

An examination of human rights work within Uganda's legal profession: BY T R Kirabira.

Abstract

Recent years have seen tremendous developments in Uganda's legal profession. Yet, there are rising levels of human rights abuse, and misuse of the laws, by both state and private actors. While human rights litigation is currently being undertaken in the courts, the role of lawyers in the protection and advancement of human rights remains tenuous. An important question arises on what, if any, role is there for lawyers in the protection and advancement of human rights? This research based on literature review, legal analysis, critical discourse analysis and secondary data reveals that until recently, there has been minimal collective

action on the part of Ugandan lawyers, towards the advancement of human rights. The article explores the key connections between the legal profession and the public good, as a way of protecting human rights. The article presents a framework for evaluating human rights related work, triggering a new movement in the legal profession, whilst also establishing an agenda for future research on lawyers and human rights work.

Key words: Lawyers, Uganda, human rights, democracy, rule of law

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1. Introduction and motivation of the article

In a landmark decision made on 29 September 2020, the high court of Uganda dismissed criminal charges against lawyer Shaban Nkuutu,¹ following his illegal arrest by police.² He had resisted several demands by the police to reveal his client's information in relation to a land transaction. The decision was applauded by lawyers, as a precedent for the protection of their rights.³ The case also mirrors a wide range of human rights abuses in Uganda, like arbitrary arrests, detention and unlawful evicts from land. In light of these challenges, an important question arises on what, if any, role is there for lawyers in the protection and advancement of human rights?

According to Ugandan jurist and former Principal Judge, James Ogoola, a lawyer is akin to a centipede, “a multifaceted

¹ *Uganda vs Nkuutu Shaban*, High Court of Uganda, HCT-14-CR-CV-0002 of 2020.

² A Okanya, ‘Lawyers arrest in line of duty illegal – court’ *New Vision*, 16 October 2020, available at: <https://www.newvision.co.ug/news/1529464/lawyers-arrest-line-duty-illegal-court> (accessed 12 October 2020).

³ A Okanya, ‘Law Society hails court ruling on illegal arrest of lawyers’ *New Vision*, 20 October 2020, available at: <https://www.newvision.co.ug/news/1529817/law-society-hails-court-ruling-illegal-arrest-lawyers> (accessed 12 October 2020).

creature endowed with many constituent body parts — all working at once in complex synchronization and intricate harmony”.⁴ Lawyers are not simply legal professionals, but are part of an interconnected set of institutions with corresponding duties. Ideally, these duties would be outlined from ethical and sociological perspectives, but also, recognised under the regulatory framework.

Ironically, beyond the obligation to safeguard clients’ funds under the Advocates Act, there is no comprehensive regulation regarding the advocate-client fiduciary relationship.⁵ Yet, due to the dynamism within the clientele, many lawyers in Uganda are specialising in particular legal fields, in order to acquire business. This is a global practice, which some commentators regard as

⁴ J M Ogoola, ‘Ethics: The heart and Soul of the Legal Profession’ in D B Dennison and P T Kalyegira (eds), *Legal Ethics and Professionalism: A Handbook for Uganda* (Globethics.net, Geneva 2014) 24.

⁵ For a more elaborate analysis, see F E Ssempebwa et al, ‘Report of the Joint Committee of the Law Council and the Uganda Law Society on amendments to the laws relating to the legal profession’, p.16, available at: <http://www.uls.or.ug/uploads/ULS%20AND%20LAW%20COUNCIL%20JOINT%20COMMITTEE%20REPORT-20120917-145504.pdf> (accessed 20 August 2020).

“one -shot businesses”.⁶ However, with this fragmented practice, it is crucial to analyse the understanding of human rights advocacy and work, among the lawyers. Moreover, the notion of lawyers as part of a profession, triggers thoughts about their responsibilities within the societies, balancing between their individual goals and those of the general public.⁷ Crucially, it is important to explore the responsibilities of lawyers in the advancement of human rights.

By exploring the responsibilities of lawyers in the advancement of human rights in Uganda, the article seeks to contribute to a developing socio-legal literature that addresses the contemporary issues of human rights and democracy in East Africa. Taye’s work analyses the role of lawyers in the formation

⁶ The Harvard Law Review Association ‘Developments in the Law: Lawyers’ Responsibilities and Lawyers’ Responses” (1994) 107(7) Harvard Law Review 1547-1674.

⁷ S L. Cummings, ‘Introduction: What Good Are Lawyers?’ In S L. Cummings (ed), *The Paradox of Professionalism : Lawyers and the Possibility of Justice* (New York: Cambridge University Press, New York 2011)1.

of the East African court of justice (EACJ), making a connection to the rule of law and human rights-related case law of the Court.⁸

Whilst existing literature explores the role of courts in the advancement of human rights in East Africa,⁹ this article centralises the role of lawyers, to show that they are uniquely paced to advance human rights.

