



**SCHOOL OF LAW**

**LEGAL PROTECTION AGAINST MARINE ACCIDENTS IN UGANDA**

**BY**

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## **ABSTRACT**

The major purpose of the study was examining the Legal Protection against Marine Accidents in Uganda. Water transport cannot be ignored. Whether carrying passengers or goods, it is an important component in the mix of transport modes in many countries, and an essential form of transport for communities – often low-income communities that live around waterways and have little access to other modes. Yet in spite of the critical importance of water transport to many communities in the developing world, and to national economies, it tends to be a highly neglected part of transport systems. It is often seen as outmoded, and is therefore poorly documented and researched, and lacks the official attention and resources it deserves. This can become a vicious circle, as a lack of awareness of its importance, its problems and its potential lead to deteriorating water transport facilities, which in turn leads to fewer users and then to even less government attention and support. Of Importance as related to the study are the Legal issues surrounding Marine Accidents specifically in Uganda where Water transport is concerned. With the revision of laws relating to Water Transportation and enactment, it's expected that the number of Maritime casualties will reduce greatly since there has been little official attention given to water transport, and therefore standards have been very low. Common problems are overcrowding, a lack of safety as far as Marine Accidents are a concern, poor conditions at docks and for boarding and alighting, and ferry engines are often inefficient or poorly maintained which is a major cause of marine accidents in Uganda. There is a need for regulation as far as Legal protection is concerned and supports to improve all these areas

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## DECLARATION

This thesis is my original work and has not been presented for a degree or any other academic award in any university or institution of learning.

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Name and Signature of candidate

Date

## APPROVAL

"I confirm that the work in this thesis was carried out by the candidate under my supervision".

PROF. G.P TUMWINE - MUKUBWA

.....

Name and Signature of Supervisor

Date

## DEDICATION

To my husband Beinomugisha K. Geoffrey, my daughters Alinda Chloe A. and Kukunda Branice Jovia.

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## LIST OF ABBREVIATIONS

BMU	Beach Management Unit
DFID	Department of Finance and International Development
EAC	East African Community
EACJ	East African Court of Justice
EADB	East African Development Bank
EALA	East African Legislative Assembly
ECA	Economic Commission for Africa
EU	European Union
ICAO	International Civil Aviation Organisation
IFRTD	International Forum for Rural Transport and Development
IMO	International Maritime Organization
LVBC	Lake Victoria Basin Commission
LVCEEP	Lake Victoria Catchment Environmental Education Programme
LVDP	Lake Victoria Development Program
LVEMP	Lake Victoria Environmental Management Project
LVFO	Lake Victoria Fisheries Organization
LVRLAC	Lake Victoria Regional Local Authorities Cooperation
LVWATSAN	Lake Victoria Region Water and Sanitation Initiative (UN Habitat)
M&E	Monitoring and Evaluation
M/T	Marine Tanker
M/V	Maritime Vessel
MENR	Ministry of Environment and Natural Resources
MoWT	Ministry of Works & Transport
MWLE	Ministry of Water Lands and Environment
NLRI	National Lake Rescue Institute
NTP	National Transport Policy

PPPs	Public Private Partnerships
RWT	Rural Water Transport
RTTP	Rural Travel and Transport Programme
SSATP	Sub Saharan Africa Transport Policy
STCW	International Convention on Standards of Training, Certification and Watch keeping for Seafarers
SUMATRA	Surface and Marine Transport Regulatory Authority
TLB	Transport Licensing Board
TPA	Tanzanian Ports Authority
UN ESCAP	United Nations Economic Commission for Asia and the Pacific
URC	Uganda Railway Corporation
WAP	Water Action Plan
WPC	Water Policy Committee

## **LIST OF STATUTES**

### **A. STATUTES**

1. The Inland Water Transport (Control) Act Revised edition 2000 Cap 348 Laws of Uganda
2. The Constitution of the Republic of Uganda, 1995
3. The Ferries Act of 1905 Cap 355 Laws of Uganda
4. The Fish Act of 2007 Cap 197 laws of Uganda
5. The Lake Victoria Transport Act of 2007 Laws of Uganda
6. The National Environment Act Cap 153 laws of Uganda
7. The Rivers Act of 1907 Cap 357 Laws of Uganda
8. The Traffic and Road Safety Act Cap 361 Laws of Uganda.
9. The Vessel Registration Act of 1904 Cap 349 Laws Of Uganda
10. Uganda National Roads Authority Act 2006 Laws of Uganda
11. Uganda Railways Corporation Act, 1992 Laws of Uganda
12. Water Act Cap 152 Laws of Uganda

### **B. STATUTORY INSTRUMENTS**

1. The Lake Victoria Transport (Maritime Safety Regulations ) 2010
2. The Inland water Transport (Safety Navigation) Rules 1959
3. The Fish (Beach Management ) Rules 2003 Statutory Instruments No.35 of 2003

### **C. REGIONAL INSTRUMENTS**

1. Treaty for the Establishment of the East African Community 1999
2. Tripartite Agreement on Inland Waterways Transport between the Government of the United Republic of Tanzania, the Government of the Republic of Uganda and the Government of the Republic of Kenya
3. Protocol for the Sustainable Development of the Lake Victoria Basin

### **D. INTERNATIONAL INSTRUMENTS**

1. International Convention for the Safety of Life at Sea and its protocol, 1978
2. International Convention on Standards for Training, Certification and Watch Keeping for Seafarers, 1978.
3. International Safety Management Code

4. United Nations Convention on the Law of the Sea 1982
5. The revised African Maritime Charter of 2006

## CHAPTER ONE: INTRODUCTION – ASPECTS OF THE RESEARCH PROPOSAL

### 5.1 1.0 INTRODUCTION

Water transport is the process of transport a watercraft , such as a barge, boat, ship or sailboat, makes over a body of water, such as a sea, ocean, lake, canal or river. The need for buoyancy unites watercraft, and makes the hull a dominant aspect of its construction, maintenance and appearance. Although slow, modern sea transport is a highly efficient method of transporting large quantities of goods. Transport by water is significantly less costly than air transport for transcontinental shipping; short sea shipping and ferries remain viable in coastal areas<sup>1</sup>.

Maritime transportation, similar to land and air modes, operates on its own space, which is at the same time **geographical** by its physical attributes, **strategic** by its control and **commercial** by its usage. While geographical considerations tend to be constant in time, strategic and especially commercial considerations are much more dynamic. The physiography of maritime transportation is composed of two major elements, which are rivers and oceans. The main advantage of maritime transportation is obviously its economies of scale, making it the cheapest per unit of all transport modes, which fits well for heavy industrial activities. On the other hand, maritime transportation has one of the highest entry costs of the transport sector. Typically, a ship has an economic life between 15 and 20 years and thus represents a significant investment that must be amortized<sup>2</sup>.

With maritime transportation, there is the risk of Marine Accidents therefore there is need for Maritime Safety. The term Maritime safety is a very broad one and cannot be easily be defined in specific limited terms. It is therefore better to use general terms to give a close indication as to what the concept means. Maritime safety refers to such measure intended to ensure safety of the human life and property when on any water body and protection of marine environment<sup>3</sup>. Hereunder the research goes into an examination of the relevant laws as regards to operational ships safety as well as navigational safety as far as Marine accidents are concerned in Uganda.

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<sup>1</sup>Martin Stopford, Maritime Economics (1997) pg. 8-9

<sup>2</sup>Rodrique J.P, The Geography of Transport System (2009) pg. 78

<sup>3</sup>Nakyonyi Aisha ,Maritime Safety on Lake Victoria, Analysis of the Legal and Regulatory Frame work, 2011, LL.M Dissertation, Oslo University.

## 1.1 BACKGROUND TO THE STUDY

### Water Transport in Uganda

The transport sector in Uganda is comprised of Road, Rail, Water and Air sub-sectors with road being the most dominant sub-sector<sup>4</sup>. Uganda's rivers and lakes, including wetlands, cover about 18% of the total surface area of the country.<sup>5</sup> The navigable water bodies are Lake Victoria, Lake Albert, Lake George, Lake Kyoga, Lake Edward, Lake Bunyonyi, Lake Bisina, Kazinga Channel and the Victoria and Albert Niles on River Nile. Hoarse water bodies make Uganda one of the countries in Africa with the biggest inland water ways.

Water transport was formerly widespread in Uganda with the East African Railways and Harbours operating passenger steamer services on Lakes Victoria, Albert and Kyoga and on the navigable sections of the River Nile.<sup>6</sup> The water transport system however, never recovered from the 1961 flooding<sup>7</sup>, and has steadily deteriorated in the absence of further investment. The Inland Water Transport Study (IWTS), carried out in 1988, identified over 70 landing sites around Uganda where formal or informal water transport services had been operated.<sup>8</sup>

Uganda Railways Corporation (URC) had until 2005 been operating three wagon ferries on Lake Victoria between Port Bell and Kisumu (Kenya) and Mwanza (Tanzania) however after an accident in 2005, one ferry sank and another was severely damaged. This accident led to cancellation of the insurance on the remaining vessels and the suspension of all operations. A Commission of inquiry into the alleged accident found that the immediate cause of the accident was due to human error, gross negligence, unprofessionalism and lack of proper training of the officers in charge of both vessels at the particular time. The un-seaworthiness of the vessels and lack of provision of adequate resources, guidelines and supervision by URC and to a certain extent the parent ministry were also sighted.

Currently, there are no passenger services on Lake Victoria between Uganda, Kenya and Tanzania. There are however, a number of ferries and other small vessels like boats and canoes on Uganda's

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<sup>4</sup> Nathan Associates Inc, *Corridor Diagnostic Study of Northern and Central Corridors of East Africa, Regulatory Framework and Transport Policy*, Vol 2: Technical papers, USAID and DFID 2011.

<sup>5</sup> World Water Assessment Programme, 2<sup>nd</sup> UN World Water Development Report, *Water, a shared responsibility: case study Uganda* (2006)

<sup>6</sup> Ahmed Barrania, *Water Ways (Water Transport) in Lake Victoria, Kyoga, Albert, Edward*, (2010)

<sup>7</sup> OECD, African Development Bank, *African Economic Outlook* (OECD publishing, 2006)

<sup>8</sup> *ibid*

navigable water bodies and a regular service between Bukakata port in Entebbe and Kalangala in the Sesse Islands aboard the MV Kalangala.<sup>9</sup>

Despite the few passenger services on Uganda's water bodies, there are rampant accidents reported year in year out. In May, 1996 a ferry sank in lake Victoria on its way to Mwanza in Tanzania, killing about 800 people<sup>10</sup> and on 10<sup>th</sup> August 2010, the New Vision Newspaper reported that 70 Ugandans perished on Lake Albert, on 21<sup>st</sup> July 2011 it was reported that one person died and three rushed to hospital after a boat capsized on Lake Victoria<sup>11</sup> and on 3<sup>rd</sup> February 2012 the New Vision further reported that five people were killed on lake Bisina after a boat capsized, on 3<sup>rd</sup> March 2012, the Newvision Newspaper further reported that 60 people died after a boat from Kiyindi to Buvuma Islands on Lake Victoria capsized.

The causes of the accidents is attributed to poor mechanical conditions of the vessels that cannot sustain strong winds, not wearing life jackets by passengers and crew masters, overloading and lack of navigation aids. All these are as a result of the obsolete laws that do not cater for the current trends in the sector. In an interview with Mr. Ronald Amanyire,<sup>12</sup> it was noted that the laws, in particular the Inland Water Transport (Control) Act of 1939 which is the main law on inland water transport in Uganda only provides for issuance and revocation of licenses by the Transport Licensing Board. There is no provision for use of life jackets or the carrying capacity let alone implementation mechanisms.

In 1997, the government with the assistance of donors carried out an Inland Water Transport Study (IWTS) whose objectives were, among others to review the effectiveness of the current inland water transport legislation. The study came up with a number of recommendations that are summed up into a 20-year water transport master plan costing up to \$484 million. These funds are however, not readily available to implement the master plan.<sup>13</sup>

In order to curb the many accidents on water bodies, Uganda adopted a draft policy on the Transport Sector in 2001 and in 2009, a National Transport Master Plan was completed which updates the policy and strategy on water transport.

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<sup>9</sup> International Maritime Organisation, Mission Report of the Needs Assessment to Uganda, May 2010.

<sup>10</sup> Safe waters wordpress.com/2010/07/22/maritime-ferry-capsizing-kills-at-least-11-in-Uganda.

<sup>11</sup> Ugandaradionetwork.com/a/story.php last reviewed on 12<sup>th</sup> March 2012.

<sup>12</sup> Ronald Amanyire, Ag. Principal Inspector of Vehicles/Vessels, Transport Licensing Board (TLB), Ministry of Works and Transport (26<sup>th</sup> March 2012).

<sup>13</sup> Kwamusi Paul, Cost Structures in Uganda Rural Inland Water Transport Services. [[www.ruralwaterways.org/en/case/ug-summary.doc](http://www.ruralwaterways.org/en/case/ug-summary.doc)] last accessed on 24<sup>th</sup> March 2012.

## **Water transport and international law**

The internationally known term for water transport law is Maritime Law. All coastal states have over the years had access to this international body of Maritime Law by ratifying and domesticating International Conventions. Uganda on the other hand has a fragmented national legal framework and has not yet ratified the major International Conventions and Agreements to enable it take advantage of this vast knowledge. However, it's a signatory to several protocols and agreements by the East African Community.

The legal framework provides for the safety of ships, boats, canoes together with the goods and passengers on board. In an effort to gain access to the vast international body of law on water transport safety, Uganda became the seventh non-coastal Member State of the International Maritime Organisation (IMO) in 2009 by ratifying the IMO convention. The IMO is a specialised agency of the United Nations with responsibility for safety and security of shipping and the prevention of marine pollution by ships. The IMO was formed in 1948 at an international conference in Geneva where the convention formally establishing IMO (the original name was the Inter-Governmental Maritime Consultative Organization, or IMCO, but the name was changed in 1982 to IMO) was adopted<sup>14</sup>. "The mission of the International Maritime Organization (IMO) as a United Nations specialized agency is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation. This will be accomplished by adopting the highest practicable standards of maritime safety and security, efficiency of navigation and prevention and control of pollution from ships, as well as through consideration of the related legal matters and effective implementation of IMO's instruments with a view to their universal and uniform application<sup>15</sup>." However, the first maritime treaties date back to the 19<sup>th</sup> Century and the Titanic disaster in 1912 which spawned the first International Safety of Life at Sea – SOLAS Convention, still the most important treaty addressing maritime safety.<sup>16</sup> The convention has been ratified by both Tanzania and Kenya. Uganda is yet to ratify the convention<sup>17</sup>. The Solas Convention aims primarily at the protection of human life at sea, prescribing uniform rules on navigation, prevention and pollution stability machinery electrical installations, fire prevention and related aspects of the constructions of ships .It also prescribes rules of safety of navigation such as danger and distress messages, meteorological and ice patrol services and routing among others.<sup>18</sup>

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<sup>14</sup> [www.imo.org](http://www.imo.org) accessed on 14<sup>th</sup> July 2012

<sup>15</sup> [www.imo.org](http://www.imo.org) accessed on 14<sup>th</sup> July 2012

<sup>16</sup> [www.imo.org](http://www.imo.org) accessed on 30<sup>th</sup> March, 2012

<sup>17</sup> IMO, Mission Report on 'Needs on Assessment Mission on Maritime Legislation Kampala Uganda , (1<sup>st</sup> - 7<sup>th</sup> May 2010) pg.35

<sup>18</sup> *Supra note 3.*



The IMO Model Safety Regulations have been adopted and domesticated by the East African Community through their incorporation into the Act 2007<sup>19</sup>. The safety standards dealt with by this Act can be considered under four main headings namely; seaworthiness of ships, collisions avoidance and or prevention, crewing standards as well as establishments of navigational aids. These safety standards are comparable to those set by IMO conventions and other instruments regarding seas and other larger water bodies in as far as they can also be considered and grouped under the same four main headings, However the intensity sophistication and applicability of the latter differs greatly in some aspects given the long period of time over which they have been developed ,the nature and the size of ships to which they apply as well as the nature ,size and classification of the water bodies to which they apply as compared to lake Victoria .

