

# REPORT OF THE NATIONAL CONFERENCE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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Main Hall



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## **1. About the organisers**

### ***1.1 Initiative for Social & Economic Rights (ISER)***

ISER is an independent, not-for-profit human rights organization responsible for promoting the effective understanding, monitoring, implementation and realization of Economic and Social Rights in Uganda. This they do by promoting a Human Rights Based approach to the design and implementation of legal and policy frameworks relating to Economic and Social Rights; building awareness about Economic and Social Rights and explore strategies for securing their realization; broadening individuals' and communities' access to Economic and Social Rights in Uganda; strengthening community participation in the design and implementation of social and economic policies and programs that affect them; ensuring government accountability for Economic and Social Rights through community empowerment; and mobilizing and building capacity of Non Governmental organizations and the media to advocate more effectively for Economic and Social Rights including using Regional and International mechanisms.

### ***1.2 Human Rights Network – Uganda (HURINET)***

HURINET-U was established in 1993 by a group of eight Human Rights organizations and was formally registered as an independent, nonpartisan and not for profit organization in 1994. The identity of HURINET-U lies with its diverse membership of 32 NGOs. Membership is drawn from organizations that are committed to a wide range of human rights issues which are complementary in terms of areas of focus including; civil and political rights, economic social and political rights, child rights, gender and women's issues, peace building and conflict resolution, prisoners' rights, refugee rights and labor rights. Members range from purely Ugandan NGOs to international organizations. HURINET runs four core programmes which include: (i) Research, Information Exchange and Advocacy Program (RIA) on a range of issues aimed at underscoring rule of Law, good governance, democracy and the promotion, protection and respect of human rights; (ii) Capacity Building and Network Development Programme that equips key actors with pertinent skills, knowledge and experience to pursue Human rights undertakings in a more efficient, effective and sustainable manner; (iii) Human Rights Fund Programme (HRF) established in 2001 in collaboration with the Swedish International Development Agency (SIDA) and the Royal Netherlands Embassy (RNE) as an initiative to support the promotion and defense of human rights in Uganda; and (iv) Institutional Strengthening and Development which involves strengthening the operational and policy base of HURINET-U with the view of enhancing effectiveness, and enhancing mutuality of understanding between HURINET-U and her relevant publics - as well as project her image as the leading Human Rights Network in Uganda.

### ***1.3 Centre for Health, Human Rights and Development (CEHURD)***

CEHURD is an indigenous, non-profit, research and advocacy organization which is pioneering the enforcement of human rights and the justiciability of the right to health in Eastern Africa. CEHURD was founded in 2007 and was registered under the laws of Uganda as a company limited by guarantee. It was formed to contribute towards ensuring that laws and policies are used as principal tools for the promotion and protection of health and human rights of populations in Uganda and in the East African region. CEHURD realizes this through a set of programs: (1) Human Rights Documentation and Advocacy; (2) Community Empowerment; and (3) strategic Litigation.

CEHURD focuses its efforts on critical issues of human rights and health systems in East Africa such as sexual and reproductive health rights, trade and health, and medical ethics which affect the vulnerable and less-advantaged populations such as women, children, orphans, sexual minorities, people living with HIV/AIDS, persons with disabilities, internally-displaced persons, refugee populations and victims of violence, torture, disasters and conflict.

### ***1.4 The Public Interest Law Clinic (PILAC)***

The Public Interest Law Clinic (PILAC) is the premium University Based Law Clinic in Uganda. Established in 2012, PILAC seeks to promote Social Justice through a hands-on experiential learning as well as exposing students to 'live' cases of individuals who have been confronted by the law in its varied manifestations. The Clinic has a Clinical Legal Education (CLE) programme, which is a hands-on learning programme intended to equip law students with public lawyering skills. This is done by supporting the students in undertaking research on selected public interest cases and implementing a legislative advocacy programme through which students are required to analyze and provide commentary on bills before Parliament. As part of CLE, the Clinic runs a Guest Lecturing Programme, which allows practitioners in various fields of public interest law to interact with students and share their practical experiences. The Clinic also runs a Special Internship programme and a Public Lecture Series as some of the ways of giving students the opportunity to interact with international and local practitioners and Human Rights Based Organisations to enable students learn from real experiences of people in the field. PILAC has also extended the benefits of hands-on practical learning through the establishment of a Community Law Programme and mobile clinic (CLAPMOC), which is used to extend legal literacy sessions and other legal services to the communities around the university.

### ***1.5 Panel Conveners included:***

- (a) The Public Interest Law Clinic (PILAC)
- (b) Human Rights Net Work, Uganda (HURINET)
- (c) Platform for Labour Action (PLA)
- (d) Minority Rights Group International (MRG)
- (e) Global Rights Alert (GRA)
- (f) Initiative for Social and Economic Rights (ISER)
- (g) Centre for health, Human Rights and Development (CEHURD)

### ***1.6 Message from the organisers***

This was the Inaugural Conference that brought together several stake holders ranging from local NGOs and CBOs, Government, Academia, Advocates, Students and Media and it is hoped that this will subsequently be part of our Annual calendars where stake holders meet and deliberate on the status of the realisation of these rights with a hope of getting policy points for joint advocacy.

## **2. Introduction**

Uganda has ratified several International and Regional Human Rights treaties related to Economic, Social and Cultural Rights (ESCRs). These include the International Convention on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights (ACHPR) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) among others.

However these International and regional commitments have not been fully incorporated into domestic law. The Constitution of Uganda has a mixed system where some ESCRs are under the justiciable parts of the Bill of Rights in Chapter 4, while the majority are relegated under the "non-justiciable" National Objectives and Directive Principles of State Policy (NODPSP) in the preamble of the Constitution. The ESCRs are taken to be more of aspirations and development goals as opposed to being rights that can legitimately be claimed, and violations of which would entitle one to an effective remedy. In practice therefore, ESCRs are hardly known or understood in Uganda and are rarely enforced.

In contrast, some countries on the African Continent like South Africa and Kenya have taken a great leap in the direction of ESCRs and have expressly provided for these rights in their Bills of Rights. This has made their governments more accountable to the populace.

It is the need to re-awaken the quest for the ESCRs in Uganda that prompted and informed the organizing of this Conference. The rationale is to annually bring all stakeholders together and take stock of the state of ESCRs in Uganda through sharing of experiences, challenges and strategies regarding the realization of these rights.

## **2.1 Goals and Objectives of Conference**

The organisers were committed to planning a conference which is practical and action-oriented. The aim was to translate the knowledge and conclusions generated from this conference into concrete actions and documents which can direct future programmatic interventions, and be used for advocacy purposes as well as for the training of the legislators, legal practitioners, judiciary and law enforcement officials, civil society as well as community based organisations. The overall goal of the conference was to promote the realization of ESCRs as a pre-requisite for social and economic transformation in Uganda. Specific Objectives included:

- (i) To raise awareness about ESCRs in Uganda and their relevance in promoting social economic transformation;
- (ii) To create a platform for knowledge and information sharing among government and non-government actors;
- (iii) To agree key issues to inform advocacy, legal and policy development/review;
- (iv) To enable network development and encourage collective advocacy that allows organizations/institutions to build their capacity, extend their reach and influence;
- (v) To assess the extent to which Uganda has lived up to its international obligations; and
- (vi) To appraise the status of ESCRs in the country on an annual basis.