As a methodological choice, the article draws substantially from the review of empirical literature, reports and attendance of workshops. It also draws upon information obtained from the

⁸ M T Taye, 'Human Rights, the Rule of Law and the East African Court of Justice: Lawyers and the Emergence of a Weak Regional Field' (2020) 34(2) *Temple International & Comparative Law Journal* 339-362.

⁹ Tomasz P. Milej, 'Human Rights Protection by International Courts - What Role for the East African Court of Justice?' (2018) 26(1) *African Journal of International & Comparative Law* 108-129; Liza Chula, 'The East African Court of Justice and Human Rights Jurisdiction: Drawing the Line' (2018) 3 *Strathmore Law Review* 1-24; Edline Eva Murungi, 'The Role of Courts in Promoting Social Transformation and Hinderances to Social Justice in Ugandan Courts' [2014] *Makerere Law Journal* 36-43.

author's experience as an advocate of the high court of Uganda. Between 2016 and 2017, I served on the Bar-Bench Committee of the Uganda Law Society (ULS). In October 2017, I delivered a presentation to lawyers and judges, on recent developments in privacy law, interception of communications and data protection in Uganda, during a seminar organized by Signum Advocates and ULS.¹⁰ The aforementioned work provided the impetus for thinking about this article. Besides its findings, its contribution lies in the way it conceptualises the role of lawyers in the protection and advancement of human rights.

To gather information about the role of lawyers in the protection and advancement of human rights, I attended several meetings convened by contestants in the ULS general elections

¹⁰ See, The innovation colloquium Report, p.13, available at: [file:///C:/Users/Admin/Downloads/Inaugural_Law_Technology_Innovation_Colloquium_Report_19th-20th_October_2017%20\(1\).pdf](file:///C:/Users/Admin/Downloads/Inaugural_Law_Technology_Innovation_Colloquium_Report_19th-20th_October_2017%20(1).pdf) (accessed 15 October 2020).

between April and August 2020.¹¹ Through critical discourse analysis, I noted the key human rights challenges in the legal practice. I also participated in the Annual General Meeting(AGM) of the ULS,on 7 August 2020. Following the arbitrary arrest and detention of lawyer Ambrose Tebyasa, a special meeting was convened by ULS.¹² My participation enabled me to garner the views and analyse the discourses of more than 150 lawyers, who participated in a poll to determine the most appropriate course of action. Based on these activities and assessment, the article draws a number of conclusions.

This article conceptualises lawyers’ engagement with the contemporary issues of human rights and democracy through two dimensions of responsibility- rule of law and, responsibilities to

¹¹ D Lumu, ‘Who will win Uganda Law Society presidency? *Observer*,10 September 2020,available at: <https://observer.ug/news/headlines/66520-who-will-win-uganda-law-society-presidency> (accessed 15 October 2020).

¹² ULS,’ Status update on the arrest and detention of advocate Ambrose Tebyasa’27 September 2020, available at: https://twitter.com/ug_lawsociety/status/1310261029683843074 (accessed 1 October 2020).

the public. It argues that lawyers have responsibilities to protect and advance human rights, beyond the conventional litigation and advocacy. The article is divided into four parts. The first part is the introduction, while the second part highlights the responsibilities of lawyers towards the legal system and rule of law. Part three analyses responsibilities towards the public, while developing a wider social agenda. It discusses the peculiar duties of lawyers as leaders, the role of legal aid services and the need for comprehensive innovative training in human rights. Finally, part four concludes with some remarks and recommendations that underscore the need for a more proactive legal environment.

2. Responsibilities to the legal system and Rule of Law

Lawyers are guardians of the rule of law and related principles like judicial independence. Former Supreme Court Justice George Kanyeihamba construes the doctrine of rule of law, primarily on

its support towards the courts and individual liberty.¹³ This relationship between democracy and justice is underpinned by the ability of courts to deliver fair and impartial decisions. However, factors like influence of public opinion, and coercion from executive and legislative organs fragment this relationship.¹⁴ In addition, several reports highlight an alarming level of corruption within Uganda's judiciary.¹⁵

Yet, the judiciary which is mandated to adjudicate such human rights cases is overwhelmed with case backlogs and inadequate staff. This challenge of the courts is acknowledged by Zeija, in his analysis on Uganda's regime of consumer protection of rights like privacy.¹⁶ Nonetheless, the courts are regarded as a "social

¹³ G W Kanyehamba, *Constitutional and Political History of Uganda: from 1894 to Present* (2nd ed., LawAfrica Publishing Ltd, Nairobi 2010) 273.

¹⁴ R D Barnes, 'Natural Legal Guardians of Judicial Independence and Academic Freedom' (2009) 77(4) *Fordham Law Review* 1466.

¹⁵ I M Kakooza, 'Combating Real and Perceived Corruption in the Uganda Judiciary' available at: http://judiciary.go.ug/files/downloads/Combating%20Real%20and%20Perceived%20Corruption%20in%20the%20Uganda%20Judiciary%20by%20Hon.%20Lady%20Justice%20Irene%20Mulyagonja%20%20Kakooza_IGG.pdf (accessed 28 September 2020).