The Act can be described as a milestone in as far as safety on the lake is concerned. The period prior to 2007 was characterised by neglect as there was hardly any comparable meaningful legislation on safety in the lake area. The breakdown of the East African Community in the 1970's had dealt a major blow to legislation such as East African Inland water transport Act and corresponding Inland Water Transport(Safety of Navigation)rules 1959.The settings of the safety standards was hence left to ship operators who instead maximised on commercial interest<sup>20</sup>.

The United Nations Convention on The Law of the Sea <sup>21</sup> has been ratified by the three states Kenya Tanzania and Uganda. Article 94 of the UNCLOS provides that every state shall take measures for its vessels as are necessary to ensure safety at sea with regard inter alia to; the constructions equipment and seaworthiness of ships; the manning of ships, labour conditions and training of crews taking into account the applicable international instruments; the use of signals, the maintenance of communication and the preventions of collisions. Although Lake Victoria is only a water way with waters only classified<sup>22</sup> into shelter and open waters as opposed to classification of waters of the sea, UNCLOS 1982 has not been formerly extended to apply to Lake Victoria, the convention in its Article 8 defines a country's internal waters as waters on the landward side of the baseline of the territorial sea; which includes lakes and rivers.

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<sup>19</sup>Para 3 preamble of the IMO Model safety Regulations, Agreement between Kenya, Uganda and Tanzania workshop held in Mwanza 15-19<sup>th</sup> October 2001.

<sup>20</sup>*Supra note 3.*

<sup>21</sup>United Nations Law of the Sea 1982

<sup>22</sup>Section 7 of The Lake Victoria Transport Act 2007

## **Institutional Framework**

The lead institution in formulation of policies and laws to govern transport in Uganda is the Ministry of Works and Transport. Within the Ministry is the Department of Transport Regulation which is charged with this specific role. The Department works closely with the Transport Licensing Board (TLB), a semi-autonomous statutory body established by the Traffic and Road Safety Act, 1998 and mandated under the Inland Water Transport (Control) Act, 1939 to regulate water transport in Uganda. Due to the dominance of road transport, water transport has often been overshadowed. This is exacerbated by Uganda being a landlocked country which has led to lack of international obligations regarding safety of water transport. The preceding status quo is in stark contrast to established maritime nations such as neighbouring Kenya and Tanzania that have been able to draw on their experience in international maritime law to effectively regulate their inland waterways.

A study done by Rd. Ademun-Odeke, the IMO regional consultant on Maritime Needs Assessment<sup>23</sup> indicates that the laws relating to water transport in Uganda are obsolete and that there is no effective regulatory body dedicated to water transport in Uganda except for the Department of Transport Regulation and Transport Licensing Board in the Ministry of Works and Transport which carry out regulation of the entire transport industry. This coupled with lack of pre-requisite qualified and experienced manpower compromises maritime safety in Uganda.

### **1.2 STATEMENT OF THE PROBLEM**

Whereas Uganda has a legal and institutional framework governing water transport, it continues to register an unsustainable number of accidents annually. Research has shown that the legal and institutional framework of water transport in Uganda is weak and that the laws in place are obsolete and cannot sustain or encourage developments in the water transport sub-sector. There is no research evidence to show that the obsolete and out dated laws are a major contributory factor to the unsustainable number of marine accidents.

There is also no certainty that this problem is attributed to factors beyond the legal and institutional framework for instance political sabotage, corruption, natural catastrophe or poor implementation mechanisms. Therefore, there is need to conduct a study to investigate the legal protection against marine accidents in Uganda.

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<sup>23</sup>Ademun-Odeke, 'A Needs Assessment mission on maritime legislation, Entebbe/Kampala, Uganda' International Maritime Organisation 1<sup>st</sup> to 7<sup>th</sup> May 2010.

### **1.3 OBJECTIVES OF THE STUDY**

#### **General Objective of the Study**

The general objective of this study was to investigate the legal protection against marine accidents in Uganda.

#### **Specific Objectives of the Study**

- i. Analysing the existing legal framework on marine transport in Uganda.
- ii. Investigating the challenges faced by institutional monitoring of marine transport in Uganda.
- iii. Investigating the causes of marine accidents in Uganda with a view to propose areas for reform.

### **1.4 RESEARCH QUESTIONS**

1. What is the existing legal framework for Water Transport in Uganda?
2. What challenges are faced by institutions that monitor marine transport in Uganda?
3. What are the causes of marine accidents in Uganda?
4. What areas for reform are necessary for the legal protection of marine accidents in Uganda?

### **1.5 SCOPE OF THE STUDY**

The proposed research study was conducted on Lake Victoria, Department of Transport Regulation, Transport Licensing Board at the Ministry of Works and Transport in Kampala. The basis for this is because Lake Victoria is the largest and main inland water transport water way in Uganda and in East Africa while Transport Licensing Board is the main regulatory body of water transport in Uganda. The researcher had the opportunity to investigate the laws, regulations and policies governing water transport and as such, primary data for this study was easily collected.

The study focused on the period since 2001 to date because this is when Uganda adopted a draft policy on the water transport Sector to cater for the deficiencies in the national laws.

## 1.6 SIGNIFICANCE OF THE STUDY

The findings of this research study led to formulation and/ or review of the laws and policies related to water transport in Uganda. The findings benefited policy makers, institutional and administrative bodies in the effective performance of their functions.

There are no significant studies about the efficacy of water transport that been carried out in Uganda. This relatively new research area was therefore an addition to existing literature for researchers and research users and made an original contribution to the fund of knowledge. Future researchers will also benefit from the study as they will be in position to formulate their hypothesis using findings from this study.

## 1.8 LITERATURE REVIEW

In Uganda, there has not been any extensive text on the subject of water transport vis a vis the prevailing legislation and policy frame work. Very few writers have attempted to discuss the law surrounding it. Thus most of the literature review was drawn from reports made by officers within the institutional bodies. Efforts were also made to review literature from other landlocked and coastal countries.

An **International Maritime Organization (IMO)** mission report<sup>24</sup> finds that the potential of inland waterways of Uganda as an efficient mode of transport for persons and cargo is not receiving the attention it deserves. The authors attribute this to lack of funding and resources preventing the authorities from carrying out their obligations of ensuring that transport on water is conducted in a proper and safe manner. Although the report points out that Uganda's water laws are strong indicators of the state's concern of matters of maritime on the lakes and rivers, it does not give an in-depth analysis of the effectiveness of the laws. There is no plausible explanation for the lack of funding and no achievable solution has been provided.

**Zake and Aguma**<sup>25</sup> attempt to show that the Transport Licensing Board (TLB) a body within the Ministry of Works and Transport mandated to inspect and license all vessels including passenger and cargo boats and landing sites on inland water transport is limited by budgetary restrictions. The authors

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<sup>24</sup> William R Dernier, Fredrick Wahutu, P. Wamala Musoke, National Workshops on Safety regulations for inland waterways vessels non conventional crafts including fishing vessels operating in Africa. Country of Assignment Uganda, 2008.

<sup>25</sup> Benon Zake and Jeremy Bassy Aguma, Consultancy for the review of the existing documents for the navigability of the Kagera River. Nile Basin Initiative, Final report, 2009.

state that TLB does not have an electronic registration of all boats and its operations are restricted due to lack of services and personnel. It was also found that there are no training programs for ferry or inland water transport operators, mechanics and deck hands, including training in life saving procedures, which is of critical importance. The authors however, do not provide factors that have led to this problem and the possible solutions. The legal framework for inland water transport is overlooked and only a mention of three of the laws available is done. The findings in this report as reviewed by researcher were not adequate and only provide an overview of the research topic at hand.

Existing literature seems to suggest that even in some coastal countries, inland water transport is not given due attention. **Jinyu Li and Theo Notteboom**<sup>26</sup> argue that although Inland Water Transport in China was mentioned in some ‘five year plans’ it took a minor position compared to other transport modes. Both the Central and local governments in China ignore the development of Inland Water Transport. The authors explain that government’s ignorance of this sector is because the improvement of waterways requires large inputs while only getting a low return in the long term and as such a vicious circle which results in less attention at the regional level is formed. The low development of Inland Water Transport in China is attributed to the lack of funding from the Central Government; no mention of the laws regulating water transport is mentioned as a likely cause of the low development. While this study is useful as it partly explains government’s ignorance of Inland Water Transport, it is not conclusive for the research at hand.

**Awal**<sup>27</sup>, in a study of 177 cases which primarily included accidents of passenger and cargo vessels aimed at collecting and analysing data of water transport accidents that occurred in the inland waterways of Bangladesh during 1995 to 2005, observed that the number of accidents increased significantly over the years and most predominant causes of accidents were found to be overloading, cyclone and collision. It was found in this study that accidents cannot be caused by a single factor as it is a complex interaction of mechanical failure, human errors and natural causes.

Awal highlights some factors behind Water Transport Accidents as follows;

**Vessel Design Factors which include** Faulty Design and Construction; Mechanical Failures of the Vessel and Insufficient and Flawed Navigational Instruments

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<sup>26</sup>Jinyu Li and Theo Notteboom, ‘The Evolutionary Path of Inland Waterway Transport in the Pearl River Delta in China’: The role of governance and Institutions.

<sup>27</sup>Zobair Ibn Awal, ‘A study on Inland Water Transport accidents in Bangladesh’: Experience of a decade (1995-2005), Bangladesh University of Engineering and Technology, Bangladesh.

**Operating Environment Factors include,** Foggy weather condition; Excessive current and whirlpool and Cyclone and stormy weather.

**Human Factor include,** Overcrowding and overloading; Rush of passengers during embarking and disembarking and Incompetence of the captain master other professionals.

**Enforcement and educational factor include,** Negligence amount of application and practice of vessel safety regulations; Deficiency in public awareness building programs and Deficiency in weather warning and counter measure system.

Although the author clearly illustrates the factors and causes of accidents in Bangladesh, this information is only relevant for the non-legal factors affecting water transport and as such is not sufficient in the analysis of the efficacy of the law on water transport in Uganda.<sup>28</sup>

A report by the **World Bank on the Revival of Inland Water Transport**<sup>29</sup> in Bangladesh is vital in the current study. The findings in this report show that quality of IWT services suffers because of inadequate regulation and involvement of Government in service delivery. As overloading contributes to 56 percent of accidents on waterways, the Government is responsible for failing to provide the framework that would prevent overloading. The report further finds that an adequate level of resources is required to ensure good sector management and that priority should be given to making enough human resources available to enforce safety regulation (controlling the technical quality of vessels design and construction, controlling overloading). The report gives an insight of the reform needed to strengthen the inland water transport legal framework. It is however, of particular significance to Bangladesh than Uganda due to the economic and political differences of the two countries.

**Paul Kwamusi's research**<sup>30</sup> on cost structures in Uganda's Rural Inland Water Services is important to this research as it emphasises that the major mode of transport of persons living near water in Uganda is water transport. This study was commissioned to understand the cost structures of inland water transport services. It is coordinated by the International Forum for Rural Transport and Development (IFRTD) and funded by Department of Finance and International Development (DFID). It is part of a wider research programme covering ten countries in Asia, Africa and Latin America. The research sites in Uganda were; Mweena landing site in Kalangala District; Katosi landing site in Mukono District; Lambu landing site in Masaka District and; Kasenyi landing site in Wakiso District. The study findings

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<sup>28</sup>*Supra note 26*

<sup>29</sup> World Bank report, 'Peoples Republic of Bangladesh Revival of Inland Water Transport: Options and Strategies,' Bangladesh Development Series paper no. 20, World Bank office, Dhaka 2007

<sup>30</sup>*Supra note 13*

revealed a number of issues that are important in understanding the characteristics of rural water transport in Uganda. Among the findings in this research was that Inland Water Transport is one of the oldest economically and environmentally sustainable modes of transport for passengers and cargo; non-implementation of the transport policies, poor implementation, absence of the relevant policies are some of the reasons for poor performance of the transport sector and that inland water ways play a vital role in economic development, especially for remote rural areas. These findings however, are not conclusive of the research at hand particularly on the major causes of marine accidents in Uganda.

**Nakyonyi Aisha**<sup>31</sup> in her thesis, *Maritime Safety on Lake Victoria, Analysis of the legal and regulatory framework presented to the University of Oslo for the award of Master of Laws* emphasises the need to improve safety on Uganda water bodies. She cites a number of accidents that have occurred in the last decade. Aisha discusses the legal and institutional framework for water transport in Uganda. She recommends for the repeal of the existing laws as they are obsolete and outdated. On the issue of institutions she states that the existing institutional framework is contradictory. Aisha's study deals more with the safety measures on lake Victoria in comparison with relevant international instruments. While Aisha's study is an important piece of research it deals more with the international instruments and port and coastal state control, leaving out inland water and major causes of marine accidents on Uganda's water bodies.

**Micheal L. Faye, John W. Mcarthur, Jeffrey D. Sachs and Thomas Snow**<sup>32</sup> in their article, *Challenges facing landlocked Developing Countries*, an analysis facing land locked developing countries including Uganda is made. The authors state that landlocked countries very often achieve lower average development levels than their maritime neighbours. That they depend on other countries transit routes for access to overseas markets. In order to gain from their maritime neighbours, the authors recommend that land locked countries should put in place regional integration strategies. Infrastructure integration requires investment in building and maintaining efficient maritime ports to serve entire region. This research provides that reader with knowledge on how to mitigate the challenges faced by landlocked countries. The recommendations made for regional integration have been adopted by Uganda in the Treaty establishing the East African Community. The research is to a great extent not relevant to this study.

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<sup>31</sup> Supra note 3

<sup>32</sup> Faye Micheal L, John W. Mcarthur, Jeffrey Sachs and Thomas Snow, *Challenges facing land locked developing countries*, Journal for Human Development, Carfax publishing March 2004

**Rodrigue Jean Paul, Claude Comtois and Brian Slack**<sup>33</sup> in their book, the geography of Transport Systems provide an understanding of how mobility is lined with geography. They define transportability as the ease of movement of passengers, freight and information. They state the importance of transportation to include; facilitation of access to health care centres, welfare and cultural or artistic events, thus performing a social service; transport plays a critical role as a source of investment and also leads to economic development, trade is easily accessible and hence efficiency in services. As regards water transport, the authors state that shipping exploits the water routes that cross oceans as well as rivers and lakes. However, they state that maritime routes are hindered by dominant winds, current and general weather patterns. They provide the types of ships to include: passenger ferries; bulk carriers; general cargo ships and roll on roll off vessels used to transport cars, trucks, trains. Although authors add to the vast knowledge of linking geography and transport and point out advantages of transport, the research is general and is sufficient to ascertain the legal protection against marine accidents in Uganda.

