigilant at accessing and enjoying them. Talk of human rights is regarded as essentially political—an arena of interaction from which they have largely been absent. At the same time, there are no programs or policies geared towards encouraging Ugandan Asians, for example, to participate in government affairs at the lower local government.
- The lack of recognition of their identity is one of the biggest problems faced by the Baruli-Banyala. This is the result of a history of official mistreatment as Baganda. At the same time, the Baruli-Banyala believe in an ethnic identity separate from that of the Baganda.
- There are no deliberate efforts in Gulu District to preserve or recognize the Nubians as an ethnic minority, and they have been considered as part of the Acholi Community. Nevertheless, they have clear grievances relating to religious expression, cultural and linguistic identity and to rights of political participation.

Against the above background, the paper makes the following recommendations:

- The District and lower local governments should be sensitized about the need to prioritize human rights generally and the rights of ethnic and racial minorities in particular.
- Ethnic minority rights should be sufficiently mainstreamed into the formulation, implementation, monitoring and evaluation of policies at the local government level.
- There is a need for programs at all levels of the decentralized system of governance to sensitize ethnic and racial minorities on their rights (especially the right to equal treatment and non-discrimination), and the available avenues through which they can demand for them.
- There is a need to build the capacities of Nubians and Baruli-Banyala and to encourage Ugandan Asians to increase their levels of participation in local government politics. Generally, these communities share a general lack of the political representation necessary to influence policies that reflect their varied interests. To ensure effective participation, special procedures, institutions and arrangements through which they are able to assert an influence over policy and politics should be established at the lower local government level.
- Policies on equal treatment and opportunities should be initiated in the Local governments for the benefit of ethnic minorities in the District Service recruitment processes.
- Civil society and other non-state actors need to step up their oversight of issues relating to the rights of minorities in the country at large, and in the districts studied in particular.
- Where ethnic minorities with a traditional ruler and institution exist, it is important for the local government institutions to work hand in hand with such institutions. The local governments can in this case deliver what is deemed appropriate and acceptable to the ethnic minority group since they participate in the making of critical choices about themselves.

LIST OF ACRONYMS/ABBREVIATIONS

CAO	Chief Administrative Officer
DAPCB	Departed Asians Property Custodian Board
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICHRP	International Council for Human Rights Policy
K.C.C	Kampala City Council
LRA	Lord's Resistance Army
MoLG	Ministry of Local Government
MoGL&SD	Ministry of Gender Labor and Social Development
NCF	Nubian Consultative Forum
NEC	National Executive Council
NIS	National Integrity Survey
NRM/A	National Resistance Movement/Army
NUSAF	Northern Uganda Social Action Fund
PWDs	Persons with Disabilities
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration of Human Rights

I INTRODUCTION

Uganda's decentralization programme was launched by President Yoweri Kaguta Museveni in 1992.¹ This brought about a new phase of decentralization and led to the passing of the Local Government (Resistance Councils) Statute in 1993,² which was a development on the earlier laws passed in the immediate aftermath of the National Resistance Movement/Army (NRM/A) assumption of power in 1986. The statute provided for the transfer of powers and resources to local governments at the district level. In the same spirit, the 1995 Constitution of Uganda makes provision for decentralization, by providing for the system of local government.³ The implementation of the decentralization programme was given effect by the Local Government Act 1997.⁴ Decentralization replaced centralization, and involved the devolution of powers and responsibilities for administration, planning and finance to Local Councils.⁵ Furthermore, the system was intended to enable the people at the various levels participate in their own affairs that included decision-making. Decentralization further provides a framework within which Government provides good governance, improved service delivery and poverty alleviation.

The decentralized system in Uganda does not seem to have been designed and implemented taking into account human rights in any critical or sustainable fashion. Instead, it hinges much more on 'service delivery', and the 'devolution of power,' both of which do not necessarily involve the conscious adoption of a human rights framework. Although a focus on these two aspects of central government power might have reflected an unconscious attempt to deliver human rights to the people, there was no way of ensuring that this would happen in the absence of specific requirements to that effect. There was therefore a risk of eliminating the protection and promotion of human rights at the lower local government.

It is important to underscore the point that Uganda is bound by the universal, international, and regional human rights regimes, with only a few exceptions.⁶ The international and regional instruments spell out a variety of rights ranging from civil, political, economic, social and cultural, to other collective rights such as the right to a clean environment, and the right to development. More so, Uganda is party to the Declaration on the Rights of Persons Belonging to

¹ Ahikire, 2002 at 7. It should be pointed out that the system in place in Uganda oscillates between deconcentration, delegation and devolution.

² The system of decentralization also draws inspiration from the Constitution of the Republic of Uganda. See Article 178 (b) and the Local Government Act, 1997.

³ See Art. 176.

⁴ Munyonyo, 1999 at 1.

⁵ Mugabi, 2006 at 9.

⁶ The exceptions are where treaties have not been ratified or have been ratified with reservations.

National Ethnic, Religious and Linguistic Minorities.⁷ The Declaration calls upon states to protect the existence of the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and to encourage conditions for the promotion of that identity.⁸ Article 2 provides for the rights of minorities, and these include: the right to culture, religion, language, freedom from discrimination and to participate effectively in decision making. All Ugandans at whatever level are entitled to the enjoyment and protection of the above rights, among others. In the same vein, Chapter Four of the 1995 Constitution of Uganda provides for a cocktail of rights and freedoms for all persons. Any person who believes that his/her rights as provided for in the Constitution have been abused may enforce them through a court of competent jurisdiction.⁹ Furthermore, the Uganda Human Rights Commission was created under Article 51 of the Constitution for the same purpose of protecting human rights, alongside the courts of judicature.

Despite the seemingly good human rights and legal framework in place, the human rights situation of ethnic and racial minorities in a decentralized system remains precarious. This research looks at a whole gamut of issues around the protection of the rights of ethnic and racial minorities in a decentralized system in Uganda. It is against this background that this paper addresses the following general issues:

- ◆ The question of Identity;
- ◆ Whether or not ethnic and racial minorities are represented in decision making;
- ◆ Whether the 1995 Constitution alone is sufficient to render the necessary protection to minorities;
- ◆ The implications and practicality of the protection of minorities in a situation of scarce resources, and
- ◆ The hindrances to the protection of minority rights in a decentralized system of governance.

1.1 *The Scope of the Study*

The ethnic minorities covered by this study are the Baruli-Banyala in Kayunga District, and the Nubians in Gulu. The study also considered the specific

⁷ Adopted by the General Assembly Resolution 47/135 of 18 December 1992.

⁸ Id. Article 1.

⁹ See Art. 50, 1995 Constitution of Uganda.

situation of Ugandan Asians in Kampala.¹⁰ Nakasongola district is predominantly occupied by the Baruli-Banyala, although they are quite widely spread out and can be found in many parts of the country. Since the grant of district status to Nakasongola, the Baruli-Banyala are the majority in the District. For the above reason, this research concentrates on the Baruli-Banyala in Kayunga district who are a minority in the District. Nubians are found in different parts of Uganda today. The Majority are in Luwero District (Bombo), Lugazi, Kisenyi in Kampala, to mention only a few places where they reside. This paper looks at the Nubians in Gulu district, to show the challenges associated with the protection of ethnic minorities in a situation of armed conflict.

The people loosely classified as 'Indians' in Uganda are an agglomeration of several different and distinct communities broadly differentiated on the basis of religion and language with further distinctions according to area of origin in India or Pakistan, as well as with regard to caste, religion or sect.¹¹ This paper adopts a generic view to Ugandan Asians without reference to place of origin. In short, it pays no particular attention to internal distinctions, and instead concentrates on the position of the community as a whole vis a vis the rest of the population in Kampala.

The paper is divided into the following 6 parts: Part I is this introduction. In Part II, I look at the issue of Ethnicity in general. Part III of the paper considers the situation of Ugandan Asians in Kampala District, while Part IV looks at the Baruli-Banyala. Part V examines the place of the Nubian Community in Gulu District, while Part VI consists of the Conclusion and Recommendations that flow from the analysis in the study.

1.2 Minorities: A general overview

There is no universally accepted definition of "minorities", since the word is interpreted differently in different contexts. According to Van der Stoel,

The existence of a minority is a question of fact and not of definition. (...) First of all, a minority is a group with linguistic, ethnic or cultural characteristics, which distinguish it from the majority. Secondly, a minority is a group which usually

¹⁰ There is a great deal of contention over the use of the term "Ugandan Asians," given that in the main the vast majority of those to whom it is applied essentially came from the Indian sub-continent (which at the time also included Pakistan). The term is generally not used with respect to Chinese or other persons from the Asian continent, and terms such as 'Ugandans of Indian Origin,' or 'Asian-Ugandans' have not gained much currency.

¹¹ Hughes, 2005 at 53.

*not only seeks to maintain its identity but also tries to give stronger expression to that identity.*¹²

Generally, minorities can be grouped or categorized according to shared ethnic, religious, linguistic or cultural characteristics.¹³ They acknowledge a common identity on that basis.¹⁴ Those working to secure their rights in fact describe them as a non-dominant group of individuals, with characteristics different from those of the majority population.¹⁵ They have a right to existence, which gives them a foundation upon which to base their claim to other rights. The existence of minorities connotes a shared consciousness of the members of the minority group, whether through language, culture, religion, or sense of history or even a common destiny.¹⁶ Existence is a right that is collectively claimed by the group.

It is difficult to define 'minorities' in the context of Uganda since there are a diversity of ethnic and racial groupings, each of which may regard itself (and qualify) to be a minority.¹⁷ Baker Wairama argues that any disempowered group regardless of numerical size could be considered a minority.¹⁸ In Uganda, it is essential to establish whether a particular group suffers or has historically suffered disempowerment or discrimination on economic, social, cultural or political grounds.¹⁹ This therefore means that the category of minorities is not closed.

Turning to the United Nations, the 1945 Charter makes no specific mention of minorities, but its provisions on individual rights may be invoked to promote their rights. Clayde asserts that although the Charter has no viewpoint on minorities, it 'did not preclude' the subsequent construction of an international framework within which the problems of minorities might be systematically solved.²⁰ In fact, the Charter adopts a strong position on discrimination. According to Article 1 (3), among other purposes of the United Nations is "...

¹² Keynote address at the opening of the OSCEC Minorities Seminar in Warsaw in 1994.

See <http://www.osce.org/hcnm/13022.html> accessed on 19 March, 2007.

¹³ Hughes, 2005 at 5.

¹⁴ Id.

¹⁵ By East African correspondent, "Minorities: Why Ignoring them is dangerous"; in *The East African Newspaper*, 12-18 June 2006, at 18, reproduced verbatim from <http://www.irinnews.org/InDepthMain.aspx?InDepthId=9&ReportId=58604>

¹⁶ Thornberry, 1991 at 58.

¹⁷ The 1995 Constitution originally recognized 56 ethnic groups in its third schedule. With the 2005 amendments, this number was increased to 65.

