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THE IMPLICATIONS OF THE COFFEE AGREEMENT BETWEEN THE GOVERNMENT OF UGANDA AND UGANDA VINCI COFFEE CO LTD ON THE SOCIO-ECONOMIC RIGHTS OF THE SUPPLY CHAIN PLAYERS IN UGANDA'S COFFEE INDUSTRY

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ABSTRACT

This article examines the implications of the coffee agreement between the government of the Republic of Uganda (GoU) and Uganda Vinci Coffee Co Ltd (UVCCL) on the socio-economic rights of the supply chain players in the coffee industry in Uganda. This article was motivated by the belief that the socio-economic rights of the players in the coffee supply chain would be violated as a result of the monopoly granted to UVCCL in Uganda's coffee industry. The article shows that the GoU-UVCCL agreement violates international human rights instruments as well as the Constitution of the Republic of Uganda, 1995 (the Constitution) and other statutes. The article recommends that stakeholders should be consulted in any GoU undertaking that directly affects their socio-economic rights such as the GoU-UVCCL agreement, GoU should observe its commitments under international law and GoU should strengthen the legal and institutional framework to uphold citizens' socio-economic rights in Uganda.

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1. INTRODUCTION

Human rights are the basic rights that every human being is entitled to enjoy from the time they are born to time they die by virtue of being human.¹ The rights are inherent and inalienable and are not just granted by anybody or a state.² This is because human beings are entitled to the right to live dignified lives. Human rights include social and economic rights as enshrined in several international human rights instruments such as the United Nations Universal Declaration of Human Rights (UDHR) and the International Convention on Social, Economic and Cultural Rights (ICESCR). At the domestic level, the Constitution of the Republic of Uganda, 1995 (the Constitution) guarantees the enjoyment of socio and economic rights in Uganda.

Certain economic activities and the nature in which they are designed may infringe on the rights of other people. For example, the concessions provided in the Government of Uganda (GoU)-UVCCL coffee agreement, which sought to grant UVCCL company extensive monopoly in the coffee industry in Uganda may, however, infringe other people's rights in the coffee supply chain. As a result, it has caused concern among the legislators and the general public.³ The agreement, therefore, requires a systematic inquiry to determine its implications on the rights of other people. Against this backdrop, this article examines the implications of the coffee agreement between GoU and UVCCL on the socio-economic rights of the coffee supply chain players such as the producers, assemblers, roasters and exporters of coffee and its products in Uganda.

The remaining part of this article deals with the background. It identifies the key players in the coffee supply chain in Uganda and analyses the coffee production and export trends. It also deals with the history and evolution of coffee marketing in Uganda. After that, it analyses the legal framework on social and economic rights at the international, regional and national level including the one regulating the coffee sector in Uganda. The article then analyses the

1 United Nations Fund for Population Activities (UNFPA) (2005) "Human Rights Principles".

2 UN Office of the High Commissioner for Human Rights (OHCHR) "What are Human Rights?", available at <https://www.ohchr.org/en/what-are-human-rights#:~:text=Human%20rights%20are%20rights%20we,language%2C%20or%20any%20other%20status> (visited 19 October 2022).

3 Barigaba J (24 May 2022) "Uganda MPs Terminates Thorny VINCI Coffee Deal but Could it Resurface?" *The East African*, available at <https://www.theeastafrican.co.ke/tea/business/uganda-mps-terminate-thorny-vinci-coffee-deal-3822278> (visited 24 July 2022).

GoU-UVCCCL agreement to determine its implications on the socio-economic rights of the players in the coffee industry in Uganda. Finally, the article draws conclusions and recommends ways in which the socio-economic rights of the industry players may be protected in Uganda.

2. BACKGROUND

2.1 Players in the coffee supply chain

There are several players in Uganda's coffee supply chain. One of the categories of players is the coffee producers. They constitute up to 1.7 million households that were, for example, involved in growing coffee in 2021.⁴ Considering that the average household size in Uganda is five people,⁵ up to 8.5 million people may, therefore, be directly or indirectly affected by any event in the coffee sector. The contribution of the mainly small-scale producers in the production process has led to Uganda being ranked eighth among the leading coffee-producing countries in the world.⁶ Furthermore, given that smallholder farmers constitute up to 85 per cent of the total coffee production in Uganda,⁷ their position in the coffee industry is very significant.

The second category of players in the coffee supply chain is small-scale dealers. These are individual middlemen who purchase coffee from farmers and aggregate them for the bigger independent traders and their agents. They play a significant role in the success of coffee trading on the world market.²⁸ In contrast to her neighbours such as Kenya, for example, Uganda's coffee is currently not sold through a centralised auction system. Instead, individuals and local companies purchase

4 Taddewo WS (4 September 2021) "Uganda's Leading Coffee Producing Regions Revealed", available at <https://businessfocus.co.ug/ugandas-leading-coffee-producing-regions-revealed/> (visited 17 June 2022).

5 Uganda Bureau of Statistics (2021) "Uganda National Household Survey 2019/20", available at https://www.ubos.org/wp-content/uploads/publications/09_2021Uganda-National-Survey-Report-2019-2020.pdf (visited 03 March 2023).

6 Otucu F (1 July 2023) "New Report Ranks Uganda 8th Among World's Leading Coffee Producing Countries" *Business Focus*, available at <https://businessfocus.co.ug/new-report-ranks-uganda-8th-among-worlds-leading-coffee-producing-countries/#:~:text=A%202022%20report%20by%20Eleven,with%20441%2C%20000%20metric%20to> ns (visited 8 August 2023).

7 Lindrio P "Big Ambitions for Uganda's Small-Scale Coffee Farms" *Global Press Journal*, available at <https://globalpressjournal.com/africa/uganda/big-ambitions-ugandas-small-scale-coffee-farms/> (visited 8 September 2023).

it on behalf of international buyers, while large coffee companies and cooperative societies market their coffee directly to buyers in the international market.⁸

Finally, coffee processors such as roasters and brewers who add value in the industry constitute the fourth category of players in the supply chain.⁹ The individuals identified at the production level, aggregators, the entities and their respective members and the processors constitute the supply chain players whose rights are the subject of investigations in this article as a result of the GoU-UVCCCL agreement.

2.2 Coffee production and export trends

In Uganda, Coffee is grown in various parts of the country. It is mainly grown in the Bugisu region in Eastern Uganda on the slopes of Mount Elgon towards the border with Kenya and in the Western region on the slopes of Mount Rwenzori towards the border with the Democratic Republic of Congo (DRC). Coffee is also grown in the South-western region in Ankole and Kigezi and the West Nile region in the Northwestern part of Uganda.¹⁰

Coffee production in Uganda has steadily increased in recent years. In 2019/2021, for example, production was 5.04 million (60 kg) bags, increasing to 5.6 million bags in 2020/2021 and to 8.4 million bags in 2021/2022 with a projected production of 9 million bags in 2022/2023.¹¹ Currently, Uganda is the second largest coffee exporter in Africa second to Ethiopia.¹²

A very small proportion of the coffee produced in Uganda is consumed locally as it is estimated to be about 3 per cent of the total volume of the coffee produced in the country.²³ Whilst the economy as a whole has expanded and improved in recent years, coffee remains to be important contributing, for example, to one-third of Uganda's total export earnings in 2019/2020.¹³

8 Uganda's Coffee Value Chain (August 2020) "Market Insight: Industry, Asoko Insights", available at <https://www.asokoinsight.com/content/market-insights/uganda-coffee> (visited 16 May 2023).