¹⁶ F Zeija, 'Consumer Protection in Uganda: The Law in Theory and Practice' (2018) 41(4) *Journal of Consumer Policy* 455-471,461.

forum” for the advancement of human rights in Uganda.¹⁷ What then, is the role of lawyers the promotion of rule of law?

The rule of law means the “absence of arbitrary or discretionary power on the part of government”, with “equality of all citizens before the law” and “uniformity of courts”.¹⁸ This definition explicitly links to the adherence to principles of human rights and to the independence of the judiciary. Commentators also relate this with a functioning legal system operating without corruption.¹⁹ Strong and credible institutions of the state, like the judiciary, are vital in order to observe human rights. Moreover, fundamental human rights are well laid out in the Constitution of Uganda, under chapter four, which has been hailed as a global model.²⁰

¹⁷ Murungi, *supra* note 9.

¹⁸ AV Dicey, *Introduction to the Study of the Law of the Constitution* (Liberty Classics ed., Indianapolis 1915) 183–191.

¹⁹ H Esmaeili, I Marboe, and J Rehman, *The Rule of Law, Freedom of Expression and Islamic Law* (1st ed., Hart Publishing, Oxford 2017) 14.

²⁰ G W Kanyeihamba, *Kanyeihamba's Commentaries on Law, Politics and Governance* (African Books Collective, Oxford 2006)22.

Despite this excellent framework, there are often tensions between the judiciary and the legal society on one hand, and the executive on the other.²¹ In the opinion of the author, the executive arm of the state seeks to limit the independence of the judiciary, as a way of evading accountability for human rights violations. Little wonder, a host of contentious constitutional amendments were made in the previous decade, which elicited public outrage and litigation. Most notably, the removal of the Presidential age-limit clause of the Constitution in 2018, which was upheld by the East African Court of Justice²² As jurists point out, “the most powerful legal instrument for legal change in the state is legislation”.²³

²¹ *Ibid* at p. 242.

²² *Male Mabirizi v The Attorney General of the Republic of Uganda*, Reference No. 6 of 2019, First Instance Judgment, 30 September 2020, available at: <https://www.eacj.org/wp-content/uploads/2020/09/Reference-No.-6-of-20191.pdf> (accessed 27 May 2021).

²³ G W Kanyeihamba, *supra note 20*, at p. 243.

The idea of thinking about lawyers within the paradigm of responsibility, provides an additional tool for human rights advocacy and litigation in developing countries like Uganda. This approach is affirmed by scholarly experts, that link legal work with the pursuit of justice and rule of law.²⁴ Scholars emphasise the normative projection of the role of lawyers as agents of the rule of law.²⁵ This emphasis calls for a proactive responsibility for lawyers to always advocate for the rule of law through either litigation or collective solidarity.

One way of achieving this could be in the form of advocacy, besides court litigation, in order to exposure human rights abuses and marshal public action and accountability. Interesting examples could be drawn from other jurisdictions, like the American Bar Association rule of law letters, which exemplify

²⁴ D L Rhode, 'Law, Lawyers, and the Pursuit of Justice ' (2002) 70(5) Fordham Law Review 1543-1562.

²⁵ S Dezalay, 'Introduction: Wars on Law, Wars through Law? Law and Lawyers in Times of Crisis' (2020) 47(S1) Journal of Law and Society S7; A Dieng, 'Role of Judges and Lawyers in Defending the Rule of Law' (1997) 21(2) Fordham International Law Journal 550-557.

the ability of lawyers to command public attention and protect human rights.²⁶ In south Africa, legal struggles for social justice contributed to the transformation of the judiciary in the post-apartheid democracy.²⁷ The African Bar Association was instrumental in intervening in human rights violations by state actors, against lawyers in different African countries.²⁸

One notable practice within the Uganda law society relates to the periodic reports from the President of the ULS. In addition, the society's Quarterly reports reflect an important component of Rule of law advocacy.²⁹ The use of media by lawyers, through newspaper articles, media interviews and radio talk shows are

²⁶ J Shestack, 'Lawyers' Role in Human Rights: Working to ensure a just rule of law worldwide is part of our goal' (1998) 84(1) American Bar Association Journal 8.

²⁷ Penelope Andrews, 'Without Fear, Favor or Prejudice: Judicial Independence and the Transformation of the Judiciary in South Africa' In S L. Cummings (ed), *The Paradox of Professionalism : Lawyers and the Possibility of Justice* (New York: Cambridge University Press, New York 2011)197.

²⁸ T O Elias, 'Organisation and Development of the Legal Profession in Africa, in Particular the Ability of the Bar and Judiciary to uphold the Rights of Both the Citizen and the State' (1986) 1 Denning Law Journal 64.