¹⁸ Wairama, 2001 at 8.

¹⁹ Id.

²⁰ Clayde, 1955, quoted in Thornberry, 1991 at 118.

encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.." This prohibition on discrimination—coupled with Article 27 of the ICCPR²¹—provides a clear black-letter intention to protect the rights of minorities. According to that Article "... persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." This Article, according to the UN High Commissioner for Human Rights is the most widely accepted, legally binding provision on minorities.²²

The above article further re-affirms the need to establish additional protection for minorities beyond that granted to the nationals of a state in order to bring about true equality among all the nationals of a state.²³ In one of the UN debates on Article 27 of the ICCPR, the difference between the concepts of "equality and non discrimination" "and" "protection of minorities" was considered, and the following distinction was made,

*The prevention of discrimination means impeding any conduct which denies or restricts the right of a person to equality. The protection of minorities, on the other hand, although also based on the principles of equal treatment of all peoples, requires a positive action: a concrete service is offered to a minority group, such as the establishment of schools in which education is given in the native language of the members of the group. Such measure, clearly, are also based on the principles of equality.. The protection of minorities, therefore, requires affirmative action to safeguard the rights of minorities whenever the people in question.. wish to maintain their distinction of language and culture.*²⁴

At the International level, further protection of minorities is offered in the Declaration on the Rights of Persons Belonging to Minorities,²⁵ Article 1 (1) of which provides:

²¹ *Black stone's International Human Rights Documents*, 2nd Edition, (P. R. Gandhi, ed.) at 63-80. Note that Uganda is a party to the ICCPR, and therefore undertakes an obligation under Art 2 of the Covenant to respect and ensure that all individuals within its territory and subject to its jurisdiction enjoy the rights set forth in the Covenant.

²² Clyde, op.cit.

²³ Inter-American Court of Human Rights, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26, May16, 1984, Original English, 22-25,76-81, 173.

²⁴ UN Secretary General: *The main types and Causes of Discrimination*, UN Publ.49.XIV. 3, Paragraphs 6-7, quoted in the Inter- American Court of Human Rights Report, (See note 23) at 173-174.

²⁵ Adopted by the General Assembly Resolution 47/135 of 18th December, 1992.

The States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

Furthermore, Article 4 (1) stipulates that, "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."²⁶

It is important to note that Uganda is a party to the above-mentioned instrument. In addition, Uganda ratified the following human rights instruments in the years indicated: the African Charter on Human and Peoples' Rights 1981 (1986), The International Covenant on Civil and Political Rights, 1966 (1987), the International Covenant on Economic, Social and Cultural Rights, 1966 (1987) and also acceded to The International Convention on the Elimination of all Forms of Racial Discrimination in 1980. Uganda is therefore duty bound to avail the rights stipulated in the above to all the minorities within its boundaries.

The Constitution of Uganda 1995 joins the International Instruments in providing for the rights of minorities. Thus, Article 36 provides that:

Minorities have a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programmes.

Unlike the International Instruments that tend to offer general or blanket protection to minorities, the Constitution of Uganda specifically concerns itself with the right to participate in decision-making. Since more often than not minorities are Ugandan nationals, they are entitled to enjoy all the other rights that accrue to all Ugandans, as set out in Chapter Four of the Constitution. It is a fact however, that well drafted black-letter rules of law are not all the time followed by adequate measures of implementation. Minority groups lack sufficient access to political power, and they face discrimination and other human rights violations.²⁷ Consequently, the legal and constitutional provisions on minorities should be supplemented with measures of affirmative action for the minority groups in Uganda.

The 1995 Constitution tends to be presumptuous when it comes to who qualifies to be a minority in Uganda. It contains no definition of "minority",

²⁶ Declaration on the Rights of persons belonging to Ethnic Minorities, Id.

²⁷ Wairama, op.cit.

and provides, generally for the rights of minorities without any distinction whatsoever on the basis of social, political, or ethnic grounds. Besides Article 36, Article 32 provides for affirmative action in favor of groups marginalized on the basis of gender, age, disability, or any other reason created by history, tradition or custom. To a great extent, the ethnic minorities studied in this paper are marginalized groups for reasons of history, among others. Very often in the Ugandan context, particularly in the Constitution, when reference is made to "minorities" or "marginalized" groups, it is to social groups such as women, youth, persons with disabilities (PWDs), and not to ethnic or racial minorities. In this respect, Article 32 seems to be too formulaic with regard to minorities. Nevertheless, the article is the basic legal source of affirmative action in favour of minorities in Uganda.

Minorities in Uganda today suffer a number of problems that range from the economic, social, and cultural, to the legal and the political. Furthermore, while some recognition is given to social minorities (such as women, the youth and people with disabilities-PWDs), very little attention is paid to the plight of ethnic and racial minorities. In such a context, the decentralized system of governance in Uganda ought to offer opportunities for ethnic and racial minority groups, or at a minimum to protect their rights from violation. Arithmetically, if ethnic minorities are geographically concentrated in a particular district in which they have a relatively high share of the population, they can be sure of electoral success.²⁸ Since District status is not usually granted to a particular tribe or ethnic group but to a region, it is very rare to find an ethnic minority becoming a majority as a result of granting district status to a region where it is found. Therefore chances of an ethnic minority taking charge of their affairs in a local government are bleak.

As is the case with any other Ugandan, ethnic and racial minorities benefit from the good of decentralization, such as service delivery. In addition, decentralisation brings power closer to the people, with the possibility of having the people directing their own affairs. Ethnic minorities should thus be in position to participate in local level politics, or to make those that take up office accountable. Unfortunately, some of the above seem more of a myth to minorities than a reality. Most minorities in Uganda are not arithmetically dominant; they are generally marginalized, and more often than not poverty stricken.²⁹ This makes them unable to vie for office, or even consider political participation more seriously.

²⁸ It is unfortunate to note that of the three groups studied, none of them is dominant in its district.

²⁹ Most ethnic minorities in Uganda (with the possible exception of Ugandan Asians) are poor.

II. ETHNIC GROUPS IN UGANDA

2.1 Facts and Figures

Present day Uganda has 65 indigenous ethnic groupings that were formerly independent traditional societies. On top of the above are groups that have their origins elsewhere, such as Asians and Nubians.³⁰ Uganda's ethnic groups vary in size, with the Bantu as the largest,³¹ followed by the Nilotics.³² The Table below indicates some of the ethnic groups in Uganda and their figures:

TABLE I
A SELECTION OF UGANDA'S INDIGENOUS COMMUNITIES

Ethnic Group	Figures
Acholi	1,145,357
Baganda	4,126,370
Bagisu	1,117,661
Bakiga	1,679,519
Banyankole	2,330,212
Basoga	2,062,920
Iteso	1,568,763
Langi	1,485,437
Lugbara	1,022,240
Bahehe	3,403
Banyabindi	13,920
Banyara	20,615
Basongora	10,599
Batuku	20,536
Batwa	6,738
Mening	2,227
Mvuba	870
Nubi	26,118
Vanoma	128
Karimonjong	260,117

Source: <http://www.ubos.org/census%20tabulations/centableB10.pdf>, accessed on 19th May, 2007

The table above clearly shows that Uganda is a multi-ethnic country. Consequently, ethnicity plays a very significant role in various spheres of life in Uganda. The manifestations of ethnicity have been particularly vivid in the political sphere. This is usually the case when the ruling ethnic group tends to marginalize the others, which raises serious human rights questions. The aim of the above may be to, among others, promote the interests of the political leader's group. This means further marginalization of the ethnic groups that are not lucky to have one of their own in power. In the extreme, ethnic

³⁰ Wairama, 2001, at 6.

³¹ These include the Baganda, Basoga, Banyoro, Batoro and the Banyankole.

³² They include the Itesot, Kakwa, Lugbara, Madi, and Karamojong.

persecution has been seen under some regimes.

Indeed on the African plane, the question of minorities is not generally discussed, and concern for disempowered groups is discouraged on the grounds that all African ethnic groups are minorities.³³ It is common for a number of ethnic groups in Uganda to regard themselves as 'minorities,' considering their few numbers compared to the others. 'Minority' in Uganda can be defined/grouped with reference to grounds such as religion, language, numerical strength, access to political power and/or cultural or economic resources.³⁴ From the above table, the Baganda, Bakiga, and the Banyankole do not have sufficient grounds to claim minority status compared to the Vanoma, Mvuba, Bahehe, Nubi, Banyala, and the Baruli.

The tables below illustrate the numbers of ethnic minorities in the respective districts studied, as compared to other ethnic groups in the same district:

TABLE II

STATISTICS OF GROUPINGS IN THE STUDY DISTRICTS

DISTRICT	ETHNIC GROUP	TOTAL
Kayunga		
	Baganda	94,239
	Basoga	47,940
	Bagisu	22,352
	Baruli	12,848
	Banyala	8,065
Gulu		
	Acholi	431,706
	Langi	21,428
	Madi	3,978

	Other Ugandans	11,342 ³⁵
Kampala		
	Baganda	671,292
	Banyankole	76,153
	Basoga	52,460
	Ugandan Asians	
	Other Ugandans	65,785

Source: UBOS, 2002 Uganda Population and Housing Census, Kayunga District Report, November 2005, at 16-18.

³³ Oloka-Onyango in "Armed Conflict and Minority and Indigenous Children in the Horn and Great Lakes Region of Africa", 23-24 April 1998 in Workshop Plenary, Kampala Uganda, Report accessed at <http://www.essex.ac.uk/armedcon/international/comment/Text/paper005.htm> on 21 May, 2007.

³⁴ Wairama, 2001, at 7.

³⁵ The 4th, 5th and 6th positions are respectively occupied by the Alur, Iteso, and Banyankole.

The table above offers a number of interesting observations. Despite the fact that the National statistics (as shown in Table I) indicate the national figure for Nubians as 26,118, their numbers in Gulu District do not explicitly feature anywhere in the UBOS District Report. One is therefore left to speculate that those in Gulu were counted as the 'other Ugandans' in the district. The largest concentration of Nubians is at Bombo in Luwero district, since that is where the colonial government initially settled them.³⁶ Others are dispersed in many different parts of the country, including Gulu District. The majority of them have low levels of education and skills, and therefore end up engaging in unskilled work that pays very little.

On the other hand, besides being in a predominantly rural district, most Baruli-Banyala live in the rural areas. Their main activity is subsistence agriculture and therefore live from hand to mouth. Their low levels of education is seen as a stumbling block to access to white collar jobs, town life or creativity to find start up capital to engage in business.