## **2.2 Summary of Emerging Issues**

### **Issues**

- The law is the most durable & most effective tool that can be used to redistribute resources and in the process cause a realization of ESCRs.
- There are a number of international and regional conventions and instruments which Uganda has ratified that provide for the protection of ESCRs and establish standards in the area of ESCRs. Uganda has not domesticated a number of them. There is need to domesticate the said instruments and to move the ESCRs from the Objectives' part of the Constitution to Chapter four in order to make the rights expressly justiciable
- The justice system has not been fully utilised to aid the defining of the core content of the ESCRs in the Ugandan context.
- Legal practitioners have not had the hands-on training in the area of ESCRs and public interest litigation. Those that have made attempts at litigation on ESCRs have been failed by their ill-preparation.
- Litigating ESCRs should be very strategic, well framed, well argued, and all possible consequences appreciated. Every step taken needs to be well thought out in terms of what consequence it will have on the campaign for ESCRs.
- The different actors should read and utilize Art 8A of the Constitution of Uganda to advance ESCRs. This provision needs to be tested in courts.
- It is vital for the Critical Civil Society (Trade Unions, Professional bodies) to build a social base (a body of persons willing to push for ESCRs). Rights in the Constitution are meaningless where they don't have a social base.
- Quasi-judicial bodies (Human Rights Commission and The Equal Opportunities Commission) can be an avenue for the enforcement of ESCRs. Civil Society Organisations have opportunity to enforce decisions of the quasi-judicial bodies in the main-stream courts, but this has not been explored.
- There is nexus between poverty, malnutrition and food security. Poverty is responsible for the lack of food, leading to malnutrition & malnutrition preserves poverty status quo.



- To address the food insecurity concerns, stakeholders need to build a coalition for all parties along the food chain (producers, distributors, value addition, consumers), to tackle the concerns as food changes hands. Community should be involved in advocacy and production of food.
- There are divergent opinions on whether Uganda has a 'Minimum wage' and what this minimum wage is. The law was found to be archaic, non-reflective to the prevailing times.
- There is no record of any report from any Civil Society Organization highlighting the need for a minimum wage. Civil Society needs to explore the quest for a minimum wage as one of their programmes.
- There is a glaring gap in the legal framework on minorities and indigenous people. Only one country in Africa has ratified the Convention on Indigenous people because Africa believes they are all indigenous. Art 36 Constitution only makes provision for minorities not indigenous.
- All the indigenous peoples of Uganda are threatened by activities in the gazetted natural resources like game reserves, and have been displaced by these activities.
- There is need for the indigenous and marginalized peoples to form a single front to advocate and pursue strategic litigation for their rights.
- If the land question can be addressed, the other ESCRs will fall in place.
- Oil has taken centre stage in Uganda's Extractives industry debates at the expense of other mineral resources.
- Uganda is ill prepared for the exploration of the oil; the debates and the processes are not inclusive of all (rich & poor, men & women, displaced & displacers, regions across the country); Uganda and Ugandans are short in skills and expertise; the principles of resettlement (resettlement, compensation and parallel benefit sharing) of the people have not been met.

- The oil debate needs to be opened-up to all peoples and the extractives debate should cover all mineral resources to deter neglect of other extractives.
- Education in Uganda has become a private matter and is no longer a government affair. There a big drawback in leaving the basic pre-primary education (nursery) wholly in the hands of private owners and thus business owners decide on what to teach the children.
- The rate of growth of private owners is affecting the quality of education in Uganda. The Ministry of Education & Sports lacks capacity to control and regulate privately owned education.
- Government has ventured into Public Private Partnerships (PPP) to have more schools for Universal Secondary Education (USE).
- The money the government invests in each child under the universal education programme (Shs. 47,000) is not sufficient to enable schools break even so schools are forced to hide fees in other school charges in order to finance the deficits and these charges are affecting retention.
- Instead of the Public Private Partnerships, government should invest in the public sector to cause a more meaningful impact on education.
- The provision of Health care in Uganda has ceased being a moral obligation for the government and has been a legal battle; Citizens are riding on the goodwill of government to enjoy the right. Uganda has more private than public health care service providers.
- The realization of the right to health is majorly constrained by limited budget allocations; limited and inconsistent supplies and commodities for health care; ill-motivated personnel; and brain drain of the experts.
- Uganda is not faring well on the Millennium Development Goals (MDGs): 16 mothers die every day due to preventable pregnancy related causes; 1 out of every 11 children in Uganda will not make it to 5years; malaria, pneumonia & diarrhoea are still major killers; and Non communicable diseases are still a big challenge.

## **2.3 Outcomes of Conference**

2.1.1. The Alternative ESCRs reports to the African Commission and the United Nations Committee on ESCRs were discussed and validated.

### **3. The Proceedings**

#### **3.1 Official Opening:**

The Conference was opened by Prof. Barnabas Nawangwe (Deputy Vice Chancellor – MAK), who was also the Guest of Honour. The address of the Guest of Honour was preceded by addresses from Assoc. Prof. Christopher Mbazira (PILAC Co-ordinator), Dr. Damalie Naggita-Musoke (Dean School of Law) – as the hosts- and Mr. John Mary Odoi (Chair Board of Directors- HURINET) on behalf of the organisers.

Prof. Mbazira indicated that this was the first National Conference on ESCRs in Uganda. He further highlighted the timeliness of the Conference saying it came at a time of (a) the Constitutional amendment process; (b) review of National Development Plan (NDP II); (c) at the genesis of Vision 2040; and (d) above all at a time when Uganda is preparing to appear before the African Commission on Human & People’s Rights and the United Nations Committee on ESCRs in October 2014 and June 2015 respectively. He expressed a wish for the CSOs to influence all these processes by advocating for a Human Rights Based Approach. He concluded with a proposal that this becomes an Annual conference.

In her remarks, Dr. Naggita opined that the current partnerships between School of Law and civil society are necessary in providing different interventions. She called on the Conference organizers and participants to take stock of where Uganda has been and where we want to go as a country in relation to ESCRs.

In his address, the Guest of Honour, Prof. Barnabas Nawangwe indicated that choosing Makerere University as the venue for the Conference was a way of utilizing the academic platform provided by Makerere University. He pointed out that the Conference was timely, coming at a time when MAK as a centre of research and innovation was focused on finding its relevance in the community and therefore this innovation is in the right direction. He concluded by pledging the University’s commitment in participating in the discussions in order to contribute to development.