²⁹ ULS, Quarterly Report on the State of the Rule of Law for the period July-September,p.8, available at: http://www.uls.or.ug/site/assets/files/1401/uls_2019_-_rule_of_law_3rd_quarterly_report_sept_2019.pdf (accessed 13 September 2020).

recognised as key tools for the advancement of human rights.³⁰

Crucially, there is a strong basis for the continued role of lawyers in advancing the rule of law, either collectively or individually.

3. Developing a wider social agenda for the public

In addition to the general responsibilities towards the legal system and rule of law, lawyers have a duty towards the public.³¹

According to former ULS President Ruth Sebatindira, “in the interests of the administration of justice, a lawyer has an overriding duty to the court, to the standards of his profession and to the public”.³² This emphasis mirrors the wider interconnections among legal, political and social dynamics

³⁰ H Atuhairwe, ‘Communication And Marketing By Advocates In Uganda’ in D B Dennison and P T Kalyegira (eds), *Legal Ethics and Professionalism: A Handbook for Uganda* (Globethics.net, Geneva 2014) 192-193.

³¹ W Bennett, *The Lawyer's Myth : Reviving Ideals in the Legal Profession* (University of Chicago Press, Chicago 2002) 128.

³² R Sebatindira, 'Uganda: A Lawyer's Duty to the Court Overrides His Duty to Clients' *Daily Monitor*, 5 February 2016, available at: <https://www.monitor.co.ug/OpEd/Commentary/A-lawyers-duty-to-the-court-overrides-his-duty-to-clients/689364-3062966-2hx87j/index.html> (accessed 20 August 2020).

across the African continent.³³ This commitment to public service is also highlighted among the high barriers to becoming a lawyer in many jurisdictions.³⁴

3.1 Leadership and shared responsibility

How is the role of a lawyer as a leader related to the protection and advancement of human rights? This question triggers a host of arguments, but also helps to understand the conditions under which lawyers advance human rights. Historical and comparative studies observe a developing influence of “political lawyering”, with the growth of political liberalism.³⁵ The ascribed democratic role of lawyers in developing countries like Uganda traces back

³³ S Dezalay, ‘Lawyers in Africa: Brokers of the State, Intermediaries of Globalization’ (2018) 25(2) *Indiana Journal of Global Legal Studies* 642.

³⁴ R G Pearce and S Nasser, ‘The virtue of low barriers to becoming a lawyer: promoting liberal and democratic values’ (2012) 19(2) *International Journal of the Legal Profession* 357–378.

³⁵ T C Halliday, ‘The Politics of Lawyers: An Emerging Agenda’ (1999) 24(4) *Law & Social Inquiry* 1007-1011; L Esbrook, ‘Where Did All the Lawyers Go? Challenging Perceptions of the Lawyer as Civic Linchpin in New Haven: 1830-1890’ (2014) 3(2) *British Journal of American Legal Studies* 367.

to the idea of a liberal lawyer in established jurisdictions like the United States.³⁶

In in context of the evolving legal profession, lawyers are also regarded as “changemakers”, as they use their legal skills to solve social challenges.³⁷ Whereas legal practice is a profession, it is unique, due to the flexibility and nature of work. Lawyers are able to practice their profession, while taking on social or communal work. One could argue for a need to separate law from political leadership, in order to protect the sanctity of the legal profession. Cummings classifies lawyers, as those who are traditional and those in the progressive era, who have a direct relation to democratic movements.³⁸ Such a debate inevitably

³⁶ B Green and R Pearce, “Public Service Must Begin at Home”: The Lawyer as Civics Teacher in Everyday Practice’ (2009) 50(4) William and Mary Law Review 1234.

³⁷ D Nahmias, 'The Changemaker Lawyer: Innovating the Legal Profession for Social Change' (2018) 106(4) California Law Review 1343.

³⁸ S L Cummings (ed.), *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (Cambridge University Press, New York 2011) 41.

draws towards discussions about the characteristics of the legal profession.

Kronman identifies four characteristics that make legal practice a profession.³⁹ Firstly, he views the profession as a “public calling to serve the community and not one’s own good”. Secondly, he highlights the “non-specialized nature of legal practice”, which grants lawyers freedom to carry out a range of activity. Thirdly, he argues that the capacity of judgment is inherently unique in the legal profession. Then fourthly, he empathizes the element of time and historical dynamism, in what he regards as “self-conscious historical development”, arguing that the law is internally connected to its past.⁴⁰ In addition to these virtues, other definitions of legal professionalism emphasize

³⁹ A Kronman, ‘The law as a profession’ in D L Rhode (ed.), *Ethics in Practice: Lawyers’ Roles, Responsibilities, and Regulation* (Oxford University Press, New York 2000) 31.