9 Uganda's Coffee Value Chain (August 2020).

10 Senyonyi TW (4 September) "Uganda's Leading Coffee Producing Regions Revealed", available at <https://businessfocus.co.ug/ugandas-leading-coffee-producing-regions-revealed/> (visited 23 May 2023).

11 Ministry of Finance Planning and Economic Development (Uganda) (3 August 2020) "Uganda Registers an Increase in Coffee Exports", available at <https://www.finance.go.ug/press/uganda-registers-increase-coffee-exports> (visited 5 July 2023).

12 City Boy Coffee (5 March 2023) "Uganda, An Awakening Coffee Giant", available at <https://cityboycoffee.com/2023/03/06/uganda-an-awakening-coffee-giant/> (visited 5 July 2023).

13 World Coffee Research, Uganda, Available at <https://worldcoffeeresearch.org/focus-countries/Uganda>

2.3 History and evolution of coffee marketing in Uganda

In the 1920s, coffee growing had already been introduced in Uganda and its export earnings surged in the 1930s making it the major foreign exchange earner.¹⁴ By the 1950s, however, frequent revolts were staged against the exploitation of the farmers by the private sector players – who were mainly Asian traders who were buying cotton and coffee produced by the smallholder farmers.¹⁵ The colonial administration in Uganda responded by compensating the Asian traders, assuming ownership of the cotton ginneries and vesting them in Co-operative Unions. Coffee trade was also handed over to cooperatives. Although this led to the success of aggregating farmers' produce; marketing became a problem. This led to the establishment of statutory marketing boards such as the Coffee Marketing Board (CMB) and the Lint Marketing Board (LMB) for cotton lint to, inter alia, stabilise producer prices.¹⁶ It was also to protect the co-operatives and producers from vacillating world market prices and to promote an orderly marketing of the country's major export crops.¹⁷ It also strengthened farmers' bargaining power making them fetch better prices.

The CMB was established under the Coffee Act, 1963 which granted it the monopoly of coffee export. Although CMB thrived until the early 1980s, by the time the National Resistance Movement (NRM) government came to power in 1986, all the Marketing Boards such as CMB and LMB had several challenges such as high operational costs, huge debts and mismanagement.¹⁸ Following decades of total state control of the sector, the coffee industry was fully liberalised between 1991 and 1992 and is currently entirely private-sector driven.¹⁹ However, export quality control has remained the responsibility of the Uganda Coffee Development Authority (UCDA) which grades liquors and classifies all export shipments.²⁰

(visited 14 February 2023).

14 Jaramogi P (8 September 2020) "What Happened to Uganda's Marketing Boards?", available at <https://thecooperator.news/what-happened-to-ugandas-marketing-boards/> (visited 20 March 2023).

15 Jaramogi P (8 September 2020).

16 Jaramogi P (8 September 2020).

17 Jaramogi P (8 September 2020).

18 Jaramogi P (8 September 2020).

19 Jaramogi P (8 September 2020).

Algrano "Uganda, The Pearl of African Coffee", available at <https://www.algrano.com/en/origins/uganda> (visited 05 July 2023).

The drastic change in the coffee supply and value chain was occasioned by the recent GoU-UVCCCL agreement. It has granted an extensive monopoly in the coffee industry to UVCCCL. This may infringe on the socio-economic rights of some participants in the coffee supply chain, which is the subject of inquiry in this article.

In conclusion, the foregoing analysis shows that Uganda has had a history in which the development, management and administration of its coffee industry was systematic. Local farmers and producers have significantly contributed to the development of the industry and have specifically played a significant role in increasing production and improving the quality of coffee products. On the other hand, the UCDA has played a regulatory function in the quality control and audit of coffee for export. There seems to be a harmonised relationship between the regulator, farmers, producers and dealers within the coffee industry in Uganda. The GoU-UVCCCL agreement has, however, caused concern about the possible violation of the rights of the coffee supply chain participants. The next section deals with the legal framework governing the coffee sector in Uganda.

3. LEGAL FRAMEWORK ON SOCIO-ECONOMIC RIGHTS

3.1 International instruments

At the international level, Uganda is a signatory to several international instruments concerned with the enforcement and promotion of socio-economic rights such as the ICESCR.²¹ Under its preamble, the idea of human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone can enjoy their economic, social and cultural rights.²² It is important to note that the ICESCR specifically underpins the enjoyment of social and economic rights. Moreover, it further provides that this right shall be enjoyed by everyone and by implication, not a few.

21 Uganda ratified the ICESCR on the 21st day of January 1987. See Uganda's Initial State Report to the UN Committee on Economic Social and Cultural Rights (July 2012), available at <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fbodies%2Fcescr%2Fdocs%2FE.C.12.UGA.1.doc%23%3A~%3> (visited 04 September 2022).

22 Article 27 of the International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

Concerning the State Party's obligation to provide economic and technical assistance for the maximisation of available resources, the ICESCR states that each State Party shall be responsible for taking steps, especially in the economic and technical sphere, to the maximum of its resources to achieve progressively the full realisation of the rights recognised under the Covenant, the steps include adopting legislative measures.²³ In so doing it was envisaged that the rights would be upheld.

Considering the adoption of legislative measures above, the ICESCR does not specifically stipulate how a State Party should implement the legislative measures. Legislation is, nonetheless, still desirable and in certain circumstances, it was found to be indispensable.²⁴ However, case law has clarified this position where it was held that a State Party with valid international obligations such as the ones arising under the ICESCR, is “bound to make in its legislation such modifications as may be necessary to ensure the fulfillment of the obligations undertaken”.²⁵ To fulfill the obligations under ICESCR, legislation is, therefore, necessary. Following the enactment of the domestic legislation to fulfill the obligations under ICESCR, Uganda has ratified almost all the major regional and international instruments that protect economic, social and cultural rights (ESCRs) including the ICESCR. However, a reading of the Constitution (which is dealt with under municipal laws) shows that the rights envisioned in the ICESCR have not been fully domesticated.

3.2 Regional instruments

At the regional level, Uganda is a signatory to the African Charter on Human and Peoples’ Rights (ACHPR).²⁶ The Charter provides for the right to economic and social development of the people and where the people shall out of their free will, determine and pursue their economic

23 Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, 1996.

24 CESCR, General Comment 3: The Nature of States Parties’ Obligations (Art 2, para 1, of the Covenant), UN Doc E/1991/23, annexe III at 86 (1990); *Mohamed Ben Djazia and Naouel Bellili (represented by Javier Rubio) v Spain*, Communication 5/2015, E/C.12/61/D/5/2015 (20 June 2017) para 3.

25 This was for example the case in the *Exchange of Greek and Turkish Population case*, Advisory Opinion (21 February 1925), PCIJ Reports, Series B, No 10 at 20, available at https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_B/B_10/01_Echange_des_populations_grecques_et_turques_Avis_consultatif.pdf (visited 25 March 2023).