### **3.2 The Sessions**

#### **3.2.1 SESSION I: The Keynote address - THE MORAL, LEGAL AND POLITICAL IMPERATIVE FOR THE PROTECTION OF ESCRs AS JUSTICIABLE.**

## **Keynote Address by Hon. Justice Joel Mwaura Ngugi**

The opening session was punctuated by a keynote address delivered by Hon. Justice Joel Mwaura Ngugi – Judge of the High Court of Kenya, Head of the Judiciary Transformation Secretariat and Director Judiciary Training Institute. In his opening remarks, the keynote speaker posited that Law and legal rules can be both tools of emancipation & oppression and that the Law is a distributive mechanism - distributive to those that are deserving, just like the market.

The speaker indicated that for every argument against justiciability of ESCRs, there was a plausible counter argument. Some of the arguments highlighted included: **i)** The democratic concern that the ESCRs will undermine democracy as they will call for the breach of the doctrine of separation of power. However judges have always made decisions that result in resource allocation and which have economic implications. And in any case it is the calling of the judges to adjudicate in all matters. **ii)** ESCRs lack clarity, they are vague in content. However law has always been vague, even when we think we have clarified meaning we still go to court for clarity. **iii)** ESCRs are positive rights as opposed to the negative civil and political rights. However the question is who decided that these rights are negative and the others positive? These classifications are academic. **iv)** That the judiciary lacks institutional competence to afford a balanced decision on allocation of resources. They argue that parliament allow wide debate on a matter will result into a balanced outcome. However the actual fear here is that litigation may take an adversarial approach against government just like it is in other civil matters. **v)** That ESCRs are dangerous as they will undermine civil and political rights since the former are dependent on the size and ability of the economy. However there is also the argument that human rights are universal and indivisible. So there cannot be a difference in prominence of these rights. **vi)** That ESCRs are dangerous because they require an activist state, “bee state”; a state that is advanced. However state constitutes the market and the market is distributive and so the state should not hold such fears. **vii)** That ESCRs are a potential for bad faith use especially by the middle class using them to extract resources. However the redistributive abilities of law should help address these fears. **viii)** That ESCRs are a form of ‘welfarism’ and will encourage laziness, as the masses will sit back and expect the state to provide. However when you visit rural Africa you will see how over worked the socially marginalized are.

He went to state that laws are the most durable & most effective way of distribution of resources hence the need to use them. He concluded by advocating for constitutionalization of the ESCRs such that they carry the same normative quality as the civil & political rights. This would ensure inclusiveness and quality of the various rights.

## **Discussion of the Keynote Address by Prof. John Jean Barya**

The Keynote address was discussed by Prof. John Jean Barya of the School of Law Makerere University. He kick-off his discussion by observing that ‘Enforcement of rights’ is simply one

of the various ways or processes of realising ESCRs, but not the only way. He went to assert that warranting of ESCR is a political question & a political process and not one for the judiciary. He noted that all arguments against ESCRs are political & that once ESCRs are debated, we enter into the political realm. He opined that not having the ESCRs in the justiciable part of the Constitution was deliberate given the political aspect. However he gave the encouragement that the 2005 amendment of the Constitution introduced Art 8A which can be utilized by Civil Society to litigate on ESCRs.

He went on to indicate that the Constitutional Court has the mandate to interpret and give clarity to ESCR, but all courts are empowered to enforce and therefore the judiciary is only an arena for advancing ESCRs. He advised that before talking of justiciability, the question to consider is: Are the rights available and what is their content? He appealed to the Judiciary to read and use Art 8A to advance ESCRs and to exercise their mandate of “Enforcement”. He called on Parliament to amend the Constitution and transfer ESCRs to Chapter 4. He appealed to Critical Civil Society (Trade Unions, Professional bodies) to build a social base (a body of persons willing to push for ESCRs) as rights in the constitution would be meaningless where they don’t have a social base.

### **3.2.2 SESSION II: THE ESCR LEGAL FRAMEWORK**

The session was a panel discussion convened by PILAC and the panellists included Hon. Justice. Dr. Geoffrey Kiryabwire – Justice Court of Appeal – Uganda, Hon. Justice. Joel Ngugi – High Court Kenya, Assoc. Prof. Christopher Mbazira (School of Law & PILAC) and Prof John Jean Barya (School of Law). The moderator of the session was Ms. Salima Namusobya (ISER). The panel proceeded on the following issues:

#### **The Legal framework and status of ESCRs in Uganda, Assoc. Professor Christopher Mbazira**

Prof. Mbazira underscored the need for Uganda to fulfil its obligation by domesticating the ratified International instruments on ESCRs. He indicated that most of the ESCRs only appear under the National Objectives and Directive Principles of the Constitution which has largely been said to be a non-justiciable part of the constitution. He further pointed out that most of Uganda’s laws are still the ones inherited; brought in by the colonial governments and thus without a Humana Rights based approach. However the Pre-Primary & Post Primary Education Act of 2008 reflects a Human Rights based approach. It indicated that there is wave across the continent of getting the ESCRs constitutionalized.

#### **Challenges faced by judiciary & the opportunities not exploited by the Actors, Hon. Justice Dr. Geoffrey Kiryabwire**

The Hon. Justice intimated that the judicially resources were insufficient right from human resource to the infrastructure and funds. The realisation of ESCRs is not a judicial question since courts are not activists; they only deal with what has been brought to them. He further indicated that Uganda has a weak legal framework for ESCRs with the Constitution short of enforceable provisions and the International Instruments are not being self-executing.

**Whether the environment in Uganda is favourable to support justiciability of ESCRs, Prof. John Jean Barya**

The Professor categorically stated that mere provisions in Constitution do not guarantee realization of the rights. Legislating for the rights is just a starting point. There is need for a body of persons willing to push for their enforcement (social base). The social base movement needs to create consciousness in the community for the quest to be real. He further advised that there is need for protracted litigation; for example there are numerous discriminations but none has been litigated on.

**Whether constitutionalizing of ESCRs in Kenya has taken anything away from Kenya, Hon. Justice Joel Mwaura Ngugi**

The Hon. Justice remarked that the civil unrest of Kenya 2007 had its roots in ESCRs with concerns about land, health, ethnicity etc hence the deliberate remedies provided for in the Constitution. Litigation opined in ESCRs should be very strategic, well framed, well argued, and all possible consequences appreciated. He asserted that every step taken needs to be well thought out in terms of what consequence it will have on the whole campaign for ESCRs. He announced that the Kenyan Government was now taking more into account of the ESCRs in its policies because it knows the masses can opt to seek court redress. He indicated that by constitutionalizing of the ESCRs, the government is more accountable.

**Comparative analysis of the ESCRs experience in other jurisdictions, Assoc. Professor Christopher Mbazira**

Prof. indicated that the push for ESCRs was not a new invention; it is a campaign world over. South Africa is the leading case study on the African continent and Kenya has also followed suit.

He noted that the first requirement to foster the crusade is to have a section of legal professionals wired, trained and equipped for ESCRs. Most practitioners have been trained for commercial and criminal practice. The second requirement is to breach the gap between legal practice and academia – a strategy that was engaged by South Africa. Legal practitioners have

been found to be so detached and more concerned with making money, while the academia are thought to be so theoretical. The two can put their resources together and build a force to propel the crusade.