The figures above also show that there are no official statistics on the number of Ugandan Asians today. Once again, it appears that they were slotted into the category of 'other Ugandans' on the Kampala District statistics record. The above situation is not new, since in the 1991 census the Asian population in Uganda was counted and stated to be among the 'other, not stated Ugandan' population of 67,294.³⁷ This to some extent implies the fact that the group is in a way officially undermined. Finally, on this matter, it is important to point out that not all of persons of Indian or Pakistani origin are Ugandan citizens. There is indeed some speculation that the number of non-citizen Asians in Uganda (who have largely come to the country in the last decade or so) is much higher than that of Ugandan Asians who are either 2nd or 3rd generation, and formed part of the group of Amin expellees in the early-1970s.³⁸

That notwithstanding, there are a number of distinguishing features about Ugandan Asians that need to be highlighted in this study. Although few in number compared to other groups in Kampala, they are economically dominant, largely as a reflection of the historical and socio-economic context within which the Asian community operated under colonialism and in the immediate post-independence era.³⁹ Furthermore, Ugandan Asians have a strong financial base that has supported their investment in many businesses that are off-limits

³⁶ Id. at 20.

³⁷ Wairama, 2001 at 21.

³⁸ Refer to Mamdani article on this issue.

³⁹ In many respects, Ugandan Asians also fall into the category of economically-dominant minority groups analyzed by Amy Chua, 2004.

to indigenous Ugandans.⁴⁰ Thus, Ugandan Asians are able to garner a highly disproportionate share of the limited opportunities for social and material advancement available in the county. This sets them apart, since they are economically doing better than most Ugandans that belong to the majority. They are able to afford good education for their children, better health facilities within and outside the country, and an overall better standard of living than the majority. This perhaps also explains their disinterest or disaffection with some of the issues of national concern, such as universal primary and secondary education, and the state of public health facilities.

As a result of their prosperity in trade and industry, Ugandan Asians employ a number of black Ugandans. However, this fact has always been a source of contention. According to a recent study by Godfrey Asiiimwe, many of the employees of Ugandan Asians complain of stringent working conditions, low pay, cases of abuse, mistrust and the mistreatment of workers.⁴¹ Despite all the dominant economic status that Ugandan Asians occupy, one cannot exclude them from the category of minorities in Uganda on the basis of their financial might, since they have little political power and representation. Indeed, as was dramatically demonstrated by the riots over the alleged give-away of Mabira Forest to the Sugar Corporation of Uganda Limited (SCOUL)—which is a company owned by the Ugandan Asian Mehta family—Ugandan Asians are extremely vulnerable.

2.2 *Placing Ethnicity in Context*

Ethnicity is perceived as a psychological aspect, an attitude of mind and practice.⁴² Atkinson argues that the ideological, social and historical forces involved in the construction and representation of ethnic identities in Africa are often (perhaps even usually) *not* confined solely to the colonial and postcolonial eras.⁴³ These eras simply made ethnicity more vivid and entrenched in our minds than was the case before. In Uganda, the alliance between the British and Buganda during the colonial period, made Buganda and the Baganda stand out as a prominent ethnic group. Other ethnic groups became 'the Other' and were placed lower in the ranking of British social hierarchy. This explains the stronger allegiance to tribe and place of origin than to Uganda as a country. The signing of the 1900 Buganda agreement put the chiefs of Buganda in a more privileged position compared to other chief in other parts of the country (e.g. Busoga) and to leaders in other communities that were not hierarchically organized. Baganda chiefs came to control or

⁴⁰ Asiiimwe, 2006 at 3.

⁴¹ *Id.*, at .29.

⁴² Kabanankye, 1999, at 2.

⁴³ Atkinson, 1999 at 2.

own large chunks of land, while as collectors of Hat and gun taxes introduced by the colonial masters, they were able to become wealthy and powerful.⁴⁴ Their high position was also clear from the fact that the colonial masters used them to extend their rule to other parts of the country and to collect taxes. This was part of the colonial policy of divide and rule, whereby the British government governed through local chiefs and rulers.⁴⁵ As a result, some Africans and Indians were placed in the, social and economic structures of the colonial government.⁴⁶ In some cases, this led to ethnic friction, e.g., in 1907, the Banyoro tried to fight Ganda chauvinism and British arrogance through an uprising.⁴⁷ All the same, the Baganda maintained their position and reaped more from the colonial government than any other indigenous ethnic group. The Baganda were able to benefit from the introduction of a cash crop economy since they grew cotton, as encouraged by the British. With the proceeds, they took their children to school, hence giving them a heredity of privilege, since they would be employed by the British government.

Indians were another group privileged by virtue of colonial policy. In the eyes of the British, the Indians were superior, more skilled and more efficient than their African counterparts. They were the middle class of the day, and took up a number of positions in the civil service, and industry. Indians were allocated a seat in the Legislative Council before Africans and demanded an equal number of seats to that of the Europeans.⁴⁸ The colonial government also forbade Asians from purchasing land, forcing them to live in urban areas, a factor that compelled them to concentrate on trade and commerce.⁴⁹ The same colonial policy restricted the 'native' Ugandans to their ancestral lands, in order to encourage them to produce for export. To this end, the colonial policy constructed a huge wall between the 'Indian town dweller' and the 'native Ugandan farmer-*Omulimi*,' placing the former in a higher social class than the latter. The Indians' unwillingness to integrate with the 'natives' was partly as a result of the above, and the fact that the 'natives' considered them racist.

Today, ethnic identity is seen as important, and protected in the 1995 Constitution of Uganda. It is believed that recognizing ethnic diversity is one of the ways through which national unity and stability can be attained. According to the National Objectives and Directive Principles of State Policy,

⁴⁴ See http://en.wikipedia.org/wiki/colonial_Uganda accessed on 19/May/2007.

⁴⁵ Id.

⁴⁶ Asiimwe, 2006 at 5.

⁴⁷ Id.

⁴⁸ Id., at 7.

⁴⁹ Wairama, 2001 at 21.

(ii) Every effort shall be made to integrate all the peoples of Uganda while at the same time recognizing the existence of their ethnic, religious, ideological, political and cultural diversity.

Ethnic separateness may be relevant in developing 'identity,' enriching and sustaining cultural attributes such as the values and language of distinct communities. On the other hand, recognition of ethnic groupings can cause disunity. This is especially the case where it is applied as a doctrine of exclusion of other rival ethnic groups.⁵⁰ This can be the case especially where some ethnic groups have more access to national resources than the others. Interethnic relations can therefore be fraught with tension, deep contestation, mistrust and suspicion. In a decentralized system of governance, ethnicity can be important especially where there are ethnic or racial minorities. This means that such local governments ought to take steps to implement affirmative action programs in favor of minorities and therefore have them included at all levels of local government, as well as in their diverse programming.

III LEFT OUT? THE CASE OF UGANDAN ASIANS

3.1 Historical background

Ugandan Asians mainly came to the country towards the end of the 19th century. Some came to trade, and the rest were recruited on contract to fill low-grade clerical positions in the colonial government and the railways.⁵¹ Thereafter, some chose to settle permanently in Uganda. These were later followed by relatives from India seeking to establish modern trade and commerce in order to create a middle class needed for the development of the protectorate. By virtue of the fact that they belonged to the British Empire, Indian immigrants became British protected persons. Some of them were offered Ugandan citizenship from the early 1960s and took it up, while others remained citizens of India or of the British Commonwealth. Before their expulsion in 1972, Ugandan Asians comprised just over one per cent of the total population of Uganda, and dominated the urban centers.⁵² Africans were unable to favorably compete with them in retail and wholesale trade, as a result of discriminatory economic policies. It therefore goes without saying that as a result of the above, after the 1940s, commerce was undeniably the crucial province of racial friction.⁵³

⁵⁰ Kabanankye, 1999 at 2.

⁵¹ Kuper, at 54.

⁵² Kuper, at 52.

⁵³ Motani, 1972 at 98.

In 1972, tens of thousands of Ugandan Asians were expelled from Uganda by then president Idi Amin.⁵⁴ The expulsion of the Asians was shrouded in xenophobic overtones. It was declared to be part of an 'economic war' waged against them, since they had become prosperous businessmen, and prominent professionals at the expense of the indigenous Ugandans. They were accused of being 'bloodsuckers' and racist, a fact which some of them acknowledge.⁵⁵ In the words of one Indian:

*... In my autobiography, which was one of the most painful things I have ever written, I said that one reason why so many black Ugandans supported Idi Amin when he expelled Asians was that we were unforgivably racist.*⁵⁶

The 1972 expulsion transformed Uganda into a pariah in the community of nations, since such an act of ethnic cleansing had not been witnessed for a long time.⁵⁷ The properties of the expellees were haphazardly allocated to Idi Amin's cronies (*mafutamingi*),⁵⁸ resulting in a meltdown of the economy.

In order to right a wrong committed by Amin's military regime, in 1982 the UPC government started the process of re-opening Uganda's doors to the former expelled Asians to return to Uganda, and to reclaim their properties.⁵⁹ After coming to power in 1986, the Museveni government accelerated and deepened the process of property restitution, marking President Museveni out as a strong advocate of the interests of the dispossessed Asians. Indeed, some have described Museveni as the 'Asians' patron saint.'⁶⁰ Several of the returnees are citizens of Uganda, live among us, and even speak the local languages. Ideally this entitles them to all the rights guaranteed to citizens in the Constitution.

⁵⁴ See: <http://new.s.bbc.co.uk/2/hi/in/2399549.stm> accessed on 17.08.2006. Note that the Immigration (Cancellation of Entry Permits and Certificates of Residence) Decree 1972 was aimed at persons of Asian origin, descent and extraction who were citizens of the United Kingdom, India, Pakistan and Bangladeshi, although in the practice there no distinction was actually made between them and Ugandan Asian citizens. However, given the prevailing circumstances, Ugandans of Asian origin who had acquired citizenship simply joined the exodus.

⁵⁵ Id.

⁵⁶ See http://comment.independent.co.uk/columnist_a_1/yasmin_alibhai_brown/article2617541ece, accessed on 24/01/07.

⁵⁷ New vision correspondent, 'Lessons from Amin's anti -Asian act.' *The New Vision*, August 6, 1997, at 8.

⁵⁸ A Luganda word commonly employed to describe the freeloaders allied to Idi Amin who benefited from the forcible "Africanisation" of the economy.

⁵⁹ The Expropriated Properties Act Cap.83 was passed to provide for the transfer of the properties and businesses acquired during the military regime to the Ministry of Finance and to provide for their return to the former owners.

⁶⁰ *The Times* (London), December 30, 1995, quoted in *The Monitor*, January 03-05, 1996, in an article by Tunko Varadarajan, 'Looking up to Museveni, the Asians' Patron Saint.'