### **1.9 RESEARCH METHODOLOGY**

Qualitative case study research methodology was used. Data was collected through secondary literature, government reports and policy documents. I also relied on open-ended, face-to-face interviews with people from across the water transport industry, including government officials, users of water transport particularly the business community around Lake Victoria. Some of the government officials Ategeka Henry, Senior Transport Officer, Ministry of Works and Transport; Amanyire Ronald, Senior Inspector of Vessels, Ministry of Works and Transport, Kizito Edward, Senior Safety Officer, Ministry of Works and Transport, Mr. Kisakye Robert, Licensing Officer, Ministry of Works and Transport, Bernard Khabhaka, Senior Inspector of Vessels, Ministry of Works and Transport and Jabeli Kyeyune, a fisherman at Kasenyi landing site,

I also used Focus Group Discussions and document analysis. Interviews were carried out with key informants purposively selected from ports on Lake Victoria, government departments particularly Ministry of Works and Transport, Uganda National Roads Authority and Uganda Railways Corporation.

A substantial part of the study involved desk research which encompassed the Transport Licensing Board and Marine Police to ascertain the enforcement mechanisms for water transport in Uganda and library research to ascertain reform for water transport laws in Uganda. Data was also obtained from various specialised journals accessible on the internet through subscription and other relevant websites.

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<sup>33</sup> Rodrigue Jean Paul, Claude Comtois and Brian Slack, the Geography of Transport Systems, Routledge Taylor and Francis Group, London and Newyork, 2006



The Makerere University library was also used to gather the available literature on the subject in Uganda.

Unstructured interviews were conducted using the in-depth interview guide to elicit primary data from the key informants, namely, crew masters at the vessels on the lakes, officials from Transport Regulation Department of Ministry of Works and Transport particularly Transport Licensing Board and the Water and Rail Transport Regulation Division. It was hoped that due to the nature of their offices, these officials would give key information that will aid the research in identifying the challenges in the water transport sector and the areas for reform. On average, 25 respondents were interviewed.

The researcher engaged the data analyst to analyse all the collected data. To ensure data quality, the researcher obtained data from multiple sources using the methods referred to herein above. The researcher finally made a logical presentation of findings.

### **1.10 CHAPTER SUMMARY**

Chapter one is the introduction and comprises of the Background to the Study, Statement of the Problem, Objectives of the Study, Scope of the Study, Significance of the Study, Literature Review and the Research Methodology. Chapter two is a critical analysis of the law on water transport in Uganda. Chapter three investigates the challenges faced by institutional monitoring of water transport in Uganda. Chapter four investigates the causes of marine accidents in Uganda. Chapter five is the summary of findings, conclusion and recommendations for the study.

## **CHAPTER TWO: CRITICAL ANALYSIS OF THE LAW ON WATER TRANSPORT IN UGANDA**

### **2.1 INTRODUCTION**

Water transport is seen as an essential component of the national road network through the provision of “road bridges” between individual road systems severed by water. Like road, water transport facilitates the movement of agricultural produce and fish products to markets and processing centres<sup>34</sup>. Uganda Railways Corporation (URC) formerly operated formal water transport in Uganda in form of Steamer ships. URC ferries connect Kisumu (Kenya), Bukoba (Tanzania) with Jinja and Port Bell in Uganda this function was however vested in Rift Valley Railways (Marine Division).

Apart from URC ferries, informal or rural Inland water transport plays a sizable portion in the transportation of passengers and cargo on the navigable rivers and lakes of Uganda. They provide services like fishing and movement to and from the islands<sup>35</sup>.

#### **2.1.1 Water Transport Policies.**

An Inland Water transport study was concluded in 1998.<sup>36</sup> Among other things, the study aimed at reviewing the current water transport policies and regulations with a view of formulating new ones. Various Laws relating to water transport were found to be disjointed and out of date. Government is working on the basis of the study recommendations and will soon come out with a new policy for the sub sector.

Currently, the government through the aid of World Bank has procured Consultancy Services to improve Inland Water Transport Legislation. The specific objectives of this Consultancy are; to review, harmonise and update existing legislation in the country related to Maritime Affairs; to propose modalities for establishment of a Maritime Administration in Uganda; to produce a draft Maritime Bill and related Draft Maritime Regulations.<sup>37</sup>

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<sup>34</sup>J. Gichugu, Analysis of links between poverty and transport and other related policies in Uganda February 2005.

<sup>35</sup> G.O. Wandera, “The role of transport in the Economy of our country,” How is poverty linked to transport? Paper presented at the inauguration of MUTMA, August 1999

<sup>36</sup> Turyamuhika lead consultant on the Inland Water Transport Study, Ministry of Works, Housing and Communication, 1998

<sup>37</sup> Contract for Provision of Consultancy Services for Improving Inland Water Transport in Uganda signed between Government of Uganda represented by Ministry of Works and Transport and KLC law firm in association with Project Planning and Management and Planet SA on 22<sup>nd</sup> February 2014.

Lake and water transport has declined in the significant role it played when the road network system was completely underdeveloped. Infrastructure and vessels are in poor conditions and there has been inadequate funding for their impact. This is being done with the clear knowledge that water transport is inexpensive, energy efficient and environmentally friendly.

There is need to address the problem of safety if water transport needs to be improved. Water transport users are a vulnerable user group who use unsafe vessels and more often the boats capsize in the process. Water transport is important for Uganda, as it is the source of foreign exchange through export of fish.

### **2.1.2 Regional Policy and Legislation**

Within the Lake Victoria Basin region, the mandate for facilitating a maritime safety culture is the prerogative of national and regional institutions. In East Africa the basis policy for water transport cooperation is enshrined in the East Africa community treaty and the second East Africa Community Development Strategy (2001-2005) which have provisions intended to improve maritime safety on Inland waterways. Member states of the EAC also ratified a tripartite Inland water way Agreement that was signed on 30<sup>th</sup> November 2002 between Kenya, Uganda and Tanzania. Its subject is cooperation in infrastructure services for Inland water way transport. Its purpose is to facilitate and promote inland water way transport.<sup>38</sup>

### **2.1.3 A critical Analysis of the laws of Water transport in Uganda**

All countries in the East African Community will have same rules and regulations governing their water bodies. Uganda has been using the same laws under the Lake Victoria Transport Act of 2007 and Rwanda and Burundi have joined the Lake Victoria Basin Commission, a body that controls the waters. If the rules have been followed, all lakes and rivers in Rwanda and other countries will be visited by a group of experts to check their navigation systems to make sure the vessels are safe and to also make sure there is proper movement of the people and goods. A marine transport safety and security officer mission is to protect the citizens in the region from accidents and to increase on the public awareness on the use of the regulations and their operationalization.

The main cause of accidents have been lack of suitable laws, use of vessels that are not in proper condition, lack of enough safety equipment, unskilled personnel among transporters<sup>39</sup>.

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<sup>38</sup> Article I, Tripartite Agreement on Inland Waterways Transport , signed between the Government of the Republic of Tanzania, Government of the Republic of Uganda and Government of the Republic of Kenya, 2002

<sup>39</sup> [www.gorillatrekking.org](http://www.gorillatrekking.org) as assessed on 23<sup>rd</sup> January 2013.

The regulatory framework in water transport focuses mainly on efforts to enhance private sector participation in port infrastructure and services.

The Regional Instruments regulating inland water ways includes the tripartite agreement on inland water ways transport<sup>40</sup>. The agreement was concluded by Kenya, Tanzania and Uganda on 30<sup>th</sup> November 2002. By virtue of their treaty by accession, Burundi and Rwanda subsequently also became bound by the agreement upon joining the EAC. The agreement provides a comprehensive framework for regulating inland water ways shipping. It harmonizes requirements relating to ship documents and registration.<sup>41</sup> It imposes common safety standards relating to periodic ship surveys<sup>42</sup>, safe manning<sup>43</sup> requirements and the provision of aids to navigation and radio communication<sup>44</sup>. The agreements adopt the important principles that states should mutually recognize each other's registration survey and safe manning certificates. The agreement further commits the states to apply the IMO'S rule on the prevention of collisions and to adopt common rules on conducting search and rescue operations<sup>45</sup>. It also contains a commitment to harmonize the rules on the prevention of marine pollution. The agreements adopt several common principles governing the liability for personal injury and death arising out of conveyance of passengers.

The Constitution of Uganda<sup>46</sup> states that “the government...shall hold in trust for the people and protect natural lakes, rivers, (and) wetlands...” and “the state shall ensure that all Ugandans enjoy rights and opportunities and access to...clean and safe water...”<sup>47</sup>

The Lake Victoria Transport Act,<sup>48</sup> an Act enacted by the East African Legislative Assembly assented to by the heads of state of Kenya, Tanzania and Uganda in January 2008 at Kampala as indicated by EAC /CM9/Decision 66 was adopted by East Africa community and came into force for operation in 2009 as indicated in EAC/CM18/Decision 139. The Act has its background in Article 31 of the protocol for the sustainable development of the Lake Victoria Basin which among others provides for the establishment of a mechanism by partner states to enhance maritime safety on the Lake. The Act has provisions for the construction, survey, registration and licensing of all vessels used on the Lake, for the

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<sup>40</sup> Supra note 36

<sup>41</sup> Article VII, Tripartite Agreement on Inland Water Ways Transport signed between the Democratic Republic of Tanzania, Republic of Uganda and Democratic Republic of Kenya, 2002

<sup>42</sup> Article IX, *ibid*

<sup>43</sup> Article X, *ibid*

<sup>44</sup> Article XI, *ibid*

<sup>45</sup> Article XIII, *ibid*

<sup>46</sup> Article 273 (b) of the Constitution of the Republic of Uganda, 1995

<sup>47</sup> Objective XIV (b) of the Constitution of the Republic of Uganda, 1995

<sup>48</sup> The Lake Victoria Transport Act of 2007 Cap 204 laws of Uganda

safety of passengers and cargo, for the competency of masters and crew and for other related matters. The Act vests specific functions in the Lake Victoria Basin Commission and the relevant units in partner states with respect to standards, developments and regulation of maritime safety and security. Its implementation and enforcement is the responsibility of three states Kenya, Tanzania and Uganda and the Lake Victoria Basin Commission<sup>49</sup>.

Section 8 of the Lake Victoria Transport Act stipulates that the Council shall by notice in the *Gazette* delegate any of the powers conferred upon it under the Act to the Commission. One of the functions of the commission is to formulate policies and programs on maritime safety and security and also to coordinate the conduct of investigations relating to accidents on the Lake including shipwrecks and any other maritime casualties<sup>50</sup>.

The Lake Victoria Fisheries Organization, in line with these regulations, conventions and guidelines, is promoting the integration of safety at sea into fisheries management through the ongoing training of patrol staff in safety and First Aid and is planning similar training for members of Beach Management Units around the lake<sup>51</sup>.

In Uganda, the major legal instruments for Inland water transport are; The Lake Victoria Transport Act, 2007, the Ferries Act<sup>52</sup>, the Vessels (Registration) Act<sup>53</sup> and the Inland water Transport(Control) Act<sup>54</sup>. The ferries Act provides for the use of special flags, forfeiture of license, fees, and auctioning of rights to run a ferry. The Inland water Transport (Control) Act sets the regulations for the licensing of ships while the Vessels (Registration) Act establishes the obligations to register all classes of vessels. However these laws have been described as disjointed and under the responsibility of numerous institutions, not harmonized and contradictory as well as archaic and dormant.

Matters on Collision avoidance and ships routing is provided for in part 8 of the Lake Victoria Transport Act and part 10 of the Maritime safety of Regulations under the heading of safety of Navigations. Safety of navigations can be considered as such conditions of conducting the ships at sea

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<sup>49</sup>Alan Boyle, *EU Unilateralism and the Law of the Sea*, 330 Marius Sacndinavian Institute of Maritime Law, Oslo, (2004)

<sup>50</sup>Section 10(1) and 10(h) of the Lake Victoria Act 2007

<sup>51</sup>The Lake Victoria Fishing Organisation website <http://www.lvfo.org/index.php?option=com> as accessed on 29<sup>th</sup> January 2012.

<sup>52</sup>Ferries Act Cap 350.

<sup>53</sup>The Vessels (Registration Act )Cap 349

<sup>54</sup>Inland Water Transport (Control) Act Cap 348

which ensure the ships are not endangered by collisions, stranding or storm damage<sup>55</sup>. Collisions on the Lake are not common the worst being that between M/V Kabalega and M/V Kaawa in May 2005 which resulted in the sinking of the former with a loss of over 800 tonnes of cargo. The commission of inquiry report into the cause of the accident attributed partly to poor and sound signals on both vessels. It follows therefore that the adherence to the provision of the Act and Regulations will enhance safety on the lake. Both port and Flag state authorities should always inspect vessels before they sail for compliance with the requirements, ensure the deck crew has necessary qualifications and are conversant with safety equipment on the vessel.

The Water Act<sup>56</sup> provides for the use, protection and management of water resources; the constitution of water and sewerage authorities; and the development of water supply and sewerage undertakings. The Water Resources Regulations<sup>57</sup> and Water (Waste Discharge) Regulation<sup>58</sup> prescribe the threshold and procedure for applications to construct any works that use or discharge water under the Water Act. Uganda and nine other countries constitute the Nile Basin. The Nile Basin Initiative is a legal entity designed to promote development and enforce regulations on projects utilizing Nile River water. The Nile Basin Initiative supports several projects, but it is unclear how well it has enforced regulations.

Also, under the Uganda Railways Corporation Act<sup>59</sup> the Uganda Railways Corporation is mandated to provide inland waterway transport services. This law was enacted to facilitate the construction, operation and maintenance of railways in Uganda, including marine and road services. The Act also provides for the establishment and management of the Uganda Railways Corporation which is vested with powers of inspection of both masters and vessels. Under section 71 of the Act, the Corporation is mandated to declare and cause to be published in a tariff notice, places to be inland waterway ports.<sup>60</sup> The Act further prohibits the embarking and disembarking any passenger or goods at any place other than an inland waterway port declared under section 71. However, the same Act exempts small boats from the provisions of this section.<sup>61</sup>

Currently, the Corporation has only retained asset management functions. The Rift Valley Railways (Marine Division) is entrusted with the management of the Inland Water Transport Services which were formerly operated by Uganda Railways Corporation.

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<sup>55</sup>Para 3 preamble of the IMO Model Safety Regulations Agreement between Kenya, Uganda and Tanzania workshop held in mwanza 15-19<sup>th</sup> October 2001.

<sup>56</sup> The water Act of 1995 cap 152

<sup>57</sup>The water Resource Regulations of 1998

<sup>58</sup>ibid

<sup>59</sup>Section 5 of the Uganda Railway Corporation Act Cap 331 Laws Of Uganda.

<sup>60</sup> Section 71 of the Uganda Railways Corporation Act, Cap 331 Laws of Uganda

<sup>61</sup> Section 72 of the Uganda Railways Corporation Act, Cap 331 Laws of Uganda

The African Maritime Charter<sup>62</sup> provides definition for International maritime Organization as a specialized agency of the United Nations with a purpose of providing mechanism and framework for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade.<sup>63</sup>

Article 4 of the charter provides that this Charter is aimed at strengthening cooperation among States Parties in maritime transport, inland waterways navigation, ports and related activities.