⁴⁰ *Ibid* at 31-34.

the importance of peer review, rule compliance, self-reflection and self-assessment.⁴¹

Such elaborate definitions suggest a key role of lawyers as leaders. Lawyers in the United States of America are historically pointed out among the “country’s policy elites and its political leadership class, in and out of office, in private practice and on leave from it”.⁴² The same is said of Uganda, where lawyers are influential policy leaders in Parliament and local government. The role of lawyers towards the public is very essential in Uganda, due to the low levels of knowledge about the justice system, among the majority of the people.⁴³ What is needed, then, is to mentor lawyers for leadership in order to address human rights concerns, through enhanced public engagement.

⁴¹ N W Hamilton and V Monson, ‘Legal Education’s Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student’s Professional Formation (Professionalism)’ (2011) 9(2) *University of St. Thomas Law Journal* 325.

⁴² R W Gordon, ‘The Return of the Lawyer-statesman?’ (2017) 69(6) *Stanford Law Review* 1762.

⁴³ WT Kiryabwire, ‘Duties of the Ugandan Advocate’ in D B Dennison and P T Kalyegira (eds), *Legal Ethics and Professionalism: A Handbook for Uganda* (Globethics.net, Geneva 2014) 62.

⁴³ Bennett *supra* note 31, p. 128.

As leaders, lawyers' discourse have an implicit influence on public opinions and also shape human rights narratives. Gad Barzilai posits that “when lawyers talk and furthermore when they are silent in the political sphere, and yet practice as lawyers, they actually determine the boundaries of the political discourse ~~xx~~and political deliberations”.⁴⁴ Similarly, Bennett argues that lawyers and the legal profession should lead the debates on the conception of justice and fairness in society, since they have the necessary training, expertise and disposition.⁴⁵ In light of these conceptions, Ugandan lawyers ought to take the lead by engaging in public work and discourses on human rights. In the opinion of the author, leadership is a shared responsibility between the leaders and the public.

⁴⁴ Gad Barzilai, ‘The Ambivalent Language of Lawyers: Between Liberal Politics, Economic Liberalism, Silence, and Dissent’ in Terence C. Halliday, Lucien Karpik and Malcolm Feeley (eds), *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism* (1st edn, Hart Publications 2007)248.

⁴⁵ Bennett *supra* note 31, p. 139.

3.2 Legal Aid as a tool for advancing human rights and the rule of law

Legal aid is an important element in the promotion of the rule of law and human rights. There has been a tremendous development of legal aid services in Uganda, since the enactment of the Advocates Act in 1970. Before that, only a handful of lawyers at Makerere University law school offered legal aid services.⁴⁶ To address the institutional and capacity challenges, law students are permitted to offer legal aid services.⁴⁷ The Law Development Centre Act, 1970 includes as one of its functions the establishment of Legal Aid Clinic in Uganda. I had set up a Legal Aid Department and actually sponsored Mr. Iya to study Legal Aid in the US but he defected and never returned. Look this up and advocate the establishment of a state financed Legal Aid

⁴⁶ S Ross, 'The Advocates Act, 1970, Uganda' (1971) 15(2) Journal of African Law 232.

⁴⁷ Gordon *supra* note 42, p. 1762. See also, Advocates (Legal Aid to Indigent Persons) Regulations, 2007, s.4. legal personnel means a lawyer, advocate or paralegal employed by a legal aid provider.

Centre, reviving that at LDC or as a separate Institution. This is a major function. The legal aid would provide legal services to indigent poor in civil cases a function now filled by the Women Lawyers Associations, mostly. The advantage of making part of LDC is that then Post Graduate Bar Course students can be deployed to use it as part of their training.

The cardinal normative framework for legal aid services in Uganda is derived from the Constitutional right to a fair hearing which states that; “Every person who is charged with a criminal offence shall in the case of any offence which carries a sentence of death or imprisonment for life be entitled to legal representation at the expense of the State”.⁴⁸ However, the provision of free legal services is limited to persons who are accused of capital offences like murder. Beyond this narrow

⁴⁸ See Article 28 of Constitution of the Republic of Uganda (adopted 22 September 1995).

provision, victims of human rights violations require access to justice as a human right. Moreover, such rights are recognized beyond the domestic legal arena, through international human rights obligations that are legally binding on Uganda, as a state party.⁴⁹This suggests that lawyers have responsibilities to the people through the provision of *pro bono* services, especially to provide remedies for victims. *Pro bono publico* is latin phrase that means “for the public good” and within this context, refers to the provision of designated legal aid work without pay, for vulnerable or underprivileged persons within society.⁵⁰

Despite the flexibility of the legal aid scheme, it is limited due to capacity related challenges. Observers note that legal aid

⁴⁹ See Article 14(1) of The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ((adopted 10 December 1984, entry into force 26 June 1987) 1465 UNTS 85) on the obligation of states to provide redress to victims of torture, as an “enforceable right to fair and adequate compensation”. See also Article 2(3) of International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force 23 March 1976) 993 UNTS 171) on duty of the states to develop and provide effective remedies to victims.