He reported that South Africa had also engaged a powerful social movement through the famous Treatment Action Campaign (TAC) case [Minister of Health & Others v Treatment Action Campaign & Others (No 2) 2002 (5) SA 721 (CC) (S. Afr.)]. The movement lobbied parliament, lobbied the masses on the streets, and engaged the judiciary psychologically through the mass mobilizations in the court premises.

He further reported that in Columbia, structural injunctions were granted, in which the courts supervised the implementation / enforcement of the orders by requiring feedback on progress from the different actors.

He concluded by advising that the judiciary, practitioners and academia need to form a coalition of the pro-active.

### **Assessing the quality of litigation in courts, Hon. Justice Dr. Geoffrey Kiryabwire**

The Justice intimated that there is a lot of ‘knee-jerk’ reaction to litigation in Uganda especially with institution of suits without any thorough preparation. The moment practitioners receive clients’ complaints, without thought they advise and jump to litigation. He advised that the secret behind successful litigation are the 3P’s = Preparation, Preparation, Preparation. He also recommended a long-term outlook on the litigation given the nature of ESCRs; the short term results should not be a driving force for litigation in ESCRs. He warned that some litigation may affect the progressive movement, ‘locking-in’ jurisprudence. He called for investment of enough time in all process: putting facts together, gathering primary evidence, assembling expert evidence, employing *amicus curie*. The legal team should have diverse professionals to augment the case.

Hon. Justice Ngugi cut in saying the ‘knee-jerk’ reaction to litigation is not only akin to Uganda, but to Kenya as well.

### **The role of Quasi-judicial bodies (like UHRC & EOC) in the quest for ESCRs, Assoc. Professor Christopher Mbazira**

The Professor indicated that most of the decisions of UHRC were on Political & Civil Rights and the Commissioners are reluctant to venture into the ESCRs. He indicated that the EOC has the mandate to enforce ESCRs, however the tribunal has just been put in place (March 2014). He also noted that state compliance with decisions of these bodies was not visible. He

however pointed out that Civil Society have opportunity to enforce decisions of the quasi-judicial bodies in the main-stream courts, but this has not been explored.

## **Plenary Discussions**

The following issues emerged during the plenary discussion:

- The Executive arm of Government sets the tone of government behaviour: it influences the Legislature; determines the independence of the Judiciary; it will debate bills first under the caucus before doing the same under cabinet. No wonder we have a contradiction between the laws and policy. Policy reflects the heart of the Executive. ESCRs therefore are feared by the executive as likely to change the political landscape.
- There are divergent views on whether Art 8A of the Constitution of Uganda is self executing. One view: The provision is not self-executing. However if the executive cannot initiate operationalizing of the provision, then Civil Society should mount pressure to have laws to operationalize it. The other view: The reading of Art 8A(2) is not for 'a law' to operationalize Art 8A(1), but 'laws' being made for the purpose of promoting the national objectives and directive principles of state policy; thus no drawback clause.
- There appears to be inconsistency in the decisions of the Supreme Court & Constitutional Court on matters of ESCRs human rights. The judiciary is tied down by the 'separation of power' doctrine. There is need to promote constitutional dialogue between the different players. In some jurisdictions the judiciary has been empowered to bring the executive to account for progressive realization of ESCRs.
- On the issue of judicial activism it was stated that judicial activism is subject matter based. It is a question of persuasion. If usual approach to the bench is employed expect to yield the usual results. Practitioners should get to understand the mind of judges and speak to the mind of the judges. Thorough preparation will move courts into activism. There is need to adopt a civil tone to lure the judges into ESCRs discussions.
- Judiciary is about to establish a bar-bench Committee; a forum to bridge the gap between the bench and the people it serves (practitioners and clients).



- The Equal Opportunities Commission Tribunal had been established with the passing of the rules and Regulations to guide its operations. Pre-tribunal Circuit visits to the different regions of Uganda had been concluded. Beginning October 2014 the tribunal was going full-blown in its mandate. EOC has judicial powers to address ESCRs, and most of the cases it will handle are within this territory.

### **3.2.3 SESSION III: POVERTY, MALNUTRITION & FOOD SECURITY IN UGANDA: USING THE RIGHT TO FOOD AS A RESPONSE.**

Sessions III and IV ran on as parallel panel sessions. Session III was convened by HURINET and the panellists included Prof. Mawa (Nkumba Univ.) and Mr. Mbalangu Gonzaga (Food Rights Alliance). The moderator of the session was Assoc. Prof. Mbazira (PILAC).

#### **Challenges to the realization of right to food in Uganda, Assoc. Professor Christopher Mbazira**

The moderator kicked off the session by painting a picture of the situation in Uganda in which he highlighted: Land grabbing which affects subsistence farming; Fluctuating food prices, mostly on an upward spiral which defeats accessibility, Variance in geographical resource allocation a challenge to achieving the minimum content of the right; Food safety concerns; and Seed safety Concerns.

#### **The relationship between Poverty, Malnutrition & Food insecurity, Mr. Mbalangu**

Mr. Mbalangu opined that the right to food is only next to the right to life. Once food is taken away enjoyment of other rights is affected. Poverty is responsible for the lack of food, leading to malnutrition & malnutrition preserves poverty status quo. The worst element of poverty is failing to feed self and family.

#### **The concept and elements of the right to food, Mr. Mbalangu**

Mr. Mbalangu highlighted first, availability which entails adequacy and stability of food supply, all the time to all persons. Second is accessibility to food which denotes physical accessibility, economic accessibility & social acceptability. And the third is Safety of the food; not just quantity, but quality.

## **An assessment of the Food situation in Uganda, Prof. Mawa**

The Professor observed that there was a big contradiction - Uganda the Pearl of Africa (which is endowed with land, water, rain, air) has numerous people starving, amidst plenty. Food insecurity is high. Homeless children eat from garbage pits, displaced people and refugees are ill-fed, the critically ill lack the most important therapy – food. He indicated that 38% of children below 5 years are stunted, 54% of adults were stunted at some point. School going children are not eating at school and the school dropout rate is at 71%. Schools have closed in Karamoja because of food shortages. Women provide most labour for agriculture yet they eat last and less while the men come to eat or to sell off the produce. Agriculture employs 80% of the nation's labour force. He was dismayed to note that Government has withdrawn from direct involvement in agriculture and since 1999, the budget allocations to the agricultural sector have not exceeded 4%. There is a looming threat of taxes on agricultural inputs proposed in the 2014-2015 budget.

### **Gaps in the legal framework, Mr. Mbalangu**

There was no express justiciable provision for the right to food. It is only provided for under Objective 22, under the Directive Principles of the Constitution. The Food & Nutrition Bill still lies in uncertainty. The policy framework does not involve the community to meet not only the family needs but also the market needs. National Development Plan II proposes a value-chain approach.