26 Uganda ratified this Charter on 10 May 1986 and signed it on 18 August 1986. ACHPR “ACHPR Ratification Table”, available at <https://www.achpr.org/ratificationtable?id=49> (visited 4 September 2022).

and social development following the policy they have freely chosen.²⁷ This provision underscores the importance of the people's freedom of choice in economic development. Thus, where people perceive that a path of economic development is contrary to their will, expressed in terms of choice, then such a development path may infringe on their rights.

Related to the foregoing is a person's right to dispose of his or her wealth and natural resources. The ACHPR provides for the right of people to dispose of their wealth and natural resources and specifically, "[A]ll peoples shall freely dispose of their wealth and natural resources". This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.²⁸ The foregoing provision underscores the freedom to decide whether to dispose of wealth and natural resources and implicitly to whom to dispose of it. Moreover, it puts the interest of the people at the forefront. Furthermore, the people shall not be deprived of the right. Thus, where the state unduly restricts the people's choice to dispose of their wealth, it may be acting in violation of their right as provided under article 21(1) of the ACHPR.

The ACHPR specifically refers to exploitation by foreign monopolies as it states that: "State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practiced by international monopolies".²⁹ The ACHPR seeks to protect the people from economic exploitation, which is deemed to be a form of disempowerment and thus a violation of economic rights. Furthermore, it identifies multilateral corporations as potential perpetrators of exploitation as envisioned in ACHPR.

Given that people's economic and social rights are instrumental in their well-being, the ACHPR accordingly provides that: "All peoples shall have the right to their economic, social and cultural development with due regard to their freedom ... in the equal enjoyment of the common heritage of mankind".³⁰ The foregoing provision first and foremost puts the economic and social development of every person as a right that every person must enjoy. Heritage specifically connotes birthright, custom, and inheritance. Thus, if a person ventures to grow, for example, coffee to sell to raise an income for his or her economic well-being, he or she

27 Article 20 of the ACHPR.

28 Article 21(1) of the ACHPR.

29 Article 21(5) of the ACHPR.

30 Article 22(1) of the ACHPR.

shall have sufficient latitude on how to deal with the outcome of such investment. Thus, if any limitations are to be imposed by, for example, the State, they must be reasonable, otherwise it may be found to violate the person's economic rights.

3.3 Municipal laws

3.3.1 *The Constitution*

At the national level, the Constitution binds all authorities and persons in Uganda³¹ and provides for some economic, social and cultural rights, which are covered under the Bill of Rights. These include the right to join or form trade unions,³² the right to strike,³³ the protection of children, freedom from exploitation,³⁴ and the equal treatment of men and women in employment, remuneration, economic opportunities and social development.³⁵ The rest of the provisions were incorporated as National Objectives and Directive Principles of State Policy (NODPSP), which are non-justiciable.

The NODPSP similarly provided for the social and economic objectives of the State under the Constitution. Under Objective XIV, the Constitution provides for the social and economic objectives of the State generally. It provides that:

[T]he State shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people.³⁶

The Constitution makes it very clear, though, that these principles are supposed to guide the state in applying or interpreting the Constitution or any other law and in implementing any policy or legislation,³⁷ to the extent that these principles can be used to interpret the Constitution or any other law which are justiciable. This position is strengthened

31 Article 2(1) of the ACHPR.

32 Article 29(1)(e) of the ACHPR.

33 Article 29(1)(d) of the ACHPR.

34 Article 34(4) of the Constitution of the Republic of Uganda, 1995 (as amended).

35 Article 34(4) of the Constitution of the Republic of Uganda, 1995 (as amended).

36 Article 8A and Objective XIV of the National Objectives and Directive Principles of State Policy under the Constitution of the Republic of Uganda, 1995 (as amended). Article 8A of the Constitution makes the National Objectives and Directive Principles of State Policy part of the Constitution of Uganda.

37 Article 8A of the Constitution makes the National Objectives and Directive Principles of State Policy part of the Constitution.

by the 2005 amendment to the Constitution introducing article 8A. This article provides for the national interest as follows: “Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directives of state policy”.³⁸ To achieve the objective, Parliament shall, therefore, enact the relevant laws to give effect to the national interest stated above.³⁹ The forgoing provision gives a very clear indication that the country is bound by the NODPSP. Not only can they form part of human rights jurisprudence through interpretation, but they may also be enforced through legislation.

Article 40(2) of the Constitution provides that: “[E]very person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business”. The right, inter alia, to carry on any lawful occupation such as farming is, therefore, a constitutional right. Implicitly, where the harvest has been realised, the farmers should be free to sell it as he or she chooses without any undue impediment.

3.3.2 *The National Coffee Act, 2021*

The National Coffee Act,⁴⁰ was enacted to repeal and consequently replace the Uganda Coffee Development Authority Act, Chapter 325.⁵² The purpose of the Act is to provide continuity of the Uganda Coffee Development Authority (CDA), promote and oversee the coffee subsector, provide for the CDA to regulate all on-farm and off-farm activities in the coffee value chain, provide for a coffee auction system, and other related matters.⁴¹ Among the key regulatory developments ushered in by the Coffee Act are registration of coffee farmers, registration and licensing of coffee chain and registration of processing factory.

The National Coffee Act empowers CDA to register all coffee farmers in Uganda and to maintain a national register of the farmers.⁴² Furthermore, registration shall be limited to those who are growing coffee at the time of registration.⁴³ The Authority is also enjoined to issue the farmers registration numbers free of charge.⁴⁴

38 Article 8A(i) of the Constitution.

39 Article 8(ii) of the Constitution.

40 National Coffee Act 17 of 2021.

41 The Long Title to the National Coffee Act 17 of 2021.

42 Section 27 of the National Coffee Act.

43 Section 26 of the National Coffee Act.

44 Section 27(3) & (4) of the National Coffee Act.

The CDA is also mandated to promote, register and regulate the formation of coffee value chain actors at the various levels of the coffee value chain in the country. In this regard, the CDA is empowered to register and maintain a register of coffee pulper operators, buyers, graders, processors, exporters, brewers, store or warehouse operators, huller operators and extractors' registers.⁴⁵ Registration shall be effected after CDA has verified the applicants information and on payment of a fee.⁴⁶ A license to participate in the coffee value chain may be made by application,⁴⁷ and is mandatory under the foregoing categories.^{48 & 49}

The Act also regulates warehousing and export of coffee where the players are required to enter a memorandum of understanding (MoU).⁵⁰ Under the MoU, a company shall only export the stock of coffee cleared by the authority. Where a company fails to comply with the above, the export license shall be cancelled. The coffee stock shall also be confiscated and forfeited to the state.⁵¹ Although the National Coffee Act does not explicitly guide on the purpose and nature of the MoU envisaged under the law, section 56(2)(i) empowers the Minister to make regulations concerning the procedure for the importation and exportation of coffee and coffee exports. The substantive provisions of the memorandum of understanding are likely to be provided for under the regulations. The Act also empowers the minister on the recommendations of the Board of the CDA, to make regulations for better carrying into effect the provisions of the Act,⁵² which have not yet been formulated.