3.2 A Contested Citizenship

Citizenship is essentially a legal construct.⁶¹ According to Henry Onoria, citizenship is

*...[a] continual legal relationship between the citizen and the independent State. The fundamental basis of citizenship is membership of a sovereign political community. Citizenship is the major legal link between the individual and the State. It empowers the citizens to demand from the State both protection and promotion of all his/her rights. ...*⁶²

The question of the citizenship of Ugandan Asian has not been in the limelight since their return to Uganda in the 1980s. Both the Obote II and Museveni regimes were more concerned with the return of their properties rather than with the question of citizenship, and inclusion of their rights in the Laws of Uganda. It is therefore highly probable that the mere fact that Ugandan Asians are Ugandans entitles them to all rights without the backing of the torch bearers of political power in the country, or their express inclusion in the law. However, their citizenship seems contested by some ordinary Ugandans. To many, the term 'Ugandans of Indian Origin' seems more of a legal construct with no practical relevance.⁶³ Their attitude can be seen in the report of the Constitutional Commission of 1993:

*From the views submitted it became clear that some Ugandans find it difficult to conceive the idea that a person from, for example, India or Germany or even any other African country can be considered truly a Uganda citizen. Such people believe that a citizen must be a child of the soil, whose ancestors have lived in Uganda from time immemorial. They tend to associate citizenship with the country where one's umbilical cord was buried and where one's ancestors lived, died and were buried. It becomes difficult for them to believe that a person may choose to leave his/her country of origin and become a citizen of another country. In their view, such a person would be either a citizen of convenience or, for that matter, a temporary one.*⁶⁴

The 1995 Constitution construes citizenship by birth on the basis of indigenous communities in its third schedule rather than on ethnic groupings.⁶⁵ Although

⁶¹ Onoria, 2005 at 4.

⁶² Republic of Uganda, 1993 at 102.

⁶³ Nakayi, *et al*, 2005, at 17.

⁶⁴ Republic of Uganda, *op.cit*, at 101-2.

⁶⁵ See Art. 10 of the 1995 Constitution of the Republic of Uganda.

there are other avenues to citizenship (via residence, marriage or prior right), the above construct puts Ugandan Asians in a disadvantaged position. As Onoria points out, any average Ugandan reading the schedule can tell that these are 'tribal' groupings in Uganda.⁶⁶ To this end, the Ugandan Asians who are not listed can easily be excluded from claiming citizenship by birth. This leads to a number of issues to do with the protection of their rights as citizens belonging to an ethnic minority group. The above is important because failure to recognize them as genuine citizens of Uganda excludes them from the category of people that can claim rights under the constitutional framework in existence.⁶⁷ This therefore means that their citizenship is mired in contestations that stand in the way of the practical enjoyment of rights that a citizen is entitled to.

3.3 Decentralization and the Question of Ugandan Asians

As the research in this study drew to a close, a demonstration that started out as a protest against the giving away of Mabira Forest to the Sugar Corporation of Uganda Limited (SCOUL)—which also happens to be owned by a Ugandan Asian family—turned virulently anti-Asian, underscoring the wobbly situation of this minority group in the country. Mabira turned into a major scandal because it symbolized the collusion between an increasingly unaccountable president and an arrogant tycoon from a racialised minority.⁶⁸ The tragic climax of the anti-Mabira give away demonstration was the death of three people, including an Asian man pulled off his motorcycle and lynched to death by a mob.⁶⁹ This single incident definitely reminded the Ugandans and Ugandan Asians of the suffering of the Asians at the hands of Idi Amin in 1972. To some commentators like Charles Onyango-Obbo, the above is closely linked to a low public profile of the Asians or even to their "invisibility."⁷⁰ Unlike in the 1960s through to the early 1980s where Asians prominently featured in the politics of Uganda, they no longer have a voice to defend themselves against anything anti-Asian.⁷¹ Instead, most Ugandan Asians have concentrated on exploiting the Ugandan peoples by single-mindedly making money in collaboration with the ruling elite.⁷² From Obote II through to the Museveni regimes, it is evident that those that have political power are their

⁶⁶ Onoria, 2005 at 5.

⁶⁷ The exclusion would mean that Ugandan Asians would not be in position to vote or be voted, form or join trade unions, in addition to all the rights guaranteed under Chapter 4 of the 1995 Constitution.

⁶⁸ Mahmood Mamdani, 'The Asian Question Again: A Reflection,' *New Vision*, April 29, 2007, at 21.

⁶⁹ *The East African*, April 16-22, 2007, at 12.

⁷⁰ Id.

⁷¹ Id. During this period, some Asians actively participated in the administration and politics of Uganda. e.g., Dr. Narendre Patel was the Speaker of Parliament; Gurdhial Singh was High Commissioner to India, and Shafiq Arain was a close advisor to President Obote.

⁷² Zahid Rajan Awaaz Magazine, accessed on www.awaaz.co.ke on May 1, 2007.

shield, but not their voice. The result of this has been to make Ugandan Asians prisoners of the state, since they have to invest considerable resources in elections and other forms of patronage, in return for political protection.⁷³ In order to protect themselves from the xenophobia that does not lurk very far below the surface, Ugandan Asians avoid participating in partisan politics which might lead them to opposing the ruling government, and hence biting the hand that feeds them.

It goes without saying that in a decentralized system in Kampala district, their participation is minimal. Ugandan Asians are not represented on the Local Councils, the reason for which lying in a complex mix of factors. According to the Secretary of the Board of Trustees of the Indian Association of Uganda, Indians have no problem whatsoever when it comes to their human rights. In his view, they are a predominantly business oriented group, and as long as the laws in that area are not oppressive, all is well. Along the same lines, one Ugandan Asian respondent stated that their job in the country was to 'boost the commerce of the communities in which they live, no less no more.'⁷⁴ The above does not seem to be a genuine reason for the lack of interest in human rights on the part of Ugandan Asians. Amidst human rights violations, commerce or business cannot prosper. The aftermath of the recent anti Mabira forest give away demonstration clearly explains this, since most of the Asian merchants closed their shops for fear of attacks.⁷⁵ In the same vein, the chairperson of the Uganda Investment Authority confirms that racism-which is a human rights violation-can definitely affect investment.⁷⁶ In a context of heightened racism and xenophobia, Ugandan Asians will lose, and at the same time Uganda as a country will be negatively affected since the Indians are the third largest investor in the country.

The findings of the field research revealed that most Ugandan Asians did not feel they were getting any special treatment, or more than they deserved during the Museveni era since they are recognized in the same way as any other Ugandan.⁷⁷ Not until the anti-Mabira give away demonstration that turned

⁷³ Charles Onyango-Obbo, 'From Citizens to hostages: Story of Uganda Asians' *The Monitor*, April, 18, 2007 at 10.

⁷⁴ Interview with Owakitibwa Rajni Tailor, Minister of State for Economic Planning and Investment in the Mengo Government and Chairman of the Board of Trustees of the Indian Association of Uganda, on March 26, 2007. A study of *New Vision* articles on Indians reveals that it is mostly about business. See for example, Alfred Wasike, *New Vision*, August 27, 2006 'Indians give shs. 50m to Karamoja'; March 19, 2007-'Indians invest shs. 170b in Uganda'.

⁷⁵ See, Frank Nyakairu *et al*, 'Army patrols City streets,' *The Monitor*, April 14, 2007 at 2, and Geresom Musamali, 'Asians Still Frightened , Kampala Shops Remain Closed' *New Vision*, April 14, 2007 at 3.

⁷⁶ Jan Ajwag, 'Racism will affect investment,' says UIA boss,' *The Monitor*, April 15, 2007 at 2.

⁷⁷ Interview on 17th March, 2007, with Dr. S.A.A. Abidi of the Makerere University East African School of Librarianship and Information.

anti Asian, did any of the respondents complain about human rights violations, whether express or implicit.⁷⁸ One respondent emphasized that human rights in a decentralized system was not an issue of concern to Ugandan Asians.⁷⁹ Many respondents were of the view that their lives would be at stake if they joined politics (in the name of enjoying the right to political participation), and instead preferred remaining in business.⁸⁰ At the same time, it is important to point out that most Ugandan Asians live in enclosed society and do not easily mix with the locals, nor is there much intermarriage between members of the two communities.⁸¹ This researcher was treated warily because the questions being asked were regarded as "highly political."

After the Amin expulsion, the few who remained behind for reason of being Ugandan found it very difficult to fit in the Ugandan Community since they were viewed as 'economy suckers.'⁸² At the same time, for those Ugandan Asians who chose to remain behind, they felt that they were treated just like any other Ugandans. This points to a difference between the Ugandan Asians who were here before the expulsion and stayed on, as well as those who had citizenship and returned, in contrast to the new entrants have come to the country only in the last decade or so.

Despite the above, one respondent cited indicators that they are a happy minority without human rights complaints.⁸³ The few Ugandan Asians who have chosen to participate in national politics such as the late Jay Tanna and his brother Sanjay (who is now Member of Parliament for Tororo Municipality) have found that the arena of politics is not necessarily off-limits. This is an indication that a number of Ugandan Asians have been incorporated into the communities where they live and that they are able to actively participate in the political process.⁸⁴ In the same vein, the decentralized system of governance has given a chance to some Ugandan Asians to take part in local government politics in Kampala. For example, one Pradit Kharia, is a Local Councilor in Kampala Central.⁸⁵ Rajini Tailor was appointed the Kabaka's Minister of State for Economic Planning and Investment in the Buganda Government.⁸⁶ Needless to say, these are only a handful of individuals, the majority preferring to steer clear of politics.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Tailor, interview supra.

⁸¹ See Prof. Tim Wangusa's response to Mamdani.

⁸² Tailor interview, op.cit.

⁸³ Id.

⁸⁴ Sanjay Tanna is the Member of Parliament for Tororo. See his interview in the Sunday Vision magazine of June 2, 2007.

⁸⁵ Taylor interview, supra.

⁸⁶ Id.

Regarding the issue of freedom of association, Ugandan Asians stress that there are over 35 Associations of Asians apart from the umbrella Indian Association of Uganda. In the main, these focus on social and cultural issues, with a particular hub on the needs of the specific grouping. Rarely are issues of a controversial nature brought to the fore. Thus, one Ugandan Asian who preferred anonymity stated that there are a number of human rights violations (such as domestic violence) in homes that are never made public.⁸⁷ Because of the high level of secrecy, many Ugandan Asian women are suffering human rights violations.⁸⁸ According to this respondent, it is sheer pretence that human rights are not 'our' concern, especially given the situation of a number of Indian housewives whose rights are being violated.

In summary, the protection of the rights of Ugandan Asians poses a significant challenge for the human rights movement in Uganda. International human rights instruments and Chapter Four of the Constitution of Uganda clearly lay down those human rights which are supposed to be upheld, and they also stress the obligation on the part of the state to protect. At the same time, there is no obligation on the part of the individual to enjoy those rights. What then happens if the individual puts him/herself out of the group of persons to receive and enjoy rights? The obligation for the state to protect remains on foot. The rights might however end up remaining on the statute books, since their violation might not be accompanied by efforts to enforce them. This is the central dilemma with the rights of Ugandan Asians in the decentralized system. At a minimum, however, there is a need for a more extensive and generalized debate than that which took place around the Mabira demonstration. Issues of integration, xenophobia, inclusion, participation and assimilation need to be at the forefront of such a discussion.⁸⁹ As it is, the surface has been barely scratched.