Article 32 of the African maritime Charter provides for Improvement of the Safety and Security of Maritime and Inland Waterways Transport. It states that States Parties shall endeavour to improve the safety of vessels not covered by relevant IMO Conventions including fishing, cargo, passenger ships and other small crafts operating in inland waterways. In this regard States Parties may be inspired to consider adopting the IMO Model legislation for the regulation of safety on inland waterways

Article 33 of the African Maritime Charter provides for Concerted Actions for the Development of Passenger Transport. It states that States Parties shall establish at national and regional level a concerted plan of action for the development of maritime and inland waterways passenger transport which is reliable, competitive and sustainable.

Article 45 of the African Maritime Charter provides for Safeguard Clause which states that, ‘nothing in the Charter shall prejudice the rights and obligations of any State Party under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea<sup>64</sup>.

The Uganda Water Action Plan (1995) provides the overall guidelines and strategies for the management, development and protection of water resources.

The National Water Policy (1999) objective is “[t]o manage and develop the water resources of Uganda in an integrated and sustainable manner, so as to secure and provide water of adequate quantity and quality for all social and economic needs of the present and future generations with the full participation of all stakeholders”.

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<sup>62</sup>The Revised African Maritime Charter

[http://www.au.int/en/sites/default/files/Revised\\_Maritime\\_Transport\\_EN\\_Original.doc](http://www.au.int/en/sites/default/files/Revised_Maritime_Transport_EN_Original.doc)

<sup>63</sup> ibid

<sup>64</sup>Supra note 50

#### **2.1.4 National responsibility for maritime safety**

Uganda does not have a specialized agency for Maritime Administration. The function to is vested in the transport Licensing Board and the Division of Water and Rail Transport in the Transport Regulation Department of the Ministry of Works and Transport. However, the EAC Partner States that share Lake Victoria have national arrangements for overseeing safety on the lake. Tanzania has established the Surface and Marine Transport regulatory Authority (SUMATRA)<sup>65</sup> while Kenya has established the Kenya Maritime Authority.

In Uganda, there exists the Rift Valley (Marine Divisions) which is entrusted with the management of the Inland water transport services on the Lake and the vessels formerly operated by URC. There is also the Transport Licensing Board established under the Traffic and Road Safety Act, 1998. Section 1(1) of The Inland Water Transport (Control Act)<sup>66</sup> provides for “board” to mean Transport Licensing Board. The Board is mandated to license and inspect all vessels including passengers and cargo boats used for inland water transport.

The Traffic and Road Safety Act<sup>67</sup> provides for the composition of the Board as follows:

1. Board Chairman,
2. The Inspector General of Police or his representative
3. The Chairperson of National Road Safety Council (NRSC)
4. The Solicitor General or his representative
5. The Director of Transport in the Ministry responsible for Transport or his representative
6. Two representatives of the motor industry, and
7. Two representatives of the travel industry.
8. The Board Secretary

The Board is appointed by the Minister of Works and Transport. The Board Secretary is a Public officer and other staff as may be necessary for the efficient performance of the functions of the Board<sup>68</sup>.

Functions of the Transport Licensing Board include among others; Routine inspection and licensing of Inland Water Transport Vessels (IWTVs); Settling disputes between Inland Water Transport Vessel operators; Routine up-dating of register and data on licensed water transport vessels; Conducting

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<sup>65</sup> [www.sumatra.or.tz.as](http://www.sumatra.or.tz.as) accessed on 12<sup>th</sup> February 2013.

<sup>66</sup>Inland Water Transport (Control Act) 1939

<sup>67</sup>S. 61 of the Traffic and Road Safety Act, 1998

<sup>68</sup>ibid



periodic Inland Water Transport Vessel inspection and licensing at the various landing sites on the lakes and navigable sections of R. Nile; Carrying out education and awareness campaigns on Inland water Transport Safety measures.

In accordance with Lake Victoria Transport Act, 2007 the Transport Licensing Board is designated as the Maritime Administration Unit.

The Maritime Administration Unit Provided in interpretation section<sup>69</sup> means a unit responsible for maritime safety and security administration in a partner established under section 11 which provides for Establishment of Maritime Administration Unit and appointment of personnel. Under Section 11(2) (b) A maritime administration unit established under sub section (1) shall among others enforce safety of navigation including compliance with construction regulations, safety standards and safety navigation regulations; Also, of importance is section 11(2) (f) which provides that a Maritime Administration Unit established under sub section (1) shall conduct investigations relating to accidents on the lake including wrecks and any other maritime casualties.

Section 105 (1) provides for reporting of accidents where a vessel is involved in an accident occasioning (a) loss of life or any serious injury to any person; or

(b) any damage affecting the seaworthiness or her efficiency

The owner or master of the vessel shall, within twenty-four hours of the occurrence of the accident or as possible thereafter transmit to the Registrar of Vessels a written report of the accident.

The National Lake Rescue Institute which is a non-governmental organization launched in 2002 as a result of several major accidents and incidents on Lake Victoria in Africa. The vision is to improve the livelihoods of people in the region through safety and security of all users of the lake as well as other inland waters, provided by education and training and an independent search and rescue service among others.

Uganda is a member of the International Maritime Organization (IMO). It is the UN system's regulatory agency for the maritime sector and its global mandate is safer shipping and cleaner oceans. It pursues that mandate by adopting international maritime rules and standards that are then implemented and enforced by Governments in the exercise of flag, port and coastal State jurisdiction.

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<sup>69</sup>Section 5 of the Lake Victoria Transport Act 2007  
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Maritime Safety Administration is a program that entails the development of maritime safety administrations to implement global safety standards relating to navigation and seafarers, passengers and cargoes, and related aspects through advisory services, training, seminars/workshops, short courses and publications. International Maritime Organisation also provided funding to promote the establishment of co-ordinated regional mechanisms for search and rescue and safety management (Sudan, Eritrea and Ethiopia)<sup>70</sup>. On the other hand, Maritime legislation entails strengthening the legal capacity and infrastructure of national maritime authorities, assisting countries to review and update national maritime legislation and training of national experts<sup>71</sup>.

To promote safety of shipping and navigation on lakes and inland waterways in Africa, and contribute to the sustainable development of the region by strengthening the safety of transportation of persons, property, and seafarers, International Maritime Organisation developed model regulations regarding the safety of small vessels.

IMO's technical co-operation programme addresses the maritime needs of developing countries, including the Least Developed Countries, focusing on priorities that can ensure sustainable maritime development, efficient and safe maritime transport services, as well as effective environmental protection. Since IMO does not have a regular budget for technical assistance, its technical co-operation activities are conceived and developed through a partnership for progress between the recipient countries, the donor community and IMO. According to Henry Ategeka, Uganda has received technical assistance from IMO, through training of staff especially in the Ministry of Works and Transport in Master's programs in Maritime Law and Policy, Maritime Safety<sup>72</sup> among others. Subject to availability of donor funding, IMO experts will implement the Lake Victoria project related to the improvement of maritime safety<sup>73</sup>

Some of the Least Developed Countries such as Burundi, Malawi, Rwanda, Uganda and Zambia depend greatly on inland waterways as part of their transportation system for both national and international trade. However, due to lack of formal training, most of the vessels on the inland waterways operate in an environment that is devoid of any appropriate safety culture. For example, Lake Victoria (the second largest fresh water lake in the world) is shared by Kenya, Tanzania and Uganda. The latter depends on the lake transport as an alternative external trade route. In 2005, the Wagon ferry M/V kabalega collided

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<sup>70</sup>ibid

<sup>71</sup>ibid

<sup>72</sup>Henry Ategeka, Senior Transport Officer, Ministry of Works and Transport

<sup>73</sup>ibid

with a sister vessel M/V Kaawa in Uganda. A commission of inquiry into the alleged accident found that one of the causes of the accident was inadequately trained crew left to man the bridge at the time.<sup>74</sup> Following the accident of M.V. "Bukoba" of Tanzania on the Lake in May 1996, which resulted in the death of more than 500 persons, the Secretary-General of IMO offered long-term technical assistance to improve safety on Lake Victoria. International Maritime Organisation has, on behalf of the East African Community Secretariat, formulated a project document "Enhancement of Safety of Navigation on Lake Victoria" with a budget cost of US\$13.54 million and is in the process of seeking donor funds to implement the project over a period of five years.

## **2.2 Conclusion**

The major laws relating to water transport in Uganda are the Lake Victoria Transport Act, 2007, the Inland Water Transport (Control) Act, Cap 348, the Vessels Registration Act, Cap 349, the Uganda Railways Corporation Act, cap 331, the Ferries Act, Cap 355, the Fish Act, Cap 197, the Rivers Act Cap 357. The laws are described as disjointed and under the responsibility of numerous institutions, not harmonised and contradictory as well as archaic. The cause of accidents has been attributed to the unsuitable laws, use of vessels that are not in proper condition, lack of enough safety equipment and unskilled personnel among transporters. The government, through the Ministry of Works and Transport has procured consultancy services for improving Water Transport Legislation in Uganda. The Contract was signed on 22<sup>nd</sup> February 2014. It is hoped that after completion of the project, government will implement the recommendations in order to boost the water transport industry.

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<sup>74</sup> Steven Candia, ferry report out, Newvision publishers, September, 02 2005  
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## **CHAPTER THREE: CHALLENGES FACED BY INSTITUTIONS MONITORING WATER TRANSPORT IN UGANDA**

### **3.1 INTRODUCTION**

Inland water transport (IWT) is one of the oldest economically and environmentally sustainable modes of transportation for passengers and cargo<sup>75</sup> and in some areas the only means of mobility and access to basic services. The sector encompasses vessels ranging from simple non-motorized boats to highly automated pushers, operating on waterways ranging from small tributaries to major rivers.

The Key institutions responsible for Water Transport in Uganda are; Ministry of Works and Transport responsible for regulation of the sector through inspection and licensing of water vessels except the fishing vessels which are regulated by Ministry of Agriculture, Animal Industries and Fisheries, the Uganda Marine Police, the Uganda National Roads Authority, the Rift Valley Railways (Marine Division) which is entrusted with the management of the Inland Water Transport Services on the lake and the vessels which were formerly operated by Uganda Railways Corporation, the National Lake Rescue Institute and National Environmental Management Authority (NEMA)

Uganda's Transport policy is set within the principles of government's overall economic policy and strategy which include the eradication of poverty, liberalization of the economy and decentralization of public sector responsibilities. Uganda's medium term transport sector policy aims at promoting cheaper and efficient reliable transport services as the means of providing effective support to increased agricultural and industrial production, trade, tourism, social and administrative service. While implementing this policy, emphasis is placed on the promotion of active sector participation while government role is limited to regulation, provision of policy guidelines and cost effective development of technically sound economically and politically justified and financially sustainable infrastructure.

Uganda's Inland water ways systems have three main components mainly;

a) Wagon Ferry services on Lake Victoria

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<sup>75</sup> Kwamusi P, Kimeze S, Bitwayiki C, Analysis of Links between Poverty and Transport and other related Policies in Uganda, Transport Forum Group, Poverty Watch, February 2005

b) Short distance road vehicle ferries acting like road bridges

c) Informal sector operations by individually owned canoes

URC wagon ferry services ceased in 2005 after two of the Ugandan Ferries were involved in mid lake coalition. However plans to refurbish two wagon ferries are in final stages.<sup>76</sup>

Uganda has not yet developed a National Transport Policy (NTP) although a Draft Transport Sector Policy and Strategy Paper<sup>77</sup> was published in 2001 with the objective of developing a National Transport Policy.

Non-implementation of the transport policies, poor implementation, absence of the relevant transports policies and negative impacts of the existing transport policies are some of the reasons for poor performance of the transport sector.<sup>78</sup> According to the Economic Commission for Africa (ECA)<sup>79</sup>, poor transport performance is due to lack of appropriate policy formulation and implementation; inadequate financing; high cost of transportation; lack of appropriate human and institutional capacity; poor transport and communication facilitation; inadequate safety and security; poor contribution of urban and rural areas to development and to poverty reduction; unexploited technological development; lack of appropriate database; disjointed market integration; and inappropriate infrastructure network among other factors.

### **3.2 INSTITUTIONAL CHALLENGES**

#### **3.2.1 Inherent Challenges**

Despite the vital role of this sector, inland water transport systems have not yet reached their full potential. In all regions, Inland Water Transport has been neglected and remains outside the mainstream transport and development planning, often overshadowed by other sectors such as road transport.

Some of the inherent challenges facing the sector noted by contributions and emphasized in research by UN ESCAP<sup>80</sup>, include:

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<sup>76</sup> Commissioner of Policy and Planning, presentation on Non-Motorized Transport (NMT) initiative in Uganda by 2008

<sup>77</sup> Government of Uganda, (Ministry of Works, Housing and Communication), The Draft Transport Sector Policy and Strategy Paper, December 2001.

<sup>78</sup> Supra note 72

<sup>79</sup> Pro-poor transport policies a synthesis report on Zimbabwe national forum transport.

<sup>80</sup> Micheal Faye, John Macarthur, Jeffrey D. Sachs and Thomas Snow, The Challenges facing landlocked Developing Countries, 2004

Research / Data deficiencies.

The 2003 UN ESCAP review of developments in transport in the region found a lack of data to adequately assess the role of inland water transport in passenger transportation. The Ministry of Works and Transport does not have any statistics for the number of vessels inspected and licensed per year. Commonly used infrastructure indicators calculated as a way to measure transport service access are heavily biased towards road transport. As a result of data deficiencies, it is difficult to quantify the economic importance of the sector or establish trends on which to base policy.

Prevailing perceptions

The lack of accurate data reflects a lack of official interest in the sector. This is mainly due to the commonly cited perception of policy makers, planners and developers of this mode of transport as slow, old fashioned and outdated. Rural Water Transport in particular is often viewed as an indication of rural backwardness. As a result, even where inland water transport enjoys favorable conditions, the sector is often ignored by existing government transport regulations and investments are markedly lower than its market share.<sup>81</sup>

Limitations in speed and geographical reach

By its nature, the inland water transport network is limited. To function, it depends on an interface with road transport, which further slows down the process and increases its overall cost. A lack of public investment in docking facilities increases the inefficiency, as much time may be wasted loading and off-loading passengers and cargo.

### **3.2.2 Safety standards**

Safety is often compromised because water transport tends to be ignored by existing government, For example transport in Lake Victoria suffers from among others hazardous safety and or security. 500 people are estimated to have drowned annually in the lake as a result of maritime accidents.<sup>82</sup> Major disasters are also frequent on the Lake. For example passenger vessel M/V Bukoba of Tanzania capsized in 1996 with loss of over 500 lives .The Wagon ferry M/V kabalega collided with a sister vessel M/V Kaawa and sank in 2005. Cargo vessel M/V Nyamageni sank in 2006. More recently the following incidents have been reported 18 Tanzanian School children drowned when their vessel

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<sup>81</sup> Supra note 13

<sup>82</sup> Lake Victoria Basin Community, Annual Report July 2008-June 2009 Kisumu Kenya pg 20

flipped in strong winds on August 5<sup>th</sup> 2010. 28 people are feared after their ferry capsized in bad weather near Entebbe on July 21<sup>st</sup> 2011. This is a crisis and the need for improved safety standards cannot be overemphasized.