Concerning selling of coffee, the National Coffee Act provides for an auction system. Specifically, it enjoins the CDA to establish a coffee auction system which shall be used as an alternative method to the existing method of selling coffee.⁵³ The coffee auction system is anticipated not only to potentially add value to the distribution system and create a closer link between growers and roasters but also enable the chain participants obtain a fair reward for their contribution.

45 Section 31 of the National Coffee Act.

46 Section 34 of the National Coffee Act.

47 Section 35 of the National Coffee Act.

48 Section 35 of the National Coffee Act.

49 Section 35 of the National Coffee Act.

50 Section 54 of the National Coffee Act.

51 Section 54 of the National Coffee Act.

52 Section 57 of the National Coffee Act.

53 Section 51 of the National Coffee Act.

In addition to regulating the types and varieties of coffee to be grown in the different parts of Uganda, the CDA shall collaborate with the body responsible for standards to develop coffee standards. The Authority shall grade and certify all coffee grown or marketed in Uganda.⁵⁴ This provision further empowers the Authority to take into account international and regional coffee grading and certification standards issued by the International Coffee Organisation or any other international and regional coffee standards organisation.⁵⁵ Apart from that, the CDA shall levy a charge not exceeding two per cent on the Free on Rail or Free on Truck or another form of the acceptable contract price of the export of coffee.⁵⁶

The National Coffee Act defines offences and provides for penalties under the coffee value chain. Specifically, any person who does the following: operates an unregistered coffee nursery or coffee seed garden; sells or distributes substandard or diseased planting materials; harvests or is found in possession of immature cherries or strips of a coffee tree; roasts or packages non-coffee material as coffee; poorly stores wet cherries or heaps coffee leading to mold formation; sets up a store or warehouse that does not meet the requirements for storing coffee; being a processor, does not have a husk chamber or store; and operates a huller without a license or without an approved structure commits an offence.

Furthermore any person who deals in coffee for internal marketing without a license or in contravention of the Act; operates a coffee processing factory without a license; handles or processes wet coffee with a moisture content above 14 per cent; dries coffee on the bare ground; processes coffee without a valid license; tampers, replaces, removes or is in possession of a security seal of the authority without authorisation; replaces inspected coffee with uninspected coffee; boils, contaminates or rough hulls coffee; adulterates coffee or is in possession of adulterated coffee which means mixing coffee of different types or mixing coffee with non-coffee materials; denies access to or blocks an inspector or staff of the authority or fails to render any reasonable assistance to an inspector commits an offence.⁵⁷

The Act further provides that where an offence specified under the Act is committed by a body corporate, every director and employee of that body corporate shall also be taken to

54 Section 40 of the National Coffee Act.

55 Section 40 of the National Coffee Act.

56 Section 44 of the National Coffee Act.

57 Section 54 of the National Coffee Act.

have committed that offence, and where the body corporate is a firm, a partner of that firm shall also be taken to have committed that offence unless he or she proves that the offence was committed without his or her knowledge, or that he or she exercised due diligence to prevent the commission of the offence.⁵⁸

In conclusion, the Act has introduced fundamental and sweeping regulatory changes to the entire coffee subsector and the coffee value chain. While it has extended the coverage of the regulatory framework amidst some initial public uproar, the ultimate power of the new law to increase the quality of the coffee value chain will be determined by the quality and extent to which the yet-to-be-passed regulations will facilitate the substantive law and make the procedure easier and accommodative to the supply chain players in the coffee industry in Uganda. As with laws for which substantive power is left for regulations, the devil in this Coffee Act will be in the detail that the regulations will provide. Finally, the National Coffee Act will be important later in analysing the GoU-UVCCCL agreement to determine whether it followed the legal procedures and if it was necessary at all for the coffee industry in Uganda and its implications on the socio-economic rights of the players in the coffee supply chain.

3.3.3 Public Procurement and Disposal of Public Assets Act, 2021

The Public Procurement and Disposal of Public Assets (PPDA) Act was amended in 2021 by the PPDA (Amendment) Act 11 of 2021. Some of the objectives of the PPDA are to promote transparency and ensure value for money in the process. The Act grants PPDA a wide range of functions which include advising procuring entities on the application of the Act.

58 Section 56 of the National Coffee Act.

3.3.3.1 Basic procurement and disposal principles

The Act (PPDA Act) introduces six basic procurement and disposal principles which are relevant to fundamental rights and reflect the principles of natural justice. These include: non-discrimination; transparency, accountability and fairness; maximisation of competition and ensuring value for money; confidentiality; economy and efficiency; promotion of ethics and preference and reservation of procurements.⁷² It is important to highlight what constitutes these principles under the Act as considered below.

One of the principles enshrined under PPDA Act is non-discrimination of bidders from participating in public procurement and disposal based on nationality, race, religion, gender or any other criterion not related to qualification, except to the extent provided for in this Act.⁵⁹ Related to the above is the principle of transparency, accountability and fairness. Thus all procurement and disposal activities shall be conducted in accordance with those principles.⁶⁰

Apart from that, PPDA Act has recognised that competition in procurement and disposal activities maximises competition and achieves value for money, and thus stipulates that it shall be observed in the process.⁶¹

Under the confidentiality principle, a procuring and disposing entity shall not disclose pertinent information concerning procurement. A procuring and disposing entity shall not, for example, disclose solicitation documents until they are officially issued. Where disclosure shall prejudice a bidder, the information shall not be disclosed.⁶² Furthermore, procurement and disposal shall be conducted in a manner which promotes economy, efficiency and value for money.⁶³ Related to the above is the ethical principle where the PPDA Act provides that procurement and disposal shall be carried out under the Codes of Ethics.⁶⁴ The PPDA Act code of ethical conduct is provided for under section 93 of the PPDA Act and provides a number of requirements in business for bidders and providers. These include: ethical principles; standards, conflict of interest; confidentiality and accuracy information; gifts and hospitality;

59 Section 44 of the Public Procurement and Disposal of Assets Act, 2021 (PPDA Act).

60 Section 45 of the PPDA Act.

61 Section 46 of the PPDA Act.

62 Section 47 of the PPDA Act.

63 Section 48 of the PPDA Act.

64 Section 49 of the PPDA Act.

and inducement and fraudulent practices. These are mandatory under the law and they were under looked in the GoU-UVCCL coffee agreement as earlier elaborated.

The last principle considered is preference and reservation of procurements under the PPDA Act. Under the Act, Ugandan consultants and contractors shall be accorded preference and reservation of procurements to promote their development. This strategy aims to give them a competitive advantage over foreign contractors when competing for public procurement contracts.⁶⁵ Furthermore, to promote some specific particular sectors in certain locations, public procurement contracts or parts thereof shall be subject to reservation schemes.⁶⁶ The above provision is in line with the government of Uganda's Buy Uganda Build Uganda (BUBU) policy, which is a policy geared towards promoting the use of locally manufactured goods and the use of local skills and/or personnel.⁶⁷

In conclusion, it is evident from the aforementioned discussion that there exists an elaborate international, regional and national legal framework regulating the coffee industry in Uganda. The legislation is akin to socio-economic rights, specifically the procurement laws that provide for different principles of procurement. The concern is whether or not GoU followed the existing legal framework on coffee in Uganda while entering the UVCCL Coffee agreement, which is analysed later in this article. The legal framework is implemented by several institutional frameworks. The next section examines the existing institutional framework regulating the coffee industry in Uganda.