⁸⁷ Interview on March 23, 2007.

⁸⁸ Id.

⁸⁹ cf. Mahmood Mamdani, 'Asia and Uganda Can Meet,' *Sunday Vision*, June 3, 2007 at 23.

IV. THE BARULI-BANYALA⁹⁰ QUESTION

4.1 *A Historical Prelude*

The Baruli form part of the Bantu peoples who constituted the Bachwezi Empire of Bunyoro-Kitara, originating from Congo in the 15th Century and briefly settling in Bunyoro before moving towards the shores of Lake Kyoga.⁹¹ Oral tradition asserts that the Baruli are descendants of *Ruanga* (God), who lived in Cope, the present day Kinanda, Marungi and Oyam county in Apac and Masindi districts. Before the '*Bagandanisation*' of the Baruli, they had 129 clans and a heritage distinct from that of Buganda. The region where they lived belonged to Bunyoro. In the 1890s, the Baganda helped the British to subdue the Banyoro and as a token of appreciation the colonial government gave the land south of River Kafu to Buganda.⁹² This land was occupied by the Baruli. Consequently, there was friction between the Baruli and some Kabakas of Buganda. In the 1890s, a combined force of the Baganda, the British and Lugard's Nubians defeated a joint force of the Banyoro and Baruli. The final blow to their distinct heritage was marked with the signing of the 1900 Buganda Agreement between the Queen of England and the Kabaka of Buganda, whereby the Baruli were incorporated as one of the counties of Buganda, officially making them Baganda.⁹³

4.2 *The Baruli-Banyala in Kayunga District*

In Kayunga district, the Baruli-Banyala are commonly found in the areas of Bbale, Galilaya, Kangulumira, Kitimba and Kayunga. They disagree with the figures on their numbers as stated by UBOS, and claim that they number more than the official statistics, but that some of them were counted as Baganda during the last census.⁹⁴ Kayunga district was carved out of Mukono district in 2000 with two sub counties but began to operate as a district only in 2002. It is typically rural and greatly depends on agriculture, with only 7% of the population living in the urban areas. The Baruli-Banyala in Kayunga live with people of almost all ethnic backgrounds of Uganda, for example, Baganda, Basoga, Ateso, Jopadhola, Acholis, etc. The question is whether or not the

⁹⁰ The Third schedule to the 1995 Constitution recognized the Baruli and Banyara as two distinct Indigenous communities. The two groups suffered a similar plight and started off with parallel struggles for recognition. However in the year 1992, on the advise of one Muruli elder (Mr. Nathan Mpagi) the Baruli and Banyara came together and formed the Baruli-Banyala Cultural Trust in order to fight a uniform cause. This is the justification for dealing with the two as one in this paper.

⁹¹ Joshua Kato and Fredrick Kiwanuka, 'Nakasangola district head offices is in a small town which has come to identify the existence of the Baruli,' *New Vision* November 16, 2004, at www.newvision.co.ug accessed on 19/03/07

⁹² Id.

⁹³ Id.

⁹⁴ Interview with James Rwebikire, spokesperson for the Baruli-Banyala Cultural Trust, on 29th August, 2006. See UBOs figures in Table II, Part II of this paper.

Baruli-Banyala are accorded the same level of human rights protection as other persons of a different ethnic background in the district. It is believed that ,where the population of a rural area is predominantly indigenous or otherwise distinct from an urban population, establishing local democracy can enhance their autonomy as well as their control over the many policies that affect them.⁹⁵ Thus, the phenomenon of creating new districts ('districtization') that has recently become a major political issue in Uganda, could give political and territorial authority to ethnic groups like the Baruli-Banyala in Kayunga. Indeed, the President of Uganda believes so. While addressing the Commonwealth Local Government Forum in Kampala, President Museveni argued that decentralization was "good governance," and it was the reason why many people were clamoring for district status.⁹⁶ However, the proliferation of districts can also exacerbate social divisions, which is a recipe for disaster as a result of the violation of the human rights of the minority group in any given district. In fact, when a particular ethnic group dominates in any given district, it tends to favor its own and to marginalize the smaller ethnic or migrant groups.⁹⁷ The Baruli-Banyala are a minority group in Kayunga and tend to be marginalized when it comes to accessing both administrative and political office in the district.

The above can be explained on the basis that Kayunga district is undergoing significant transformation, and thus is not yet at the level of those districts that were formed back in 1993. Kayunga is still struggling to change the attitudes of the people and build the capacity of its civic and political leadership.⁹⁸ Allegations of corruption and conflict of interests among the district leadership have also greatly affected the district administration.⁹⁹ This therefore means that there are a number of bottlenecks in the struggle to protect the rights of the people in the district generally, and specifically those of the Baruli-Banyala. Ideally, institutional frameworks would be instrumental in monitoring human rights enjoyment, protection and promotion. However, they are not in place since the district is to a great extent financially constrained.

4.3 Main Human Rights concerns of the Baruli-Banyala

As Ugandans, the Baruli-Banyala are entitled to all the rights stipulated in Chapter 4 of the Constitution, ranging from the civil and political rights to the economic, social and cultural rights. The Constitution provides for every

⁹⁵ International Human Rights Council on Rights Policy; *Local Rule, Decentralization and Human Rights*, at 21.

⁹⁶ Peter Nyanzi, 'Uganda: Embrace Decentralization, Says Museveni,' *The Monitor*, May 2, 2006 accessed on <http://allafria.com/stories/200605011078.html>, on 5/18/2006.

⁹⁷ Ahikire, 2002 at.15-16.

⁹⁸ Interview on 29th August 2006, with Joseph Maira, Chief Administrative Officer Kayunga District.

⁹⁹ See, Joshua Kato and Saul Wokulira, "Battle of Egos Paralyze Kayunga District Development," *New Vision*, May 10, 2007, at 19.

person's right to belong to, enjoy, practice, profess and promote any culture, cultural institution, language, tradition, creed or religion in community with others.¹⁰⁰ The cultural head of the 129 Baruli-Banyala clans has stated that; "The Baruli have their own culture which is different from that of the Baganda. We want to strengthen our identity."¹⁰¹ The desire of the Baruli is not to secede from Buganda, but to be accepted as a distinct cultural entity within Buganda.¹⁰² Their administrative set up is entrusted to the Baruli-Banyala Cultural Trust.

One of the greatest fears of the Baruli-Banyala is assimilation into Buganda, whereby it is feared that such assimilation might lead to the extinction of their culture, language, and a loss of their land.¹⁰³ This has happened before; the signing of the 1900 Buganda Agreement brought them from Bunyoro to Buganda, and led to the disintegration of their cultures. Many Baruli-Banyala fled to Teso and Lango. In 1979, the majority returned to Buganda, only to find that their culture had been eroded and their land grabbed.¹⁰⁴ It is asserted that when they became part of Mengo they were not recognized as distinct from the Baganda. Therefore, no effort was made to cater for their specific development and all resources went to Mengo.¹⁰⁵ On the other hand, the Baruli believed that Buganda's administrative policy was shaped by the principles of assimilation, exploitation and revenge.¹⁰⁶ They therefore wanted to stand on their own two feet and 'to go where they wanted to be'.¹⁰⁷ This could only be achieved by having their own traditional ruler installed, to take care of the issues of the Baruli-Banyala. For over 100 years, the Baruli-Banyala have lived as Baganda, and their efforts at self identity have begun only recently. The driving force behind these efforts has been the feeling of inferiority brought on as a result of stigma, and a desire to rediscover their tradition.¹⁰⁸ For the same reason, they have opposed the demand for a Federal arrangement (Federo)

¹⁰⁰ Article 37, 1995 Constitution of the Republic of Uganda.

¹⁰¹ Ssalongo Mwoenzi Lwampanga, in an interview quoted in an article entitled "Baruli Prepare for Enthronment", *New vision* June 8, 2004 accessed on 19/03/07 at www.newvision.ac.ug.

¹⁰² Cyprian Musoke, Baruli Petition Buganda Caucus, quoting James Kinobe, Chairman of the Sub-Committee entrusted to look into the demands of the Baruli, *New Vision* October 14, 2004, accessed on www.newvision.co.ug

¹⁰³ Rwebikire interview, *supra*.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Saabaruli Isabarongo Mwoenzi Mubijwa Butamanya, quoted by Joshua Kato and Fredrick Kiwanuka, *supra*.

¹⁰⁷ *Id.*

¹⁰⁸ Stephano Kajura Nsobya, quoted by Joshua Kato and Fredrik Kiwanuka, 'Nakasongola district head offices is in a small town which has come to identify the existence of the Baruli,' *New Vision* November 16, 2004, accessed at www.newvision.ac.ug on 19/03/07.

that has been strongly advocated for by Buganda.¹⁰⁹ It is believed that if this arrangement is granted to Buganda, it will be a stumbling block to their independent identity. The leader of the Baruli-Banyala has stated,

*If Buganda is granted a federal status, it will make our fight for self determination even harder. We shall be one huge unit, engulfed by greater Buganda. For as long as we remain a single district within Buganda, chances of advancing our identity are bleak.*¹¹⁰

Although their history has been characterized by struggles for autonomy and identity, there was a ray of hope as a result of the introduction of the decentralized system of governance, and the elevation of Kayunga to the status of a district.¹¹¹ The Baruli-Banyala have benefited from these developments since it is the Kayunga District Councillors that passed a resolution in support of the installation of their cultural head—the Ssabanyala-Nathan Mpagi. Despite the go-ahead from the District however, the Bugerere County Elders Council and their representative to the Mengo Lukiiko, one Sevume Musoke are against the installation, and believe it is tantamount to secession from Buganda.¹¹² This opposition of Mengo to the Baruli Institution is not new, since Mengo was opposed to the coronation of the Saabaruli Isabarongo Mwogezi Butamanya in 2004.¹¹³ The Buganda Government at Mengo has persistently gone ahead to oppose the idea of a distinct identity for the Baruli-Banyala arguing that it is a government-inspired scheme to divide Buganda.¹¹⁴ Contrary to the above assertions, the struggles for recognition of Institutions of traditional or cultural leaders are justified under Article 246 (1) of the constitution, and clauses (2) and (4) of the same article that calls upon the government to accord privileges to the traditional rulers. However, recognition of traditional or cultural leaders has not been free from politics. A certain section of the public has argued that recognition of certain cultural institutions—particularly that of the Baruli-Banyala—is a new form of patronage intended so that the beneficiaries of these acts owe full allegiance to the Movement as a political party.¹¹⁵

¹⁰⁹ Nakasongola district for example is predominantly occupied by the Baruli. The district's submission to the Constitutional Review Commission did not support Buganda's ideas on Federalism (Federo).

¹¹⁰ Id.

¹¹¹ Rwebikire, supra.

¹¹² Fred Muzaale, "Uganda: Bataka to Block Ssabanyara Installation", at <http://allafrica.com/stories/200705080977.html>, accessed on 21 May, 2007.