### **The way forward, Mr. Mbalangu & Prof. Mawa**

Proposing, the two panellists advocated:

- For awareness campaigns in which the role of consumers in creating a conducive atmosphere for producers is emphasized;
- Special focus on Children, women and People with disabilities as the most insecure groups in the realization of the right to food;
- The state taking proactive steps to protect individuals from land-grabbing.
- Government's adopting a hands-on involvement in agriculture. Government needs to meet her obligation under the Maputo Protocol of investing at least 10% of total budget in agriculture.
- Environmental protection policies need to be effected.
- Deliberate increased investment in agricultural sector.

- Focus on rural areas in treating the chronic food insecurity. There is need for civil society in every community where there is chronic food insecurity.
- A value chain approach needed such that all processes and stages of the food chain are influenced and paid attention to.

## **Plenary Discussions**

The following issues emerged during the plenary discussion:

- Other threats to food security to include: activities in gazette game reserves together with protected animals; Floods that are displacing masses; Big institutions and personalities on land originally belonging to the Internally Displaced persons (IDPs); Food production in refugee camps like Kyangwali is met with very low price offers; Genetically modified seeds campaign for seeds whose life span does not go beyond two seasons; Trading in all food that is produced leaving the cultivators without food themselves; Global Climate change; Continued reliance on food hand-outs especially for the insecure populations. What is the guarantee that these food hand-outs will continue for a life time?; Policy disharmony; with laws being passed without enabling regulations and rules, or policy thus leaves the laws on paper; Independent Southern Sudan, buying all the food while still on the farms, leaving the communities in the neighbourhood without food.
- On the proposed way forward, the participants recommended:
  - The revival of the co-operative society debate and practice as a redress to the food insecurity and to help address the consequences of the food price fluctuations on individual farmers.
  - Community involvement in advocacy and production of food.
  - Promotion and advocating for the school feeding programme to address the food insecurities in school.
  - Building a coalition for parties along the food chain (producers, distributors, value addition, consumers), such that all insecurity concerns are addressed as food changes hands.

- Developing physical infrastructure to enable easy movement of food and in the process ensuring availability and accessibility.
- Making agriculture attractive to the youth especially while still in school.
- Exploiting the Youth fund and direct it towards agricultural investment.
- Asked what could have gone wrong in the Pearl of Africa, Prof. Mawa opined that killing of the nucleus family which championed food production in the country is responsible for the mess. He advised that there is need to take the campaign of the right to food to the family.

### **3.2.4 SESSION IV: THE IMPACT OF THE MINIMUM WAGE ON REALIZATION OF ESCRS**

Session IV was convened by Platform for Labour Action – (PLA) and the panellists included: Ms. Lillian Keene Mugerwa (ED- Platform for Labour Action - LA), Mr. Usher Wilson Owere – (Chair National Organization of Trade Unions - NOTU) and Mr. Patrick Okello. The moderator of the session was Mr. Gawaya Tegule. The issues raised in this panel were:

#### **Does Uganda have a minimum wage?**

There were divergent views on this. One panellist argued Yes; it is Shs. 6,000 per statutory instrument No. 38/ 1984 and since the same has not yet been repealed, it is still the official minimum wage. Though one can factor in the currency point multiple and arrive at Shs. 60,000. Another panellist indicated that there was no minimum wage. What is thought to be was set by Statutory Instrument 38/1984 over 30years ago by Obote II regime and given the passing of time and the current social-economic state of Uganda it cannot be said there is a minimum wage. It was further argued that the minimum wage is too low to be sustaining in the long run.

#### **What does minimum wage mean?**

There were still different opinions on what ‘Minimum wage’ is. To the first panellist it denotes the lowest monetary value which may be paid to a worker at a particular point in time. The second panellist suggested it is that wage proportionate to work put in (modified definition), while to the third panellist it is a Living wage (the minimum income necessary for a worker to meet their needs that are considered to be basic)

#### **How the Minimum wage can be an avenue to realization of ESCRs.**

It was opined that a minimum wage is aimed at protecting the non-unionized workers, but currently it is being used to protect the economy at the expense of the worker. Implementation

of the National Directives & objective principles of state policy by government is an assured avenue for the realization of a minimum wage and thus ESCRS. In setting the minimum wage, the needs of the workers and their families, and the level of employment need to be considered. Once minimum wage is fixed it can create other jobs and a minimum wage is insurance for workers without social security schemes. It was concluded that through minimum wage, marginalized can then access the basic needs hence realizing ESCRS.

### **What is the status quo on the Minimum wage?**

Uganda is a member of the ILO, and ratified the Minimum Wage - Fixing Machinery Convention, 1928 (No. 26) on June 4, 1963. The government is expected to meet its commitments to all conventions. Uganda is in breach of Article 4 of the Convention. The National Development Plan (NDP) 2009/10 - 2014/15 identifies instituting a minimum wage as a critical step to increasing access to gainful employment. Surprisingly, there is no record of any report from any Civil Society Organization highlighting the need for a minimum wage. The Ministry of Labour has prepared a government paper and a Memorandum to determine the minimum wage; and a Private member's Bill by NOTU MP is in the offing. However it may not be sufficient to move Parliament to legislate for a reasonable minimum wage.

### **Way forward**

It was proposed that Civil Society should explore and utilize Uganda Law Reform Commission's mandate to review and initiate reform of laws to push for a minimum wage. Secondly, Civil Society needs to explore the quest for a minimum wage as one of their programmes.

## **3.2.5 SESSION V: MINORITIES AND INDIGENOUS PEOPLES' LAND RIGHTS**

Sessions V and VI ran on as parallel panel sessions. Session V was convened by **Minority Rights Group International (MRG)** and the panellist were Mr. Samuel Tindifa (Senior Lecturer School of Law – Makerere University), Mr. Michael Kuskus (National Pastoralists Council) and Mr. Godfrey Tinkasimiire (Bagungu Community). The moderator was Ms. Kemigabo Jolly (MRG)

### **Conceptualization of indigenous and minority people, Mr. Tindifa**

Mr. Tindifa kicked off the discussion with the Conceptualization of Indigenous and Minority people by. He remarked that Minorities are of three forms: ethnic, religious & linguistic. Minority doesn't connote 'numerical strength' but 'a non-dominant group'. Indigenous connotes a people whose culture differs from the dominant group and under the threat of extinction. He indicated that Minorities & Indigenous share the same conditions of life: they constitute the poorest, landless, houseless, and foodless. The Karamojong under the threat of

investors and the Batwa are majorly squatters. He opined that the approach needed is not to deal with the definitions of who these people are, but with their situations in life.

He went further to highlight the Legal framework on the rights of Indigenous and Minority people considering both the International & Domestic provisions. He observed that only one country in Africa has ratified the Convention on Indigenous people because Africa believes they are all indigenous. He further indicated that Art 36 of the Constitution of Uganda only makes provision for minorities not indigenous. However the Ministry of Gender, labour & Social Development is in the process of building a data base on indigenous peoples. He observed that Government policies & programmes are only confined to Karamoja backed by the World Bank, ignoring the other peoples. The coverage of Indigenous people is even limited further by concentrating more on women than men.