4. LEGAL INSTITUTIONS REGULATING THE COFFEE INDUSTRY IN UGANDA

Uganda's coffee is regulated by several institutions which include the parliament under the Public Accounts Committee (PAC),⁶⁸ the Uganda CDA,⁶⁹ courts of law,⁷⁰ and the office of the Auditor-General.⁷¹

65 Section 50(1) of the PPDA Act.

66 Section 50(2) of the PPDA Act.

67 Natamba P "Buy Uganda Build Uganda", available at <https://www.pwc.com/ug/en/press-room/buy-uganda-build-uganda.html> (visited 4 September 2022).

68 Article 154(3) of the Constitution.

69 Section 5(a) of the National Coffee Act.

70 Article 126 of the Constitution.

71 Article 163(4) of the Constitution.

Parliament performs the legislative role of the government, in addition to its oversight functions, including acting as a watchdog over the executive. In the performance of its roles, it holds the executive accountable. The PAC is a standing committee of Parliament, and its mandate is concerned with watchdog roles on matters of financial accountability. Specifically, it was created to scrutinise the reports of the Auditor-General. Such reports are tabled before the floor of Parliament. Following the procedures of Parliament, the Committee is required to report back to Parliament after considering the report for adoption.

The purpose of scrutiny is to recommend remedial actions to the cabinet. The PAC has the power to summon any controlling officer or department head to give an explanation and be held accountable for breaches in financial accounts in the auditor general's report. The scrutiny of annual accounts and audit reports by the PAC completes the circle of the various stages of control for ensuring financial accountability. Parliament is also empowered to censure ministers accused of engaging in acts of abuse of office and misconduct.⁷²

The Constitution grants parliament powers to appoint committees necessary for the efficient discharge of its functions.⁸³ The Constitution further empowers Parliament by its rules of procedure, to prescribe the powers, composition and functions of its committees.⁸⁴ Rules 156(1) and (2) of the Rules of Procedure of Parliament reiterate the above constitutional provisions. Under Rule 159 of the Rules of Procedure of Parliament, the functions of a committee of Parliament include: assessing and evaluating activities of GoU and other bodies;⁷³ carrying out relevant research in the committee's respective field;⁷⁴ and reporting to Parliament on its functions.⁷⁵

Rule 187(1) provides for the existence of Sectoral Committees of the House, and in sub-rule (2)(b), there shall be a Sectoral Committee on the Tourism, Trade and Industry sector. Specifically, as a Sectoral Committee, rule 189 charges it with functions that include: examining and commenting on policy matters affecting the Ministry of Trade, Industry and Cooperatives and the Ministry of Tourism, Wildlife and Antiquities;⁷⁶ initiating and evaluating

72 Rule 109 of the Rules of Procedure of Parliament of Uganda, Statutory Instrument 30 of 2021.

73 Rule 159(c) of the Rules of Procedure of Parliament of Uganda.

74 Rule 159(d) of the Rules of Procedure of Parliament of Uganda.

75 Rule 159(e) of the Rules of Procedure of Parliament of Uganda.

76 Rule 189(a) of the Rules of Procedure of Parliament of Uganda.

action programmes of the said ministries and their sectors and appropriate recommendations on them;⁷⁷ monitoring the performance of Departments and Agencies (MDAs);⁷⁸ monitoring government activities with approved plans and programmes;⁷⁹ and monitoring the progress of implementation of industry Sector Development Goals (SDGs) made in the tourism, trade and industry sector.⁸⁰ Parliament has already taken up this matter and issued a report concerning the status of the coffee agreement between the government of Uganda and UVCCCL.⁸¹ This article analyses the findings of Parliament later on.

The Uganda Coffee Development Authority (UCDA) is another legal institution regulating coffee in Uganda. It is a government agency that was established by an Act of Parliament in 1991, amended in 1994 by Cap 325 and the Coffee Regulations of 1994. The National Coffee Act, 2021 repealed and replaced the UCDA Cap 325. It is responsible for regulating all “on” and “off” coffee farm activities.

The Authority is governed by a Board of Directors which oversees the conduct of business and supervision of the UCDA management. The UCDA management is responsible for the day-to-day operations of the Authority.⁸² The objectives of the Authority are to promote, improve and monitor the marketing of coffee to optimise foreign exchange and farmers’ earnings; guarantee that the quality of coffee exports meet international standards; develop and promote coffee and other related industries through research and extension arrangements; promote the marketing of coffee as a value-added product; promote domestic consumption of Uganda coffee; harmonise activities of coffee sub-sector associations in line with industry objectives; and formulate policies related to the coffee industry.⁸³

The functions of the Authority are to issue certificates in respect of grade and quantity of coffee; to register in accordance with guidelines issued by the Minister, on the advice of the Board, organisations and bodies applying to market coffee; to collect, maintain and

77 Rule 189(b) of the Rules of Procedure of Parliament of Uganda.

78 Rule 189(d) of the Rules of Procedure of Parliament of Uganda.

79 Rule 189(o) of the Rules of Procedure of Parliament of Uganda.

80 Rule 189(g) of the Rules of Procedure of Parliament of Uganda.

81 See the Report of the Sectoral Committee on Tourism, Trade and Industry on Investigations of the Alleged Unfair Terms in the MOU between the Government of Uganda and the Uganda Vinci Coffee Company Limited. Accessed from Parliamentary Building, Kampala dated 29 April 2022.

82 Section 14 of the National Coffee Act.

83 Section 4 of the National Coffee Act.

disseminate statistical data in respect of all aspects of the coffee industry; to certify all coffee exports; to monitor world market price changes and adjust the indicative price on a day-to-day basis to reflect the changes; and to research and make extension arrangements through the Ministry of Agriculture or any other organisations established in the country for the purpose and to reconcile coffee sub-sector policies with macro-economic policies of the Government.

Furthermore, the functions are to maintain statistical data in respect of all coffee sales; to advise Government on the mechanism of determining the indicative price for the sale of coffee; to liaise with the International Coffee Organization (ICO) and be responsible for the administration of stamps of the organisation; to liaise with other international organisations and promote Uganda coffee on the world market; to be responsible for the overall supervision of the coffee sub-sector including related industries and advise Government on coffee sub-sector policies; and to organise training for technicians, coffee processors and quality controllers.⁸⁴

Chapter eight of the Constitution provides for the courts of law. Its constitutional mandate is to administer justice.⁸⁵ The Human Rights (Enforcement) Act, 2019 has also given the magistrates' courts jurisdiction to try some matters concerning violation of human rights though the mandate is limited to the civil jurisdiction of a particular magistrate under different laws establishing the jurisdiction of courts. The other matters concerning violation of human rights that are not within the jurisdiction of the magistrates' courts are handled by the High Court of Uganda which has unlimited jurisdiction.⁸⁶

Similar to most constitutional offices above, the office of the Auditor-General is an autonomous constitutional office.⁸⁷ Its overall mandate is the audit of public accounts. Its watchdog role is to ensure financial integrity. Its power also extends to value-for-money audits on the public accounts of Uganda. In performing its role, its jurisdiction extends to public offices, projects of government and statutory organisations.⁸⁸

84 Section 5 of the National Coffee Act.

85 Article 129 of the Constitution.

86 Article 50 of the Constitution.

87 Article 163 of the Constitution.

88 Section 13(1) of the National Audit Act, 2008.

Despite the existence of a strong legal and institutional framework regulating the coffee industry in Uganda, the signing of the coffee agreement between GoU and UVCCL, left a lot to be desired. Several provisions of this agreement affect the socio-economic rights of several players in the coffee industry in the country. Similarly, most of the clauses of the agreement contravene the provisions of the Constitution and other Acts of Parliament such as the PPDA Act and the National Coffee Act. The next section analyses the Gou-UVCCL agreement.