⁵⁰ A C Kakooza, ‘Access to Justice and Pro Bono Legal Services in Uganda’ in D B Dennison and P T Kalyegira (eds), *Legal Ethics and Professionalism: A Handbook for Uganda* (Globethics.net, Geneva 2014) 267.

services provided by ULS members are predominantly urban centred and dependant on donor funds.⁵¹ In addition, studies indicate that “most Ugandans are unaware of the location or availability of legal aid providers”.⁵² From a normative perspective, only few lawyers provide voluntary pro bono services, due to the lack of implementation of the relevant rules by the ULS and Law Council.⁵³ These challenges require a rethinking of the legal aid strategies in Uganda, in order to advance and protect human rights. Moreover, the commitment to legal aid and pro bono service is not just a concern for the public good, but also enhances the lawyers experience and reputation.⁵⁴

⁵¹ Report of Legal Aid Service Providers Network (LASPNET), ‘Cost Benefit Analysis of the Uganda National Legal Aid Policy’(2016),p.11, available at: <https://www.jlos.go.ug/index.php/document-centre/legal-aid/403-cost-benefit-analysis-of-the-legal-aid-policy/file> (accessed 20 September 2020) .

⁵² *Ibid.*,at p. 21.

⁵³ Pro Bono Institute, ‘Pro Bono Practices and Opportunities in Uganda’ *PBI*,2019,p.5,available at: <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-Uganda-2.pdf>.(accessed 4 October 2020).

⁵⁴ R Granfield and L Mather, *Private Lawyers and the Public Interest : The Evolving Role of Pro Bono in the Legal Profession*(Oxford University Press, New York 2009)251.

To fill this void, the instigation of public interest litigation is vital. On positive note, public interest litigation has established a constitutional framework for human rights litigation through a host of decisions that allow for an expansive legal challenge of state actions, and affirmative action like prevention of pregnancy-related deaths.⁵⁵ For example, regional and international legal principles of progressive realization are now accepted in the interpretation of economic, social and cultural rights.⁵⁶

It is also critically important, however, not to lose sight of the practical difficulties faced by most young lawyers in Uganda, the majority of whom receive low remuneration.⁵⁷ Despite this challenge, the newly qualified lawyers can still provide pro bono services through innovation in cost effective ways. Research

⁵⁵ *Centre for Health, Human Rights and Development & 3 Others v. Attorney General* (2015), Constitutional Appeal No. 1 of 2013, 22-23.

⁵⁶ *Centre For Health, Human Rights and Development & 2 Ors Vs the Executive Director, Mulago Referral Hospital & Anor* (Civil Suit NO. 212 OF 2013) [2017] UGHCCD, 7-11.

⁵⁷ V Namale, 'Set minimum wage for junior lawyers' *Daily monitor*, 22 December 2018, available at: <https://www.monitor.co.ug/OpEd/Letters/-minimum-wage-junior-lawyers-graduates-Uganda/806314-4905962-v34i8mz/index.html> (accessed 5 August 2020).

highlights the need for innovation in legal services, as most clients seek for more proactive and innovative lawyers with new skillsets.⁵⁸ The internet is a powerful tool to engage citizens about their legal rights. A good example is an organization of young lawyers, Barefoot Law, which uses online media to educate people about human rights.⁵⁹

Another challenge relates to abuse of lawyers' rights by state agents, during their course of duty. In some instances, lawyers are arbitrarily arrested and detained in relation to their client's cases.⁶⁰ A common theme across ULS election candidates, regarding the solution to the violations of rights against lawyers,

⁵⁸ M DeStefano, 'Innovation: A New Key Discipline for Lawyers and Legal Education' in M DeStefano and G Dobrauz-Saldapenna (eds), *New Suits: Appetite for Disruption in the Legal World* (1st edition, Stämpfli Verlag, Bern 2019) 106.

⁵⁹ A Fallon, 'Ugandan Lawyer Revolutionises Access to Justice with Just an iPhone and Facebook' *Inter Press Service*, 29 May 2014, available at: <http://www.ipsnews.net/2014/05/ugandan-lawyer-revolutionises-access-justice-iphone-facebook/> (accessed 5 August 2020).

⁶⁰ Business & Human Rights Resource Centre 'Uganda: Police arrest and charge seven lawyers investigating circumstances of alleged forceful eviction of locals by multinationals', 7 July 2020, available at: <https://www.business-humanrights.org/en/latest-news/uganda-police-arrest-and-charge-seven-lawyers-investigating-circumstances-of-alleged-forceful-eviction-of-locals-by-multinationals/> (accessed 6 August 2020). See also, ULS, 'Statement on the Arrest and Detention of Advocate Ambrose Tebyasa' *ULS*, 27 September 2020, available at: https://twitter.com/ug_lawsociety/status/1310232584216076290 (accessed 27 September 2020).

was the need for a proactive collective action by the society against the perpetrators.⁶¹ From the discourse analysis made after the ULS AGM in August 2020, the majority of lawyers, in addition to this collective action, allude to the critical role of lawyers in the protection of human rights. Like highlighted in the Shaban Nkuutu case,⁶² judicial activism is also a pathway for protecting the rights of lawyers and advancement of human rights in general. In addition, such solidarity among the lawyers helps to improve the rule of law in the country.⁶³

3.3 Rethinking the training agenda: Education through innovation

Another way in which lawyers can fulfill their responsibilities towards the public is through supporting legal education. In advocating for human rights education in primary and secondary

⁶¹ Speeches of Presidential candidates (May-June 2020).