### **Experience of the different indigenous peoples of Uganda**

#### *The Karamojong experience, Mr. Kuskus*

Mr. Kuskus indicated that from colonization the Karamojong were curved off Uganda, the Batwa pushed to the mountains & at independence left in a pool of poverty. 95% of Karamoja's land is set aside for game reserves. The disarmament programme only left the Karamojong more vulnerable to land grabbers. This accounts for the influx of street children from Karamoja. Disarmament is the only government programme devotedly invested in and pursued. It is the food insecurity that is responsible for the continued cattle rustling and raids on neighbouring communities. Karamoja's lime is extracted and taken to factories in Budaka, robbing the Karamoja as source of opportunities that come with industrialization. Mines are ring-fenced, locking the locals out. He reported that efforts by the coalition to negotiate for more land from the Wildlife Authority have yielded only 2% of the land. He observed that the question of the 'Balaro' has not been explored.

#### *The Bagungu experience, Mr. Tinkasimire*

Mr. Tinkasimire indicated that these are located in Buliisa District and the land tenure is there is customary. He noted that land ownership & food security were threatened by the Oil industry and its activities. The indigent are not met with justice in courts of law in land matters and compensation for the displaced is not forth coming; they have been pushed and are confined between the lakes and Game parks. He noted that recourse to fishing has not helped since the lakes are depleted.

#### *The Benet experience, Mr. Chebet*

He indicated that these are located in the Sebei region. The Benet people lived in the mountains for over 200years and even after the gazetting of Mt. Elgon, and declaring it a game reserve they were left in the Mountain. The 1970's Government evicted them from the forests, their cattle were killed, they were pushed to cold areas of the forest, and many of the old died. Social services like schools, medical facilities are non-existent. Through the Benet lobby group, they

have lobbied government for social services. In 2005, court case victory registered, but to date no resettlement has been effected.

*The Banyabwindi experience by a member of the community*

These are located in Kasese district. Between 1964 – 1982 the Rwenzururu grabbed land from them and they were forced into camps. The Land Act provisions for security of occupancy granted to the bonafide & lawful occupants defeated the Banyabwindi's interest, favouring the land grabbers who were found on the land. Some of the land was gazetted as natural resources. To the majority of the Banyabwindi, leaving in the bush is normal.

### **Plenary Discussions**

The following issues emerged during the plenary discussion:

- Land is a critical issue for both the Indigenous and Minority people. Life starts with land & ends in land Gen 2:7. This is augmented by IRO Convention 139 & Convention 169 land is critical to indigenous people. There is need to identify, demarcate the land and protect them from forced displacement. Once confined to small portions of land, even their food productivity is confined.
- One pertinent observation that was made that affects all indigenous people is the competition with interest with Natural Resources. They are threatened by activities in gazetted natural resources like game reserves
- On the way for ward it was recommended that:
  - There is need to push for recognition of the indigenous people in the legal framework
  - Alternatives to the livelihood of the Karamojong are needed as the state pushes for disarmament.
  - The street-life of the Karamojong has compounded the marginalization and needs to be addressed.
  - There is need to mainstream minority & indigenous people in all policies, programmes like it has happened for women.
  - Protection of the indigenous people's collective rights and land ownership would go along way in ensuring realization of ESCRs.

- There is need for a single coalition for the indigenous and marginalized to form a single front to advocate and pursue strategic litigation for their rights.
- There be put in place a legal framework to provide for resettlement, compensation and parallel benefit sharing of resources from these regions.
- If the land question can be addressed, the other ESCRs will fall in place.

### **3.2.6 SESSION VI: UGANDA'S EXTRACTIVES INDUSTRY: AN ENGINE FOR HUMAN RIGHTS ENJOYMENT OR NOT?**

Session VI was convened by **Global Rights Alert – (GRA)** and the panellists included: Mr. Wilfred Muganga Asiimwe (UHRC), Mr. Kakuru Robert (Lecturer - Faculty of Humanities MAK and Ms. Winfred Ngabiirwe (Executive Director- GRA). The moderator of the session was Ms. Shifa Mwesigye

#### **The Extractive debate situation in Uganda, Ms. Winfred Ngabiirwe**

This panel discussion opened with painting the situation in Uganda and it was observed that Oil has taken centre stage in the debates. Uganda is endowed with over 3.5billion barrels of Oil in the Albertine region. Exploration and exploitation is under way and human rights issues are emerging. It was noted that the discovery of oil in Uganda is a source of trouble and poverty.

#### **The Role of Uganda Human Rights Commission (UHRC) in the extractives debate, Mr. Wilfred Muganga Asiimwe**

It was stated that UHRC has taken a wholesome approach of ESCRs in the oil debate and venture. UHRC is ahead of any institution concerning the extraction of oil. UHRC published a report in December 2013 to Parliamentary Committee on Human Rights on potential threats to violations of human rights. UHRC has established an office to handle oil exploration and exploitation matters.

#### **How prepared is Uganda to benefit from local content on oil (i.e what space is available to Ugandans to occupy in the mining industry)?, Mr. Kakuru Robert**

It was observed Uganda is ill-prepared and the debate is not all inclusive: that the government has not guided the country on the advantages of oil exploration. The impression created is that the oil industry is masculine and this may be a drawback on women affirmative action. Oil debate is also left to the elite, experts, but local left out with claims that it's a technical area. Uganda and Ugandans are short in skills and expertise. The content has not catered for the poor. Where society remains undemocratic, follow-up by the populace will be difficult. . Debate has remained localized in the Albertine region not National.



It was indicated that the principles of resettlement (resettlement, compensation and parallel benefit sharing) of the people have not been met.

### **Way forward**

It was advised that:

- Uganda must as of necessity avoid the ‘Dutch disease: abandoning other sectors like the tourism activities in game parks. Uganda’s extractives are not only oil thus the need to diversify extraction.
- The refinery affected victims need to be sensitized on how to manage the resettlement process, and more specifically the compensation funds received.
- The oil debate be made national and all extractives encompassed to widen the base of benefit.

### **Plenary Discussion**

During the plenary it was observed that:

- The most active oil wells are near the water sources and this is a threat to the realization of the right to water.
- The venture is bound to affect game reserves and activities in those natural resources.
- There is a presidential directive stopping issuance of land titles in Buliisa in a bid to protect land, but this directive has not been heeded.

## **DAY II: 18<sup>th</sup> September 2014.**

Day II kicked off with Mr. Nsereko Arthur, the Conference’s Rapporteur, doing a recap of Day I’s events. He gave a brief on the issues that had arisen from the previous day’s sessions.

### **3.2.7 SESSION VII: THE IMPACT OF PRIVATIZATION ON THE RIGHT TO EDUCATION**

Session VII was convened by **Initiative for Social & Economic Rights (ISER)** and the panellists included: Ms. Salima Namusobya (Executive Director – ISER), Mr. Fred Mwesigye (Executive Director – FENU) and Mr. Patrick Kaboyo (Executive Director – COUPSTA). The moderator of the session was Mr. Peter Kibazo.

The panel discussion started with clarifying what level of education was the focus of the discussion and it was indicated by Ms. Namusobyia that the focus would be basic education which encompassed pre-primary, primary and post primary lower secondary education.