5. ANALYSIS OF THE IMPLICATIONS OF GoU-UVCCL COFFEE AGREEMENT ON SOCIO-ECONOMIC RIGHTS OF THE COFFEE INDUSTRY

On 29 April 2015, the Government of Uganda, through the Ministry responsible for Finance, Planning and Economic Development executed a Project Implementation Agreement (Agreement) between GoU and UVCCL. In this Agreement, GoU was represented by Mr Keith Muhakanizi, the then Permanent Secretary or Secretary to the Treasury (PSST) while Ms Enrica Pinetti signed on behalf of UVCCL. The Agreement was to facilitate the company's ventures of processing Ugandan coffee into a roasted and instant coffee for local and international markets. The agreement was for the construction and operation of an integrated 60 000 metric ton per-year coffee processing facility at Kampala Industrial and Business Park (KIBP), Namanve and such other places where the Company may have offices or presence to carry out its project.⁸⁹

In December 2015 and October 2017, the GoU and UVCCL signed Addendum 1 and Addendum 2 to the Project Implementation Agreement to clarify various matters agreed upon between them; and the parties under the Deed consolidated the said addenda and amalgamated them with the Project Implementation Agreement and restate their agreement within the terms of the Deed.⁹⁰ Accordingly, the Project Implementation Agreement signed on 29 April 2015 was amended by the Deed.⁹¹ In the same respect, Addendum 1 to the Project Implementation Agreement and Addendum 2 to the Project Implementation Agreement were incorporated into the said agreement whose terms were consolidated and restated by

89 Article 50 of the Constitution of the Republic of Uganda.

90 Paragraph 7, p 2 of the GoU-UVCCL coffee deed.

91 Paragraph 1(1.1), p 3 of the GoU-UVCCL Coffee Deed.

the Deed.⁹² The Deed has superseded and replaced the Project Implementation Agreement of April 2015 and the two addenda signed in respect thereof.⁹³ The agreement infringes on several issues affecting the socio-economic rights of local coffee industry players as discussed hereunder.

92 Paragraph 1(1.2), p 3 of the GoU-UVCCCL Coffee Deed.

93 Paragraph 1(1.3), p 3 of the GoU-UVCCCL Coffee Deed.

5.1 Ownership of UVCCCL

According to the Articles and Memorandum of Association of UVCCCL, the Company was incorporated to, among others, purchase, sell, import, export, distribute, supply and trade in all types of coffee and the relevant by-products, all types of agricultural products and the relevant by-products. The shareholders of UVCCCL are Hisham Ahmed Sultan Ismail (ten shares); Ahmed Ahmed Sultan Ismail (ten shares); Ibrahim Elias Salloum (ten shares); Hadi Elias Salloum (ten shares); and Hawk Limited (960 shares). The directors of UVCCCL are Erica Maria Aristidina Pinetti, the Managing Director; Hisham Ahmed Sultan Ismail; Ahmed Ahmed Sultan Ismail; Ibrahim Elias Salloum; and Hadi Elias Salloum. All the above persons are citizens of Italy and the United Kingdom.⁹⁴

Given that none of the shareholders and directors is a Ugandan, the implication of the above is that this is a foreign company. This provision violates the provisions of article 8A of the Constitution of Uganda and specifically, Objective XIV of the NODPSP which requires Ugandans to have access to all developmental programmes and available opportunities.

The agreement further contravenes the basic procurement principles of non-discrimination, transparency, accountability and fairness and competition.⁹⁵ The local or indigenous companies in the coffee business in Uganda were never given a chance to compete with the foreign company for works outlined in the agreement. According to the report of the Parliamentary Select Committee, Uganda has 58 licensed coffee roasters and incubatees for the coffee year 2021-2022.⁹⁶ None of these companies was given a chance to participate in the process leading to this coffee investment agreement. Article 21(1) of the Constitution of Uganda outlaws any form of discrimination based on any ground be it economic background. The rationale for discriminating against Ugandan local companies to participate in this lucrative business is unknown. This approach is unfair, not transparent and unjust as it excludes local companies from meaningfully participating in the existing development programmes and opportunities thus affecting their socio-economic rights to work and compete with foreign companies.

94 Page 16-17 of the UVCCCL Memorandum of Association.

95 Sections 44, 45 and 46 of the PPDA Act.

96 Page 11-12 of the GoU-UVCCCL Coffee Deed.

Consequently, this agreement contravenes the provisions of the Constitution, PPDA Act and other international and regional instruments already cited herein as far as it violates the socio-economic rights of Ugandans as it disenfranchises them from participating in the kind of business. More so, it was only given to a foreign company moreover without any kind of competition for the same.

5.2 The monopoly of coffee supply granted to UVCCCL

Clause 4.2 of the GoU-UVCCCL Agreement makes provision for coffee supply and obligates the government, in clause 4.2.1, to take reasonable measures to give priority to the supply of coffee to the Company before registering any contract or acknowledging any arrangement for the export of coffee beans, so that the company will have ample supply of coffee to sustain its operations. Clause 4.2.2 of the agreement further requires the company to pay for a priority supply of superior quality coffee beans at a premium price to be determined by the company but, in any case, not lower than the price approved by the relevant authority for a particular consignment or the prevailing international price for each grade of coffee, whichever is lower.

The above provisions essentially have the following implications: They grant priority to UVCCCL to purchase super-quality coffee beans before GoU can register any contract or acknowledge any arrangement for the export of coffee beans; allow UVCCCL to determine the price it pays for coffee beans, not being the lower of the price approved by the relevant authority for a particular consignment or the prevailing international price for each grade of coffee; and Clause 4.2.1 creates a monopoly in favour of UVCCCL in the purchase of super-quality coffee in Uganda.

The above provisions create negative discrimination and promote unfair competition in business contrary to article 8A of the Constitution and sections 44 (non-discrimination) and 46 (competition) of the PPDA Act. The latter are basic procurement principles recognised by our domestic laws and under international law. The OECD principle of integrity in procurement requires upholding ethical standards and moral values of honesty, professionalism and

righteousness. This is the cornerstone of ensuring fairness, non-discrimination and compliance in the public procurement process.⁹⁷

Monopoly was defined in the case of *State v Duluth Board of Trade*,⁹⁸ to consist in the ownership or control of so large a part of the market supply or output of a given commodity as to stifle competition, restrict the freedom of commerce, and give the monopolist control over prices. This definition simply means that other players in the same market are excluded from participating in a similar trade and if they are to participate, unfair trade terms are imposed on them thus limiting their participation. Consequently, the coffee agreement between UVCCCL and GoU creates a monopoly by: giving priority supply of premium quality coffee to the Company;⁹⁹ limiting licensing of coffee exporters until the company meets its unlimited demand; and granting the company powers to determine the prices of coffee.