⁶² *Uganda vs Nkuutu Shaban*, *supra* note 8.

⁶³ Dieng *supra* note 25, p. 553.

school, Stephanie Yamniuk argues that it “promotes critical engagement with social and political realities”.⁶⁴

The legal education in Uganda is comprised of two primary educational components. First, a lawyer is required to have completed a Bachelors of Law degree from a law school accredited by both the National Council for Higher Education and the Law Council and second, a postgraduate Diploma in Legal Practice from the Law Development Centre. Historically, this contemporary legal education has been criticized due to the absence of concise roles for lawyers.⁶⁵ Law students graduate without a clear career trajectory, besides the expectation to take the bar course.

This lack of a clear trajectory could be a result of the recent proliferation of law schools in Uganda and deteriorating teaching

⁶⁴ S Yamniuk, ‘The importance of Including Human Rights Education in Primary and Secondary Schools: A focus on empathy and respect’ in J Zajda and S Ozdowski (eds), *Human Rights Education and Reforms Globalisation* (1st ed., Springer Netherlands, Dordrecht 2016)147.

⁶⁵ S D Ross, ‘A comparative study of the legal profession in East Africa’ (1973) 17(3) *Journal of African Law* 285.

standards. In his discussion on political-legal developments since 1986, Semugabi notes profound technical and capacity related challenges emanating from liberalization of the law course at university level.⁶⁶ Similar concerns are raised by Gakeri, regarding the legal education in Kenya, which he considers as a “commercialism over other imperatives in university education”.⁶⁷ Despite these challenges, there is still room for improvement in the legal education.

Lawyers are also conceptualized as “citizen-lawyers” and “civics teachers”, with broader responsibility towards the public good into their practice.⁶⁸ Within the rubric of education, I posit that law school-based leaders have the power to drive change through innovation. By teaching human rights subjects at law

⁶⁶ J A Semugabi, ‘Recent Political–Legal Developments, Practical Legal Training and the Law Development Centre Library in Uganda’ (2013) 13(1) *Legal Information Management* 43-51.

⁶⁷ J K Gakeri, ‘Enhancing Legal Education in East Africa: Contextualizing the Role of the Legislature, Council of Legal Education and the Judiciary in Kenya’ (2016) 6(4) *International Journal of Humanities and Social Science* 74.

⁶⁸ Pearce and Nasser, *supra* note 33, p. 358; Green and Pearce, *supra* note 35, p. 1234.

schools, lawyers can influence both faculty and student behavior by incorporating aspects of human rights in their teaching and research. In addition, law schools can facilitate the much-needed public dialogue about human rights concerns.

A good example is the research and drafting of a “Prevention of Acid attacks Bill”, by law students at Uganda Christian University.⁶⁹ Such a project enhances the ability of law students to advance their academic careers, while maintaining practical relevance within the society. In addition, there is a need for collaborations with non-academic partners in order to facilitate and integrate human rights education in institutions. These include the Uganda Human Rights Commission and Office of the United Nations High Commissioner for Human Rights

⁶⁹ Uganda Christian University drafts a “prevention of acid attacks” bill, *Uganda Christian News*, 29 May 2014, available at: <https://www.ugchristiannews.com/uganda-christian-university-drafts-a-prevention-of-acid-attacks-bill/> (accessed 07 October 2020).

(OHCHR).⁷⁰ Lawyers make meaningful impact through such research and public interest projects, while training law students.

Beyond the law schools, human rights education should target diverse people within the societies, through both formal and non-formal avenues. In order to address the capacity gaps and barriers of poor infrastructure, Yeshanew recommends the use of legal trainees.⁷¹ According to Rhode, this also helps to reduce the challenge of limited access to justice.⁷² In this context, the lawyers' responsibilities relate to active participation in human rights education programs both within and outside the academic fora.

⁷⁰ M Karugaba, 'UCU to teach short human rights courses' *New Vision*, 22 August 2017, available at: https://www.newvision.co.ug/new_vision/news/1460260/ucu-teach-short-human-rights-courses (accessed 25 August 2020).

⁷¹ S A Yeshanew, 'Utilising the Promotional Mandate of the African Commission on Human and Peoples' Rights to Promote Human Rights Education in Africa' (2007) 7(1) *African Human Rights Law Journal* 194.

⁷² D L Rhode, 'In the Interests of Justice: a Comparative Perspective on Access to Legal Services and Accountability of the Legal Profession' (2003) 56 *Current Legal Problems* 112; D L Rhode, "Access to Justice: An Agenda for Legal Education and Research" (2013) 62(4) *Journal of Legal Education* 531-550.