#### **Assessment of the situation of education in Uganda, Fred Mwesigye**

It was indicated that education in Uganda has become a private matter and was no longer a government affair. First class schools in Uganda are denominational schools under religious organizations. Government only comes in to intervene and to manage examinations. The 'Government Schools' as described on paper are merely government aided. What we have as public schools are those founded by communities and then taken over by government or those founded and run by government. There are also individuals' privately owned and privately run schools.

#### **The legal framework on the right to education, Mr. Patrick Kaboyo**

He opined that the right to education is pegged on accessibility and affordability of the education. The Pre-Primary and Post Primary Education Act Of 2008 has taken a human rights based approach. The drawback is leaving the basic pre-primary education (nursery) in the hands of private owners.

#### **The effect of privatization on the right to education**

It was opined that the state is duty bound to provide basic, quality, free education, acceptable to the people & to create an enabling environment for other players.

The panellists indicated that Primary school enrolment in private schools rose from 8.33% in 2005 to 16.2% in 2013, while in secondary schools the enrolment rose from 43.9% in 2005 to 51.0% in 2013.

It was further observed that the rate of growth of private owners is affecting the quality of education. Research reveals failing in public schools because of non-investment by the state. The quality of education in public schools is going down and this has led to the shift to private education. The home and family are no longer the first school, day cares have assumed the responsibility, and many children are taken there before the appropriate age. Pre-primary business is not regulated so the business owners decide on what to teach the children. The purpose of an all round person, able to impact society is lost in the process. Schools are not running the prescribed curriculum and the government inspectorate is absent. The White Paper on Education is no longer relevant to Uganda.

#### **Assessment of the Universal Education programme, Ms. Salima Namusobyia**

It was observed that Universal Primary Education (UPE) has led to an increase in enrolment, with gender parity achieved. Government has ventured into Public Private Partnerships (PPP) to have more schools for Universal Secondary Education (USE). The PPPs were meant to meet the government's promise to have a secondary school at every sub-county. The students who end up in PPP schools are those that have been in UPE.

It was also noted that the money invested in each child under the Universal Education arrangement (Shs. 47,000) is not sufficient to enable schools break even. Schools are therefore forced to hide the fees in other school charges in order to finance the deficits and this is greatly affecting retention.

It was indicated that the schools under the Universal Education arrangement have few teachers and the infrastructure is ill developed. Critical planning has failed under the programme.

### **Plenary Discussion**

The following issues emerged during the plenary discussion:

- Instead of the Public Private Partnerships, government should invest in the public sector to cause a more meaningful impact on education.
- The Ministry of Education & Sports lacks capacity to control and regulate privately owned education.
- The quality of education has been oriented towards grade achievements. Quality education entails: literacy skills, social skills, analytical skills, but all these are overlooked.
- It was pointed out that the meaning of quality education across the country is unknown.
- Privatization of education and health care are a clear failure in the state's mandate in the realizations of ESCRs.
- Fears were expressed that the current education system is creating social classes, and in essence becoming discriminatory.

### **3.2.8 SESSION VIII: THE POST 2015 DEVELOPMENT AGENDA AND ITS IMPACT ON THE RIGHT TO HEALTH**

Session VIII was convened by **Centre for Health, Human Rights and Development (CEHURD)** and the panellists included: Dr. Kiggundu Charles (Gynaecologist – Mulago Hospital), Dr. Dennis Kibira (Deputy Executive Director, HEPS) and Mr. Adrian Jjuuko (Executive Director – HRAPF). The moderator of the session was Mr. Moses Mulumba (Executive Director – CEHURD)

### **Assessment of the health situation in Uganda**

The panel discussion commenced with painting a picture of the health care situation in Uganda. It was observed that the provision of Health care has ceased being a moral obligation for the government and has become a legal battle.

It was indicated that the discussion of right to health has two different fora: (a) the Global discussion of the right & (b) the national level discussion. At the global forum questions of global solidarity arise; health is looked at more of as a trade. At the national forum there is still a struggle of realization of the right

It was observed that Uganda has more private than public health care service providers with 13 regional Referral Hospitals, 2 national referral Hospitals – Mulago & Butabika. The HIV laws fall short of protecting HIV patients today. Uganda has the 2nd fastest growing population in the world. Citizens are riding on the goodwill of government to enjoy the right; it appears it is no longer state obligation. The critical areas are: Maternal health, Child health & HIV/AIDS.

The discussants also identified that unsafe abortions have taken center stage in causing death for women. One of the factors behind these could be the legal and policy framework around abortion- indeed the law in Uganda restricts provision of abortion services yet unsafe abortions contribute 26% of maternal deaths. The specialist in Gynecology, Dr. Kiggundu noted that the country ought to rethink its position on abortion and provide for more comprehensive circumstances under which legal and safe abortions could be provided if it's to end the preventable maternal deaths.

It was further observed that minority groups like the homosexuals, LGBTI and sex workers face more threat as health agencies may be forced to think twice before giving the needed medical care. This is expounded by Uganda's Anti Homosexuality Law, which although nullified, might get back to parliament to yet be passed into law. This will definitely have an impact on the health of these selected groups.

### **Major Challenges of the Uganda's Health sector**

A number of challenges were highlighted that impede better provision of services within the health sector and these included:

- Constrained budget allocations;
- Limited and inconsistent supplies and commodities for health care;
- Ill-motivated and yet highly trained personnel;
- Brain drain of the experts.
- Unequipped infrastructure to better provide the services
- Limited salaries and remuneration for health service providers

## **Uganda's standing on the Millennium Development Goals (MDGs)**

It was indicated that 16 mothers die every day due to preventable pregnancy related causes; 1 out of every 11 children in Uganda will not make it to 5 years. Malaria, pneumonia & diarrhoea are still major killers. The non-communicable diseases are also a big challenge. Uganda spends \$4 dollars on medicine per capita, HIV/AIDS taking the biggest portion and \$1 dollar or less on other diseases. Government was spending about 10 billion on health in mid 1990s and now spends over 200 billion yet this is not sufficient.

With over 438/100,000 women dying annually, a number that is far above Uganda's target goal of reducing by three quarters, between 1990 and 2015, its maternal mortality rate to 131/100,000, it is very clear that of all the Millennium development Goals (MDG), one that has made some progress, albeit slow, is MDG 5: Improve maternal health and Uganda has obviously failed to achieve this goal.

### **Do the global standards of the right to health make sense to us at the National Level?**

It was contended that the standards may be too high, but the work being done by advocacy groups is putting clarity to the content. Through advocacy, government has increased its investment in the health sector. The standards must make sense, and can be realized if the masses can take a stand and demand for them.

The demand may take different diversions, of recent CSOS have used litigation as one of the strategies to realize ESCR (Constitutional petition No. 16 of 2011 see [www.cchurd.org](http://www.cchurd.org)), Conferences like the inaugural conference on ESCR highlighting the status, challenges and achievements in realizing such rights are yet another strategy that citizens can use to demand for their rights. It was also noted that empowering communities through a set of strategies like sensitization, use of media and holding duty bearers accountable is one way through which global demands can make sense to us at national level.