Clause 4.2 creates a monopoly in favour of UVCCCL to the purchase of superior quality coffee beans from Uganda by restricting GoU from registering any contract or acknowledging any arrangement for the export of coffee beans. This means that no export of quality coffee beans shall be allowed by GoU until the quantity required by UVCCCL is attained. Further still, a monopoly is created in favour of UVCCCL since it controls the prices it pays for the coffee beans supplied to it. The supply of premium quality coffee beans in Uganda is limited since such coffee beans constitute between 3-6 per cent of the total coffee production in Uganda.¹⁰⁰ Out of the total production of 390 000 tons of coffee, 23 400 tons are of the super-quality beans which are restricted by the agreement.¹⁰¹

The supply of these high-quality beans is much sought after since they fetch premium prices internationally and domestically. Therefore, restricting access to such beans to UVCCCL amounts to restraint of trade and, therefore, contravenes article 40(2) of the Constitution as it prevents all other persons in Uganda, except UVCCCL, from accessing and trading in such beans.

97 OECD (2016) "Preventing Corruption in Public Procurement", available at <https://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf> (visited 7 July 2023).

98 *State v Duluth Board of Trade* 107 Minn 506.

99 Clause 4.2.1 of the GoU-UVCCCL Deed.

100 Clause 4.2.1 of the GoU-UVCCCL Deed.

101 Clause 4.2.1 of the GoU-UVCCCL Deed.

Article 40(2) of the Constitution guarantees a person's right to practice their profession and to carry on any lawful occupation, trade or business. By the command of article 40(2) of the Constitution, a person in Uganda is free, without restriction, to carry out any lawful occupation, trade or business.

In Uganda, the courts have already made a decision on the negative effect of monopoly power in *Spedag Interfreight Uganda Ltd v Attorney General*,¹⁰² wherein the decision of the government to enter into an agreement with Great Lakes Ports Ltd granting it monopoly rights in respect of clearing, forwarding and handling of all goods imported into and exported out of Uganda through the port of Mombasa was held to be a contravention of article 40(2) of the Constitution. The court found that the government does not have the power to enter into a contract that limits the enjoyment of fundamental rights under article 40(2) of the Constitution. This practice affects the livelihoods of farmers and all persons engaged in the coffee value chain since the coffee requirements of the agreement represent approximately 15 per cent of the total coffee production in Uganda and 100 per cent of the premium coffee beans.¹⁰³

To allocate 100 per cent of premium quality coffee produced in the country means that other players will not be able to access that category of coffee thereby affecting the economic activities and livelihoods of various persons participating in the coffee value chain. Monopoly is a serious threat to socio-economic rights. The already existing 47 licensed processors of coffee in Uganda are likely to be unemployed, GoU will also lose taxes and the players in the coffee value chain will shut down operations.

The Attorney-General of Uganda has argued that legal due diligence was conducted before the clearance of the deed and it was determined that the company was validly existing, incorporated under the laws of Uganda, had its returns up to date and could execute the agreement on behalf of the parties.¹⁰⁴ With all due respect, it is very difficult to comprehend what the learned Attorney-General means by his legal analysis. Whereas the issue of legal existence and compliance with the provisions of the Company Act is disputed in the report of

102 Constitution Petition 85 of 2017.

103 Constitution Petition 85 of 2017.

104 Weekly Observer (28 June 2022) "Attorney General Defends Vinci Coffee Agreement", available at <http://observer.ug> (visited 16 October 2022).

the Parliamentary Committee, the issue at stake is more than mere legal existence but the overall effect of the agreement on socio-economic rights of the coffee industry supply chain players in the country which the Attorney-General ought to have advised Government.¹⁰⁵ The Attorney-General has also not come out clearly as to whether or not he rendered advice to GoU in respect of this agreement and whether GoU sought his opinion prior to executing the agreement.

On the other hand, the Uganda Law Society (ULS) is of the view that the impugned agreement in its entirety violates the guiding principles of creating a competitive, equitable, commercialised, liberalised and sustainable coffee sector contrary to the National Coffee Policy of 2013 and the National Coffee Act of 2021.¹⁰⁶ It further argues that the nature and structure of the agreement will lead to the disenfranchisement of smallholder farmers, individuals who have been providing forward and backward linkages to the coffee sub-sector, the land rights and the attendant livelihoods of affected communities.¹⁰⁷

5.3 Unfair trade practices

The creation of a monopoly under the agreement also infringes the East Africa Competition (EAC) Act, 2006 wherein, section 5(1) of the EAC Act prohibits anti-competitive concerted practices and more so if such practices have or are intended to have an anti-competitive effect in the relevant market, as the case is in the present scenario with the terms in this agreement. Section 5(2)(e) of the EAC Act in its strongest terms prohibits any person from barring competitors from access to the market or from access to an association or arrangement which is essential for competition.

105 Under Article 119(3) of the Constitution, the Attorney-General is the principal legal adviser of the Government. Under Article 119(4) of the Constitution of the Republic of Uganda, 1995, the functions of the Attorney-General shall include the following: a) to give legal advice and legal services to the Government on any subject; b) to draw and peruse agreements, contracts, treaties, conventions and documents by whatever called, to which the Government is a party or respect of which the Government has an interest; c) to represent the Government in courts or any other legal proceedings to which Government is a party; and d) to perform such other functions as may be assigned to him or her by the President or by law.

106 ULS (25 April 2022) "ULS Views and Opinions Presented to the Sectoral Committee on Tourism, Trade and Industry Regarding the Unfair Terms of the MOU between the Government of Uganda and Uganda Vinci Coffee Company Ltd at Parliament of Uganda", available at <https://www.uls.or.ug> (visited 16 October 2022).

107 ULS (25 April 2022).

5.4 The legality of the agreement is in issue

Article 8A of the Constitution deals with national interests and requires that Uganda shall be governed based on principles of national interest and common good enshrined in the National Objectives and Directive Principles of State Policy (NODPSP). One of the principles enshrined in the NODPSP is objective X which enjoins the State to take all necessary steps to involve the people in the formulation and implementation of plans and programmes which affect them.¹⁰⁸ On the other hand, article 26 of the Constitution guarantees a person's right to own property either individually or in association with others.

The Constitution (article 26) requires that before a person is deprived of his or her property, the state must ensure that: The taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and the compulsory taking of possession or acquisition of property is made under a law which makes provision for (i) prompt payment of fair and adequate compensation, before the taking of possession or acquisition of the property, and (ii) a right of access to a court of law by any person who has an interest or right over the property. The agreement thus violates article 8A of the Constitution as it was concluded without the input of coffee farmers, who are the owners of the coffee beans which are being granted to UVCCCL under the Agreement.