¹¹³ Frederick Kiwanuka, 'Baruli Raps Mengo,' *New Vision*, May 5, 2006, accessed on 19/03/07 at www.newvision.co.ug

¹¹⁴ Id.

¹¹⁵ Nakasongola district was elevated to the status of district in 1997. During the 2001 presidential elections, President Museveni captured 99% of the votes.

4.4 Some Human Rights Challenges Facing the Baruli-Banyala

The Baruli-Banyala's efforts to enjoy human rights in Kayunga District have been hampered by the following factors¹¹⁶;

Their efforts to regain their identity have always been held back by Mengo's efforts to insist that they are Baganda. The other threat to their identity lies in the fact that their language is not documented and most of them speak Luganda and other languages. This consequently dissolves their identity in that of the Baganda. In addition to the above most of their Royal Regalia is in Bunyoro. Considering the fact that majority of them have very low incomes, it is not easily accessible. All the above make them vulnerable to losing strong ties to their culture and identity. They fall easy prey to assimilation into other cultures, since their own is not as strong due to the prevailing circumstances.

Most of the Baruli-Banyala do not know how the decentralized system of governance operates. They have not been trained on the above. They are therefore not able to demand for their rights since they are not sure of how to go about this within the decentralized system of governance.

In addition to the above, majority of the Baruli-Banyala have not been keen to take part in the politics or administration of the District and the lower local governments, with the exception of a few in positions of responsibility. This means there hasn't been much efforts to push for policies that are pro their protection as a minority group in the district. The above-mentioned inability to take up political office in the district is also partly as a result of their low levels of education. The educated few have not benefited from any sort of special appointments at the District and the government levels. The majority lacks the requisite knowledge and ability to press for what is due to them as a minority group in Kayunga.

Kayunga district cannot do much to help due to limited resources. It does not have enough funds to cater for its budgets, later on the activities of organizations or minority groups like the Baruli-Banyala. The above is made worse by the high levels of corruption and lack of transparency and accountability on the part of the District and lower local government office holders. This translates into budgetary constraints for the Baruli-Banyala since they are not facilitated by the District or lower local governments in order for them to carry out their activities.

The Baruli-Banyala are single handedly fighting to alleviate their plight. After Kayunga district was curved out of Mukono, a number of civil society

¹¹⁶ Id.

organizations remained in Mukono District. There is no presence of civil society organizations dealing with minority rights in Kayuga District.

From the above, it is clear that the lack of an identity of their own and the requisite finances to fund their activities or enable them access resources/services are a great hinderence to their human rights enjoyment. At the same time, the budgetary constraints faced by the District in practical terms affects how much it can do for the Baruli-Banyala in terms of the nature and extent of monitoring, promoting and protecting their rights. This leaves the Baruli-Banyala in a precarious human rights situation.

V. THE NUBIAN COMMUNITY IN GULU

5.1 *A Narrative History of the Nubian Community*¹¹⁷

Five thousand years ago, a rich and powerful nation called the kingdom of Kush (also referred to as ancient Nubia) was a center of culture and military might in Africa.¹¹⁸ The land of Ancient Nubia now forms part of modern Egypt and Sudan.¹¹⁹ Legend states that the Nubians are the first human race on earth, and most of their customs were adopted by the ancient Egyptians who are believed to be at the fore front of civilization.¹²⁰ Before they spilt and moved to other parts of Africa, the Nubian ethnic group could be found in Egypt and Sudan.¹²¹ Their language is divided into two main branches and called *Nobiin*.¹²² Their socio-economic status was better in Sudan than Egypt. During the 19th Century, the slave trade expanded and stretched as far as the Sudan, which was then under Egyptian rule. By 1860, the slave traders operated as far south as the present day Uganda border, Central African Republic and Zaire.¹²³ In 1872, the Nubians had had an overwhelming effect on Acholi, Madi, Lugbara, and Kakwa communities of Uganda.¹²⁴ These communities to a great extent adopted the Nubian culture, and got involved in trade. Trade was initially an activity exclusively for the Nubians.

¹¹⁷ Unless otherwise expressly stated, the information in this section is from an interview with Sheikh Al Hajji Musa Khalil and Adaranan, conducted in Gulu on, Dec 27th, 2006.

¹¹⁸ <http://www.homestead.com/wysinger/nubians.html> accessed on 9/03/07.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ See <http://en.wikipedia.org/wiki/Nubians> accessed on 9/03/07.

¹²² Id.

¹²³ Id.

¹²⁴ Id

In the 1880s, the British abandoned Sudan following Colonel Charles Gordon's death in Khartoum at the hands of the Mahdists.¹²⁵ At the battle of Dufile, Emin Pasha repulsed the Mahdists, a majority of whom were Nubians.¹²⁶ In 1890, the Nubian soldiers were brought to Kampala, with their families, to form Uganda's first army—the African Rifles.¹²⁷ On their way to Buganda and Bunyoro, Emin Pasha forcefully recruited several people from the different tribes of Madi, Kakwa, Acholi and Alur from the West Nile District of Northern Uganda, who were forced to convert to Islam and to speak Arabic. All these recruits later formed part of the Nubian contingents that remained in Uganda and other parts of East Africa. They intermarried, multiplied in number and it became impracticable for the Colonial Administration to repatriate them to the Sudan. More significantly, they formed a large part of the colonial army. When the British met resistance in the Buganda and Bunyoro Kingdoms, they called for reinforcement with troops from Egypt and Sudan. A larger part of them were recruited from the Nubian Peninsular in Sudan under the ruthless command of Sir Emin Pasha. They played a big role in protecting Buganda, and shielding it against Kabalega, and were in fact later represented in Sir Edward Mutesa's government.¹²⁸

As a reward for their services, the Colonial Administration proposed to settle all the Nubian forces at "Patiko Ajullu," some 200 km north of present-day Gulu Town. Some of them who had acquired land elsewhere were allowed to settle there, although a large number remained at Patiko Ajullu. Some settled in Gulu at "Aria-aga" (which means 'Area-Guard'), 5 km from Gulu town; others chose to be settled in Masindi district, Bombo, Lugazi, Kampala, Tororo and other parts of Uganda in small "Nubian Quarters." A number went to Nairobi, Kenya, Dodoma in Tanzania, but the majority remained in the West Nile district of Arua.

After independence in 1962, the Nubians enjoyed a privileged position in Ugandan society and many joined politics as strong supporters of UPC and DP, which were the main political parties at the time. Others were engaged in business. The Nubians preserved their Arabic Culture and dance and to date can easily be identified by the famous 'Duluka Dance,' which is a celebration and marriage dance. In terms of religion, they continued to practice Islam and acquired several pieces of land on which they built mosques and many locals converted to Islam.

¹²⁵ Merrick Posnansky, 'Correcting Uganda's History', *New Vision* March 12, 2007 at 12.

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Musa Moshin, 'Kabaka forgot Nubians,' *New Vision*, March 11, 2005, accessed on 19/03/07 on www.newvision.co.ug

When Idi Amin came to power in 1971, many Nubians jubilated and some were under the illusion that since they had a Moslem president, 'they were in Government' and therefore above the law. However, they retained good relations with the Acholi in Gulu with whom most of them had intermarried. Nevertheless, many Nubians amassed wealth under Amin's regime, since they could easily access gainful employment. A number of them purchased land and property which belonged to departed Asians in different parts of the country, including present day Gulu District.¹²⁹ After the overthrow of Idi Amin, many Nubians fled the country. When Milton Obote was overthrown in 1985, a number of them returned only to find that their land and property had been taken. Most of them became squatters. Indeed, many Nubians believe that they have been inhumanely treated since the fall of Idi Amin in 1979.

When the NRM took power in 1986, the Gulu District Administration, gathered all the Nubians in Gulu at Pece Stadium in order to address their claims. This was disrupted by an immediate rebellion staged in response to the NRM/A government and as a result three grenades shells were thrown into Pece stadium but never exploded.¹³⁰ The rebels invaded the stadium with a desire to kill all the Nubians but were stopped by one of their commanders.¹³¹ A number of Nubians met the District Administration together with the Ministry of Rehabilitation and requested to be relocated to Masindi at a place called 'Kirasha' or to another area around Masindi Port. Indeed, many were relocated from Gulu to the above places. Nevertheless, over 5,000 Nubians who had intermarried with the Acholi, acquired land and set up businesses in Gulu remained behind. These constitute the present Nubian community totaling approximately 7,000 people. They are mainly found in Anaka, Obiya, Opit, Palaro Rajab and Awach.

At present, the term 'Nubians' comes from the phrase "Nubi" which literally refers to the Nubian culture and religion. In Acholi, the term is synonymous with Islam or people professing and practicing the Islamic or Mohammedan religion. Typical Nubians currently form about $\frac{3}{4}$ of the entire Moslem community in Northern Uganda and the term Nubians no longer means typical Nubians, but Moslems in general because nearly all Moslems in Gulu now speak the Nubian language no matter what tribe they belong to.

¹²⁹ Wahib Mohammed, Vice Chairman Nubian Consultative Forum (NCF) quoted by Mariam Nalunkuuma, "Nubians appeal to government on tribalism," *New Vision* 28 July, 2003, at www.newvision.co.ug accessed on 19/03/07.

¹³⁰ Sheikh Al Hajji Musa Khalil, *supra*.

¹³¹ Sheikh Al Hajji Musa Khalil & Adranan in an interview conducted in Gulu on Dec 27, 2006.

5.2 Struggles for Land Rights, Freedom of Worship and Representation

The Nubians are recognized as one of Uganda's indigenous communities in the Third Schedule to the 1995 Constitution. That notwithstanding, the Nubians in Uganda have tended to be marginalized. Since they were close to the Idi Amin government in the 1970s, there has been a tendency of Ugandans to blame some tribes for the atrocities committed by the past leaders.¹³² Politicians also tend to instigate animosity against those who belong to the ethnic groups of past leaders.¹³³ When the Nubian Consultative Forum (NCF) appealed to government on tribalism and discrimination against Nubians, they asserted that it is because of the misconception that Amin was a Nubian and yet he was a Kakwa.¹³⁴ They therefore believe that their role in the political history of Uganda (especially during Idi Amin's time) is the cause for their neglect and alleged persecution today.

5.2.1 The Question of Lost Land: Who Cares?

After the fall of Amin in 1979, many Nubians and Moslems were generally persecuted and killed and a number fled into exile in Sudan and Kenya. These left behind land and other properties in places like Labia, Aria-aga, Obiya Highlands and Anaka. This was an opportune moment for several people from other places in Gulu, Kitgum and present day Pader to grab that land and property. It is disappointing to note that even after the introduction of the decentralized system of governance, no Nubian in Gulu has regained his or her land officially, with the help of the District or any Local Authority. The few who have taken matters to courts have rarely succeeded since in most of the cases, evidence of ownership of the land and properties is lacking. Some of those who have gone to court with proper documentation of ownership have allegedly been denied justice by the court. An example of such cases is that of the land on which Laroo Primary School for formerly-abducted children is located. This land belonged to two Nubian women, however, all attempts to get it back have been futile.¹³⁵

The Nubians who purchased properties from the Departed Asians Property Custodian Board (DAPCB) lost them without any compensation from government, despite the fact that the Expropriated Properties Act, 1982¹³⁶ provided for compensation. The return of formerly expropriated properties to the Indians is seen as differential treatment by the Government: If Indians

¹³² Lt. Gen. Moses Ali, quoted by Richard Otim, 'Blame Leaders, not Tribes', *New Vision* July 18, 2003 at www.newvision.co.ug, accessed on 19/03/07.