### **3.2.3 Institutional bias**

The institutional environment is often biased against the sector, as hidden subsidies disguise the costs of road transport and create the illusion of water transport as an unviable alternative. Moreover, waterway users and operators lack the organizational and lobbying power to influence government decisions. Water transport is usually associated to poor people. Mostly, it consists of small family owned boats or canoes which ply river and canal networks.

### **3.2.4 Environmental concerns**

Certain environmental problems and risks associated with water transport include canalization and dredging (reactivation of polluted sediments into surface waters); shipping operations (pollution through oil spills; noise pollution; risks of accidents with dangerous cargoes); and import of invasive species: (bacteria and other microbes, small invertebrates and the eggs, cysts and larvae of various species): the introduction of invasive species into new aquatic environments by ships (through the ship's ballast water, attached to ships' hulls and via other vectors).

As a result of the neglect of inland water transport in mainstream planning, irrigation, energy, and land, transport interventions are often planned without consideration of their impact on waterways. Studies by the International Forum for Rural Transport and Development (IFRTD) found that the consequence of water transport neglect has resulted in the deterioration of traditional thoroughfares, conflicts between waterway use and land transport interventions, lost opportunities for poor people to improve their livelihoods through access to basic services and economic opportunities, and the lost potential to develop ecologically and financially sustainable transport technologies<sup>83</sup>.

### **3.2.5 Lack of Integrated Planning**

There are hidden subsidies that disguise the real costs of transport modes, particularly roads, which make water transport seem unattractive and unviable in comparison. Without a level playing field, market mechanisms cannot work properly. The sector doesn't work as smoothly as it should or as it appears that the road sector works because of a series of institutionalised constraints.

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<sup>83</sup>Laurel Gascho, Henrike Peichert and Sarah Renner, Malaysia/Referral and Comparative Experiences/Inland Waterway Transportation System 2006

### **3.2.6 Unaffordable Life jackets**

It is well known that most users of water transport in Uganda do not use life jackets. In co-operation with the Ugandan National Lake Rescue Institute (NLRI), Design without Borders developed a user-friendly life jacket.

The new life jacket was an improved, more user-friendly and affordable version of the original design. However, due to the lack of funding, NLRI had to phase out a number of its services, including the production of life jackets.<sup>84</sup>

NLRI's first life jacket, Mega float, satisfied buoyancy ratings, but had a number of weaknesses, including: it was too large, heavy, bulky and uncomfortable; it restricted movement<sup>85</sup>.

Life jackets in general are reported to be very expensive for the water transport users and as such majority do without them.

### **3.2.7 Seaworthiness of ships**

All vessels in Uganda lack safety standards. There are no boat building standards specified for the small family owned boats. In order to make certain that shipping is kept safe and that marine accidents are kept at minimum, it's important that all ships are fit in design structure and condition and equipment to encounter the ordinary perils of the voyage.<sup>86</sup>

The Lake Victoria Transport Act<sup>87</sup> and the corresponding Maritime Safety Regulations lay down standards relating to the construction and equipments of ships, fire protection life saving arrangements and appliances, communication equipment, carriage of bulk cargos and dangerous goods.<sup>88</sup> The Act requires vessels operating on the lake to carry certificates of seaworthiness attesting to compliance with the technical requirements<sup>89</sup>.

### **3.2.8 Inadequately trained or qualified water transport users**

Uganda lacks a marine training institute. Persons who are interested in marine trainings are usually sent to other countries. The requirement for marine training is not mandatory in our national laws and

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<sup>84</sup><http://norskform.no/en/Themes/Design-as-development-aid/Avsluttede-prosjekter/Redningsvest1/Redesigning-life-jackets/>  
as assessed on 28<sup>th</sup> January 2013.

<sup>85</sup>Ibid

<sup>86</sup>Supra note 3

<sup>87</sup>Lake Victoria Act, 2007

<sup>88</sup>Paras 3-12 of the Lake Victoria Maritime safety Regulations

<sup>89</sup>



therefore the vessels are manned by untrained staff. The collision of M/V Kaawa and M/V Kabalega was partly attributed to inadequately trained crews on the bridges of both vessels. It should therefore follow that an improvement in the quality of the crews would lead to reduction of accidents. The law provides for Certificates of competence and manning in part VII of the Act<sup>90</sup> and part 8 of the regulations<sup>91</sup>. Law sets down mandatory minimum requirements for certification training and qualification of masters, officers and ratings serving on tankers as well as safety training. These laws have not been implemented in Uganda

### **3.2.9 Poor Navigational Aids**

Under section 10(g) and 11(h) of the Act<sup>92</sup> this obligation is the responsibility of the LVBC and Maritime Administrative Units respectively. However the Act is ambiguous in as far as it does not give a criteria and guidelines for the establishment of such aids. Further it does not provide for a mechanism through which this is to be achieved, the source of funding as well as a time frame within which a state should discharge this obligation. As earlier stated the law has not been implemented in Uganda.

### **3.3 Conclusion**

The institutional framework for Inland Water Transport in Uganda is: Ministry of Works and Transport, the Uganda Police Marine Unit, Rift Valley Railways (Marine Division), National Lake Rescue Institute, National Environmental Management Authority, Uganda National Authority and the Beach Management Unit and Uganda Railways Corporation. The challenges faced with institutions monitoring water transport include among others; prevailing perceptions particularly that water transport is slow and old fashioned and is a transport mode for the poor, Institutional bias of the sector which creates the illusion of water transport as an unviable mode of transport, the lack of safety standards to be followed by institutions, environmental concerns like oil spills, noise pollution and import of invasive species, lack of integrated planning and poor infrastructure, the poor navigational aids and inadequately trained or unqualified crew. These challenges are all as a result of the obsolete and out dated laws which are not respected by the institutions. It is hoped that modernisation of the water transport sector, improved laws and regulations and improved funding for the sector will revive this industry.

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<sup>90</sup>Supra note 39

<sup>91</sup>Lake Victoria Maritime Safety Regulations

<sup>92</sup>Ibid

## **CHAPTER FOUR: CAUSES OF MARINE ACCIDENTS IN UGANDA**

### **4.1 INTRODUCTION**

The Government of Uganda is aware of the benefit in improving water transport services for not only providing services to the poor but also exploitation of the rich agricultural and fishery resources for increased development. It sees water transport as an essential component of the national road network through the provision of “road bridges” between individual road systems severed by water. Unfortunately there are numerous islands that do not have the required infrastructure to handle such vessels. In addition, government ferries that would easily act as the water bridges to connect people more often breakdown due to the ageing fleet<sup>93</sup>.

In order to streamline water transport services in the country, the government with assistance of donors in 1997 initiated a study called the Uganda Inland Water Transport Study (IWTS). Some of the objectives were to assess how to integrate road, rail and water transport for an integrated transport system and to review the effectiveness of the current inland water transport legislation. The study came up with a number of recommendations that are summed up into a 20-year water transport master plan costing up to \$484 million. Unfortunately, these funds are not readily available to implement the master plan.<sup>94</sup>

Rural water transport in form of boats is the alternative transport mode that provides low cost access to the islands and remote shorelines on Lake Victoria and other lakes, and connects villages along the banks of navigable rivers. It is an alternative to the Government’s water bridge solution as resources are being sought to implement the master plan<sup>95</sup>.

The researcher gathered information from the internet and found out that road accidents, rail accidents and aircraft crash landings are accidents that everyone has become accustomed to hearing about. In a

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<sup>93</sup>Supra note 13

<sup>94</sup>Ibid

<sup>95</sup>ibid

similar manner, maritime accidents occur, casualties are caused and damages have to be borne. This is not new to the public. There are several types of maritime accidents<sup>96</sup>.

1. **Cruise Vessel Mishaps:** Cruise vessels form a very important part in the vacation itinerary of people. However, a major type of maritime accident occurs in cruise vessels. Cruise vessels could capsize or face tough weather conditions causing the ship to develop major problems. Another important case of accidents in cruise ships is because of the negligence on the part of workers. As per statistical data nearly 75% of fires are caused because of a mere mistake by people working on the cruise ship.

2. **Commercial Fishing Mishaps:** Even fishing for commercial purposes can lead to fatal incidents being caused. Inexperienced fishermen – sometimes even experienced ones – can fall overboard. Harsh weather conditions also could cause severe damages to a commercial fishing expedition<sup>97</sup>

3. **Accidents on Tugboats:** Tugboats are those which help move huge ships to enter docks. They are small in nature but are powerful to ensure that the large vessels are handled safely. But sometimes because of the blockage of the visibility of tugboats by the larger vessels, maritime accidents occur. Also human error on the part of the pilot of the tugboat can also lead to unwanted and unexpected tugboat mishaps.

4. **Accidents on Crude Oil Tankers and Cargo Ships:** The major cause of accidents on cargo tankers is explosions. Since the very nature of the materials these tankers transport is dangerous and highly flammable, even the most minor of explosions can cause enormous losses. According to statistics, one of the main reasons for oil tanker accidents occurring is because of workers' negligence – nearly 84-88%.

5. **Maritime Accident because of Drugs and alcohol:** Drug or substance abuse is a major problem across the world. Even in the marine world, substance abuse can cause irreparable damage. If the workers of a particular ship engage in substance abuse or alcohol, the addiction-induced frenzy could cause the worker to behave erratically and thereby lead to an unwanted maritime accident on board ships.

6. **Cargo Hauling Accidents:** Cargo hauling maritime accidents are those accidents caused to workers who work as cargo haulers. However, according to several maritime accident investigations, it has been

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<sup>96</sup><http://marineinsights.com> as accessed on 28<sup>th</sup> January 2013.

<sup>97</sup>Ibid

reported that cargo hauling workers overstate their cargo-hauling injuries. The maritime accident investigation, consequentially reports that because of this, this profession has one of the most severe rate of work-place absenteeism.

It can be seen from the above mentioned types of maritime accidents, that mistakes on the part of the workers and operators play a major role in the accidents being caused. But in order to find out the actual cause of the marine accident, a maritime accident investigation is necessary.

#### **4.2 INVESTIGATIONS INTO CAUSES OF MARINE ACCIDENTS IN UGANDA.**

The researcher conducted interviews from respondents of; Ministry of works and Transport, business communities around lake Victoria, Uganda Railways Corporation and the Marine Police<sup>98</sup>. On the issue of Management of Marine Transport in Uganda the researcher found that it is disjointed, haphazard, rudimentary and based on individual preferences of owners. The forms of management are basically determined by the vessel owners themselves.

There are three categories of vessel owners: Central Government, Large Corporations (URC/RVR, Earth wise etc.) and Small Boat owners. Majority of the population that needs marine transport uses vessels that belong to the latter. Small Boat owners have little or no education at all drawing their knowledge from traditional methods passed on from one generation to the next without referring to modern developments. Large corporations use their vessels mainly for transportation of Cargo and although they may be aware of the necessary management methods they are not fully compliant. Government vessels are majorly referred to as mobile bridges since most of them are used for river crossings and are also self-regulating.

On the existing laws, one of the respondents from the Ministry of Works and Transport criticised the Lake Victoria Transport Act, 2007 and corresponding Maritime Safety Regulations as being a milestone as far as safety standards are concerned. At the time of its enactment, explained the respondent, there was general lack of Maritime safety culture and Marine Accidents were quite often. For example overloading of all kinds of vessels used on the Lake, incompetent and unqualified crew, use of very old vessels which were also in poor technical state, the absence of life jackets on vessels, outdated navigational charts and the absence of navigational aids among others. This period saw some of the worst disasters ever on the lake, for example the sinking of the Ugandan registered Vessel M/V

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<sup>98</sup>Unstructured questionnaires were used, April2013

Kabalega after it collided with sister vessel M/V Kaawa in 2005. The Act vests specific functions in the Lake Victoria Basin community and the relevant units of partner states with respect to standards, development and regulations of maritime safety and security.

The researcher reviewed the Lake Victoria Transport Act<sup>99</sup> and found out that it is wanting in a number of ways; firstly it is provided that the Act applies to all vessels whether new or old without qualifications of the provisions as regards already existing vessels. The challenge in respect of such provisions is enforcement. Courts in Uganda and East Africa as a region are reluctant to apply laws retrospectively. There is need for clarity as regards provisions applicable to already existing vessel circumstances under which such vessels may be exempted from application of the Act. Further, with few exceptions the Act sets general standards for passengers and cargo vessels without distinguishing between standards specific to each of the two types This makes the provision ambiguous and brings about uncertainty as regards what exactly an inspector or surveyor should look out for in respect of each of the two types of vessels during inspections and or surveys. There is need for special requirements and or standards for different types of vessels.

Such vessels like tankers and passenger vessels need special requirement over and above general requirements for Vessels. This is attributed due to additional risks associated with carriage of passengers and other toxic or dangerous substance such as oil and gas.<sup>100</sup> When it comes to communications systems the provisions of the Act are ambiguous in as far as they do not clearly specify how and who should operate such equipment. There is need for clarity of these. As regards navigational aids and their installations there is a void in the Act as regards the criteria for their installations. Other voids of the Act include forms of jurisdiction other than criminal, follow action and controls as far as enforcement and implementation of the Act is concerned. Lastly the Act provides for inspections and surveys for vessels for purpose of establishing their seaworthiness. However, there is no guarantee as regards the efficiency of such inspections and surveys. This brings into question the effectiveness of such inspections and surveys and the safety of vessels subjected to such inspections and surveys.

On the significance of having legal systems in controlling marine transport in Uganda the researcher found out from the respondents that any sector or business transaction for that matter needs a legal regime to govern its operations. Without it private business will always aim to maximise their bottom line (profits). It is significant to have a legal system for marine transport in order to minimise on the excesses of the private sector vessel owners. Laws make people do what is good for society/country as a

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<sup>99</sup>Supra note 39

<sup>100</sup>Supra note 3

whole and not for the individual. For example, the traffic and road safety law which requires citizens to be licensed to drive ensures that or is supposed to ensure that all drivers on the road are qualified to do so. This protects all other road users. Similarly, there should be law requiring all vessel operators to have a licence to operate the vessels they operate. (The basis for the STCW Convention). On the issue of legal systems however, the respondents especially from Ministry of Works and Transport and Uganda Railways Corporation stated that the existing laws were good but only required updating in order to meet the current trends.

The researcher interviewed the respondents and wanted to understand what seemed to be the causes of Marine Accidents in Uganda. Officials from the Ministry of Works and Transport pointed out backward sailing practices (boat operators starting journeys without proper weather forecasts); boat over loading; poorly built boats; poorly maintained boats and ill-trained or untrained boat builders and operators as the major causes of marine accidents.

It was noted that almost all marine accidents in Uganda involve the small vessels and not the big ones owned by the URC, RVR, UNRA, Earth wise etc. Over the past 15 years only one accident has occurred involving big vessels (MV KABALEGA sunk) like we have been discussing throughout the research study.

From the research interview the researcher noted, possible strategies need to be targeted at the small boats since they are the most risky and claim a lot of lives every year. The strategy should therefore begin with setting boat-building standards, adopting a policy to incorporate these standards and passing legislation to enforce the standards among other things.