Coffee beans are owned by farmers unlike minerals and other natural resources that are held in trust by the State for the people of Uganda. It is, therefore, arbitrary to agree without the consent of the owners of the property subject to the agreement. The agreement thus interferes with the exclusive rights granted to farmers over their coffee under article 26 of the Constitution by pledging the coffee to a single entity without the consent of farmers. The farmer's proprietary rights are affected by the agreement, irreversibly.

Similarly, the National Coffee Act prescribes two types of price determination, being the indicative issued by the National Coffee Development Authority and a price determined through auction under section 35. Permitting UVCCCL to determine the price for coffee beans not only contravenes the above sections of the National Coffee Act but also amends, by implication, the price determination mechanisms prescribed by law.

108 Article 8A of the National Objectives and Directive Principles of State Policy under the Constitution.

5.5 Exclusion of relevant stakeholders in the process leading to the agreement

The Select Committee of Parliament established to investigate the impugned agreement reported that it interacted with coffee farmers through their cooperatives who affirmed that they were not consulted by the Minister before executing the agreement. The Committee was also informed by UCDA that it was also not consulted during the formulation of the agreement. The Minister of Finance and the Attorney-General also confirmed to the Committee that they had not consulted the coffee farmers since there was no legal obligation to consult them.¹⁰⁹ The non-consultation of coffee farmers contravenes article 8A, which now entrenches the democratic principle of consultations in our constitution.

5.6 Undermining relevant policies protecting the economic rights of coffee players

In 2013, the government of Uganda formulated the National Coffee Policy as the guiding instrument of the coffee subsector. This policy aims to lay a strong foundation for long-term competitiveness that is socially, environmentally and economically sustainable and also ensures that Uganda coffee flourishes throughout the world. The implementation of the National Coffee Policy is guided by clear principles, namely:

Coffee production, processing, and marketing shall be undertaken by the private sector as individual farmers, farmer organisations and business companies. The sub-sector shall operate under a liberalised market environment within the framework of a regulatory body. Coffee development services will be provided to all farmers with special emphasis on women and youth. Through farmer organisations, smallholder farmers shall be empowered to participate at all stages of the coffee value chain. Smallholder farmers shall, through farmer organisations, participate at all stages of the coffee value chain. Service delivery shall be guided by the needs of all actors in the value chain. Furthermore, value addition shall be pursued at all stages of the coffee value chain.

Considering the above, the GoU-UVCCCL agreement infringes and reverses the National Coffee Policy, specifically the principle that coffee production, processing, and marketing shall be undertaken by the private sector as individual farmers, farmer organisations and business

109 Weekly Observer (28 June 2022) 47 – 48.

companies since it has now transferred the purchase of high-quality beans to be exclusively provided by a single company. Furthermore, the creation of a monopoly has infringed upon the principle that the coffee sub-sector shall operate under a liberalised market environment within the framework of a regulatory body. Related to the above, clauses 4.2.1 and 3.1.4 have defeated the government policy which favours value addition to coffee by allowing the export of raw coffee beans.

The National Development Plan NDPIII focuses on agro-industrialisation and value addition and GoU has taken a deliberate strategy to add value to coffee. Therefore, allowing UVCCL to export raw coffee beans is a policy reversal in light of the fact that government should be looking at establishing more soluble coffee plants to supplement the plant to be established by UVCCL rather than allowing UVCCL to export raw coffee beans.

Clause 4.2.2 of the Agreement also poses some challenges since it infringes the price determination mechanisms established in the National Coffee Act. Clause 4.2.2 not only allows the UVCCL to determine the price of coffee beans but also allows UVCCL to pay a price, whichever is lower, between the price approved by the relevant authority for a particular consignment and the international price for each grade of coffee. This provision not only exploits farmers by being paid a lower price than the one they can obtain from selling their coffee beans elsewhere but also contravenes the specific provisions of section 5(g) of the National Coffee Act, the obligation to prescribe quality control standards for the sale and marketing of coffee, issue indicative prices at which coffee may be traded and protect coffee farmers from exploitation and unfair trade practices.

5.7 Undermining well-known economic determinants of price

It has already been noted that the agreement permits UVCCL to determine the price for coffee beans and thereby contravening section 35 of the National Coffee Act. Whereas farmers are being promised premium prices, the agreement is silent on the method of supply of coffee beans to the factory. This, therefore, opens a window for possible contracted brokers by UVCCL since the factory will need constant supply from different regions of the country thus, reducing the margin on the farm gate price. Designating UVCCL as a price determinant will distort coffee

prices in Uganda by disregarding the forces of demand and supply, both locally and internationally, in determining coffee prices.

Given the above concerns, the UVCCL coffee agreement has far-reaching implications for the socio-economic rights of Ugandans in the coffee industry. As this section has elaborated, if implemented in its current form, the monopoly power created is likely to leave many players in the coffee industry unemployed, and others will be operating under terrible economic terms (high taxes, unfair prices for their coffee products, unilateral rejection of their products, lack of bargaining power and lack of participation in decision making), shut down of businesses and discriminative trade practices. These implications affect the socio-economic rights of Ugandans in the coffee industry thus it violates international, regional and national legal frameworks protecting these rights. The GoU should immediately address this impasse to protect and promote the socio-economic rights of players in the coffee industry.

6. CONCLUSION

This article has demonstrated coffee agreement between the GoU and UVCCL. It was shown that the agreement undermines efforts to promote socio-economic rights in Uganda. It has highlighted various socio and economic human rights violations specifically of the supply chain players in the coffee industry. It also contravenes international human rights instruments as well as various provisions of relevant statutes and the Constitution. Several key stakeholders were not consulted and Parliament has recommended that the agreement should be terminated to which this article agrees. Given that GoU is silent about the report of Parliament to terminate the agreement, means that the impugned agreement is still in force. Parliament should exert pressure on GoU to terminate the agreement.

7. RECOMMENDATIONS

Based on the analysis, the article makes the following recommendations:

GoU should carry out stakeholders' consultation with the people affected by an undertaking. Thus, before executing agreements such as the GoU-UVCCL, the coffee supply chain players should have been meaningfully consulted. In reaching this agreement, coffee

farmers, assemblers, exporters, and even the regulator – UCDA; the minister in charge and the Attorney-General were not meaningfully consulted.

GoU should show commitment to her international obligations. Given that Uganda has ratified several international agreements such as the ICESCR, and some of its provisions domesticated in the Constitution, Uganda should adhere to the provisions of the instrument rather than domesticate and turn a blind eye.

GoU should respect the rule of law. It is only courteous to remind GoU that Uganda should follow the rule of law and this should be seen to exist in practice. Institutions established and with a mandate to pursue certain statutory functions should be left to discharge their mandates.

GoU should strengthen the legal institutional framework. Several statutory institutions have been established to regulate the coffee sector in Uganda including UCDA with its full governing board. The way the impugned agreement was entered and the processes leading to it tends to undermine the institutions and their mandates.

Parliament should ensure that GoU terminates the GoU-UVCCCL as it has already recommended. Given that GoU has not taken steps to terminate the agreement, parliament should put pressure on Government. The Uganda Law Society and value chain players should also join in this struggle.