¹³³ Id.

¹³⁴ Mariam Nalunkuuma, 'Nubians Appeal to Government on Tribalism', *New Vision*, July 28, 2003, at www.newvision.co.ug accessed on 19/03/07.

¹³⁵ Khalili in an interview supra.

¹³⁶ Cap. 87 Laws of Uganda.

could be given back their properties, why not Nubians? The struggles of the Nubians for land have not only affected the individuals but they have also adversely impacted on the Nubian community as well. One of their leaders lamented:

*Land, which used to belong to the Nubians in the 1970s, has since been grabbed and churches have been built on it. Several of Nubian's mosques in Obiya Highland, Layibi, and Kasubi have been demolished or taken over by the authorities! This is a violation of our right to property and religion.*¹³⁷

The above struggle for property rights is not a monopoly of the Nubians in Gulu, but affects most Nubian communities throughout the country.¹³⁸ Nubians in Soroti have also complained about the denial of access to their land and property lost during the period of insecurity.¹³⁹

All in all, the Constitution of Uganda Protects every one's right to property. Availing minorities a right to own property is very important if they are to access other rights. Interference with the Nubian's right to land has affected enjoyment of their other rights like the right to religion. Without rights to land, it is unlikely that they Nubians will be able survive in Gulu, and even access other rights, like to education and political representation.

5.2.2 Addressing Rights to Political Participation

At the national level, Nubians have for a long time been agitating for fair political representation, although the 1979 experience discouraged them from participating in politics.¹⁴⁰ A number of Nubians claim that their ancestors played a big role in the development of modern day Uganda, and they should therefore be rewarded by making some of the areas where they reside into districts, e.g. Bombo.¹⁴¹

In the decentralized system of governance, the Nubians complain that they have been left out. They are not represented in the local government structures and this greatly excludes them from local politics in Gulu. They are locked

¹³⁷ Id.

¹³⁸ The Nubians in Jinja also complained that they have never recovered their properties lost after the overthrow of the Amin regime in 1979. See Jonathan Angura, 'Nubians hold Cultural Fete' *New Vision*, April 15, 2004, at www.newvision.ac.ug accessed on 19/03/07.

¹³⁹ Richard Otim, 'Prove Nubian Persecution, Ali asks Soroti authorities' *New Vision* August 1, 2003 at www.newvision.co.ug accessed on 19/03/07

¹⁴⁰ Id.

¹⁴¹ Aganas Ali, 'Why have Nubians been marginalized?' *New Vision*, September 17, 2005 accessed on 19/03/07 at www.newvision.co.ug

out of the District Service Commission, the Public Accounts Committee, the Tender Board, and the District Land Board.¹⁴² In Gulu, the voice of Nubians is not heard. The 2003 National Integrity Survey (NIS) report calls for the independence of the District Service Commission by having it centralized and rescued from political arm twisting, and that the Public Service Commission appoints the District Service Commission, picking competent people no matter their tribe.¹⁴³ All the same, this has not helped the Nubians in Gulu District. Many a time, decisions reached by local leaders on matters of concern to the community negatively affect them, since no one represents their point of view. For example, in Bibia and Anaka, the Local Authorities and people have deliberately sabotaged the setting up of a mosque and any place of worship for Nubians and other Moslems. The preservation of burial grounds is a prominent cultural belief among the Nubi. Needless to say, even this sacred rite is often under threat, e.g. the District Council and Gulu Mayor threatened to take away their burial ground/cemetery and give it to investors.¹⁴⁴ Instead of protecting the Nubians, the District Council appears bent on abusing them.

5.2.3 Education & welfare

The majority of young Nubian people are not educated. This is the result of poverty, displacement and landlessness, hence exacerbating an acute situation of unemployment. The school drop-out rate is very high. Many young people drop out of school at the level of senior 4 or 6 and resort to business. According to Sheikh Al Hajji Musa, only two Nubians have joined University in the last five years.¹⁴⁵ The district Khadiship has no scholarships and generally those available at the District are inaccessible to Nubians. The Acholi Education Initiative, which was formed to promote education for formerly abducted children in Gulu has often turned down Nubians and moslems abducted by the LRA.¹⁴⁶ The situation of Nubians is made even more precarious by the fact that they do not have representatives with jobs in government. For example, while addressing an NRM mobilization rally organized by Nubian youth, Political Assistant to President Museveni, Moses Byaruhanga said, "Send us names of eligible people. We shall give them jobs in the Government so that they ensure that your interests are catered for."¹⁴⁷ This promise to give more political posts to Nubians was ostensibly intended to ensure that their special interests were well co-ordinated by the Government.¹⁴⁸ Over time, the statement

¹⁴² Khalil interview, supra.

¹⁴³ Garamba Doka, 'It is sheer madness for Nadduli to lock out non-Baganda' *New Vision* June 6, 2003 at www.newvision.co.ug accessed on 19/03/07.

¹⁴⁴ Khalil, in an interview, Supra.

¹⁴⁵ In an interview on December 27, 2006.

¹⁴⁶ Khalil, interview, Supra.

¹⁴⁷ Quoted by Frederick Kiwanuka, 'Nubians to get more jobs', *New Vision* February 3, 2006 accessed on 19/03/07 at www.newvision.co.ug

¹⁴⁸ Id.

has proved to be more of a political than a factual statement.

Although decentralization is partly about participation, the non-participation of Nubians in matters that affect them is a very prominent issue for the Nubians. The local government officers and the Acholi do not realize or recognize that the Nubians are a minority that ought to be catered for in a special manner.¹⁴⁹ They are treated like anyone else, since they live in Acholi, speak Acholi, and to some extent practice Acholi culture.¹⁵⁰ The government too has not done much to improve the welfare of the Nubians in Gulu. The several development projects initiated by government in the district rarely benefits the Nubians. For example, the Northern Uganda Social Action Fund (NUSAF) has so far only approved two projects submitted by the Association formed by the Nubian community, which are on Poultry keeping for Nubian women and the construction of a nursery school for their children.¹⁵¹ Part of the problem is that NUSAF is afflicted by poor management, and some respondents assert that it is likely that more projects by the Nubians would have received funding.¹⁵² In sum, the corruption in NUSAF, has led to the neglect of genuine beneficiaries.¹⁵³ At the same time, it is quite clear that there is no special attention given to the situation of minorities.

In this regard, it is clear that the decentralized system of governance has not been of great help to the Nubian Community in Gulu in as far as their human rights are concerned. The Nubians still struggle for rights to property, religion, political participation, education among others.

VI. CONCLUSION AND RECOMENDATIONS

This working paper has demonstrated that ethnic divisions have played a big part in defining Uganda's recent history. At the same time, the ability of ethnic or racial minorities to access and enjoy human rights is also a product of a history of tensions and misunderstandings. Most importantly, the lack of a legal and policy framework on the situation of minorities has exacerbated their plight. Ethnic or racial minorities—whether immigrant (like the Uganda Asians and Nubians) or indigenous (such as the Baruli-Banyala) to a great extent suffer a similar plight, when it comes to human rights protection and enjoyment

¹⁴⁹ During the focused group discussion held at the district headquartersth August, 2006, none of the officers believed that the Nubians were a minority requiring special attention. The consensus was that they were just like any other Acholi. They denied any discrimination of whatever kind against the Nubians.

¹⁵⁰ Local Government leaders in a focused group discussion held, At the Gulu district offices.

¹⁵¹ Sheikh Al Hajji Khalil, *Supra*.

¹⁵² Yasin Mugerwa, "Acholi MPs want government to review Nusaf", *Monitor*, May 8, 2007 at 13.

¹⁵³ Aswa MP Reagan Okumu, quoted in Yasin Mugerwa, *Id*.

in a decentralized system. What is also clear is that in the absence of any meaningful political gain for the government of the day, there has been no will to put in place specific laws and policies to protect the existence, identity and languages of ethnic and racial minorities in the country. With regard to the two ethnic minorities studied in this paper (i.e. the Nubians and the Banyala-Baruli), there is no doubt that they are unique and vulnerable, making them deserving of special attention in local government budgets, plans, and activities. Conversely, although Ugandan Asians do not suffer from economic marginalization or poverty, there is no doubt a need to revisit the manner in which they are treated as a minority that may face unjustified xenophobia or discrimination. Failure to address both the general and the specific situation of minorities places them in a precarious situation, where they are susceptible to exclusion and human rights abuse. In a decentralized system, to disregard ethnic minorities is equivalent to building on loose sand, which is a high-risk exercise. Measures ought to be put in place to monitor the protection of the rights of ethnic and racial minorities at the lower local government level.

Uganda is party to a number of key international human rights instruments designed for the protection of ethnic minorities. This is not well reflected in our domestic laws, including the 1995 Constitution. The Constitution does not clearly make provision for ethnic minorities, although it generally caters for the protection of social minorities (generally) and for affirmative action in their favour. In light of the above, the following are the conclusions with specific regard to the three communities studied in this paper:

The citizenship of the Ugandan Asians—even for those who hold Ugandan passports—has for a long time been contested largely because of the fact that they are not indigenous. This has had far reaching effects on the protection of their rights generally and specifically in a decentralized system. At the same time, there is a general lack of engagement on the part of Ugandan Asians to politically participate in the affairs of Kampala District or in the Lower Local Governments and in issues of general human rights. A greater interest was expressed for conditions of trade and investment, rather than in human rights. However, since the Mabira demonstration that turned out to be a xenophobic attack on Asians, a lot of water has passed under the bridge. The fact that the absence of proper human rights protection meant that business may not prosper, was brought to bear on the Ugandan Asian community in bold relief. It therefore becomes important to discuss the protection of their rights in Uganda as a whole, and at the decentralized level in particular. Rather than entrust the protection of Ugandan Asians to the powers that be (the ruling government), there is a need to directly address the issue in the laws of Uganda.

The greatest challenge to the Baruli-Banyala's enjoyment of human rights in Kayunga District are the hurdles obstructing their struggle for identity. A reflection into their history shows that they have for a long time been 'officially' assimilated into another ethnic group, the Baganda. This escalated their minority position, while also masking the fact of the discrimination they felt acutely. The independent existence of their culture and language was impaired, which they believe is key to the enjoyment of any human rights.