With the evolving digital technology, we can think of ways in human rights can be advanced using technology. Technology and business play a significant role not only in improving peoples' standards of living, but also in determining their relationships. These developments and innovations are also manifest in the legal profession.⁷³ Therefore, innovation in education could encompass the use of digital media spaces for monitoring human rights standards.

Finally, it is important to note that beyond Uganda and East Africa, human rights lawyers in countries like the United Kingdom experience some similar challenges, as they apply the law to limit arbitrary powers.⁷⁴ One can argue that states are generally intimidated by the enormous influence of lawyers

⁷³ Examination of Uganda Law Society (ULS), Annual Report (2017). It was reported that ULS had 11,300 organic followers on Twitter and 7794 Organic likes on Facebook in 2018,p.17, available at: http://www.uls.or.ug/site/assets/files/1275/uls_annual_report_2017.pdf (accessed 7 June 2020).

⁷⁴ F de Londras, 'When government ministers denigrate lawyers, their real target is the rule of law' *The Conversation*, 15 October 2020, available at: <https://theconversation.com/when-government-ministers-denigrate-lawyers-their-real-target-is-the-rule-of-law-148201>(accessed 15 October 2020).

within the arenas of democracy and human rights. What then, should be done to maintain the lawyers' grip on shoes of human rights? I posit that lawyers should make use of regional and transnational networks in order to share best practices, but also develop multifaceted strategies for advancement of human rights in country specific contexts.

There is a need to overhaul the entire curriculum at the Law Schools. In a typical US Law School, core compulsory subjects are identified: in Uganda; Criminal Law, Contract, Torts, Constitutional Law (which would include Human Rights Law) and Introduction to Law. The Second and Third Years should offer concentrations (bundles which would also identify core subjects but include many optional subjects. In the Second year: Domestic Relations, Succession, Company Law, Land Law, Customary Law and Public Law. In the final year students should be introduced to such subjects as: Intellectual Property Law,

Trade Law, Law and Development, Foreign Direct Investment Law, Accountancy and the Law, Commercial Law and Arbitration, Labour Law, International Law, International Organizations Law, Conflicts of Laws, Advanced Human Rights Law, Jurisprudence etc]. Students would be encouraged to select subjects according to what they intend to do after graduation.

4. Conclusion and recommendations: Multifaceted Strategies

This Article has conceptualized the professional responsibility of lawyers from a human rights perspective. It also explored the ways in which lawyers are finding occasions to advance and protect human rights. Effective human rights litigation has the ability to promote structural and systemic changes in society.

As this article has shown, the Ugandan context can be used as a lens through which to explore similar realities within East Africa, where lawyers seek to promote the rule of law and human rights. Elsewhere, I have argued that East African states are

legally obligated to establish and implement legal measures that do not infringe upon the human rights of the people.⁷⁵

A notable implication of this article has been the illustration of the power of collective legal action in the advancement of human rights in two ways: First, the case of Shaban Nkuutu illustrates that lawyers are making pathways towards the advancement and protection of human rights. Second, it points towards a growing proactive law society where members collectively fight for human rights and the rule of law. Nonetheless, there is more work to be done, in order to sensitize the public about their rights. The services of lawyers are mostly centered within the central region of the country. This is a result of both professional and societal constraints, such as limited

⁷⁵ T R Kirabira, 'New Digital Media: Freedom of Expression and Safeguarding Journalists in the Context of East Africa' (2020) 2(1) Cross-cultural Human Rights Review 49–71.

resources and continuous attacks on advocates in the course of their work.⁷⁶

In order to overcome these barriers, there needs to be effective professional collaboration among lawyers, large law firms and small law firms, in order to share best practices in human rights implementation. Deeper information sharing is a vital component within the legal profession.⁷⁷ Secondly, law schools should introduce courses in clinical legal education, with partnerships with external organizations and human rights practitioners. Thirdly, legal aid providers should collaborate with the academia, especially on research about the global challenges of climate and human rights.

⁷⁶ Uganda Law Society (ULS) Quarterly Report on the State of the Rule of Law for the period July-September, at http://www.uls.or.ug/site/assets/files/1401/uls_2019_-_rule_of_law_3rd_quarterly_report_sept_2019.pdf. (accessed 27 May 2021)p. 12.

⁷⁷ S. J. Shackelford, 'Human Rights and Cybersecurity Due Diligence: A Comparative Study' (2017) 5094 University of Michigan Journal of Law Reform 885.

The ULS members could benefit from regional practices, through the exchange of opinions and experiences under the East Africa Law Society and African Bar Association. Partnerships and collaboration with Non-Government Organisations would enable lawyers to acquire the relevant skills and resources in order to litigate cases at the domestic, regional and international levels. In this way, it is recommended for lawyers to join global movements, in order to explore alternatives at the domestic, regional and international fora.