Vessels unlike vehicles are not imported when already designed and built and vehicle manufacturers have standards and regulations that they follow in their countries of manufacture. Similarly vessels in Uganda need to be built and maintained in accordance with set standards and guidelines. The standards and guideline should then be enshrined in a Legal Framework. The Legal Frame work should also force vessel owners to maintain their vessels in good condition by providing for thorough regular inspections. It should address the issue of over loading and vessel manning which encapsulates number and quality of people needed to operate the boat/vessel.

On the issue of how the government through the Ministry of works and Transport assist marine transport in Uganda, the researcher got information from respondents that Government has procured a consultant to improve inland water Transport. The contract was signed on 22<sup>nd</sup> February 2014 between

the government of Uganda and KLC law firm in association with Project Planning and Management and Planet S.A<sup>101</sup> and also that it conducts inspection and licensing of vessels. It also conducts sensitisation exercises. Respondents expressed the need for government to give marine transport priority like it gives to other modes of transport. Most respondents strongly disagreed at the fact that government aids the marine Transport Industry.

The researcher reviewed literature from the internet<sup>102</sup> and found out that Water transport is certainly dangerous as is the cause of Marine accidents, but inadequate life jackets, weather and hazardous waters, passenger and skipper behavior, coupled with reckless operations remains key recipes for disaster on Uganda's water transport. A survey carried out by Uganda Radio Network still on the same literature that the researcher reviewed, showed that while there are many boats along the fishing islands, almost 90 percent of these boats operate on the fringe of safety.<sup>103</sup>In July 10 people died and many more went missing after the boat they were travelling in sank. Early this month more than 40 people drowned after storms overturned an overloaded boat in Uganda's Lake Albert. The recent accidents, just like the previous ones have taken more than 1,000 lives throughout East Africa since 1990, often attributed to bad weather. During dry season, strong winds can turn the lakes treacherous. But the real problem is human. All too often, financially strapped operators refuse to take responsibility for safety even as they dangerously overload their boats in a desperate effort to turn a profit. The Government might be expected to step in to protect passengers, but it largely ignores the problem. As a result, passengers are constantly at risk.

The researcher further reviewed the literature from the internet<sup>104</sup> and found out that the survey by Uganda Radio network included, as a visit to Kasenyi landing site, where boats depart for the Ssesse Islands in Lake Victoria. At the bustling site, there is nobody on ground to check on the condition of boats or even ensure the operators do not overload their boats. Formerly, any operator who wanted to provide passenger services would need clearance from the department of fisheries in the Ministry of Agriculture. However this responsibility was moved to the Ministry of Works and Transport.

The Beach management units which are mandated to monitor the activities at the water ways do not have the expertise to determine which boat is overloaded. In the absence of supervision, boat operators are largely free to do whatever they wish. Unfortunately, safety is not a high priority for them. Though

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<sup>101</sup> Ategeka Henry, Contract Manager for the Consultancy Services for the improvement of the Inland Water Transport Legislation, Ministry of Works and Transport, May 2014

<sup>102</sup> Deadly accidents taints ugly mark on Uganda's water transport [Http://Ugandaradionetwrok.com](http://Ugandaradionetwrok.com) reported on 6<sup>th</sup> August 2012 as assessed on 17<sup>th</sup> January 2013

<sup>103</sup>Ibid

<sup>104</sup>Ibid

skippers know they must have two engines, for instance, many of them take a gamble and move with one engine, not enough fuel and at times without oars. Boats frequently are overloaded. In fact, Richard Musingo a skipper who carries people between Kasenyi and Mazinga Island near the Tanzania border says operators conspire in ways that make overloading likely. They agree among themselves to determine who can carry passengers each day. The goal is to avoid competition, but the effect is to limit the number of boats available to carry passengers. To make matters worse, boats rarely are adequately stocked with life jackets<sup>105</sup>.

The researcher reviewed data from the Fish (Beach Management) Rules<sup>106</sup> and got the Meaning on BMU. Beach Management Units (BMUs) are community fisheries management institutions, legally empowered and registered with the Department for Fisheries Resources. The Beach Management Units were inaugurated in November 2005 to monitor and develop fisheries infrastructure on Lake Victoria. They were tasked with managing tax collection and issuing Movement Permits to all operators at landing sites throughout Uganda.<sup>107</sup>

The researcher reviewed the report surveyed by Radio network Uganda<sup>108</sup> and found an analysis of accidents on Uganda's waters shows that passengers may have been able to survive, if it was mandatory for them to wear life vests, while crossing treacherous waters. But there are No regulations requiring passengers to wear life vests. However, According to the report most of these life jackets would provide little protection in an emergency. They have loose strings to fasten the jacket and in case of an accident they can easily be ripped away by the wind.

These inadequate life jackets go for as little as 30,000. In contrast, genuine ones, which go for 70,000 shillings, have reflectors, whistles with strong straps. To make matters worse, many passengers remove the life jackets and use them as cushions in boats. A person for example, who has never been to any marine school, uses his common sense to determine if a boat is overloaded. He can order people off or even confiscate the boat engine. Each boat at the landing site is painted with different colors, but the colors are not meant to determine maximum load but show ownership. So many boats leave overloaded. And the trip can be perilous<sup>109</sup>. There are no navigational points in places to show directions, so skippers rely on instinct.

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<sup>105</sup>Ibid

<sup>106</sup>The Fish (Beach Management ) Rules 2003 Statutory Instruments No.35 of 2003

<sup>107</sup><http://www.ugandaradionetwork.org> as assed on 18<sup>th</sup> January 2013

<sup>108</sup>Ibid

<sup>109</sup>Ibid



On the Issue of prominent Regulation of water transportation of Dangerous goods, the researcher reviewed literature from the internet <sup>110</sup> and found out that the transportation of dangerous goods is controlled and governed by a variety of different regulatory regimes, operating at both the national and international levels. They include the United Nations Recommendations on the Transport of Dangerous Goods, ICAO's Technical Instructions, IATA's Dangerous Goods Regulations and the IMO's International Maritime Dangerous Goods Code. Collectively, these regulatory regimes mandate the means by which dangerous goods are to be handled, packaged, labelled and transported. 'Dangerous goods' in this context are materials or items with hazardous properties which, if not properly controlled, present a potential hazard to human health and safety, infrastructure and/ or their means of transport.

The researcher reviewed the Regulatory Framework and Transport Policy<sup>111</sup> and found out that the regulation of Inland waterway shipping is entrusted to SUMATRA and the Transport Licensing Board in Uganda. The researcher reviewed the Tripartite Agreement on Inland waterways Transport in East Africa <sup>112</sup> and found out that it's an agreement between Tanzania Kenya and Uganda on which has the conscious need to ensure safety and life and property safety of navigation and prevention of pollution inland water staking into account principle enunciated in the applicable Maritime Convention. Seeking to develop and maintain a rational coordinated and mutually beneficial system of inland water way system of inland waterway transport Committed to adopting harmonising and simplifying rules regulations and administrative procedures governing their inter-state inland waterway transport. The Agreement therefore provides a comprehensive framework for regulating inland waterways shipping since it harmonizes requirements relating to ship documents and registration. It imposes common safety standards related to periodic ship surveys safe manning requirements and the provision to aids for navigation and radio communication. The agreements therefore adopt the important principles that states should mutually recognize each other's registration survey and safe manning certificates. The Agreements further commits the states to apply the IMO's rules on the prevention of collisions and to adopt common rules on conducting search and rescue operations in terms of Marine Accidents. It also contains Commitment to harmonize rules on the prevention of marine pollution. The Agreements adopts several common principles governing the liability of carrier for loss or damage to goods and liability of carrier for loss or damage to goods and liability for personal injury and death arising out of the conveyance of passengers. It should be noted that the EAC Legislative assembly is considering an act

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<sup>110</sup><http://www.dgiglobal.com/classes> as asessed on 1st April 2013

<sup>111</sup><http://www.eastafricancorridors.org/updates/actionplan> as accessed on 1st April 2013

<sup>112</sup>Supra note 36

dealing with transport management on Lake Victoria. The Act proposes to introduce a common safety regime and will effectively operationalize the protocol in respect to shipping on the Lake<sup>113</sup>.

The EAC has adopted the Tripartite Agreement on Inland water way transport which provides a suitable framework for harmonizing regulations in the subsector, further work is needed to operationalize the Agreement within the national laws of each state. Legislation is also being prepared by the EAC to provide for a common approach to the safety regulation on Lake Victoria. The legislation provides a potential model for harmonized safety regulations on all waterways within the EAC<sup>114</sup>. Uganda adopted a draft policy plan and strategy paper on the transport sector in December 2001, in 2009 a National Transport Master Plan was completed which updated the policy and strategy<sup>115</sup>. With regard to Northern and central corridors the policy proposes that both corridors be utilised for international traffic to and from Uganda. It identifies the slow progress with ratification and implementation of regional treaties and agreements as one of the causes of the regions high transport costs. Other causes that are identified include among others inefficient port operations and ineffective coordination of ferry services on Lake Victoria. In the Inland water sector the policy proposes that all service be owned and operated by private sector subject to licensing regulations to ensure adequate quality and safety standards. In comparison with the policies adopted by other states the Ugandan document does not provide for measures that are needed in order to domesticate regional agreements into National Law.

The researcher assessed the Diagnostic study on Northern and Central Corridors of East Africa<sup>116</sup> and found out that legal and regulatory framework on Sea ports and Inland waterways focuses mainly on efforts to enhance private sector participation in port infrastructure and services. The project preparation and procurement framework in Uganda is still rudimentary. Further, legal reform is needed to create enabling laws to support inland port and maritime service PPP arrangements.

The researcher further reviewed the regulatory framework and transport policy and found out that under the Ports Act, the Tanzanian Ports Authority (TPA) is responsible for Inland ports on Lake Victoria, Tanganyika and Nyasa. Hence the power it enjoys to enter into PPPs in respect of seaports also extends to Inland ports. Similarly, SUMATRA's role as economic and safety regulator also extends to Inland ports. According to section 5(ii) of Uganda Railways Corporation Act<sup>117</sup> The Uganda Railways Corporation is mandated to provide inland waterway transport services. Such Agreements may also

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<sup>113</sup>Supra note 4

<sup>114</sup>Ibid

<sup>115</sup>Ministry of Works and Transport, National Transport Maser Plan including a Transport Master Plan for the Greater Kampala Metropolitan Area (NTMP/GKMA), May 2009

<sup>116</sup>Supra note 4

<sup>117</sup>Supra note 50

provide for private party to levy fees for the services it provides on behalf of URC and can therefore provide for suitable PPP type arrangements on inland waterways such as concessions management contracts leases e.t.c. The Ugandan wagon Ferries and terminals at port bell and Jinja were included in the railway concessions and have since November 2006, been transferred to Rift valley railways.

Inland water transport services are subject to regulation by the Transport Licensing Board (TLB).<sup>118</sup> Regulation has both a safety and economic dimension. The former verifies seaworthiness of the vessel through routine vessel inspections by TLB<sup>119</sup>. The URC is also authorized to provide and manage poor infrastructure. Parallel authority has been vested in the Uganda National Roads Authority (UNRA) also to provide Inland water way and ferry services. UNRA is charged with the development and management of road network 'Road's defined as including a ferry or a ship designated by the minister as per section 4(b)(c) of the UNRA act<sup>120</sup>,but does not include port infrastructure.

The researcher reviewed the Inland Water Transport (Control) Act<sup>121</sup> and The Vessels (Registration) Act<sup>122</sup> and found out that both laws have not been fully implemented. The Acts are ambiguous in as far as Marine Safety is concerned. They do not clearly specify who should operate such vessels. There is need for the Laws to make provisions for such related issues to curb Marine accidents in Uganda. There is need for special provisions such as right to access of vessels to ports and refuge, guarantees as regards efficiency of surveys and inspections. This is important otherwise there is a risk that special maritime issues upon which the Acts are silent may be subjected to other general laws of the state.

The researcher further found that the problem of marine accidents is exacerbated by the lack of personnel and finance to inspect boats and enforce existing laws. Uganda lacks guidelines for building boats. According to Kisakye Robert<sup>123</sup>, to solve the water transport problem, Uganda needs to train skippers and people to build boats and also have standards for boat building. Annual boat licensing fees range from 20,000 to 500,000 depending on the tonnes of the boat.

The Study from the reviewed literature by the researcher<sup>124</sup>, confirmed that transport is the biggest problem suffered by the islanders and people living along the lakes and rivers. Local water transport users are aware of the strong relationship of transport and development in their areas. They are clearly aware of how under-developed water transport services contribute to their isolation and neglect.

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<sup>118</sup>Supra note 45

<sup>119</sup>Supra note 117

<sup>120</sup>Uganda National Roads Act, 2006

<sup>121</sup>Supra note 45

<sup>122</sup>Supra note 44

<sup>123</sup>Kisakye Robert is a student at the Malmo University undertaking a master's degree in Maritime Law and Policy

<sup>124</sup>Supra note 13

From the report the researcher also found out that Water transport services require well-developed infrastructure for improved service provision just as formal water transport vessels to reduce chances of marine accidents.

The researcher visited the business community around portbell and kasenyi landing sites and found that the current state on landing sites facilities is poor and requires improvement. Safety was cited as one of the biggest problems affecting both the users and operators on these sites. The fishing community particularly was worried of the heavy winds and the poor life jackets that cannot contain the strong winds. Members at these sites showed lack of interest in government stating that the Ministry of Works and Transport officials had not been useful to them.

The researcher found out that the current institutional framework within the MoWT is inadequate to effectively handle the issues regarding water transport services especially in the rural areas.

According to a report on experts<sup>125</sup>, the Chairman of the Marine Classification Society of Tanzania stated that lack of navigation charts exposed chances of marine accidents. He cited MV Baobab accident in May 1996 that claimed nearly 1,000 lives, saying that even loading of cargo should be closely monitored.

Marine Transport Consultant and Lecturer on the same report<sup>126</sup> said that “observance of safety aspects in marine transportation could best be achieved through concerted efforts among stakeholders in the public and private sectors.” Safety regulations in maritime administration should also focus on proper ways of dealing with the aftermath of marine accidents which includes rescue operations and good care of survivors. He said that experience has shown that some of the ship captains currently operating marine passenger vessels were exclusively trained in the operation of marine tankers. "In case of marine accidents, some of them do not know what to do to help ill-fated passengers.

The causes of marine accidents as per the report by all Africa.com<sup>127</sup> is overcrowding, negligence by management allowing the vessel to sail even when they are not designed for sea faring and also letting them off in bad weather. Negligence, unprofessionalism, lack of accountability and corruption were cited as among the factors drawing back water transport in Uganda.

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<sup>125</sup>Micheal A Winkleman, Marine Transport Stakeholders work for Maritime Safety Improvement, 2012

<sup>126</sup> ibid

<sup>127</sup>All Africa .com, Experts on Marine Accidents prevention <http://all Africa.com> as assessed on 23<sup>rd</sup> January 2013

The researcher observed that Uganda's inland water bodies are extensively used for transport and trade purposes. There are a few big ferries, transport boats and oil tankers, most of the goods transported between landing sites is carried out by big, open, wooden motorized boats (between 4 and 10 tons). Boats are often used, most people lack lifesaving equipment. As a result many lives are lost due to drowning in the lake (estimated 5,000 deaths per year)<sup>128</sup>.