After a long time of living among the Acholi in Gulu, the Nubians have to some extent been assimilated in to the Acholi. This has been as a result of their long stay, and intermarriage with the Acholi. However, the study revealed that their rights to property, education and religion are threatened. The Nubians are very conscious of their religion. Islam is the essence of their continued existence and the core of their identity.¹⁵⁴ However, their right to religion is under threat. Some of the land that belonged to mosques in places like Layibi, Obiya, and Kasubi was taken over by the authorities, hence indirectly infringing on their right to worship.¹⁵⁵ Despite this, there have been no efforts at the lower government or District level to address this issue. The fact that there is a thin line between the Nubians and the Acholis jeopardizes the interests of the former, since the Acholi local government officers consider them to be just like other Acholi that require no special attention.

Taken as a whole, the focus on a select few of Uganda's ethnic and racial minorities demonstrates that there is still a great need for awareness raising on the situation of this particular group of Ugandan citizens who often fall under the radar of national attention. There is consequently a need to conscientize the national government, politicians, and local leaders, to pay more attention to the needs and interests of the three groups studied in this paper. Needless to say, this would also extend to a general appraisal of the whole minority question in Uganda—an assessment that is long overdue.

The following are the recommendations:

The Central Government:

- Since the government exercises a certain level of control over local governments, it needs to demonstrate that it has the political will necessary to make the tackling of the minority question in the country a priority at all times.

¹⁵⁴ Holger Bernt Hansen (1991), "Pre-colonial Immigrants and Colonial Servants. The Nubians in Uganda" accessed at <http://www.jstor.org/view/00019909/ap020196/02a00050/0> on 23/05/07.

¹⁵⁵ Interview with Hajji Khalil, op.cit.

- There is need for a comprehensive framework for the implementation of international norms/obligations with regard to the protection of ethnic and racial minorities, e.g., those in the ICCPR, ICESCR, and in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. In similar vein, there is a need for the establishment of an institution(s) to protect and promote minority rights in a systematic and sustained fashion.
- A system for monitoring the extent to which the constitutional provisions on minorities are being respected, and measures should be put in place to check the extent to which the constitutional provisions have been observed by Local Authorities through periodic checks on those districts where ethnic and racial minorities exist.
- Concerted efforts need to be instituted in order to promote the peaceful co-existence of all Ugandans in a multi-ethnic and multi-lingual society.

Local Governments:

- Ethnic minority rights should be sufficiently considered and mainstreamed into the formulation, implementation, monitoring and evaluation of policies at the local government level.
- The District and lower local government officers should be sensitized on human rights generally and the need for their protection and promotion. With this, they should appreciate the importance of availing and protecting the rights for the ethnic minorities. In particular, Gulu district authorities should recognize the Nubians as a minority group and put in place programs to protect and promote their education and welfare. The Nubian community should be included in all the development projects and activities of the district.
- There is a need to build the capacities of the Nubians and Baruli-Banayala and to encourage Ugandan Asians to participate more actively in local and national politics. Generally they lack political representatives to influence policies that reflect their interests. To ensure their effective participation, special procedures, institutions and arrangements through which they are able to effectively influence policy and politics must be established at the lower local government level.

- Equal treatment and opportunities policies should be initiated in the Local governments for the benefit of ethnic minorities in the district service recruitment processes.
- Gulu and Kayunga Districts should put in place affirmative action policies in favour of the Nubians and the Baruli-Banyara respectively. Such should be in the areas of education, access to jobs, and funds for development projects.
- The contestation over Ugandan Asian citizenship needs to be comprehensively addressed, through formal recognition in the Constitution of Uganda, alongside the other Ugandan communities. This would indisputably entitle them to all rights in the constitution, and even equip them with the tools to vindicate them.
- While recognizing that there are risks in doing so, Ugandan Asians need to become more actively engaged in the day today politics of the country. Obviously, there are limitations in competing for positions as easily as other Ugandans due to their small numbers. Consideration should therefore be given to the creation of special seats in the District in order to encourage enhanced participation on the part of Ugandan Asians in local government politics.
- There is need for a more critical engagement between Ugandan Asians and Black Ugandans in order to chart a new path to national inclusion and reconciliation, and to address issues such as xenophobia and the tensions between the two communities.
- The existing contestations between the Baruli-Banyala and the Kingdom of Buganda need to be comprehensively addressed in order to reduce the possibility of future conflict and turmoil between the two communities.
- In the districts studied, there was no existence of a civil society organization dealing with the rights of any of the specified minorities in any comprehensive fashion. Furthermore, issues of minority rights have largely been ignored or overlooked by civil society organizations, whether at the national or local level. There is a need for the non-state actors to begin to strategically address issues relating to the rights of ethnic and racial minorities.

REFERENCES

- Ahikire, Josephine, (2002), 'Decentralization in Uganda Today: Institutions and Possible Outcomes in the Context of Human Rights,' International Council for Human Rights Policy.
- Asiimwe, B. Godfrey (2006), 'Of Unequal Competition and Citizenship Contestations: The Roots and Dynamics of the Indian Question and Relations in Uganda,' (Draft).
- Atkinson, Ronald. R. (2001), *THE ROOTS OF ETHNICITY: THE ORIGINS OF THE ACHOLI OF UGANDA*: Fountain Publishers, Kampala, Uganda.
- Basalirwa, Asuman (2006), "Youth and Uganda's Transition to Multiparty Democracy," *Contemporary Africa Review Journal*, Vol. No.2., (July).
- Chua, Amy, *WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY*, William Heinemann, London.
- Clayde, I.L., (1955), *NATIONAL MINORITIES: AN INTERNATIONAL PROBLEM*, Cambridge Mass.: Harvard University Press.
- Dakas, (2001), 'The Minorities Question and Constitutionalism in Nigeria: Towards a Concrete Guarantee of Minority Rights Under the Nigerian Constitution,' in League for Human Rights, *THE RIGHT TO BE DIFFERENT: PERSPECTIVES ON MINORITY RIGHTS, THE CULTURAL MIDDLE-BELT AND CONSTITUTIONALISM IN NIGERIA*, Proceedings of the Peoples of the Cultural Middle-Belt of Nigeria Conference on the 1999 Constitution, Edited by Nankin Bagudu esq. and Dakas C.J. esq.
- Hughes, Alexandra, PRSPS (2005), *Minorities and Indigenous Peoples*, Minorities Rights Group International Issue Paper.
- Hutchinson, Paul *et al* (2003), *The Impact of Decentralization on Health Behaviors in Uganda*, Carolina Population Center, University of North Carolina,
- International Human Rights Policy (2002) *LOCAL RULE: DECENTRALISATION AND HUMAN RIGHTS*, International Council on Human Rights Policy, Switzerland.
- _____ (2005) *LOCAL GOVERNMENT AND HUMAN RIGHTS: DOING GOOD SERVICE*, International Council on Human Rights Policy, Switzerland.

Kabananukye, Kabann *et al* (2004), *Study of Strategies and Capacity for Promoting Equity and Protecting the Vulnerable in Uganda*; study prepared for Ministry of Gender, Labour and Social Development, Ministry of Finance, Planning and Economic Development, and United Nations Development Programme.

_____ (1997) *Status of Minorities and Marginalized Communities in Uganda*, Study Commissioned by MS Uganda.

Kasumba, G (1997) *Decentralizing Aid and its Management in Uganda:*

Lessons for Capacity-building at the Local Level. ECDPM Working Paper No. 20). Maastricht: ECDPM.

Kuper, Jessica, (n.d.), 'The Goan Community in Kampala,' in the Institute of Commonwealth Studies Papers, *Expulsion of a Minority: Essays on Ugandan Asians*, (not dated), Center for Basic Research Baskerville Road Kololo.

Litvack, Jennie *et al*, (1998), *Rethinking Decentralization in Developing Countries*, World Bank Sector Series.

League for Human Rights (2001), *THE RIGHT TO BE DIFFERENT: PERSPECTIVES ON MINORITY RIGHTS, THE CULTURAL MIDDLE-BELT AND CONSTITUTIONALISM IN NIGERIA*, Proceedings of the Peoples of the Cultural Middle-Belt of Nigeria Conference on the 1999 Constitution, Edited by Nankin Bagudu esq. and Dakas C.J. esq.

Mbao, M.L, *Constitutional and Legal Aspects of the Youth Participation in Government*. As appearing in *Studies in Youth and Development*.

Mugabi, E (2006), 'Uganda's Decentralization Policy, Legal Framework and Local Government Structure,' (Papers Presented at a one week course conducted by Uganda Management Institute.

Mikulu, Andrew. L. (2004), 'Eight Million Adolescents in Uganda: A Challenge to Service Provision.' *UBOS Newsletter*, Vol.3, January.

Motani, Nizar (1972), 'The Ugandan Civil Service and the Asian Problem 1894-1972,' in the Institute of Commonwealth Studies Commonwealth Papers, *Expulsion of a Minority*, op.cit.

Mwesigye F, (1999), 'Priority Service Proviso under Decentralization: A Case study of Maternal and Child Health Care in Uganda,' Partners for Health Reform Plus (PHRplus).

Nakayi, *et al* (2005), 'The Women's Movement in Africa: Creative Initiatives and Lessons Learnt,' *East African Journal of Peace & Human Rights*, Vol.11 No.2.

Oloka-Onyango J. (2006), *The Problematic of Economic, Social and Cultural Rights in Post Globalized Uganda: A Conceptual Review*, HURIPEC Working Paper No.3.

Onoria, Henry (2005), 'Citizenship and Constitutional Recognition of Legal Pluralism in Uganda,' Paper presented at a workshop organized by the University of Wisconsin-Madson on the Theme Constitution Building in Africa Post-1989, October 15-16.

Pain, Dennis, 'The Nubians: Their Perceived Stratification System and Its Relation to the Asian Issue,' in The Institute of Commonwealth Studies papers, *Expulsion of a Minority*, *op.cit.*

Republic of Uganda, (1995) THE REPORT OF THE UGANDA CONSTITUTIONAL COMMISSION, ANALYSIS AND RECOMMENDATIONS (Odoki Report), Government Printery Entebbe.

Wairama, Baker, (2001), *Uganda: The Marginalisation of Minorities*, Minority Rights Group International.

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 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: 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].
13. **Laura Nyirinkindi**, *Economic and Social Rights, Service Delivery and Local Government in Uganda* [July, 2007].
14. **Benson Tusasirwe**, *Enforcing Civil and Political Rights in a Decentralized System of Governance* [July, 2007].
15. **Rose Nakayi**, *Decentralisation and the Situation of Selected Ethnic and Racial Minorities: A Human Rights Audit* [July, 2007].

ABOUT THE AUTHOR

Rose Nakayi holds a Master of Laws (LLM) from the University of Cambridge. She is presently teaching at the Faculty of Law Makerere University. Her academic interests are in Human Rights, International Criminal Law, Transitional Justice and Land Law. She is currently the coordinator of the LLM in Human Rights and Democratisation in Africa Program.