The above could have been possible but Uganda influenced by donors. These set their own strategies that in one way or another impacts on citizens demand. There is thus need to ensure that they compromise their demands with those of the country and in this way, realization of ESCR would seem much clearer.

### **Plenary Discussion**

During the plenary discussion it was observed that:

- Allowing for safe abortion will save many women from the complication arising from unsafe abortions.
- At the national level the quest for the right to health has to grapple with the challenge of cultural sentiments.

- There are still clarity problems with the minimum core content approach.
- The law on reproductive health is discriminatory – it punishes the woman that conceives and leaves the man responsible to go free.
- There is need to get the consumer of health care services involved in the discussions on the right to health.
- There is need to include ESCR especially Right to health in the substantive parts of the constitution. We could also advocate for domestication of international instruments into Ugandan legislation.

### **3.2.9 SESSION IX: REVIEW & ADOPTION OF ALTERNATIVE REPORTS TO THE ACHPRS & UN COMMITTEE ON ESCRs**

The session kicked off first with Hon. Lady Justice Lydia Mugambe – High Court Judge, sharing her personal experiences in the quest for ESCRs in Uganda.

She indicated that Courts are faced with the challenge of lack of domestic laws on ESCRs. She highlighted the need to domesticate the international instruments so as to give courts express tools to use. This will see the state moved from just commitment to mandatory protection.

She observed that ESCRs are unique: are not shield rights, they are progressively realized. There highlighted the need for ESCRs to assume the same footing as the civil and political rights if courts are going to be empowered to adjudicate on them.

She went on to clarify the court's role in the realization of ESCRs. She underscored: **(a)** Court being medium for checking of government's activity or inactivity in respect of the rights; **(b)** Court being a medium for clarifying the content of the rights; **(c)** Court with the mandate to highlight areas that have been neglected or ignored and call for attention to them; **(d)** Court as an enforcement avenue through directing different actors on their obligations; and **(e)** Court's duty test and develop jurisprudence.

On the challenges encountered, the judge highlighted: **i)** Poor understanding & appreciation of ESCRs by court officials, legal practitioners and the masses; **ii)** Poor preparation for litigation; **iii)** the lengthy & laborious court system which disenfranchises the masses; **iv)** costly litigation; **v)** general apathy in the public; **vi)** language barrier in courts; **vii)** poor evidence collection &

preservation; viii) unfriendly strange court system to the lay man; **ix)** Lack of a data base for ease reference; **x)** general perceived lack of interest to litigate ESCRs hence most pursue the civil avenue which leaves most matters terminated at the preliminary stages of mediation and in turn curtailing development of jurisprudence on ESCRs.

The Judge decried the fact that courts have been denied the mandate to invent or cause development of jurisprudence since the legal framework is insufficient and the practitioners have not extensively explored litigation in ESCRs.

On the way forward she recommended:

- Sensitizing and training judicial officer and practitioners on ESCRs and jurisprudence;
- Strategic ESCRs litigation to test the core content of such rights in Uganda;
- Thorough, strategic research to inform litigation processes;
- Civil society networking with the masses, academia, practitioners so as to strength the cause;
- Civil society and academia with expertise attending court as *amicus curie*;
- Sensitizing the state actors on their commitments and obligations.

During the question and answer sessions the following issues arose:

- **How is Civil society to navigate round the ‘political doctrine question’?** In response, Civil Society Organisations were advised to pile more pressure on courts of law to deal with or do away with the political question doctrine. They were advised to take cases through the whole court structures and do not surrender mid-way. It was opined that Judgments, whether in their favour or not, are meant to boost and inform the next step in the struggle. When domestic remedies fail, explore the regional and international remedies.
- Asked on **whether the experts could find their way into court as *amicus curie*** the Hon. Judge indicated that experts can cause court to invite them by way of the latter writing formal letters to court or through physical appearance in court. Courts can receive information from persons not party to the matters. There is need to identify the right stakeholders and networks.

- **How can civil society and courts make a sustainable partnership?** It was stated that Courts are taking deliberate steps to open up to the public. It is civil society to take steps to bring matters before court, courts cannot source for litigation.

Session IX was convened by the organisers and it was meant to generate the conference participants' input in the Alternative reports that were to be presented at the Regional and International ESCRs fora. The panellist for the review included Assoc. Prof. Christopher Mbazira (PILAC), Ms. Salima Namusobya (ISER), and Ms. Noor Nakibuuka (CEHURD). The moderator was Mr. John Robert Ekapu (HURINET).

A brief on the structure of the three reports was given by Prof. Mbazira. He pointed out that the bulkiness of the content of the report had forced the drafters to separate the reports into three, that is, specific reports on the right to education and right to health (the two thought critical) and a general report on rights had been generated.

It was brought to the attention of participants that the interactions and processes leading up to the reports begun way back in 2009 through national and regional interactions. The panellists thus called upon participants to input into the report. They further requested for factual facts and evidence since this would help put the report in good shape and not to work on allegations. The following issues were raised in submission:

- Land grabbing in Buliisa, especially with court decisions not complied with.
- Absence of Uganda's trade negotiation template when it comes to negotiating treaties especially trade treaties.
- Food sovereignty as threatened by the Bio-technology & Bio-safety Bill.
- The lack of commitment on the part of the Ministry of Finance to address climate change.
- The massive lay-off of workers in the country.
- Need for a comprehensive list of minorities in Uganda



- The social services in juvenile homes.
- Need to address challenges faced with persons with disabilities. Little is attention paid to them even in reporting processes.

#### 4. CLOSING SESSION

Ms. Saliam Namusobya, who chaired this session, gave a wrap-up of the two days' activities, highlighting the core content of the discussions and recommendations that arose from the different sessions.

She then invited Ms. Patricia Nduru who was representing the Chairman of Uganda Human Rights Commission to make her remarks.

Ms. Patricia Nduru began off by commending the organizer for bringing different actors together. She appreciated the fact that the debate had been cross cutting, not only from legal practitioners, but with many non-lawyers. She opined that question of justiciability of ESCRs is political, legal and moral thus the need to carry the Human Rights discourse to all realms of life. In concluding her remarks she hoped that the indepth discussions and strategies would go a long way in enabling realization on the ESCRs in Uganda.

**Ms. Zaminah Malole – Commissioner Equal Opportunities Commission**, officiating at the closing of the conference made mention of the fact that the conference theme was found to resonate with the EOC's work. She highlighted the commission's commitment to join advocacy for ESCRs. The EOC Act calls for all budgets and ministerial statements to comply with S.14 Equal Opportunities Act 2007 with is to the effect that policies, laws, plans, programs, activities and practices are compliant with equal opportunities and affirmative action. She appreciated the participants for the commitment and input in the discussions that lasted two days and encouraged participants not to wear out as the struggle continues. In concluding, she called on civil society to put a human face on all the issues.

The conference was officially closed at 5:23pm.