East Africa is endowed with navigable water resources, with the most prominent being the Indian Ocean and Lake Victoria. While the ports on the Indian Ocean act as gateways to East Africa, Lakes Victoria and Tanganyika play a critical role in inland transportation and have the potential for cruise tourism, and water sports. It is therefore important to enhance the efficiency of ports, safety of navigation and maritime security in general.

The researcher also reviewed literature from the internet<sup>129</sup> and found that coastal and inland waterways transport also plays an important role in transportation of goods and passengers. However, the Maritime and Ports sectors are faced with many challenges, including congestion, poor infrastructural development, ageing ship repair equipment and lack of human capacity, among others.

The researcher reviewed the East African Community plan<sup>130</sup> and discovered that the Maritime and Ports Authorities in the Partner States meet regularly under the auspices of the East Africa Community Secretariat to review and develop regional projects and programs in the sector. This joint committee has identified several areas where regional projects can be undertaken to complement ongoing efforts at national levels.

Similarly, the researcher reviewed the East Africa Community Development Strategy<sup>131</sup> and found out that it outlines the following objective and strategic intervention areas in the maritime transport and ports sectors.

**The Objective:**

Have in place efficient, safe and secure maritime operations.

**The Strategic Interventions:**

- I. Implementing the Inland Waterways Transport Agreement;

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<sup>128</sup>Zain, Ericson and GSMA development Fund, Lifelines at Lake Victoria, 2010

<sup>129</sup>Maritime transport and ports development in the EAC <http://www.EAC.INT.INVEST//.COM> as assessed on 26<sup>th</sup> January 2013.

<sup>130</sup>East African Community strategy Plan, 2006-2010

<sup>131</sup> Ibid

- II. Undertaking capacity building of Lake Victoria Transport Commission to enable it manage transport in the Lake.

#### 4.2 DATA COLLECTION

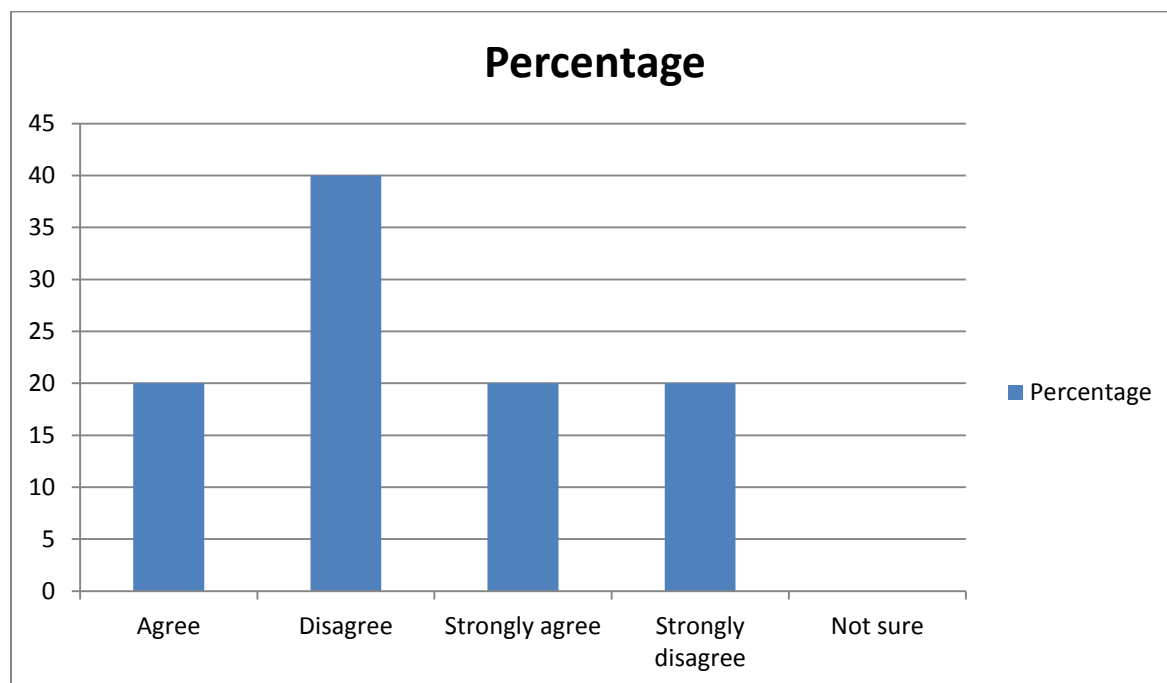
Questionnaires were distributed amongst the respondents. The data collected is as below:

**Table 1: Management of Marine Transport**

<b>Marine transport is well managed in Uganda</b>	<b>Frequency</b>	<b>Percentage</b>
Strongly Agree	5	20
Agree.	5	20
Disagree	10	40
Strongly Disagree	5	20
Not sure	-	-
<b>Total</b>	<b>25</b>	<b>100</b>

Source: Field Data 2014

**Figure :1**



**Source: Field Data 2014**

Table 1 and figure 1 above show that 40% of the respondents disagree that marine transport is well managed in Uganda while 20% strongly disagree. This is an indication that marine transport is not well managed in Uganda

**Table 2: Importance of having new laws for marine transport**

<b>Is it important to have new laws for marine transport in Uganda.</b>	<b>Frequency</b>	<b>Percentage</b>
Agree.	<b>4</b>	<b>16</b>
Disagree	<b>2</b>	<b>8</b>
Strongly Agree.	<b>5</b>	<b>20</b>
Strongly Disagree	<b>8</b>	<b>35</b>
Not sure	<b>6</b>	<b>24</b>
<b>total</b>	<b>25</b>	<b>100</b>

**Source: Field Data 2014**

From table 2 above, it was revealed that 20% of the respondents strongly agreed that it is important to have legal systems in place controlling marine transport in Uganda while 8% of the respondents disagreed. 24% were not sure on whether it was important to have legal systems in place. 35% of the respondents strongly disagreed. The researcher found that this was attributed to the fact that respondents believed that the existing laws can suffice but only needed up dating to meet the current trends.

**Table 3: Sufficiency of government's aid to marine transport.**

<b>Is government's aid through the ministry of Works and transport to marine transport sufficient?</b>	<b>Frequency</b>	<b>Percentage</b>
Strongly Agree	5	20
Agree.	0	0
Disagree	15	60

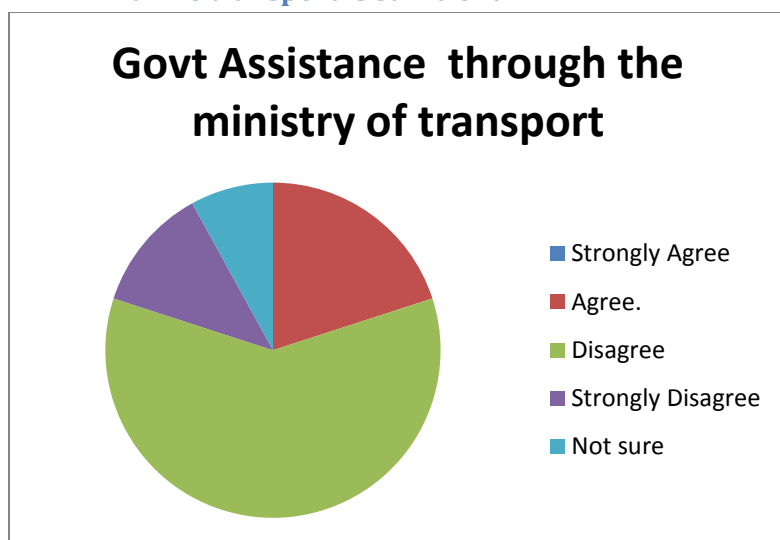
Strongly Disagree	3	12
Not sure	2	8
<b>total</b>	<b>25</b>	<b>100</b>

**Source: Field Data 2014**

From the table above, 60% of the respondents strongly disagreed that the government’s aid through the Ministry of Works and Transport to marine transport is sufficient, while 8% of the respondents were not sure.

The information above can further be illustrated on a pie chart as shown below.

**Figure 3: showing whether government’s aid through the ministry of Works and Transport to marine transport is sufficient.**



**Source: Field Data 2014**

**Table 4: Challenges faced by institutions monitoring water transport in Uganda.**

<b>What are the challenges faced by institutions monitoring water transport in Uganda.</b>	<b>Frequency</b>	<b>Percentage</b>
Legal challenges	8	32
Environmental condition	6	24



Safety challenges	<b>4</b>	<b>16</b>
Financial challenges	<b>5</b>	<b>20</b>
Others	<b>2</b>	<b>8</b>
<b>Total</b>	<b>25</b>	<b>100</b>

**Source: Field Data 2014**

From the table above 32% of the respondents said that legal challenge was the biggest challenge faced by institutions monitoring water transport in Uganda while 8% of the respondents said that there are other challenges faced by institutions monitoring water transport in Uganda.

**Table 5: Showing the causes of marine accidents in Uganda**

<b>What are the causes of marine accidents in Uganda</b>	<b>Frequency</b>	<b>Percentage</b>
Backward sailing practices	<b>5</b>	<b>20</b>
Boat over loading	<b>15</b>	<b>60</b>
Poorly build boats	<b>1</b>	<b>4</b>
Poorly maintained boats	<b>2</b>	<b>8</b>
Ill trained or untrained builders and operators	<b>2</b>	<b>8</b>
<b>Total</b>	<b>25</b>	<b>100</b>

**Source: Field Data 2014**

From the above table 60% of the respondents said that boat over loading was the biggest cause of marine accidents in Uganda, while 8% of the respondents said that ill trained or untrained builders and operators was the biggest cause of marine accidents in Uganda. This can also be illustrated on a pie chart as seen below.

**Table 6: Showing the types of maritime accidents**

<b>What are the types of maritime accidents</b>	<b>Frequency</b>	<b>Percentage</b>
Cruise vessel mishaps	<b>5</b>	<b>20</b>
Commercial	<b>4</b>	<b>16</b>
Fishing mishaps	<b>13</b>	<b>52</b>
Accidents on crude oil tankers and cargo ships	<b>3</b>	<b>12</b>
Others	<b>-</b>	<b>0</b>
<b>Total</b>	<b>25</b>	<b>100</b>

Source: Field Data 2014

From the above table 52% of the respondents said that fishing mishaps were one of the types of maritime accidents, while 12% of the respondents said that accidents on crude oil tankers and cargo ships were some of the several types of maritime accidents.

**Table 7: Solutions for marine accidents**

<b>What do you recommend as solution of marine transport</b>	<b>Frequency</b>	<b>Percentage</b>
Increase capacity building in the industry	<b>4</b>	<b>16</b>
Adopting a policy to incorporate safety standards	<b>6</b>	<b>24</b>
Update existing legislation	<b>10</b>	<b>40</b>
Increases of government funding	<b>4</b>	<b>16</b>
Others	<b>1</b>	<b>4</b>
<b>Total</b>	<b>25</b>	<b>100</b>

Source: Field Data 2014

From the table above 40% of the respondents said that updating the existing legislation was the best solution of marine transport, while 44% of the respondents recommended adopting a policy to

incorporate safety standards. 16% recommended the need to increased government funding for marine transport.

**Table 8: Strategies the ministry of Works and Transport has put in place to curb marine accidents**

<b>What strategies has ministry of works and transport put in place to curb marine accidents?</b>	<b>Frequency</b>	<b>Percentage</b>
Recruitment of staff with a bias in inland water transport (IWT)	<b>15</b>	<b>60</b>
Sensitization programmes around the landing sites about safety at the waters.	<b>3</b>	<b>12</b>
Monitoring the operators of the vessels to meet the minimum standards.	<b>5</b>	<b>20</b>
Developing inland water transport policy to improve on safety.	<b>2</b>	<b>8</b>
Others.	<b>-</b>	<b>0</b>
<b>Total</b>	<b>25</b>	<b>100</b>

Source: Field Data 2014

According to the data in table above, 60% of the respondents said that recruitment of staff with a bias in inland water transport (IWT) was the most compelling strategy the ministry of works and transport put in place to curb marine accidents, while 8% of the respondents said that developing inland water transport policy to improve on safety was the most compelling strategies the ministry of works and transport put in place to curb marine accidents.

**Table 9: Challenges faced by local persons that use marine transport**

<b>What are the challenges facing the local people who use marine transport</b>	<b>Frequency</b>	<b>Percentage</b>
Expensive life Jackets	<b>6</b>	<b>24</b>
Institutional frame work unknown	<b>9</b>	<b>36</b>

Inadequate Financials	<b>10</b>	<b>40</b>
Lock of Government Monitoring	-	
Others.	-	
<b>Total</b>	<b>25</b>	<b>100</b>

Source: Field Data 2014

From the above table 40% of the respondents said that inadequate financials was one of the challenges faced by the local people who use marine transport while 24% of the respondents mentioned expensive jackets. 36% of the respondents were not aware of the institutions responsible for marine transport.

### **4.3 Conclusion**

The management of maritime transport is disjointed, haphazard, rudimentary and based on individual preferences of owners. The forms of management are determined by vessel owners themselves. This attitude has exacerbated the number of marine accidents in the country. Marine Transport Accidents have been categorised as: Cruise Vessel Mishaps; Commercial Fishing Mishaps; Accidents on Tug boats; Accidents on Crude Oil Tankers and Cargo Ships; Maritime accidents due to drugs and alcohol and Cargo hauling accidents. The causes of marine accidents are attributed to the outdated and obsolete laws that do not provide for safety standards and regulations for vessel manning, overloading, incompetent and unqualified crew, use of old boats, out dated navigational charts and absence of navigation aids, backward sailing practices, untrained boat builders among others. It has been noted from this research study that most marine accidents in Uganda involve small vessels. That over the last fifteen years, only one accident has occurred involving MV Kabalega and MV Kaawa in 2005. Therefore, it is pertinent that the government gives priority to small vessels by providing safety standards, boat building standards, adopting policies to incorporate these standards and passing legislation to enforce the standards.

## **CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **5.1 INTRODUCTION**

Water transport had been a common transport mode in the early and mid-1900s, with the East African Railways and Harbors operating passenger steamer services on Lakes Victoria, Albert and Kyoga and on the navigable sections of the River Nile. The water transport system never recovered from the 1961 flooding, however, and has steadily deteriorated in the absence of further investment. URC had until recently been operating three wagon ferries on Lake Victoria between Port Bell and Kisumu (Kenya) and Mwanza (Tanzania)<sup>132</sup>.

In 2005, the sinking of the Ugandan registered Vessel M/V Kabalega after it collided with sister vessel M/V Kaawa led to cancellation of the insurance on the remaining vessels and the suspension of all operations.

Inland water transport in Uganda is characterized by obsolete vessels, poor landing facilities and incoherent oversight. With the exception of the construction of a \$5 million ship to operate between the Ssesse Islands on Lake Victoria and Port Bell and a few ferries, inland water transport in Uganda is dysfunctional. The most urgent measures to be taken involve repair of the lake landing site infrastructure, provision of more ferries, and improved enforcement of safety regulations<sup>133</sup>.

### **5.2 SUMMARY OF FINDINGS**

These research findings are based on the discussions in line with the objectives and hypotheses of the study outlined in chapter one of this report. They include:

Inland water transport in Uganda is characterized by obsolete and uninsured vessels, poor landing facilities, and incoherent oversight. Rural water Transport in form of boats is the alternative transport mode that provides low cost access to the islands and remote shorelines on Lake Victoria and other lakes, and connects villages along the banks of navigable rivers.

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<sup>132</sup>Supra note 7

<sup>133</sup>ibid

There are several types of maritime accidents namely; Cruise Vessel Mishaps, Commercial Fishing Mishaps, accidents on tugboats, Accidents on Crude Oil tankers and Cargo ships, Maritime accidents due to drugs and alcohol and Cargo hauling accidents.

Management of maritime transport in Uganda is disjointed, haphazard, rudimentary and based on individual preferences of owners.

It is significant to have a legal system in place for maritime transport in order to minimize on the excesses of the private sector vessel owners. Since without the law private owners will always aim at maximizing profits and as a result lead to accidents.

The Lake Victoria Transport Act, 2007 has a number of weaknesses as far as maritime safety is concerned. The Act applies to all vessels whether new or old without qualifications of the provisions as regards already existing vessels of which majority are in very poor mechanical condition.

The Act also sets general standards for passenger and cargo vessels without distinguishing between standards specific to each type. This makes the provision ambiguous especially to the inspector or surveyor who may not know what standards to look out for.

The Inland Water Transport (Control) Act, 1939 and the Vessels (Registration) Act, 1904 are obsolete laws that have never been implemented. The laws do not provide safety standards and do not provide for qualifications for operation of the vessels.

Almost all maritime accidents in Uganda involve small vessel (boats). Over the past 15 years only one accident has occurred involving big vessels i.e MV Kabalega and MV Kaawa in 2005. Strategies should be put in place to improve safety standards of boats by setting boat building standards, adopting a policy to incorporate these standards and passing legislations to enforce the standards.

The causes of maritime accidents in Uganda include among others: Boat overloading; poorly built boats; poorly maintained boats; ill trained boat builders and operators; backward sailing practices; lack of navigational aids on the water bodies; lack of life jackets; bad weather and absence of supervision of boats.

The Government through the Ministry of Works and Transport has put in place strategies to curb maritime accidents in Uganda through recruitment of staff with a bias in Inland Water Transport (IWT); sensitization programmes around the landing sites about safety at the waters. The Ministry through the Transport Licensing Board also monitors the operations of the vessels to meet the minimum standards.

The ministry is also developing an Inland water Transport Policy to improve on safety. IMO has also come on board and is helping with capacity building by offering training to members of the Ministry.

The life jackets available to sailors are said to be too expensive at UGX 70,000/=. The relatively cheaper ones at UGX 30,000/= are weak and can easily be blown off by strong winds. They also lack reflectors and may not be easily seen especially at night.

The current institutional framework within the Ministry of Works and Transport is inadequate to effectively handle the issues regarding maritime safety on Uganda's water bodies. There is also lack of coordination between the Ministry and other bodies related to water transport activities like the MAAIF.

### **5.3 CONCLUSION**

It is clear from the above research study on Legal Protection Against Marine Accidents in Uganda that the law governing water transport is obsolete and outdated and that there is need for formulation of a strong water transport policy in order to deal with the many accidents occurring on Uganda's water bodies. The revision of the Safety regulations in maritime administration and harmonization of the water transport laws is also wanting. Also, issues of funding for transport intervention is woefully inadequate and requires to grow substantially especially in the water transport sector.

The major laws relating to water transport in Uganda are the Lake Victoria Transport Act, 2007, the Inland Water Transport (Control) Act, Cap 348, the Vessels Registration Act, Cap 349, the Uganda Railways Corporation Act, cap 331, the Ferries Act, Cap 355, the Fish Act, Cap 197, the Rivers Act Cap 357. The laws are described as disjointed and under the responsibility of numerous institutions, not harmonised and contradictory as well as archaic. However, the government, through the Ministry of Works and Transport has procured consultancy services for improving Water Transport Legislation in Uganda. The Contract was signed on 22<sup>nd</sup> February 2014. It is hoped that after completion of the project, government will implement the recommendations in order to boost the water transport industry.

The institutions monitoring water transport in Uganda face a number of challenges. They include among others; prevailing perceptions particularly that water transport is slow, old fashioned and is a transport mode for the poor, Institutional bias of the sector which creates the illusion of water transport as an unviable mode of transport, the lack of safety standards to be followed by institutions, environmental concerns like oil spills, noise pollution and import of invasive species, lack of integrated planning and poor infrastructure, the poor navigational aids and inadequately trained or unqualified crew. These challenges are all as a result of the obsolete and out dated laws which are not respected by the institutions. It is hoped that modernisation of the water transport sector, improved laws and regulations

and improved funding for the sector will revive this industry. Similarly, the management of maritime transport is disjointed, haphazard, rudimentary and based on individual preferences of owners. The forms of management are determined by vessel owners themselves. This attitude has exacerbated the number of marine accidents in the country. Also, causes of marine accidents are attributed to the outdated and obsolete laws that do not provide for safety standards and regulations for vessel manning, overloading, incompetent and unqualified crew, use of old boats, out dated navigational charts and absence of navigation aids, backward sailing practices, untrained boat builders among others. It has been noted from this research study that most marine accidents in Uganda involve small vessels. That over the last fifteen years, only one accident has occurred involving MV Kabalega and MV Kaawa in 2005. Therefore, it is pertinent that the government gives priority to small vessels by providing safety standards, boat building standards, adopting policies to incorporate these standards and passing legislation to enforce the standards.

#### **5.4 RECOMMENDATIONS**

It has been found by the researcher that Inland water transport in Uganda is characterised by obsolete and uninsured vessels, poor landing facilities and out dated transport laws. In 2012 the opposition challenged the government to adopt the following recommendations<sup>134</sup> in abid to curb the numerous accidents on Uganda's water ways.

- a) Procure insurance cover for MV Kalangala
- b) Carry out comprehensive repair of the lake landing site infrastructures.
- c) Provide more ferries (Kayunga-Amolatar, Amuru- Rhino Camp, Kamuli- Bugondo, Kumi - Magoro, Rwampanga- Namasale).
- d) Improve enforcement of safety regulations.

The following are recommended areas for reform in order to curb the problem of marine accidents.

#### **1. Harmonisation of Laws with the East African Community**

The harmonisation of laws and regulations relating to water transport is an important aspect for the development of marine transport.

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<sup>134</sup>Report by Shadow Minister of Works and Transport Uganda Hon Patrick Amuriat Http; fdcuganda.org as assed on 18<sup>th</sup> January 2012  
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Chapter 15 of the Treaty establishing the East African Community commits the member states to implement harmonized transport policies and expanded transport links. Areas of cooperation include; harmonizing laws, standards and procedures and improving and integrating transport infrastructure. Specific articles deal with each mode separately as well as multimodal transport, freight forwarding, custom clearing and shipping agency.

The specific commitments contained in the treaty for the purpose of this study are: Harmonization of transport maritime policies and inland water transport policies, rules and regulations; Commercialization and liberalisation of port operation; Provision of access to landlocked states and Non-discriminatory tariffs for goods from other member states; ; Joint use of maintenance facilities; Undertaking joint ventures and joint shipping services; Non-discrimination in locations of cargo space and adoption of common rules on packaging marking and loading.<sup>135</sup>

It is recommended that the government of Uganda implements the provisions of this treaty on marine transport in order to minimise marine accidents on water bodies and also to develop this sector.

## **2. Strengthen the laws relating to maritime administration**

From the research, it was found that Uganda's laws on water transport are obsolete and out dated. It is recommended that the existing laws should be updated to meet the current trends. Adopting safety standards from International Maritime Organisation and the East African Community is one of the recommendations. Similarly, laws for the compulsory wearing of life saving jackets while on water should be adopted. However, the law should provide for standard life saving jackets which can be afforded by every person and at the same time serve the purpose.

The law should also be strengthened to provide steps for water transport operators to form associations in order to help them to work towards the development of the service. The use of diesel powered boat engines, which are more robust and less expensive in terms of fuel prices should also be included in the law.

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<sup>135</sup> Article 94 of the Treaty Establishing the East African Community, 1999.

Mandatory inspection and licensing of the water vessels should be included in the law. Small boats that are locally made should have boat building standards attached to them and also, those that make the boats should have some level of qualification. For instance they should have obtained some practical skills on maritime safety and boat building from a recognised maritime institute.

The Inland Water Transport (Control) Act and The Vessels (Registration) Act should be amended to clearly spell out who should operate the different vessels. There is need for special provisions such as right to access of vessels to ports, guarantees as regards efficiency of surveys and inspections.

The Lake Victoria Act, 2007 should be amended particularly section 11(h) to give a criteria and guidelines for the establishment of Maritime Administration and to provide a mechanism through which this is to be achieved, the source of funding as well as a time frame within which a state should discharge this obligation should be clearly spelt out and the penalties for failure to set up the Administration Unit.

### **3. Establish a marine Institute**

It is recommended that the government opens up a marine institute to train vessel operators. This is aimed at having qualified staff to manage the water transport industry and also to equip masses with marine skills in case of any eventualities. Training skippers and people to build boats and standards for boat building will also improve on the marine sector. The institute will also equip people with measures for dealing with the aftermath of marine accidents that include rescue operations and good care survivors.

### **4. Improve Port Infrastructure**

One of the recommendations is for government to improve the ports for better service delivery. The researcher found that the facilities and the infrastructure at the landing sites are in very poor conditions and this slows down the activities at the landing sites.

## **5. Proper funding of the Marine Industry**

The government is urged to prioritise the water transport industry through allocating enough/sufficient funds at the time of budgeting. The Ministry of Works and Transport is also urged to prioritise maritime activities, carryout regular inspections and licensing of vessels. Improving capacity building in the department will also improve the sector and also sending more staff to attend the training in maritime law and policy and maritime safety at sea. This opportunity is currently available to government officers by IMO at Malmo University in Sweden.

## **6. Empowering the institutions that monitor Marine Transport.**

The Ministry of Works and Transport and the Marine police should be empowered to properly monitor the industry. Lack of enough funds to carryout inspection and licensing at the landing sites was sighted as the major challenge. Empowering may be through funding and capacity building- recruiting staff with a bias in maritime law and safety and maritime economics.

## **7. Establishment of the Maritime Administration Unit**

It is recommended that the government borrows a leaf from Kenya and Tanzania to establish an autonomous body whose sole responsibility is to deal with maritime related matters. The establishment of a Maritime Administration Unit as provided for under the Lake Victoria Transport Act should be expedited. The Maritime Administration will be responsible for enforcement of safety of navigation; implement maritime training and adhere to safety standards, set up and maintain aids of navigation among others.

## **8. Maritime safety should be included in the Secondary Education Curriculum**

Ministry of Education and Sports is urged to include maritime safety in the secondary school curriculum. This will not only enhance students with maritime skills but will also erase the bias that maritime sector is useless and is only an affair for the rural people who leave near the water. Similarly, sensitisation and awareness campaigns on the advantages of marine transport should be intensified by government through Ministry of Works and Transport.

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## **APPENDIX I**

### **INTERVIEW GUIDE**

I am Twesigomwe Mary a student from Makerere University School of Law pursuing Masters of Law Degree. I am conducting a research on, 'The Legal Protection against Marine Accidents in Uganda.' The interview questions were directed to key Informants purposely selected from ports of Lake Victoria, Ministry of Works and Transport, Uganda Railways Corporation, .The key informants, namely, crew masters at the vessels on the lakes, officials from Transport Licensing Board and the Water and Rail Transport Regulation Division in the Ministry of Works and Transport. You have been selected as one of the key informants.

1. How is marine transport system managed in Uganda?
2. What do you consider to be the significance of having legal systems in controlling marine transport in Uganda?
3. What do you consider to be the most common cause of Marine Accidents in Uganda and are there possible strategies to curb these.
4. What are some of the policies considered to counteract the situation of water transport in Uganda?
5. How does the government through the Ministry of Works & Transport assist marine transport in Uganda?
6. How has the Ministry of Transport and works overcome the challenges of Marine transportation In Uganda?

## APPENDIX II

### QUESTIONNAIRE

I am Twesigomwe Mary a student from Makerere University School of Law pursuing Masters of Law Degree. I am conducting research on, 'The Legal Protection against Marine Accidents in Uganda.' The interview questions are directed to key Informants purposely selected from ports of Lake Victoria, Government Departments particularly Ministry of Works and Transport and Uganda Railways Corporation. You have been selected as one of the key informants in this study.

1. Marine transport is well managed in Uganda

A. Agree  B. Disagree  C. Strongly Agree.

D. Strongly Disagree.  E. Not sure

2. Is it important to have legal system controlling marine transport in Uganda.

A. Agree  B. Disagree  C. Strongly Agree.

D. Strongly Disagree.  E. Not sure

3. Is government's assistance through the ministry of transport to marine transport sufficient ?

A. Agree  B. Disagree  C. Strongly Agree.

D. Strongly Disagree.  E. Not sure

## SECTION B

4. What are the challenges faced by institutions monitoring water transport in Uganda.

- a) Legal challenges
- b) Environmental condition
- c) Safety challenges
- d) Financial challenges
- e) Others

5. What are the causes of marine accidents in Uganda

- a) Backward sailing practices
- b) Boat over loading
- c) Poorly build boats
- d) Poorly maintained boats
- e) Ill trained or untrained builders and operators

6. What are several types of maritime accidents you know.

- a) Cruise vessel mishaps
- b) Commercial
- c) Fishing mishaps
- d) Accidents on crude oil tankers and cargo ships
- e) Others

7. What are challenges of marine transport in Uganda

- a) Disjointed
- b) Haphazard
- c) Rudimentary
- d) Based on individual preferences of owners.
- e) Others



8. What do you recommend as solution of marine transport
  - a) Strategies to improve safety standards of boats
  - b) Adopting a policy to incorporate these standards
  - c) Passing legislation to enforce the standards
  - d) Increases of government funding
  - e) Others.
  
9. What strategies has ministry of works and transport put in place to curb marine accidents?
  - a) Recruitment of staff with a bias in inland water transport (IWT)
  - b) Sensitization programmes around the landing sites about safety at the waters.
  - c) Monitoring the operators of the vessels to meet the minimum standards.
  - d) Developing inland water transport policy to improve on safety.
  - e) Others.
  
10. What are challenges facing the local industry
  - a) Expensive life jackets
  - b) Current institutional frame work
  - c) Inadequate financials
  - d) Lack of government monitoring
  - e) Others

## Appendix III

### LIST OF RESPONDENTS

1. Michael Walwanga Deputy Commander, Uganda Marine police
2. Nyamulinyi Emmanuel Chief Civil Engineer, Uganda Railways Corporation
3. Ministry of Works and Transport include:
  - a) Winstone Katushabe Secretary Transport Licensing Board
  - b) Amanyire Ronald Ag. Principal Inspector of Vessels
  - c) Ategeka Henry Senior Transport Officer
  - d) Bernard Khabakha Senior Inspector of Vessels
  - e) Kisakye Robert Licensing Officer
  - f) Kizito Edward Senior Safety Officer
  - g) Niwenyine Patience Guma Licensing Officer
  - h) Agaba Yusuf Inspector of Vessels
  - i) Muhangi Andrew Licensing Officer
  - j) Kyotya Catherine Senior Accounts Assistant
4. Business communities at Port Bell and Kasenyi Landing Sites